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United Nations**



The International Treaty
ON PLANT GENETIC RESOURCES
FOR FOOD AND AGRICULTURE

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Rome, 11–16 November 2019

Report by the CGIAR System on the Status of Implementation of the CGIAR Principles on the Management of Intellectual Assets that Relate to Germplasm under the Framework of the International Treaty

Executive Summary

At its Seventh Session, the Governing Body invited the CGIAR System to provide the Governing Body, through the Secretary, with the annual reports concerning the status of the implementation of the CGIAR Principles on the Management of Intellectual Assets that relate to germplasm that the CGIAR Centers manage under the framework of the International Treaty, including in cases where such germplasm, parts thereof, or information generated from the use of this germplasm are the subject matter of patent or plant variety protection applications, or are included in partnerships that qualify as restricted use or limited exclusivity agreements pursuant to the CGIAR Principles.

In response to the invitation by the Governing Body, the CGIAR submitted the information that is contained in this document. Document, IT/GB-8/19/8.1, *Report on the Implementation and Operations of the Multilateral System*, provides a summary of the information (paragraphs 24-29).

*This document can be accessed using the Quick Response Code on this page;
an FAO initiative to minimize its environmental impact and promote greener communications.
Other documents can be consulted at <http://www.fao.org/plant-treaty/meetings/meetings-detail/en/c/>*



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The status of implementation of the CGIAR Principles on the Management of Intellectual Assets: a submission from CGIAR to the Eighth Session of the Governing Body of the ITPGRFA

Introduction

Through Resolution 4/2017, the Governing Body of the International Treaty on Plant Genetic Resources for Food and Agriculture (ITPGRFA),

"Invites the CGIAR System to provide the Governing Body, through the Secretary, with the annual reports concerning the status of the implementation of the CGIAR Principles on the Management of Intellectual Assets that relate to germplasm that the CGIAR Centers manage under the framework of the International Treaty, including in cases where such germplasm, parts thereof, or information generated from the use of this germplasm are the subject matter of patent or plant variety protection applications, or are included in partnerships that qualify as restricted use or limited exclusivity agreements pursuant to the CGIAR Principles."

On 10 July 2019, the Executive Director of the CGIAR System Organization received a message from the Secretary of the ITPGRFA, recalling Resolution 4/2017, and asking CGIAR to provide the Governing Body with information "on the status of implementation of the CGIAR principles that relate to germplasm that the CGIAR Centers manage under the framework of the International Treaty." CGIAR is submitting this document to the Secretariat and the Eighth Session of the Governing Body in response to these requests.

Annual CGIAR Intellectual Assets Management Reports

In response to Resolution 4/2017, the CGIAR System submits the following links to all seven of the annual CGIAR Intellectual Assets Management Reports which have been published since the CGIAR Principles on the Management of Intellectual Assets (CGIAR IA Principles)¹ were adopted in 2012:

- CGIAR Intellectual Assets Report for 2018: <https://www.cgiar.org/impact/intellectual-assets-reports/>
- CGIAR Intellectual Assets Report for 2017: <https://cgspace.cgiar.org/handle/10568/102281>
- CGIAR Intellectual Assets Report for 2016: <https://hdl.handle.net/10568/89835>

¹The full text of the Intellectual Asset Principles is available at <https://hdl.handle.net/10947/4486>. The Implementation Guidelines for the CGIAR IA Principles on the Management of Intellectual Assets are available at <https://hdl.handle.net/10947/4487>.

- CGIAR Intellectual Assets Report for 2015: <https://hdl.handle.net/10947/4372>
- CGIAR Intellectual Assets Report for 2014: <https://hdl.handle.net/10947/3977>
- CGIAR Intellectual Assets Report for 2013: <https://hdl.handle.net/10947/3404>
- CGIAR Intellectual Assets Report for 2012: <https://hdl.handle.net/10947/3103>

Particularly relevant are the annual reports covering 2017 and 2018, since they were developed after Resolution 4/2017, and their content was partially influenced by the Resolution, as described below. In addition to these annual reports, the CGIAR System Organization (System Organization) maintains a page on its website entitled 'CGIAR Intellectual Asset Management' which provides links to Centers' individual public disclosures regarding intellectual property applications, limited exclusivity agreements (LEA) and restricted use agreements (RUA):

- <https://www.cgiar.org/how-we-work/accountability/cgiar-intellectual-asset-management/>

Resolution 4/2017 makes specific reference to "germplasm that the CGIAR Centers manage under the framework of the International Treaty". All plant germplasm or related information subject to intellectual property protection, LEAs, and RUAs as reported in the annual CGIAR Intellectual Management Reports are derived from the use of plant genetic resources held in trust by the Centers, or from the use of plant genetic resources acquired by the Centers under a Standard Material Transfer Agreement.

In the paragraphs that follow, we provide background information about the content of the CGIAR IA Principles, the annual reporting and compliance monitoring cycle that has been adopted across the CGIAR System, and some of the ways in which the annual CGIAR Intellectual Assets Management Reports have evolved in light of Resolution 4/2017.

CGIAR IA Principles²

The CGIAR IA Principles were developed to provide guidance to Centers as they balance their traditional approach to treating all intellectual assets as international public goods with the recognition that they occasionally need to make semi exclusive arrangements to create incentives for other organizations to contribute to further develop those assets or increase their availability to farmers through market mechanisms. The default position of the CGIAR IA Principles is that "CGIAR regards the results of its research and development activities as international public goods [...]". However, the CGIAR IA Principles permit Centers to seek Intellectual Property Rights, and/or enter into LEAs and/or RUAs when 'necessary for the further improvement of such Intellectual Assets or to enhance the scale or scope of impact on target beneficiaries, in furtherance of the CGIAR Vision.'

The CGIAR IA Principles underscore that each Center will manage in trust germplasm in conformance with Centers' Article 15 agreements with the ITPGRFA Governing Body. Furthermore, the CGIAR IA Principles impose limitations on the Centers' discretion under

² Supra note 1.

the ITPGRFA framework when they manage improved assets derived from in trust germplasm (e.g., PGRFA under Development, new Products). In particular, the CGIAR IA Principles address (and limit) the kinds of restrictions that Centers can place on Center-improved materials and establish criteria that Centers must satisfy for creating such restrictions.

Three types of restrictions are potentially permitted pursuant to the CGIAR IA Principles. First, Centers may enter into LEAs to grant exclusive rights to third parties to commercialize the materials they have (co)developed, provided the exclusivity is limited in scope (e.g. country specific, time limited), and the restrictive arrangement is necessary for the further development of the innovation or to maximize the scale and scope of impact. Importantly, the CGIAR IA Principles require that the materials that are subject to such limited exclusivity agreements continue to be made available to public research organizations for non-commercial research and breeding, and for emergency use.

Second, Centers may enter into a RUA to acquire and use proprietary technologies from third party providers on terms that may restrict the global accessibility of products or services that incorporate downstream intellectual assets developed by the Centers using such proprietary technologies. In such cases, Centers must ensure that those technologies are not available from alternative sources under less restrictive conditions and the products and services in question will further CGIAR's mission in the countries in which they are made available.

Third, Centers may file or authorize a third party to file a patent or plant variety protection over CGIAR Centers' technologies and/or germplasm provided such protection is necessary for the further development or to maximize the scale and scope of impact, of the technologies or germplasm concerned. In each instance, the restriction is permissible only if it furthers the CGIAR Vision.

The CGIAR IA Principles state that they will be reviewed every two years. These reviews have taken various forms, including an independent external review coordinated by the CGIAR Independent Evaluation Arrangement published in 2017 and available on line.³

Monitoring Centers' compliance with the CGIAR IA Principles

The annual reporting/monitoring cycle to review Centers' conformity with the CGIAR IA Principles includes the following elements: The Boards of Trustees/Governing Boards of the respective Article 15 Center must provide an annual statement to the System Organization that their Center is in compliance with the CGIAR IA Principles. Each CGIAR Center provides an annual report to the System Organization concerning their implementation of the CGIAR IA Principles using a standardized template. The Centers' reports include very detailed

³ See Bennett, A, Correa, C. (2017) Review of CGIAR Intellectual Assets Principles: an IEA Review, available at <http://iea.cgiar.org/2018/03/21/evaluation-of-intellectual-assets-principles-of-cgiar/>

information about the LEAs, RUAs, and intellectual property applications the Centers have entered into in the reporting period. Those reports are scrutinized by the System Organization and an independent System Council Intellectual Property Group (SCIP Group).

These two bodies review the restrictive arrangements and intellectual property applications and justifications reported by Centers and assess whether such arrangements comply with the CGIAR IA Principles. Over the course of these reviews, the System Organization and SCIP Group can, and often do, request additional information from the Centers concerned. The System Organization publishes an annual report concerning the CGIAR Centers implementation of the CGIAR IA Principles. That report includes a section authored by the independent SCIP Group setting out its findings (both positive and negative) with respect to the process and content of issues that arise in the course of the annual reporting/monitoring cycle, highlighting, when necessary, the need for responses or further action by Centers concerned. Each year's report reviews Centers' responses to the SCIP group's recommendations the previous year.

Response to Resolution 4/2017 within the CGIAR System

As highlighted in the CGIAR Intellectual Asset Management reports for 2017 and 2018, Resolution 4/2017 has been considered at the highest levels of governance within the CGIAR System, specifically by the CGIAR System Management Board (SMB)⁴ and the General Assembly of CGIAR Centers⁵. The SMB directed CGIAR Centers, and staff of the System Organization, with support from the Genebank Platform Policy Module, to share additional information of potential interest to the Governing Body in the annual CGIAR Intellectual Asset Management Reports, and in the form of independent disclosures published by the Centers. As a result, the 2017 and 2018 reports now include summary information about all LEAs, RUAs, IP applications entered into by the Centers during the reported upon year (including the name of the Center, the technology concerned, the kind of licensing agreement, and if subject to IP, where applied and the state of progress of the application).

These two reports also include extended case studies of intellectual property applications, RUAs, and LEAs entered into during those years.

To assist Centers with the development and improvement of their Public Disclosures, in 2018 the Policy Module developed a 'Guidance Note on CGIAR Research Center Public Disclosures related to the Management of Intellectual Assets'. The System Organization and Genebank Platform Policy Module have organized training sessions with all Centers' Intellectual Property Focal Points and Genebank Managers for the purpose of raising Centers' awareness about Resolution 4/2017, the need to increase transparency in Centers' communications when entering into restrictive arrangements, and the usefulness of the

⁴ For more information about the composition and terms of reference of the CGIAR System Management Board, see <https://www.cgiar.org/how-we-work/governance/system-organization/system-management-board/>

⁵ For more information about the composition and terms of reference of the General Assembly of CGIAR Centers see <https://www.cgiar.org/how-we-work/governance/centers-general-assembly/>

guidance note on public disclosures and other supporting tools at the Centers' disposal. Centers have redoubled their efforts over the course of the last biennium to write and publish more lengthy disclosures in a timely manner.

In addition, the System Organization has restructured the webpages where they share links to Centers' individual disclosures to make them easier to find (as referred to in the first section above). The System Organization is also coordinating a process to streamline the annual reporting/monitoring cycle in future years, to integrate it into the broader CGIAR strategic management reporting and evaluation process. CGIAR will provide updates on these efforts to the Governing Body, through the Secretariat, in the next biennium.