



# 2015

## CGIAR Intellectual Assets Management Report



Prepared by the CGIAR Consortium Office

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# Executive Summary

**This CGIAR Intellectual Assets (IA) Report covers the calendar year 2015 and corresponds to the fourth 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.**

Based on **Center IA Reports** and additional information received from the Centers, the CGIAR Consortium and the FC IP Group agree that **all Centers complied with the CGIAR IA Principles** in 2015. The Center IA Reports reflected ongoing efforts by the Consortium Legal Team, the FC IP Group and Center IP focal points to revise the report template in order to make reports more comparable and homogenous, to develop tools to facilitate CGIAR-wide comparisons concerning policies related to IA management and registered rights in the form of trademarks, patents and plant variety protection (PVP) and to clarify issues concerning implementation of the CGIAR IA Principles through updates to a Question and Answer (Q&A) tool.

**Intellectual Property (IP) capacity has remained relatively stable** in the CGIAR Consortium and the Centers. The Consortium Legal Team consisted of a full-time General Counsel and a full-time Legal Officer for most of 2015. Eight Centers rely primarily on in-house IP expertise, six Centers rely on both in-house and external IP expertise and one Center relies primarily on external IP expertise.

The **CGIAR Legal and IP Network (CLIPnet)** held its fifth

annual meeting in France in July 2015 and continues to operate as an important coordination and consultation mechanism between the CGIAR Consortium and IP focal points. The FC IP Group participated virtually in a session to exchange observations and questions concerning the fourth reporting cycle with Center IP focal points. IP webinar sessions, newsletter updates and fact sheets were provided to CLIPnet on a monthly basis throughout the year.

A publicly available CGIAR-wide portfolio of policies related to implementation of the IA Principles facilitates the tracking of Centers' ongoing **policy development and revision activities**. In 2015, these addressed a broad range of issues, including public private partnerships, open access (OA) and data management, farmers' rights and traditional knowledge, and research ethics and informed consent.

The CGIAR Consortium, in consultation with the FC IP Group and Centers, developed **guidance on intellectual asset management for the call for proposals issued in December 2015 for the 2nd phase of CGIAR Research Programs (CRP)**, due to commence in 2017. The 2nd Phase CRP full proposals, which are being evaluated in

2016, are required to identify indicative dissemination pathways for the different types of intellectual assets produced by the CRPs and to highlight critical/strategic issues from an IA management perspective. Additionally, the proposals are required to demonstrate the following in relation to IA management during CRP implementation: (i) effective planning and tracking; (ii) effective decision-making structures; (iii) sufficient capacity; and (iv) sufficient resource allocation.

**Open access and open data initiatives** reported in 2015 demonstrate effective strategies for implementation, including better integration in the workflows and knowledge management strategies of Centers and CRPs, and the formation of specialized committees involving senior management to drive implementation.

Centers and their partners typically **disseminate the outputs of their research and development activities**, which are predominantly information products and improved germplasm, **as international public goods** via openly accessible repositories and through transfers utilizing the Standard Material Transfer Agreement of the International Treaty on Plant Genetic Resources for Food and Agriculture (Treaty), without additional terms and conditions. Dissemination pathways which maximize global access and impact and which involve limited restrictions, as is permitted pursuant to the IA Principles, are not frequently utilized. The number of **agreements involving restrictions to global access, namely Limited Exclusivity Agreements (LEA) and Restricted Use Agreements (RUA)** reported in 2015, continues to follow a downward trend, as observed in previous reporting cycles. In 2015, no Restricted Use Agreements were reported, and one Limited Exclusivity Agreement was subsequently found not to qualify as such. This compares with fifteen such agreements reported in 2012, ten in 2013 and five in 2014. The biennial review of the CGIAR IA Principles due to take place in 2016 will attempt to ascertain why the number of such agreements is declining.

A publicly available CGIAR-wide IP portfolio was developed to facilitate the tracking of **Centers' registered IP rights** in the form of patent, plant variety protection (PVP) and trademark applications. Several Centers filed or provided status updates regarding their trademark applications and registrations in relation to their names/logos, or to facilitate the dissemination of specific products. No Center reported filing PVP in 2015, or authorizing third parties to do so, and only one Center, the International Rice Research Institute (IRRI), reported filing patent applications in 2015.

**IRRI's patent applications in 2015** comprised three provisional patent applications – two in the USA and one in Australia – as well as a Patent Cooperation

Treaty (PCT) filing, advancing to national phase filings in seven countries (Brazil, China, India, Philippines, Thailand, USA and Vietnam). The justifications provided by IRRI in support of these applications were deemed acceptable by the CGIAR Consortium and FC IP Group. These national filings provided the first opportunity for the CGIAR Consortium and FC IP Group to assess, in the context of a specific scenario, the information that should reasonably be included in a **Center's justifications provided in support of non-preliminary patent applications**, in countries that are of strategic interest when considering CGIAR's target beneficiaries. The CGIAR Consortium and FC IP Group further clarified to Centers that justifications in such instances should contain clear information concerning ownership, arrangements with donors, co-developers or third parties for managing dissemination, specific details regarding the anticipated licensing strategy for maximizing impact, and plans for communications and impact evaluation.

Eleven CGIAR Centers host international 'in trust' crop and forage collections, which are managed under the **Multilateral System for Access and Benefit Sharing of the International Treaty on Plant Genetic Resources for Food and Agriculture**. In 2015, CGIAR IP focal points, in collaboration with Center genebank managers, reported to the Governing Body of the Treaty on their transfers of Plant Genetic Resources for Food and Agriculture (PGRFA), made in accordance with the Standard Material Transfer Agreement (SMTA). They also **actively engaged with a review and investigation by the Secretariat of the Treaty concerning CGIAR practices related to the transfer of Centers' improved materials**, including preparation of a public document to provide greater transparency and understanding of CGIAR practices in this regard. The Treaty Secretariat's report to the Governing Body concerning their review and investigation did not identify any deficiency or material concern regarding Centers' general practices for the transfer of improved material. The Treaty Secretariat indicated that it concluded its investigation without any adverse findings in relation to a specific transfer under investigation involving two CGIAR Centers.

IP focal points and Center genebank managers actively participated in the **biennial meeting of the Governing Body** held in 2015, and were involved in **meetings of the Working Group to Enhance the Functioning of the Treaty's Multilateral System of Access and Benefit Sharing (WG-EFMLS)**. This is tasked by the Governing Body with presenting options for revision of the Multilateral System of the Treaty (MLS) to the Treaty's Governing Body for consideration at its next session in October 2017. The CGIAR Consortium works closely with Bioversity International to coordinate activities by Center IP focal points and genebank managers to

promote **mutually supportive implementation** of the Treaty and the Nagoya Protocol on Access to Genetic Resources and the Fair and Equitable Sharing of Benefits Arising from their Utilization to the Convention on Biological Diversity (Nagoya Protocol), and to understand the implications of implementation of the Nagoya Protocol for CGIAR. These include potential risks regarding the cross-border flow of germplasm.

**Overall, the CGIAR Consortium is satisfied with the 2015 reporting cycle** and with Centers' implementation of the CGIAR IA Principles in 2015. It will continue to collaborate with Centers and the FC IP Group to ensure continued improvement in implementation of the CGIAR IA Principles. There will be a particular focus on integration of IA management into the 2nd phase of CRPs to commence in 2017, for which the reporting and monitoring evaluation framework is being developed in 2016.

### **FC IP Group's Independent Section**

The FCIP Group is satisfied with the Center's compliance with the CGIAR IA Principles and considers that Centers' reporting, IP capacity and adoption of best practices has continued to gradually improve.

The FC IP Group has the following recommendations:

- a) that all Centers – and IRRI in particular -- develop and report on their market and dissemination strategy plans in line with the CGIAR Vision as part of the 'justifications' for any patent application and, where possible, for any provisional or PCT patent application in the future. IRRI should also follow specific recommendations outlined in Section 8.2.3 with respect to the patent application on methods associated with increased grain yield involving a novel 'SPIKE' gene.
- b) that as part of the annual reporting process, the Consortium provide in its consolidated report a section on all patent protection sought by Centers;
- c) that Centers continue to share their IP related policies, best practices and effective IP strategies and models with the CGIAR Consortium and other Centers;
- d) that the Consortium's report include a section on how the Centers and Consortium have implemented the FC IP Group's recommendations included in the prior year's review; and
- e) that Centers are strongly encouraged to

include in their annual Center IA Reports, a status report of their IP Portfolio, material updates concerning the progress of the LEAs, RUAs and patents/PVPs they have previously reported (i.e. as part of their Part 1 general reporting concerning partnerships or dissemination pathways, or in Part 2 if the update contains confidential information). Such updates should include progress against any development, dissemination, risk management and/or communications plans (or other material attribute) that forms part of the justifications approved by the Consortium and the FCIP Group, and should also include public communications made in this regard.

# 1 Background

This CGIAR Intellectual Assets (IA) Management Report, covering the calendar year 2015 – the fourth reporting cycle under the CGIAR Principles on the Management of Intellectual Assets (CGIAR IA Principles) – is submitted by the CGIAR Consortium to the Fund Council in accordance with the CGIAR IA Principles<sup>2</sup>.

The report was developed by the CGIAR Consortium in consultation with the Fund Council Intellectual

Property Group (FC IP Group) and Centers. It includes an independent section – Section 8 – from the FC IP Group. The report is based on Center IA Reports submitted for 2015, together with supplementary information requested from Centers as a result of discussions between the CGIAR Consortium Legal Team and the FC IP Group during a meeting in Montpellier from 4-7 April 2016<sup>3</sup>.

# 2 Review of Center IA reporting and compliance for 2015

## 2.1 Format and quality of reporting

The CGIAR Consortium is generally satisfied with the quality of Center IA Reports for 2015, which are based on the reporting template developed in 2012<sup>4</sup>.

As further outlined in Section 4.3 below, work was undertaken in 2015 to improve the reporting template. Although the revised template had not yet been formally adopted, this work was observed to have had a positive impact on the quality and content of several Center reports in 2015, which followed some of its key elements on a voluntary basis. Updates made in 2015 to the Question and Answer (Q&A) tool on

implementation of the CGIAR IA Principles also contributed to improvements in the quality and content of reporting.

## 2.2 Assessment of compliance

Based on Center IA Reports, and additional information requested from the Centers, as well as on the Center board assurances of compliance submitted by all Centers in accordance with Article 10.1.1 of the CGIAR IA Principles, the CGIAR Consortium considers that all Centers complied with the CGIAR IA Principles in 2015.

<sup>1</sup> CGIAR IA Principles are accessible at

<http://library.cgiar.org/bitstream/handle/10947/3755/CGIAR%20IA%20Principles.pdf?sequence=1>.

<sup>2</sup> Article 10.3 of the IA Principles 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.”

<sup>3</sup> The agenda of the 2016 Meeting of the Fund Council IP Group and the CGIAR Consortium concerning the 2015 reporting cycle is available at <https://goo.gl/xY46Pn>

<sup>4</sup> The reporting template is an Annex of the Implementation Guidelines of the CGIAR IA Principles which are accessible at <http://library.cgiar.org/handle/10947/2846>.

# 3 IP capacity and community of practice

## 3.1. IP capacity at CGIAR Consortium and Centers in 2015

The CGIAR Consortium Legal Team consisted of a full-time General Counsel and a full-time Legal Officer. The General Counsel is also the IP focal point responsible for IP matters in the CGIAR Consortium. The Legal Officer interacts with Center IP focal points on issues related to implementation of the CGIAR IA Principles, and supports the CGIAR Consortium's open access initiative (described in Section 4.5 below). The CGIAR Consortium Legal Team collaborates with the Australian Center for Intellectual Property in Agriculture (ACIPA) for the provision of monthly webinars on IP and related issues (see Section 4.2 below).

An increase in Center IP capacity was observed following the adoption of the CGIAR IA Principles in 2012, with Centers recruiting approximately ten additional legal and/or IP staff during 2012 and 2013. This capacity remained steady in 2014 and 2015, with the majority of Centers reporting either no changes or neutral changes to capacity. Eight Centers<sup>5</sup> rely on in-house expertise to manage implementation of the CGIAR IA principles, six Centers<sup>6</sup> rely on both in-house and external expertise and one Center<sup>7</sup> relies on external expertise. In addition, five Centers<sup>8</sup> reported external training undertaken by staff, which is relevant to the implementation of the CGIAR IA Principles.

## 3.2. The CGIAR Legal/IP Network

The CGIAR Legal/IP Network (CLIPnet) is a community of practitioners with multi-disciplinary backgrounds who are interested in legal and IP related issues relevant to CGIAR. It includes IP focal points and interested staff from the CGIAR Consortium Office and Centers. The wider network also includes non-CGIAR members. CLIPnet is supported by activities coordinated by the CGIAR Consortium Office, which in 2015 included mailing lists, periodic updates on legal or IP matters of interest within CGIAR, monthly webinars and a CLIPnet annual meeting (as further outlined in Section 4 below). CLIPnet has been an effective network in CGIAR. This is evident from the regular interaction on substantive issues observed on the mailing lists, both among Center IP focal points and with the CGIAR Consortium Office.

<sup>5</sup> AfricaRice, CIAT, CIFOR, CIMMYT, ICARDA, ICRISAT, IWMI and ILRI.

<sup>6</sup> Bioversity, CIP, ICRAF, IITA, IRRI and WorldFish.

<sup>7</sup> IFPRI.

<sup>8</sup> CIMMYT, ICRAF, IITA, IWMI and WorldFish.

# 4 Main activities by and in support of the CGIAR Legal/IP Network in 2015

## 4.1. Annual CLIPnet meeting

The fifth annual CLIPnet meeting was held from 7-9 July 2015 at Montpellier, France. Some 14 of the 15 Centers were represented and more than 30 participants contributed to the meeting in-person and remotely<sup>9</sup>. Participants included: (i) IP focal points<sup>10</sup> from 14 Centers and some of their legal/IP colleagues; (ii) CGIAR Consortium Office staff involved in science, knowledge management, partnerships and governance functions; (iii) Center genebank managers; (iv) the FC IP Group; (v) a representative from the Secretariat of the International Treaty on Plant Genetic Resources for Food and Agriculture (Treaty); (vi) representatives from the Syngenta Foundation accompanied by a representative from their pro-bono legal advisers, Sidley Austin; and (vii) a representative from ACIPA.

The annual meeting provides an opportunity for IP focal points to share their expertise and experiences in implementing the CGIAR IA Principles. Importantly, the meeting also offers an occasion for the FC IP Group to relay perspectives and expectations from donors, and to interact with IP focal points directly concerning the challenges they face from an implementation perspective. The comprehensive agenda for the 2015<sup>11</sup> meeting allowed coverage of a broad range of issues

related to implementation of the CGIAR IA Principles. These included the following: (i) IA management in CRPs including guidance for the development of the 2<sup>nd</sup> phase CRP proposals (submitted in March 2016 and due to commence in January 2017); (ii) proposed revisions to the Center IA Report template and the development of related tools; (iii) updates concerning possible changes to the Treaty and Standard Material Transfer Agreement being considered by the Governing Body; and (iv) implications for Centers of implementation of the Nagoya Protocol in countries where CGIAR Centers operate or acquire materials.

## 4.2 Periodic webinars, factsheets and newsletter updates

In 2015, the Consortium Office continued to coordinate regular webinars, covering a broad range of issues relevant to the implementation of the CGIAR IA Principles. The 2015 webinar series<sup>12</sup> included 11 interactive online webinar sessions delivered predominantly in collaboration with ACIPA. The webinar series was designed with a priority focus on issues related to the relationship between the Treaty and other international legal frameworks, particularly the Nagoya Protocol.

<sup>9</sup> A participant list for the 2015 CLIPnet meeting is available at <https://goo.gl/tKK7v4>

<sup>10</sup> IP focal points comprise a multi-disciplinary group of professionals, with roles ranging from General Counsel, Head of Contracts Office, IP and Compliance Managers.

<sup>11</sup> The agenda for the 2015 CLIPnet meeting is available at <https://goo.gl/5bVd50>

<sup>12</sup> The 2015 webinar topics included the following: (i) Governance: Board fiduciary duties and liability risks; (ii) Use of the SMTA and the enhancement of the MLS of the international Treaty; (iii) The Nagoya Protocol and food security; (iv) The Nagoya Protocol: implications for CGIAR Centers; (v) The Nagoya Protocol: implementation strategies for CGIAR Centers; (vi) Competition in the agricultural seeds sector; (vii) Implementing farmer's rights under the Treaty; (viii) ABS governance: biodiversity, agriculture, health and other schemes; (ix) Genetically modified organisms (GMO) and risk mitigation; (x) IP protection concerning plants, including essentially derived varieties; and (xi) The breeder's exemption under the International Union for the Protection of New Varieties of Plants (UPOV), the Convention on Biodiversity and the Nagoya Protocol.

As part of its collaboration with the CGIAR Consortium, ACIPA has also developed a briefing paper for CGIAR on farmers' rights<sup>13</sup>, as well as factsheets concerning the Nagoya Protocol on Access and Sharing Benefits Arising from the Utilization of Genetic Resources<sup>14</sup> and Disclosure of Origin<sup>15</sup>.

The CGIAR Consortium Legal Team has continued to send out a periodic newsletter, covering legal and IP activities of interest in CGIAR, as well as updates concerning relevant system-wide initiatives. In 2015, these updates focused on the development of guidance for the 2<sup>nd</sup> Phase CRP proposals, CGIAR activities concerning the Treaty and CGIAR progress regarding open access implementation.

### 4.3. Revision of the reporting template and updating the Q&A

Although the CGIAR Consortium and FC IP Group were generally satisfied with the quality and content of Center IA Reports, a need was identified to revise the reporting template. This was in order to improve the consistency and breadth of coverage of Center IA Reports and provide better insight regarding year-on-year developments and longer-term trends concerning Center IA management practices.

Work on this revision made significant progress in 2015. The revised template is expected to be finalized in 2016, taking into account development of the new reporting template for CRPs. This will include a section on IA management and open access, and will be developed during the second half of 2016. These new reporting templates will apply to the 2<sup>nd</sup> phase CRPs to commence in 2017, and will therefore take effect from 2018 onwards<sup>16</sup>.

Additionally, work was undertaken to continue to update the Q&A, which provides guidance on implementation of the CGIAR IA Principles. This has proved to be a successful tool, with a significant number of queries received by the Consortium Office in 2015 from IP focal points concerning interpretation and implementation of the CGIAR IA Principles resolved to mutual satisfaction following the guidance contained in it.

### 4.4. CGIAR portfolios concerning IP related policies and registered rights

In 2015, the CGIAR Consortium developed tools to facilitate tracking of Center policies and guidelines related to implementation of the CGIAR IA Principles, and to enable more efficient tracking of registered rights and applications by Centers related to patents, plant variety protection and trademarks. These tools provide greater visibility to Center activities in any given year, while offering a better overview of the portfolio of policies and registered rights across Centers.

Continued use of these tools to simplify and streamline reporting is being considered as part of revisions to the IA report template discussed in Section 4.3. The Fund Council IP Group requested that these portfolios be made publicly available for the purpose of increased transparency. Accordingly, this information is now accessible on the CGIAR website<sup>17</sup>.

### 4.5. CGIAR open access and data management

In January 2015, the Fund Council approved a USD 2.38 million grant to support implementation of open access and open data initiatives across CGIAR. This move follows adoption of the CGIAR Open Access and Data Management Policy in 2013<sup>18</sup> and its Implementation Guidelines in 2014<sup>19</sup>.

The initial one-year phase of the grant funded activities by the Consortium Open Access Team to support implementation of open access and open data across CGIAR, including: (i) assisting Centers to undertake needs assessments concerning inventory infrastructure and capacity; (ii) developing a framework to prioritize legacy data; (iii) coordinating support to Centers and CRPs in their implementation of the CGIAR Open Access and Data Management Policy and Implementation Guidelines, including developing implementation plans at Center level; and (iv) developing monitoring and evaluation plans to assess impact. In late 2015, a proposal was submitted for a second phase of funding for this initiative. This is now

<sup>13</sup> Available at <https://goo.gl/ri7KsP>

<sup>14</sup> Available at <https://goo.gl/BRv9yh>

<sup>15</sup> Available at <https://goo.gl/IPkVN3>

<sup>16</sup> i.e. reports in 2018 will report on activities undertaken in 2017.

<sup>17</sup> Available at <http://www.cgiar.org/resources/cgiar-intellectual-asset-management/>

<sup>18</sup> Accessible at [http://library.cgiar.org/bitstream/handle/10947/2875/CGIAR\\_OA\\_Policy\\_-\\_October\\_2\\_2013\\_-\\_Approved\\_by\\_Consortium\\_Board.pdf?sequence=1](http://library.cgiar.org/bitstream/handle/10947/2875/CGIAR_OA_Policy_-_October_2_2013_-_Approved_by_Consortium_Board.pdf?sequence=1)

<sup>19</sup> Accessible at [https://library.cgiar.org/bitstream/handle/10947/3857/2014\\_OA\\_Implementation\\_Guidelines\\_FINAL.pdf?sequence=1](https://library.cgiar.org/bitstream/handle/10947/3857/2014_OA_Implementation_Guidelines_FINAL.pdf?sequence=1)

being considered by donors as part of the 2nd Phase CRP proposals being evaluated in 2016 for commencement in 2017.

The Consortium Open Access Team includes the legal officer responsible for supporting Centers on issues related to implementation of the CGIAR IA Principles (as indicated in Section 3 above). This ensures close coordination within the CGIAR Consortium Office, and also between CLIPNet and the CGIAR community of practice for initiatives concerning open access and open data. The community of practice is made up of data managers and knowledge managers<sup>20</sup>. In 2015, support consisted mainly of the following: (i) assisting with Center queries concerning the CGIAR Open Access and Data Management Policy and its Implementation Guidelines; (ii) remote and in-person participation in workshops to discuss the scope of the OA Policy and licensing arrangements to implement open access; (iii) assisting in the development of a CGIAR core meta data schema which includes fields related to legal rights; (iv) assisting in the development of sections of the CRP 2nd Call guidance concerning open access and open data, and IA management; and (v) development of draft open access license guidelines and license selection tool to assist in open access implementation (to be finalized in 2016).

#### 4.6. Guidance for the CRP 2nd call related to IA management

Building on the outputs of a working group set up in 2014, guidance on intellectual asset management was developed for the call for proposals issued in December 2015 for the 2<sup>nd</sup> phase of CRPs, due to commence in 2017. This was taken into account in the CRP 2<sup>nd</sup> Call Full Proposal Guidance<sup>21</sup>, and its supplementary documents<sup>22</sup>, released pursuant to the call for proposals.

The 2<sup>nd</sup> Phase CRP full proposals are required to identify indicative dissemination pathways for the different types of intellectual assets produced by each

CRP and to highlight critical/strategic issues from an intellectual assets management perspective. Additionally, the proposals are required to demonstrate the following in relation to IA management during CRP implementation: (i) effective planning and tracking; (ii) effective decision-making structures; (iii) sufficient capacity; (iv) sufficient resource allocation. The 2nd Phase CRP full proposals are being evaluated in 2016. As part of this process, the CGIAR Consortium Office Legal Team will provide preliminary feedback regarding arrangements concerning IA management included in the proposals<sup>23</sup>.

#### 4.7. Activities in 2015 concerning the Treaty

The Treaty creates a framework for farmers, research organizations, NGOs, plant breeding and seed companies and governments to coordinate activities conserving, improving and sustainably using Plant Genetic Resources for Food and Agriculture (PGRFA) and to equitably share benefits derived from the use of those resources. CGIAR is committed to fully implementing and complying with the Treaty<sup>24</sup>.

The Governing Body of the Treaty meets every two years and held its sixth session (GB6) in October 2015. In 2015, the CGIAR Consortium Office worked closely with CGIAR IP focal points and genebank managers to prepare for and attend GB6<sup>25</sup>. Preparatory activities in the lead up to GB6 included actively participating in the Secretariat's review of CGIAR practices related to the use of the SMTA, as well as active involvement in the review of options to enhance the functioning of the Multilateral System of the Treaty (MLS). As further outlined in the sections immediately below, these issues have reputational and strategic implications for CGIAR. In undertaking a coordinating role for activities related to GB6, the Consortium Office relied heavily on the expertise and guidance of Bioversity International's Policy Research Unit. Section 5.7 below provides further information regarding CGIAR Centers' management of genetic resources and related issues.

<sup>20</sup> Further information concerning open access implementation in CGIAR is available at [www.cgiar.org/open](http://www.cgiar.org/open)

<sup>21</sup> Available at <http://goo.gl/08H1sr>

<sup>22</sup> Including 'General information concerning intellectual asset management to assist with CRP Proposal planning' and 'Explanatory note concerning the CRP 2nd Call Proposal Annex related to IA Management' available at <http://online-submission-tool-support.cgxchange.org/documents>

<sup>23</sup> The criterion from an IA Management perspective is as follows: The indicative dissemination pathways identified for the different types of intellectual assets produced by the CRP and the critical/strategic issues identified from an intellectual assets management perspective instill confidence that intellectual assets will be managed by CRP partners in a manner which maximizes global accessibility and impact with due regard to best practices and the CGIAR IA Principles. Additionally, the support identified for intellectual assets management during CRP implementation demonstrates: (i) effective planning and tracking; (ii) effective decision-making structures; (iii) sufficient capacity; (iv) sufficient resource allocation.

<sup>24</sup> As reflected in Section 4.2 of the IA Principles.

<sup>25</sup> A report developed by GB6 attendees to cover issues of particular importance to CGIAR is available at <http://library.cgiar.org/handle/10947/4150>

#### 4.7.1. Review of CGIAR practices related to use of the SMTA

At its 5<sup>th</sup> session in 2013, the Governing Body (GB5) of the Treaty raised a concern regarding a transfer of germplasm involving two CGIAR Centers, which may have occurred in violation of the Standard Material Transfer Agreement adopted pursuant to the Treaty. The Governing Body requested the Treaty Secretariat to investigate the specific instance and to review the practices of CGIAR Centers generally in relation to transfer of improved material (i.e. under development), and to report back to the Sixth Session of the Governing Body (GB6).

CGIAR has a good working relationship with the Treaty Secretariat and cooperated fully with its review. To ensure transparency, CGIAR Centers directly addressed the issue of transfer practices in the CGIAR report to GB6<sup>26</sup>, regarding CGIAR Centers' activities to implement the ITPGRFA. The report was prepared by CGIAR IP focal points and genebank managers who attended the meeting.

The Treaty Secretariat's report to GB6<sup>27</sup> concerning their review and investigation did not identify material concerns regarding Centers' practices on the transfer of improved material. The report indicated that the Treaty Secretariat awaits further information regarding the specific transfer under investigation. In follow-up communication since GB6, the Treaty Secretariat has indicated to the Consortium Office that it has concluded its investigation without any adverse findings in relation to the transfer involving two CGIAR Centers.

The Governing Body's resolutions<sup>28</sup> issued following GB6 thanked CGIAR for the information it provided regarding Centers' transfer practices. It instructed the Treaty Secretariat to work with CGIAR Centers to gather information on the content of additional conditions attached to the transfer of Plant Genetic Resources for Food and Agriculture under Development, and to explore ways of facilitating implementation of the obligation under Article 6.5 of the Standard Material Transfer Agreement to identify material received from the MLS in Annex 1 to the SMTA. CGIAR will work closely with the Treaty Secretariat to ensure that the information requested is submitted at GB7 in 2017<sup>29</sup>.

#### 4.7.2. Review of options to enhance the functioning of the Multilateral System of the Treaty

At its 5<sup>th</sup> session in 2013, the Governing Body established an ad hoc working group to consider options to enhance the functioning of the MLS (WG-EFMLS). CGIAR IP focal points and genebank managers have been closely involved in deliberations of the WG-EFMLS since its inception and CGIAR representatives from these communities participated in the working group's two meetings held during 2015.

Based on the WG-EFMLS's recommendations, consensus was reached at GB6 to further explore a subscription model as the principal mechanism for increasing user-based payments. Many details still need to be worked out, including revisions to the ITPGRFA and the SMTA to implement such a system. Given its commitment to fully implementing and complying with the Treaty, a revision of the MLS could have wide-reaching implications for CGIAR. The CGIAR Consortium coordinates a working group comprising CGIAR IP focal points and genebank managers to track developments, interact with the Treaty Secretariat and regional groups, and to assess on a rolling basis the need for CGIAR submissions on options under consideration. The working group will continue to be closely involved in these deliberations and recommendations, to be made to the Governing Body at its seventh session in 2017.

<sup>26</sup> Available at <https://library.cgiar.org/handle/10947/3995>

<sup>27</sup> Available at [http://www.planttreaty.org/sites/default/files/MO289\\_IT\\_GB-6\\_15\\_10\\_en.pdf](http://www.planttreaty.org/sites/default/files/MO289_IT_GB-6_15_10_en.pdf)

<sup>28</sup> See Appendix A.1 Resolution 1/2015, paras #24 and 25: <http://www.planttreaty.org/sites/default/files/a-mo938e.pdf>

<sup>29</sup> Further information concerning the Treaty Secretariat's review is contained in a comprehensive GB6 report developed by CGIAR IP focal points and genebank managers available at <http://hdl.handle.net/10947/4150>

# Overview and examples of Centers' implementation of CGIAR IA Principles in 2015

## 5.1 Sound management of intellectual assets

Article 5 of the CGIAR IA Principles affirms a commitment to the sound management of intellectual assets. In accordance with guidance contained in the Implementation Guidelines for the CGIAR IA Principles, this includes measures related to IP ownership, licensing, invention disclosure and laboratory notebooks, among other measures. In 2015, Centers reported a range of initiatives to ensure sound management of their intellectual assets, as further highlighted in Box 1 below.

### **Box 1: Examples of Center initiatives to promote sound management of IAs in 2015**

*CIFOR* developed a **template data sharing agreement** and shared its experience in implementing a tool developed in 2014 for **tracking IAs** which are contributed to and produced in its research collaborations.

*CIAT* implemented an **online tool for tracking expected deliverables by CRP partners** and commenced development of an easy-to-use **data management tool** for use in Center projects (which it intends to roll out in 2016).

*CIMMYT* updated its **confidentiality provisions** in agreements, so as to better reflect its obligations concerning open access and open data pursuant to the CGIAR Open Access and Data Management Policy, as well as its obligation to disclose certain information to the CGIAR Consortium and the FC IP Group in accordance with CGIAR IA Principles. It also launched a **review of the project management lifecycle** from the perspective of

sound management of IA, including **audit coverage** related to IA management practices.

*CIP* developed a **standard procedure for obtaining prior informed consent**, for use in projects involving human participants, including projects involving researchers working directly with farmers and farming communities.

*ICRISAT's* IP focal point sits on the Center's **due diligence and the global risk management committees** and provides input from an IA perspective.

*IWMI* implemented a **project closure report** to identify IAs produced in its collaborations, and their anticipated method of dissemination in order to facilitate subsequent monitoring and evaluation.

*WorldFish* updated its collaboration and consultancy agreements to strengthen its **institutional ownership provisions**.

## 5.2. Center IP related policies

The CGIAR portfolio of IP related policies compiled in 2015 (see Section 4.4 above) demonstrated a significant focus on open access, publications, data and information management. A similar trend was observed in 2014, and this activity is attributed to the adoption of the CGIAR Open Access and Data Management Policy in October 2013 and its related Implementation Guidelines in July 2014. Additionally, a number of Centers updated or developed complementary policies and guidelines concerning public private partnerships, open access and data management, farmers' rights and traditional knowledge, and research ethics and informed consent. This policy activity is further highlighted in Box 2 below.

### Box 2: Examples of Center policy activity in 2015

*AfricaRice, CIFOR, CIP and ILRI issued new or updated policies in 2015 related to open access, publications, data and/or information management. CIMMYT and WorldFish are reviewing their existing policies in this regard.*

*A number of Centers issued new or updated policies/guidelines in 2015 which are related to the implementation of the IA Principles. These included private sector engagement (CIFOR), project management and institutional agreements (CIFOR), biotechnology (CIP) and ethics in research involving human subjects (CIFOR, IITA).*

*CIMMYT reviewed elements of its core intellectual property policy in 2015 and a number of Centers are reviewing or developing existing policies/guidelines that are related to implementation of the IA Principles. These include private sector engagement (ICRAF and WorldFish), managing germplasm (CIMMYT) and ethics in research involving human subjects (ICARDA and CIMMYT)*

## 5.3. Center open access initiatives

In addition to policy activity related to open access, publications, data and information management (as described in section 5.2 above), Centers' reporting on progress of open access and open data implementation was more extensive compared with previous years. This is exemplified by: (i) comprehensive information regarding total Center publications in 2015<sup>30</sup>; (ii) progress toward open access relative to total Center publications<sup>31</sup> or in relation to Center datasets<sup>32</sup>; (iii) a breakdown of Center publications according to categories<sup>33</sup>; (iv) identification of open access repositories used by Centers and/or CRPs to disseminate information products<sup>34</sup>; (v) practices/preferences concerning the use of open licensing<sup>35</sup>; and (vi) staff capacity related to open access implementation<sup>36</sup>.

Initiatives and highlights in 2015 regarding Centers' implementation of open access practices for their research are given in Box 3 below.

### Box 3: Examples of Centers' open access initiatives in 2015

*A knowledge management strategy submitted by AfricaRice for approval by its Board of Trustees was designed in compliance with the Center's open access and open data obligations and includes workflows for archiving data and other information products on a regular basis in a central repository.*

*ILRI formed an open access committee, with its Deputy Director General as Chair, to steer and monitor implementation of open access at the Center's headquarters and regional offices.*

*IWMI implemented open access related workflows, to ensure that pre-prints of articles are collected for immediate open access publishing via staff profile pages, and that post-prints are collected and scheduled for publication on expiry of any applicable embargo period.*

<sup>30</sup> CIAT, ICRISAT, IFPRI, IITA and WorldFish.

<sup>31</sup> CIAT, CIFOR, CIP, ICARDA, ICRAF, IITA, IWMI and WorldFish.

<sup>32</sup> AfricaRice and CIAT.

<sup>33</sup> CIFOR, CIP, ICARDA, ICRAF, ICRISAT, IWMI and WorldFish.

<sup>34</sup> AfricaRice, CIAT, CIFOR, CIP, ICRAF, ILRI, IWMI and WorldFish.

<sup>35</sup> CIFOR, CIP and ICARDA.

<sup>36</sup> Bioversity, CIAT, ICARDA and ICRAF.

## 5.4. Center partnerships, including arrangements involving restrictions to global access

### 5.4.1. Limited Exclusivity Agreements and Restricted Use Agreements

Under article 6.3 of the CGIAR IA Principles, the CGIAR Consortium and/or Centers “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)” (RUA), provided that certain conditions are fulfilled. Additionally, under articles 6.2 and 6.3 of the CGIAR IA Principles, the CGIAR Consortium and/or Centers “may grant limited exclusivity for commercialization of the respective Intellectual Assets they produce (Limited Exclusivity Agreements)” (LEA), subject to certain research and emergency use exemptions. These ensure that the intellectual assets that are to be exclusively commercialized by a third party remain available for use by public sector organizations for non-commercial research purposes, and for use in food emergencies anywhere in the world. The CGIAR IA Principles allow Centers to request approval from the CGIAR Consortium to deviate from these exemption requirements in their LEAs, if compelling reasons are provided.

The CGIAR Consortium did not itself conclude any LEAs or RUAs in 2015.

CGIAR Centers and their partners disseminate outputs of their research and development activities – predominantly information products and improved germplasm – as international public goods via openly accessible repositories and through transfers utilizing the SMTA of the Treaty, without additional terms and conditions. Dissemination pathways which maximize global access and impact, and which involve limited restrictions – as is permitted in accordance with the IA Principles – are utilized with limited frequency and by a limited number of Centers. Centers reported no RUA and one LEA, which was subsequently deemed not to constitute an LEA (as further explained below). Additionally, no request for an LEA deviation was submitted in 2015. The number of LEAs and RUAs reported in 2015 continued a downward trend, as observed in previous reporting cycles: fifteen such

agreements were reported in 2012, ten in 2013 and five in 2014. The biennial review of the CGIAR IA Principles due to take place in 2016 will attempt to ascertain why the number of such agreements has declined<sup>37</sup>. Revisions to the IA reporting template discussed in Section 4.3 propose the addition of fields that will allow Centers to identify challenges they have faced pursuant to the CGIAR IA Principles, including in negotiating and concluding LEAs and RUAs.

The only LEA reported in 2015 concerned a Memorandum of Agreement with a new member of CIMMYT's International Maize Improvement Consortium for Asia (IMIC-Asia). This consortium was highlighted in last year's report, as it effectively strengthens dissemination pathways by establishing partnerships with Indian seed companies to ensure that new elite germplasm will actually reach farmers. The CGIAR Consortium and IP Fund Council Group considered CIMMYT's IMIC-Asia arrangements to be consistent with the CGIAR IA Principles. However, the agreement was not deemed to be an LEA as the arrangements do not meet the criteria for an LEA, in line with CGIAR IA Principles<sup>38</sup>. IMIC-Asia members receive beneficial treatment compared with non-members, in the form of priority access to breeding lines, materials at an early stage of development and evaluation data. Additionally, CIMMYT retains the right to make all breeding lines available to any public organization for research purposes and for food emergencies, in furtherance of the CGIAR vision. Such arrangements involve a degree of semi-exclusivity, as between members and non-members. However, because membership is not unreasonably restricted, and members do not receive exclusive rights to the exclusion of other members, the arrangements concerning commercial exclusivity are not deemed to qualify as an LEA in accordance with CGIAR IA Principles.

The CGIAR Consortium encourages Centers to report agreements such as these, because the contextualized discussions they generate concerning dissemination pathways (i.e. in a technology, country and market specific context) enrich the collective understanding of Centers, the Consortium and the Fund Council IP Group. These interactions are instrumental in ensuring that the guidance developed in the Q&A – concerning issues of interpretation or which test the boundaries of the CGIAR IA Principles – lead to mutually agreeable and practical outcomes. Reporting such arrangements also demonstrates a commitment to transparency and enhances donor confidence and trust. The revisions

<sup>37</sup> CGIAR Consortium has held discussions with the Independent Evaluation Arrangement (IEA) of the CGIAR concerning their undertaking of the biennial review of the IA Principles which are due to be held in 2016. IEA have agreed to include the review in their program of work and budget for 2017. If approved the IEA's terms of reference for the review would be developed through a consultative process in late 2016 with the substantive review to be undertaken in early 2017.

<sup>38</sup> LEAs must be justified as being as limited as possible and necessary for the further improvement of intellectual assets, or to enhance the scope or scale of impact on target beneficiaries, in furtherance of the CGIAR vision.

being proposed to the IA Report template (as discussed in section 4.3 above) are intended to capture 'best practice' more effectively. This includes information concerning dissemination pathways that have significant potential for maximizing global access and impact, but do not meet the criteria for LEAs and RUAs.

### 5.4.2. Other partnerships

Centers concluded many other types of partnerships to maximize impact, while not involving the restrictions inherent in RUAs or LEAs. Some examples are highlighted in Box 4 below.

**Box 4: Examples of partnerships concluded by Centers to maximize impact, which do not involve LEAs or RUAs**

*CIMMYT, IRRI and ICRISAT each lead membership-based consortia arrangements that connect the breeding efforts of Centers with the development and dissemination activities of partners in the public and private sectors<sup>39</sup>. These platforms use the SMTA and tailored licenses (which are compliant with SMTA and CGIAR IA Principles) to facilitate transfers of Center improved materials to consortium partners. Such platforms are among various modalities used by Centers to transfer their improved materials and are responsible for a significant portion of overall transfers by CGIAR Centers to the private sector.*

## 5.5. CGIAR IP rights portfolio: trademarks

The CGIAR IP portfolio of registered rights compiled in 2015 (see Section 4.4 above) demonstrated that most Centers pursue trademark protection concerning the institution's name and/or logo, and some Centers pursue trademark protection in relation to their product dissemination strategies (e.g. registration by IITA in 2015 regarding AFLOTOXIN in Nigeria). It also showed that few Centers have filed patents or PVP applications since the CGIAR IA Principles took effect in 2012, or prior to this time.

## 5.6. CGIAR IP rights portfolio: patents and plant variety protection

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 CGIAR Consortium did not itself file any patents or plant variety protection (PVP) applications in 2015. No Center reported applying for or authorizing any third party to apply for any PVP. One Center, IRRI, reported three provisional patent applications – two in USA and one in Australia – as well as a Patent Cooperation Treaty (PCT) filing<sup>40</sup>, advancing to national phase filings in seven countries (Brazil, China, India, Philippines, Thailand, USA and Vietnam).

The 2014 CGIAR IA Report clarified the expectations of donors regarding justifications to be provided for the filing of patent applications. Centers were strongly encouraged to include in their justifications for provisional and PCT filings an outline regarding their anticipated development and dissemination strategy. They were also urged to bear in mind that PCT and provisional patent applications involve minimal costs and are used strategically to lock in a priority date while further analysis and decisions are made in regards to obtaining a full patent. A lower threshold is applied for the justifications to be deemed acceptable at this preliminary stage. However, if such applications advance to a mature filing, the subsequent justifications require further information to be provided regarding anticipated development and dissemination strategy. Centers were also encouraged to engage with the CGIAR Consortium while reflecting on and/or developing their strategies.

### 5.6.1. National patent applications

The justifications provided by IRRI at first instance, in support for its seven national patent filings, were observed not to have met the standards outlined in the 2014 CGIAR IA Report. Following a request for additional information, IRRI's IP focal point was immediately responsive and was able to provide detailed information concerning IRRI's strategy to further develop the technology. This concerns a breeding method for enhancing grain yield, which is associated with a novel 'SPIKE' gene that IRRI identified in a landrace. IRRI plans<sup>41</sup> to initially grant third parties non-exclusive research licenses to allow

<sup>39</sup> These consortia arrangements are described in greater detail in the report submitted by CGIAR to the WG-EFMLS (see Section 4.7 above). Section III and Annex 6 of the report provide detailed information concerning these arrangements. The report is available at <https://library.cgiar.org/handle/10947/3995>

<sup>40</sup> This application was reported by IRRI in 2014.

<sup>41</sup> Which could of course change in the future, however, any arrangements amounting to an LEA would need to be reported appropriately as well as be limited in scope and contain research and emergency use exemptions as per Section 5.4.1 above.

further information to be obtained in geographies of interest which will help to further develop the technology. It plans to subsequently license for commercialization on a non-exclusive basis, differentiated as royalty-free for public sector institutions. Additionally, IRRI plans to set-up an advisory committee which includes external experts to help inform its licensing strategy and to develop a communications strategy to help explain to the public its licensing strategy for maximizing global access and impact.

After considering this further information, the CGIAR Consortium deemed IRRI's justifications for the national filings to be acceptable. The Consortium believes it is crucial that Centers develop a clear communications strategy for any technology where reputational concerns can be reasonably anticipated, such as may arise in connection with a CGIAR Center's motivation for obtaining a patent, or ambiguity regarding use of the underlying technology by third parties, or consequences thereof. The CGIAR Consortium and FC IP Group also consider that Centers need to conduct a critical evaluation, at the planning stage and on an ongoing basis, of dissemination strategies for maximizing global access by farmers, as well as the manner in which patent protection will affect such access.

Besides a US utility patent application reported by IRRI in 2014, all patent filings reported in previous reporting cycles have been of a preliminary nature, involving PCT and provisional patent filings. IRRI's applications in Brazil, China, India, Philippines, Thailand, USA and Vietnam, reported in 2015, are the first PCT applications made by a Center to have advanced to national filing. Accordingly, this is the first opportunity that the CGIAR Consortium and FC IP Group have had to consider, in the context of a specific scenario, the information that should reasonably be included at first instance in a Center's justifications provided in support of non-preliminary patent applications in countries that are of strategic interest when considering CGIAR's target beneficiaries. The CGIAR Consortium and FC IP Group have offered further clarification to Centers, stipulating that justifications in such instances should contain clear information regarding ownership, arrangements with donors, co-developers or third parties for managing dissemination, as well as specific details concerning the anticipated licensing strategy for maximizing impact, and plans for communications and impact evaluation, at first instance.

## 5.6.2. PCT and provisional patent applications

The justifications supporting provisional and PCT applications reported by IRRI in 2015 were deemed acceptable. IRRI has undertaken to provide more comprehensive information at first instance in support of justifications to be provided for national filings that result from the PCT application, or any mature applications resulting from the provisional applications.

## 5.7. Management of genetic resources and related issues

### 5.7.1. Center SMTA reporting to the Treaty's Governing Body

In 2015, the Treaty Secretariat continued to work with Centers to improve the formatting and content of Center reporting on their use of the SMTA. All 11 Centers with genebanks operating under the MLS reported having used the SMTA, as required under the Treaty for their transfers of Plant Genetic Resources for Food and Agriculture (PGRFA)<sup>42</sup>. Additionally, all 11 Centers confirmed that their 2015 SMTA transfers have been reported or are in the final stages of being reported to the Governing Body of the Treaty. The Consortium, together with Centers, continues to collaborate with the ongoing review of the Secretariat of the Governing Body to track usage of the SMTA, including when transferring Center improved materials. Further information regarding Center obligations in accordance with the Treaty is provided in Section 4.7.1 above.

### 5.7.2. Mutually supportive implementation of the Treaty and the Nagoya Protocol

The Nagoya Protocol on Access to Genetic Resources and the Fair and Equitable Sharing of Benefits Arising from their Utilization to the Convention on Biological Diversity (Nagoya Protocol) entered into force in October 2014, upon reaching the required threshold of ratification by 50 countries. Unlike the MLS established pursuant to the Treaty, which allows facilitated access to certain PGRFA with a pre-established framework for access and benefit sharing, the Nagoya Protocol creates a bilateral system of access and benefit sharing requiring prior informed consent in regard to the access and use of genetic resources and

<sup>42</sup>This includes PGRFA under Development.

associated traditional knowledge.

Coordination exists at treaty level for the mutually supportive implementation of the Treaty and the Nagoya Protocol. However, whether this is achieved in practice depends on implementation of these treaties at national level. Implementation in a manner that is not mutually supportive has the potential to adversely impact the germplasm transfer operations of Centers. This is particularly true in the case of countries that have ratified the Nagoya Protocol, but have not ratified the Treaty. Box 5 below offers examples of CGIAR initiatives to ensure mutually supportive implementation between the Treaty and the Nagoya Protocol.

**Box 5: Example of initiatives in 2015 to ensure mutually supportive implementation between the Treaty and the Nagoya Protocol**

A CGIAR working group coordinated by the CGIAR Consortium and comprising IP focal points and genebank managers from [CIMMYT](#), [CIP](#) and [IRRI](#), convene *ad hoc* meetings to discuss issues relevant to the **cross-border flow of germplasm**, including sharing of updates and challenges faced pursuant to the implementation of the Nagoya Protocol.

[Bioversity International's](#) policy team, which is led by its IP focal point, was commissioned by the CGIAR Consortium to develop **CGIAR guidelines concerning mutually supportive implementation between the Treaty and the Nagoya Protocol** (scheduled for release in 2016).

[CIP's](#) IP focal point and genebank manager actively participated in regulatory/policy discussions concerning updates to the Peruvian seed laws and regulations.

[ICRISAT](#) highlighted positive regulatory developments affecting cross-border germplasm transfers from India.

and to support the development of appropriate policies and procedures for their recognition and promotion. Box 6 below highlights certain Center initiatives undertaken in 2015 concerning traditional knowledge and farmers' rights.

**Box 6: Example of initiatives in 2015 concerning traditional knowledge and farmers' rights**

[CIP's](#) involvement in regulatory/policy discussions concerning updates to the Peruvian seed laws and regulations (as described in Box 5 above) included active **engagement of farmers' organizations** with which they work. The aim is to inform CIP's position and to include these organisations in their own right in the decision-making process in furtherance of CIP's commitment to promoting farmers' rights in accordance with the Treaty.

As part of a drylands agrobiodiversity project [ICARDA](#) conducted demonstration trials in 26 communities in Lebanon, Jordan, Palestine and Syria. This work aims to **strengthen informal seed production systems** through training and capacity development associated with nurseries established for the multiplication of fruit trees as well as activities concerning the processing of fruits, cheese making and mushroom production.

[ICRISAT](#) highlighted its continued efforts to engage farmers through periodic **farmer field days** and ongoing **partnerships with farmers' organizations**.

[IITA](#) highlighted the fact that its determination to **safeguard farmers' private information** drove the development of its ethics policy, which governs the approval of projects involving human subjects.

### 5.7.3. Traditional knowledge and farmers' rights

Article 3 of the CGIAR IA Principles recognizes the indispensable role of farmers, indigenous communities, agricultural professionals and scientists in conserving and improving genetic resources. Furthermore, Centers are required to be respectful of national and international efforts to protect and promote farmers' rights, as envisaged by the Treaty,

# 6 Implementation of the FC IP Group's recommendations

A number of recommendations were made in the FC IP Group's 2014 report<sup>43</sup>, which was approved by the Fund Council at its 14<sup>th</sup> meeting held 4-5 November, 2015<sup>44</sup>. The CGIAR Consortium's updates regarding each recommendation are given below:

*Recommendation 1: that Centers develop and report on their market and dissemination strategy plans in line with the CGIAR Vision as part of the 'justifications' for any patent application and, where possible, for any provisional or PCT patent application in the future*

This issue was discussed at the 2015 CLIPnet meeting<sup>45</sup>, and explicit advice on the topic was included in the updated Q&A tool, which provides guidance to Centers on implementation of the CGIAR IA Principles<sup>46</sup>.

*Recommendation 2: that Centers consider future approaches for tracking the impact of their LEAs and RUA's on the target beneficiaries*

This issue was discussed at the 2015 CLIPnet meeting<sup>47</sup>. It was acknowledged that this matter would require further investigation, including specialized expertise, in order to address it in a comprehensive manner. The CGIAR Consortium's Legal Officer joined the CGIAR Monitoring and Evaluation Community of Practice as an observer, so as to better understand existing CGIAR initiatives aimed at monitoring and

evaluating impact. Further actions to address this issue will be developed as greater clarity emerges concerning the monitoring and evaluation framework for the 2<sup>nd</sup> Phase CRPs, due to commence in 2016.

*Recommendation 3: that Centers share their best practices and effective IP strategies and models with the CGIAR Consortium and other Centers and leverage these resources when drafting agreements and negotiating terms*

Centers frequently exchange materials, practices and knowledge through the CLIPnet mailing lists<sup>48</sup>. In 2015, some Centers also shared agreements, policies and tools with the IA Consortium as part of their Center IA report, or in the course of their ad hoc interactions with the CGIAR Consortium throughout the year. This included policies, internal guidelines, template agreements and tools to facilitate project planning and implementation from an IA management perspective. The CGIAR Consortium relied on these mailing list exchanges and shared materials to develop best practice highlights and recommendations included in the updated Q&A tool, which provides guidance to Centers on implementation of the CGIAR IA Principles<sup>49</sup>. In addition, the CGIAR Consortium is working to improve the repository it maintains in relation to Center materials, and to continue to encourage a stronger culture of sharing by IP focal points of their practices, workflows, agreements and

<sup>43</sup> This report was included as an independent section in the 2014 CGIAR IA Report and is available at <http://library.cgiar.org/bitstream/handle/10947/3977/2014%20CGIAR%20IA%20Report.pdf?sequence=4>

<sup>44</sup> A summary of the meeting is available at

<http://cgiarweb.s3.amazonaws.com/wp-content/uploads/2014/04/Summary-of-CGIAR-FC14-Final.pdf>

<sup>45</sup> As further detailed in Section 4.1 above.

<sup>46</sup> As further detailed in Section 4.3 above.

<sup>47</sup> As further detailed in Section 4.1 above.

<sup>48</sup> As further detailed in Section 4.1 above.

<sup>49</sup> As further detailed in Section 4.3 above.

tools.

*Recommendation 4: that the CGIAR Consortium, in consultation with the FC IP Group, continue to clarify issues related to interpretation of the CGIAR IA Principles*

This issue was discussed in detail at the 2015 CLIPnet meeting<sup>50</sup>, and was a key driver for the extensive updates made to the Q&A tool, which provides guidance to Centers on implementation of the CGIAR IA Principles<sup>51</sup>. The CGIAR Consortium encourages Centers to consult with it on a regular basis regarding interpretation issues, challenges faced and the design of novel dissemination pathways, as it is primarily in the context of these interactions that the Consortium is alerted to practical issues concerning implementation of the CGIAR IA Principles. The CGIAR Consortium handles such interactions in a collaborative and practical manner, with the objective of reaching mutually agreeable outcomes that can be replicated across the system. These interactions also help the CGIAR Consortium to determine where best to direct its support and resources.

*Recommendation 5: that Centers and the CGIAR Consortium continue to build awareness regarding compliance with the Nagoya Protocol and the Treaty's MLS*

This issue is a strategic focus for the CGIAR Consortium and a number of its initiatives in 2015 were designed to build awareness regarding compliance with the Nagoya Protocol and the Treaty's MLS. These included: (i) a number of webinars dedicated to this issue<sup>52</sup>; (ii) increased cross community of practice collaboration between genebank managers and IP focal points, including via participation in the CLIPnet annual meeting<sup>53</sup>; (iii) commissioning guidelines concerning Nagoya Protocol implementation from a CGIAR perspective<sup>54</sup>; and (iv) coordination of CGIAR submissions to the sixth meeting of the Governing Body and broad circulation of a subsequent report developed by participants covering the meeting from a CGIAR perspective<sup>55</sup>.

<sup>50</sup> As further detailed in Section 4.1 above.

<sup>51</sup> As further detailed in Section 4.3 above.

<sup>52</sup> As further detailed in Section 4.2 above.

<sup>53</sup> As further detailed in Section 4.1 above.

<sup>54</sup> As further detailed in Box 5 in Section 5.7.2 above.

<sup>55</sup> As further detailed in Section 4.7 above.



# The CGIAR Consortium's conclusion

Overall, the CGIAR Consortium is satisfied with Centers' implementation of the CGIAR IA Principles in 2015, as well as with the quality of Center IA Reports during the fourth cycle of reporting.

The CGIAR IA Principles are meant to encourage – following certain parameters – the Centers' partnership efforts, particularly with the private sector, with the aim of scaling up innovations and reaching more smallholder farmers. It is still unclear why so few – and a decreasing number – of LEAs and RUAs were concluded by Centers over the first four reporting cycles. For example, it has not yet been established whether this was due to lack of opportunity, difficulty in using these tools or other types of partnerships being concluded that are not captured by the reporting on LEAs and RUAs, etc. Revisions to the reporting template, as well as the biennial review of the CGIAR IA Principles due to take place in 2016, should help to address this issue<sup>56</sup>.

Increased collaboration between IP focal points and genebank managers in 2015 strengthened system-level coordination in relation to policy related work on genetic resources. This collaborative approach will continue in 2016, with IP focal points and genebank managers leading CGIAR engagement with the specialized working group instructed by the

Governing Body of the Treaty to continue to evaluate options for the enhancement of the MLS and to report back to the Governing Body in 2017. The CGIAR Consortium will also continue to work closely with Centers to better understand implications of implementation of the Nagoya Protocol for CGIAR, and the potential risks regarding the cross-border flow of germplasm.

The 2nd phase of CRPs, due to commence in 2017, has been designed to improve integration of IA management into the proposals and budgets of the CRPs to be evaluated by donors in 2016. The reporting and monitoring evaluation framework for the 2nd phase of CRPs, which is still to be developed, will provide opportunities for further integration. Compared with the 1st phase of CRPs, this improved integration is expected to provide a more comprehensive understanding of the context of IA management in CRP and Center activities, particularly in relation to the design and implementation of dissemination pathways which maximize global access and impact. Taking into consideration these developments, and the lessons learned following four cycles of reporting, the CGIAR Consortium is confident that an enabling environment is emerging, which will enable IA management to continue to improve across CGIAR.

<sup>56</sup> CGIAR Consortium has held discussions with the Independent Evaluation Arrangement (IEA) of the CGIAR concerning their undertaking of the biennial review of the IA Principles which are due to be held in 2016. IEA have agreed to include the review in their program of work and budget for 2017. If approved the IEA's terms of reference for the review would be developed through a consultative process in late 2016 with the substantive review to be undertaken in early 2017.



# FC IP Group's independent section

This Section 8 presents the FC IP Group's update to the Fund Council on its work as well as its findings regarding the fourth review of the Centers' compliance with and overall implementation of the CGIAR IA Principles, based on information made available to the FC IP Group by the CGIAR Consortium. The reporting window was limited to calendar year 2015, and the information reviewed included the CGIAR Consortium's Consolidated IA Report (which included all Center IA Reports) as well as discussions with the Consortium's legal team<sup>57</sup> on April 4-7, 2015, in Montpellier, France. During these discussions, the FC IP Group raised a number of questions about the Centers' reports which were directed to the Centers, and the Centers' responses further informed the analysis and conclusions in this section.

The findings, opinions and recommendations discussed in more detail hereafter represent the FC IP Group members'<sup>58</sup> professional views in their advisory role to the Fund Council and do not necessarily reflect the views of the organizations or entities with which the members are affiliated.

This section includes a review of relevant Center activities, recommendations for the Fund Council's consideration, as well as positive highlights and other developments. Overall, the FC IP Group is satisfied with the Centers' compliance with the CGIAR IA Principles. In addition, there continues to be steady progress in terms of Center reporting, IP capacity and development of best practices. The FC IP Group would like highlight an issue for the Fund Council's attention regarding certain patent protection by one Center, as explained in more detail in Section 3.3.

## 8.1. 2016 biennial review, extension of the CGIAR IA Principles and the CGIAR Transition

The FCIP Group has played an oversight role on the Centers' management and use of their intellectual assets and compliance with the CGIAR Intellectual Assets Principles. The CGIAR is currently undergoing an organizational transition to a new system. It is the understanding of the FCIP Group that the *CGIAR Principles on the Management of Intellectual Assets* and the *Implementation Guidelines for the CGIAR Principles on the Management of Intellectual Assets* will remain in effect and will be reviewed biennially in accordance with its terms). As the system transitions, it is important that the role of the FCIP Group continue to adhere to the following principles:

- **Independence:** To adequately and objectively serve its oversight function, it is essential that the FCIP Group remain independent from the System Organization (board and office) and Centers. Currently, the FCIP Group is composed of three members appointed by the Fund Council, in consultation with the Consortium and the Centers. The FCIP Group members are not affiliated or employed by the Fund Office, the Consortium governing bodies or the Centers.
- **Compliance Oversight:** The primary role of the FCIP Group as established by the Terms of Reference has been to oversee the Centers' compliance with the IA Principles. To meet this objective, the FCIP Group

<sup>57</sup> Elise Perset, General Counsel, and Rodrigo Sara, Legal Officer.

<sup>58</sup> The FC IP Group Members are Paul Figueroa (Chair, USAID), Bram De Jonge (Wageningen University) and Aline Flower (Bill & Melinda Gates Foundation). All three Members' two-year terms come to an end once the fourth review cycle is completed. The Terms of Reference impose no limit on the number of terms the Members can serve.

issues a report of its findings based on a review of the Centers' confidential Intellectual Assets reports.

• **Access to Centers' Information:** Each Center provides summary data and information on any IA protection sought and any agreements with third parties that seek to commercialize IA under Limited Exclusivity Agreements ("LEAs") or Restricted Use Agreements ("RUAs"). It is key that the FCIP Group continues to have access to this information, including underlying agreements that seek to commercialize or restrict access to Intellectual Assets, in accordance with the IA Principles. To address the Centers' concerns regarding confidentiality, the FCIP members are required under the IA Principles and Terms of Reference to sign a non-disclosure agreement (NDA) with the Consortium. The FC IP Group has been informed by the Consortium that the Consortium will continue as a legal entity and that these NDA's will remain in effect as contracts between the FC IP Group reviewers and the Consortium and thus will be assumed by the System Organization under the transition.

• **Evolving Advisory Role on Oversight of IA:** The Terms of Reference describes the role of the FC IP Group as "advising the Fund Council in order to enable the Fund Council to provide adequate oversight of Intellectual Asset management in the CGIAR..." Given the increased integration of IA management in the 2nd phase of CRPs, the FCIP Group acknowledges the possibility that its advisory role to the new System Council could evolve to include an advisory role regarding more strategic management of intellectual property in addition to evaluating compliance. If the role of the FC IP Group is broadened in this way, it may be necessary for the Fund Council/System Council to consider increasing the capacity of the FC IP Group. The FCIP Group invites the guidance of the Fund Council/System Council regarding possible expansion of its advisory role on more strategic management of intellectual property in addition to compliance issues, while maintaining the collaborative approach to IA Center Report reviews that has been established with the Consortium. Of course, to continue to serve the function under the IA Principles, the FC IP Group should still adhere to the principles of independence, compliance oversight and ability to access to the Centers' information, as discussed above. The FC IP Group also welcomes the opportunity to provide comments on transition issues that might impact the IA Principles, the FCIP Group and its function.

We understand the CGIAR Consortium has held preliminary discussions with the Independent Evaluation Arrangement (IEA) of the CGIAR concerning their involvement in the biennial review of the IA Principles which are due to be held in 2016 and that IEA have expressed an interest in conducting the review

given the system-wide implications of the IA Principles. We support IEAs involvement in the review process and we look forward to the opportunity to contribute to the terms of reference for the review which we understand would be developed late 2016 and for the review to be undertaken in early 2017.

## 8.2. Compliance with the CGIAR IA Principles

### 8.2.1. Limited Exclusivity Agreements (LEAs)

Only one center (CIMMYT) reported to have entered into 1 LEA. It concerns a Memorandum of Agreement with a new member to CIMMYT's International Maize Improvement Consortium for Asia (IMIC-Asia). This Agreement was highlighted in last year's report as it seeks to effectively strengthen dissemination pathways by establishing partnerships with Indian seed companies to ensure that new elite germplasm will actually reach farmers. CIMMYT confirmed that 1) any interested party can join the Consortium by paying a membership fee; and 2) all members have semi-exclusive access to the germplasm, while CIMMYT retains the right to make all breeding lines available to any public organization for research purposes and for food emergencies in furtherance of the CGIAR vision.

The FC IP Groups has, in consultation with the CO, informed CIMMYT that the above agreement is not considered an LEA since no exclusivity per se is being granted. However, the FCIP Group is happy that CIMMYT included it in its report, which demonstrates a commitment to transparency. The FCIP Group's position is that agreements about which there is any doubt as to whether to classify them as LEAs or RUA's under the IA Principles are still reported to allow for interpretation by the FC IP Group.

### 8.2.2. Restricted Use Agreements (RUAs)

No Center reported to have entered into a RUA in 2015.

### 8.2.3. Patent applications

One Center (IRRI) reported the filing of 1 national phase patent application and 4 provisional patent applications. The provisional patent applications lock in a priority date and require an additional filing and, of course, the granting of that application by the relevant national authorities, to mature into a patent.

Article 6.4.2 of the IA Principles holds that 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 last year’s report, the FC IP Group recommended that Centers develop and report on their market and dissemination strategy plans in line with the CGIAR Vision as part of the ‘justifications’ for any patent application and, where possible, for any provisional or PCT patent application in the future.

IRRI reported national stage filings on its previously reported PCT application on methods associated with the ‘SPIKE’ gene, which IRRI identified from a rice landrace. The patent application has been filed in 7 countries: Brazil, China, India, Philippines, Thailand, USA and Vietnam. The FC IP Group sent follow-up questions in an effort to understand whether and how the proposed patent protection furthers the CGIAR vision or enhances the scope of impact on target beneficiaries. The FC IP Group notes that IRRI provided comprehensive responses to our questions and shared its draft Intellectual Property Management Agreement with its co-owner JIRCAS on its own initiative. Based on a review of these responses and the draft IP Management Agreement with the co-owner, the FC IP Group has come to the following observations and conclusions:

- 1) IRRI claims that the patented method has the potential to increase yield of rice varieties, but that additional research needs to be carried out in various genetic backgrounds and in different agro-climatic conditions. IRRI claims that it does not have the resources to perform this additional research and considers its IP protection strategy a tool that can provide an incentive for seed companies to enter into license agreements with IRRI and JIRCAS, in order to use this asset and develop new rice varieties. IRRI has reported that no commercial licenses have been granted to-date.
- 2) The patent application concerns a method for producing a rice plant with improved grain yield, specifically replicating the gene ‘SPIKE’ . IRRI claims that the original material used as a

source for the ‘SPIKE’ gene was acquired under the SMTA and that no third party traditional knowledge was used in identifying the trait. Based on these representations, the FC IP Group observes that IRRI is bound by the benefit-sharing conditions stipulated by the SMTA of the FAO treaty.

- 3) IRRI further claims that it will manage the ‘SPIKE’ gene method “in a way that does not impair legitimate use of landrace material containing the SPIKE trait”. The FC IP Group does, indeed, want to stress that any issued patent must not limit farmers in any way from using, saving, exchanging, trading, selecting and breeding with their landraces or farmer varieties containing the ‘SPIKE’ trait.
- 4) Given the sensitivities surrounding the patenting of (methods relating to) native traits, the FC IP Group recommends that IRRI make every effort to increase the scope of impact of the technology and access by farmers in developing countries, and to be transparent about its IP management practices in this regard.
- 5) The FC IP Group is of the opinion that the terms included in the draft Intellectual Property Management Agreement with co-owner JIRCAS may strengthen dissemination pathways of the technology to reach target beneficiaries and preserve ample latitude for IRRI to advance the CGIAR vision and strategy of providing broad access to IRRI’s IA’s. However, these Agreement terms are still only in draft version. The FCIP Group strongly supports IRRI’s strategy to negotiate for the proposed terms and requests ongoing review and monitoring by the Consortium and, in turn, by the System Organization, to ensure that the final JIRCAS Agreement, together with any further Agreements (e.g. Research and Development, Licenses, etc.) do, indeed, establish a position for IRRI that protects and advances the CGIAR vision.

In summary, the FC IP Group considers IRRI’s justification – that the patent protection was necessary for the further improvement of the technology – to be in line with the IA Principles. Yet, given the sensitive nature of the patent, i.e., seeking protection of a method related to a native trait derived

<sup>59</sup> The application sought to patent a method described as follows:

- a) providing a first rice plant comprising a gene ‘SPIKE’;
- b) transferring a nucleic acid encoding gene ‘SPIKE’ from the first rice plant to a second rice plant;
- c) analyzing the second rice plant for the gene ‘SPIKE’;
- d) identifying and selecting a second rice plant comprising the gene SPIKE and exhibiting improved grain yield when compared to the second rice plant prior to the transfer.

from a landrace, the FC IP Group strongly encourages IIRI to a) share its final agreement with JIRCAS with the Consortium upon execution, along with any other licensing agreements concerning the patented method that may be signed in the future; b) promote and track the scope of impact of the technology and sharing of benefits to advantage the poor, especially farmers in developing countries; and c) pursue a transparent and pro-active public communications strategy with respect to its IP management in this regard.

## 8.3. Positive highlights

### 8.3.1. Reporting

The FC IP Group supports the CGIAR Consortium's ongoing efforts to develop a more streamlined IA reporting template which readily reflects the annual updated activities. Consistent with the FC IP Group's recommendation in 2014, the broader CRP level reporting will now include sections related to the program-wide implementation of the IA Principles, including how management of IP may be relevant to the structuring of partnerships within the particular CRP. The FC IP Group supports the Consortium's effort to further coordinate the Center's IA Reporting cycles with the cadence of these CRP reporting cycles. The FC IP Group anticipates that this coordinated reporting will not only eliminate reporting redundancies but also provide contextualized insight into the application of the IA Principles within the various research programs.

### 8.3.2. Capacity building

Centers continue to report building specialized legal capacity in the area of IP, genetic resource management and related transactional expertise. In addition to new hires, a number of Centers reported having engaged in specialized trainings for their staff, including IP Focal Points. This development of in-house expertise is a positive indicator of the Center's increasing commitment to the development of Center-based internal infrastructure for the sound management of Center intellectual assets.

### 8.3.3. Enhanced policy environment

The FC IP Group was struck by the increasing sophistication regarding the Centers' respective cultivation of nuanced policy guidance surrounding critical areas related to the sound management of IA's. The FC IP Group commends the many Centers for the extensive policy development. Specifically, as detailed in the Consortium portion of this Report, a number of Centers have now adopted or are in the process of adopting various IA-related policies, including Open

Access, Genetic Resource Management, Research Ethics among many others. However, some Centers have not made some of their policies public. The FCIP Group recommends that the Centers make their IA policies and related guidance publicly available for the benefit of other Centers, the public at large and in the interest of transparency.

### 8.3.4. Trademarks

The majority of Centers have now reported having applied for and/or received trademark registration for their names and/or logos. A small number of product-related trademarks are pending including FORTIFER and GreenPHABLET, and several others now successfully registered, including Aflasafe™ and Nodumax™. Centers cited trademarks as an effective means of promoting institutional recognition; connecting a Center to its projects, technologies and material; and measuring the impact of Center, its programs and products and ensuring quality control. The FC IP Group supports the Centers' effective use of trademarks in furtherance of the CGIAR Vision.

### 8.3.5. Community of practice and shared best practices

The CGIAR Consortium continues to strengthen the IP Community of Practice of all Centers, by providing effective continuing education and discussion on critical areas on many matters of intellectual asset management. A number of webinars have been developed on critical topics such as Nagoya Protocol compliance which were reportedly well-attended, according to the CGIAR Consortium. These ongoing education interactions among the Centers and the Consortium provide key opportunities to not only discuss the requirements and application of the CGIAR IA Principles, including sharing experiences in applying the CGIAR IA Principles to advance the CGIAR Vision.

The CGIAR Consortium acknowledged that participation levels for a number of the webinars, however, was low. The FC IP Group notes that the Consortium is reviewing, in a consultative manner, the current selection of topics to ensure that these critical opportunities for further developing and strengthening the community of practitioners be leveraged for maximum effect. In order to increase participation, the FCIP Group encourages the Consortium to continue to draw from the internal expertise of the Centers and encourages Centers to actively participate.

Centers have continued making their internally developed tools available to the CGIAR Consortium for improved dissemination within the CGIAR community of practice. Several Centers shared excellent samples

that included Research Collaboration Agreements, Invention Disclosure Agreements, as well as Due Diligence tools which help identify third party IP rights implicated by proposed research activities. The FC IP Group commends those Centers for developing tools that reflect thoughtful and responsible Center-level approaches to the management of Center research programs and associated intellectual assets.

The FC IP Group notes that the Consortium has shared with all IP focal points the IA management best practices and tools developed by Centers and reported in the 2015 Centre IA Reports, and that a lot of sharing occurs between Centers IP focal points through the CLIPnet mailing list. The Consortium is updating the platform it uses to facilitate internal sharing of sample Agreements clauses, tools, policies and overall best practices, in order to further incentivize sharing among Centers. The FCIP Group considers this initiative should be further prioritized as a more effective platform and culture of sharing will have significant impact on improving internal CGIAR coordination, collaboration and overall effectiveness.

### 8.3.6. Improved CGIAR IA Principles implementation

In consultation with the FC IP Group, the CGIAR Consortium continues to develop a Q&A document to memorialize answers to Centers' questions concerning implementation of the CGIAR IA Principles and Implementation Guidelines. The CGIAR Consortium and FC IP Group will continue to fine-tune this Q&A document to incorporate lessons learned and to identify areas of ambiguity and overall evolution of the CGIAR IA Principles. The FC IP Group commends the Consortium for diligently keeping track of Center questions and for collating the Consortium's responses and guidance to enhance consistent IA Principles interpretation and application system-wide.

### 8.3.7. IA management in CRPs

The FC IP Group is pleased to note that the new round of CRPs include a section on Intellectual Asset Management consistent with the FC IP Group's recommendation in 2014. The FCIP Group is pleased to note that the FCIP Group, the Consortium and Centers will have opportunity to provide input concerning the extent to which the revised CRP reporting template, anticipated to be finalized in the second half of 2016, addresses IA management issues at the CRP level. It is the FC IP Group's suggestion that the lead Centers of the CRPs include a status report on IA Management in line with the IA Principles in the yearly IA report submitted to the Consortium. The FCIP

Group will work with the CGIAR Consortium and Centers to synchronize reporting at Center and CRP level in order to minimize duplication or gaps.

### 8.3.8. Genetic resource management & Farmers' Rights

All 11 Centers with genebanks operating under the MLS of the Treaty confirmed that their 2015 SMTA transfers have been reported or are in the final stages of being reported to the Governing Body of the Treaty. The Consortium together with Centers continue to collaborate with the ongoing review of the Secretariat of the Governing Body to track usage of the SMTA including when transferring PGRFA 'under development'.

Also, the CGIAR Consortium in close collaboration with Centers continue to build capacity and awareness on the Nagoya Protocol and how its implementation may affect Center activities in different countries. The FC IP Group commends the ongoing efforts to develop the CGIAR Nagoya Protocol Guidelines and FAQs to assist Centers and partners in this regard. Like last year, the FC IP Group recommends Centers and the CGIAR Consortium continue these activities in light of national implementation of the Nagoya Protocol and its interrelations with the FAO Treaty.

Several Centers reported on their activities to strengthen and promote 'Farmers' Rights'. Two notable examples in this regard are the meetings organized by CIP that facilitated farmers' participation and successful input in the decision-making process for the new Potato Seed Regulations in Peru,<sup>60</sup> and ICARDA's support to strengthen informal seed systems and participatory breeding initiatives.<sup>61</sup> The FC IP Group recommends Centers to continue and, where possible, scale up activities that strengthen farmers' rights, including the facilitated access of farming communities to gene bank materials.

## 8.4. Conclusion and recommendations

Overall, the FCIP Group is satisfied with the Center's compliance. The Centers' reporting, IP capacity and adoption of best practices improved significantly from the first to the second year of implementation of the IA Principles. Since then reporting has continued to gradually improve, and this review is no exception. In this review the FC IP Group has the following recommendations:

- a) that all Centers – and IRRI in particular -- develop and report on their market and dissemination strategy plans in line with the

<sup>60</sup> As per Box 6 in Section 5.7.3 above

<sup>61</sup> As per Box 6 in Section 5.7.3 above

CGIAR Vision as part of the 'justifications' for any patent application and, where possible, for any provisional or PCT patent application in the future. IRRI should also follow specific recommendations outlined in Section 2.3 with respect to the patent application on methods associated with the 'SPIKE' gene.

- b) that as part of the annual reporting process, the Consortium provide in its consolidated report a section on all patent protection sought by Centers;
- c) that Centers continue to share their IP related policies, best practices and effective IP strategies and models with the CGIAR Consortium and other Centers;
- d) that the Consortium's report include a section on how the Centers and Consortium have implemented the FC IP Group's recommendations included in the prior year's review; and
- e) that Centers are strongly encouraged to include in their annual Center IA Reports, a status report of their IP Portfolio, material updates concerning the progress of the LEAs, RUAs and patents/PVPs they have previously reported (i.e. as part of their Part 1 general reporting concerning partnerships or dissemination pathways, or in Part 2 if the update contains confidential information). Such updates should include progress against any development, dissemination, risk management and/or communications plans (or other material attribute) that forms part of the justifications approved by the Consortium and the FCIP Group, and should also include public communications made in this regard.

<b>AfricaRice</b>	Africa Rice Center
<b>ACIPA</b>	Australian Center for Intellectual Property in Agriculture
<b>Bioversity Centers</b>	Bioversity International Members of the CGIAR Consortium
<b>CGIAR Consortium</b>	Consortium of International Agricultural Research Centers
<b>CGIAR IA Principles</b>	CGIAR Principles on the Management of Intellectual Assets
<b>CIAT</b>	International Center for Tropical Agriculture
<b>CIFOR</b>	Center for International Forestry Research
<b>CIMMYT</b>	International Maize and Wheat Improvement Center
<b>CIP</b>	International Potato Center
<b>CLIPnet</b>	CGIAR Legal and IP Network
<b>CRP(s)</b>	CGIAR Research Program(s)
<b>FC IP Group</b>	Fund Council Intellectual Property Group
<b>GMO(s)</b>	Genetically modified organism(s)
<b>IA</b>	Intellectual Assets
<b>ICARDA</b>	International Center for Agricultural Research in Dry Areas
<b>ICRAF</b>	World Agroforestry Center
<b>ICRISAT</b>	International Crops Research Institute for the Semi-Arid Tropics
<b>IFPRI</b>	International Food Policy Research Institute
<b>IITA</b>	International Institute of Tropical Agriculture
<b>ILRI</b>	International Livestock Research Institute
<b>IP</b>	Intellectual Property
<b>IRRI</b>	International Rice Research Institute
<b>IWMI</b>	International Water Management Institute
<b>LEA(s)</b>	Limited Exclusivity Agreement(s)
<b>MLS</b>	Multilateral System of Access and Benefit Sharing of the International Treaty on Plant Genetic Resources for Food and Agriculture

# GLEOSARY

<b>Nagoya Protocol</b>	Nagoya Protocol on Access to Genetic Resources and the Fair and Equitable Sharing of Benefits Arising from their Utilization to the Convention on Biological Diversity
<b>PCT</b>	Patent Cooperation Treaty
<b>PGRFA</b>	Plant Genetic Resources for Food and Agriculture means “any genetic material of plant origin of actual or potential value for food and agriculture” as defined in Article 2 of the SMTA
<b>PGRFA under Development</b>	PGRFA under Development means “material derived from the Material, and hence distinct from it, that is not yet ready for commercialization and which the developer intends to further develop or to transfer to another person or entity for further development” as defined in Article 2 of the SMTA
<b>PVP</b>	Plant variety protection
<b>Q&amp;A</b>	Question and Answer
<b>RUA(s)</b>	Restricted Use Agreement(s)
<b>SMTA</b>	Standard Material Transfer Agreement of the International Treaty on Plant Genetic Resources for Food and Agriculture
<b>Treaty</b>	International Treaty on Plant Genetic Resources for Food and Agriculture
<b>WG-EFMLS</b>	Working Group to Enhance the Functioning of the Treaty's MLS

# GLOSSARY

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