

Hypothetical Case for Exercises 1A and 1B

General Facts

Bugania is a country in South Central Africa and shares similar ecosystems with two neighbouring countries to the east and west, Eastania and Westalia, respectively. While the three countries have economic partnership agreements between them, they are often seen as competitors in the area of external trade related to agricultural and natural products, on which their respective economies largely depend.

The taper plant, known as *obokun* in the local language, is common to the three countries, although the largest concentration is found in Eastania. However, the plant occurs largely in the areas considered the ancestral range of the local Burutu tribe, who are a semi-nomadic people indigenous to all three countries, in different concentrations but with the highest population in Westalia. Historically, the Burutu people have used the *obokun* plant for a variety of agricultural, medicinal and dietary purposes, including as a hunger suppressant.

Based on the traditional uses of *obokun*, researches were recently able to isolate a compound from the plant that prevents obesity. Initial tests have shown that it is without any foreseeable side effects and it is anticipated that annual sales from the resulting product could run into several billions of dollars. Several private-sector operators are currently interested in commercializing the compound, either as a pharmaceutical product or as a food supplement, along with other cosmetic applications. However, because of the complexity of the compound, it has been difficult to synthesize and it is envisaged that production will depend on raw extracts from the plant for several years to come.

Recent ecological studies have shown that the *obokun* plant has a very complex inter-relationship with other species and therefore plays a critical role in maintaining the balance of the ecosystem in the areas where it is found. Furthermore, the plant takes several years to reach useful maturity. However, aside from the traditional uses, there is a significant level of unauthorized collection currently going on in one of the neighbouring countries and, to a lesser degree, in Bugania.

Bugania has recently completed its draft bill and regulations on ABS, based on the African Model Law but consistent with the relevant international agreements, including the Convention on Biological Diversity. The relevant authority is about to send the bill and regulations to the Parliament for enactment into law. In this regard, Bugania is significantly ahead of its neighbours in the policy and legislative process. Eastania has no legislation at all or even any defined institutional arrangement to govern issues of genetic resources, while Westalia has an environmental management authority that has a mandate over genetic resources but no defined laws governing them. Each of the countries, to varying degrees and based on its specific situation, is interested in a number of objectives, including the following:

- boosting the infrastructure of its local research capacity
- protecting and conserving its fragile ecosystems
- protecting the rights and interests of the local communities
- boosting food security
- stopping illegal collection or harvesting of resources
- making money from the resources, etc.

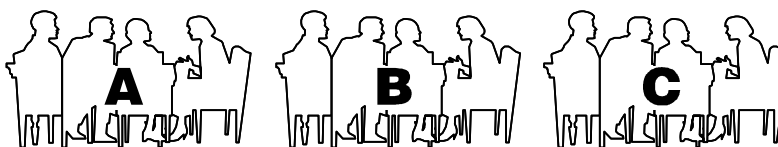
Each of the countries is also concerned about what effect internal arrangements will have on its ability to reap these benefits in light of the possible situation in the other countries.

Exercise 1B. Developing a Draft Segment of an ABS Regime

(group work)

The aim of this exercise is to identify critical points in drafting ABS legislation and the information needed at each point to make a good decision and to understand the role law and policy can have in both positive and negative terms.

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



Phase 1. Group work (1 hour 5 minutes)

2. All groups keep in mind the hypothetical case (handout 1A.5) and discuss the following additional facts to be able to work on this exercise:

Due, among other things, to encroachments on their traditional hunting ranges and survival needs, as well as the impact of external developments on their way of life, certain groups of the Burutu tribesmen have developed settlements and actively engage in farming activities. Like the rest of the tribe, these groups also make extensive use of the *obokun* plant but have, in addition, developed unique cropping systems for the multiplication and cultivation of the plant. They have also, in the process, developed a particular forage variety containing unique nutritional qualities as well as veterinary properties that serves as fodder for their livestock. Incidentally, this plant falls under one of the genera that are listed under the FAO International Treaty as being covered under the multilateral system.

Part A. (20 minutes)

3. Discuss and respond briefly to the following:
 - (a) Define key terms using language that can be understood by most people in your country and that clearly addresses the objectives of the law.
 - (b) Define the scope of the legislation, policy or administrative action.
 - (c) List provisions that make the law interface with other instruments and treaties, specifically taking into account the requirement of the FAO International Treaty for a multi-lateral system of access and benefit sharing and the aspect of farmers' rights.

- (d) Define what provisions are needed to ensure that the prior consent of local and indigenous communities is obtained and enforced, and that they receive ‘appropriate’ benefits.
 - (e) List administrative arrangements that can streamline the process of access so that there is less bureaucracy.
 - (f) List any other factors you can think of, such as research collaboration and in-country capacity building.
4. Use handout 1B.2 to note down the summary of your group’s discussion.

Part B. (40 minutes)

5. Based on the identified national priorities and objectives, as well as the agreed common approaches in the sub-region, and using existing global and regional agreements as a guide, paying particular attention to the African Model Law on the regulation of access to biological resources and the Revised African Convention on the Protection of Nature and Natural Resources, **prepare a draft segment of an ABS regime** containing the provisions mentioned above.

NOTE: Remember the reading review that you did prior to the workshop on:
African Model Legislation for the Protection of the Rights of Local Communities, Farmers and Breeders, and for the Regulation of Access to Biological Resources

6. The rapporteurs prepare the results of their group’s discussion on a flipchart to present to the audience. (5 minutes)

Phase 2. Reporting and discussion (60 minutes)

9. The rapporteurs present their group’s results to the audience. Each rapporteur has approximately 5 minutes to present. (15 minutes)
10. After the three presentations, the trainer facilitates a discussion. (30 minutes)
11. 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. (15 minutes)

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Practical Considerations for Exercise 1B

(to be distributed after completion of Exercise 1B)

After doing this exercise, the participants are able to identify critical points in drafting ABS Legislation and the information needed at each point to make a good decision and to understand the role law and policy can have both in positive and negative terms.

General Issues

The trainer should look at the general issues raised in Exercise 1B and help the participants see how they apply in the drafting of the legislation in this hypothetical case. The two exercises are linked and the participant is asked to evaluate the information and answers provided in Exercise 1A for its impact on drafting the ABS legislation in Exercise 1B.

Specific Issues

One of the ultimate goals of Exercise 1B is for the participants to create draft ABS legislation.

At the end of the exercise, the participants should demonstrate the following abilities:

- (a) to understand the key elements of ABS legislation

key elements of ABS legislation:

- access regulation (with requirements for prior informed consent)
- fair and equitable benefit-sharing mechanisms (monetary and non-monetary)
- the process of accession of pre- and post-CBD *in situ* and *ex situ* collections, and the process of accession to Annex I IT crops
- the discretion of the exercise of farmers' rights by the Contracting Parties to the CBD and the IT
- the requirement (subject to national legislation, and insofar as appropriate) for a country to respect, preserve and maintain knowledge, innovations and practices of indigenous and local communities embodying traditional lifestyles relevant to the conservation and sustainable use of biological diversity; to promote their wider application with the approval and involvement of the holders of such knowledge, innovations and practices; and to encourage the equitable sharing of benefits arising from the use of such knowledge, innovations and practices.

- (b) to understand the international instruments of relevance to ABS, particularly the International Treaty on Plant Genetic Resources for Food and Agriculture, the African Model Law on the Regulation of Access to Biological Resources, and the Revised African Convention on the Protection of Nature and Natural Resources and how these instruments interact with national law.

- (c) to identify the key administrative authorities at the national level in regulating ABS and the functions/processes of each.

key administrative authorities at the national level and their functions:

- national environmental authority—ensures that biological resources are accessed in a sustainable manner
 - national genebank—regulates access to national *ex situ* collections and maintains primary collections
 - national commerce authority—oversees fair and equitable sharing of benefits
 - customs and border control—ensures that resources are not exported illegally
 - plant variety protection authority—ensures that materials imported are not harmful to existing flora and fauna
 - national patent authority—ensures that intellectual property rights are not expropriated
 - national cultural authority—ensures that knowledge, innovations and practices of indigenous and local communities are maintained and preserved
- (d) to define key terms used in ABS in a language that can be understood by most people in their countries.
- some key terms used in ABS:***
- access
 - benefit sharing
 - mutually agreed terms
 - material transfer agreements
 - prior informed consent
 - farmers' rights
 - *in situ* collections
 - *ex situ* collections
 - germplasm
 - genetic resources
- (e) to understand the objective and scope of ABS policy and legislation and how they are best implemented by administrative actions.
- objective and scope of ABS policy and legislation:***
- regulation of access to genetic resources
 - ensuring that benefits arising from use of biological resources are shared fairly and equitably
 - preserving and maintaining knowledge, innovations and practices of indigenous and local communities embodying traditional lifestyles relevant to the conservation and sustainable use of biological diversity
- (f) to identify and understand other key factors of relevance to ABS that contribute to the implementation of ABS regimes,
- including, but not limited to***
- research collaboration
 - capacity building
 - sustainable development
 - joint ownership of intellectual property rights
 - third-party transfer of materials collected and rights