

## System Management Board Commentary on the Review of the CGIAR Intellectual Assets Principles <sup>1</sup>

### Background to the review

1. The CGIAR Principles on the Management of Intellectual Assets approved on 7 March 2012 (“IA Principles”)<sup>2</sup> provide that they “*shall be reviewed by the System Organization, in consultation with the Centers, and the System Council in 2014 and every two years thereafter in light of experiences gained*”<sup>3</sup>. (Article 12)
2. In 2014, the then named Consortium Office undertook the first review of the IA Principles in consultation with Center IP Focal Points and the then named Fund Council Intellectual Property Group.
3. In 2015, the then named CGIAR Consortium proposed that the Independent Evaluation Arrangement (“IEA”) facilitate the second review of the IA Principles, to be undertaken by external independent reviewers engaged by the IEA. This approach was approved by the System Council through the approval of the IEA’s Program of Work and Budget for 2016.
4. In 2016, the IEA issued terms of reference for the external independent review of the IA Principles<sup>4</sup> and appointed a review team to undertake the review.
5. The IEA issued the final report on the independent review on 13 October 2017<sup>5</sup> and requested the System Management Board (“Board”) to prepare a response. For ease of reference, the review team’s main recommendations and conclusions can be found in the Executive Summary on pages iv-v of the report.
6. The System Management Board endorsed this commentary on the review at its 8<sup>th</sup> meeting on 11-12 December 2017.

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<sup>1</sup> This commentary is prepared pursuant to Article 8.1(tt) of the *Charter of the CGIAR System Organization (June 2016)*, which provides that the System Management Board’s role is to ‘*review IEA evaluations of the CGIAR Portfolio, functions and structures and provide comments to the System Council for its consideration*’.

<sup>2</sup> Available at <https://cgspace.cgiar.org/bitstream/handle/10947/4486/CGIAR%20IA%20Principles.pdf?sequence=1>

<sup>3</sup> Particularly in light of Center competitiveness, as well as operational and administrative efficiency

<sup>4</sup> Available at [http://iea.cgiar.org/wp-content/uploads/2017/02/ToRs\\_IA-Review\\_FINAL.pdf](http://iea.cgiar.org/wp-content/uploads/2017/02/ToRs_IA-Review_FINAL.pdf)

<sup>5</sup> Available at [https://cgiar-my.sharepoint.com/personal/r\\_sara CGIAR org/\\_layouts/15/guestaccess.aspx?docid=1cb4b46fadccd4f28b90927e59eedb76c&authkey=AXI2nFZN2G8liQFlmHFX37E&e=03d62021dc164c33845ff184a16379ba](https://cgiar-my.sharepoint.com/personal/r_sara CGIAR org/_layouts/15/guestaccess.aspx?docid=1cb4b46fadccd4f28b90927e59eedb76c&authkey=AXI2nFZN2G8liQFlmHFX37E&e=03d62021dc164c33845ff184a16379ba)

## System Management Board Commentary on the independent review

### Part A. General comments on review

1. The Board recognizes the importance of intellectual assets management in the CGIAR System and considers the effective implementation of the IA Principles to be essential both to facilitate dissemination pathways and partnerships that maximize CGIAR's global accessibility and impact, and to mitigate reputational risk.
2. The Board therefore welcomes the review of the IA Principles which assesses the IA Principles (including their Implementation Guidelines) five years after their adoption in terms of their appropriateness, effectiveness, efficiency and governance. The Board finds the review comprehensive, and concurs with most of its findings which it notes are based on evidence gathered from a broad range of stakeholders across the CGIAR System.
3. The Board is generally pleased to note that *"the review team recognizes that the IA Principles are appropriate and have the potential to amplify the impact of the CGIAR System"* (page v). The Board is also pleased to note the review team's observation that *"the implementation of the IA Principles has proceeded systematically with a number of positive signs, including increased legal staffing at each Center, development of a review and oversight process, a robust reporting process and launching of the CGIAR Legal/IP Network (CLIPnet) community of practice"* (page iv).
4. A matter of key interest to the Board, as the CGIAR System implements a more strategic approach to its business planning cycle over the forthcoming years, is to ensure that intellectual assets produced by CGIAR are managed innovatively and leveraged by the scientific and development communities. In this respect, the Board takes encouragement from the review team's finding that the IA Principles *"have contributed to preserve the reputation of CGIAR as a System focused in delivering international public goods (IPGs), with a realistic, prudent and transparent policy to exploit the opportunities offered by various types of agreements that may enhance Centers' research capacity and contribution to CGIAR's outcomes"* (page v). This is particularly important given the delicate balance that the IA Principles seek to achieve between maintaining the founding value of global accessibility of CGIAR research results and proactively achieving targeted impacts through the use of intellectual property rights and licensing.
5. The Board was keen to understand why Centers have entered into such a limited number of agreements granting exclusivity for commercialization of intellectual assets or that lead to downstream restrictions on their global accessibility (i.e., 'Limited Exclusivity Agreements' and 'Restricted Use Agreements'), and notes with interest the review team's explanation that this is *"likely due to either lack of capacity (...) or absence of a perceived need and therefore interest to enter into such agreements"* (Section 3.2.4). The Board takes encouragement from the fact that the limited number of these agreements, often with the private sector, does therefore not seem to be due to the content of the IA Principles, which the review team found to provide in most

cases “*useful guidance in negotiations with partners*” and “*an important shield against private sector partners who may (...) seek to overly control dissemination of research results*” (Section 3.2.4). However, the Board recognizes that, in addition to training, benchmarking and scaling up, communication efforts will be needed around the implementation of the IA Principles (see comments on Recommendation 2 below).

6. In addition, the Board notes that that the IEA review did not specifically look into the adequacy of resources to support Center capacity to implement the IA Principles. In practice, the uncertainty of funding experienced since the adoption of the IA Principles has made it more difficult for Centers to fund intellectual asset management capacity. Further consideration at the CGIAR System level on aligning resource allocation with expectations would be beneficial.
7. The Board is pleased to note the review team’s conclusion that “*the IA Principles provide a sound policy necessary for maintaining oversight at the system level*” (Section 3.3) and agrees with the review team’s positive observations regarding the System Council Intellectual Property Group (“SC IP Group”), i.e. that they are “*highly engaged with the System Management Office and with the issues surrounding IA management*” and that they play “*an important role in oversight*” (Section 4.2.3). The Board believes that there is an opportunity to re-examine the role of the SC IP Group in light of the revised governance structure of the CGIAR System and in particular the functions of the standing committees of the System Council and System Management Board. There is also an opportunity to look into whether more strategic advice on IA management is needed. As these matters are looked into, it will also be important to examine how oversight of compliance with the IA Principles, including annual system-level reporting on intellectual assets management, fits into the CGIAR System Risk Management Framework and the Performance Management System.
8. Finally, taking into account the experiences with implementation of the IA Principles over the last five years, this latest review of the IA Principles and the need to streamline evaluation and reviews in the System, the Board feels that the IA Principles no longer require to be reviewed every two years and proposes instead that they be reviewed as determined necessary within an overall performance and evaluation cycle for the CGIAR System. Under such a system, it is envisaged that the IA Principles would be reviewed every 4-6 years, or sooner if deemed necessary. Accordingly, it is proposed that the following amendment be made to Section 12 of the IA Principles (words crossed out and underlined to highlight changes only): “*These CGIAR IA Principles shall be reviewed by the System Organization, in consultation with the Centers, and the System Council ~~in 2014 and every two years thereafter~~ periodically within the framework of an agreed overall business cycle for the CGIAR System.”*

## Part B. Commentary on the 4 key recommendations of review

9. The review team makes four main recommendations to improve the impact of the IA Principles.
10. Taking into account the feedback received<sup>6</sup> from Centers and the SC IP Group on these recommendations as well as the principle of subsidiarity adopted by CGIAR's Funders and Centers in the July 2016 CGIAR System Framework<sup>7</sup>, the System Organization developed the following comments and action points for each of these recommendations.

### **Recommendation 1**

*In order to clarify the scope and intent of the IA Principles, the System Management Board should oversee revision of the Guidelines to ensure (a) a coherent application of the IA Principles across all CGIAR technology sectors, including forests, microorganisms, livestock, fish and information technology, and (b) more specificity regarding emergency exemptions.*

11. The System Organization agrees with this recommendation taking into account feedback received.
12. Centers have gained significant experience in applying the IA Principles across a diverse range of technology sectors and thematic issues since the IA Principles' Implementation Guidelines were developed in 2013.
13. Updated guidelines will allow this accumulated expertise to be shared across the System. Updated guidelines will also assist Centers in applying the IA Principles in a consistent manner, which will be of particular benefit when multiple Centers across the System work with the same donors and partners, while allowing for a differentiated application according to the technology sector. Advanced genetic technologies constitute an additional sector that should be considered for inclusion in the updated guidelines. More specificity regarding the application of the emergency and research exemptions would also be useful given the broad mandate of CGIAR.
14. The updated guidelines should be kept simple and practical.
15. The action points to implement this recommendation are set forth below:
  - a. System Management Office to create and support a task force to develop draft guidelines;
  - b. Working group to be composed of several Center IP focal points and other sector-specific specialists within the System (including the cross-cutting Platforms of the CGIAR Research Portfolio, as appropriate), in order to leverage expertise within the System;
  - c. External expertise to be sought on a needs basis;

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<sup>6</sup> This feedback was collected through a survey which was answered by 14 Centers and the SC IP Group.

<sup>7</sup> Refer Principle 12 of Annex A of the CGIAR System Framework

- d. All Centers (through their IP Focal Points) and SC IP Group to be consulted on draft.
- 16. Responsibility for action: Task force supported by the System Management Office (which would hire external experts as relevant).
- 7. Timing for implementation: 1 year.

**Recommendation 2**

*The System Management Board should oversee the development and deployment of a communications program to create a more uniform understanding across the CGIAR System regarding the opportunities to enter into partnerships that may add value to the Centers' activities as well as the prudent use of [intellectual property rights] when needed to enhance impact.*

- 17. The Board partially agrees with this recommendation, taking note of the feedback received. The Board agrees with the need to better communicate the opportunities that exist under the IA Principles for technology transfer, Public Private Partnerships (PPPs) and other innovative dissemination pathways, scale-up and impact acceleration, and strategic use of intellectual property rights. However, but the Board does not believe that at this stage the deployment of a full-fledged communications program is warranted given the limited System-level resources and other pressing financial needs.
- 18. Noting that a better understanding of the needs of Centers in this regard is important, action points to address this recommendation are set forth below.
  - a. Organization of a workshop to support CGIAR Center tech transfer. *This workshop also addresses Recommendation 4.*
    - i. Responsibility for action. Task force led by IRRI<sup>8</sup> and made up of Center representatives and the System Management Office, of a total of 4 or 5 members, to organize a 2 or 3-day workshop in 2018 to support CGIAR Center tech transfer.
    - ii. Objectives. The objectives of this workshop would be as follows (*with the second objective addressing Recommendation 4*):
      - 1. To increase awareness regarding the opportunities for tech transfer for CGIAR Centers (particularly re PPPs, LEAs, RUAs and other innovative dissemination pathways, scale-up and impact acceleration, and strategic use of intellectual property rights), by looking at:
        - what different Centers are doing and can improve (benchmarking with CGIAR Centers and other public R&D organizations, best practices and challenges);

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<sup>8</sup> IRRI has proposed to lead this task force given that the workshop builds on a workshop initially proposed by IRRI to leverage best practices in and support Public Private Partnerships and scale-up.

- what other models exist that would be compatible with the IA Principles; and
- 2. To assess CGIAR Centers' needs regarding tech transfer support, by:
  - assessing needs to coordinate CGIAR Centers' staff involved in tech-transfer (e.g., through the expansion or modification of the CGIAR Legal Intellectual Property Network);
  - assessing options for a (or several) Center-led initiative(s) and/or an interdisciplinary function at the System-level to support tech transfer.
- iii. Outcomes and outputs
  1. Mapping of CGIAR Centers' resources and needs and identification of main topics of interest in tech transfer and PPPs;
  2. Increased awareness re. the opportunities for tech transfer in CGIAR Centers and mapping of best practices;
  3. Potential coordination mechanism for CGIAR Centers' staff involved in tech transfer; and
  4. Paper proposing options for a (or several) Center-lead initiative(s) and/or an interdisciplinary function at the System-level to support CGIAR Center tech transfer, for consideration by the Centers and the System Management Board.
- iv. Participants. Centers would be invited to send an average of 2 representatives on a voluntary basis (from amongst DGs, DDG-Rs, staff working on tech transfer, PPPs, business development, intellectual property management, etc.). A small number of external experts and other representatives of stakeholder organizations with an interest in CGIAR Center tech transfer would also be invited.
- v. Cost. System Management Office to pay for workshop costs (meeting venue, catering and other event management costs). Centers would self-fund their flights, visa and any accommodation expenses.
- b. Center outreach. System Management Office to undertake outreach to raise awareness and promote a uniform understanding of the IA Principles.
- c. Webinars. The System Organization to continue to organize webinars on the implementation of the IA Principles through partnerships and the effective use of intellectual property rights.
- d. Development of communication tools. It is proposed to put on the agenda of the next meetings of the resource mobilization and communication communities-of-practice, the possible need to develop CGIAR-wide institutional tools to better communicate the IA Principles and their implementation to partners, donors, the public and Center staff.

**Recommendation 3**

*To determine the portfolio of existing [intellectual assets] in the Centers and to better understand their range and value, Centers should be encouraged and supported by the System Organization to undertake an [intellectual asset] audit and develop strategies to ensure their effective management and dissemination of [intellectual assets]. This applies particularly to those Centers that generate non- traditional [intellectual assets] where CGIARs' awareness of the [intellectual assets'] value may be limited.*

19. Taking note of the feedback received, the Board agrees with the recommendation to encourage and support Centers to undertake intellectual asset audits at their discretion and to develop strategies to ensure the effective management and dissemination of intellectual assets. In this respect, the Board notes that the Implementation Guidelines of the IA Principles already identify intellectual asset audits as one of the practices for Centers to consider in their commitment to the sound management of intellectual assets and IP rights.
20. However, the Board recognizes that, given the significant differences between Centers, this recommendation cannot be implemented through a one-size-fits-all approach and that each Center must assess whether to undertake an audit according to its own needs and resources (i.e. taking into account its distinct activities, the types of intellectual assets it produces, the dissemination pathways it utilizes, etc.).
21. To date the System Organization is aware of two Centers having commissioned external intellectual asset audits (e.g. CIAT and ICARDA) and is not aware of the extent to which Centers have undertaken internal audits in this regard.
22. The Board considers that the System Organization's support to Centers regarding their undertaking of intellectual asset audits should be as follows:
  - a. to organize a webinar to share insights from Centers that have previously undertaken intellectual asset audits (through internal or external audits) and from external professional(s) with expertise in this area, and, on this basis, develop useful tips for Centers to consider (e.g. criteria or data fields for intellectual asset inventories; software for the inventory process, etc.); and
  - b. compile a list of professionals with expertise to conduct or support intellectual asset audits and with an understanding of CGIAR.
23. Finally, the Board notes that the CGIAR System Risk Management Framework, as adopted by the System Council in November 2017, provides an appropriate mechanism for the System to periodically review System-wide opportunities and risks with respect to the management of intellectual assets by Centers moving forward.

**Recommendation 4**

*System Organization should develop an interdisciplinary (not just legal) IA Management function at the System-level, designed to support IA management across all Centers with a*

*minimum commitment of 2 full-time professional staff with expertise in contract and intellectual property law and in business and technology management to provide services to Centers as well as advice and training through Q&A or other methods (e.g. workshops). This would be most readily achieved through expansion of the activities and designated responsibility in the System Management Office.*

24. The Board does not support implementation of this recommendation at this time.
25. The Board takes encouragement in the finding that “the IA Principles have had an important impact in increasing the awareness of [intellectual assets] across the CGIAR System and increasing the capacity at each Center to work with [intellectual assets] in the context of partnership development” (Section 3.2.1). The Board agrees that the IP management and tech transfer capacity of Centers needs to be further strengthened in CGIAR and that a System-level approach can bring a number of advantages (e.g. economies of scale, increased efficiency and improved risk mitigation).
26. However, the Board does not agree with significantly expanding the intellectual asset management function within the System Management Office at this time. In addition, input from Centers shows differing views on this recommendation, particularly regarding expertise, location and funding arrangements.
27. That said, the Board appreciates that a system-wide intellectual asset management interdisciplinary function could also be delivered through other mechanisms that may prove as effective as a central function (e.g. via a shared services approach or a Center-led initiative for the support of CGIAR Center tech transfer). On balance, the Board believes that the recommendation requires further discussion and careful assessment by the Centers before any possible implementation (which is proposed through the workshop described under Recommendation 2 above).