



Document No.: ICW/00/09
Distribution: General
Date: Sept.29, 2000

International Centers Week 2000
October 23 - 27
Washington, D.C.

**Charting the CGIAR's Future --
Reshaping the CGIAR's Organization**

Report of the 11th Meeting of the GRPC

The attached report from the Genetic Resources Policy Committee is being circulated for consideration at ICW00 under Agenda Item 10(c) Business Matters, Committee Reports.

CGIAR Genetic Resources Policy Committee

11th Session

**ISNAR, The Hague, Netherlands
6-8 September 2000**

Participants: See Annex 1

Agenda: See Annex 2

Agenda Item 1: Update on Renegotiation of the FAO International Undertaking (IU)

1. Substantial progress was made in the August, 2000, negotiating session of the Chairman's Contact Group of the FAO Commission on Genetic Resources, held in Tehran, Islamic Republic of Iran. Major issues were clarified and progress was made concerning Articles dealing with Access and with Benefit-Sharing under the proposed multilateral system for plant genetic resources for food and agriculture (PGRFA). Completion of the negotiations in the near future is now a distinct possibility, though a number of complex and contentious technical and political issues remain to be resolved.
2. A widely held view emerged in Tehran that royalties will be paid to an agreed mechanism or fund, whenever the use of PGRFA accessed under the IU results in a product protected by any form of intellectual property rights that restricts utilization of the product for research and plant breeding. In addition, rights-holders of other kinds of intellectual property rights or commercial protection will be encouraged to make voluntary payments, with this provision being reviewed in five years to assess the possibility of its conversion to a mandatory scheme. In addition, the Contact Group agreed on text for most of the Article dealing with the terms of facilitated access under the multilateral system.
3. Included among the issues yet to be resolved, are:
 - Which crops (genera) will be covered under the multilateral system. Regional proposals differ widely, with Africa proposing 9 crops, and Europe 287. The African, Asian, and Latin American proposals omit a number of crops with which CGIAR centers are currently working, a point which was viewed with great concern by the GRPC.
 - How components of accessions (genes, cell lines, organelles, constructs, etc.) will be addressed, particularly in regards to whether intellectual property rights can be sought for such materials acquired in whole or part from the multilateral system.
 - Whether access to PGRFA may be sought for the express purpose of "conservation," a purpose which would support CGIAR centers in fulfilling their role

of maintaining extensive collections under conditions ensuring long-term conservation.

- How non-Parties to the IU (countries that choose not to ratify the agreement) and institutions that are not associated with the agreement, will be treated. The GRPC noted with some concern that potentially, access restrictions might be imposed on non-Parties to materials currently held by the CGIAR (conceivably including countries that had originally supplied the material, donors of funds that were supporting conservation and improvement of the material for the resource-poor, etc.)
- What type of “agreed and predictable” financial arrangements will be made to support implementation of the IU (arrangements not linked with the tentatively-agreed commercial royalty scheme). What will the funding target be?

4. **Conclusion:** The GRPC strongly believes that all main crops on which the CGIAR works should be included on the list of crops that constitutes the scope of the multilateral system. Omission of any of these crops might send a signal that either the crop is not viewed as particularly important or that conservation and breeding work can effectively be handled solely by national governments without multilateral or CGIAR assistance. The Committee requested IPGRI to produce and circulate among CGIAR members, a table showing the full range of crops being worked on by the CGIAR, including those held in Centre collections, those undergoing genetic improvement, and those associated with other aspects of Centre research. The GRPC recognizes that among the accessions currently designated by centers are materials of certain minor or “non-mandate” crops unlikely to be included on the “list” for the multilateral system. These specific accessions, now held “in trust for the international community,” should remain available within the multilateral system. The GRPC would also be concerned if restrictions were placed on access by non-Parties to materials held by the CGIAR. Such restrictions could undermine collaborative research and reduce funding aimed at producing international public goods by the centers. The Committee also considers that it would be important to include in the multilateral agreement those crops which are the mandate of other international organizations such as, for example, vegetables for AVRDC. Finally, the GRPC took note of recent IPGRI research on germplasm flows that dramatically demonstrates both the interdependence of countries for PGRFA, and the extent to which countries receive materials from the CGIAR. The research indicates, among other things, that virtually all countries, regardless of development status, are major net recipients of germplasm samples from the CGIAR, and have been since the 1970s (*Germplasm Flows Between Developing Countries and the CGIAR: An Initial Assessment* by Cary Fowler, Melinda Smale and Samy Gaiji, GFAR/IPGRI, in press. Copies available from IPGRI on request).
5. Since some of the recommendations made under this item deal with matters presently under negotiation by Member Countries of FAO in the context of the International Undertaking on Plant Genetic Resources, the representative of FAO, who is also Secretary of the intergovernmental Commission on Genetic Resources for Food and Agriculture, which is negotiating the Undertaking, considers it institutionally appropriate to reserve his position at this stage

Agenda Item 2: CGIAR Governance, Organization and Structure

6. The process being undertaken for reviewing and revising the governance, organization and structure of the CGIAR was described. Particular attention was given to the outcome of the CDC/CBC retreat held the previous weekend at ISNAR.

The Centres are proposing to form a federation, which would have an independent legal body to provide federation-wide services. While individual Centres (the form and number of which is expected to evolve over time) will remain autonomous, certain decision-making authority will be delegated to the board of the Federation unit. This board would not be representative (no current DGs or Board Chairs would serve on the board) but be comprised of individuals serving in their personal capacity. Central services provided might include IPR advisory and management services, support and governance for multi-Centre or system-wide programmes and initiatives, resource mobilization, and the formulation of system-wide policies, e.g., on genetic resources. The federation unit would also be a logical home for future system-wide support of the kind provided by the CGIAR Secretariat.

7. **Conclusion:** The Committee noted that these proposals for strengthening the organization of the system are likely to have significant implications for the role, composition or even continued need for the GRPC. Thus, the Committee will continue to monitor developments in this regard and make recommendations on its future at an appropriate time.
8. The Committee also noted that in the electronic conference several suggestions had been made for combining the genebanks within a single management entity. The Committee stressed the importance of the genebanks continuing to be managed in such a way that maximum synergies can be achieved between the conservation work of the genebanks and the Centre breeding programmes that continue to be the primary users of the materials conserved. Obviously, in making such far reaching changes, the provisions in the legal agreements between centres and their host country Governments will have to be kept in view by the respective Boards of Trustees.

Agenda Item 3: Genetic Resources Endowment Fund Initiative

9. Consideration of how financing for the long-term conservation of PGRFA collections can be ensured, has a long history. Recently the CGIAR Finance Committee, the SGRP, Future Harvest, and the Conservation Company have been involved. A feasibility study has now been commissioned by IPGRI to assess the possibilities of raising a substantial amount of money to establish an endowment fund (or a similar mechanism to support long-term conservation). It is planned that this study be completed prior to MTM 2001.
10. Subject to the findings of the feasibility study, it is envisioned that a fund-raising "campaign" will be launched having four elements: (1) upgrading of CGIAR genebanks to meet international standards, (2) provision of funding for long-term maintenance of the "in trust" collections, (3) development of a global system (including CGIAR, national, regional and international collections), and (4) funding of that system.
11. **Conclusion:** The GRPC stressed that the CGIAR is committed to (1) ensuring that it can carry out the obligations it has assumed in the FAO-CGIAR agreements concerning "in trust" germplasm, and (2) implementation of the FAO Global Plan of Action. The solicitation of funds and the possible creation of an endowment fund should be seen as means of meeting these responsibilities. The CGIAR's interest, however, is broader, thus it sees the possible campaign as a way to generate support not just for CGIAR-maintained collections, but also for national and regional collections. The over-riding aim is to ensure the long-term conservation of a major

portion of the world's PGRFA in an efficient, effective manner. To achieve this goal, a rigorous, scientifically-based, consultative process will need to be initiated to identify relevant collections, appropriate facilities, etc. IPGRI is now undertaking these initial scientific studies.

12. The GRPC expressed concern that the efforts described above might be misconstrued and that some might feel that it was an attempt either simply to seek funds exclusively for the CGIAR or to divert funds from the proposed multilateral system under the FAO International Undertaking to the CGIAR. The GRPC wishes to make it clear that this is not the case. It is first, an understandable and legitimate effort to meet our obligations. But, more importantly it is an effort to ensure the conservation of the existing diversity of the world's PGRFA. Moreover, it is anticipated that this initiative would aim to secure funds primarily from non-traditional sources, unavailable to the mechanisms foreseen under the IU. The GRPC felt that a paper outlining CGIAR intentions and expectations would be useful in explaining the effort and generating support. The Committee also noted that the CGIAR might make use of events surrounding "Rio +10" and "Stockholm + 30" to promote a major initiative to generate sustained and long term support for the conservation of PGRFA.

Agenda Item 4: Update on the FAO-CGIAR Agreements

13. Centers will soon provide FAO with an updated list of designated germplasm totaling approximately 514,000 accessions – a modest increase over the previous total. Several centers have used the occasion for improving the accuracy of their own databases, and reducing redundancies in the reporting to FAO. The agreements with FAO have worked very smoothly during the past year. There have been no new allegations of abuses. In one case – the patenting of the yellow "Enola" bean in the US, a center has initiated legal action against the patent holder. The center – CIAT - was not obliged to do so (the patent-holder did not obtain its materials from CIAT, and thus, there was no MTA to enforce), but chose this action in the belief that the patent effectively covered materials held "in trust" by the center. CIAT believes that the patent improperly covers pre-existing materials. The center has asserted its intention to continue to distribute essentially "identical" designated materials.
14. **Conclusion:** The GRPC conveys its appreciation for the actions of CIAT. The Committee noted and expressed its concern that improper application of patent laws in some countries create situations, such as the yellow bean patent in the US, that have the effect of complicating and undermining negotiations of the FAO IU.

Agenda Item 5: New CGIAR IPR Guiding Principles

15. The GRPC considered the draft IP Guiding Principles, which had been prepared by Susan Bragdon of IPGRI on behalf of the CDC. The draft was widely distributed to all Centres, CAS, and others for their input.
16. **Conclusion:** The GRPC proposed a revised version which is attached as Annex 3 to this report.

17. It was suggested that it would be worthwhile to develop guiding principles on intellectual property generally, rather than limiting the guiding principles to those intellectual property issues relevant to genetic resources. If a decision is taken to expand the coverage of the Guiding Principles it was suggested that the advice of CAS should be sought.
18. The GRPC noted that the Guiding Principles will have to be reviewed and revised as appropriate after the conclusion of the IU revision.
19. Since some of the issues dealt with in the CGIAR IPR Guiding Principles are presently under negotiation by Member Countries of FAO in the context of the International Undertaking on Plant Genetic Resources, the representative of FAO, who is also Secretary of the intergovernmental Commission on Genetic Resources for Food and Agriculture, which is negotiating the Undertaking, considers it institutionally appropriate to reserve his position at this stage.

Agenda Item 6: Report on the Central Advisory Service (CAS) Steering Committee

20. The Steering Committee of the Central Advisory Service met for the two days prior to GRPC11. The GRPC noted the Steering Committee's unanimous agreement that there is a continuing need for a CAS to foster and facilitate sharing of experience among the Centres and to provide them with information on relevant IP trends and developments and as a referral service for IP issues as they arise. The Committee noted the distinction between these terms of reference and work related to policies and policy development.
21. **Conclusions:** To foster coordination between the CAS and GRPC it was recommended that the head of CAS be an ex-officio member of the GRPC and that IPGRI have a permanent seat or be an ex-officio member of the CAS Steering Committee.
22. The GRPC suggested that the CAS use the IP audits to synthesize common IP issues facing Centres. Recognizing that Centres will make a decision in the near future about further funding of the CAS, the importance of the CAS focussing on its mission of providing a service to the Centres is paramount.

Agenda Item 7: Update on GFAR Genetic Resources Initiative

23. The GRPC received a report on the recent activities of GFAR, including the upcoming publication of a book containing articles on topical PGRFA issues first tabled at the GFAR meeting held in conjunction with MTM 2000 in Dresden. There was a discussion of GFAR's future plans in regards to genetic resources.
24. **Conclusions:** The GRPC viewed the recent work of GFAR as quite positive and encouraged further cooperation and collaboration. It expressed concern, however, over some recent developments that indicate that GFAR might be taking on the role of an "implementing agency" in this field. The GRPC observed that the original intention – and the acknowledged need – was for a forum that would help air views, involve stakeholders and strengthen partnerships.

Agenda Item 8: Outcome of COP V and Update on Developments in CBD and Other Fora

25. The GRPC was briefed on the outcome of COPV, in particular its decisions on access to genetic resources, agrobiodiversity and Article 8(j) and related provisions dealing with indigenous and local communities. The negotiations on access were political and difficult with old issues regarding the best institutional location for the revision of the International Undertaking arising again. The decision ultimately supported the IU revision under the FAO and called for its speedy completion. It also called for Parties that are promulgating national access legislation to leave sufficient flexibility for joining a multilateral system. The Expert Panel on Access and Benefit-Sharing was reconvened. Finally, the decision noted the difficulties in understanding and reaching consensus on the relationship between intellectual property rights and access and benefit-sharing. It did, however, note the importance of *sui generis* approaches in this regard.
26. The decision on agro-biodiversity noted the leadership of FAO on implementation of the CBD work programme in this area. It explicitly calls upon the CGIAR to support this work. The decision also calls for study of "Genetic Use Restriction Technologies" (GURTS) to continue noting in particular the need to understand its effects on indigenous and local communities and the elaboration of Farmers' Rights. The decision on Article 8(j) called for the continuation of the Intersessional Ad-Hoc Working Group on Article 8(j) and related provisions. It also noted the importance of *sui generis* approaches for the protection of the innovations of indigenous and local communities.
27. The GRPC was briefed on a series of case studies put out by WIPO on intellectual property rights and the innovations of indigenous and local communities. WIPO has circulated the case studies widely and asked for comments. It was agreed that if the deadline allowed, IPGRI would coordinate a system-wide response to the document.

Agenda Item 9: WHAT Commission Report

28. Biodiversity is one of the priority areas of the World Humanity Action Trust (WHAT). Their recent report suggests the establishment of a consultative forum on biodiversity (on the model of the Climate Change Panel) that would include UN agencies, CGIAR, UPOV, WIPO and others. This non-political panel would be composed of high-level professionals and scientists. The GRPC was informed of the various recommendations of the report, *inter alia*, on funding, incentives for the private sector, the use of biodiversity and the promotion of a multilateral system, and international collaborative projects.

Agenda Item 10: Report for ICW

Agenda Item 11: Next Meeting: Date, Place, Agenda

29. The Committee received and welcomed an invitation by Usha Barwale to hold the next meeting in India at the end of January or end of February 2001 (the date to be decided after further consultations).

Agenda Item 12: Any Other Business

Report by RAFI

30. The Chairman and several Committee members had received copies of a draft press release and study by Rural Advancement Foundation International (RAFI) entitled: *"In Search of Higher Ground: the intellectual property challenge to public agricultural research and human rights and 28 alternative initiatives"*. The Committee discussed the documents at some length and several inaccuracies were pointed out. It also noted that some of the issues, such as those that invoke or concern human rights, are the subject of a broader debate in other international fora. While appreciating the fact that RAFI had provided advanced copies of the study, the Committee agreed that it would not be appropriate to respond with a detailed point-by-point analysis of the documents.
31. **Conclusion:** The Committee prepared, for the attention of the members of the CGIAR, the following statement of general principles relating to the issues raised by RAFI:
32. The CGIAR has continually produced an extensive range of global public goods over a long period, and remains committed to this ethos, to enhance food security, to reduce poverty, and to protect the environment. Genetic resources management (conservation and use) in the Centers has resulted in products that have had substantial and positive impact on the social and economic well-being of their partners in developing countries.
33. The challenge to keep these global public goods in the public domain for the benefit of the resource-poor in the South has been more complex for a range of reasons:
34. Firstly, the rapidly changing IP environment means that more decisive action is required to ensure that the products of CGIAR research with its partners remain in the public domain unfettered by the IP claims of third parties. For this reason the CGIAR retains the right to defensive protection of inventions when this is in the best interest of the resource-poor. The conditions for such actions are laid out in the Guiding Principles.
35. Secondly, as the challenges of food security, poverty alleviation and environmental protection have become more complex, it has become even more important to ensure that all appropriate technologies are harnessed. This requires more extensive collaboration with partners – South and North; public and private; governmental and non-governmental – necessitating clarity on the management of IP. Accessing the technologies of others to address the challenges and opportunities of the resource-poor is a key component of this approach and is only possible with enhanced attention to IP management. The overall objective of these partnerships is to develop better products and deliver them more quickly for the benefit of the resource-poor.
36. Given the CGIAR's continued commitment to the production of global public goods and the desire to keep these in the public domain, the Committee has proposed some revisions and refinements in the Centers' Guiding Principles on IP and Genetic Resources. These, together with the previously tabled statements on Ethical Principles; Biotechnology; and dealing with the Private Sector, provide the framework for the Centers' work with their partners. It firmly believes that the revised

guidelines enable the CGIAR to adopt new tools and strategies to keep faith with its mission.

37. In order to strengthen the Centers' capacity to address IP management issues, the Centers have established the Central Advisory Service (CAS) on IP. Located in ISNAR, the CAS serves the Centers' needs by providing and facilitating expert advice and enhancing exchange of knowledge and experiences.
38. The Committee disagrees with the expressed view that the CGIAR guidelines and centres' policies on IP "compromise public goods in favor of corporate interest" and that they constitute a violation of human rights. They have been formulated precisely to protect the interest of resource-poor farmers in developing countries by enhancing their access to technologies that otherwise will remain in the private domain. In this sense, they promote rather than violate the human rights of people in the South in terms of greater access to genetic resources and technologies that contribute to poverty reduction and food security in line with the mission of the CGIAR.

Draft Terms of Reference for an IPR Audit at the Swedish University of Agricultural Sciences

39. The Committee received a report on this subject from Carl-Gustaf Thornstrom, who stressed the need for such audits in public institutions, both for legal as well as for educational purposes.
40. **Conclusion:** The GRPC commended Dr. Thornstrom for this useful initiative and his personal efforts in this regard.

World Food Prize

41. The GRPC was informed that two CIMMYT scientists had won the World Food Prize for 2000 for their work on Quality Protein Maize.
42. **Conclusion:** The GRPC extends its congratulations to Drs. Eva Villegas and Sam Vasal, and to CIMMYT. It noted that this research demonstrated not only the quality of CGIAR science, but also the value of genetic resources (the achievement is the result of 20+ years of work) with a recessive gene linked to several deleterious traits and of core, unrestricted funding that underpinned the long-term research needed to overcome substantial technical obstacles on the way to producing materials that offer superior nutritional advantages.

Annex 1

List of Participants

Members: M.S. Swaminathan, Chairman
Usha Barwale, TAC

Robert Bertram, USA

Ron Cantrell, CDC
Marcio de Miranda Santos, CBC
Pepe Esquinas, FAO
Carmen Felipe Morales, NGOC
Christina Grieder, Switzerland
Geoffrey Hawtin, Secretary
Bernard Le Buanec, PSC
Timothy Reeves, CDC
Carl-Gustaf Thornstrom, Sweden
Cary Fowler, Resource Person

Observers: Stein Bie, ISNAR
June Blalock, USDA/ARS
Susan Bragdon, IPGRI
Joel Cohen, ISNAR
Helen Cordell, Argonne National Laboratory
Barry Greengrass, UPOV
Victoria Henson-Apolonio, CAS, ISNAR
Chagemma Kedera, KEPHIS
Manuel Lantin, CG Secretariat

Apologies: Godwin Mkamanga, NARS

GENETIC RESOURCES POLICY COMMITTEE

Eleventh Session

The Hague, Netherlands, 6-8 September 2000

PROVISIONAL AGENDA

1. Update on renegotiation of the International Undertaking
2. CGIAR governance, organization and structure
3. Genetic resources endowment fund initiative
4. Update on the FAO-Centre agreements
5. New CGIAR IPR Guidelines
6. Report on the Central Advisory Service (CAS) Steering Committee
7. Update on GFAR genetic resources initiative

Outcome of COPV and update on developments in CBD and other fora (WTO, WIPO, UPOV etc.)

WHAT Commission Report

8. Report for ICW
9. Next meeting: date, place, agenda
10. Any other business

**Proposed by the GRPC at its Eleventh Meeting
6-8 September 2000**

**Guiding Principles for the Consultative Group on International Agricultural Research
Centers on Intellectual Property Relating to Genetic Resources**

CONTEXT

The CGIAR is committed to the conservation and use of genetic resources in an efficient, cost-effective and equitable manner. Developments in the last five to ten years have significantly changed the policy environment affecting the management of genetic resources. The expansion and increasing complexity of relevant policy issues present challenges and opportunities to the CGIAR in pursuing its mission. Some of the most significant issues include Farmers' Rights, the rights and interests of indigenous and local communities, prior informed consent, benefit-sharing, access to genetic resources, patenting, and *sui generis* protection of plant varieties. Developments in the field of intellectual property rights have arguably been the most dramatic. This is particularly true with regard to the application of intellectual property rights to biological materials and processes. The CGIAR has a responsibility to be alert to these changes and to adopt new tools and strategies to enable it to keep faith with its mission. It is in this context that the CGIAR has examined and will continue to examine its Guiding Principles on Intellectual Property Rights and Genetic Resources.

BACKGROUND

At its Mid-Term Meeting in Istanbul, in May 1992, the CGIAR agreed on a set of working principles on genetic resources and intellectual property. These were published in the proceedings of the meeting and were largely based on a set of guiding principles on plant genetic resources and related intellectual property rights issues adopted by the Centers in 1991.

The entry into force of the Convention on Biological Diversity in 1993, the 1994 agreements between the Centers and FAO bringing designated germplasm under the auspices of the FAO as part of the International Network of *Ex Situ* Collections, and the entry into force of the Multilateral Trade Agreement embodying the Agreement on the Trade-Related Aspects of Intellectual Property Rights in 1995, prompted the CGIAR to convene a panel on intellectual property rights in September 1994 under the Chairmanship of Dr. M.S. Swaminathan. The report of the panel was endorsed at International Centers Week in October 1994. Based on the agreed recommendations made in this report the CGIAR Centers revised and endorsed their guiding principles on intellectual property in 1996.

Since the 1996 revision, the legal and policy environment has continued to evolve. Developments affecting the conservation, exchange and use of genetic resources include:

- The use of intellectual property rights, including patenting to protect plant varieties and/or their components, has expanded dramatically creating an uncertain but arguably more restrictive environment for the use and deployment of genetic resources. Methods and technologies of critical importance to the research function of CGIAR centers are also increasingly

protected by intellectual property rights, rendering access and use more problematic. The rise of broad, so-called “blocking” patents raises the possibility that intellectual property rights might be employed in ways that could restrain existing and/or future research.

- The deadline for implementing PVP legislation in accordance with Article 27.3(b) of the TRIPs Agreement was reached for most countries. Disagreement about the nature of the review process required by that article continues to be discussed by the TRIPs Council. In addition, UPOV 1991 entered into force in 24 April 1998 foreclosing the possibility for countries to adhere to UPOV 1978.
- Negotiations to revise the FAO International Undertaking on Plant Genetic Resources, which began in 1994, have not yet been concluded. These negotiations are addressing questions concerning the ownership and control of plant genetic resources, and more specifically, are centering on the issues of access to and benefit-sharing associated with plant genetic resources. As such, the talks are likely to have a major impact on CGIAR-held germplasm collections, their management, use, and future terms of access by others – issues that are linked to questions of intellectual property rights. Progress has been made in agreeing on text on Farmers’ Rights. The agreed language indicates that countries are likely to have wide discretionary authority in terms of how they define and apply Farmers’ Rights in the national context.
- The FAO and the CGIAR issued two Joint Statements, in 1994 and 1998, respectively, clarifying certain issues with respect to implementation of the 1994 agreements. Among other things, the Statements established material transfer agreements (MTA) as a means through which designated germplasm could be kept in the public domain. The text of the MTA was jointly agreed between FAO and the Centers. It requires recipients of designated germplasm to forego claims of ownership or intellectual property over the material received. The Joint Statements set out agreed procedures to handle any alleged violations.

GUIDING PRINCIPLES

I. Purpose

The Guiding Principles are intended to:

- Guide and assist Center decision-making in matters related to the acquisition, management and/or use of intellectual property;
- Elucidate the principles by which the Centers are guided in managing intellectual property for donors and all partners in research and development, which include national research and extension organizations, non-governmental organizations and the private sector; and
- Promote the human right to access to food.

II. General Philosophy

1. The management of intellectual property by Centers will be guided by of the CGIAR mission to contribute to food security and poverty eradication in developing countries through research, partnerships, capacity building and policy support.
1. The Centers will manage intellectual property issues with integrity, equity, responsibility and accountability and in accordance with the CGIAR Ethical Principles related to Genetic Resources.
1. The CGIAR does not view the protection of intellectual property as a mechanism for securing recurring financial returns upon which it may depend. However, if additional resources are generated, they will be used in support of specific tasks and projects fully compatible with the CGIAR mission and objectives.
1. The Centers recognize the contributions of farming and indigenous communities to genetic resources conservation and enhancement, that these contributions may have relevance to intellectual property rights and must therefore be appropriately recognized in Centers' management of their intellectual property. The Centers also recognize the expertise of many national and international organizations on equity, gender, conservation and sustainability issues and where appropriate form partnerships with them and others in order to integrate this expertise in research on genetic resources. The CGIAR supports efforts to bring about an equitable balance between intellectual property rights and the protection of traditional knowledge in relation to the use of plant genetic materials, with a view to fostering the conservation, sustainable use and benefit-sharing. Furthermore, the Centers will contribute to national and international efforts to convert the recognition of the contribution of indigenous and local communities into tangible measures to develop appropriate policies and procedures for the recognition of Farmers' Rights.
1. In seeking access to genetic resources the Centers will abide by the access regimes established by national governments, either individually or collectively, including any provisions relating to intellectual property.

1. The CGIAR encourages germplasm donors to permit the designation of material in accordance with the 1994 agreements with FAO.

III. Designated Germplasm

1. The germplasm designated by the Centers is held in trust for the world community in accordance with the 1994 agreements signed with FAO. Under these agreements, the Centers:
2. agree to conserve, maintain, study and distribute this germplasm world-wide for use in agricultural research and development;
3. recognize the intergovernmental authority of FAO and its Commission on Genetic Resources for Food and Agriculture in setting policies for the International Network of Ex Situ Collections, of which the designated germplasm is part, and undertakes to consult with FAO and its Commission on proposed policy changes related to the conservation of, or accessibility to the designated germplasm;
4. agree to hold designated germplasm in trust for the benefit of the international community, in particular the developing countries, in accordance with the International Undertaking on Plant Genetic Resources;
5. affirm their responsibility for the safe and secure conservation of these genetic materials for present and future generations, including their duplication in at least one other location for safety.
6. Matters concerning the practical implementation of these agreements are addressed in a series of Joint Statements agreed by FAO and the Centers.
7. The Centers shall adhere to the principle of ready access to designated germplasm in accordance with the 1994 agreements with FAO and relevant joint statements.
8. Designated germplasm will be made available to recipients under terms set forth in a Material Transfer Agreement developed by the Centers in collaboration with FAO. As set forth in the MTA, all recipients shall be required to consent to the following:
9. not to assert legal ownership nor to seek intellectual property protection over the designated germplasm or related information; and
10. to ensure any transfer of the designated germplasm or related information subject to these conditions.
11. In addition (and pending final agreement with FAO), to promote the use of the designated germplasm, MTAs will be employed to maintain the freedom of access to, and use of, the designated germplasm even in the event of intellectual property rights being granted on the products of research involving the germplasm concerned.

III. Center Research Products

1. The CGIAR adheres to the principle of ready availability of breeding material for breeding and research activities.

2. Subject to paragraph 3 below, the CGIAR regards any information, inventions, processes, biological material or other research products funded or developed by the CGIAR or the Centers (research products) as international public goods to be used in furtherance of its mission. Full disclosure of research results and products in the public domain is the preferred strategy for preventing misappropriation by others.
3. Recognizing there may be times when intellectual property protection is a necessary or preferred means to pursue CGIAR and Center objectives, Centers may consider acquiring and managing intellectual property in research products developed or supported by the Center when to do so would:
 - a. support public and private partnerships which pursue mission-based research or which develop and apply research results;
 - b. assure ready access by others to research products developed or funded by the Center;
 - c. ensure the Center's ability to pursue its research without undue hindrance;
 - d. facilitate the transfer of technology, research products and other benefits to the resource poor including, where appropriate, through commercialization or utilization of research products; and/or
 - e. facilitate the negotiation and conclusion of agreements for access to proprietary technologies of use to the Center's research and in furtherance of its mission.
4. The Centers shall take every possible measure to facilitate access to research products for the public benefit, in particular in developing countries.
5. Breeding materials will typically be made available to recipients by contract, designed to ensure that future access and use by others is not compromised or restricted.
6. If a Center's pursuit, exercise and/or management of intellectual property leads it to impose conditions on the supply of research products, this shall be done only when such conditions are in harmony with the CGIAR and Center missions and objectives.
7. When entering into collaborative partnerships, Centers will seek IP arrangements that promote unrestricted access to research products for CGIAR clients and beneficiaries.
8. The circumstances in which a Center, collaborators, grantees or recipients may protect by intellectual property the research products or the results of their research or breeding using the research products are specified in Section V: Protection Prerequisites.

III. Protection Prerequisites

1. Decisions on pursuing protection of Center research products will be taken by the Center on a case-by-case basis at an appropriate stage in the research process, in accordance with these principles and only after a specific judgement that this course of action will support the CGIAR and the Center's missions and objectives.

2. Where plant variety protection is sought on an improved variety, it must be consistent with the provisions of UPOV or any other *sui generis* system that does not preclude others from using, in their breeding programmes, either the original material and preferably the new variety, on which protection is sought.
3. With regard to the patenting of cells, organelles, genes, molecular constructs, plants, varieties and traits, Centers shall pay due regard to the nature of the recipient and the product, and the effect that protection would have on access to, distribution and use of the protected product before agreeing to proceed with an application for patent protection or allowing others to do so.
4. With regard to derivatives: In promoting the use of genetic resources, Centers shall be mindful of and give high priority to the importance of retaining freedom of access and use to non-designated germplasm, products of breeding and their components.
5. Agreement granted to recipients to apply for intellectual property protection does not in any way waive the rights of the Center to challenge protection granted, by recourse to administrative and court proceedings.

IV. Licensing

Licensing decisions will be guided by the objective of facilitating access to, or ensuring the delivery of, appropriate existing and future technologies for the public benefit, particularly the resource poor in developing countries. As a licensor, a licensee or a joint developer/financer, the Centers shall retain, transfer, or obtain the right to make the technology available to support this objective. In all licensing decisions, the Centers will follow the principle that technology licensed to or from others, or derived from their research, will be available to the resource poor of the world at no royalty.

VII. Publications (printed and electronic), Databases, Reports, Training Material, Public Awareness, Artwork, Audio-visual material

The CGIAR encourages the wide dissemination of its publications (printed and electronic) including, databases, reports, training and public awareness material, artwork and audio-visual material to the genetic resources community, seeks that such materials be used to the maximum benefit, and will pursue intellectual property arrangements that promote these objectives.

V. General Procedures

1. These Guiding Principles will be reviewed at regular intervals and revised as need be in the light of international developments. The Center Directors Committee will carry out this revision.
2. The Centers will adopt specific policies for the distribution and use of improved germplasm and biotechnological products following the above Guiding Principles.