



Convention on Biological Diversity



A hypothetical case for small group discussion (item 3.3: National experience)

Gellyland is a country with one of the largest lakes in the world, Lake Kirar. A 1980 study shows that Lake Kirar has abundant fishery resources. The study confirmed also that the lake is home for one rare fish species known as Jack Jelly.

In 1992, the Ministry of Environment and Fisheries of Gellyland issued, for the first time, fishing licences for five fishing companies with exclusive fishing rights on Lake Kirar for the next 20 years. Subsistence fishing by traditional fishermen was, however, still allowed.

In 2010, the Ministry started taking stock of the fishery in Lake Kirar as part of its preparation to issue or reissue the next licences. The experts of the Ministry learned that the fishery stock in the lake has dropped significantly. In fact, they found out that the population of Jack Jelly, the rare species, has collapsed reaching a critically endangered status and may soon become extinct

The Ministry issued moratorium on all fishing activities and launched a massive study into the causes of the significant decline of the fishery in Lake Kirar and in particular the extinction of Jack Jelly. The study was completed in 2011 and the report came out with disturbing findings.

The study revealed that the lake was contaminated with infectious bacteria that disrupted any breeding in the fish stocks. The bacteria contain a gene modified through genetic engineering. Every fish sample taken from the lake was tested positive to the bacteria containing the modified gene. All the fishing companies and traditional fishermen were investigated how the modified bacteria had been introduced into the lake. All of them confirmed that they have no activity involving any genetically modified organism. The experts expanded their investigation into the nearby settlements and operations. They identified a laboratory, known as Greylab, which has been conducting research on genetically modified microorganisms since 1985.

Greylab has no permit for its laboratory research activities involving GM microorganisms despite the requirement under the 1996 GMO Act of Gellyland. The laboratory was inspected and DNA traces of the same strain of fish-infecting bacteria and the modified gene were found. The manager of Greylab has also admitted that the laboratory had been dumping its waste, without any safety management aiming at destroying the GM microorganisms prior to disposal, into Lake Kirar until 1995.

The Environmental Protection Act of Gellyland was enacted in 1991. The Act prohibits, among other things, the discharge of any effluent into lakes and other water bodies of the country. The Act also has a provision on liability. The provision states that any person who causes damage to the environment shall be liable for the payment of compensation up to a maximum of \$5 million.



The Ministry of Environment and Fisheries initiated, in January 2012, an administrative action against Greylab. Accordingly, it issued an order to Greylab to pay, as penalties and compensation,: (i) \$1 million for conducting GMO research without having the necessary permit in accordance with the 1996 GMO Act; (ii) \$2 million for discharging waste into Lake Kirar in violation of the 1991 Environmental Protection Act; and (iii) \$ 3 million for causing damage on the fisheries of Lake Kirar. Greylab has appealed to the High Court of Gellyland for review of the decision by the Ministry.

The High Court sustained the Ministry's decision. Gellyland is a Party to the Nagoya - Kuala Lumpur Supplementary Protocol. At the time of ratifying the Supplementary Protocol (assuming it entered into force in October 2010) the Government has reached the conclusion that its existing laws – the 1991 Environmental Protection Act and the 1996 GMO Act – fully address damage as defined in the Supplementary Protocol.

Group exercise

Participants in each small group may further divide themselves into two sub-groups and discuss the case – one sub-group could advance the possible arguments that Greylab may raise before the court against the measures taken by the Ministry, and the other sub-group could argue in defence of the Ministry justifying the administrative measures taken.

Guiding questions:

What possible arguments and counter arguments do you envisage before the High Court by the Ministry on the one hand and Greylab laboratory on the other?

Do you think the payment of the penalties and/or the compensation addresses the damage that has occurred on Lake Kirar's fisheries in a way that meets the requirements of the Supplementary Protocol?