



CGIAR

Intellectual Assets Report for Year 2013

Prepared by: The CGIAR Consortium Office and the Fund Council IP Group



CGIAR

Science for a food-secure future

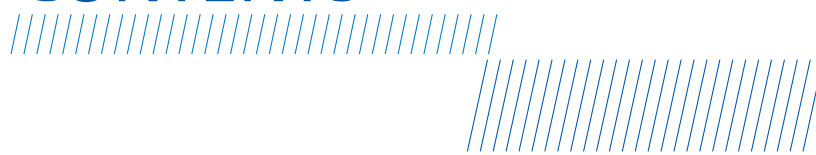
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CGIAR Intellectual Assets Report for Year 2013

Annual Report from the CGIAR Consortium to the Fund Council on the implementation of the CGIAR Principles on the Management of Intellectual Assets in 2013

Approved by the Consortium Board on 10 October 2014
For submission to the Fund Council

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EXECUTIVE SUMMARY

This CGIAR Intellectual Assets (IA) Report covers the calendar year 2013, which is the second reporting cycle under the CGIAR Principles on the Management of Intellectual Assets (CGIAR IA Principles). It was developed by the CGIAR Consortium in collaboration with the Fund Council Intellectual Property Group (FC IP Group) and in consultation with the Centers. It includes an independent section, Section 8, from the FC IP Group.

In general, there was significant improvement, in terms of both substance and format, in Center IA reports covering 2013 compared to their 2012 reports. Based on these reports and additional information received from the Centers, the Consortium and the FC IP Group agree that all Centers complied with the CGIAR IA Principles in 2013. In this regard, all Centers submitted to the Consortium their boards' assurances of compliance for 2013.

Improved reporting and compliance can be partly credited to the Consortium emphasizing the importance of compliance, strengthening its oversight, and clarifying expectations regarding the implementation of the CGIAR IA Principles and reporting on the basis of lessons learned during the first reporting cycle. The Consortium worked with the FC IP Group to resolve the issues raised during the first reporting cycle and developed clearer guidance for the Centers. In addition, the Centers' expanded knowledge and experience in IP contributed to their improved reporting and compliance.

IP capacity has continued to improve in 2013 as the Consortium recruited an additional IP lawyer and the Centers recruited two additional IP managers. In addition, the Centers continued to actively build their own capacity as many IP staff participated in the monthly IP webinars organized by

the Consortium and other IP seminars, and organized internal training to familiarize their scientists, research partners, staff and board members with the CGIAR IA Principles.

The CGIAR Legal and IP Network (CLIPnet) engaged in a number of activities in 2013. Regarding policy, it developed the Implementation Guidelines for the CGIAR IA Principles and contributed to the Open Access and Data Management Policy and Guidelines. CLIPnet held its third annual meeting in Nairobi in October as well as a successful regional workshop with partners on IP management in the CGIAR Research Programs (CRPs). The CLIPnet wider network has grown organically to about 80 members, and the Consortium is now extending it to CRP partners.

To better implement the CGIAR IA Principles, all Centers set up procedures to ensure compliance, adopted new IP policies or reviewed existing policies to ensure alignment with the CGIAR IA Principles and further integrated IP management best practices and Open Access practices in their research. In addition to their many partnerships, the Centers concluded seven Limited Exclusivity Agreements (LEAs) and three Restricted Use Agreements (RUAs). Regarding their LEAs, no Centers requested authorization from the Consortium to deviate from the emergency exemption; and only one Center requested authorization to deviate from the research exemption (which was approved by the Consortium). The CGIAR Consortium and the FC IP Group deemed the justifications provided for all LEAs and RUAs consistent with the CGIAR IA Principles after their follow-up questions to Centers received adequate responses.

In terms of IP protection, only one Center filed patent applications. No Center applied for

plant variety protection (PVP), though several Centers concluded agreements with partners authorizing partners to apply for PVP. Three Centers registered a total of four trademarks for either names/ logos, or products.

All Centers reported having used the Standard Material Transfer Agreement when required under the International Treaty on Plant Genetic Resources for Food and Agriculture. Further, Centers shared a variety of useful farmers' rights practices in their IA reports for 2013.

Regarding the review of the CGIAR IA Principles in 2014, the Consortium and the FC IP Group have planned to appraise progress on implementation during the first two reporting cycles in light of the experience gained by them and the Centers and to produce a joint report for submission to the Fund Council before its meeting in November 2014.

The Consortium is pleased with the outcome of the second IA reporting cycle. It is keen to continue fine-tuning expectations through each reporting cycle and to work with the FC IP Group and the Centers to achieve this.

FC IP Group Independent Section

The FC IP Group reviewed the Consortium's Consolidated IA Report incorporating all

Center IA reports, which it discussed with the Consortium Legal Team during a 3-day meeting in Montpellier in April. The FC IP Group agrees with the Consortium that there was significant progress in reporting, compliance, IP capacity and adoption of best practices, and it commends the Consortium's IP leadership, initiatives and oversight.

The FC IP Group recommends that:

1. Centers explain more fully how their LEAs and RUAs further the CGIAR vision including impact on target beneficiaries,
2. Centers seeking patent protection clearly explain why they need to do so and how such protection furthers the CGIAR vision,
3. the Consortium and the Centers develop a CGIAR-wide IP portfolio with comprehensive information on, at minimum, all patent and PVP applications and trademarks registrations that are filed,
4. Centers include a section on intellectual asset management in their future CRP proposals to explain how their use of IP tools will maximize impact, and
5. Centers continue to strengthen their IP capacity to appropriately deal with demands and needs.



CGIAR INTELLECTUAL ASSETS REPORT FOR YEAR 2013

1. Background

This CGIAR Intellectual Assets (IA) Report covers the calendar year 2013, the second reporting cycle under the CGIAR Principles on the Management of Intellectual Assets (CGIAR IA Principles).

It is submitted by the Consortium to the Fund Council in accordance with Article 10.3 of the CGIAR IA Principles, which provides that the "Consortium shall provide annually to the Fund Council a high level report, satisfactory to the Fund Council, regarding the implementation of the CGIAR Principles during the preceding year."

It was developed by the Consortium in collaboration with the Fund Council Intellectual Property Group (FC IP Group) and in consultation with Centers. It includes an independent section, Section 8, from the FC IP Group.

This report was developed using information from Center IA reports for 2013 and supplemental information requested from Centers by the Consortium and/or the FC IP Group. It takes into account discussions between the Consortium Legal Team and the FC IP Group during a 3-day meeting in Montpellier on 8-10 April 2014, during which all Center IA reports were reviewed.

2. Overview of Center IA reporting and compliance for 2013

2.1 Quality and format of reporting

In general, the Center IA reports covering 2013 were significantly improved in terms of substance and format compared to the Center IA reports for 2012, which was the first reporting cycle and somewhat of a test-drive. It is clear from the 2013 reports that the Centers prioritized this subject area. Center IP focal points were very cooperative throughout the reporting process. All reports were submitted on time, and Center IP focal points responded very positively to preliminary Consortium requests for clarification. All Center IA reports followed the same format, using a table template prepared by the Consortium Legal Team in consultation with the FC IP Group, which improved clarity and facilitated review.

The Center IA report sections providing general information on the implementation of the CGIAR IA Principles provided well balanced and detailed information on (1) legal and IP capacity at the Centers, (2) new or updated IP policies, (3) Centers' IP portfolios, (4) information showing that the requirements for sound IP management were met, and (5) IA management highlights, case studies and practices. As these sections are not confidential, they have been shared with all Center IP focal points to help them learn from one another and to inform discussions at the next annual CLIPnet meeting.

The sections of Center IA reports on Limited Exclusivity Agreements, Restricted Use Agreements and IP applications were also clearer and more detailed than last year. However, better explanations are needed on

how the agreements will further the CGIAR vision or enhance the scale or scope of impact on target beneficiaries, as this was the topic of most follow-up questions from the Consortium Legal Team and the FC IP Group.

See more information on Center IA reports in Section 5 hereafter.

2.2 Assessment of compliance

All Centers submitted to the Consortium their boards' assurances of compliance, in accordance with Article 10.1.1 of the CGIAR IA Principles.

Based on Center IA reports and additional information received from the Centers, the Consortium and the FC IP Group agree that all Centers complied with the CGIAR IA Principles in 2013.

2.3 Measures taken in 2013 to improve reporting and compliance

A number of measures were taken since last year to improve reporting and compliance:

The Consortium emphasized the need for the Centers to fully comply with the CGIAR IA Principles and strengthened its oversight.

- A formal letter was sent to all Center directors general and board chairs to inform them of the importance of full compliance with the CGIAR IA Principles.
- The Consortium involved internal audit which reminded Center board audit committee chairs of their boards' responsibilities, in particular with regard to assurance of compliance.
- The Consortium sent formal notifications of non-compliance to the Centers that were deemed not to have fully complied with the CGIAR IA Principles in 2012 and requested remedial actions. All notified Centers responded by providing additional information and explanations, which the Consortium Legal Team and the FC IP Group discussed extensively and found satisfactory.

- The Consortium Legal Team developed a process for handling Center requests for deviations from research and emergency exemption requirements under Article 6.2.2 of the CGIAR IA Principles (approved by the Consortium Board at its last meeting in December).
- The Consortium Legal Team developed a register on issues in Center IA reports to monitor follow-up actions.

Expectations regarding reporting and the implementation of the CGIAR IA Principles were clarified since 2012 on the basis of lessons learned during the first reporting cycle.

- It emerged from discussions and additional information provided by Centers after the first reporting cycle that the alleged cases of non-compliance were either due to differences of interpretation by the Centers of certain provisions of the CGIAR IA Principles (and subsequently these interpretations were accepted by the CGIAR Consortium and the FC IP Group) or to a lack of sufficient justifications for certain restrictions to global access in Center agreements (which were subsequently provided by Centers).
- The Consortium Legal Team worked with the FC IP Group to clarify expectations regarding the future implementation of the CGIAR IA Principles and reporting on the basis of lessons learned in the first reporting cycle. This resulted in the development of a number of IP tools for Center use as described in Section 4.7 hereafter.
- Communication between the Consortium Legal Team and the Center IP focal points improved. The Consortium Legal Team contacted Center IP focal points individually to indicate where improvement in reporting was necessary. In addition, Centers have increasingly consulted the Consortium Legal Team for advice and guidance with regard to various practical intellectual property cases they encountered, to ensure compliance with the CGIAR IA Principles.

3. IP capacity in the Consortium Office and the Centers in 2013

3.1 Consortium Office IP capacity in 2013

The Consortium Legal Team in 2013 consisted of a full-time general counsel supported by a part-time legal consultant and a part-time communications consultant. The general counsel is the Consortium's IP focal point responsible for IP matters in the Consortium. The general counsel was absent for part of 2013 (on combined maternity and vacation leave) and replaced by a full-time legal officer. Upon the general counsel's return at the end of 2013, a second position was created for the legal officer to assist the general counsel and primarily handle IP matters, such that the Consortium Office currently has two full-time legal and IP positions.

The Consortium Legal Team continued to be supported by the Australian Center for Intellectual Property in Agriculture (ACIPA),

which has a grant from the Australian Research Council and the Australian Centre for International Agricultural Research to work on IP and food security, as well as on IP in CGIAR. The eight IP specialists in ACIPA worked with the CGIAR Consortium to help address some of the needs relating to IP, conducting monthly IP webinars and reviewing Center IP practices and procedures, among other activities (see more information on activities involving ACIPA under Section 4 hereafter).

3.2 Centers' IP capacity in 2013

The Consortium emphasized the importance of Centers having adequate capacity, which continued to improve in 2013 compared to 2012 (Table 1). Indeed, several Centers recruited full-time IP staff and many Centers made progress in strengthening their internal IP capacity by enrolling their staff in IP training and seminars.

Table 1: Internal and external IP capacity at Centers in 2012 and 2013

Center	Internal IP Capacity (number of full-time IP staff employed)		External IP Capacity (number of external IP consultants)	
	2012	2013	2012	2013
AfricaRice	1	1		
Bioversity	1	1		
CIAT	1	1		
CIFOR			1	1
CIMMYT	2	2		
CIP		1	1	1
ICARDA		1		
ICRAF			1	1
ICRISAT	2	2		
IFPRI			1	1
IITA	1	1	1	1
ILRI	1	1		
IRRI	1	1		
IWMI ¹	1	1		
WorldFish			1	1
Total	11	13	6	6

¹ IWMI's focal point, who is a qualified Attorney-at-law, primarily provides support to IWMI on legal and contractual matters and has been advised by the Consortium to further develop her expertise in 2014.

3.3 The CGIAR Legal/IP Network

The CGIAR Legal/IP Network (CLIPnet) is a community of practitioners with multidisciplinary backgrounds who are interested in all things legal and IP in CGIAR.

CLIPnet is structured as one network comprising two complementary groups (Figure 1).

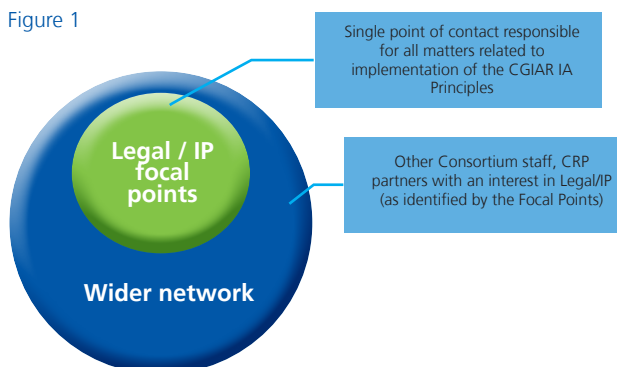
1. **The wider network** consists of anyone in CGIAR or CRP partners interested in legal or IP matters, currently about 80 members.
2. **IP focal points** are a subgroup of the wider network, comprising one IP focal point per Center and the Consortium IP focal point. This group handles core in-house Consortium legal and IP affairs such as reporting on intellectual assets and all matters related to implementing the CGIAR IA Principles, and it provides advice on strategic policies and issues.

CLIPnet's aim is to help its members better understand each other's activities, identify ways of working together and create effective channels of communication between CGIAR practitioners involved in IP and intellectual asset management, contracts, partnerships and other legal/IP matters by:

1. Sharing and leveraging IP management practices, tools, experience and resources with the aim of building IP management capacity within CGIAR;
2. Developing practical legal and IP resource tools for members of the community;
3. Continuing professional development and networking; and
4. Raising the profile of CGIAR in terms of expertise in IP and agriculture.

Services to CLIPnet currently include an intranet site for the group featuring a work space and a document repository, monthly updates on legal or IP matters of interest in CGIAR, monthly webinars and training, and a CLIPnet annual meeting.

Figure 1



3.4 Capacity building activities

The CGIAR Consortium continued to lead a number of capacity building activities for CLIPnet, including through its collaboration with ACIPA (as described in Section 4 hereafter).

In addition, a number of Centers conducted internal capacity building activities for their scientists, research partners and staff. For example, the IP manager at the International Crops Research Institute for the Semi-Arid Tropics (ICRISAT) makes a biennial visit to all ICRISAT locations in sub-Saharan Africa to provide IP training and interact with staff, and sometimes with national partners, to clarify IP issues specific to their projects. In 2013, he visited two ICRISAT locations in Bamako and Nairobi for this purpose. The legal and IP counsel at the International Livestock Research Institute (ILRI) made several presentations to train scientists, partners, graduate fellows and staff on a number of IP matters, technology transfer agreements and the CGIAR IA Principles. The Legal Office of the International Center for Tropical Agriculture (CIAT) provided training on the CGIAR IA Principles to its Board of Trustees and on Open Access to key scientists. The legal and IP office of the International Maize and Wheat Improvement Center (CIMMYT) trained administrative and scientific staff on the CGIAR IA Principles in 2013. Similarly, IP manager of the International Potato Center (CIP) visited CIP's sub-Saharan regional office and made presentations on the CGIAR IA Principles to the CIP Board of Trustees and senior management, and CIP engaged an external IP consultant who conducted one-to-one interviews with CIP scientists to identify research results being generated and build awareness on the CGIAR IA Principles.

4. Main activities involving the CGIAR Legal/ IP Network in 2013

4.1 Implementation guidelines of the CGIAR IA Principles

Implementation guidelines were developed to provide additional information and illustrations with regard to the CGIAR IA Principles to facilitate their understanding, guide their interpretation and ensure their coherent implementation. They were formulated by a working group made up of the Consortium Legal Team and members of CLIPnet, taking into account comments received from the Centers, FC IP Group, Secretariat of the International Treaty on Plant Genetic Resources for Food and Agriculture (Treaty), and the Global Forum on Agricultural Research (GFAR). The guidelines were approved by the Consortium Board in June 2013²

Inter alia, the guidelines explain what it means to “be respectful of national and international efforts to protect and promote farmers’ rights as envisaged by the Treaty and support the development of appropriate policies and procedures for their recognition and promotion” and include measures that Centers can take in this regard. They take into account and reference the study on this subject commissioned by GFAR. Further, they explain how facilitated access to plant genetic resources for food and agriculture within the purview of the Treaty shall be provided in accordance with the Treaty and the CGIAR IA Principles by indicating in which cases Centers should use the Standard Material Transfer Agreement and reminding Centers of their reporting obligations to the Governing Body of the Treaty. They describe concrete measures by which Centers ensure the sound management of IA and IP rights including ensuring that all agreements comply with the CGIAR IA Principles, maintaining an IP portfolio and laboratory notebooks, and carrying out IP audits, due diligence and other requirements. They also provide concrete examples explaining the prompt dissemination of research results, Limited Exclusivity Agreements, Restricted Use Agreements, how to take out IP rights, and how Centers may charge fees for access to their intellectual

assets. They specify that Centers need to have designated personnel or consultants who ensure compliance with the CGIAR IA Principles, as well as an IP focal point, describing that officer’s role. They include a template for the Center IA reports and for the CGIAR IA Report.

4.2 CGIAR Open Access and data management policy

The movement for Open Access and open data for agriculture has progressed swiftly, and CGIAR is committed to taking a leading role into the future. The CGIAR mandate for Open Access has been in place since March 2012, when the CGIAR IA Principles were approved. Indeed, the CGIAR IA Principles require as a general principle that the Consortium and the Centers “promptly and broadly disseminate their research results, subject to confidentiality as may be associated with [certain] permitted restrictions, or subject to limited delays to seek IP Rights” such as patents. Last year was important for CGIAR Open Access as the Consortium Board approved in October the CGIAR Open Access and Data Management Policy, which the Centers unanimously endorsed in November. (See the announcement “CGIAR Consortium now officially ‘Open Access’” for more background and a link to the policy.³)

The Open Access and Data Management Policy sets common expectations with respect to Open Access to information products such as peer-reviewed journal articles; reports and other papers; books and book chapters; data and databases; tools for data collection and analysis; video, audio and images; computer software; web services; and metadata associated with information products.

The Consortium Legal Team played a significant role in drafting the policy, which engaged a wide range of networks (including CLIPnet), stakeholders, partners and donors both within and outside of the CGIAR Consortium. The first draft of the Implementation Guidelines for the Open Access Policy was developed at the end of 2013 with input from the Consortium Legal Team and CLIPnet. The Consortium Legal

² See http://library.cgiar.org/bitstream/handle/10947/2846/Implementation_Guidelines_-_For_the_CGIAR_IA_Principles_on_the_Management_of_Intellectual_Assets.pdf?sequence=1

³ See www.cgiar.org/open

Team has further supported the Consortium Knowledge Management & Communications Team on the legal aspects of a number of CGIAR Open Access initiatives.

CGIAR has been reporting on progress towards Open Access for the past year, with information and news items collected at www.cgiar.org/open. This page offers, for openness and transparency, public access to key documents on Open Access, including drafts of documents for consideration.

4.3 Annual CLIPnet meeting

The third annual CLIPnet meeting, which was organized by the Consortium Office, was held on 8 October 2013 at ILRI in Nairobi. It was attended by representatives from 13 Centers, mostly Center IP focal points, and the Consortium Office. Partners from ACIPA were scheduled to attend but cancelled at the last minute on security concerns. The meeting presented an opportunity to sensitize and update participants on a variety of important initiatives relevant to IP such as the Strategy and Results Framework management update, guidance for the CRP second call, and the outcomes of the Fifth Session of the Governing Body of the Treaty. Participants engaged on practical issues regarding IP management in CGIAR such as legal and IP partnerships, strategic IP management, and promising practices and showcases for good IP management by Centers and projects. The meeting presented the opportunity to reflect on the outcome of the first round of IA reporting for 2012 and draw lessons on the way forward.

4.4 Regional CRP IP workshop

This workshop, held on 9-11 October 2013, was designed to support legal and IP management in CRPs and the first of its kind since the CGIAR reform. It was attended by 32 participants, including Center IP focal points and 11 representatives selected by them from CRP partners in East Africa, representing national agricultural research systems, universities and non-governmental organizations in Egypt, Ethiopia, Kenya, Malawi, Rwanda, Tanzania, Uganda and Zambia. At a time when partnerships are key to the success of CRPs, this workshop

provided an opportunity for Centers, particularly Lead Centers, to receive feedback from and interact with their regional CRP partners. The objectives of the workshop were to increase awareness of partner perspectives and needs with regard to contract and IP management in CRPs, give all participants a better understanding of the key legal and IP and technology transfer issues in CRPs, and identify the legal and IP needs of CRPs. The workshop was the final activity covered by a grant funded by the government of the Netherlands.⁴ Workshop participants indicated that they found the meeting valuable, with 65% of respondents indicating that the sessions were either very useful or extremely useful.

4.5 Monthly IP webinars

Nine interactive online webinar sessions were conducted in 2013 in collaboration with ACIPA, covering a broad range of IP subjects but with a focus on the CGIAR IA Principles. The sessions covered copyright use and the dissemination of research results, Open Access and copyright, the patent research exemption and freedom to operate, end point royalties, traditional knowledge, farmers' rights, and the patenting of DNA sequences. A general session covered the CGIAR IA Principles and their implementation guidelines, as well as plant breeders' rights. The sessions were well attended, with notable high demand for sessions on traditional knowledge, farmers' rights, plant breeders' rights and Open Access implementation. After each session, participants were requested to provide feedback through online surveys. On average, 90% participants who responded to these surveys indicated that the webinar session they attended was either useful or very useful. All participants who responded to the surveys indicated that they would attend future sessions. These IP webinars and their content will be opened up to CRP partners in 2014.

4.6 Monthly updates and fact sheets

The Consortium Legal Team continued to develop a monthly newsletter, covering legal and IP activities of interest in CGIAR as well relevant system-wide initiatives. Newsletters were sent to members of the CLIPnet wider

⁴ This grant was originally awarded to the CGIAR Central Advisory Service on Intellectual Property in 2007 and taken over by the Consortium Office in 2011.

network and made available on the CLIPnet intranet. Feedback received from CLIPnet has shown that its members value these monthly updates and see them as useful resources. ACIPA also developed several fact sheets on IP subjects that IP focal points can send to various audiences.

4.7 Development of IP tools

Several tools were developed through CLIPnet interactions, and in consultation with the FC IP Group, to assist IP management and compliance with the CGIAR IA Principles. They include a checklist of Center obligations under the CGIAR IA Principles, a Q&A on the implementation of the CGIAR IA Principles, and a Center IA report template in table format to ensure a consistent format for Center IA reports. A working group helped develop examples of research and emergency exemption clauses which are deemed to comply with the CGIAR IA Principles and are available for Centers to use when negotiating limited exclusivity agreements.

4.8 Review of Center IP practices

In 2013, in the context of their collaboration with the Consortium, ACIPA members visited the WorldFish Center to undertake an independent review of its policies, procedures, and contracts and determine in particular whether any changes were needed in light of the CGIAR IA Principles. A follow-up visit is proposed for 2014/15.

4.9 Research on IP in agriculture

In collaboration with the CGIAR Consortium, ACIPA set up a number of research programs to improve understanding of the scope and operation of IP in terms of its impact on food security.⁵ To ensure that the possibilities permitted by the use of IP are maximized while minimizing the possible drawbacks, it is important to undertake original empirical research that looks at the role that the law can play in building food security — an area that has enjoyed very little sustained research despite its importance. ACIPA's research programs cover IP and food security, IP and

genetic resources, farmers' and livestock keepers' rights, historicizing IP, IP and climate change, and the agricultural production chain and IP. ACIPA produced a number of publications derived from its research in 2013.⁶

ACIPA will work with the Consortium and the Centers to ensure that its research is relevant and grounded in practice. The research results will underpin the monthly IP webinars, the IP fact sheets, the IP briefing papers (for development in 2014) and other activities undertaken by ACIPA as part of its ongoing work with CGIAR. They will be widely disseminated throughout CGIAR. This research will also be used as a platform to identify issues to be resolved, best practices to be shared, and possible ways of dealing with problems in the future.

4.10 Stronger communication between the Consortium and the FC IP Group and IP focal points

The Consortium Legal Team worked with the FC IP Group to resolve issues that arose in the first reporting cycle and clarify expectations. These issues and expectations were conveyed by the Consortium Legal Team to Center IP focal points, who have increasingly asked the Consortium Legal Team for advice and guidance on the various practical IP cases they encountered, to ensure compliance with the CGIAR IA Principles. Plans are currently being made for the FC IP Group to participate in the CLIPnet's annual meeting in July 2014, in order to further improve dialogue and understanding between the Centers and the FC IP Group in terms of perspectives and expectations.

4.11 Opening up of CLIPnet to CRP partners

CLIPnet has grown organically since its creation in 2011, and the wider network now includes about 80 people. In response to the FC IP Group's recommendation in 2013 to continue to invest and improve this digital network, the Consortium began in 2014 to extend the wider network group to CRP partners and to make more documents available, including to the public.

⁵ These research programs are funded by grants from the Australian Research Council and the Australian Centre for International Agricultural Research to ACIPA.

⁶ Lawson C, Sanderson J (eds). 2013. *The Intellectual Property and Food Project: From Rewarding Innovation and Creation to Feeding the World*. Ashgate; Sanderson J, 2013. *Can Intellectual Property Help Feed the World?* Intellectual Property, the PLUMPYFIELD® Network and a Sociological Imagination; Lawson C, Sanderson J. 2013. *The Intellectual Property and Food Project*; Sherman B. 2013. *Reconceptualizing Intellectual Property to Promote Food Security*.

5. Overview of Centers' implementation of the CGIAR IA Principles in 2013, including highlights from Centers

5.1 Sound management of intellectual assets

All Centers set up procedures to ensure compliance with the CGIAR IA Principles. A number of Centers hired an IP consultant to review all agreements to ensure compliance.

In addition, the Centers acted in keeping with CGIAR's commitment to soundly manage intellectual assets to further the CGIAR vision, a few of which are highlighted below.

CIAT developed an innovative software tool named Project Manager, which manages a database of all CIAT projects and includes a follow-up system that ensures compliance with all contractual terms. CIAT was a pioneer in developing this software tool and has helped other Centers implement it. CIP developed a similar tool to monitor compliance with agreement requirements and adopted creative commons licensing for all copyright works. CIP reactivated its Intellectual Property Committee, which discusses the management of intellectual assets and provides recommendations to CIP's Executive Committee.

To preempt third parties making IP claims over its intellectual assets, ICRISAT continued in 2013 to provide the European Patent Organization (EPO) with its publications for inclusion in the EPO's non-patent literature database, under a memorandum of agreement signed in 2005. The Consortium Legal Team will encourage other Centers to do the same. ICRISAT regularly reviews the PVP Journal of the Indian PVP Office for Center's mandate crops to facilitate awareness among breeders and ferret out any unauthorized registration of ICRISAT germplasm or breeding lines.

5.2 Center IP policies

The adoption of the CGIAR IA Principles in March 2012 has spurred Centers to either adopt new IP policies or review and revise existing policies to ensure consistency. The Consortium Legal Team reviewed Centers' general IP policies in force in December 2013 and found them to be consistent with the CGIAR IA Principles. Three Centers

are in the final stages of reviewing their IP policies, which the Consortium Legal Team will review when finalized. The Consortium has developed a publicly accessible table at <http://bit.ly/1j2nOOp> with links to all Center IP policies currently in force.

5.3 Center Open Access initiatives

The Centers continued in 2013 to integrate Open Access practices into their research. A number of useful examples were shared by Centers in their IA reports, several of which are mentioned below.

In 2013, the Center for International Forestry Research (CIFOR) invested in its Open Access capacity, repositories, human resources, hardware and software, making 46% of its publications Open Access. It developed and promulgated its Research Data Management Policy and Guidelines to ensure that data from research projects become and remain accessible for both CIFOR and the broader research community, consistent with the CGIAR Open Access and Data Management Policy. ICRISAT took several steps to implement its Open Access Policy adopted in 2009 by establishing an Open Access repository together with a process of library-mediated archiving of research publications. The repository has more than 6,700 research publications. The World Agroforestry Centre (ICRAF) used as its data repository Dataverse, which was released in 2011 and had 96 studies as of September 2013. To share datasets and metadata with partner organizations, ICRAF's prime platform is the Landscape portal (www.landscapes.org) which is designed primarily to provide researchers with secure data storage, sharing and visualization options through its web mapping application. The International Institute of Tropical Agriculture (IITA) used its novel e-research platform as an information and knowledge repository and a sharing mechanism and gateway to various data, information and knowledge systems. The aim of the e-research platform is to develop an infrastructure in IITA for managing agricultural research data to improve research and service delivery along the entire chain from laboratories to smallholder farms, to reduce rural poverty and boost food security and economic growth. Other Centers and CRPs have made significant progress as well (see www.cgiar.org/open).

5.4 Center partnerships, including Limited Exclusivity and Restricted Use Agreements

Under articles 6.2 and 6.3 of the CGIAR IA Principles, the Consortium and/or Centers “may grant limited exclusivity for commercialization of the respective Intellectual Assets they produce (Limited Exclusivity Agreements)” and “may enter into agreements for the acquisition and use of third party Intellectual Assets that restrict the global accessibility of the products/services resulting from the use of such Intellectual Assets for commercialization, research and development (Restricted Use Agreements),” provided that certain conditions are fulfilled.

The CGIAR Consortium itself did not conclude any Limited Exclusivity Agreements (LEAs) or Restricted Use Agreements (RUAs) in 2013.

Among the many partnerships Centers entered into in 2013, seven were LEAs and three were RUAs (Table 2). Regarding their LEAs, Centers made no requests to deviate from the emergency exemption requirement and only one Center made a request to deviate from the research exemption requirement, which was approved by the Consortium after having been found to be compelling on the basis of the supporting information provided. Based on that Center’s annual IA report, the approved deviation did not however materialize in any LEA concluded by that Center in 2013. The justifications provided for all LEAs and RUAs were deemed consistent with the CGIAR IA Principles by the CGIAR Consortium and the FC IP Group after some follow-up questions to Centers received adequate responses. Indeed, for all LEAs, Centers provided justifications for exclusivity, which in each case was as limited as possible and necessary for the further improvement of the intellectual assets or to enhance the scope or scale of impact on target beneficiaries, in furtherance of the CGIAR vision. For all RUAs, Centers declared that they were, to the best of their knowledge, unable to acquire equivalent intellectual assets from other sources under less restrictive conditions and that the products or services that are intended to result from their use would further the CGIAR vision. However, Centers need to improve their justification of their LEAs and RUAs in their reports. Indeed, the Consortium Legal Team and FC IP Group needed to seek clarification on a number of the justifications included in Center IA reports, which the Centers provided. This will be emphasized at the upcoming

CLIPnet annual meeting with FC IP Group participation.

Under the Implementation Guidelines for the CGIAR IA Principles, Centers need to use their best efforts to make publicly available, within the context of their own project communication strategies, key information on the LEAs and RUAs they have concluded using press releases, web notices, blogs, reports, solicited public correspondence, etc., and provide links to, or copies of, such key information to the Consortium Office. All Centers have publicly disclosed information on their LEAs and RUAs or are in the process of doing so. The Consortium maintains a publicly accessible register accessible at <http://www.cgiar.org/IAmanagement> consolidating such key information.

Table 2: Number of LEAs and RUAs concluded by Centers in 2013

Center	LEAs	RUAs	Public disclosure of info on LEA & RUAs
CIAT	1		Yes
CIMMYT	2	1	Yes for 1 LEA. In progress for the other LEA and the RUA.
CIP		1	In progress
ICARDA	1		In progress
IITA	1		Yes
IRRI	2	1	Yes
Total	7	3	

A couple examples of LEAs and RUAs concluded by Centers are highlighted below. CIMMYT entered into a 5-year Collaboration Agreement on Wheat with a European private sector company, which qualifies as an LEA. Under this agreement, CIMMYT provides yearly advanced lines of wheat and triticale materials to the company for the latter to carry out trials in a specific country. After several growing/testing cycles the company provides back to CIMMYT the research results from the trials and seed of the materials finally selected by the company and destined for commercialization in the country in question. The company also provides yearly funds to CIMMYT. The company has exclusivity to commercialize the selected materials in the country in question and for a determined period of time (less than 6 years), and is entitled, in such country only, to protect the selected materials through PVP. This exclusivity for commercialization is justified for the

following reasons. It is limited to the country in question and important in such country for the company to recoup its investment. The trials by the company allow CIMMYT (1) to gain valuable information on the adaptability and productivity of its materials under certain specific agro-ecological conditions and (2) to obtain the selected materials which it is free to incorporate in its improvement programs to target environments with similar characteristics, thereby enlarging scope and scale of potential beneficiaries. Furthermore, the Research and Emergency Exemption requirements are fulfilled as CIMMYT can use or make the intellectual assets available for use by public sector organizations for non-commercial research purposes and can use the intellectual assets to fulfill the food emergency requirement anywhere in the world.

CIP entered into a 5-year R&D collaboration agreement with a private sector company which qualifies as a RUA as it imposes certain downstream restrictions on a limited part of the intellectual assets produced. The collaboration aims at improving potato productivity by further developing and using new technologies belonging to the company and by improving on-farm seed management. The activities are funded by the company, and the majority of the resulting intellectual assets will be publicly available. Under this collaboration, CIP has privileged access to the company's existing or pipeline proprietary technologies and to the related know-how on a confidential basis. All results developed using the proprietary technologies and know-how will belong to the company. CIP has the right to publish the results subject to the prior approval of the company⁷. CIP can also use the results for non-commercial research and can make them available on a confidential basis for non-commercial research conducted by public sector organizations in furtherance of the CGIAR Vision and for the people affected by a national or regional Food Security Emergency for the duration of the Emergency. CIP accepted these terms as no equivalent technologies (intellectual assets) were available from other sources under no or less restrictive conditions. The restrictions will only apply to a limited part of the results which will involve the use of proprietary technologies. As the majority of the results of all other activities under the collaboration

related to better on-farm management will be jointly owned by the parties having generated them and will be made available world-wide by CIP, the collaboration is furthering the CGIAR Vision and CIP's mission. These results will be published in scientific journals and presented in conferences. The project will also demonstrate improved seed production methods to seed growers, which will in turn improve the availability of G1 and G2 seed for farmers/seed growers. By positive selection and the use of new technologies, the farmers will have better quality seed. New mechanisms for linking small farmers to the value chain will also be fostered and studied for an increased income generation for small farmers.

In addition to LEAs and RUAs, there were many other types of partnerships that Centers concluded to maximize impact, an example of which is highlighted below.

IRRI hosts a large consortium of 17 advanced institutions around the world with the goal of creating rice with a C4 photosynthetic mechanism. This consortium, which is largely funded by the Bill & Melinda Gates Foundation, was renewed in 2013 and includes 'Global Access Strategy' terms which are binding on all partners. The Global Access Strategy ensures that there would be appropriate access to developing countries should a product be created that is of commercial significance in the developed world. Under the Global Access Strategy, results that arise under the C4 project are subject to the IP policies (including ownership) and commercialization protocols of the institution(s) that developed them. Should a result be developed by several institutions wishing to seek formal IP protection, the institutions negotiate an agreement that defines their roles and responsibilities regarding ownership and management of the IP in question. In all cases, whether the developments are owned by a single institution or jointly owned, IRRI has the right to use C4 project results and disseminate them (often through national partners) in developing countries. In addition, IRRI has identified partner background IP used in the C4 project which it has obtained authorization to use for humanitarian purposes. At any rate, prior to release of any product related to C4 project results, IRRI will perform due diligence to ensure that it has all the necessary authorizations to release the product in question.

⁷ Approval can be withheld only if publication would damage the company's legitimate business interests or its intellectual property rights.

5.5 IP Applications or registrations made by the Consortium and Centers in 2013

Under Article 6.4.2 of the CGIAR IA Principles, “Centers shall carefully consider whether to register/apply for (or allow third parties to register/apply for) patents and/or plant variety protection (“IP Applications”) over the Centers’ respective Intellectual Assets. As a general principle, such IP Applications shall not be made unless they are necessary for the further improvement of such Intellectual Assets or to enhance the scale or scope of impact on target beneficiaries, in furtherance of the CGIAR Vision.”

The Consortium itself did not file any IP Applications, either patents or PVP, nor did it register any trademarks, in 2013. Centers did file IP Applications as indicated in Table 3 and described here.

Table 3: Overview of Center IP Applications (patents & PVP) and trademarks in 2013}

Center	Provisional patent applications	Potential PVP applications (authorization from Centers to third parties to take out PVP)	Trademark registrations
AfricaRice			2
CIMMYT		1	
ICARDA		1	
IITA		1	
IRRI	6		1
IWMI			1
Total	6	3⁸	4

The CGIAR Consortium plans to develop a CGIAR-wide IP portfolio with comprehensive information on, at minimum, all patent and PVP applications and trademarks registrations that are filed.

5.5.1 Patents

IRRI is the only Center that applied for patents in 2013.

In 2013, IRRI filed 6 provisional patent applications with the USPTO (United States Patent and Trademark Office), two of which were filed jointly with JIRCAS. As patents apply only in the country where protection has been sought and granted, IRRI’s protection is only in the USA. US provisional patents last only 12 months from the date of filing and

have many benefits: they are cheap (125 USD + external counsel fees if any), are easy to file (as they do not require a formal patent claim or any information disclosure [prior art] statement), establish an early effective filing date in a later filed non-provisional patent application and allow the term “*Patent Pending*” to be applied in connection with the description of the invention.

All provisional patent applications were filed to keep ownership/control over the inventions and prevent premature disclosure (defensive protection) while keeping open various innovation pathways. These applications could promote further research and potential product development, which may result in products that can be made available to IRRI’s target beneficiaries in furtherance of the CGIAR Vision, and distributed under commercial terms in more competitive markets. IRRI has not yet developed any product development or dissemination plans or done any detailed market analysis and therefore has not yet made any decisions about patent protection in any specific territories.

These were deemed by the CGIAR Consortium and the FC IP Group to be consistent with the CGIAR IA Principles. If further patents are filed in 2014 by IRRI (due to the provisional US patents lapsing), the CGIAR Consortium and FC IP Group will need further information on IRRI’s strategy regarding the use of these patents in IRRI’s IA Report for 2014 in order to assess compliance.

5.5.2 Plant variety protection

No Center applied for plant variety protection (PVP) in 2013. Three Centers concluded agreements with third parties containing provisions authorizing third partners to apply for PVP over the Centers’ intellectual assets in specific territories for purposes of commercialization (see Table 3 above).

Like patents, PVP protection applies only in the countries where the PVP protection has been sought and granted. PVP is a set of exclusive rights for a prescribed period to sell, reproduce, import and export a plant variety that is novel, distinct, uniform and stable. Important differences with patents are the so-called breeder’s exemption and farmer’s privilege. Under the breeder’s exemption, a

⁸ In each of these cases, the intellectual asset that is the subject of the agreement remains available for noncommercial use, including for noncommercial research and breeding use, anywhere in the world

variety protected by PVP can still be used freely for breeding and experimentation without a license. Under the farmer's privilege, a farmer has the right to save crop seeds from a PVP variety for a subsequent season.

In each case, the authorizations to take out PVP were deemed consistent with the CGIAR IA Principles by the CGIAR Consortium and the FC IP Group. In all 3 cases the potential PVP applications would be limited to specific countries and incentivize partnerships by securing investments from key private sector partners which in turn are important for deployment of Center intellectual assets. In each case, varieties will be developed or selected by a third party (for commercial purposes) and made available to the Center which may use them, or make them available to others, for breeding and research purposes anywhere in the world, and for commercialization in all countries where there is no PVP protection.

5.5.3 Trademarks

According to their reports, 3 Centers registered a total of 4 trademarks in 2013 for either names/ logos, or products. An example of a trademark for a product is provided below.

The AfricaRice Breeding Task Force launched a new generation of high-performing rice varieties under a new brand called "ARICA" (Advanced Rice Varieties for Africa). The taskforce includes international and national rice breeders from 30 African countries and operates as part of the Japan-funded project "Developing the Next Generation of New Rice Varieties for Sub-Saharan Africa and Southeast Asia". In 2013, five ARICA varieties developed by AfricaRice were selected by the taskforce as particularly suitable for the African continent. To be nominated as ARICA, a breeding line must prove to have a significant advantage over the best check varieties in a region for three seasons, the trial results must emphasize at least one particularly strong trait that makes this line perform better than existing varieties. ARICA varieties are, therefore, products developed by NARS partners participating in the Breeding Task Force and that they want to release in their countries. AfricaRice wishes to apply for the ARICA trademark in all rice producing countries in Africa, and has started to do so in 2013 by registering the trademark in Liberia, Uganda, Tanzania and Malawi (members of ARIPO - African Regional IP Organization) in order to differentiate ARICAs

from other high performing rice varieties developed by AfricaRice (e.g. NERICAs) and to protect itself from the possible misuse, abuse and misappropriation of the ARICA name. AfricaRice also registered the trademark in the USA in 2013 as a defensive measure, in order to ensure ownership of the name and prevent misuse and abuse. At this stage, AfricaRice does not have plans to commercialize ARICA in the US but, since ARICA could be varieties with new added traits, commercialization in the USA could be possible in the future. AfricaRice is predisposed to license the trademark out to NARS partners involved in multi-locational testing or in the development of a variety free-of-charge to stimulate wider dissemination. According to Dr Papa Seck, former Director General of AfricaRice, "The ARICA varieties offer promising opportunities to Africa's rice sector and can make a difference to the lives of Africa's rice farmers, who do not have access to new varieties that are better adapted to their growing environment and likely to sell well". Here the trademark should help farmers identify the varieties and stimulate global demand, with the ARICA brand standing for high quality.

5.6 The International Treaty, use of the SMTA and transfer of material

With regard to the International Treaty on Plant Genetic Resources for Food and Agriculture (Treaty), all Centers reported having used the Standard Material Transfer Agreement (SMTA) as required under the Treaty for their transfers of Plant Genetic Resources for Food and Agriculture (PGRFA).

On average, the Centers distribute approximately 500,000 PGRFA samples per year with the SMTA. 85% of the material provided by the Centers is transferred to developing countries and countries with economies in transition, mostly to public agricultural research organizations and genebanks. Only approximately 5% is sent to private commercial organizations. 70% is material that has been improved by the Centers (PGRFA under Development). Those improved materials are usually transferred in the context of long term crop improvement projects with national programs, projects that also involve information sharing, capacity strengthening, and other forms of technology transfer.

Indeed, generally speaking, the Centers are not in the business of developing finished

varieties for registration and release. Instead, they develop improved lines to be further improved by national programs through either selection or crossing with locally adapted varieties. National program partners arrange the finalization, registration where necessary, multiplication and distribution of the varieties they develop that incorporate improved material from Centers. They do this in a variety of ways, from fully publicly funded multiplication and the free distribution of seeds of those varieties, to subsidizing parastatals and to licensing these rights to private companies. The overwhelming majority of material improved by Centers is disseminated in this manner, without payment to the Centers.

In 2013, Bioversity continued to focus on issues related to the implementation of the Treaty, in harmony with the Nagoya Protocol to the Convention on Biological Diversity (CBD). In this context, Bioversity is a partner in the FAO/ Bioversity International/ Treaty Secretariat Joint Program to support developing countries implement the multilateral system of the Treaty. The current round (2011-2015) of activities under the Joint Program is supported by a grant from the government of The Netherlands. This program has been welcomed by the Governing Body of the Treaty during its last three sessions. As part of this program, in 2013, Bioversity supported research and capacity building in 10 countries to put systems in place to participate in the multilateral system of access and benefit sharing. The research includes studies of countries' past, current and future levels dependence on internationally PGRFA with a particular emphasis on adapted germplasm to respond to climate change related challenges. In January 2013, in cooperation with the Secretariats of the CBD and the Treaty, and the ABS Capacity Building Initiative, Bioversity hosted an international experts' meeting focusing on mutually supportive mechanisms for the national implementation of the Treaty and the Nagoya Protocol.

In 2013, the Consortium was represented at the last meeting of the Governing Body of the Treaty in Oman, on 24-28 September 2013, by staff from the Consortium Office and six Centers (Bioversity, CIMMYT, IRRI, ICARDA, AfricaRice and CIP). The same representatives helped prepare the Treaty Secretariat's review of the Centers' use of the SMTA for PGRFA under development. The meeting addressed

a number of issues, including the relationship of the Treaty to the Centers; the Global Crop Diversity Trust and other international organizations; the implementation of the multilateral system of ABS; the launch of an intersessional process to revise the conditions for ABS; proposed changes to the SMTA; investigation by the Third Party Beneficiary of a past instance of Centers' non-use of the SMTA; the development of a global PGRFA information system; and farmers' rights and sustainable use of PGRFA. During the meeting, the Consortium and the Centers organized a successful side event for sharing information and perspectives drawn from their experience operating under the Treaty. In addition, the CRP on Climate Change, Agriculture and Food Security organized a side event concerning the importance of the Treaty's policy support for countries' access to and use crop diversity to adapt to climate change, and another on the mutually supportive implementation of the Treaty and the CBD's Nagoya Protocol. Both CRP side events involved representatives of Centers, national partner organizations, and the secretariats of the CBD and the Treaty.

CIP concluded in 2013 a key framework agreement that aims at regularizing CIP's collections of genetic resource of Peruvian origin which entered into its custody after the entry into force of the CBD. This agreement signed with INIA (the Instituto Nacional de Innovación Agraria of Peru) will grant CIP the legal custody of genetic materials of Peruvian origin which came into CIP's possession by means of donations, as well as the necessary permits to undertake scientific research on these materials and distribute them in accordance with applicable national laws. In the agreement, INIA also agreed to provide CIP with the required permits, in accordance with applicable national laws, for collecting genetic and/or biological resources necessary for CIP's scientists' research activities, thereby facilitating the administrative procedures for their collection activities. CIP prepared and submitted an inventory of all genetic and biological resources of Peruvian origin in order to obtain their legal custody. Finally, CIP and INIA are also jointly developing a model Material Transfer Agreement to be used by CIP for the distribution of materials that are not included in the International Treaty's Multilateral System exclusively for research, breeding and training, and which could constitute an example for other institutions.

In its IA Report for 2013, ICRISAT reported that ICRISAT and several other Centers with activities in India are experiencing problems in dispatching breeding material developed using material of Indian origin to other countries since 2013. ICRISAT attributes this primarily to the implementation of the Indian Biodiversity Act in accordance with the CBD principles. These issues were raised with India's National Biodiversity Authority (NBA) which indicated that the exemptions provided by the Act would allow the dispatch of materials originating in India only under international collaborative research projects approved by the Ministry of Agriculture. Formal approvals from the Ministry are currently being awaited. Based on a national workshop in 2013, Bioversity International, the Indian Council on Agricultural Research, and the National Bureau of Plant Genetic Resources co-published a monograph⁹ which documents the flows of germplasm in and out of India, the continued importance of access to germplasm for India as a result of climate change and other pressures and development opportunities, bottlenecks for implementation of the multilateral system as a result of the NBA, and options for the resolution of those bottlenecks. The Consortium Legal Team will continue to follow this matter closely.

5.7 Farmers' rights

The Centers understand that farmers' rights are key to reducing rural poverty and ensuring food security. In their IA reports for 2013, they shared a variety of useful farmers' rights practices, several of which are highlighted below.

CIP strengthened its partnerships with local farm communities and enhanced its collaboration with Potato Park residents through a successful workshop for the local community on modern techniques for conserving genetic diversity. CIP continued to play a key role in monitoring the high diversity of native potatoes under the Chirapaq-Nan (Rainbow Route) initiative launched in 2012. The initiative creates a network, currently with 12 member rural communities and public, private and international institutions working in genetic diversity, to involve local farmers in conserving, protecting and documenting traditional knowledge and in ABS relevant to native potato varieties.

WorldFish developed a farmers' rights approach in the CRP on Aquatic Agricultural Systems using participatory action research. Under this approach, local community participants co-own the research process and share responsibility for data collection and analysis. The results of the process are fed back to them for ongoing learning. Research processes and the resulting outputs and outcomes are jointly owned. This approach has succeeded in Bangladesh and Zambia, where it has expanded knowledge in vegetable and fish farming, developed capacity, and empowered communities by strengthening their management of production and their bargaining power.

ICARDA developed best practices and questionnaires with its social scientists to ensure that prior informed consent is always obtained and that personal data is managed fairly and legally.

Bioversity supported research in 10 countries that documented traditional knowledge and studied the contributions of community seed banks to the functioning of seed systems, agroecosystem resilience, biodiversity conservation and food security. The research gathered empirical evidence where genebanks have existed for some time and, working with national partners, explored scenarios to determine where the future introduction of community seed banks would have greater or lesser value. Bioversity is leading projects exploring (1) innovative ways for community-participatory documentation and monitoring of crop diversity in situ and on farm, including the development and testing in Bolivia, Nepal and India of a Red List system for cultivated species; (2) novel mechanisms for farmers to benefit from the increased acceptance, use and marketing of neglected and underutilized species; and (3) mechanisms to improve farmers' access to high-quality seed of diverse crops from a range of suppliers, supporting small companies as they develop and use foundation seed of varieties that farmers identified as highly suitable to their growing conditions and needs. Bioversity supports research with national partners on policy mechanisms to promote farmers' rights associated with varietal improvement, conservation, access and use, benefit sharing, and participation in processes to

⁹ The monograph is entitled *A Road Map for Implementing the Multilateral System of Access and Benefit-sharing in India*.

identify research priorities and national policy options. To that end, it co-sponsored national workshops on the role of custodian farmers as nodal actors in agro-ecosystems in a number of countries. Important outcomes from these efforts include recognition of the work of custodian farmers and community genebanks by national conservation agencies, such as Bolivia's National Institute of Agricultural and Forestry Innovation or the Nepal Agricultural Research Council, which is paving the way for complementarity in situ, on farm and ex situ conservation. Bioversity is promoting similar developments at CENARGEN/EMBRAPA in Brazil.

5.8 IP management in CRPs

Although the IA reporting template did not require Centers to provide information on intellectual asset management in CRPs, several Centers provided this information. ICRISAT provided an IP portfolio database for intellectual assets developed in the CRPs on Grain Legumes and Dryland Systems in 2013. These databases indicate the major IA outputs for 2013 in terms of crop varieties released, publications and datasets, as well as the measures taken to promote unrestricted public access to the various intellectual assets produced. IITA shared tools used to manage and disseminate intellectual assets generated from the CRP on the Humidtropics, such as an Open Access repository website server. WorldFish shared practical and legal best efforts taken to manage intellectual assets under the CRP on Aquatic Agricultural Systems, which has a budget line to promote Open Access publishing.

To get a more nuanced account on intellectual asset management in the CRPs, the Consortium will request in next year's reports information on efforts to develop or improve intellectual asset management in CRPs in line with the CGIAR IA Principles. This will further enable Consortium assessment and oversight of intellectual asset management in CRPs, which is particularly important given the high number of CRP partnerships concluded by Centers.

6. Biennial review of CGIAR IA Principles

The CGIAR IA Principles provide that they "shall be reviewed by the Consortium in consultation with Centers, and the Fund Council in 2014." In accordance with this, the Consortium and the FC IP Group have planned to appraise progress on implementing the CGIAR IA Principles during the first two reporting cycles and to produce a joint report that, after consultation with the Centers, will be submitted to the Fund Council before its meeting in November 2014.

The collective experiences of the Centers, the Consortium and the FC IP Group on implementing the CGIAR IA Principles and how the Principles have worked so far will provide the necessary raw material for evaluating and assessing them. The report will take into account lessons drawn from the two first IA reporting cycles, comments from Centers on their experience implementing the CGIAR IA Principles and any key issues raised by them. These will be discussed with Center IP focal points at the upcoming CLIPnet annual meeting. The report will take into account comments on the experiences so far of the Consortium and the FC IP Group. It will offer recommendations as relevant.

7. Consortium conclusions and recommendations

- (a) In terms of reporting quality and format, there was significant improvement of Centers' IA Reports for 2013 compared to 2012. The Consortium is satisfied with the outcome of this second round of reporting and with Centers' compliance with the CGIAR IA Principles.
- (b) Efforts need to be continued to fine tune expectations as we move through each reporting cycle. With regard to the next reporting cycle, the Consortium will emphasize to Centers the importance of providing detailed justifications for LEAs and RUAs, as a number of the justifications provided in the current reporting cycle required clarifications

to be sought by the Consortium and FC IP Group. The Consortium will also request that more information be shared on intellectual asset management and oversight at the CRP level. In addition, the Review of the CGIAR IA Principles (referred to in Section 6 above) will present an opportunity to further assess the CGIAR IA Principles and progress on implementation.

- (c) Centers concluded few LEAs (7) and RUAs (3) in 2013. The ability for Centers to conclude such agreements was meant to encourage their partnerships, particularly with the private sector, in order to help CGIAR scale up innovations and reach more small-holder farmers. The fact that few LEAs and RUAs were concluded by Centers in 2013 will be discussed at the upcoming CLIPNet annual meeting in order to understand the reasons for this, including Centers' experiences with these tools. In order to encourage partnerships, it is important for Centers to use these tools, as well as other types of partnerships, in an innovative and flexible way, and keep an open mind towards learning and sharing experience.
- (d) The Consortium Legal Team is currently working with IP focal points on generating a proposal on how best to integrate sound IA/IP management in line with the CGIAR IA Principles in the next round of CRPs via the Guidance for CRP Second Call document. Indeed, in the second round of CRPs, CRP proposals will be expected to integrate the CGIAR IA principles and their Implementation Guidelines by for example setting out an intellectual asset management strategy or plan. The next round of CRPs will also be expected to comply with the Open Access and Data Management Policy and their corresponding Implementation Guidelines. Proposals in this regard will be discussed and shared with the Centers and the FC IP Group.

8. FC IP Group independent section

8.1 Introduction

This section presents the FC IP Group's findings of the second review of the Centers' implementation of the IA Principles, based on information made available to the FC IP Group by the Consortium. The reporting window was limited to calendar year 2013, and the information reviewed included the Consortium's Consolidated IA Report (which included all Center IA Reports) as well as discussions with Elise Perset and Moses Muchiri (the Consortium's legal team) on April 8-11, 2014 in Montpellier. During the meetings in Montpellier, the FC IP Group raised some questions about the Centers' reports, which were then sent to the relevant Centers by the Consortium. Responses to those follow-up questions have further informed the conclusions in this section. The findings, opinions and recommendations discussed in more detail hereafter represent the FC IP Group Members' professional views in their advisory role and do not reflect the views of the organizations or entities with which the Members are affiliated. Overall there was significant progress in terms of reporting, compliance, IP capacity and adoption of best practices.

8.2 Comments on the Consolidated IA Report and the Centers' IA Reports

The FC IP Group reviewed and commented on the Consolidated IA Report prepared by the Consortium Office (CO). Taking the first year of implementation and review as a marker, the FC IP Group agrees with the Consortium that overall substantive gains have been made across the CGIAR Consortium in terms of reporting, compliance with inclusion of the research and emergency exceptions when required, IP capacity and adoption of best practices. Overall reporting has strongly improved across the board. All Center IA Reports followed a clear and standardized template, and most reports contained sufficient information for the FC IP Group to make a proper and full assessment of compliance with the IA Principles. Some Centers provided information not only on agreements taking place during the reporting window, but also on ongoing agreements, partnerships and success stories, excerpts of the agreements and robust overviews of their current IP portfolios.

8.3 Positive Developments/Highlights

- The Consortium shared with the FC IP Group the "Update to the Fund Council on Intellectual Asset Reporting"¹⁰ as well as the "Consortium Responses to Comments and Recommendations from the FC IP Group Report for 2012"¹¹ which the Consortium developed to address the donors' requests made during FC 10 (Nairobi, 2013). The FC IP Group is happy to observe that the measures taken by the Consortium to ensure compliance are strong. It should also be noted that the Consortium has significantly strengthened its oversight role, including more constant communication with the Centers and the FC IP Group.
- As of April 2014, all Centers have reviewed their policies to make them consistent with the CGIAR Principles or indicated on-going processes of either reviewing existing or making new IA/IP related policies in 2013. The Consortium reviewed and commented on the Centers' IP policies for consistency with CGIAR IA Principles. A few Centers' IP policies are waiting for Board of Trustee approval in 2014. The FC IP Group recommends, and the Consortium agrees, that Centers should make their IP Policies publicly available.
- The FC IP Group commends the Consortium's leadership of the CGIAR Legal/IP Network (CLIPnet) community of practice, established to share information on best practices and leverage experiences on the implementation of the CGIAR IA Principles amongst Centers and the Consortium Office. At the next CLIPnet meeting the FC IP Group plans to make a presentation on the CGIAR IA Principles and the donors' perspectives, requirements and expectations.
- In consultation with the FC IP Group, the Consortium is also developing a Questions and Answers document on compliance with the CGIAR IA Principles drawing on lessons learned from the first two reporting cycles.
- Most of the Centers reported on the adoption of the CGIAR Open Access and Data Management policy. The Centers are implementing different measures and

processes to achieve the policy's objectives. For example, some Centers are providing incentives to researchers who choose to publish in Open Access journals. Also, several Centers highlighted their efforts to negotiate with periodicals/journals the publication of copyrighted materials in CGIAR's electronic library, which provides Open Access.

- The FC IP Group applauds some Centers' efforts in support of farmers' rights, including CIP's program to repatriate clean, virus and pathogen free germplasm and WorldFish's Participatory Action Research (PAR). Both programs are described in more detail in other sections of this report.
- The Nagoya Protocol, which will enter into force in the near future, will apply to CGIAR activities dealing with Non-Annex I crops, micro-organisms and animal species. In preparation, we suggest that the Consortium and Centers start looking into the interplay between the requirements under the Protocol and other applicable laws and policies, including the ongoing developments regarding the review of the Multilateral System of the ITPGRFA.

8.4 Compliance with the Principles

Based on the Centers' reports and information received from Centers, the FC IP group deemed all Centers to have complied with the CGIAR IA Principles in 2013.

All Centers complied with the requirement to include research and emergency exceptions in the 7 LEAs. The Consortium reported that it approved one request from a Center to deviate from the research exemption requirement in 2013. Since, based on that Center's annual IA report, that deviation did not materialize in a LEA in 2013 the FC IP Group has not examined this request. Overall, the Centers showed that the exclusivity provided is limited in duration, territory and/or field of use. Regarding 5 of the 7 LEAs, the FC IP Group sent follow-up questions through the Consortium Office to 5 Centers with respect to the justifications provided, and received adequate responses.

¹⁰ Annex 1 of the CGIAR Consortium Report to FC 11 (May 2014) available at <https://library.cgiar.org/bitstream/handle/10947/3013/3-CO%202013%20Report.pdf?sequence=1>

¹¹ Made available to donors by the Fund Office after FC 11 (May 2014)

The three Centers that entered into RUAs confirmed that, to the best of their knowledge, they were unable to acquire equivalent Intellectual Assets from other sources under no or less restrictive conditions. These Centers also explained the steps taken to ensure that such third party Intellectual Assets are only used in relation to, or incorporated into, the intended products/ services. The FC IP Group sent a follow-up question through the Consortium Office to CIP in relation to the justification provided, and CIP provided an adequate response.

Three Centers concluded agreements with third parties that allowed the third party to potentially apply for Plant Variety Protection over Centers' IA in specific territories for the purpose of commercialization. The Centers showed that these agreements are necessary for the further improvement of such Intellectual Assets or to enhance the scale or scope of impact on target beneficiaries in furtherance of the CGIAR Vision.

One Center filed 6 provisional patent applications, either on its own or in collaboration with a third party. In accordance with 6.4.2 of the Principles, "The Centers shall carefully consider whether to register/ apply for (or allow third parties to register/apply for) patents and/or plant variety protection ("IP Applications") over the Centers' respective Intellectual Assets. As a general principle, such IP Applications shall not be made unless they are necessary for the further improvement of such Intellectual Assets or to enhance the scale or scope of impact on target beneficiaries, in furtherance of the CGIAR Vision." In order to better assess compliance

with Article 6.4.2, the FC IP Group addressed follow-up questions through the Consortium Office to the Center for 5 of the 6 provisional patent applications. The answers provided by the Center were satisfactory.

8.5 Recommendations

The FCIP Group has the following recommendations:

- a) That Centers provide more explanation about how their LEAs and RUAs further the CGIAR Vision including impact on target beneficiaries;
- b) That Centers seeking patent protection provide clear explanation about why they need to do so and how such protection furthers the CGIAR Vision;
- c) That the Consortium and Centers develop a CGIAR-wide IP portfolio with comprehensive information on (at a minimum) all patent and PVP applications and trademarks registrations that are filed;
- d) That Centers include a section on intellectual asset management in their future CRP proposals explaining how their use of IP tools will maximize impact;
- e) That Centers continue to strengthen their IP capacity to appropriately deal with the demands and needs.

Finally, the FC IP Group commends the Consortium's IP leadership and initiatives, which have led to substantial improvement from last year in terms of compliance, oversight, and sharing of information and best practices.



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