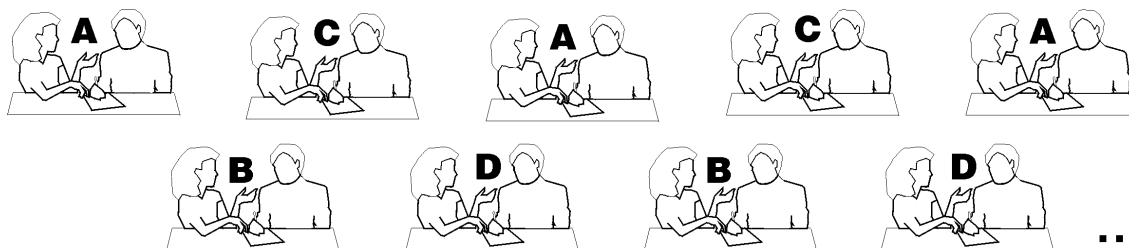


Exercise 1C. Accessing Materials from an *ex Situ* Centre

(work in pairs)

*The aim of this exercise is to analyze the different situations that managers of **ex situ** conservation/research centres and plant genetic resources in general may face when undertaking transfer activities (collecting and distribution) in a 'post-CBD' world.*

1. Form a pair with your neighbour. (5 minutes)



Phase 1. Work in pairs (25 minutes)

1. The trainer assigns letters A, B, C, D, E and F to the pairs, repeatedly, until all pairs have a letter.
2. Carefully read the hypothetical case below and work on the questions assigned to your pair to complete step 3 of this exercise.

You are the manager of a public, *ex situ*, genebank in a country in the Amazon called Brazuela, which holds genetic material of a rare variety of cassava from the Andean-Amazon region (it is found only in a limited geographical area and is only used for local consumption). This was acquired after the entry into force of the CBD and the adoption of Decision 391 of the Andean Community (Venezuela, Colombia, Ecuador, Peru and Bolivia). You received these materials from colleagues in Peru.

A colleague from a public research institution in Argentina has requested material for continued research and breeding.

You know that there is now a wide range of international, regional and national legal instruments that seek to regulate access to genetic materials, so you ask a legal expert for advice. (Take into account the fact that the Andean Region and Brazuela have access legislation in place.)

Decision 391 requires that to access genetic resources from *in situ* or *ex situ* conditions (in the Andean countries), an access agreement and authorization is required from the State Competent Authority. In the case of Brazuela, its national access laws require that anyone seeking access to the genetic patrimony of the Nation must require an authorization from the State Authority.

NOTE: take into account the fact that the PGR Treaty is now in force and all involved countries have ratified it.

3. Respond to the question assigned to your pair:

PAIR A: What are some of the key legal issues you should consider in a case like this? You should seek not so much to come up with a definite and precise answer, but rather to identify the type of issues that may arise in a case like this.

PAIR B: Is it relevant that the material was acquired after the entry into force of the CBD? Please explain.

PAIR C: Is there any special provision applicable to *ex situ* centres? How do you think Decision 391 and the IT provisions relate to this case?

PAIR D: What legal instrument should be used (e.g., a contract, an MoU, an MTA) if you decide to forward these materials to your Argentinean colleague?

PAIR E: Should a National Authority be involved in some way?

PAIR F: Should benefits be shared and, if so, how? Should Brazuela take into account the Andean countries' access regime?

4. Use the worksheet to note down your ideas. Write your responses on a flipchart or an overhead transparency provided by the trainer. Use key words and make sure you write clearly using large letters.

Phase 2. Reporting and discussion (40 minutes)

5. The trainer invites rapporteurs from the A, B, C, D, E and F pairs to present the results to the audience. (20 minutes)
6. The trainer invites other pairs who had different responses to share and discuss their results. (10 minutes)
7. The trainer distributes Handout 1C.8 to the participants, analyses practical considerations for this exercise, provides feedback on the context of the presentations and closes the session. (10 minutes)

Exercise 1C — Worksheet

Pair A

Question:

What are some of the key legal issues you should consider in a case like this?

This image shows a single sheet of white paper with horizontal blue ruling lines. The lines are evenly spaced and run across the width of the page. There are no margins, text, or other markings on the paper.

Exercise 1C — Worksheet

Pair B

Question:

Is it relevant that the material was acquired after the entry into force of the CBD?

[illegible]

Exercise 1C — Worksheet

Pair C

Question:

Is there any special provision applicable to *ex situ* centres?

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Exercise 1C — Worksheet

Pair D

Question:

What legal instrument should be used (i.e., a contract, a MoU, a MTA) if you decide to forward these materials to your Argentinean colleague?

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Exercise 1C — Worksheet

Pair E

Question:

Should a National Authority be involved in some way?

[illegible]

Exercise 1C — Worksheet

Pair F

Question:

Should benefits be shared and, if so, how?

Should Brazuela take into account the Andean countries' access regime?

This image shows a single sheet of white paper with horizontal ruling lines. The lines are evenly spaced and run across the width of the page. There are no margins, text, or other markings on the paper.

Practical Considerations for Exercise 1C

(to be distributed after the exercise has been completed)

*After doing this exercise, participants are able to analyze the different situations that managers of **ex situ** conservation/research centres and plant genetic resources in general may face when undertaking transfer activities (collecting and distribution) in a 'post-CBD' world.*

General issues

Questions proposed to pairs will almost certainly not generate straightforward, direct answers but, rather, other related questions, which will enrich the capacity of participants to speculate on the various approaches that may be taken when applying the provisions of the CBD, IT and Decision 391. Although the answers are important, it is equally important to identify the issues and problems that may make these questions much more complex than originally thought. A 'correct' answer will not always be possible.

Specific considerations

Exercise 1C does require more familiarity with Decision 391 in particular. In this regard, the trainer should recommend the following:

1. Pairs C and D, especially, should focus their analysis on articles 36, 37, 41, the Fifth Complementary Disposition and the First and Second Transitory Disposition.
2. Pair A should try to concentrate on specific issues in the area of: property rights/sovereignty, access procedures and benefit sharing.
3. Pair B should perhaps make a small box looking at cases involving (a) post-CBD acquisitions *vis-à-vis* pre-IT collections and/or (b) post-IT collection and distribution. Work under different assumptions.
4. Pair C will need to carefully analyze the legislation (specific provisions) mentioned above.
5. Pair D should look at how Access Contracts under Decision 391 and MTAs under the IT relate to one another.
6. Pair F should consider how reciprocity and incentives can play a role in the overall implementation of an equitable benefit-sharing scheme.