SESSION 1

Summary of Overheads

Session 1. Understanding and Implementing the International Treaty on Plant Genetic Resources for Food and Agriculture

Schedule of Session 1
Understanding and Implementing the International Treaty on Plant Genetic Resources for Food and Agriculture

Day 1
08:30 – 09:00 Opening of the Day’s Activities
09:00 – 09:30 The Rationale for the International Treaty on Plant Genetic Resources for Food and Agriculture (Presentation 1, Part 1)
09:30 – 10:30 Introduction to the Treaty (Presentation 1, Part 2)
10:45 – 12:30 Making Decisions about Access to Genetic Resources (Exercise 1)
12:30 – 13:00 More Detailed Consideration of Some Elements of the Treaty (Presentation 2)
14:00 – 15:45 Interpreting the Treaty (Exercise 2)
16:00 – 16:30 Implementing the Treaty (Presentation 3)
16:30 – 17:00 Feedback on the Day’s Activities

Day 2
08:30 – 09:00 Opening of the Day’s Activities / Recap of Previous Day
09:00 – 10:30 Implementing the Treaty (Exercise 3)

Objectives of Session 1

- To understand the significance of the International Treaty on Plant Genetic Resources for Food and Agriculture and its main elements
- To explain the relationship of the Treaty to the Convention on Biological Diversity (CBD)
- To identify which regime of access and benefit sharing will apply to individual cases of germplasm accessions
- To understand how to implement the Treaty
Rationale for the Treaty

Why the Treaty is important for food and agriculture

- The Convention on Biological Diversity (CBD) applies to all genetic resources, including plant genetic resources.
- The CBD provides for the conservation and sustainable utilization of genetic resources and a regime for access and benefit-sharing.
- The CBD has almost universal application (193 parties).
- Why do we need a new International Treaty on Plant Genetic Resources for Food and Agriculture?

What makes PGRFA different?

- Special nature of plant genetic resources for food and agriculture (PGRFA)
- Importance of PGRFA for food security
- Interdependence of countries on PGRFA
Special nature of PGRFA

- PGRFA are different from medicinal plants found in the rain forests.
- Agricultural crops are essentially man-made:
  - Developed by farmers over the millennia.
  - Many cultivated crops could not survive in the wild without human intervention.

Special nature of PGRFA (cont.)

- Maize, with its tight ears, cannot seed itself. Compared to the original wild *teocinte*, maize is almost unrecognizable.

Special nature of PGRFA (cont.)

- The value in agricultural genetic resources lies in diversity within a crop, not at a species level.
- Intra-specific diversity is important for resistance to diseases and environmental challenges, as well as for maintaining yields.
Importance of PGRFA for food security

- Over 1 billion people suffer from chronic hunger and malnutrition.
- The world population will increase to over 9 billion by 2050.
- Agricultural production must increase by 70%.
- 70% of the increase in cereal production is expected to come from increased yields.
- Plant genetic resources are essential for future food security.

Importance of PGRFA for breeding

- PGRFA are the basic building blocks for plant breeding.
- Farmers and breeders select and breed plants to breed out unwanted traits and breed in desirable characteristics.
- They may need to screen thousands of germplasm samples to find useful new traits.
- Veery wheat was the product of 3170 crosses involving 51 parent varieties from 26 different countries.
- Breeders work with existing cultivars, advanced (elite) lines, but may also need landraces (farmers’ varieties) and wild crop relatives.
- Intra-specific diversity is essential for maintaining yields and resistance to disease and environmental challenges.

Countries interdependent on PGRFA

- Agricultural genetic resources have always been freely exchanged, *inter alia* in order to preserve intra-specific genetic diversity.
- They are not only exchanged among farmers at the local level but also across the globe from continent to continent.
- Wheat, maize, potatoes, yams and rice are now world crops. Wherever farmers have adapted them to their climates and needs, they have created new genetic diversity, which has been widely shared.
- The countries from which the richest biodiversity comes are usually in the semi-tropics.
Centres of Diversity

Crops often do better outside their centres of origin

- When things go wrong, however, it is crucial to go back to the centres of origin and diversity to find solutions, including resistance to diseases.
- The Irish potato famine in the 1830s occurred because limited diversity had come from the Americas with Europe’s first potatoes.
- Only when resistance could be found in South America could the European potato recover.

All countries interdependent on PGRFA

- As a result, all countries are now interdependent on each other for PGRFA. That means that they all depend for their food and agriculture on crops that originated elsewhere.
- On average, 70% (and, in some places, up to 100%) of their agricultural crops originated elsewhere.
Exchange of PGRFA essential for agriculture

- Special needs for access to PGRFA:
  - Need to allow for continued exchange of PGRFA and access to PGRFA in centres of origin and diversity
  - Need to allow access as easily as possible and to reduce transaction costs
  - Need for easy, efficient and equitable system of benefit-sharing

Summary of international flows: Regional inter-dependency...

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<th>E. Asia</th>
<th>Europe</th>
<th>M. America</th>
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Source: CGIAR System-wide Information Network for Genetic Resources (SINGER), personal communication, 2005.

The International Treaty on Plant Genetic Resources for Food and Agriculture: Learning Module

Summary of international flows of rice ancestors in selected countries

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<thead>
<tr>
<th>Country</th>
<th>Total landrace progenitors in all related varieties</th>
<th>Own landraces</th>
<th>Borrowed landraces</th>
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The International Treaty on Plant Genetic Resources for Food and Agriculture: Learning Module
Food security and climate change

- Climate change will impact negatively on agriculture in most developing countries.
- Climate change will change growing conditions for crops.
- For many countries, mean temperatures for growing seasons over next 50 years will be different from those for last 50 years.
- All countries will need to adapt their crops to new conditions.
- Many countries will need to seek PGRFA from other countries where growing conditions may be similar.
- Climate change will increase the interdependence of countries on PGRFA.

Session 1: Presentation 1 – Part 2

Introduction to the Treaty

The origins of the Treaty

- The International Undertaking on Plant Genetic Resources
- The Convention on Biological Diversity (CBD)
The International Treaty on Plant Genetic Resources for Food and Agriculture: Learning Module

### Part 2

#### 2.5.3 The International Undertaking

- **Originally based on common heritage of humankind and free availability**
- **Reservations and difficulties:**
  - Sovereignty and the CBD
  - Plant breeders’ rights
- **Agreed interpretations:**
  - National sovereignty
  - Recognition of plant breeders’ rights
  - Recognition of farmers’ rights

#### 2.5.4 Paradigm Shift

**Common Heritage**
- unrestricted access
- public breeding
- no intellectual property rights (IPRs)
- International Undertaking 1983

**National Sovereignty**
- controlled access
- private breeding
- IPRs (plant breeders’ rights & patents)
- Convention on Biological Diversity 1992

#### 2.5.5 The Convention on Biological Diversity

- Adopted in 1992, it entered into force in 1993
- Almost universal: 193 parties
- Objectives: conservation, sustainable use, fair and equitable benefit-sharing
- Emphasis: *in situ* conservation
- Based on concept of national sovereignty:
  - Access subject to national legislation
  - Prior consent and mutually agreed-upon terms
  - Fair and equitable sharing of benefits
  - Country-of-origin access regime applies only to genetic resources from country of origin or country that acquired them under the CBD
Why the CBD regime needed to be taken further

- Provides for (facilitated) access and benefit-sharing
- Intended to be implemented by access and benefit-sharing agreements on a bilateral basis
- Slows down exchange and creates higher transaction costs
- Need for handling access and benefit-sharing for PGRFA on a multilateral basis
- Problem of identifying country of origin for PGRFA
- Problem of status of ex situ collections acquired prior to the entry into force of CBD
- Recognition of CBD that outstanding issues of PGRFA need to be settled within the FAO Global System on PGRFA

Background of Treaty negotiations

- FAO Conference Resolution 7/93 called for renegotiation of the International Undertaking to bring it into harmony with the CBD.
- Treaty negotiated in FAO Commission on Genetic Resources for Food and Agriculture.
- The FAO Commission is a recognized international forum where governments negotiate all matters dealing with agricultural biodiversity, genetic resources for food and agriculture and related biotechnologies.
- Treaty deals with special problems of PGRFA.
- Treaty is in harmony with CBD.

Treaty was adopted by FAO Conference, 3 November 2001
Objectives of the Treaty

- The conservation and sustainable use of plant genetic resources for food and agriculture
- The fair and equitable sharing of benefits derived from their use

These two objectives are to be pursued in harmony with the Convention on Biological Diversity, with a view to achieving sustainable agriculture and food security.

Main elements of the Treaty

- The Treaty applies to all PGRFA.
- The Treaty . . .
  - sets out general provisions regarding the conservation and sustainable use of PGRFA
  - establishes a multilateral system of access and benefit-sharing (MLS) for PGRFA of the most important crops
  - deals with supporting components, including the collections held by the CG Centres
  - establishes institutional structures to implement its provisions

Conservation of PGRFA

- Article 5 sets out general provisions regarding the conservation, exploration, collection, characterization, evaluation and documentation of PGRFA.
- These provisions apply to all PGRFA.
- Contracting parties are required to promote an integrated approach to the exploration, conservation and sustainable use of PGRFA, including, inter alia,
  - surveys and promoting collection of PGRFA under threat
  - promoting farmers’ efforts to conserve PGRFA on-farm
  - promoting in situ conservation of wild crop relatives
  - cooperating to promote the development of an efficient and sustainable system of ex situ conservation
Sustainable use of PGRFA

- Contracting parties are required to develop and maintain appropriate policy and legal measures to promote sustainable use of all PGRFA, which may include:
  - promoting diverse farming systems
  - strengthening research that enhances biological diversity
  - promoting participatory plant-breeding efforts to develop locally adapted varieties
  - broadening the genetic base of crops
  - promoting the use of local and locally adapted crops
  - adjusting breeding strategies and seed regulations as necessary

Farmers’ rights (Article 9)

- Recognition of the enormous contribution that farmers and their communities have made and continue to make to the conservation and development of plant genetic resources.
- Farmers’ rights include the protection of traditional knowledge and the right to participate equitably in benefit-sharing and in national decision making about plant genetic resources.
- Governments are responsible for realizing these rights.

Multilateral system of access and benefit-sharing (MLS)

- MLS applies to PGRFA of crops listed in Annex 1.
  - List of crops based on importance for food security and interdependence
  - Multilateral agreement on rules regarding facilitated access
  - Multilateral agreement on rules regarding benefit sharing
Access: The multilateral system ‘pools’ crucial plant genetic resources

- PGRFA will be available under a standard material transfer agreement (SMTA).
- There is no tracking of individual accessions.
- Recipients must continue to make the materials received available to other contracting parties.
- ‘Intellectual property or other rights that limit facilitated access to the plant genetic resources for food and agriculture, or their genetic parts and components, in the form received from the multilateral system’ may not be claimed.

Benefit-sharing

- Because these genetic resources are pooled, there is no individual owner with whom individual contracts for access and benefit-sharing must be negotiated.
- This means there are very low transaction costs, to the benefit of farmers, plant breeders and researchers and, ultimately, to consumers.
- It also means that benefits must be shared in a pooled, multilateral way.

Benefit-sharing includes

- Facilitated access, which is, itself, a major benefit
- Exchange of information
- Access to and transfer of technology
- Capacity building
- The sharing of monetary and other benefits of commercialization
Benefit-sharing (cont.)

- The Treaty includes ground-breaking, innovative provisions for monetary benefit-sharing:
  - If a product that incorporates material from the multilateral system is commercialised in such a way that it is not ‘available without restriction to others for further research and breeding’, a mandatory payment will be made.
  - If it is available without restriction to others, payment is voluntary.

- These moneys will be used in the context of the Treaty’s funding strategy.

Other key provisions of the Treaty

- Supporting components
- Financial and institutional provisions

The Treaty’s ‘supporting components’

- The Global Plan of Action for the Conservation and Sustainable Use of Plant Genetic Resources for Food and Agriculture
- Agreements in regard to the ex situ collections of the international agricultural research centres (about 650,000 accessions)
- International networks for plant genetic resources
- The global information system
Financial and institutional provisions

- The Treaty will adopt a funding strategy to enhance the availability, transparency, efficiency and effectiveness of the provision of financial resources to implement activities under this Treaty (Art. 18.2).

- The Global Crop Diversity Trust is an essential element of the funding strategy.

Global Crop Diversity Trust

- Endowment fund—in force 21 October 2004
- Essential element of funding strategy
- Governing body to provide overall policy guidance
- Executive independence
- Almost US$170 million pledged so far
- Over US$7 million disbursed, including almost US$2 million a year for long-term conservation

The status of ratification

- The Treaty entered into force 90 days after ratification by 40 states: on 29 June 2004.
- At present, there are 125 parties to the Treaty.
- The United States has signed the Treaty, implying that it intends to ratify. It is now before the US Congress.
The governing body

- The Treaty is a dynamic agreement.
- The governing body is composed of all contracting parties to the Treaty.
- The governing body needs to develop the mechanisms for implementing the Treaty.
- The first session of the governing body was held in Madrid in June 2006.

Achievements of the first session

- Meeting finalized and adopted:
  - SMTA (essential for Treaty)
  - Agreements with CGIAR Centres
  - Agreement with the Trust
  - Funding strategy
  - Rules of procedure
  - Financial rules
  - Budget

Second session of governing body

- Held in October/November 2007
- Several important decisions, including approval of use of SMTA by CG Centres for non-Annex 1 PGRFA collected by the Centres before the entry into force of the Treaty
### Third session of governing body

- Held in June 2009
- Approved a strategic plan for the funding strategy and approved a target of US$116 million for the Benefit-Sharing Fund
- Adopted third-party beneficiary procedures
- Started work on compliance procedures

### Summary of main developments

- Adoption of SMTA
- Extension of SMTA to non-Annex 1 PGRFA held by CGIAR Centres
- Establishment of secretariat
- Adoption of funding strategy
- Launching of first benefit-sharing project cycle
- Adoption of target of US$116 million for Benefit-Sharing Fund
- Adoption of third-party beneficiary procedures

### Conclusions

- The Treaty is important for food and agriculture.
- Many countries (125) have already ratified it.
- The Treaty will eventually become universal.
- The Treaty is already off to a good start with the adoption of the SMTA and funding strategy.
- The MLS is already functioning, with almost ½ million transfers per year by CPG Centres alone. Many countries starting to use the SMTA.
- It is important for all countries to consider ratifying the Treaty as soon as possible.
A More Detailed Consideration of Some Elements of the Treaty

Crops included in the MLS

- 35 genera of food crops and 29 forage species, including all major ‘CGIAR crops’ except:
  - groundnut
  - soybean
  - tropical forages
- Also not yet included: Phaseolus polyanthus, Solanum phureja, Musa textilis, Zea perennis / Zea diploperennis / Zea luxurians, minor millets, Aegelops.
- In the case of cassava, only Manihot esculenta is included.

Crops included in the MLS (cont)

- Other notable crops not yet included:
  - Most fruits, berries and many vegetables (e.g., tomato, onion, Cucumis, grape, olive, Cucurbita)
  - Sugarcane
  - Major ‘industrial’ and ‘non-food’ crops (e.g., rubber, oil palm, tea, coffee, cacao, tobacco)

Notable inclusions:
The Treaty, sovereign rights and intellectual property rights (IPRs)

- Treaty balances need for free flow of PGRFA with national sovereignty and IPRs.
- Treaty recognizes sovereign rights over PGRFA.
- In exercise of sovereign rights, Contracting Parties agree to provide facilitated access to PGRFA of most important crops.
- PGRFA under management and control of Contracting Parties and in public domain (i.e., free of IPRs) automatically in MLS.
- Access to PGRFA subject to IPRs placed voluntarily in MLS, to be consistent with international agreements and national laws. UPOV-type plant breeders’ rights allow access for research and breeding. Patents that restrict access would be incompatible with MLS.

How MLS balances access and IPRs

- Recipient may not claim IPRs over material received from the MLS that would restrict others getting access to original material in the MLS in form received.
  - Ambiguity of what ‘in form received’ means (we will deal with this later).
- Recipients may claim IPRs over product they develop from material accessed through the MLS.
- But the MLS encourages Recipients to claim IPRs that permit availability of products for further research and breeding.
- Under the SMTA, Recipient required to make non-confidential information from research and development available to MLS.
- Recipients encouraged to place product in MLS at end of IPRs.

Meaning of certain provisions in the Treaty

- The ad hoc technical advisory committee on the SMTA has suggested the following clarification of the expression PGRFA ‘under the management and control of the Contracting Parties and in the public domain’:
  - ‘Under the management’ means that the Contracting Party has the physical power to undertake acts of conservation and utilization of the material.
  - ‘Under the control’ means that the Contracting Party has the legal power to decide on the treatment to be given to the material.
  - ‘In the public domain’ means not subject to IPRs.
  - ‘Of the Contracting Parties’ means all material held by the central national administration. It might or might not cover material held by autonomous or quasi-autonomous entities, and might not automatically include material held by sub-federal entities. There might be a legitimate expectation that all material normally regarded as part of the national system of plant genetic resources will be included either automatically or by positive action.
Meaning of certain provisions in the Treaty (cont.)

- Some provisions in the Treaty remain ambiguous because of difficulties in reaching agreement during the negotiations.
- One example is Article 12.3(d): '(d) Recipients shall not claim any intellectual property or other rights that limit the facilitated access to the plant genetic resources for food and agriculture, or their genetic parts or components, in the form received from the Multilateral System.'
- This seems to mean that the recipient cannot take out IPRs that would stop others from having facilitated access to the same material from the MLS.
- But the meaning of 'genetic parts and components' and 'in the form received' is unclear: Would isolated genes be in the form received?

The Treaty and non-Parties

- The Treaty operates at the level of international law and binds only Contracting Parties.
- Parties agree to encourage all States to accept the Treaty.
- The SMTA operates at the level of contractual law and binds whoever signs it, wherever they are located.
- Under the MLS, Contracting Parties are required to grant facilitated access to other Parties or natural and legal entities under their jurisdiction. It says nothing about non-Parties.
- Non-Parties have no legal right to demand facilitated access.
- Parties may, if they wish, grant facilitated access to non-Parties. Some do so as a matter of policy.
- The Governing Body will decide whether natural and legal entities under the jurisdiction of Parties should continue to enjoy facilitated access if they don’t place their collections in the MLS.
Session 1: Presentation 3

Implementing the Treaty

Reviewing national legislation

- The Treaty (Article 4) requires Contracting Parties to ensure that their laws, regulations and procedures do not conflict with their obligations under the Treaty.
- Many Parties implement the Treaty and its Multilateral System through administrative measures without the need for new legislation (e.g., Germany).
- Existing ABS legislation implementing the CBD might make it difficult to implement the MLS.

National legislation to implement MLS

- Where existing ABS legislation is inconsistent with the MLS (e.g., by requiring bilateral negotiation of conditions of access for all genetic resources, prior informed consent, complicated procedures of approval, etc.) new legislation might be required . . .
  - to create legal space for implementation of MLS (as in Ethiopia, for example); or
  - to set detailed procedures for implementation of access to PGRFA (as in Syria, for example).
Legislation to create legal space

The ad hoc advisory technical committee on the SMTA and the MLS suggested the following wording:

‘Pursuant to the obligations established by the International Treaty on Plant Genetic Resources for Food and Agriculture, access to and the transfer of plant genetic resources for food and agriculture of the crops covered by the Multilateral System of the Treaty shall only be subject to the conditions set out in Party IV of the said Treaty.’

More detailed substantive legislation

Some Contracting Parties have more detailed legislation setting out procedures for dealing with requests for access to PGRFA (e.g., Syria).

Such legislation allows for the implementation of the Multilateral System. For other requests for access, it tends to distinguish between access for commercial and non-commercial purposes.

It also provides for institutional arrangements, including the need for coordination between agriculture and the environment.

Deciding what is automatically in the MLS

Article 11.2 of the Treaty provides that the MLS shall include all PGRFA listed in Annex 1 that is ‘under the management and control of Contracting Parties and in the public domain’.

The ad hoc technical advisory committee on the SMTA has suggested a clarification of the meaning of these criteria (see earlier slide).

Particular issues might arise regarding the situation in federal states and collections held by semi-autonomous institutions.
Collections held by natural and legal entities

- Article 11.3 provides that Contracting Parties shall take appropriate measures to encourage natural and legal entities holding collections of Annex 1 PGRFA to include them in the MLS.
- Such measures could include public awareness raising and (for institutions receiving public funds) funding conditions.
- The Governing Body will assess progress and might decide to discontinue facilitated access to those who don’t include their collections in the MLS.

Example of measures taken by one Party

- **First Step:** Information on MLS and SMTA provided to relevant stakeholders.
- **Second Step:**
  - Collections under direct control of Federal Ministry instructed to include material in MLS.
  - Collections under control of States and/or local authorities requested to include material in MLS.
  - Other collections invited to introduce SMTA.
- **Third Step:** Identification of material in public domain.
- **Final Step:** Formal inclusion in MLS and notification.

Implementation of other Treaty provisions

- Legislation may provide mandate to implement Treaty provisions on conservation/sustainable use.
- Legislation may also provide for implementation of Farmers’ Rights at the national level.
- **New Indian legislation provides for**
  - rights of farmers to save, use, sow, exchange, and sell farm produce;
  - registration of farmers’ varieties;
  - disclosure of use of genetic material conserved by tribal or rural families in development of registered varieties and benefit sharing.