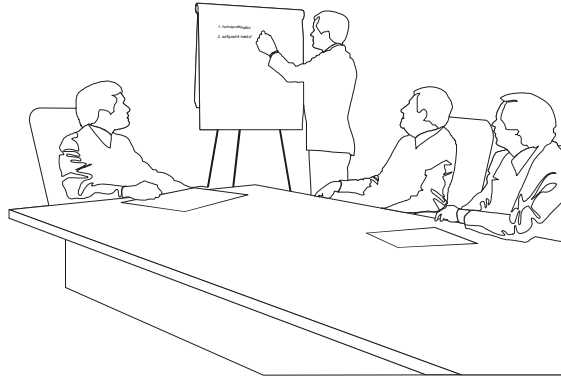


## Exercise 9. Cross-Cutting Issues

### (plenary session)



*This exercise aims to discuss how access to genetic resources, benefit sharing, intellectual property, the rights of indigenous and local communities, traditional knowledge and Farmers Rights relate to each other and how national laws and regional and international instruments address them. The exercise will demonstrate how different institutional arrangements in countries, different approaches to these issues in national laws (and international agreements) and sometimes very fine but important linkages among different legal regimes determine varying interpretations on their practical implications.*

#### **Phase 1. Plenary discussion (45 minutes)**

1. While the trainer makes the presentation, think about responding to the following questions:
  - a) Which regulatory agencies in your country would have a hand in the implementation of IPR and ABS mechanisms? Would they relate in some way? How?
  - b) What issues do you find cut across the CBD, IT, TRIPs and your national or regional laws and policies? Are they treated similarly in all instruments?
  - c) What are the gaps, contradictions, or positive synergies you might find among different agreements, laws and regulations addressing these issues and concepts?
  - d) How is ABS legislation to be enforced in a country with each of the three types of legislation?

---

---

---



## Practical Considerations for Exercise 9

**(to be distributed after the exercise has been completed)**

*After doing this exercise, participants have identified key cross-cutting issues and their interrelationship with international legal agreements having an impact on genetic resources.*

### General approach:

There are a wide range and different levels of policies and legislation related to ABS, intellectual property and indigenous rights. It is often not clear which policies and laws prevail or should be taken into account in specific circumstances. It is possible that various instruments need to be analyzed in parallel, with the difficulties this entails. It is important to consider that often there is no direct, clear-cut answer to a particular problem. However, an answer will be available, even if debatable and subject to diverse interpretations.

### Specific issues:

One possible way to address the questions proposed for discussion is, very simply, to have at least the following key instruments at hand as a starting point:

- a) CBD
- b) FAO IT
- c) TRIPs
- d) Regional/national policies and legislation that may be in force (on ABS, TK, IPR)

Second, determine the nature of the issue under consideration. Is it a benefit-sharing issue that is being prioritized? Is it strictly a question of intellectual property that is under debate? Is it a question of a more scientific nature, such as defining whether resources belong to the IT list? Are monetary benefits at the core of the problem or the strategy under discussion? After doing this, identify where these issues are located in the instruments mentioned above; try to understand what exactly is their meaning in each instance and whether there are links that can be made among these instruments.

A third way to think through this discussion exercise is to think about cross-cutting issues as the basis for an international ‘architecture’ on ABS, IPR, TK, biosafety, etc. It is therefore important to find and discover the lines that cross different legal or policy instruments and the figure or framework these determine. Is it a linear sort of construction? Is it a random set of lines? Are there obvious connections or are these very subtle?