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The International Treaty
ON PLANT GENETIC RESOURCES FOR FOOD AND AGRICULTURE



**INTERNATIONAL TREATY ON PLANT GENETIC RESOURCES
FOR FOOD AND AGRICULTURE**

**THIRD MEETING OF THE AD-HOC OPEN-ENDED WORKING GROUP TO
ENHANCE THE FUNCTIONING OF THE MULTILATERAL SYSTEM**

Brasilia, Brazil, 2-5 June 2015

**ADDITIONAL SUBMISSIONS RECEIVED FROM WORKING GROUP
MEMBERS AND OTHERS**

Note by the Secretary

1. This *addendum* to document IT/OWG-EFMLS-3/15/Inf.3 compiles additional submissions received after 10 April 2015.
2. The submissions have been reproduced in language and form, as well as in the sequence, in which they were received.

List of Appendixes

1. Submission by the CGIAR Consortium and its 11 CGIAR Centers hosting international 'in trust' crop and forage collections (CGIAR), received on 19 May 2015
2. Submission by the Asia Region (1), received on 22 May 2015
3. Submission by the Asia Region (2), received on 22 May 2015
4. Submission by the Near East Region, received on 22 May 2015

Comments from the CGIAR Consortium and its 11 CGIAR Centers hosting international ‘in trust’ crop and forage collections (CGIAR) on options considered by the Ad Hoc Open-ended Working Group to Enhance the Functioning of the Multilateral System of Access and Benefit-sharing (WG-EFMLS)

Executive Summary

The CGIAR Consortium and its 11 CGIAR Centers hosting international ‘in trust’ crop and forage collections (CGIAR) remain committed to the continued full implementation of the International Treaty on Plant Genetic Resources for Food and Agriculture (ITPGRFA) and its multilateral system of access and benefit sharing (MLS).

CGIAR appreciates the efforts that are being made to enhance the MLS’ functioning; however, CGIAR also wishes to highlight that, by a number of measures, the MLS has been and continues to be a success.

Given experiences to date, the most efficient potential change in the MLS would be for ITPGRFA Contracting Parties to undertake to make contributions to the International Benefit-sharing Fund (BSF) based on annual seed sales within their jurisdictions, and create a levy on commercializers according to their own national systems. That said, CGIAR understands that many ITPGRFA Contracting Parties are unwilling to explore this option at this time, or perhaps ever.

Regarding possible revisions to the Standard Material Transfer Agreement (SMTA) to increase user payments, CGIAR supports further investigation of reforms to the article 6.11-based model, to encourage predictable payments, and dramatically reduce transaction costs associated with tracking and tracing. In this regard, it is important to consider introducing an exhaustion date for benefit sharing obligations, a fixed number of years after receipt of materials from the MLS.

No matter what revisions are made to the SMTA, it is imperative that any changes are: fair to non-ITPGRFA Contracting Parties whose materials are in article 15 collections hosted by CGIAR Centers; provide for food security in non-ITPGRFA Contracting Parties; and respect CGIAR Centers’ hosting agreements with non-ITPGRFA Contracting Parties. The Centers must continue to have the flexibility to provide Plant Genetic Resources for Food and Agriculture (PGRFA), using the SMTA, to recipients in non-ITPGRFA Contracting Parties.

CGIAR further supports the development of small and medium size seed enterprises in developing countries, and urges the WG-EFMLS to consider exempting independent commercializing organizations with annual sales that do not exceed a minimum threshold (e.g., 2 million USD/year) from mandatory benefit sharing obligations.

In the broader context of enhancing the functioning of the MLS, CGIAR also urges the WG-EFMLS to consider mechanisms to ease transaction costs and respond to ‘on the ground



realities' associated with transferring PGRFA directly to small holder farmers who use the materials for mixed purposes of research, breeding and direct cultivation, and who (one hopes) will exchange materials with other farmers.

Finally, given the important contribution of the MLS for food security, CGIAR believes it is important for the WG-EFMLS to consider expanding the scope of the MLS to include more food security crops and forages than those listed in Annex 1, perhaps to the extent of including all PGRFA.

1. Background

The International Treaty on Plant Genetic Resources for Food and Agriculture (ITPGRFA) 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, and always has been, committed to fully implementing and complying with the ITPGRFA.

Eleven CGIAR Centers that host international 'in trust' crop and forage collections¹ signed Article 15 agreements with the ITPGRFA Governing Body in 2006, placing those collections in the ITPGRFA's multilateral system of access and benefit-sharing (MLS). Pursuant to those agreements, the CGIAR Centers distribute Annex 1 materials from those collections using the Standard Material Transfer Agreement (SMTA) adopted by the first session of the Governing Body. The second session of the ITPGRFA Governing Body, endorsed the option that the Centers should also make non-Annex 1 'in trust' materials available using the SMTA (including footnotes indicating that various sections of the SMTA should not be read as precluding the use of the SMTA for transferring non-Annex 1 crops).

The CGIAR Centers also use the SMTA to distribute derived materials, developed by Centers' breeding and research programs that incorporate PGRFA from the MLS. Where a Center distributes derived material that it considers not to be ready for commercialization, it identifies the material as 'PGRFA under Development' in accordance with article 6.5 of the SMTA, and

¹ These eleven Centers, which are eleven of the fifteen members of the Consortium of International Agricultural Research Centers (CGIAR Consortium), are the following: Africa Rice Center (**WARDA**); Bioversity International (**IPGRI**); Centro Internacional de Agricultura Tropical (**CIAT**); Centro Internacional de Mejoramiento de Maiz y Trigo (**CIMMYT**); Centro Internacional de la Papa (**CIP**); International Center for Agricultural Research in the Dry Areas (**ICARDA**); International Crops Research Institute for the Semi-Arid Tropics (**ICRISAT**); International Institute of Tropical Agriculture (**IITA**); International Livestock Research Institute (**ILRI**); International Rice Research Institute (**IRRI**); and World Agroforestry Center (**ICRAF**).



distributes it with or without additional terms and conditions as provided for in article 6.6 of the SMTA. Where a Center considers that the derived material is ready for commercialization (which in some Centers applies to all the derived material distributed by the Centre), the derived material is distributed with the SMTA as 'Products' in accordance with article 6.8 of the SMTA.

Each year, the CGIAR Centers distribute approximately 500,000 samples of PGRFA to recipients around the world under the SMTA with approximately 86% sent to developing countries and countries with economies in transition. Details about the Centers' distributions and acquisitions of materials, and challenges they have faced, and practices they have developed to operate under their agreements with the ITPGRFA's Governing Body have been reported elsewhere.²

CGIAR appreciates the complexity of striking the correct balance of access and benefit-sharing conditions to create incentives for actors to access and use materials from the MLS, and to proactively make materials available through it. By a number of measures, the balance already struck in the MLS has been successful. The ITPGRFA's Secretariat estimates that approximately 1.6 million accessions are included in the MLS, with a significant representation of the genepool of food security crops and their wild relatives. Approximately 600 accessions are transferred every day through MLS.³ Data on acquisitions of PGRFA by the CGIAR Centers shows that the Centers have received materials under the SMTA from a range of sources, including regenerated materials from national genebanks, new collecting missions conducted by national organizations, research partners, universities, some companies, and even from holders of PGRFA in countries that are not Contracting Parties.⁴ Furthermore, it seems likely that more PGRFA is actually being transferred than has been reported to the governing body, as many users do not yet have the capacity, or the routines, of reporting transfers in a regular, timely manner.

However, to date, the level of funds directed to the International Benefit-sharing Fund (BSF) is well below the anticipated levels. Most of the commercializing organizations that choose to

² The CGIAR reports to the Second, Third and Fourth Sessions of the Governing body are available at <http://www.planttreaty.org/sites/default/files/gb2i11e.pdf>, <http://www.planttreaty.org/sites/default/files/gb3i15e.pdf>, and <http://www.planttreaty.org/sites/default/files/gb4i05e.pdf>, respectively.

³ See ITPGRFA website at <http://www.planttreaty.org/content/recent-progress>

⁴ See CGIAR reports, *supra* note 3. See also Halewood, M., Sood, R., Sackville Hamilton, R., Amri, I., Van den Houwe, I., Roux, N., Dumet, D., Hanson, J., Upadhyaya, H.D., Jorge, A and Tay, D. 2013. Changing Rates of Acquisition of Plant Genetic Resources by International Genebanks: Setting the Scene to Monitor an Impact of the International Treaty, in Halewood, M, Lopez, I., Louafi, S. (Eds) *Crop Genetic Resources as a Global Commons: Challenges in International Law and Governance*. Routledge. Axon at pp 111-118 available at <http://www.biodiversityinternational.org/e-library/publications/detail/crop-genetic-resources-as-a-global-commons/>

take materials from the MLS and incorporate them in new PGRFA products do not restrict others' access to those PGRFA for further research and breeding purposes, so they are not triggering the mandatory monetary benefit sharing mechanism. Other commercial users, including those that would be more likely to trigger the mandatory benefit sharing formula have consistently chosen not to access materials through the MLS, motivated in part by their aversion to the benefit-sharing formula, and their ability to acquire material through other sources. Among other things, they are concerned about the perpetual liabilities that they may incur since each new use of accessed materials, even decades later, could trigger benefit sharing obligations. This concern is compounded by the fact that no minimum threshold of incorporation is required. The competitive process forces companies to look for the cheapest possible source of resources, and makes them averse to incurring costs that their competitors can avoid. For similar reasons, commercializing user organizations also have not been making voluntary contributions to the benefit sharing funds under Article 6.8. If they do make such contributions, but their competitors do not reciprocate, they are placed at a competitive disadvantage.

Furthermore, many Contracting Parties and some natural and legal persons continue to demonstrate reluctance (or inability) to proactively engage as providers of material through the MLS.

In light of these challenges, CGIAR appreciates the wisdom of exploring options to make the system work better. This includes considering options for creating obligations and incentives to increase the flow of financial resources to the BSF and for increasing the range of PGRFA (and related information) available through the MLS. CGIAR also appreciates the risk that revisions to the current system could end-up making matters worse, inadvertently creating reasons for increased avoidance of the MLS, by both users and providers of PGRFA.

CGIAR encourages the Governing Body not to focus only on contributions to the BSF as the only indicator of the effectiveness of the MLS. The BSF represents one of the five modalities for sharing benefits through the MLS. As indicated above, the extent of material transfers using the SMTA is probably much greater than reported to the Governing Body, perhaps partly because some providers do not realize they must report, or do not know how. In addition, many independent impact studies have consistently demonstrated that the "non-monetary" benefits of the MLS (as outlined in articles 13.1 and 13.2(a) to (c) of the Treaty) generate much greater economic returns – orders of magnitude greater – to developing countries than those same countries would ever gain through the BSF. Great care must be taken to ensure that sustainable development, enhanced food security and poverty alleviation in those countries, as achieved through the "non-monetary" benefit sharing mechanisms of the MLS, are not put at risk by focusing on only contributions to the BSF.

CGIAR appreciates the contributions of the Working Group on the Funding Strategy leading up to the fifth meeting of the Governing Body, and the subsequent good faith efforts and

innovation of parties and non-governmental observers to identifying options for reforms to the MLS. A wide range of CGIAR scientists were interviewed regarding their perspectives on the MLS and options related to its improved functioning as part of the development of ‘Synoptic Study 4 : Consultation with Stakeholder Groups’⁵ which was presented to the second meeting of the WG-EFMLS. Representatives of IRRI and the CGIAR Consortium were involved in a multi-stakeholder consultation meeting regarding options for revising the MLS hosted by Bioversity International and coordinated by the Meridian Institute in May 2014; a report of that workshop, including a background issues paper prepared by Bioversity International was submitted to the second meeting of the WG-EFMLS.⁶ Some of the following comments were already raised by CGIAR representatives in these earlier contributions.

2. Comments on options under consideration

2.1. Contracting Parties make payments based on seed sales

In principle, the most direct way to increase contributions to the BSF, negate costs/concerns about tracking and tracing, overcome concerns about incurring costs not assumed by commercial competitors, and increase PGRFA available through the MLS would be for Contracting Parties to agree to make annual payments to BSF based on a percentage of seed sales. They could then recoup the amounts paid from organizations according to their own national systems (or decide not to). While some Contracting Parties have indicated they are not willing to consider this option, as far as the enhanced functioning of the MLS is concerned, it appears likely to be an efficient, effective reform. It is also noted that some stakeholders have declared that this option would be unacceptable if the amounts paid were recouped as a tax.

2.2. Revised article 6.11 formula to promote flatter, simpler system

Another option is to develop a revised benefit-sharing formula based on a revision of article 6.11 of the SMTA whereby a recipient could elect to have the possibility of facilitated access to the PGRFA of a crop, or of all crops, in the MLS over a period of time during which it made annual payments to the BSF based on seed sales or some other mechanism such as a crop specific formula. One of the reasons article 6.11 does not currently actually lower tracking and tracing costs is that, at its expiration, it reverts back to article 6.7 style benefit sharing, which requires recipients to track and trace their uses of materials received. A revised article 6.11-based model would have to be structured so that there is no reversion to another benefit-sharing formula that requires tracking and tracing. It would have to be structured so that payments do not need to be made in perpetuity. Another disincentive to broader adoption of

⁵ Available at http://www.planttreaty.org/sites/default/files/OWGEFMLS2w6_en.pdf

⁶ Available at <http://www.planttreaty.org/sites/default/files/EFMLS2Inf41.pdf>

6.11 is its complexity, embodying three different forms of benefit sharing, namely (1) a discounted rate on all seed sales during its period of validity, (2) article 6.7-style payments at a discounted rate after the end of its period of validity, and (3) 6.8-style payments, except that they are mandatory (instead of voluntary), imposed on all subsequent recipients of PGRFA under Development. The last of the three 6.11 forms of benefit-sharing is a major disincentive for collaborative breeding programs such as those between the CGIAR Centers and their NARS partners in developing countries. This is currently the only situation giving rise to mandatory 6.8-style payments, and yet helping NARS breeding programs is the most important modality for CGIAR to share benefits with developing countries. Adoption of 6.11 in its current form would cause developing country breeding programs to become the major contributors to the BSF, which is not consistent with the spirit of the ITPGRFA. Therefore, Annex 3 paragraph 3 needs to be deleted regardless of any other revisions to the SMTA.

The problems with the 6.11 formula could be removed by replacing the reversion to 6.7-style payments with termination of the obligation to pay and deleting the obligatory 6.8-style payments for collaborative breeding programs. SMTA Annex 3 paragraph 4 further complicates options to introduce a termination clause, by tying the period of validity to the first acquisition. Currently, once recipients opted to receive materials under 6.11, they would be obliged to make payments and be free to access materials for a number of years (10 currently) with no additional obligations. A termination clause would need to tie the period of validity to the last access. For example, one way would be state, in the SMTA, that recipients shall be required to make payments for an additional five years after the last receipt of materials under this formula. So if material was received in year 9, the recipient would make payments until year 14. Thereafter, they could use any materials received for purposes set out in the SMTA without any need to make benefit-sharing payments of any kind. A simpler alternative could be simply to delete the last sentence of Annex 3 para 4, so that every access under 6.11 starts a new (but not cumulative) 10 year period, and payments would simply stop 10 years after the last access. Such changes would greatly simplify and increase the attractiveness of 6.11. In summary, we suggest:

- Deleting “renewable in accordance with *Annex 3* to this Agreement” from 6.11(b);
- Deleting Annex 3 paragraph 3; and
- Deleting Annex 3 paragraph 4.

In keeping with the current logic of the MLS, payments would be based on commercial sales of PGRFA products on the open market. It should not be based on fees that may be charged when transferring PGRFA under development as part of a multi-actor PGRFA development/improvement chain.

In the interest of supporting/fostering the development of small and medium sized plant breeding and seed enterprises, it would be worth considering exempting payments from organizations/companies whose annual sales fall under a minimum threshold, for example, 2

million USD per year. Such an exemption would not be extended to subsidiaries of companies with annual seed sales that exceed 2 million USD per year.

2.3. One option v two to three options for benefit sharing included in the SMTA

On one hand, the system would be significantly simplified if just one monetary benefit sharing option was included in the SMTA. On the other hand, it may be that there is a sufficient range of different situations to justify having more than one monetary benefit-sharing option for recipients to choose from. It is argued by some that 6.11 cannot be made the only option because it is incompatible with benefit sharing provided for under the Treaty. If so, it may be possible to make it the default and most attractive option by revisions to 6.7 and 6.8 to make them comparatively less attractive.

2.4. Transferring PGRFA to recipients in non-Contracting Parties using the SMTA

A number of the CGIAR Centers that signed agreements with the ITPGRFA Governing Body are located in, and hosted by, countries that are not Contracting Parties to ITPGRFA. Furthermore, a significant amount of the PGRFA in these Centers' collections was originally collected from countries that are not ITPGRFA Contracting Parties. Moreover, a significant additional amount of PGRFA has already been contributed to the MLS by non-Contracting Parties by providing PGRFA under the SMTA. Additionally, a significant number of the least developed countries are not ITPGRFA Contracting Parties; being the most in need of assistance, the apolitical global imperative to promote food security and alleviate poverty among the poorest of the poor must not be put at risk by seeking to deny them access.

All these issues are pertinent to the following sentence in the CGIAR alliance statement issued upon signing the agreements with the Governing Body: *"It is understood that nothing in Article 2 of the Agreement will prevent the Centers from making available PGRFA held by it to non-Contracting Parties"*. It is essential that the CGIAR Centers continue to have flexibility/autonomy to make PGRFA available to ITPGRFA non-Contracting Parties, both from the article 15 collections and Center-improved materials incorporating PGRFA from the MLS. Of course, as is currently the case, they will use the SMTA when transferring such materials to recipients including those in countries that are not ITPGRFA Contracting Parties.

Additionally, since some of the biggest potential commercial users are located in ITPGRFA non Contracting Parties, making materials available to them under the SMTA should increase the quantum of funds shared through the BSF.

Finally, some of the largest financial donors to CGIAR are also countries, or non-governmental organizations with their headquarters in countries, that are not ITPGRFA Contracting Parties.

In the event that a single option subscriber/membership model is adopted, it will be critically important for CGIAR that organizations and individuals in ITPGRFA non Contracting Parties can elect to subscribe or become members.

2.5. Transferring PGRFA to small holder farmers

CGIAR and its partners in national programs have been concerned with transaction costs and practical difficulties associated with transferring PGRFA to farmers, partly as a result of the scope and modus operandi of the MLS. The uses smallholder farmers make of material they receive from genebanks and research organizations can sometimes be hard to define, including a mix of research, breeding and direct use.

When in doubt, it makes most sense to use the SMTA. But this is potentially problematic for two reasons. The first reason is based on the impracticality of this approach. In many parts of the world, the use of the SMTA is unrealistic to transfer materials to smallholder farmers, who are often illiterate. And it is even more unrealistic to expect them to pass on such materials to other farmers in informal seed systems using the SMTA. At the same time, it is critically important that farmers receive, evaluate, (sometimes cross) and select promising materials, and to pass them on to other neighboring farmers through informal mechanisms, where and when they exist. (In many countries, the overwhelming majority of small holder farmers' reproductive materials are sourced through informal channels.) Insisting on the use of the SMTA creates disincentives for farmers to receive, use and pass on such materials. The second reason is that it unfairly passes on responsibility for interpreting whether or not their uses of materials constitutes a) research and breeder or b) direct use, to the farmers themselves. The Technical Advisory Committee on the MLS/SMTA noted in situations of uncertain uses by farmers that the transferor could use *both* the SMTA covering the research and breeding, and a shorter MTA that would apply in the case of direct use (assuming a right to pass it on for such a use). CGIAR appreciates the logic behind this approach, based as it is on the current logic and structure; however, our view is that it is far too complicated. We hope that in the context of this exploration of options for the enhanced functioning of the MLS, some practical accommodation for small farmers can be considered.

2.6. Expansion of Annex 1 to include all crops

While the Annex 1 list of crops covers most major crops, there are notable exclusions which, if included in the MLS, could significantly affect the BSF. These include extremely important food and feed crops such as the genera *Arachis* (groundnut or peanut), *Glycine* (soybean), *Saccharum* (sugarcane), *Capsicum* (peppers) and *Lycopersicum* (tomato). Also excluded from Annex 1 are all wild relatives of cassava (*Manihot* species other than *M. esculenta*), *Phaseolus polyanthus* (one of the five species of domesticated beans), *Solanum phureja* (the yellow potato), all the Andean Root and Tuber Crops (including *Ahipa*, FAO's April 2015 Traditional Crop of the Month), and several important small millets along with their wild relatives. Many



of these crops and crop wild relatives are included in 'in trust' collections in CGIAR genebanks and subject to our article 15 agreements with the Governing Body. For those that are not, the importance of these crops to global agriculture, particularly in developing countries more than justifies their protection and inclusion in a global system such as the MLS. Expansion of the MLS to include all crops is critical for global food security and needs to be considered as a mechanism to enhance the BSF.

**Third meeting of the Ad-Hoc Open Ended Working Group to enhance the
Multilateral System of the International Treaty**

**Summary of preferred options: Informal meeting of the Asia Region,
Tokyo (Japan), 25-26 August 2014**

The Asia Region is making available to the Working Group the summary of the informal meeting held by the Asia Region in Tokyo (Japan) on 25-26 August 2014. This summary was already presented by the regional representatives at the second meeting of the Working Group.

Increase user-based payments

- retain 6.7/6.8 and 6.11
- mandatory for 6.8
- rate differentiation between 6.7 (higher rate) and 6.8 (lower rate)
- refine 6.11
- rate differentiation between seed protected by patent and seed protected by PVP (applies to 6.7 and 6.11)
- rate differentiation between 6.7, 6.8 and 6.11, in which 6.11 would have lowest rates
- payment rates for seed derived from protected parental lines, i.e. hybrid seeds

Contribution payments by Contracting Parties

- continue to encourage contracting parties to make contribution payments based on seed-sales (Norwegian approach)

Crop coverage

- if general consensus is reached on measures to increase user-based payments, we would consider adding additional crops to the coverage, such as soybean, groundnut, vegetables, ornamental for food and agriculture and removal of some of the observations in Annex I
- agree on step-by-step approach of expansion of the list

Technology transfer

- continue to support the further development of the platform for co-development and transfer of technology

- additional tools, such as the research collaborative partnerships among developers of PGRFA under development to be added
- a framework agreement and criteria would be developed for such cooperative research arrangements that would protect the interest of all developers in such cooperation, such as confidential information, IPRs, payment for the use of material from the MLS.
- Such cooperative research approach can also be developed for farming communities and NGO networks
- the BSF would be directed to assist the implementation and operation of the platform; based on Window 3, create a structural link between BSF funding priority for 'Information exchange, Technology Transfer and Capacity Building' and the platform

In-situ conservation

- support of GIAHS and the establishment and support of national PGRFA in-situ conservation heritage site
- a protocol similar to the Ramsar Convention on Wetlands can be developed under Treaty for Contracting Parties to designate, conserve and manage such sites
- the Protocol will set the standards for the designation, conservation and management of the national PGRFA in-situ conservation heritage sites
- the Protocol will set the standards for in-situ access to PGRFA in the national PGRFA in-situ conservation heritage sites and GIAHS in accordance with Article 12.3(h)
- the BSF would be directed to assist farmers in the conservation of PGRFA on these sites through information exchange, capacity building, transfer of relevant technologies; in two steps:
 1. install a Window for GIAHS and national PGRFA in-situ conservation heritage site
 2. install possible structural link between BSF funding priority for on-farm management and conservation with GIAHS and national PGRFA in-situ conservation heritage site under the Protocol

Next BSF project cycle

Arising from the assessment of the BSF, Asia will support the continuation of the BSF project cycle and next call for proposals in the coming biennium in the next cycle, priority will be given to those mechanisms in bold, namely:

1. Exchange of info, TT and Capacity building
 - a. **Exchange of information --- use and exchange of information by farming communities through Global Information System**
 - b. **Technology transfer --- platform for co-development and transfer of technology --- use, exchange, and improve technology packages by and for farming communities and ; co-development and transfer of technology, including for material under development**

2. **on-farm conservation and management**
 - a. **GIAHS**
 - b. **national PGRFA in-situ conservation heritage site**

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The inputs below complement the information provided in the Summary of the informal meeting by the Asia Region, held in Tokyo (Japan) on 25-26 August 2014. Such summary has also been made available to the Working Group.

These inputs are under discussion and being further refined by regional representatives from Asia, in preparation of the third meeting of the Working Group. We submit these inputs as they may give *food for thought* to regional and stakeholder groups in the consultations preceding the meeting.

Dimensions of change

In influencing the volume of user-based income to the Benefit-sharing Fund (BSF) the following factors can be considered:

- Rates
- Voluntary or mandatory nature of payments
- Methods of payment
- Coverage (annex 1) of crops
- Number of users

Based on the above, consideration is given to different models to increase the income to the Benefit-sharing Fund.

Subscription Model

The Subscription Model is a new model. It is just like paying a membership fee to join a library, to subscribe or be a member of the Multilateral System (MLS). Once you have subscribed, you can then borrow books from the library (have access to materials in the MLS). However every time you borrow a book, you would sign a contract to access to the book (sign a SMTA for access to the material in the MLS). The circulation of the book is limited (closed system) (circulation of materials including PGRFA under development is limited). You can only pass the book (materials) to other subscribers and not to non-subscribers.

This closed system will minimize avoidance as non-subscribers cannot have access to materials in the MLS. Recipients in non-Contracting parties can have access if they subscribe.

Subscribers

- All users have to subscribe to the MLS. Only those who subscribe to the MLS will have access to all materials including PGRFA under development in the MLS (closed system).

- Providers in Contracting Parties can only provide materials (including PGRFA under development) to subscribers in Contracting Parties and subscribers in Non-Contracting Parties.
- Subscribers cannot provide materials (including PGRFA under development) to users (non-subscribers) in Non-Contracting Parties (closed system). Providers in non-Contracting Parties can provide materials including PGRFA under development to subscribers in Contracting Parties. However such subscribers can only provide such materials to other subscribers.

Subscription fee and other payments

- Under the subscription model there are two payments – one for subscription to be a member of the MLS and another payment when you commercialises a product in the open market. If this model is accepted, the Working Group has work out the payment rates for the annual subscription fee and for Articles 6.7 and 6.8.
- The subscription model has several advantages over Article 6.11 which only has one payment (prepayment or advance payment).
- Under this Model, there is a possibility of double payments. For the sale of the same seeds, you may pay under the annual subscription fee and also under Article 6.7 or under Article 6.8.
- The subscription fee is not a subscription for access but a formula under the benefit sharing arrangement consistent with level, form and manner of the payment, in line with commercial practice under 13.2.d of the Treaty. It is therefore consistent with the Treaty.
- The annual subscription fee is based on the commercial sales of products of all MLS crops in the open market and non MLS crops' products that incorporate MLS materials. Therefore licensing/royalty payment for PGRFA under development will be excluded unless such licensing/royalty are commercially available in the open market.
- The rate for calculation of the subscription fees will be small maybe 0.1 percent of products' sales.
- The prepayment or advance payment is the annual subscription fee which can be based on a percentage of commercial sales of all seeds (products) of Annex 1 crops as well as seeds (products) of other crops that incorporate materials from the MLS (this is the same as Article 6.11 except that the payment is on all crops of Annex 1)
- Future payments under Article 6.7 or 6.8 under the Subscription Model will need to be discussed.

Revision of rates of the current SMTA

- If there is only a revision of the rates within the current SMTA while making 6.8 mandatory, it is suggested to keep Article 6.11 rate at 0.5 % and make rates of payment under 6.7 and 6.8 very high. It is suggested to have a rate of payment under Article 6.7 at 5% (10 times) and for Article 6.8 at 2.5% (5 times).

Contracting Parties undertaking payments for all users/recipients in their territories

This is another measure under discussion which allows Contracting Parties to undertake payments for all users/recipients of MLS materials in their territories. This option is the easiest to implement. Payments are based on the sales of all seeds (0.1% of total seed sales in the Norwegian formula). Articles 6.7/6.8 are retained. SMTAs are signed between providers and recipients. However users/recipients in Contracting Parties that undertake to make payments do not have to make any payment under Articles 6.7/6.8. Article 6.11 is deleted. No need for any tracking and tracing within their territories. Tracking and tracing is only necessary in Contracting Parties which do not undertake to make the payments.

This measure can be implemented through Art.13 and Art.18 of the Treaty - that means the Funding Strategy and the Financial Rules applicable to the Benefit-sharing Fund for commercial benefit-sharing to create effective allocation of predictable and agreed resources. The following proposed texts will enable the implementation of this measure.

Under the Funding Strategy, a new sub-item could be introduced under paragraph 2.1 (section II AIMS of the Funding Strategy adopted by the first Session of the Governing Body of the International Treaty, IT/GB-1/06/Report, Appendix F)

- g. Payments of Contracting Parties for all users and recipients of Multilateral System materials in their territories. Payments are based on the sales of seeds in each Contracting Party and reflected in a Scale agreed by the Governing Body at each regular session for the next biennium. The Sum Total of the Scale for the next biennium shall be the difference between financial resources generated under paragraph 2.1(d) above in the previous biennium and the funding target established by the Governing Body for the previous biennium under Article 18.3 of the Treaty.

Under the Financial Rules, a new sub-item could be introduced under Rule V Provision of Funds, in paragraph 5.1 (Financial Rules of the International Treaty, IT/GB-4/11/Report, Appendix A.1)

- l) Contributions from Contracting Parties to the Benefit-sharing Fund of the Treaty, with an indicative scale of contributions available to a Contracting Party upon its request to the Treaty Secretary, to serve as guidance regarding the possible level of its contribution. This scale of contributions shall be adopted by the Governing Body by consensus and maintained by the Treaty Secretary, and shall achieve a funding target established under Article 18.3. The Scale shall be based on based on seed sales in Contracting Parties, adjusted so as to ensure that the Sum Total of the Scale amounts to the difference between the contributions

received under Rule 5.1j above in the previous biennium and the funding target established by the Governing Body for the Benefit-sharing Fund for the previous biennium under Article 18.3 of the Treaty.

Submission by the Near East Region:
Proposal for a Subscription Model with obligations for Contracting Parties
within a possible Treaty Protocol

One of the innovative approaches to increase income to the Benefit-sharing Fund identified already during the last biennium by the *Ad Hoc* Advisory Committee on the Funding Strategy was to promote regular seed sales-based contributions by Contracting Parties. At its second meeting, the Working Group agreed that such approach should be further explored as part of the range of measures to be proposed to the Governing Body (IT/OWG-EFMLS-2/14/Report, paragraph 15).

The representatives from the Regional Group of the Near East have prepared this proposal of a Subscription Model within a possible Treaty Protocol, providing for facilitated access to Protocol Parties as well as to subscribers, based on a benefit-sharing mechanism where Protocol Parties, on behalf of their constituencies, will be responsible for providing regular and predictable funds to the Benefit-sharing Fund. The major advantages of this proposal lie in its overall simplicity; the reduced administrative burden for Protocol Parties, the Treaty Secretariat and the users (which could be minimized by combining it with an expansion of the coverage); the guarantee of a predictable flow of income to the Benefit-sharing Fund; and the flexibility it leaves to Protocol Parties to decide how they would like to raise the funds, including by involving the users (subscribers).

This proposal will be complemented by other measures which would each provide a part of an adequate flow of income to the Benefit-sharing Fund. In this context, the representatives of the Near East wish to recall that its *Proposal for a flexible benefit sharing approach, predicted by the Treaty* which was put forward during the last biennium, is still valid.¹ An improved SMTA besides the proposed model will be necessary to cover transfers to users other than subscribers (for example users in non-Protocol Parties or users who have not subscribed) or transfers after expiry of a subscription.

The following elements could be foreseen to make the scheme operational:

- Contributions will be based on a scale decided by the Governing Body. The scale of the contribution could be based on GDP, scale of contributions to FAO, the established UN scale and national seed sales or other factors related to PGRFA use.
- It would be up to each country, based on a scale arising from discussions by the Governing Body, to decide how to collect and provide such contributions. While some countries may want to include such contributions in their national budget, others may decide to collect it from the seed industry or through its associations. Countries may also discuss a burden-sharing mechanism agreed by industry and government, where each one would provide a certain obligation on a regular basis.
- The scheme can be put in place with simple number of changes to the Financial Rules of the Governing Body, by including or revising the following Rules:

New 5.1. bis Contributions to the Benefit-sharing Fund from Contracting Parties, with a scale of contributions available to a Contracting Party upon its request to the Treaty Secretary, to serve as guidance regarding the possible level of its contribution. This scale of contributions shall be adopted by the Governing Body by consensus and maintained by the Treaty Secretary, and shall be based on the scale of contributions adopted from time to time by the United Nations and a number of indicators related to use of PGRFA within each Contracting Party, such as national seed sales;

¹IT/ACFS-7 RES/13/Report, Appendix 4. http://www.planttreaty.org/sites/default/files/ACFS-7b_Report%20FINAL.pdf

5.2 In respect of contributions made pursuant to Rule V.1b and Rule V.1b. bis:

a) Contributions for each calendar year are expected as soon as possible following receipt of a letter from the Secretary requesting payment of the voluntary contributions.

b) Each Contracting Party shall, as far in advance as possible of the date due for the contribution, inform the Secretary of the contribution it intends to make and of the projected timing of that contribution.

c) Each Contracting Party that wishes to avail itself of the scales of contributions may request a copy from the Treaty Secretariat.

- The development of an effective benefit-sharing mechanism as described above will remove the obstacles to expand the access and benefit-sharing provisions of the Treaty. The Contracting Party contributions could be integrated in a possible Protocol to the Treaty, which would:
 - [Scope] expand the scope of application of the access and benefit-sharing provisions under the Treaty
 - [Benefit-sharing mechanism] contain, as its main benefit-sharing mechanism, a provision whereby
 - the Parties to the Protocol shall contribute to the Benefit-sharing Fund pursuant to a scale that shall be adopted by the Governing Body (as Meeting of the Parties to the Protocol);
 - the scale shall be based on the scale of contributions adopted from time to time by the United Nations, adjusted by a number of indicators related to use of PGRFA within each Contracting Party, such as national seed sales.
 - It would be up to each country, to decide whether and how to link, at national level, this benefit-sharing mechanism with the subscription system described below, including with regard to possible user-based payments (subscription fee), establishing payment levels for different categories of users or crops, or the trigger for payments.
 - [Subscription system] contain framework provisions relating to a subscription system to be implemented at national level, whereby
 - [Who subscribes] Natural and legal persons within the jurisdiction of the Parties to the Protocol shall be eligible to register as subscribers;
 - [How to subscribe] Through a register to be opened at national level within Protocol Parties;
 - [Scope of the subscription] Covers all crops to which the subscription system applies, but grants subscribers an option to subscribe only to certain crops;
 - Subscribers shall have facilitated access to PGRFA within the Protocol pursuant to simplified terms and conditions, and
 - Transfers will only happen between subscribers without an SMTA;
 - Transfers between subscribers and natural and legal persons within the jurisdiction of Parties to the Protocol, who are not subscribers, shall require an SMTA;
 - Transfers between subscribers and natural and legal persons in the jurisdiction of non-Parties to the Protocol shall require an SMTA;
 - [Subscription period] would be for [10] years with possibility of renewal.
 - After termination of the subscription, all material accessed under the terms and conditions of the subscription system shall fall under the provisions of the MLS and its SMTA, including for crops not contained in Annex 1.