

Exercise 1B. Access to and Use of Plant Genetic Resources under the PGR Treaty

(group work)

After doing this exercise, participants are able to identify the scope and coverage of the International Treaty and determine whether the issue of 'commercial benefits' is relevant in this particular situation.

1. Form the same three groups as in the earlier exercise. Each group elects a rapporteur.
(5 minutes)



Phase 1. Group work (1 hour 10 minutes)

2. Discuss the following hypothetical case and respond to the related questions.

You are the head of a national agricultural research institution in Ecuador (INIAP) and you are executing a research project with a German university and company, which involves collecting unique native potato varieties in the Ecuadorian Andes that are (a) in one case covered by the IT and (b) in the other case, not covered.

The project implies collecting materials from the fields of indigenous communities and undertaking some improvement of the varieties in German laboratories for their reproduction and cultivation in German fields and their further use in producing a special type of potato chip.

Ecuador has signed and ratified the IT (which is now in force).

Your Agriculture Minister is concerned about the project, having heard there may be sovereignty issues involved, and some advisors are not too sure about what legislation may be applicable—the CBD, Decision 391 or the IT.

The following considerations should be taken into account:

- The CBD sets minimum access and benefit-sharing principles; Decision 391 applies to all genetic resources and, having preceded the IT, makes no reference to it.
- The IT is in harmony with the CBD and is applicable to the genetic resources of a list of crops, including potatoes.

NOTE: Remember the reading review that you did prior to the workshop on
DECISION 391: Régimen Común sobre Acceso a los Recursos Genéticos.

3. Pretend that you are a legal advisor and must respond to the questions below, for which your Minister needs speedy answers. You should try to work on two proposed lines of thought: (1) this crop *is* under the IT and (2) it is not.
 - i. What is the applicable legislation (are the native varieties to be collected under the scope of the Multilateral System)? Take into account that in most Latin American countries, genetic resources are the patrimony of the Nation or State and thus States may have rights over genetic resources.
 - ii. If the IT is applicable, is reproducing these native varieties in Germany expressly covered under the scope of the Treaty? Which articles? Why?
 - iii. What would be the benefits one might expect from this project and how would they be shared?
 - iv. How are Farmers' Rights relevant (under what circumstances would they be)?
 - v. Could the German partner apply for PBR legislation in Europe and elsewhere? Give reasons for your response (whether positive or negative).
4. Use the worksheets (Handout 1B.2, three pages) to note down the summary of your group's discussion.
5. The rapporteurs compile their group's responses on a flipchart to present to the audience.

Phase 2. Presentation and discussion (55 minutes)

6. The rapporteurs present the results of their group's discussions to the audience. Each rapporteur has five minutes to report. (20 minutes)
7. The trainer distributes Handout 1B.3 to the participants, analyses practical considerations for this exercise, provides feedback on the context of the presentations and closes the session. (35 minutes).

Exercise 1B — Worksheet (1)

- i. What is the applicable legislation (are the native varieties to be collected under the scope of the Multilateral System)?

- ii. If the Treaty is applicable, is reproducing these native varieties in Germany expressly covered under its scope? Which articles? Why?

Exercise 1B — Worksheet (2)

- iii. What would be the benefits one might expect from this project and how would they be shared?

- iv. How are Farmers' Rights relevant (under what circumstances would they be)?

[illegible]

Practical Considerations for Exercise 1B

(to be distributed after the exercise has been completed)

After doing this exercise, participants are able to identify the scope and coverage of the International Treaty and to determine whether the issue of 'commercial benefits' was relevant in this particular situation.

General issues

Each proposed situation in Exercise 1B—(1) covered by the IT list and (2) not covered—should be analyzed by trainees separately in order to make the logical process of thinking through the exercise easier. If questions that are not immediately clear arise regarding the exercise, participants should make reasonable assumptions and work through these rather than opening the discussion as to what exactly and unequivocally the exercise means.

Specific considerations

1. The analysis may become quite complicated in the case of a country like Ecuador and most Andean countries, where a distinction is made between the legal status of biological and of genetic resources. The trainer should briefly comment on the type of complexities this distinction may generate—as a means to make trainees aware of them rather than explaining them in detail. An example could be useful (i.e., the case of a domestic animal: who owns its genes?).
2. Make participants aware of the need to take into account the fact that there are some improvement activities to be undertaken over the varieties in question and that it is not simply a case of selling and reproducing for seed, processing, etc., in Germany. The act of 'improving' this variety may be of considerable relevance to the outcome of the exercise.
3. In regards to Farmers' Rights, trainees should try to determine their relevance, even in the absence of specific, implementing national laws and policies, if this were the case. Using the general Farmers' Rights principles in the International Treaty (participation, benefit sharing, protection of TK), participants should also be in the position of determining whether and which type of benefits may be applicable for this specific situation (if any).