

## DAY THREE

### Session 6 IPRs I: An Introduction to the TRIPs Agreement, UPOV 1978 and 1991, and Pertinent WIPO Treaties

*The TRIPs Agreement has obliged countries to initiate policy and legal processes to adapt their IPR legislation to TRIPs standards, including developing legislation to protect new plant varieties. Some countries have adhered to UPOV or have used a 'UPOV-like approach'. Many other countries are still discussing the level of flexibility they have to design sui generis regimes for the protection of local plant varieties and land races. In this context, the reference to patents, plant patents, plant breeders' rights or sui generis regimes conjures up all kinds of debates and discussions, especially among countries that feel they need to adapt to TRIPs (and a TRIPs-plus dynamic promoted by the US through bilateral and regional free-trade agreements in particular) but to do this in accordance to their own social, economic, technological and cultural needs and interests. WIPO administers a series of treaties and conventions that are used to implement other provisions of TRIPs standards are of relevance to plant material and information regarding plants.*

#### Instructions to Trainers

#### SESSION 6

**10:45 – 13:00 Session 6. IPR's I: An Introduction to the TRIPs Agreement, UPOV, 1978 and 1991, and Pertinent WIPO Treaties**

**13:00 – 14:00 Lunch**

#### OBJECTIVES

By the end of this session, the participants will be able to do the following:

- Discuss the meaning of *sui generis* protection of plant varieties (UPOV is one such system).
- Outline UPOV's main provisions and understand the main differences between plant varietal protection and patent protection.
- Explain how a *sui generis* system for plant variety protection may relate to other policy and legal issues of relevance to PGRFA (such as protection of the innovations and practices of indigenous and local communities, and elaboration of farmers' rights).
- Outline the TRIPs Agreement's main provisions relevant to GR professionals.
- Discuss and understand WIPO treaties relevant to GR professionals.

Use overhead 3.6.5 and 3.6.6 to present the session's objectives

## PROCEDURE

Learning Strategies: presentation, group work.

**Make sure that handouts 3.6.4, 3.6.5 and 3.6.6 are sent to the participants prior to the workshop. Prepare extra copies for distribution if necessary.**

## PRESENTATION

(*experience*) Give a presentation on the TRIPS Agreement, UPOV and relevant WIPO Treaties. Before you begin your presentation distribute the Summary of Overheads (Handout 3.6.3). Overheads 3.6.7 to 3.6.8 support the presentation. You will find the information in handouts 3.6.4, 3.6.5 and 3.6.6 very useful to support your presentation. Be sure to ask the participants if they have any comments or questions, or if they need any clarification. (30 minutes)

## SPECIAL NOTES TO TRAINERS

**Please be sure to read the following notes before the session. They will help you comment on the participants' output. Handout 3.6.9 also provides 'practical considerations' for Exercise 6. Read these considerations before the session. Distribute the handout **ONLY** after the participants have completed the exercise**

The most important thing to stress in Exercise 6 is that the first step in creating a *sui generis* system is to determine what the goals of the system are. What are the designers hoping to accomplish? Often there are calls for certain elements of a system, without consideration of what the elements are designed to promote (without even going into the costs – financial, human, institutional – of creating and administering the system!).

As you listen to the outputs, it may also be useful to ask questions that make the participants examine their underlying assumptions. For example, there may be calls to include landraces in a modified IPR system. The first question would be, 'For what purpose?' The answer might be, 'To encourage development', and the trainer may wish to ask why the participants in the group concluded that a modified IPR (PVP or otherwise) would in fact promote development (perhaps noting that the Green Revolution took place without the benefit of PVP) or that farmers have been innovating for millennia without the benefits of *sui generis* PBRs.

You may also wish to highlight what national interests (e.g., farmers, seed and biotech industries, local communities) they were trying to satisfy in designing the system and how the elements of the system would respond to these interests. Next, the trainer may wish to ask how these interests, as reflected in the designed system might be balanced with other policy objectives. You will want to get the participants to see how the *sui generis* PVP system

might relate to other laws and policies, such as those on access. Also, despite the attention given to IPRs in international fora concerned with plant genetic resources, intellectual property is unlikely to be the instrument of choice for sectors of the economy that rely on traditional varieties and plant breeding by traditional farmers. Because one aim of the policy training course is to show connections and the relative roles of different policy instruments, the trainer may wish to point out the need to consider elaborating on other concepts, such as farmers' rights, rights against misappropriation, and the promotion of on-farm conservation, and to see that a *sui generis* PVP system does not run counter to these concepts and goals. You can then get back to the *sui generis* system itself and talk about how it might be modified to support these goals.

You may also wish to explore how well the participants have considered the costs of establishing and maintaining the system created. With this context established, the trainer may wish to raise specific questions such as:

1. Would landraces be inside or outside the *sui generis* PVP system?
  - i. If inside, why? What goals are you trying to achieve?
  - ii. How would you modify or create elements within the PVP system to accommodate landraces?
  - iii. How does this relate to the dynamics at the community level?
  - iv. How does having landraces inside a *sui generis* PVP system affect the conservation of biodiversity?
2. Is the role of the public sector important in the hypothetical situation depicted?
3. How does the *sui generis* PVP system relate to conservation of biodiversity? How does it relate to other conservation laws and policies?
4. What additional things would be needed (in addition to the classic PVP system designed for 'modern' varieties) to implement a *sui generis* PVP system that accommodated landraces? If the system is tiered to address classical breeding and farmer breeding, how will it be administered? (The trainer may wish to note that increasing complexity in a system implies increasing administrative costs.)
5. How does the system relate to the conservation and use of PGRFA on-farm?
6. Will the *sui generis* system affect the informal system of exchange in the country?
7. How does the *sui generis* system relate to national seed and marketing laws?

8. What is the effect of the system on costs such as the price of seeds?

In terms of assessing UPOV, the trainer may wish to go through the key requirements of UPOV and see how those relate to some of the agro-economic needs and objectives identified in the discussions of the elements of a *sui generis* system. For example, the trainer may ask how, given the national situation and objectives, a UPOV definition of 'distinct and uniform' would work, and what modifying it might mean. The trainer should also stress that while UPOV 1978 is no longer open for membership, that does not mean a country cannot choose to model at least some of its PVP provisions on the 1978 version. The trainer can ask the participants what rights they feel the farmer should retain and why, and then ask if this is compatible with UPOV 1978 and 1991. A good reference document for this discussion is IPGRI's Key Questions for Decision-Makers: Protection of Plant Varieties under the WTO Agreement on Trade-related Aspects on Intellectual Property Rights (October 1999).

## EXERCISE 6

### Exercise 6. Implementing the TRIPS Agreement and the UPOV System (2 hours, 10 minutes)

**Handout 3.6.9 provides 'practical considerations' for Exercise 6.**

**Please be sure to read these considerations before the session. Distribute the handout *only* after the participants have completed the exercise.**

1. Distribute handouts 3.6.7 and 3.6.8, which give clear instructions for the exercise. Ask a participant to read the instructions aloud. Go over the instructions with the participants step by step. Emphasize and remind the participants about the time. Ask if clarification is needed.
2. Form four groups of participants each. Each group elects a rapporteur.

#### Phase 1. Group work (60 minutes)

3. Ask the groups to browse handouts 3.6.4 and 3.6.5 and to respond to the questions in the hypothetical case for Exercise 6 (handout 3.6.7), which they have already received.
4. (*experience*) As the groups work, circulate to check progress. Clarify any concerns they may have while working. Remind them of the time remaining.
5. (*process, generalization*) The rapporteurs prepare a presentation summarizing the major points of the discussion of their group to present to the audience. Ask the participants to use the flipchart or overhead transparencies, and to prepare the visual aids to support their presentations.

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

6. (*generalization*) The rapporteurs present their group's results to the audience. Approximately 10 minutes are available for each presentation.  
(40 minutes)

(*generalization*) At the end of the presentations, distribute handout 3.6.9 (practical considerations), and invite the participants to discuss this exercise. Ask the participants questions such as, 'How did you feel doing this exercise?' and 'What did you learn?'  
(30 minutes)

## **CLOSURE**

**Closure** (5 minutes)

1. (*application*) Ask the participants, 'How useful has this exercise been to you?'
2. Summarize the results and provide feedback on the entire exercise. Make a transition to the next session.