

MINUTES OF THE GENETIC RESOURCES POLICY COMMITTEE (GRPC)

24th Session, Bioversity, Rome, 10-12 September 2008

Members present: Carlos Correa (Chair)
Emile Frison (Committee Secretary)
Mike Gale (Science Council)
Carl-Gustaf Thornström (CGIAR member)
Tony Gregson (Alliance Board)
Teresita Borromeo (NARS)
Shadrack Moephuli (CGIAR member)
Orlando de Ponti (Private sector)
Mahmoud Solh (Alliance Executive)
Dan Leskien (FAO Observer)
Benito Odala Eliasi (Farmers' Organizations)
Chee Yoke Ling (NGOs)

Members of Secretariat: Michael Halewood, Gerald Moore* (Bioversity International).

Resource Persons: Selim Louafi (Senior Treaty Officer, International Treaty Secretariat), Victoria Henson-Apollonio (CAS-IP), Kent Nnadozie (Treaty Support Officer, International Treaty Secretariat)[†].

Wednesday 10 September

A. Welcome, introductions, logistics, and adoption of the agenda

Carlos Correa welcomed participants to the meeting. The agenda was adopted; it is included as *Appendix 1* to these minutes. The Chair expressed his appreciation for the input paper from the ICWG-GR Executive.

B. Overview of activities from GRPC 23 work plan

Given that the last meeting of the AE was not able to consider the draft policies and related instruments forwarded to it from this committee, the Secretariat will have to bring them to the AE's attention via E-mail.

Emile provided an update on the ongoing Change Management Process. The committee considered that there will continue to be a need for the GRPC to provide advice to the CG system as a whole. The committee's title should be changed to reflect the fact that one of the important issues it deals with is intellectual property. In the new, anticipated structure, the committee considered that it should provide advice to the Board of the Consortium. The committee will communicate its recommendation in this regard to the next meeting of Ex Co.

* Thursday 11 September, morning only

† Friday 12 September, morning only.

C. Report of the intersessional activities of the Secretariat of the International Treaty, including the Meeting of Experts on the SMTA and MLS

Selim Louafi provided an update of relevant developments since the Second Session of the Governing Body of the International Treaty on Plant Genetic Resources for Food and Agriculture (the Treaty).

He highlighted the successful First Meeting of Experts on the Standard Material Transfer Agreement and the Multilateral System of the Treaty, 22-23 July 2008; the First Meeting of the Capacity Building Coordination Mechanism for the Implementation of the International Treaty, 16 May 2008; national or regional workshops on the Implementation of the ITPGRFA, and activities of the joint FAO/Treaty Secretariat/Bioversity Treaty implementation programme. Selim also reviewed the Treaty Secretariat's request to the Centres for inputs to the Third Session of the Governing Body concerning the Treaty's Funding Strategy, the implementation of Article 6 concerning sustainable use, and the Centres' experiences concerning the use of the Standard Material Transfer Agreement (SMTA) for Annex 1 and non-Annex 1 materials.

The Committee noted that it would be useful if the Treaty Secretariat collected and made available options for the implementation of farmers' rights.

The GRPC reiterated its recommendation, from its 23rd Session, that the Chair of the CGIAR should a) inform CGIAR members about the message from the Secretariat of the Governing Body to Treaty parties (sent in July, 2008) requesting them to identify collections they may include in the multilateral system (MLS), and b) encourage CGIAR member representatives to support their own national authorities in replying to the Secretariat's request.

The Third Session of the Governing Body will be held 31 May to 5 June, 2009, in Tunis.

D. Report of the intersessional activities of the Secretariat of the Commission on Genetic Resources for Food and Agriculture

Dan Leskien provided an update on the relevant intersessional activities of the Secretariat of the Commission on Genetic Resources for Food and Agriculture (the Commission). He noted that the CGIAR, through Bioversity, will be consulted with respect to the first draft outline of the Commission's work plan 2007-2017. With respect to access and benefit-sharing, Dan described ongoing efforts to coordinate work on the seven sector-specific studies, and CG Centres participation in the development of some of them. Dan emphasized the importance of the relevant CG Centres participating in the preparation and review of the sectoral papers, when the first drafts of those papers are completed. One member emphasized the importance of segmentation within particular sectors in terms of utilization.

E. Revising/developing a system-wide policy on intellectual assets

The committee revised the draft policy of the Alliance of CGIAR Centres on Intellectual Assets, taking into consideration all inputs received to date, including those received since GRPC 23, from IRRI, the June 2008 meeting of Ex Co, and thereafter, from India and FAO.

The revised draft policy is included as *Appendix 3* to these minutes. The GRPC will forward the proposed policy to Ex Co for information during its next meeting, 1-2 October, 2008, and to the Alliance Executive for its immediate consideration.

Thursday 11 September

G. Using the SMTA, including addressing the outcomes of the Meeting of Experts on the SMTA and MLS, with consideration of distribution for non-food/feed purposes, direct use by farmers, reporting, etc

Gerald Moore introduced the agenda item, highlighting the outcomes of the First Meeting of Experts on the SMTA and MLS. The committee endorsed the Expert Group's recommendations concerning framework agreements; termination and applicable law; and the reporting and information needs for the operation of the MLS. The committee recommended requesting the Expert Group for further clarification regarding the termination of the obligation to pay. Regarding reporting, it was noted that it would be useful for the CG Centres to contribute a short paper on which reporting fields would be useful for evaluating the proper functioning of the MLS. It was noted that the private sector has no difficulty with aggregate data being made available concerning distributions, but in general, has concerns about the identities of recipients being made public. It was also noted that this concern does not apply in the case of the CG Centres, which have traditionally made recipients identities available.

The committee reiterated its previous endorsement of IRRI's practice of making the full text of SMTAs available on a public database, and its recommendation that all Centres should follow the same practice. The committee further recommended that all such information, from all Centres, should be made available through SINGER.

The committee welcomed that Expert Group's affirmation that PGRFA *in situ* are included in the MLS when they are under the management and control of Contracting Parties and in the public domain. The committee also welcomed the fact that the Treaty Secretariat is considering whether changes are necessary to make the FAO Code of Conduct for Plant Germplasm Collecting and Transfer compliant with the Treaty.

The Expert Group discussed the issue of distributions of material for non-food/non-feed purposes and whilst largely in favour of the Centres developing an MTA based on minor variations to the SMTA, the Group did not come to a final decision. The Expert Group will reconsider the issue at its next meeting in November 2008. In the meantime, the committee requested the GRPC Secretariat to develop the MTA for distribution of materials by the Centres for non-food/non-feed purposes, following the recommendation of GRPC 22, which was reaffirmed by GRPC 23.

The committee re-examined its own decision, from GRPC 23, concerning distributions to farmers for their direct use, using the SMTA. It noted the difficulties associated with the use of the SMTA on farmer field days, and the possible advantages of not being required to use the SMTA for such purposes. The committee appreciates that the Second Meeting of Experts will consider the issue further.

The committee requested the Secretariat of the GRPC to forward the report of the Meeting of Experts to the AE and the ICWG-GR, along with the committee's endorsements.

H. Question and Answer session regarding update papers

Update on the enola bean case

The press release regarding the USPTO's, Board of Patent Appeals and Interferences (BPAI) decision was circulated to the GRPC[‡]. In the 30 April 2007 decision the BPAI rejected all the claims of the Enola patent and amended claims. The GRPC was also informed of the latest action by the patent owners, Mr. Larry Proctor, who filed an appeal with the U.S. Court of Appeals for the Federal Circuit (CAFC) on 17 June 2008. The only recourse for CIAT is to weigh the merits of filing an Amicus brief to support the BPAI decision. CAS-IP has arranged for pro bono support for such an action, from a top-notch intellectual property law firm, Morrison & Foerster LLP.

F. Guidelines for Traditional Knowledge practices in the CGIAR Centres

Victoria Henson-Apollonio introduced a draft preface to the Guidelines for Traditional Knowledge Practices previously adopted by GRPC 23. Committee members will send comments on the paper to Victoria. Both the Guidelines and the preface are attached as Appendix 4.

I. FAO/Bioversity/International Treaty Secretariat project on Treaty Implementation

Selim Louafi described the joint programme on Treaty implementation, noting that it has recently received one million dollars from the Swedish government, and describing activities to date. The committee expressed its appreciation of the joint programme and emphasized the importance of the joint programme working closely with regional and sub-regional organizations.

Selim underscored the importance of coordinating training efforts with organizations such as the Swedish Advanced International Training Programme: Genetic Resources and Intellectual Property Rights (GRIP), Global Initiative on Plant Breeding (GIPB), Bioversity, and others.

J. Ethical issues – what is the role of the GRPC?

Emile Frison introduced the issue, noting that the GRPC has the mandate to monitor and analyze ethical issues.

Mike Gale described three papers commissioned by the Science Council addressing ethical issues of relevance to the CG Centres:

- Ethics and the CGIAR Mission – 2008 (Study currently in progress)[§]
- Science Council Commentary on the Report: “Research Ethics and the CGIAR”. 16 November 2006^{**}.

[‡] The press release is available at URL: <http://www.cgiar.org/monthlystory/june2008.html>

[§] Available at URL: http://www.sciencecouncil.cgiar.org/home/priorities_strategies.html

^{**} Available at URL:

http://www.sciencecouncil.cgiar.org/fileadmin/user_upload/sciencecouncil/Reports/Ethics_CGIAR_Research.pdf

- How Should the CGIAR Handle Ethical Challenges? Issues and Proposal for a Strategic Study. Proposal prepared by Peter Sandoe and Karsten Klint Jensen. Centre for Bioethics and Risk Assessment, Royal Veterinary and Agricultural University, Denmark. SC. 2nd SC Meeting, FAO Headquarters, Rome, Italy, 6 – 10 September 2004. Working document SDD/SC:IAR/04/12^{††}.

Science Council will develop a commentary/summary of the three papers and publish them together in a single volume. The committee decided that it should review the draft papers and send comments to Science Council. They will be considered by Science Council in the development of the commentary/summary.

Dan provided a list of ethical issues related to food and agriculture that have been considered in the past by the FAO Panel of Eminent Experts on Ethics in Food and Agriculture.

The committee noted that one possible issue to consider in future GRPC meetings are the ethical dimensions of decreasing freedom to operate in plant breeding.

K. Roundtable on additional genetic resources policy issues of relevance to the CGIAR

The committee identified the implications for food security of the changing intellectual property/freedom to operate landscape as a particularly important issue. The committee requested CAS-IP and committee member Orlando de Ponti to prepare a presentation on the issue for the next meeting.

Friday 12 September

L and M. Review/update of the GRPC work plan

The committee amended the GRPC work plan, which is attached as *Appendix 2* to these minutes.

N. AOB and next meetings

The committee identified the following dates and places for its 25th and 26th sessions:
GRPC 25, Tuesday 17 March – Thursday 19 March, 2009, World Fish Centre.
GRPC 26, Monday 14 September - Wednesday 16 September, 2009, Bioversity.

^{††} Available at URL:

http://www.sciencecouncil.cgiar.org/fileadmin/user_upload/sciencecouncil/Reports/Ethics_first_report.pdf

GENETIC RESOURCES POLICY COMMITTEE
24th Session
Bioversity International
Rome, Italy
10-12 September 2008
DRAFT AGENDA

Wednesday 10 September

12:00 – 13:00 Lunch

13:00 – 13:30 **A.** Welcome, introductions, logistics, adoption of agenda.

(Introduced by Carlos Correa, Emile Frison)

Documents

A.1. Agenda

A.2. ICWG-GR teleconference concerning GRPC 23 report and GRPC 24 agenda

13:30 – 14:00 **B.** Overview of activities from GRPC 23 work plan

(Introduced by Michael Halewood)

Documents

B.1. GRPC 23 work plan (annotated)

14:00 - 14:30 **C.** Report on the intersessional activities of the Governing Body of the International Treaty, including the Meeting of Experts on the SMTA and MLS

(Introduced by Selim Louafi)

Documents

C.1. Report of Meeting of Experts on the SMTA and MLS

C.2. Report on meeting on Capacity Building

C.3. Letter from Shakeel Bhatti dated 5 August 2008

14:30 - 15:00 **D.** Report on intersessional activities of the Commission on Genetic Resources for Food and Agriculture

(Introduced by Dan Leskien)

Documents

D.1. CGIAR Centres' contributions to papers on sectoral approaches to ABS for GRFA

15:00 - 15:30 **E.** Revising/developing system-wide policy on intellectual assets

(Introduced by Emile Frison)

Documents

- E.1. Collected comments from ExCo, AE and others (e.g. India, FAO)
- E.2. Revised Draft Policy

15:30 – 16:00 Coffee/Tea break

16:00 – 17:00 **E.** Revising/developing system-wide policy on intellectual assets
(continued)

17:00 – 17:30 **F.** Guidelines for Traditional Knowledge practices in the CGIAR Centres
(*Introduced by Victoria Henson-Apollonio.*)

Documents

- F.1. Introductory paper to accompany the Guidelines

Group dinner

Thursday 11 September

08:00 – 10:00 **G.** Using the SMTA, including addressing the outcomes of the Meeting of Experts on the SMTA and MLS, with consideration of distribution for non-food/feed purposes, direct use by farmers, reporting, etc
(*Introduced by Michael Halewood, Gerald Moore*)

Documents

- G.1. Issues relating to the implementation of the SMTA. Report on the First Meeting of Experts on the SMTA and the Multilateral System of the Treaty
- G.2. Seed distribution cost recovery survey: Current CGIAR practices

10:00 – 10:30 Coffee/Tea break

10:30 - 11:30 **H.** Question and Answer session regarding update papers

Documents

- H.1. Update on the CBD/COP 9, COP/MOP 4
- H.2. Update on biosafety: report of the Science Council/IRRI meeting on the CGIAR, biotechnology and biosafety, 22-24 April 2008

11:30 – 12:00 **I.** FAO/Bioversity/International Treaty Secretariat project on Treaty Implementation

(*Introduced by Selim Louafi, Gerald Moore*)

Documents

- I.1. Swedish International Development Agency (SIDA): Project Profile for the Swedish Development Assistance Framework. FAO/Bioversity/International Treaty Secretariat/Governments Cooperative Programme: Implementing The International Treaty On Plant Genetic Resources For Food And Agriculture

12:00 – 13:00 Lunch

13:00 – 14:00 **J.** Ethical issues – what is the role of the GRPC?

(Introduced by Emile Frison)

Documents

J.1. Science council paper on biofuels

J.2. GRPC Terms of Reference

14:00 – 15:30 **E.** Revising/developing system-wide policy on intellectual assets

15:30 - 16:00 Coffee/Tea break

16:00 – 16:30 **E.** Revising/developing system-wide policy on intellectual assets (cont'd)

16:30 – 17:30 **K.** Roundtable on additional genetic resources policy issues of relevance to the CGIAR

(Introduced by Carlos Correa)

19:30 – 21:00 Optional evening session, over dinner, to continue work on outstanding issues

Friday 12 September

08:30 - 10:00 **L.** Review/update of the GRPC work plan

(Introduced by Emile Frison)

Documents

L.1. minutes GRPC 23

10:00 - 10:30 **M.** Adoption of main conclusions, action list and report

10:30 - 11:00 Coffee/Tea break and Group photo

11:00 - 11:30 **M.** Adoption of main conclusions, action list and report (continued)

11:30 - 12:00 **N.** AOB, next meeting, closing

12:00- 13:00 Lunch followed by departures

Appendix 2: GRPC Work Plan (as amended at GRPC 24)

Issue	Activity/Input	Outputs	Timetable
Consultations with the legal experts convened by the GB secretariat	The GRPC Secretariat will work closely with the Secretariat of the Governing Body to develop submissions to the Second International Expert Group Meeting.	Documents prepared for Expert Group Meeting	October/ November 2008
Reporting on uses of the SMTA	Secretariat will communicate the relevant recommendations to the AE and the ICWG-GR via E-mail.	E-mail message to AE, copied to ICWG-GR. Consideration by AE	October 2008
Template with optional conditions for PGRFA under Development	Secretariat will develop next draft of the template after the intellectual assets policy has been finalized and adopted	Revised draft template	
Guidelines for Centres acquisition of germplasm	Secretariat will forward the draft guidelines and draft GAA to the AE for approval via E-mail	E-mail message to AE, copied to ICWG-GR. Consideration by AE	October 2008
Guidelines for the Centres' use of the SMTA	The Guide for the Centres' use of the SMTA will be further revised to include work on the template with optional conditions for PGRFA under Development, best practices for associated information, and system-wide policies on distributing materials for non-food/feed, acquiring new materials and intellectual assets if/when they are adopted.	Revised guide Update to the GRPC by Secretariat	Ongoing GRPC 25

Issue	Activity/Input	Outputs	Timetable
Including materials in the MLS	Secretariat to prepare communication to the Director of the CGIAR concerning the message from the GB Secretariat to Treaty parties requesting them to provide a list of the collections they are including in the MLS	Draft message	October 2008
Ethical issues	GRPC members will send their comments on the Science Council ethical issues papers for consideration in the Science Council commentary on all three papers	Comments on papers	October 31, 2008
Distributing materials for non-food/feed purposes	Secretariat will develop the MTA The draft policy document will be forwarded to the AE for approval via e-mail.	Draft MTA E-mail message to AE, copied to ICWG-GR. Approved or revised draft policy and draft MTA Report to GRPC 25	September 2008 October 2008 GRPC 25
Guidance for Centres' research involving traditional knowledge	Committee members will send comments to Victoria concerning the preface Secretariat will forward the draft guidelines to the AE for approval via e-mail CAS-IP will prepare information document to be sent to WIPO and UN Permanent Forum for Indigenous Peoples.	comments E-mail message to AE, copied to ICWG-GR. Considered/approved guidelines Report to GRPC 25	September 19 October 2008

Issue	Activity/Input	Outputs	Timetable
Policy on intellectual assets	Secretariat will forward the draft policy to ExCo and the AE Secretariat and CAS-IP will develop an explanatory note	Messages to ExCo and AE Commented on, or adopted, policy draft	September 2008 GRPC 26
Implementation of the IA policy	CAS-IP to conduct a survey of current and future capacity in legal and IP across the Centres, subject to approval of the policy by the AE.	Survey for consideration of GRPC 25, subject to approval of AE	GRPC 25
Assessment of Centres' impact concerning: 1. technology transfers as benefit-sharing, and 2. contributions to the implementation of Farmers' Rights	CAS-IP will draft paper for presentation to the GRPC	Draft paper	GRPC 25
Demand driven GRPC agenda setting process	Secretariat will continue to consult systematically with the ICWG-GR, AE	Update papers GRPC by Secretariat	GRPC 25
Developments at CBD, WIPO, WTO, other bodies	Secretariat will prepare short update paper(s) summarizing relevant developments CGIAR Centres will be represented in relevant meetings	Update papers	GRPC 25
Cartagena Protocol on Biosafety	Monitoring progress of the international meetings	Update paper	GRPC 25

Issue	Activity/Input	Outputs	Timetable
(Cross)-sectoral approaches to ABS	<p>Secretariat will work with University of Louvain to develop paper on AMiGR to submit to the 12th session of the Commission.</p> <p>Bioversity will make contributions to Plant, AnGR sectoral papers for the Commission.</p> <p>Commission Secretariat will circulate, through the SGRP, updates on the development of the sectoral papers, and the papers themselves, for comments from the Centres.</p>	Draft papers and or progress report	GRPC 25
Patents	CAS-IP, Orlando will prepare a presentation on the changing intellectual property/freedom to operate landscape and its implications for food security	Presentation	GRPC 25
GRPC at AGM	Chair to report to business meeting	Chair's report	December 2008

Appendix 3:

GRPC proposal:

Policy of the Alliance of CGIAR Centres on Intellectual Assets^{‡‡}

Preamble

The policy on intellectual assets of the Alliance of International Agricultural Research Centres supported by the Consultative Group on International Agricultural Research (CGIAR) is driven by the mission of the CGIAR and the imperative that the products of the Centres' research should be available without restriction. The mission of the CGIAR is: To achieve sustainable food security and reduce poverty in developing countries through scientific research and research-related activities in the fields of agriculture, forestry, fisheries, policy, and environment.

The Centres work with a wide range of partners, including national agricultural research systems (NARS), advanced research institutes (ARIs), civil society organizations, private sector companies, and regional and international intergovernmental organizations. The Centres are supported by funding from countries, international and regional organizations, and private entities. The Centres produce, manage and provide access to the products of their research and development for use by, and for the benefit of, the poor, especially farmers in developing countries.

Centres hold their in-trust collections of germplasm for the benefit of the world community, in accordance with agreements signed by Centres and the Governing Body of the International Treaty on Plant Genetic Resources for Food and Agriculture (International Treaty).^{§§}

Objective

The objective of this policy is to establish common standards and procedures for the CGIAR Centres regarding the acquisition, management and release of intellectual assets.

All policies of CGIAR Centres that affect the acquisition, management and release of intellectual assets shall conform with this policy.

Definitions

^{‡‡} Upon approval by the Alliance, this policy will replace the 'Guiding Principles for the Consultative Group on International Agricultural Research Centres on Intellectual Property and Genetic Resources,' 1996. It does not yet include issues relating to stewardship and liability. It is anticipated that the policy will be expanded to address those issues in the future.

^{§§} The text of these agreements is available at:

<http://www.sgrp.cgiar.org/InTrustCollections/Agreements/AgreementwithCentresfinal1.doc>

‘Intellectual assets’ refers to all products of the Centres’ research and development activities, including, but not limited to: improved germplasm, technologies, software, information, publications, vaccines, databases, methodologies and know-how.

‘Market segment’ refers to restrictions including territorial and/or field of use.

General conditions of access to Centers’ intellectual assets

1. The Centres will make their intellectual assets globally available without restriction, subject to the following exception:

When it is indispensable for the effective utilization or further improvement of Centres’ intellectual assets, the Centres may grant limited exclusivity for commercialization in a defined market segment, for a limited period of time, provided that the intellectual asset remains available without restriction, at no cost or minimum administrative costs, for research and development in developing countries and ARIs in support of the CGIAR mission.

2. The Centres will not seek or assert intellectual property rights^{***} over their intellectual assets, subject to the following exception:

When it is indispensable for the effective utilization or further improvement of Centres’ intellectual assets, the Centres may seek or assert or allow third parties to seek or assert intellectual property rights over the Centres’ intellectual assets, provided that the intellectual asset remains available without restriction, at no cost or minimum administrative costs, for research and development in developing countries and ARIs in support of the CGIAR mission.

3. The Centres shall not use their intellectual assets with the sole intention to raise income. The Centres may charge financial compensation in return for providing access to their intellectual assets, on the condition that this does not divert the Centres from their research agendas. However, the intellectual asset shall remain available without restriction, at no cost or minimum administrative costs, for research and development in developing countries and ARIs in support of the CGIAR mission.

Conditions of access to Centres’ intellectual assets that incorporate inputs subject to third parties’ intellectual property or contractual rights

4. Centres will only enter into agreements concerning the use of intellectual assets of third parties subject to IPRs or contractual rights that restrict the use of the resulting products in ways that are inconsistent with the conditions set out in paragraph 1 above, when: a) the intellectual asset the Centre is producing will result in significant improvements to food security and or poverty alleviation in the countries where it can be

^{***} Concerning copyright, which normally vest automatically upon the creation of a ‘work’, see paragraph 6 below.

made available, and, b) no equivalent intellectual asset is available from other sources under no or less restrictive conditions.

Public disclosure

5. The Centres will promptly make public the justification for, and describe the conditions of, their granting limited exclusivity, or seeking or asserting (or allowing third parties to seek or assert) intellectual property rights (other than copyright) over their intellectual assets, particularly when availability in developing countries is affected. The source and amount of income received for providing access to intellectual assets will be made public. Centres will also make public the justification for entering into agreements described in paragraph 4 and the conditions of those agreements.

Dissemination of research results

6. The Centres shall publish their research and development results in a timely manner and in a way that allows open access. This includes results of research and development that is carried out by the Centre itself, or in partnership with another organization. The Centres will allow the reproduction and distribution of their copyrighted works by third parties without the need to obtain permission from the Centres, provided that proper citation is made and the work is not altered.

Preventing misappropriation

7. The Centres should take action, as appropriate, to pre-empt intellectual property claims over their intellectual assets by others without the Centres' authorization.

8. The Centres shall abide by the 'CGIAR's Ethical Principles Relating to Genetic Resources,'^{†††} and shall respect the rights of traditional knowledge holders by seeking their prior informed consent for the documentation, use and publication of information associated with their traditional knowledge, consistent with national and international law.

^{†††} These guidelines can be found at [URL]

Appendix 4:

Preface to the CGIAR Guidelines on the Acquisition and Use of Traditional Knowledge

Staff of the CGIAR Centers are committed to following ethical practices in the way they carry out their research^{†††}. This responsibility extends to awareness and respect of the rights associated with traditional knowledge (TK) acquired from indigenous people and other partners, for use by CGIAR researchers. Many international treaties have been signed to address the protection of TK, while WIPO and World Bank have ongoing initiative to raise awareness of the importance of, and problems with, rights in TK. However, -the potential for loss and misappropriation of TK is still seen to remain problematic. On the one side there is the lack of enforcement of international and national commitments, while on the other side, case studies have shown that there is a lack of recognition of indigenous people's rights by both recipients and givers of such knowledge.

Many CGIAR scientists are directly involved in work with communities and the TK associated with agriculture as developed by these groups. Thus CGIAR scientists represent a point of intersection between the industrialized world and indigenous people. Therefore, these scientists bear a serious responsibility with regard to the way in which TK is acquired and used during their research. As stated in the United Nations Declaration on the Rights of Indigenous Peoples, "Indigenous peoples have the right to maintain, control, protect, and develop their cultural heritage, traditional knowledge and traditional cultural expressions, as well as the manifestations of the sciences, technologies and cultures, including human and genetic resources, seeds, medicines, knowledge of the properties of fauna and flora, oral traditions, literatures, designs, sports and traditional games and visual and performing arts. They also have the right to maintain, control, protect and develop their intellectual property over such cultural heritage, traditional knowledge and traditional cultural expressions."^{††††}

Several Centers expressed the need for a set of guidelines, to ensure that the practices used by CGIAR scientists would be consistent, fair and ethical. Such as set of guidelines has been produced, that are based on interviews of CGIAR scientists and experiences of research and policy groups in other organizations. These guidelines attempt to provide a practical framework to the CGIAR community as a basis for using best practices for conducting research in an appropriate and ethical manner.

One over-arching concern for both those that supply TK and those that receive it is the need for prior informed consent (PIC). The Guidelines make this clear. It is necessary to document the PIC that has been established before the beginning of any new study, based on the understanding that has been reached between the provider and the intended recipient. This PIC can take the form of a signed memorandum, minutes reflecting agreements reached, or documents exchanged between both parties. Discussion between the parties will likely improve the research methodology by asking

^{†††} CGIAR Statement of Ethical Principles, 1999.

^{††††} Article 31.1 of the United Nations Declaration on the Rights of Indigenous Peoples, adopted by General Assembly Resolution 61/295 on 13 September 2007. <http://www.un.org/esa/socdev/unpfii/en/drip.html>

for input from both the providers and the recipients****. The PIC documentation may be signed by CGIAR scientists and one or more members of the community or its representative. Documents on PIC should provide evidence that both parties understand what TK is going to be supplied, how the TK is going to be used, how and when the results of the research will be reported back to the providers, what the risks or opportunities regarding IPRs might be, as well as other points that have been discussed in order to bring about as full an understanding as possible of the research project and the implications for both parties regarding the use of the TK in the project.

When an existing project changes, the PIC documentation should be revised, as necessary, to reflect such changes to such a project. It would be appropriate for Centers to keep track of the financial cost of executing each PIC so that budgetary implications can be determined and included in the financial planning for future projects involving TK.

An aspect of the acquisition and use of TK that may be desirable to both the researcher and the community providers is to document the TK. Documentation could, for example, take the form of the creation of a database that contains fields that describe the TK, dates when the knowledge was provided, and other characteristics such as whether the TK should be kept as confidential information, etc. The possibility of documenting TK received should be spelled out in the instrument that memorializes the PIC.

CGIAR researchers that were interviewed emphasized the need and responsibility of the scientists to bring their results back to the communities that provided the TK in each project. Results need to be shared with communities in a way that contributes to the communities understanding of what the results are and how these results may be useful to them in their future use of their own TK. Many Centers work with communities using a participatory action research (PAR) approach. By using the PAR approach, these Centers feel that communities derive maximum benefit from interacting with the researchers and are better able to utilize research results.

The following guidelines are based on the experience regarding TK's acquisition and use by CGIAR scientists and of research and policy groups in other organizations has been produced and is presented in this document. These guidelines attempt to provide practical recommendations to the CGIAR community incorporating best practices to ensure that research involving the acquisition and use of TK is carried out in an appropriate, ethical and consistent manner throughout the CGIAR System.

**** Various methodologies that are designed to ensure the opportunity for all parties engaged in a research project have been described. Examples of these methods include: Participatory Action Research (PAR), Adaptive Collaborative Management (ACM), and in general, Integrated Natural Resource Management (INRM).

Draft Guidelines for the Acquisition and Use of TK by CGIAR Scientists

1. Prior Informed Consent (PIC)

- Before every research activity that involves local communities or indigenous people and exchange of traditional knowledge (TK)¹⁴, the relevant stakeholders and representatives will be identified and informed of the research plan of proposed activities and research products to be disseminated. Whenever possible, scientists should work in cooperation with local and national authorities, such as the Ministry of Culture/Cultural Affairs¹⁵.

- Prior informed consent (PIC) must be reduced to writing including details about the research activity, the time/planning schedule, the expected results and foreseeable benefits and potential harms and risks. The PIC will comply with applicable law.

- Adequate time, resources, and expertise shall be allocated for documentation and for PIC discussions, which shall always be carried out in an atmosphere of mutual respect.

- Information about potential further use and the implications of such use shall be provided to the local communities or indigenous people involved in the research activity.

- When *in situ* PGRFA material is collected, researchers should seek to obtain it under the SMTA in accordance with national law.

- The research will be carried out in compliance with the PIC. For any activity that differs from the terms agreed, a new PIC understanding will be sought

- Means for dealing with problems that might arise such as a difference in opinions, withdrawal of a party from the cooperation, or other unforeseen circumstances that change the relationship of the parties, shall be agreed upon.

2. Publishing TK

¹⁴ “Traditional knowledge” means the context or substance of knowledge resulting from intellectual activity in a traditional context, and includes the know-how, skills, innovations, practices and learning that form part of traditional knowledge systems, and knowledge embodying traditional lifestyles of indigenous and local communities, or contained in codified knowledge systems passed between generations. It is not or contained in codified knowledge systems passed between generations. It is not limited to any specific technical field, and may include agricultural, environmental and medicinal knowledge, and knowledge associated with genetic resources.

¹⁵ Examples of such ministries are: the Department of Culture, Indian Ministry of Tourism and Culture, New Zealand Ministry of Foreign Affairs and Trade, the Nigerian Federal Ministry of Culture and Tourism

- For the public disclosure of TK in scientific articles, databases, books, presentations, etc, the consent of all relevant parties shall be sought and an understanding regarding authorship and attribution shall be reached.

- The contribution of the TK holders shall be acknowledged and respected in all publications and presentations.

- TK holders must be informed about reasonably foreseeable consequences of the public disclosure of their knowledge before publication.

3. Giving back research results

- Passing back research results shall be recognized to be an integral part of the research. As such, all project plans will have a component for ensuring that results reach the local communities in an accessible and useful manner (for example, in local languages).

- Methodologies used to process TK during the research will be explained to the local communities or indigenous people.

4. Access and Benefit Sharing

- Steps should be taken to ensure, to the greatest extent possible, that providers of TK as well as, counterpart institutions will get an equitable share of the benefits arising from the collaboration. This requirement is within the responsibility of the parties and the Centres that carry out research in cooperation with local communities indigenous people, and, as such, Centres shall take steps that protect the misuse and misappropriation of TK.

- This principle also applies to non-monetary benefits created by research activities such as capacity building, technology transfer, the establishment of networks and other cooperative mechanisms.

5. Active TK protection efforts

- During the research every effort will be undertaken by the Centres/researchers, to protect TK from misappropriation by following procedures that are consistent with the wishes of the TK providers and consistent with national and regional laws.

- Centres shall ensure that scientists will take into account the legal frameworks and other mechanisms concerning the protection of TK; wherever possible Centres shall facilitate to the extent possible help to communities that wish to actively seek measures of protecting TK and to ensure its maintenance within the local context