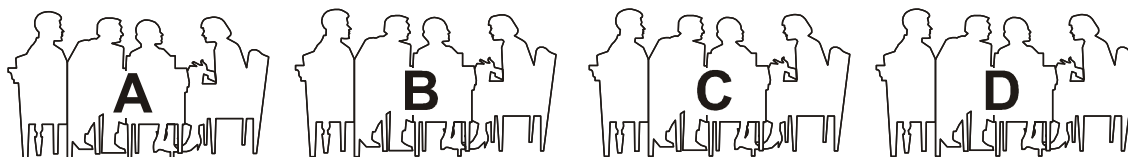


Exercise 6. Implementing the TRIPS Agreement and the UPOV System

(group work)

The aim of this exercise is to apply knowledge acquired in this session to contribute to the design of policies relevant to PGRFA at national level, taking into account (a) the international context, and (b) the characteristics of agriculture, production and national technological and development objectives.

1. Form groups of four participants each and elect a rapporteur. (5 minutes)



Phase 1. Group work (60 minutes)

2. All groups briefly browse handouts 3.6.4, 3.6.5 and 3.6.6 and discuss the following hypothetical case:

You represent a developing country with an emerging sector of agricultural production geared towards export. Your national objectives include strengthening this sector while over 50% of your population is dependent on subsistence agriculture for its survival. Some varieties are used by traditional farmers and commercial users, but mostly there is no overlap in use. Most of the country is dependent on farmer-saved seed and an informal seed supply system though the emerging commercial sector needs access to improved varieties from outside the country (and needs to be able to sell its product in the global market). Funding for public research and breeding in your country has been on the decline and will likely continue to fall. You are asked by the Minister of Agriculture for advice on implementing Article 27.3(b) of the TRIPS Agreement. He has also asked you to assess UPOV as a *sui generis* system.

3. All groups work on the questions that follow. Use the Worksheet (handout 3.6.8) to record your discussion.
 - 1) What objectives do you hope the *sui generis* system will achieve?
 - 2) What would you recommend to your Minister as the elements of a system for your country?
 - 3) Identify how each element addresses a national need/objective. Is this the best and/or an effective way to address each objective?
 - 4) Are the elements compatible with TRIPS?
 - 5) How do they relate to the CBD and IT objectives and provisions?

4. The rapporteurs prepare a presentation summarizing the major points of their comparative analysis to report to the audience, using flipcharts or overhead transparencies.

Phase 2. Reporting and discussion (1 hour, 10 minutes)

1. The rapporteurs present their group's results to the audience. Each rapporteur has approximately 10 minutes to make the presentation. (40 minutes)
2. The trainer distributes handout 3.6.9 (practical considerations), stimulates the discussion, and invites the participants to provide feedback on the exercise (30 minutes)

[illegible]

Practical Considerations for Exercise 6

(to be distributed after the exercise has been completed)

After doing this exercise, the participants are prepared to contribute to the design of policies relevant to PGRFA at the national level, taking into account all necessary requirements.

General approach:

In undertaking this exercise, participants should apply the knowledge acquired in this Session on intellectual property to a specific national situation. It requires a fair understanding of the international rules described, as well as the ability to elaborate on how they might be implemented in the described domestic situation.

In developing this exercise, participants are expected to consider both the constraints imposed by the international context as well as the opportunities that it offers to develop suitable GR policies. These policies should not be merely defensive (how to mitigate the restrictions imposed) but offensive (how to take advantage of the flexibilities allowed).

Specific observations:

An important aspect of the exercise is to integrate the *national* and *international* aspects of a PGR policy, which are often dissociated due to lack of coordination among different national agencies and departments. In this regard, consideration should be given to what actions the country should take in international fora, such as WTO and WIPO, in order to preserve or expand its room for manoeuvre in this field.

This exercise requires an effective interdisciplinary approach and consideration of intellectual property as an *instrument* that society may use to provide adequate incentives (not as an end in itself). In this sense, participants are expected to find a proper balance between the interests of subsistence farmers and the emerging commercial sector, taking into account the need to obtain access to foreign improved varieties.

Participants are also expected to discuss, among other things, policy issues, such as the following:

- how different options of intellectual property protection may affect farmers' practices of saving seeds and the functioning of an informal seed supply system;
- the role that intellectual property rights may play in stimulating research and breeding in public institutions, and whether granting such rights might change the trend in declining funding for those activities;
- the extent to which different modalities of protection might provide incentives for increased research and breeding by the private sector;

- whether PVP based on the UPOV model is appropriate for a country with the described situation, or whether alternative *sui generis* options need to be developed;
- what the main elements of a *sui generis* regime should be.