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ON PLANT GENETIC RESOURCES FOR FOOD AND AGRICULTURE



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INTERNATIONAL TREATY ON PLANT GENETIC RESOURCES FOR FOOD AND AGRICULTURE

FOOD AND AGRICULTURE ORGANIZATION OF THE UNITED NATIONS

THIRD SESSION OF THE GOVERNING BODY

Tunis, Tunisia, 1 – 5 June 2009

EXPERIENCE OF THE INTERNATIONAL AGRICULTURAL RESEARCH CENTRES OF THE CONSULTATIVE GROUP ON INTERNATIONAL AGRICULTURAL RESEARCH WITH THE IMPLEMENTATION OF THE AGREEMENTS WITH THE GOVERNING BODY, WITH PARTICULAR REFERENCE TO THE USE OF THE STANDARD MATERIAL TRANSFER AGREEMENT FOR ANNEX 1 AND NON-ANNEX 1 CROPS.

Introduction

1. At its Second Session, the Governing Body endorsed the use of the Standard Material Transfer Agreement by the International Agricultural Research Centres, for plant genetic resources for food and agriculture other than those listed in *Annex I* of this Treaty and collected before its entry into force, with an interpretative footnote or series of footnotes that indicated that certain of its provisions should not be interpreted as precluding such use of the SMTA.¹ It also decided that it would review these measures during its consideration of the Standard Material Transfer Agreement at its current session.²
2. Pursuant to the decision of the Governing Body, and in accordance with the Agreement between the Governing Body and the International Agricultural Research Centres (IARCs) of the Consultative Group on International Agricultural Research (CGIAR), the Secretary held consultations with Bioversity International, on behalf of the IARCs, to seek their views and input to assist the Governing Body in its review of the said measures.
3. Following the consultations, the Secretary received a report from Bioversity International on behalf of the IARCs of the CGIAR, based on system-wide consultations and describing their experiences in the use of the Standard Material Transfer Agreement for both *Annex I* and non-*Annex I* crops. The Report is contained in the *Appendix* to this document, in the form received from Bioversity International on behalf the IARCs of the CGIAR.
4. The report submitted by the CGIAR Centres highlighted that the “Centres still have only limited experience with the use of the SMTA to date” and that “the impression of the Centres is

¹ Paragraph 68, IT/GB-2/07/Report.

² Ibid.

that the SMTA is attracting increasing acceptance by potential recipients as they become more familiar with its terms". During the period covered by this report, no potential recipients explicitly refused to accept materials under the SMTA.

5. The Governing Body is invited to take note of the report, and to take any decisions necessary.

Appendix

EXPERIENCE OF THE INTERNATIONAL AGRICULTURAL RESEARCH CENTRES OF THE CONSULTATIVE GROUP ON INTERNATIONAL AGRICULTURAL RESEARCH WITH THE IMPLEMENTATION OF THE AGREEMENTS WITH THE GOVERNING BODY, WITH PARTICULAR REFERENCE TO THE USE OF THE STANDARD MATERIAL TRANSFER AGREEMENT FOR ANNEX 1 AND NON-ANNEX 1 CROPS.

The International Agricultural Research Centres of the Consultative Group on International Agricultural Research (IARCs) submitted its first report on the implementation of the Agreements with the Governing Body of the Treaty to the Second Session of the Governing Body in October/November 2007. The report summarized the experience of the IARCs with the implementation of the Agreements and the use of the Standard Material Transfer Agreement (SMTA) for the transfer of plant genetic resources for food and agriculture (PGRFA) of crops and forages listed in Annex 1 of the Treaty, for the period 1 January 2007 through 1 August 2007. This second report covers the period 1 August 2007 through 31 July 2008. The report covers acquisitions and distribution of germplasm by both genebanks and Centres' breeding programmes.

At its Second Session, the Governing Body endorsed the use of the SMTA also for non-Annex 1 material held by the IARCs and collected before the entry into force of the Treaty, with a footnote or series of footnotes explaining that the use of certain terms in the SMTA should not be interpreted as precluding the use of the SMTA for non-Annex 1 material. The IARCs commenced using the SMTA on 1 February 2008. In accordance with the decision of the Governing Body, the same SMTA including the interpretative footnotes is being used by the IARCs for the transfer of both Annex 1 and non-Annex 1 materials, thus avoiding the need for two different versions of the SMTA. The present report provides information on acquisition and distribution of non-Annex 1 materials from 1 August 2007 to 31 July 2008, i.e., both before and after the IARCs started using the SMTA for non-Annex 1 materials.

The main elements of the report on acquisitions and distribution of Annex 1 and non-Annex 1 PGRFA are summarized in sections 2 – 5, and further details are given in the tables and pie charts set out in Appendices A - D.

1. The use of the SMTA by the IARCs for the Transfer of PGRFA of Annex 1 and Non-Annex 1 Crops and Forages

A copy of the SMTA being used by the IARCs for both Annex 1 and non-Annex 1 material is attached as Appendix E to this report. The form and content of the explanatory footnote follows that communicated to Bioversity International by the Secretariat of the Governing Body on 14 January 2008. The first report presented to the Second Session of the Governing Body in 2007 indicated that only three potential recipients rejected the SMTA. This second report indicates no formal rejections, in the sense that potential recipients formally notified the IARCs if they could not accept the SMTA. This should be treated with a certain amount of caution, in the sense that

This report was prepared by the System-wide Genetic Resources Programme (SGRP) of the Consultative Group on International Agricultural Research (CGIAR) as an input to the Third Session of the Governing Body of the International Treaty on Plant Genetic Resources for Food and Agriculture, Tunis, Tunisia, 1-5 June 2009.

potential recipients that initially expressed concerns with the SMTA have not always had those concerns allayed, and a number of potential recipients may not be proceeding with completion of orders and signature of the SMTA. However, the impression of the Centres is that the SMTA is attracting increasing acceptance by potential recipients as they become more familiar with its terms.

2. Numbers of Annex 1 materials acquired during the period 1 August 2007 through 1 August 2008

During the period from 1 August 2007 to 31 July 2008, a total of 7,264 samples of Annex 1 germplasm were acquired by the IARCs. The majority of these were acquired by the genebanks as opposed to the breeding programmes. All the Annex 1 materials received by the genebanks were acquired under the SMTA or otherwise on the condition that the genebank could further distribute it using the SMTA. 80.38% of the material received by the breeding programmes was acquired on the same basis. Over half of the material received by genebanks constituted inter-Centre transfers; over 46% came from developing countries; and just over 2% came from developed countries.

3. Numbers of Annex 1 materials sent out under the SMTA during the period 1 August 2007 through 1 August 2008

A total of 444,824 samples of Annex 1 PGRFA were distributed under the SMTA during the reporting period.³ Of these, 323,322 (72.68%) consisted of improved material from the breeding programmes, all of which was distributed as PGRFA under Development, without any additional conditions. Of the 121,502 (27.32%) distributed by the genebanks, 95,236 (21.41%) were unimproved germplasm and 26,266 (5.91%) improved material distributed as PGRFA under Development. Of the improved material distributed by the genebanks as PGRFA under Development, 99.75% was distributed without additional conditions. The only PGRFA under Development distributed with additional conditions were the 68 samples distributed under the Musa Crop Improvement and Evaluation Programme coordinated by Bioversity International. The additional conditions reflect additional conditions under which the PGRFA under Development was received by Bioversity from participants in the Programme. These conditions relate to the reporting of evaluation data back to the original provider of the PGRFA under Development, and the preservation of the rights of the original provider in respect of commercialization of the PGRFA under Development.

The IARCs provided details about the type of country – i.e., developing country, country with economy in transition, developed country – for 78% of the samples distributed. Based on these data we extrapolate that of the total samples distributed by the IARCs, 74 % were sent to developing countries and 6% to developed countries, with a similar amount (6%) to countries with economies in transition. The remaining 14% were inter-Centre transfers.

4. Numbers of non-Annex 1 materials acquired during the period 1 August 2007 through 1 August 2008

³ It is important to recall that CIAT has provided two full years of distribution data, with a total of 53,119 transfers, from January 1 2007 to December 31, 2008. A more accurate total could possibly be derived by dividing the CIAT total in two, and subtracting it from the overall total number of samples (ie 444,824 - 26,558 = 418,266).

During the reporting period, a total of 67 samples of non-Annex 1 germplasm were acquired by the IARCs, all of them by the genebanks. No non-Annex 1 materials were acquired by the breeding programmes directly. 71.64% of this material was acquired under conditions that would allow the IARC to further distribute the material using the SMTA. All the material was acquired from developing countries.

5. Numbers of non-Annex 1 materials sent out under the SMTA during the period 1 August 2007 through 1 August 2008

A total of 6,546 samples of non-Annex 1 PGRFA was distributed under the SMTA during the reporting period. Of these, 1,428 (21.82%) consisted of improved material from the breeding programmes, all of which was distributed as PGRFA under Development, without any additional conditions. Of the 5,118 (78.18%) distributed by the Genebanks, 5,112 consisted of unimproved germplasm, and 6 improved material distributed as PGRFA under Development. All non-Annex 1 material distributed by the genebanks as PGRFA under Development was distributed without additional conditions.

Of the total samples of non-Annex 1 material distributed by the IARCs, 3,927 (60%) were sent to developing countries, 516 (8%) to developed countries and 19 (<1%) to countries with economies in transition. The remaining 2,084 (32%) were inter-Centre transfers.

The above figures do not reflect distributions coordinated by the World Agroforestry Centre (ICRAF), and carried out by the National Tree Seed Centres and NARS who have the mandates to distribute germplasm in a centralised way. ICRAF is promoting more decentralised ways to procure and disseminate quality seed and seedlings, thus increasing the efficiency of distribution and use and establishing decentralised sources in farmers' landscapes

6. Experience of the Centres with respect to the use of the SMTA

a. Concerns expressed by potential recipients

During the period covered by this report, no potential recipients explicitly refused to accept materials under the SMTA.

In only a few cases have Centres reported concerns expressed by potential recipients regarding the SMTA and its use. To a certain extent, the concerns raised are being allayed by increased familiarity of potential recipients with the terms and conditions of the SMTA and explanations of those terms and conditions. In cases where concerns have been expressed by potential recipients, these have related to the following:

- *Thresholds for and the duration of obligations to make payments.*
In this connection, the Frequently Asked questions (FAQs) included on Centres' websites indicate that the obligation to make payments would not extend beyond the period that the restrictions are in force, e.g. for patents that restrict further availability for research and breeding, the period of patent protection.
- *Requirements that records be kept in perpetuity.*
- *Agreement clarity.*

b. Views on the use of the SMTA expressed by the Centres

Centres still have only limited experience with the use of the SMTA to date. However, a number of legal and technical queries have been raised by individual Centres a number of legal and technical questions have been raised in the course of implementing the SMTA on which the Centres need authoritative guidance. Since these questions may require legal and technical analysis, the Centres would appreciate it if some inter-sessional mechanism could be set up to provide such analysis and guidance.

In addition to the above, the Centres wish to draw the attention of the Governing Body again to the following points that were raised in their first report:

- *Definition of “Material” in the SMTA*

Article 6.5 b) requires the Recipient to “identify, in Annex 1 to the new material transfer agreement, the Material received from the Multilateral System, and specify that the Plant Genetic Resources for Food and Agriculture under Development being transferred are derived from the Material”. In this context, the Centres have noted that the capitalization of the term “Material” denotes that the term is defined in Article 3 of the SMTA as meaning the PGRFA specified in Annex 1 to the SMTA: i.e. the material being transferred under the SMTA in question. It is the understanding of the Centres that the “material” referred to in Article 6.5 b) is in fact the material originally received from the Multilateral System and not the Material (PGRFA under Development) actually being transferred under the SMTA. If this understanding is correct, the Governing Body may wish to consider whether to recommend the inclusion of an explanatory footnote in the SMTA to this effect, in order to avoid confusion for future recipients of PGRFA under Development.

- *Transfers of PGRFA as part of a service provision*

Some Centres have raised the problem of dispatch of materials strictly for the purpose of laboratory analysis or other services on behalf of the Centre. It is understood that such dispatches are not transfers of PGRFA for use for research, breeding or training, within the meaning of the Treaty, and that the use of the SMTA for such dispatches is not appropriate. Indeed, the delivery of material for such service purposes specifically does not authorize its use for research, breeding or training, transfer to others by the service provider, or retention or use by the service provider after the service is provided. The contract for such services contains wording to that effect.

Where material is to be sent for both service purposes and for use for the recipient’s own training, breeding and research, the material is being sent with the SMTA in addition to the service contract provisions.

- *Reporting schedule and format*

Article 5 e) of the SMTA grants that the Provider of PGRFA under the SMTA shall periodically inform the Governing Body about the Material Transfer Agreements entered into, according to a schedule to be established by the Governing Body. The Centres would appreciate some guidance from the Governing Body as to the schedule to be followed in reporting, and the preferred format for reports.

c. Information that has come to the knowledge of individual Centres regarding implementation of the SMTA by partners, including NARS.

To date, the experience of the Centres still indicates a limited use of the SMTA on the part of partners from whom they receive materials. A number of Centres have reported requests from national programmes for technical assistance in implementing the Treaty, and the multilateral system of access and benefit-sharing in particular.

7. System-wide activities regarding implementation of SMTA

The Centres have adopted a system-wide approach to their implementation of the Agreements with the Governing Body and in particular the SMTA. This has included the development of a *Guide for the CGIAR Centres' Use of the Standard Material Transfer Agreement*, and a series of *Frequently asked Questions (FAQs)* on the Treaty and the SMTA. The Guide has been recently revised to take into account the decisions of the Governing Body made at its Second Session in October/November 2007. Copies of the Revised Guide and FAQs will be made available for participants at the Third Session of the Governing Body.

The Centres are also participating actively in the FAO/Bioversity International Project on the Information Technology Support for The Implementation of the Multilateral System of Access and Benefit-Sharing, as well as in the FAO/Treaty Secretariat Joint Programme of Assistance to Developing Countries on the Implementation of the Treaty, with particular reference to the Multilateral System.

Conclusions and recommendations

The above report is submitted for the information of the Governing Body. The attention of the Governing Body is drawn in particular to the need for guidance from the Governing Body as to the schedule to be followed in **reporting**, and the preferred **format** for reports.

Appendix A - Annex 1 PGRFA

A.1 Overview of acquisitions and distributions of Annex 1 PGRFA							
(Genebank and Breeding Programmes)							
	Acquisitions	Transfers					
		Normal PGRFA	PGRFA under development	PGRFA under development with additional conditions	Total Transfers	Shipments	Rejections
Bioversity ⁴	32	402	0	68	470	25	0
CIAT ⁵	371	11436	41683	0	53119	543	0
CIMMYT	393	12616	82156	0	94772	1723	0
CIP	9	1204	1650	0	2854	101	0
ICARDA	684	33780	182821	0	216601	141	0
ICRAF ⁶	0	1	0	0	1	1	0
ICRISAT	1635	8172	14495	0	22667	550	0
IITA ⁷	1197	2202	1390	0	3592	119	0
ILRI ⁸	0	162	0	0	162	10	0
IRRI	1991	24318	24763	0	49081	0	0
WARDA	952	1490	15	0	1505	54	0
Total	7264	95783	348973	68	444824	3267	0

⁴ BIOVERSITY figures for genebank only. Has no specific breeding programme.

⁵ CIAT reporting period 1 Jan 2007 to 31 Dec 2008.

⁶ ICRAF figures for genebank only. Breeding programme figures not applicable due to different approach to breeding activities.

⁷ IITA distribution figures includes breeding distribution data for Cowpea and Yam.

⁸ ILRI figures for genebank only. Has no specific breeding programme.

A.2 Breakdown of acquisitions of Annex 1 crops (Genebank and Breeding Programmes)							
	Received by Centre under SMTA	Not received under SMTA, but can distribute under SMTA	Acquisitions	Country			CGIAR
				Developing	Developed	In Transition	
Bioversity ⁹	32	0	32	0	32	0	0
CIAT ¹⁰	0	371	371	297	9	1	52
CIMMYT	0	393	393	393	0	0	0
CIP	0	0	9	1	8	0	0
ICARDA	0	684	684	0	0	5	679
ICRAF ¹¹	0	0	0	0	0	0	0
ICRISAT	851	784	1635	8	0	0	1627
IITA	410	527	1197	4	3	0	1190
ILRI ¹²	0	0	0	0	0	0	0
IRRI	1991	0	1991	1909	82	0	0
WARDA	952	0	952	115	0	0	837
Total	4236	2759	7264 ¹³	2727	134	6	4385

⁹ BIOVERSITY figures for genebank only. Has no specific breeding programme.

¹⁰ CIAT reporting period 1 jan 2007 to 31 Dec 2008. Acquisitions for genebank only. For 12 acquisitions country type not provided.

¹¹ ICRAF figures for genebank only. Breeding programme figures not applicable due to different nature of breeding activities.

¹² ILRI figures for genebank only. Has no specific breeding programme.

¹³ Total not equal to sum of country types + CGIAR because for 12 acquisitions country type not provided.

A.3 Breakdown of Distribution of Annex 1 crops

Genebank and Breeding Programmes					
	Distribution	Country			CGIAR
		Developing	Developed	In Transition	
Bioversity ¹⁴	470	282	103	65	20
CIAT ¹⁵	53119	41615	4013	6	7485
CIMMYT ¹⁶	94772	3764	1491	0	8596
CIP	2854	1409	27	12	1406
ICARDA	216601	158675	9297	21311	27318
ICRAF ¹⁷	1	1	0	0	0
ICRISAT ¹⁸	22667	6104	1337	0	731
IITA ¹⁹	3592	941	302	0	2349
ILRI ²⁰	162	162	0	0	0
IRRI	49081	44311	4271	499	0
WARDA	1505	621	38	0	846
Total ²¹	444824	257885	20879	21893	48751

¹⁴ BIOVERSITY figures for genebank only. Has no specific breeding programme.

¹⁵ CIAT reporting period 1 Jan 2007 to 31 Dec 2008.

¹⁶ CIMMYT Total distribution includes genebank and breeding programmes. Distribution by country type only given for genebank.

¹⁷ ICRAF distribution for genebank only.

¹⁸ ICRISAT Total distribution includes genebank and breeding programmes. Distribution by country type only given for genebank.

¹⁹ IITA distribution figures includes breeding distribution data for Cowpea and Yam.

²⁰ ILRI figures for genebank only. Has no specific breeding programme.

²¹ Total distributions of 444,824 samples is higher than sum of distribution by country type plus CGIAR due to fact that not all Centres provided distribution data divided by country types.

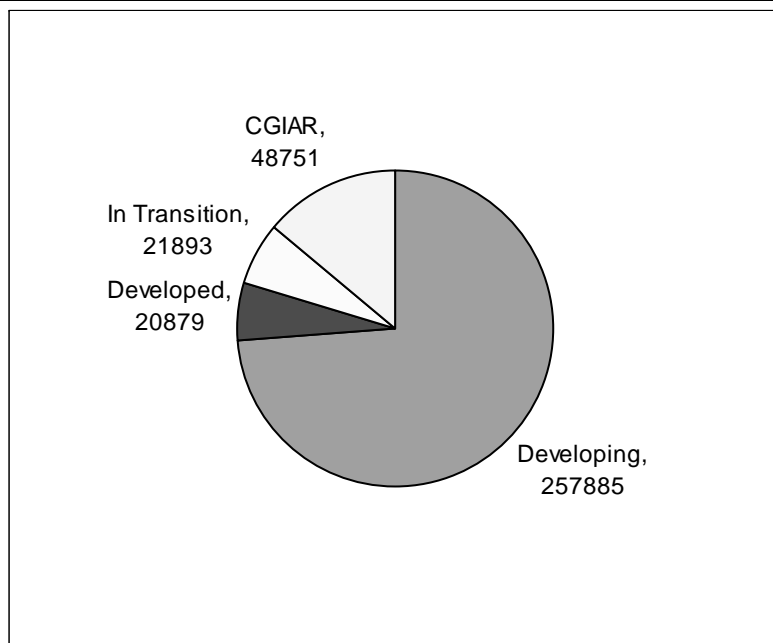


Figure 1 Breakdown of Distribution of Annex 1 crops Genebanks and Breeding Programmes (see Table A3)

A4. Distribution Annex 1 Materials by Genebanks

	Distribution	Country			CGIAR
		Developing	Developed	In Transition	
Bioversity	470	282	103	65	20
CIAT²²	11436	1705	3287	6	6438
CIMMYT	13851	3764	1491	0	8596
CIP	842	529	0	0	313
ICARDA	33780	4884	858	959	27079
ICRAF	1	1	0	0	0
ICRISAT	8172	6104	1337	0	731
IITA	2202	243	250	0	1709
ILRI	162	162	0	0	0
IRRI²³	49081	44311	4271	499	0
WARDA²⁴	1505	621	38	0	846
Total	121502	62606	11635	1529	45732

²² CIAT reporting period 1 Jan 2007 to 31 Dec 2008.

²³ IRRI figures include distribution by genebank and breeding programmes.

²⁴ WARDA figures include distribution by genebank and breeding programmes.

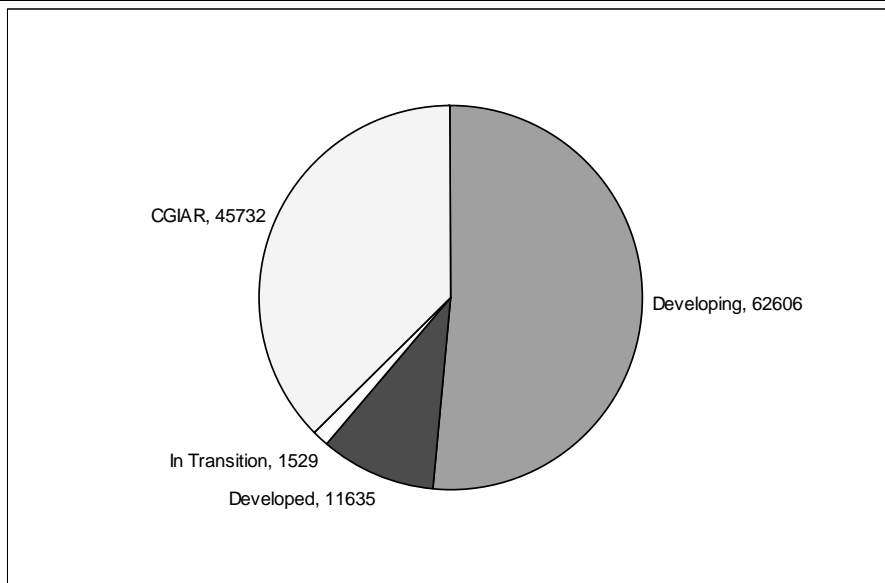


Figure 2 Distribution Annex 1 Materials by Genebanks (see Table A4)

A5. Distribution Annex 1 Materials by Breeding Programmes

	Distribution	Country			CGIAR
		Developing	Developed	In Transition	
Bioversity ²⁵					
CIAT ²⁶	41683	39910	726	0	1047
CIMMYT	80921				
CIP	2012	880	27	12	1093
ICARDA	182821	153791	8439	20352	239
ICRAF ²⁷					
ICRISAT	14495				
IITA ²⁸	1390	698	52	0	640
ILRI ²⁹					
IRRI ³⁰					
WARDA ³¹					
Total ³²	323322	195279	9244	20364	3019

²⁵ BIOVERSITY has no specific breeding programme.

²⁶ CIAT reporting period 1 Jan 2007 to 31 Dec 2008.

²⁷ ICRAF not applicable due to different nature breeding activities.

²⁸ IITA distribution data for Yam and Cowpea.

²⁹ ILRI has no specific breeding programme.

³⁰ IRRI figures included in genebank distribution data.

³¹ WARDA figures included in genebank distribution data.

³² Not all Centres reported distribution by country type. Therefore total sum of parts is not equal to total distributed.

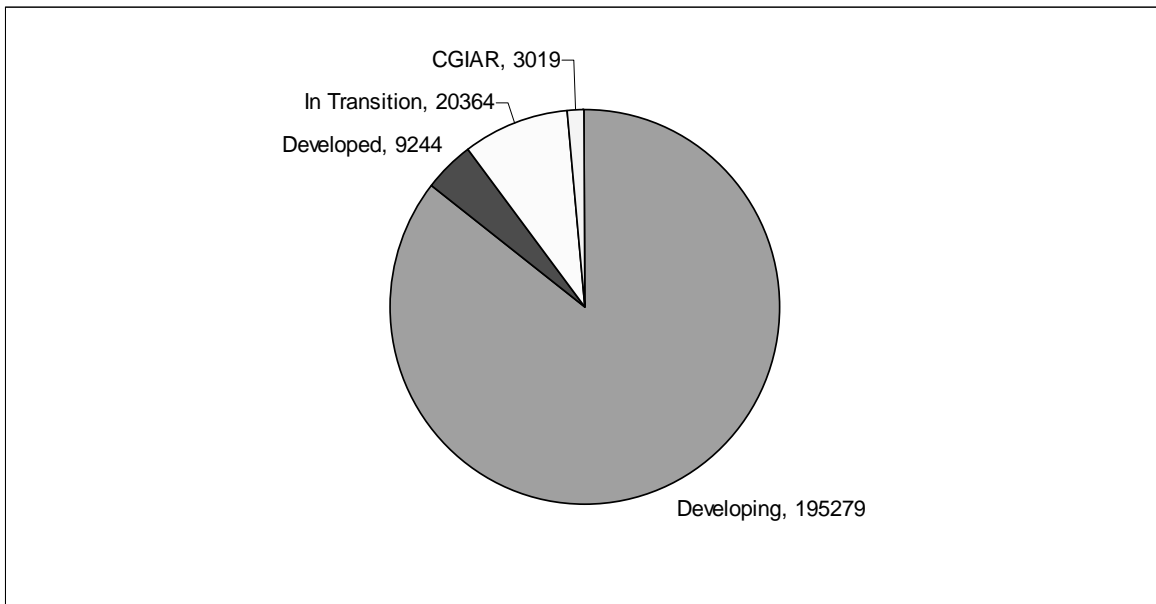


Figure 3 Distribution Annex 1 Materials by Breeding Programmes based on 227,906 of 323,322 distributed samples (see Table A5)

Appendix B – Non-Annex 1 PGRFA

B.1 Overview of acquisitions and distributions Non-Annex 1 PGRFA

(Genebank and Breeding Programmes)

	Acquisitions	Transfers					
		Normal PGRFA	PGRFA under development	PGRFA under development with additional conditions	Total Transfers	Shipments	Rejections
Bioversity ³³	0	3	0	0	3	3	0
CIAT ³⁴	0	846	0	0	846	192	0
CIMMYT	0	39	0	0	39	6	0
CIP	0	143	0	0	143	10	0
ICARDA	0	981	0	0	981	13	0
ICRAF ³⁵	32	13	6	0	19	19	0
ICRISAT	35	2095	1305	0	3400	137	0
IITA	0	906	111	0	1017	38	0
ILRI ³⁶	0	98	0	0	98	9	0
IRRI	0	0	0	0	0	0	0
WARDA	0	0	0	0	0	0	0
Total	67	5124	1422	0	6546	427	0

³³ BIOVERSITY figures for genebank only. Has no specific breeding programme.

³⁴ CIAT reporting period 1 Jan 2007 to 31 Dec 2008. Acquisitions for genebank only.

³⁵ ICRAF figures for genebank only.

³⁶ ILRI figures for genebank only. Has no specific breeding programme

B.2 Breakdown of acquisitions Non Annex 1 crops (Genebank and Breeding Programmes)							
	Received by Centre under SMTA	Not received under SMTA, but can distribute under SMTA	Acquisitions	Country			CGIAR
				Developing	Developed	In Transition	
Bioversity ³⁷	0	0	0	0	0	0	0
CIAT ³⁸	0	0	0	0	0	0	0
CIMMYT	0	0	0	0	0	0	0
CIP	0	0	0	0	0	0	0
ICARDA	0	0	0	0	0	0	0
ICRAF ³⁹	0	13	32	32	0	0	0
ICRISAT	0	35	35	35	0	0	0
IITA	0	0	0	0	0	0	0
ILRI ⁴⁰	0	0	0	0	0	0	0
IRRI	0	0	0	0	0	0	0
WARDA	0	0	0	0	0	0	0
Total	0	48	67	67	0	0	0

³⁷ BIOVERSITY figures for genebank only. Has no specific breeding programme.

³⁸ CIAT reporting period 1 Jan 2007 to 31 Dec 2008. Acquisition includes genebank only.

³⁹ ICRAF genebank acquisitions only.

⁴⁰ ILRI figures for genebank only. Has no specific breeding programme.

B.3 Breakdown of Distribution Non Annex 1 crops (Genebank and Breeding Programmes)

	Distribution	Country			CGIAR
		Developing	Developed	In Transition	
Bioversity ⁴¹	3	2	1	0	0
CIAT ⁴²	846	656	34	0	156
CIMMYT	39	12	16	0	11
CIP	143	134	7	0	2
ICARDA	981	304	2	19	656
ICRAF ⁴³	19	19	0	0	0
ICRISAT	3400	2462	452	0	486
IITA	1017	282	0	0	735
ILRI ⁴⁴	98	56	4	0	38
IRRI	0	0	0	0	0
WARDA	0	0	0	0	0
Total	6546	3927	516	19	2084

⁴¹ BIOVERSITY figures for genebank only. Has no specific breeding programme.

⁴² CIAT reporting period 1 jan 2007 to 31 Dec 2008.

⁴³ ICRAF distribution genebank only.

⁴⁴ ILRI figures for genebank only. Has no specific breeding programme.

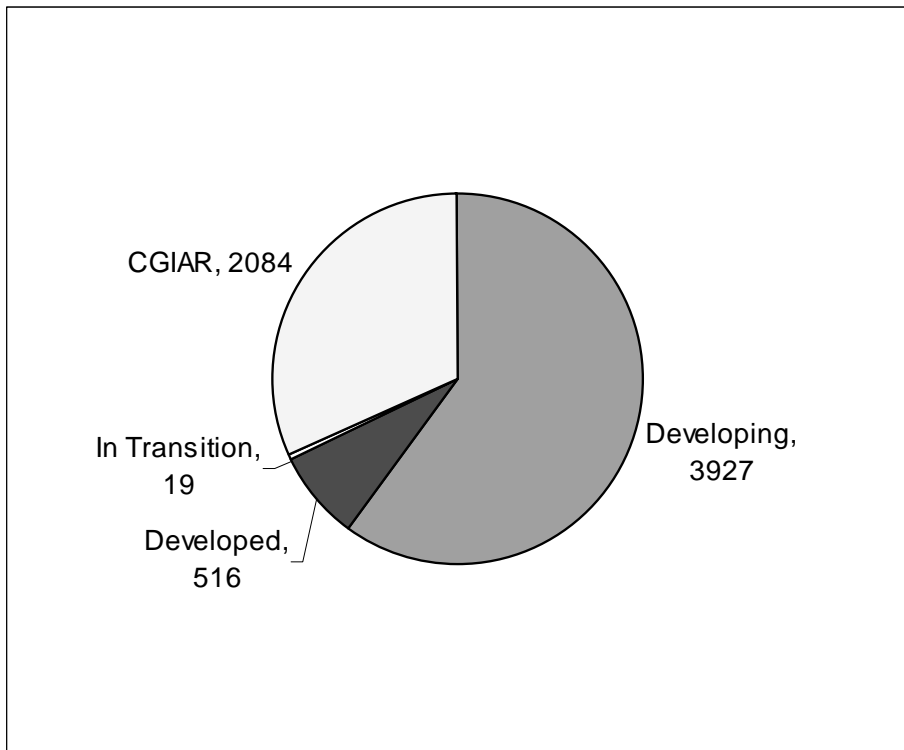


Figure 4 Breakdown of Distribution Non Annex 1 crops (see Table B3)

B4. Distribution Non Annex 1 Materials by Genebanks

	Distribution	Country			CGIAR
		Developing	Developed	In Transition	
Bioversity	3	2	1	0	0
CIAT⁴⁵	846	656	34	0	156
CIMMYT	39	12	16	0	11
CIP	131	131	0	0	0
ICARDA	981	304	2	19	656
ICRAF	19	19	0	0	0
ICRISAT	2095	1457	152	0	486
IITA	906	220	0	0	686
ILRI	98	56	4	0	38
IRRI⁴⁶	0	0	0	0	0
WARDA⁴⁷	0	0	0	0	0
Total	5118	2857	209	19	2033

⁴⁵ CIAT reporting period 1 Jan 2007 to 31 Dec 2008.

⁴⁶ IRRI figures include distribution by genebank and breeding programmes.

⁴⁷ WARDA figures include distribution by genebank and breeding programmes.

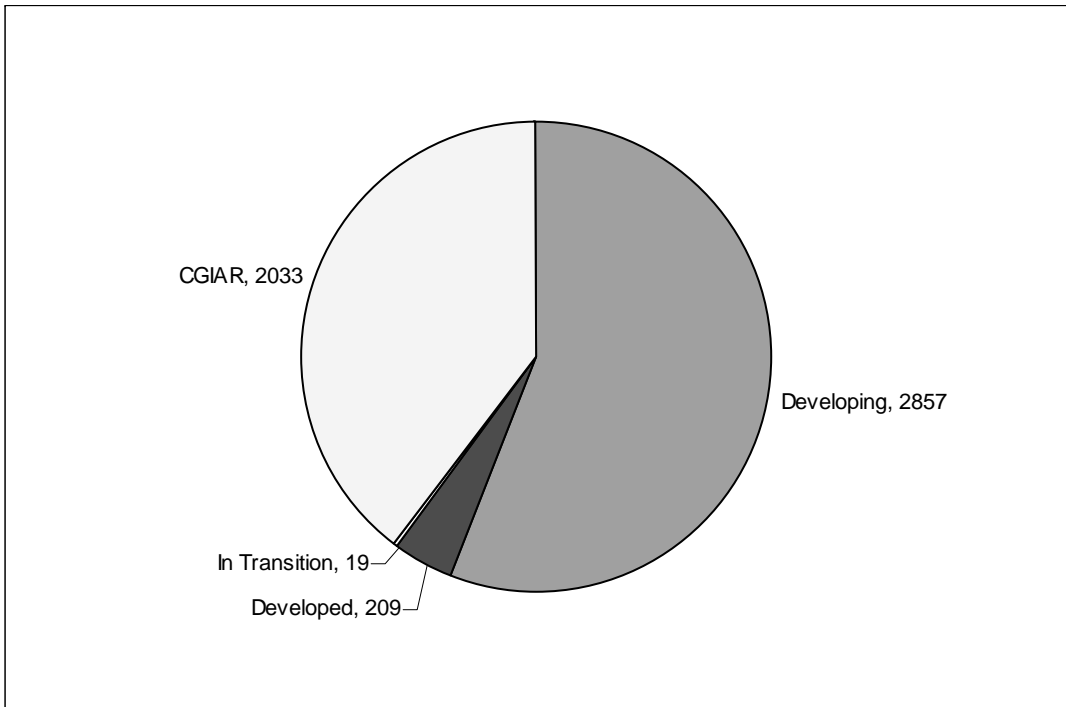


Figure 5 Distribution Non Annex 1 Materials by Genebanks (see Table B4)

B5. Distribution Non Annex 1 Materials by Breeding Programmes					
	Distribution	Country			CGIAR
		Developing	Developed	In Transition	
Bioversity ⁴⁸					
CIAT ⁴⁹	0	0	0	0	0
CIMMYT	0				
CIP	12	3	7	0	2
ICARDA	0	0	0	0	0
ICRAF ⁵⁰					
ICRISAT	1305	1005	300	0	0
IITA	111	62	0	0	49
ILRI ⁵¹					
IRRI ⁵²	0				
WARDA ⁵³	0				
Total	1428	1070	307	0	51

⁴⁸ BIOVERSITY has no specific breeding programme.

⁴⁹ CIAT reporting period 1 Jan 2007 to 31 Dec 2008.

⁵⁰ ICRAF not applicable due to different nature breeding activities.

⁵¹ ILRI has no specific breeding programme.

⁵² IRRI figures reported under genebank distribution include distribution by breeding programmes.

⁵³ WARDA figures reported under genebank distribution include distribution by breeding programmes.

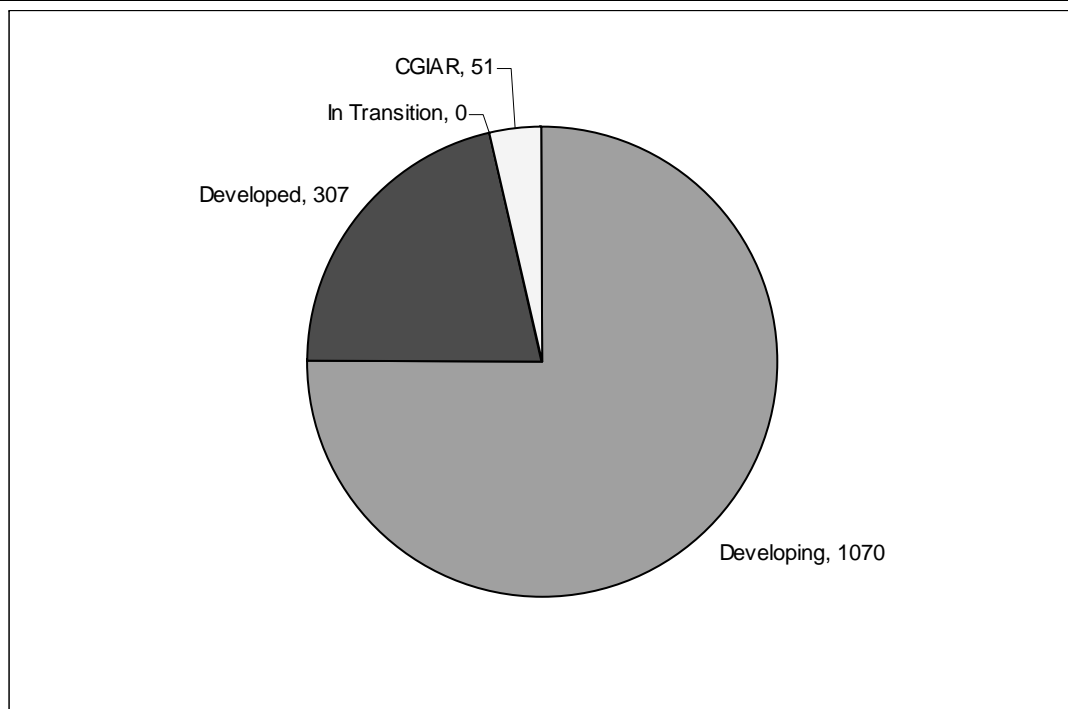


Figure 6 Distribution Non Annex 1 Materials by Breeding Programmes (see Table B5)

Appendix C Supplementary information on acquisitions
Annex 1 and Non-Annex 1 PGRFA⁵⁴

C.1 Genebank Acquisitions by biological status⁵⁵ – Pie chart Overview

Biological status	Acquisitions
Advanced/Improved material	97
Breeding/Research material	469
Traditional cultivar/Landrace	2288
Weedy	0
Wild	129
Other	984
Unknown	7

⁵⁴ Future reports will differentiate between Annex 1 and non-Annex 1 PGRFA.

⁵⁵ Pie chart based on 3974 out of 5965 acquisitions (Annex 1 and non-Annex 1) only as only for these data on acquisitions by biological status were provided.

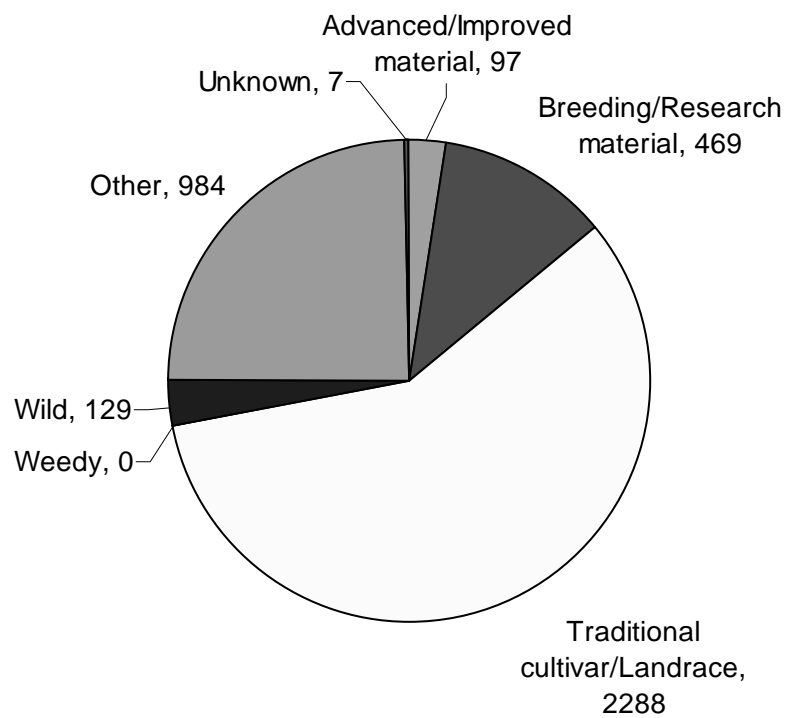


Figure 7 Genebank Acquisitions by biological status (see Table C1)

C.2 Breakdown of Genebank Acquisitions by biological status								
	Advanced/ Improved material	Breeding/Research material	Traditional cultivar/ Landrace	Weedy	Wild	Other	Unknow n	Total
Bioversity	3	0	0	0	29	0	0	32
CIAT⁵⁶	36	0	335	0	0	0	0	371
CIMMYT	0	0	337	0	56	0	0	393
CIP	0	1	0	0	0	0	0	1
ICARDA	55	398	202	0	19	3	7	684
ICRAF	0	14	0	0	0	18	0	32
ICRISAT	3	13	1398	0	21	54	0	1489
IITA	0	0	16	0	4	0	0	20
ILRI	0	0	0	0	0	0	0	0
IRRI⁵⁷								1991
WARDA⁵⁸	0	43	0	0	0	909	0	952
Total⁵⁹	97	469	2288	0	129	984	7	

⁵⁶ CIAT reporting period 1 Jan 2007 to 31 Dec 2008.

⁵⁷ IRRI no breakdown by biological status provided

⁵⁸ WARDA includes acquisitions by genebank and breeding programmes

⁵⁹ Horizontal and vertical sum of parts not equal since not all Centres provided breakdown by biological status.

Appendix D Supplementary information on acquisitions – Annex 1 and Non-Annex 1 PGRFA⁶⁰

D.1 Distribution by recipient type – Pie chart Overview⁶¹

	CG Centre	Commercial Company	Farmer	Genebank	Individual	National Agric. Research Service	NGO	Regional Organization	University	Other	Unknown
Genebank	47754	3342	389	303	17	8400	201	1589	15334	171	0
Breeding Programmes	2831	17959	76	834	0	98602	3650	2163	2258	2633	10111
Overall total	50585	21301	465	1137	17	107002	3851	3752	17592	2804	10111

⁶⁰ Future reports will differentiate between Annex 1 and non-Annex 1 PGRFA.

⁶¹ Based only on 218,617 out of 444,824 samples for which the data on the distribution by recipient type were provided.

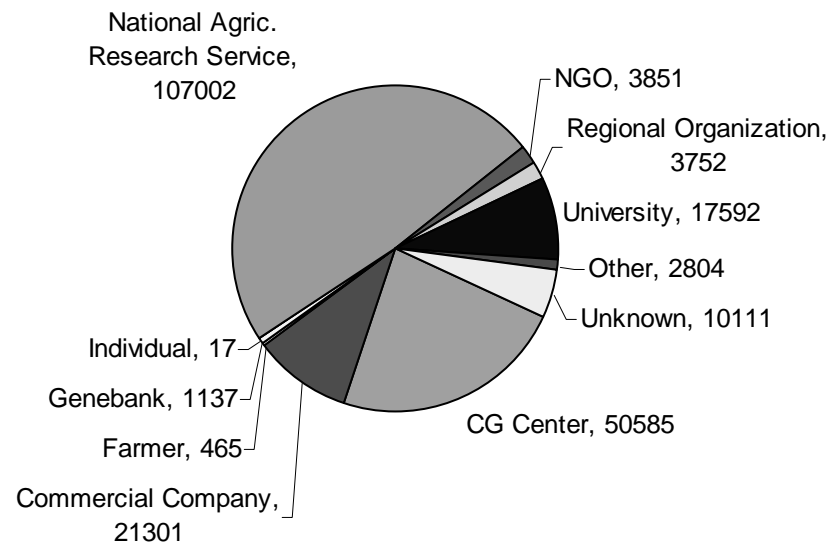


Figure 8 Distribution by recipient type for genebanks and breeding programmes (see Table D1)

D.2 Breakdown of Genebank Distribution by recipient type											
	CG Centre	Commercial Company	Farmer	Genebank	Individual	National Agric. Research Service	NGO	Regional Organization	University	Other	TOTAL Samples
Bioversity	20	49	4	0	0	187	1	39	173	0	473
CIAT ⁶²	6594	1210	290	0	11	1401	15	27	2731	3	12282
CIMMYT	8596	1560	0	0	0	810	0	763	2064	58	13851
CIP	313	0	87	0	0	363	173	0	37	0	973
ICARDA	27735	53	0	295	0	3578	0	132	2905	63	34761
ICRAF	0	0	1	0	0	17	0	0	2	0	20
ICRISAT	1217	382	7	8	3	1265	8	618	6759	0	10267
IITA	2395	0	0	0	0	146	0	10	510	47	3108
ILRI	38	88	0	0	0	43	4	0	87	0	260
IRRI ⁶³											49081
WARDA ⁶⁴	846	0	0	0	3	590	0	0	66	0	1505
Total ⁶⁵	47754	3342	389	303	17	8400	201	1589	15334	171	

⁶² CIAT reporting period 1 Jan 2007 to 31 Dec 2008.

⁶³ IRRI figure includes genebank and breeding programme distribution

⁶⁴ WARDA figure includes genebank and breeding programme distribution

⁶⁵ Total samples distributed by genebanks is higher than the sum of distribution by all recipient types as not all Centres provided the distribution by recipient type data.

D.3 Breakdown of Breeding Programme Distribution by recipient type												
	CG Centre	Commercial Company	Farmer	Genebank	Individual	National Agric. Research Service	NGO	Regional Organization	University	Other	Unknown	Total Samples
Bioversity ⁶⁶												
CIAT ⁶⁷	1047	4099	0	834	0	28289	1494	2103	2038	0	1779	41683
CIMMYT	0	13860	0	0	0	67061	0	0	0	0	0	80921
CIP	1095	0	0	0	0	743	80	60	46	0	0	2024
ICARDA ⁶⁸												182821
ICRAF ⁶⁹												
ICRISAT	0	0	76	0	0	2509	2076	0	174	2633	8332	15800
IITA ⁷⁰	689											1501
ILRI ⁷¹												
IRRI ⁷²												
WARDA ⁷³												
Total ⁷⁴	2831	17959	76	834	0	98602	3650	2163	2258	2633	10111	

⁶⁶ BIOVERSITY figures for genebank only. Has no specific breeding programme.

⁶⁷ CIAT reporting period 1 Jan 2007 to 31 Dec 2008.

⁶⁸ ICARDA no breakdown by recipient type provided

⁶⁹ ICRAF not applicable due to different nature of breeding activities.

⁷⁰ IITA breeding programme distribution data for Soybean, Yam and Cowpea.

⁷¹ ILRI has no specific breeding programme.

⁷² IRRI figures for breeding programme included in genebank figures.

⁷³ WARDA figures for breeding programmes included in genebank figures

⁷⁴ Total samples distributed by breeding programmes is higher than the sum of distribution by all recipient types as not all Centres provided the complete distribution by recipient type data.

D.4 Genebank Distributions by biological status⁷⁵ – Pie chart overview

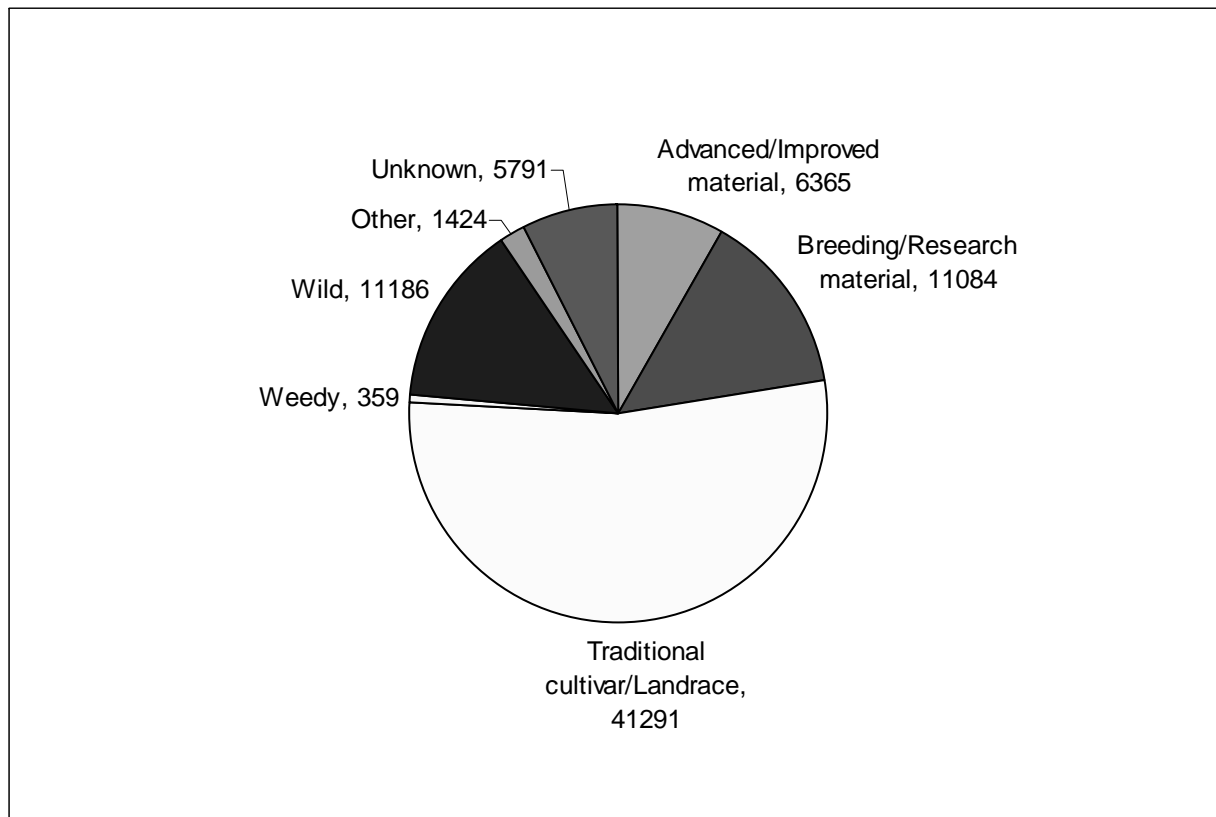


Figure 9 Breakdown of Genebank Distributions by biological status (see Table D5)

⁷⁵ Not all Centres provided the distribution by biological status type data. Pie chart is based on 77,500 out of 126,581 distributed samples.

D.5 Breakdown of Genebank Distributions by biological status								
	Advanced/ Improved material	Breeding/ Research material	Traditional cultivar/Landrace	Weedy	Wild	Other	Unknown	Total
Bioversity	68	0	284	0	120	1	0	473
CIAT ⁷⁶	841	0	9018	139	2122	161	1	12282
CIMMYT	4066	5225	4248	0	311	0	1	13851
CIP	66	178	727	0	2	0	0	973
ICARDA	795	4175	17110	209	7831	58	4583	34761
ICRAF	0	20	0	0	0	0	0	20
ICRISAT	423	842	8455	0	417	130	0	10267
IITA	11	220	1442	11	218	0	1206	3108
ILRI	95	0	0	0	165	0	0	260
IRRI ⁷⁷								49081
WARDA ⁷⁸	0	424	7	0	0	1074	0	1505
Total ⁷⁹	6365	11084	41291	359	11186	1424	5791	

⁷⁶ CIAT reporting period 1 Jan 2007 to 31 Dec 2008.

⁷⁷ IRRI figure includes distribution by genebank and breeding programmes

⁷⁸ WARDA figure includes distribution by genebank and breeding programmes

⁷⁹ Total sum of samples distributed by all biological status types not equal to total sum of samples distributed, because not all Centres provided breakdown by biological status type.

D.6 Breeding Programme Distributions by Biological Status								
	Advanced/Improved material	Breeding/Research material	Traditional cultivar/Landrace	Weedy	Wild	Other	Unknown	Total
Bioversity ⁸⁰								
CIAT ⁸¹	0	41683	0	0	0	0	0	41683
CIMMYT	0	80921	0	0	0	0	0	80921
CIP	261	1470	170	0	5	118	0	2024
ICARDA								182821
ICRAF ⁸²								
ICRISAT	0	11797	0	0	0	3003	0	15800
IITA ⁸³								1501
ILRI ⁸⁴								
IRRI ⁸⁵								
WARDA ⁸⁶								
Total ⁸⁷	261	135871	170	0	5	3121	0	

⁸¹ CIAT reporting period 1 Jan 2007 to 31 Dec 2008.

⁸² ICRAF not applicable due to different nature breeding activities.

⁸³ IITA breeding programme distribution data for Soybean, Yam and Cowpea.

⁸⁴ ILRI has no specific breeding programme.

⁸⁵ IRRI figures for breeding programme included in genebank figures.

⁸⁶ WARDA figures for breeding programme included in genebank figures

⁸⁷ Total sum of samples distributed by all biological status types not equal to total sum of samples distributed, because not all Centres provided breakdown by biological status type.

Appendix E

STANDARD MATERIAL TRANSFER AGREEMENT*

PREAMBLE

WHEREAS

The International Treaty on Plant Genetic Resources for Food and Agriculture (hereinafter referred to as “the **Treaty**”)⁸⁸ was adopted by the Thirty-first session of the FAO Conference on 3 November 2001 and entered into force on 29 June 2004;

The objectives of the **Treaty** are the conservation and sustainable use of **Plant Genetic Resources for Food and Agriculture** and the fair and equitable sharing of the benefits arising out of their use, in harmony with the Convention on Biological Diversity, for sustainable agriculture and food security;

The Contracting Parties to the **Treaty**, in the exercise of their sovereign rights over their **Plant Genetic Resources for Food and Agriculture**, have established a **Multilateral System** both to facilitate access to **Plant Genetic Resources for Food and Agriculture** and to share, in a fair and equitable way, the benefits arising from the utilization of these resources, on a complementary and mutually reinforcing basis;

Articles 4, 11, 12.4 and 12.5 of the **Treaty** are borne in mind;

The diversity of the legal systems of the Contracting Parties with respect to their national procedural rules governing access to courts and to arbitration, and the obligations arising from international and regional conventions applicable to these procedural rules, are recognized;

⁸⁸ *Note by the Secretariat:* as suggested by the Legal Working Group during the Contact Group for the Drafting of the Standard Material Transfer Agreement, defined terms have, for clarity, been put in bold throughout.

* In the event that the SMTA is used for the transfer of Plant Genetic Resources for Food and Agriculture other than those listed in *Annex I* of the Treaty:

The references in the SMTA to the "Multilateral System" shall not be interpreted as limiting the application of the SMTA to *Annex I* Plant Genetic Resources for Food and Agriculture, and in the case of Article 6.2 of the SMTA shall mean "under this Agreement";

The reference in Article 6.11 and Annex 3 of the SMTA to "Plant Genetic Resources for Food and Agriculture belonging to the same crop, as set out in *Annex I* to the Treaty" shall be taken to mean "Plant Genetic Resources for Food and Agriculture belonging to the same crop".

Article 12.4 of the **Treaty** provides that facilitated access under the **Multilateral System** shall be provided pursuant to a Standard Material Transfer Agreement, and the **Governing Body** of the **Treaty**, in its Resolution 1/2006 of 16 June 2006, adopted the Standard Material Transfer Agreement.

ARTICLE 1 — PARTIES TO THE AGREEMENT

1.1 The present Material Transfer Agreement (hereinafter referred to as “**this Agreement**”) is the Standard Material Transfer Agreement referred to in Article 12.4 of the **Treaty**.

1.2 **This Agreement** is:

BETWEEN: (*name and address of the provider or providing institution, name of authorized official, contact information for authorized official**) (hereinafter referred to as “the **Provider**”),

AND: (*name and address of the recipient or recipient institution, name of authorized official, contact information for authorized official**) (hereinafter referred to as “the **Recipient**”).

1.3 The parties to **this Agreement** hereby agree as follows:

ARTICLE 2 — DEFINITIONS

In **this Agreement** the expressions set out below shall have the following meaning:

“**Available without restriction**”: a **Product** is considered to be available without restriction to others for further research and breeding when it is available for research and breeding without any legal or contractual obligations, or technological restrictions, that would preclude using it in the manner specified in the **Treaty**.

“**Genetic material**” means any material of plant origin, including reproductive and vegetative propagating material, containing functional units of heredity.

“**Governing Body**” means the **Governing Body** of the **Treaty**.

“**Multilateral System**” means the **Multilateral System** established under Article 10.2 of the **Treaty**.

* *Insert as necessary. Not applicable for shrink-wrap and click-wrap Standard Material Transfer Agreements.*

A “shrink-wrap” Standard Material Transfer Agreement is where a copy of the Standard Material Transfer Agreement is included in the packaging of the **Material**, and the **Recipient’s** acceptance of the **Material** constitutes acceptance of the terms and conditions of the Standard Material Transfer Agreement.

A “click-wrap” Standard Material Transfer Agreement is where the agreement is concluded on the internet and the **Recipient** accepts the terms and conditions of the Standard Material Transfer Agreement by clicking on the appropriate icon on the website or in the electronic version of the Standard Material Transfer Agreement, as appropriate.

“Plant Genetic Resources for Food and Agriculture” means any **genetic material** of plant origin of actual or potential value for food and agriculture.

“Plant Genetic Resources for Food and Agriculture 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. The period of development for the **Plant Genetic Resources for Food and Agriculture under Development** shall be deemed to have ceased when those resources are **commercialized** as a **Product**.

“Product” means **Plant Genetic Resources for Food and Agriculture** that incorporate⁸⁹ the **Material** or any of its genetic parts or components that are ready for **commercialization**, excluding commodities and other products used for food, feed and processing.

“Sales” means the gross income resulting from the **commercialization** of a **Product** or **Products**, by the **Recipient**, its affiliates, contractors, licensees and lessees.

“To commercialize” means to sell a **Product** or **Products** for monetary consideration on the open market, and **“commercialization”** has a corresponding meaning. **Commercialization** shall not include any form of transfer of **Plant Genetic Resources for Food and Agriculture under Development**.

ARTICLE 3 — SUBJECT MATTER OF THE MATERIAL TRANSFER AGREEMENT

The **Plant Genetic Resources for Food and Agriculture** specified in *Annex 1* to **this Agreement** (hereinafter referred to as the **“Material”**) and the available related information referred to in Article 5b and in *Annex 1* are hereby transferred from the **Provider** to the **Recipient** subject to the terms and conditions set out in **this Agreement**.

ARTICLE 4 — GENERAL PROVISIONS

4.1 **This Agreement** is entered into within the framework of the **Multilateral System** and shall be implemented and interpreted in accordance with the objectives and provisions of the **Treaty**.

4.2 The parties recognize that they are subject to the applicable legal measures and procedures, that have been adopted by the Contracting Parties to the **Treaty**, in conformity with the **Treaty**, in particular those taken in conformity with Articles 4, 12.2 and 12.5 of the **Treaty**.⁹⁰

⁸⁹ As evidenced, for example, by pedigree or notation of gene insertion.

4.3 The parties to **this Agreement** agree that (*the entity designated by the **Governing Body***),⁹¹ acting on behalf of the **Governing Body** of the **Treaty** and its **Multilateral System**, is the third party beneficiary under **this Agreement**.

4.4 The third party beneficiary has the right to request the appropriate information as required in Articles 5e, 6.5c, 8.3 and *Annex, 2 paragraph 3*, to **this Agreement**.

4.5 The rights granted to the (*the entity designated by the **Governing Body***) above do not prevent the **Provider** and the **Recipient** from exercising their rights under **this Agreement**.

ARTICLE 5 — RIGHTS AND OBLIGATIONS OF THE PROVIDER

The **Provider** undertakes that the **Material** is transferred in accordance with the following provisions of the **Treaty**:

- a) Access shall be accorded expeditiously, without the need to track individual accessions and free of charge, or, when a fee is charged, it shall not exceed the minimal cost involved;
- b) All available passport data and, subject to applicable law, any other associated available non-confidential descriptive information, shall be made available with the **Plant Genetic Resources for Food and Agriculture** provided;
- c) Access to **Plant Genetic Resources for Food and Agriculture under Development**, including material being developed by farmers, shall be at the discretion of its developer, during the period of its development;
- d) Access to **Plant Genetic Resources for Food and Agriculture** protected by intellectual and other property rights shall be consistent with relevant international agreements, and with relevant national laws;
- e) The **Provider** shall periodically inform the **Governing Body** about the **Material Transfer Agreements** entered into, according to a schedule to be established by the

⁹⁰ In the case of the International Agricultural Research Centres of the Consultative Group on International Agricultural Research (CGIAR) and other international institutions, the Agreement between the Governing Body and the CGIAR Centres and other relevant institutions will be applicable.

⁹¹ *Note by the Secretariat:* by Resolution 2/2006, the Governing Body “invite[d] the Food and Agriculture Organization of the United Nations, as the Third Party Beneficiary, to carry out the roles and responsibilities as identified and prescribed in the Standard Material Transfer Agreement, under the direction of the Governing Body, in accordance with the procedures to be established by the Governing Body at its next session”. Upon acceptance by the FAO of this invitation, the term, “the entity designated by the Governing Body”, will be replaced throughout the document by the term, “the Food and Agriculture Organization of the United Nations”.

Governing Body. This information shall be made available by the **Governing Body** to the third party beneficiary.⁹²

ARTICLE 6 — RIGHTS AND OBLIGATIONS OF THE RECIPIENT

6.1 The **Recipient** undertakes that the **Material** shall be used or conserved only for the purposes of research, breeding and training for food and agriculture. Such purposes shall not include chemical, pharmaceutical and/or other non-food/feed industrial uses.

6.2 The **Recipient** shall not claim any intellectual property or other rights that limit the facilitated access to the **Material** provided under **this Agreement**, or its genetic parts or components, in the form received from the **Multilateral System**.

6.3 In the case that the **Recipient** conserves the **Material** supplied, the **Recipient** shall make the **Material**, and the related information referred to in Article 5b, available to the **Multilateral System** using the Standard Material Transfer Agreement.

6.4 In the case that the **Recipient** transfers the **Material** supplied under **this Agreement** to another person or entity (hereinafter referred to as “the **subsequent recipient**”), the **Recipient** shall

- a) do so under the terms and conditions of the Standard Material Transfer Agreement, through a new material transfer agreement; and
- b) notify the **Governing Body**, in accordance with Article 5e.

On compliance with the above, the **Recipient** shall have no further obligations regarding the actions of the **subsequent recipient**.

6.5 In the case that the **Recipient** transfers a **Plant Genetic Resource for Food and Agriculture under Development** to another person or entity, the **Recipient** shall:

- a) do so under the terms and conditions of the Standard Material Transfer Agreement, through a new material transfer agreement, provided that Article 5a of the Standard Material Transfer Agreement shall not apply;
- b) identify, in *Annex 1* to the new material transfer agreement, the **Material** received from the **Multilateral System**, and specify that the **Plant Genetic Resources for**

⁹² *Note by the Secretariat:* The Standard Material Transfer Agreement makes provision for information to be provided to the **Governing Body**, in the following Articles: 5e, 6.4b, 6.5c and 6.11h, as well as in *Annex 2*, paragraph 3, *Annex 3*, paragraph 4, and in *Annex 4*. Such information should be submitted to:

The Secretary
International Treaty on Plant Genetic Resources for Food and Agriculture
Food and Agriculture Organization of the United Nations
I-00100 Rome, Italy

Food and Agriculture under Development being transferred are derived from the **Material**;

- c) notify the **Governing Body**, in accordance with Article 5e; and
- d) have no further obligations regarding the actions of any **subsequent recipient**.

6.6 Entering into a material transfer agreement under paragraph 6.5 shall be without prejudice to the right of the parties to attach additional conditions, relating to further product development, including, as appropriate, the payment of monetary consideration.

6.7 In the case that the **Recipient commercializes a Product** that is a **Plant Genetic Resource for Food and Agriculture** and that incorporates **Material** as referred to in Article 3 of **this Agreement**, and where such **Product** is not **available without restriction** to others for further research and breeding, the **Recipient** shall pay a fixed percentage of the **Sales** of the **commercialized Product** into the mechanism established by the **Governing Body** for this purpose, in accordance with *Annex 2* to **this Agreement**.

6.8 In the case that the **Recipient commercializes a Product** that is a **Plant Genetic Resource for Food and Agriculture** and that incorporates **Material** as referred to in Article 3 of **this Agreement** and where that **Product** is **available without restriction** to others for further research and breeding, the **Recipient** is encouraged to make voluntary payments into the mechanism established by the **Governing Body** for this purpose in accordance with *Annex 2* to **this Agreement**.

6.9 The **Recipient** shall make available to the **Multilateral System**, through the information system provided for in Article 17 of the **Treaty**, all non-confidential information that results from research and development carried out on the **Material**, and is encouraged to share through the **Multilateral System** non-monetary benefits expressly identified in Article 13.2 of the **Treaty** that result from such research and development. After the expiry or abandonment of the protection period of an intellectual property right on a **Product** that incorporates the **Material**, the **Recipient** is encouraged to place a sample of this **Product** into a collection that is part of the **Multilateral System**, for research and breeding.

6.10 A **Recipient** who obtains intellectual property rights on any **Products** developed from the **Material** or its components, obtained from the **Multilateral System**, and assigns such intellectual property rights to a third party, shall transfer the benefit-sharing obligations of **this Agreement** to that third party.

6.11 The **Recipient** may opt as per *Annex 4*, as an alternative to payments under Article 6.7, for the following system of payments:

- a) The **Recipient** shall make payments at a discounted rate during the period of validity of the option;
- b) The period of validity of the option shall be ten years renewable in accordance with *Annex 3* to **this Agreement**;
- c) The payments shall be based on the **Sales** of any **Products** and of the sales of any other products that are **Plant Genetic Resources for Food and Agriculture** belonging to the same crop, as set out in Annex 1 to the **Treaty**, to which the **Material** referred to in *Annex 1* to **this Agreement** belongs;

- d) The payments to be made are independent of whether or not the **Product** is **available without restriction**;
- e) The rates of payment and other terms and conditions applicable to this option, including the discounted rates are set out in *Annex 3* to **this Agreement**;
- f) The **Recipient** shall be relieved of any obligation to make payments under Article 6.7 of **this Agreement** or any previous or subsequent Standard Material Transfer Agreements entered into in respect of the same crop;
- g) After the end of the period of validity of this option the **Recipient** shall make payments on any **Products** that incorporate **Material** received during the period in which this Article was in force, and where such **Products** are not **available without restriction**. These payments will be calculated at the same rate as in paragraph (a) above;
- h) The **Recipient** shall notify the **Governing Body** that he has opted for this modality of payment. If no notification is provided the alternative modality of payment specified in Article 6.7 will apply.

ARTICLE 7 — APPLICABLE LAW

The applicable law shall be General Principles of Law, including the UNIDROIT Principles of International Commercial Contracts 2004, the objectives and the relevant provisions of the **Treaty**, and, when necessary for interpretation, the decisions of the **Governing Body**.

ARTICLE 8 — DISPUTE SETTLEMENT

8.1 Dispute settlement may be initiated by the **Provider** or the **Recipient** or the (*the entity designated by the **Governing Body***), acting on behalf of the **Governing Body** of the **Treaty** and its **Multilateral System**.

8.2 The parties to **this Agreement** agree that the (*the entity designated by the **Governing Body***), representing the **Governing Body** and the **Multilateral System**, has the right, as a third party beneficiary, to initiate dispute settlement procedures regarding rights and obligations of the **Provider** and the **Recipient** under **this Agreement**.

8.3 The third party beneficiary has the right to request that the appropriate information, including samples as necessary, be made available by the **Provider** and the **Recipient**, regarding their obligations in the context of **this Agreement**. Any information or samples so requested shall be provided by the **Provider** and the **Recipient**, as the case may be.

8.4 Any dispute arising from **this Agreement** shall be resolved in the following manner:

- a) Amicable dispute settlement: The parties shall attempt in good faith to resolve the dispute by negotiation.

- b) Mediation: If the dispute is not resolved by negotiation, the parties may choose mediation through a neutral third party mediator, to be mutually agreed.
- c) Arbitration: If the dispute has not been settled by negotiation or mediation, any party may submit the dispute for arbitration under the Arbitration Rules of an international body as agreed by the parties to the dispute. Failing such agreement, the dispute shall be finally settled under the Rules of Arbitration of the International Chamber of Commerce, by one or more arbitrators appointed in accordance with the said Rules. Either party to the dispute may, if it so chooses, appoint its arbitrator from such list of experts as the Governing Body may establish for this purpose; both parties, or the arbitrators appointed by them, may agree to appoint a sole arbitrator, or presiding arbitrator as the case may be, from such list of experts. The result of such arbitration shall be binding.

ARTICLE 9 — ADDITIONAL ITEMS

Warranty

9.1 The **Provider** makes no warranties as to the safety of or title to the **Material**, nor as to the accuracy or correctness of any passport or other data provided with the **Material**. Neither does it make any warranties as to the quality, viability, or purity (genetic or mechanical) of the **Material** being furnished. The phytosanitary condition of the **Material** is warranted only as described in any attached phytosanitary certificate. The **Recipient** assumes full responsibility for complying with the recipient nation's quarantine and biosafety regulations and rules as to import or release of **genetic material**.

Duration of Agreement

9.2 **This Agreement** shall remain in force so long as the **Treaty** remains in force.

ARTICLE 10 — SIGNATURE/ACCEPTANCE

The **Provider** and the **Recipient** may choose the method of acceptance unless either party requires **this Agreement** to be signed.

Option 1 –Signature*

I, (*Full Name of Authorized Official*), represent and warrant that I have the authority to execute **this Agreement** on behalf of the **Provider** and acknowledge my institution's responsibility and obligation to abide by the provisions of **this Agreement**, both by letter and in principle, in order to promote the conservation and sustainable use of **Plant Genetic Resources for Food and Agriculture**.

Signature..... Date.....
 Name of the **Provider**

I, (*Full Name of Authorized Official*), represent and warrant that I have the authority to execute **this Agreement** on behalf of the **Recipient** and acknowledge my institution's responsibility and obligation to abide by the provisions of **this Agreement**, both by letter and in principle, in order to promote the conservation and sustainable use of **Plant Genetic Resources for Food and Agriculture**.

Signature..... Date.....
 Name of the **Recipient**.....

Option 2 – Shrink-wrap Standard Material Transfer Agreements*

The **Material** is provided conditional on acceptance of the terms of **this Agreement**. The provision of the **Material** by the **Provider** and the **Recipient's** acceptance and use of the **Material** constitutes acceptance of the terms of **this Agreement**.

* Where the **Provider** chooses signature, only the wording in Option 1 will appear in the Standard Material Transfer Agreement. Similarly where the **Provider** chooses either shrink-wrap or click-wrap, only the wording in Option 2 or Option 3, as appropriate, will appear in the Standard Material Transfer Agreement. Where the "click-wrap" form is chosen, the **Material** should also be accompanied by a written copy of the Standard Material Transfer Agreement.

Option 3 – Click-wrap Standard Material Transfer Agreement*

- I hereby agree to the above conditions.

Annex 1

LIST OF MATERIALS PROVIDED

This *Annex* contains a list of the **Material** provided under **this Agreement**, including the associated information referred to in Article 5b.

This information is either provided below or can be obtained at the following website: (*URL*).

The following information is included for each **Material** listed: all available passport data and, subject to applicable law, any other associated, available, non-confidential descriptive information.

(*List*)

Annex 2

RATE AND MODALITIES OF PAYMENT UNDER ARTICLE 6.7 OF THIS AGREEMENT

1. If a **Recipient**, its affiliates, contractors, licensees, and lessees, **commercializes** a **Product** or **Products**, then the **Recipient** shall pay one point-one percent (1.1 %) of the **Sales** of the **Product** or **Products** less thirty percent (30%); except that no payment shall be due on any **Product** or **Products** that:
 - (a) are **available without restriction** to others for further research and breeding in accordance with Article 2 of **this Agreement**;
 - (b) have been purchased or otherwise obtained from another person or entity who either has already made payment on the **Product** or **Products** or is exempt from the obligation to make payment pursuant to subparagraph (a) above;
 - (c) are sold or traded as a commodity.
2. Where a **Product** contains a **Plant Genetic Resource for Food and Agriculture** accessed from the **Multilateral System** under two or more material transfer agreements based on the Standard Material Transfer Agreement only one payment shall be required under paragraph 1 above.
3. The **Recipient** shall submit to the **Governing Body**, within sixty (60) days after each calendar year ending December 31st, an annual report setting forth:
 - (a) the **Sales** of the **Product** or **Products** by the **Recipient**, its affiliates, contractors, licensees and lessees, for the twelve (12) month period ending on December 31st;
 - (b) the amount of the payment due; and
 - (c) information that allows for the identification of any restrictions that have given rise to the benefit-sharing payment.
4. Payment shall be due and payable upon submission of each annual report. All payments due to the **Governing Body** shall be payable in (*specified currency*)⁹³ for the account of (*the Trust Account or other mechanism established by the Governing Body in accordance with Article 19.3f of the Treaty*).⁹⁴

⁹³ *Note by the Secretariat:* The Governing Body has not yet considered the question of currency of payment. Until it does so, Standard Material Transfer Agreements should specify United States dollars (US\$).

⁹⁴ *Note by the Secretariat:* This is the Trust Account provided for in Article 6.3 of the Financial Rules, as approved by the Governing Body (*Appendix E* to this Report). The details of the Trust Account when established, will be introduced here, and communicated to Contract Parties.

Annex 3

TERMS AND CONDITIONS OF THE ALTERNATIVE PAYMENTS SCHEME
UNDER ARTICLE 6.11 OF THIS AGREEMENT

1. The discounted rate for payments made under Article 6.11 shall be zero point five percent (0.5 %) of the **Sales** of any **Products** and of the sales of any other products that are **Plant Genetic Resources for Food and Agriculture** belonging to the same crop, as set out in Annex 1 to the **Treaty**, to which the **Material** referred to in *Annex 1* to **this Agreement** belong.
2. Payment shall be made in accordance with the banking instructions set out in paragraph 4 of *Annex 2* to **this Agreement**.
3. When the **Recipient** transfers **Plant Genetic Resources for Food and Agriculture under Development**, the transfer shall be made on the condition that the **subsequent recipient** shall pay into the mechanism established by the **Governing Body** under Article 19.3f of the **Treaty** zero point five percent (0.5 %) of the **Sales** of any **Product** derived from such **Plant Genetic Resources for Food and Agriculture under Development**, whether the **Product** is **available or not without restriction**.
4. At least six months before the expiry of a period of ten years counted from the date of signature of **this Agreement** and, thereafter, six months before the expiry of subsequent periods of five years, the **Recipient** may notify the **Governing Body** of his decision to opt out from the application of this Article as of the end of any of those periods. In the case the **Recipient** has entered into other Standard Material Transfer Agreements, the ten years period will commence on the date of signature of the first Standard Material Transfer Agreement where an option for this Article has been made.
5. Where the **Recipient** has entered or enters in the future into other Standard Material Transfer Agreements in relation to material belonging to the same crop[s], the **Recipient** shall only pay into the referred mechanism the percentage of sales as determined in accordance with this Article or the same Article of any other Standard Material Transfer Agreement. No cumulative payments will be required.

Annex 4

**OPTION FOR CROP-BASED PAYMENTS UNDER THE ALTERNATIVE PAYMENTS
SCHEME UNDER ARTICLE 6.11 OF THIS AGREEMENT**

I (full name of **Recipient** or **Recipient's authorised official**) declare to opt for payment in accordance with Article 6.11 of **this Agreement**.

Signature.....

Date.....⁹⁵

⁹⁵ In accordance with Article 6.11h of the Standard Material Transfer Agreement, the option for this modality of payment will become operative only once notification has been provided by the **Recipient** to the **Governing Body**. The signed declaration opting for this modality of payment must be sent by the **Recipient** to the **Governing Body** at the following address, whichever method of acceptance of **this Agreement** (signature, shrink-wrap or click-wrap) has been chosen by the parties to **this Agreement**, and whether or not the **Recipient** has already indicated his acceptance of this option in accepting **this Agreement** itself:

The Secretary,
International Treaty on Plant Genetic Resources for Food and Agriculture
Food and Agriculture Organization of the United Nations
I-00100 Rome, Italy

The signed declaration must be accompanied by the following:

- The date on which **this Agreement** was entered into;
- The name and address of the **Recipient** and of the **Provider**;
- A copy of Annex 1 to **this Agreement**.