

Nordic Ministerial Declaration

Access and Rights to Genetic Resources

2003

Nordic Council of Ministers
(Fisheries, Agriculture, Forestry and Food)
Kalmar, 25 June 2003

Nordic Council of Ministers (Environment)
Oslo, 28 October 2003

Background

At the meetings of Nordic ministers (for agriculture, forestry, fisheries, food and environment) in August 2002, the issue of access and rights to genetic resources was discussed. The respective Councils of Ministers approved a declaration that established principles and objectives for how the Nordic countries should deal with the issue of access and rights to genetic resources.

Based on recommendations by the Nordic Genetic Resources Council (NGRC), the ministers decided to resume discussions on the issue no later than summer 2003.

The ministers also urged NGRC to follow up the Nordic gene banks' and the Nordic countries' implementation of the Convention on Biodiversity (CBD), including its guidelines that regulate the access to genetic resources and benefit-sharing ("Bonn-guidelines"), as well as the International Treaty on Plant Genetic Resources for Food and Agriculture (IT-PGRFA).

In its project "Rights and access to genetic resources", the Nordic Genetic Resources Council analysed the international developments in the field, and made some recommendations for the implementation of Nordic cooperation in the field of genetic resources, Nordic national genetic resource efforts and the CBD and IT-PGRFA. This work was carried out by a separate project group, and resulted in the publication of the report Access and Rights to Genetic Resources – A Nordic Approach (Nord 2003:16).

The need for Nordic action

In the past few decades, there have been rapid developments in the field of international law and national regulations governing the access and rights to genetic resources. The advance of modern biotechnology has enabled a dynamic development in crop and livestock breeding, the food industry and other biologically-based industries. It is now possible to extensively protect such developments through various forms of intellectual property rights. Many countries, especially developing countries, have introduced stringent regulations regarding the access to genetic resources. The general principle of these regulations is that permission is needed for all forms of genetic resource collection, as well as the right to compensation for the application of genetic resources in research, development and, above all, commercial activities.

The developments have led to an intensification of the debate on property rights and the need for regulating access to genetic resources. Throughout history, genetic resources were regarded as part of the human common heritage and freely exploited. This has now changed. Limited access to genetic resources affects research activities and the gene banks' collection and dissemination of genetic material. Even in countries that have chosen not to introduce national regulations, the need to clarify the legal status of genetic resources has arisen, both in their natural surroundings (*in situ*) and in gene banks (*ex situ*).

The Nordic countries have played an active role and have held leading positions within international cooperation aimed at developing international law in the field. At the same time, the Nordic countries have not given much priority to the issue of access and rights to genetic resources on a national level. In principle, there are presently no regulations regarding genetic resources in the Nordic countries. However, Norway has appointed a "Biodiversity Law Committee", which shall, *inter alia*, evaluate a new law on access to genetic resources.

Due to the international developments described above, the Nordic countries must now assess the legal status of Nordic genetic resources. This includes determining if genetic resources shall be private or public property, and whether the ownership rights to genetic resources follow the ownership rights to the biological material or not. It is also necessary to decide whether or not the access to genetic resources shall be nationally regulated, i.e., if permission shall be required for the collection of genetic material or if certain requirements must be met in order to gain access to domesticated genetic material or genetic material administered by various gene banks, including the Nordic Gene Bank (NGB). Finally, it is also necessary to consider other measures the Nordic countries could introduce in order to promote the implementation of the recent international regulations in the field, above all, making it easier for the developing countries to implement the new conventions.

In addition, the project report Access and Rights to Genetic Resources – A Nordic Approach (Nord 2003:16), represents an important tool for the Nordic Genetic Resources Council in its continued efforts to disseminate information and increase awareness for these issues among the relevant parties.

The ministers' declaration will thus represent an important standpoint, which hopefully will serve as a source of inspiration for the activities in other countries and regions regarding this issue.

The Nordic Genetic Resources Council therefore proposes that the Nordic Council of Ministers adopts the following recommendations.

Access and Rights to Genetic Resources in the Nordic Countries

The NORDIC COUNCIL OF MINISTERS responsible for fisheries, agriculture, forestry, food and environment have agreed upon the following declarations and recommendations, on the basis of their discussions at the ministers' meetings on 24–26 June and 28 October 2003.

The NORDIC COUNCIL OF MINISTERS

1. *notes* with satisfaction the result of the Nordic Genetic Resources Council's project on rights to genetic resources, which is presented in the report Access and Rights to Genetic Resources – A Nordic Approach;
2. *refers to* its conclusions from the ministers' meetings in August 2002, especially regarding the importance of fully implementing the Convention on Biological Diversity (CBD), the International Treaty on Plant Genetic Resources for Food and Agriculture (IT-PGRFA), the follow-up of the "Strategy for sustainable development – new bearings for the Nordic countries" and the "Strategy for conservation of genetic resources in the Nordic Region 2001–2004";
3. *also refers to* its conclusions from the same meeting, stating that genetic resources, with the exception of security collections held or administered by the Nordic Gene Bank (NGB), are to be regarded as a common Nordic resource, which is freely accessible, and which is subject to public administration and control, under the condition that no legal restraints exist;
4. *underlines* the importance of genetic resources for sustainable development, and that the efforts aimed at the conservation and sustainable utilisation of genetic resources in the Nordic countries are given higher priority;

Plant genetic resources in the Nordic Gene Bank

The NORDIC COUNCIL OF MINISTERS

Declares that

5. all accessions of the Nordic Gene bank, except for security collections held by NGB for other gene banks, are under common Nordic management and in the public domain;

relevant material administered by the Nordic Gene Bank shall be part of the multilateral system for plant genetic resources under IT-PGRFA following the agreement's ratification by all Nordic countries;

Emphasises that

7. the following recommendations shall be seen in relation to the negotiations on the implementation of IT-PGRFA, especially the negotiations on a mutual standard agreement for the transfer of genetic material (Material Transfer Agreement – MTA). The results of the IT-PGRFA negotiations can affect to what extent the recommendations of the Council of Ministers can be followed up.

Recommends that

8. the respective Nordic governments should confirm the above-mentioned declarations by passing necessary resolutions or in other ways;
9. the Board of the Nordic Gene Bank should initiate the measures necessary for implementing the Nordic governments' confirmation of the above-mentioned declarations;
10. the Nordic Gene Bank should provide access to all its accessions on equal terms, regardless of whether they are covered by the scope of the multilateral system of the IT-PGRFA or not. The terms should be set out in a standard Material Transfer Agreement (MTA);
11. the Board of the Nordic Gene Bank should consider the use of the provisional MTA, which now is used by international agricultural research centres, until the standard MTA for use in the multilateral system for simplified access and benefit-sharing is approved by IT-PGRFA's steering committee;
12. the Nordic Gene Bank should closely follow the negotiations on the above-mentioned standard MTA under IT-PGRFA, and, if the need arises, approve a separate

MTA in accordance with the current principles and terms for gaining access to the Nordic Gene Bank's genetic resources;

13. access should be facilitated to all its accessions for all purposes, not only for use in the fields of food and agriculture;
14. the Nordic Gene Bank requires, when handing over genetic material, that the recipient, in accordance with Article 12.3 (d) in IT-PGRFA, should not have any intellectual property rights or other rights, which limit the simplified access to plant genetic resources for the food and agricultural sector, or to their genetic parts or components, and which pertain to the genetic material in the form in which it is received from the multilateral system;
15. the Nordic Gene Bank should not claim any monetary benefits in the case of commercialisation of the material withdrawn from NGB's accessions;
16. the Nordic Gene Bank should make it clear upon receiving genetic material that its inclusion in NGB's accessions entails that the material will be subject to common Nordic management and form part of the public domain;

Other domesticated plant genetic resources in the Nordic countries

The NORDIC COUNCIL OF MINISTERS

Recommends that

17. the Nordic countries determine the legal status of their plant genetic resources and their wild relatives, and thus consider the following options:
 - to declare that the rights to use genetic resources follow the rights to use the biological resources;
 - to specify that rights to use biological material include rights to restrict others from utilising the genetic material except on terms mutually agreed upon in private contractual agreements;
 - to specify that rights to use genetic resources are separate from ownership over biological resources and that such rights can only be exercised through the use of intellectual property rights. This entails that in case access to genetic resources remains unregulated, the holders of biological resources cannot exercise any control over genetic resources.

18. the Nordic countries, as far as possible, handle the access to all domesticated plant genetic resources in the same manner, with the aim of facilitating free access to such genetic resources in the Nordic countries;

**Farm animal genetic resources
in the Nordic countries**

The NORDIC COUNCIL OF MINISTERS

19. ascertains that farm animal genetic resources presently are regulated by private contractual agreements, and has therefore not identified any reasons to recommend any change of the present legal status or regulation of access;

Forest tree genetic resources

The NORDIC COUNCIL OF MINISTERS

Recommends that

20. the Nordic countries initiate a project with the aim of providing a basis for the Nordic countries' decision regarding the legal status of their forest tree genetic resources, but has not identified any reasons to recommend regulation of access;

Wild genetic resources

The NORDIC COUNCIL OF MINISTERS

Recommends that

21. the Nordic countries establish the legal status of their wild genetic resources;

Ascertains that

22. the Nordic countries have divergent opinions regarding the need for regulating access to wild genetic resources and that the issue is under debate in some of the Nordic countries. For this reason, no recommendation can be made on this issue;

Recommends that

23. the Nordic countries consider the need to provide an overview of the benefits of wild genetic resources, e.g., in the form of a simple system for registering the collection of wild genetic resources in order to

increase the knowledge and awareness of these genetic resources and their protection;

Measures for improved implementation of international agreements in the field of genetic resources

The NORDIC COUNCIL OF MINISTERS

Recommends that

24. the Nordic countries facilitate the implementation of international arrangements and agreements in the field of genetic resources by implementing the Bonn guidelines regarding access to genetic resources and benefit sharing adopted by the Conference of the Parties to the Convention on Biological Diversity, including that they as users of genetic resources take steps to help the providing countries comply with access legislation, as well as by designating a national coordinator for the exchange of information about genetic resources;
25. the Nordic Genetic Resources Council initiates appropriate measures for disseminating information and knowledge about the international agreements and arrangements in the field of genetic resources.