Report of the Genetic Resources Policy Committee

14th Meeting, Los Baños, Philippines, 21-22 February 2002

People Present

GRPC members: M.S. Swaminathan, Chair
Usha Barwale, TAC
Robert Bertram, USA
Ron Cantrell, CDC
Marcio de Miranda Santos, CBC
José Esquinas-Alcázar, FAO
Christina Grieder, Switzerland
Geoffrey Hawtin, IPGRI/Secretary
Bernard Le Buanec, PSC
Timothy Reeves, CDC
Renato Salazar, NGOC
Carl-Gustaf Thornström, Sweden

Observers: Adel El-Beltagy, ICARDA
Willie Dar, ICRISAT
Cary Fowler, IPGRI, Resource Person
Michael Halewood, IPGRI, Resource Person
Victoria Henson-Apollonio, CAS
Emil Javier, TAC/iSC
Manny Lantin, CGIAR Secretariat
Gerald Moore, Resource Person, IPGRI
Jane Toll, SGRP

Agenda: See Annex I

Agenda Item 1: Opening of the meeting and adoption of the agenda

1. Dr. M.S. Swaminathan, Chair of the Genetic Resources Policy Committee, opened the meeting and welcomed participants and observers. He thanked Dr. Ron Cantrell and the International Rice Research Institute for hosting the meeting. The agenda (Annex 1) was adopted with the addition of several items.

Agenda Item 2: Presentation on genetic resources and related policy issues at IRRI

2. Dr. Cantrell welcomed the group on behalf of IRRI. He informed the group of developments at IRRI related to genetic resources and intellectual property rights issues, and noted that awareness of such matters had increased significantly in recent years. He provided the GRPC with a brief history of the recently-publicized

case of the transfer of Jasmine rice from IRRI to the Agricultural Research Service of the USDA in the United States, and subsequently to a rice breeder at the University of Florida. The transfer was mistakenly made without a Material Transfer Agreement (MTA), but when the oversight was recognized, MTAs were agreed with all parties. Concerns about the situation were, it was noted, mostly centred around possible future trade effects of any future production of Jasmine rice outside of Thailand (where the original accession was collected). Dr. Cantrell noted that IRRI had quickly taken steps to inform Thai officials of the case, and they understood that the accession in question was "designated" germplasm under the auspices of FAO. Initial concerns about its transfer, it would appear, have now been resolved.

Agenda Item 3: International Treaty on Plant Genetic Resources for Food and Agriculture and follow-up to the workshop

3. The GRPC considered the International Treaty on Plant Genetic Resources for Food and Agriculture and discussed the steps that will need to be taken for Centres to associate themselves formally with it. The GRPC welcomed the adoption of the Treaty and congratulated FAO on the successful conclusion of the difficult negotiations. The Committee felt that the new Treaty marks the beginning of what it hopes and anticipates will be a new era of cooperation and trust in this field.

4. The GRPC welcomed the observation by the member from FAO that the Treaty is not just FAO's, but it is everyone's, including the CGIAR's Treaty. He also noted the important role that the CGIAR played in providing technical assistance and advice during the negotiations and in facilitating the adoption of the Treaty.

5. The GRPC observed with pleasure that the CGIAR has a clear and important role to play in implementating the Treaty. The Committee noted the importance of CGIAR-NARS partnerships to implementing the Treaty and in this regard suggested that consideration be given to holding workshops at the regional or sub-regional level to inform and assist policy-makers and others in their consideration of the Treaty during the ratification period. Such workshops could also heighten awareness of the need to make sure that national legislation is compatible with the provisions of the new Treaty, which is in harmony with the CBD.

6. The GRPC expressed its satisfaction that most of its earlier concerns about the Treaty had been satisfactorily resolved in the final stages of the negotiations.

7. The Committee noted the importance of having a system-wide approach to the Treaty and in this regard, the importance of informing all of the individual Boards of Trustees about the Treaty. Dr. Geoff Hawtin (IPGRI) expressed the willingness of IPGRI to assist this process and offered to try to facilitate attendance of Cary Fowler or Gerald Moore at Board of Trustee meetings in cases where it might be useful to have them as a resource to answer questions and provide information about the Treaty.

8. Dr. Hawtin informed the group about the workshop sponsored by GRPC, SGRP, CAS-IPR and the CGIAR System Office, which had immediately preceded the GRPC meeting. The workshop focused on the implications of the International Treaty for

CGIAR Centres, and produced a draft agreement between the Governing Body of the Treaty and CGIAR Centres for further discussion with FAO and within Centres, and a draft interim MTA. This draft interim MTA (attached as Annex 2), intended to serve as a transitional MTA under the present FAO-CGIAR "in trust" agreements until the International Treaty comes into force, will also be further discussed with FAO. The FAO Commission on Genetic Resources for Food and Agriculture requested that such a draft be submitted to its next meeting, scheduled for October 2002. This interim MTA was drafted in such a way as to incorporate a number of features of the new Treaty. The Committee discussed the draft text of the proposed interim MTA as developed at the inter-Centre meeting, and agreed that it provides a good basis for discussion with FAO. One editorial suggestion was made for its improvement.

9. Workshop participants also examined, but did not have time to fully discuss, a draft "Joint Statement" addressing certain issues related to implementing Centre participation in the Treaty. Such a statement, if agreed with FAO, would be made jointly with the Centres upon the occasion of concluding an Agreement with the Governing Body of the Treaty, after its entry into force. Dr. Hawtin reported that the draft Joint Statement presented to the workshop will be further developed and refined based on discussions with FAO and will be brought back to Centres for further input, and ultimately approval, at the appropriate time, prior to any final action being taken.

10. The attention of the Committee was drawn to a recent article in Nature Biotechnology entitled "CGIAR Under Pressure to Support Seed Treaty" by Anna Meldolesi. The Committee expressed its concern over the many factual errors contained in the article. The Committee was, in particular, concerned that the article gives the impression that the CGIAR Centres are being 'forced' against their will and better judgment, to become associated with the new International Treaty. In fact the opposite is the truth. The CGIAR representative at the FAO Conference made a strong statement of support for the new Treaty at the time of its adoption. Immediately thereafter the Chair of the CGIAR had conveyed his congratulations on concluding the Treaty to the Director General of FAO. All the Centres present at the inter-Centre meeting held immediately prior to the GRPC meeting to discuss the Treaty, expressed support for the Treaty and felt that it represented a significant step forward. It was also noted that it had been recommended at that meeting that the Centre Directors be asked to send a joint letter to the editor of Nature Biotechnology pointing out the errors contained in the article and expressing support for the Treaty. The GRPC felt that consideration should also be given to submitting a separate article for publication in a major journal, setting the record straight.

11. The GRPC expressed its full satisfaction with the role that IPGRI had played in the negotiations and thanked the Centre for representing the CGIAR system so well throughout the long and often arduous negotiations.

Agenda Item 4: Developments in the CGIAR and upcoming GRPC review

12. The Committee was brought up to date on developments in the CGIAR, including the Challenge Programmes, the evolution of the System Office and the upcoming review of the Committee's work.

13. Challenge Programme on Genetic Resources and Genomics: The prospect of this Challenge Programme was welcomed and seen as having real potential to address problems facing smallholder farmers in developing countries. Research progress on drought tolerance, salinity tolerance and other key traits is critically important and increasingly within the reach of science. With less-restricted funding for the Centres in increasingly short supply, new approaches that emphasize partnerships with NARS and ARIs are especially appropriate. The Committee believes that a Challenge Programme on Genetic Resources and Genomics has the potential to hasten progress on a central task of the CGIAR and attract new funds and important research partners in the process.

14. Pointing out that 2003 marks the 50th anniversary of the Watson & Crick paper on their historic work on the structure of DNA, the Chairman suggested that the CGIAR could mark this milestone by convening an inter-centre symposium on "Genetic Resources, Genomics and Food Security." The symposium could mark the launching of the new Challenge Programme and involve CGIAR researchers and their partners from around the world. Such an event could examine the roles of genetic resources and new science in addressing poverty, hunger and environmental degradation. Supporting the suggestion, the Committee proposed that the Science Council might consider how such a symposium could contribute to advancing the CGIAR's research agenda.

15. GRPC Review: At AGM1 in Washington, the ExCo was charged with holding a review of the GRPC. Dr. Manny Lantin, CGIAR Secretariat Science Advisor, presented the draft plans for the review that have been shared with the ExCo members. A forward-looking review is proposed that would lay out options or recommendations for the future, as well as assess past performance. Issues likely to be addressed include:
    - How successful has the Committee been in achieving its mission?
    - Is there a continuing need for a separate committee or other mechanism to address genetic resource policy issues?
    - If yes, how should the task be carried out? What should the terms of reference be and how should accountability be ensured?

16. The draft terms of reference call for a small (2 person) team, with one member from the North and one from the South, with the System Office providing support. The draft terms of reference call for experience in biodiversity (at least one panelist), knowledge of evaluation and organizational design, and an "arms-length relationship to the CGIAR System."

17. The Committee welcomed the review of its work, and noted the appropriate timing for this in view of the new International Treaty having recently been adopted. It discussed the challenge facing the review team, especially in assessing the GRPC's contribution to helping resolve issues before they assumed major proportions. The Committee believes its pro-active efforts have helped to resolve a number of politically sensitive situations by responding to concerns among a range of stakeholders. Its nature as a stakeholder-based committee has been particularly valuable in this respect. Dr Thornström offered to make available text (extracted from a report to a Parliamentary commission on Swedish Policy for Global Development), concerning events (or rather "non-events") that had occurred at ICW-2000 in relation

to the CGIAR's IPR policies. Dr Lantin offered CG Secretariat support to assist in its translation into English.

18. The Committee will seek to help the work of the review panel by developing a resumé explaining its make-up, mode of operation and description of some of its achievements. Concern was expressed that the "arms-length" criterion for the panel be tempered by a solid understanding of the role and make-up of the CGIAR. A working knowledge of the Centres and the system as a whole, as well as of the many dimensions of global biodiversity policy issues, will be crucial to the review panel's having a ready appreciation for the challenges, sensitivities and political nuances that have faced the CGIAR, and that led to the creation of the GRPC.

Agenda Item 5: Report on CGIAR CAS-IP

19. The Committee heard and welcomed the report from Dr. Victoria Henson-Apollonio, Manager of CAS-IP. The Committee notes that CAS assisted WIPO in the development of a distance-learning course on IP and Biotechnology and that CAS has a verbal agreement with WIPO that CGIAR staff (and students from developing countries) will be able to take for the course for free - with the option of receiving a certificate from the WIPO Academy. In the coming year, CAS will continue to promote increased inter-Centre sharing of IP/IPR experiences, and a second workshop will be held in late 2002 to discuss IP-management tools, including checklists developed from ongoing studies of cases representing Centre IP experiences.

20. Mention was made of the appointment of IP Managers during the last year by CIMMYT (Mr. Shawn Sullivan), ILRI (Ms. Rose Ndewga), WARDA (Ms. Solange Dao), and IRRI (Dr. Thanda Wai). Several other Centres, e.g. ICARDA, already had IP managers.

Agenda Item 6: Report on SGRP

21. Ms. Jane Toll, the Coordinator of the Systemwide Genetic Resources Programme, described to the Committee some of the recent developments in the Programme including the work done in relation to the International Treaty, the Global Conservation Trust, and various technical information and representational activities. The Committee congratulated her on the many achievements of the Programme and noted, in particular, the strides that had been made in strengthening and expanding the Systemwide Information Network on Genetic Resources, SINGER. This information system, together with others such as IWIS/ICIS, are now in a good position to play a key role both within the CGIAR (such as in relation to the proposed Challenge Programme on Genetic Resources) as well as internationally.

22. The GRPC endorsed the continuing role of SGRP in informing, coordinating and assisting centres regarding the implementation of the International Treaty. In particular, through SGRP, umbrella agreements for transfers of materials between centres (obviating the need for individual MTAs for inter-centre transfers) might be developed. Guidelines for acquiring, distributing, and disposing of certain materials might also be developed.

Agenda Item 7: Global Conservation Trust

23. A report was presented on developments that had taken place since the last meeting with respect to the Global Conservation Trust. The Committee congratulated those concerned and expressed its satisfaction with the progress made on many fronts, and in particular the securing of the first gift of $10 million from the Swiss government. Special thanks were given to SDC, for the key role they played in this.

24. The Committee considered the draft Executive Summary of the document proposing a governance mechanism for the Trust. The Committee considered that the proposed mechanism was generally appropriate and suggested ways by which it might be further developed. The need to keep the mechanism as light as possible was stressed. However, it was noted that there is a trade-off between a light governance structure, which would be possible if the fund is focused only on the in-trust collections, and a more comprehensive mechanism required if the Trust is to cover a broader range of collections. The Committee reiterated its concern that the Trust be developed in the context of the International Treaty, as one of the financing mechanisms foreseen in Articles 18 and 19 of the Treaty.

Agenda Item 8: World Summit on Sustainable Development (Johannesburg) and developments in other fora

25. Dr. Lantin informed the Committee about preparations regarding the CGIAR's participation in the Johannesburg Summit. The Committee took note that issues important to the CGIAR, such as genetic resources, intellectual property rights and, in particular, the FAO International Treaty, were mentioned in the preliminary paper of the preparatory committee.

26. Mr. Michael Halewood, IPGRI Legal Specialist, reported on developments in other fora:

- WIPO: The World Intellectual Property Organization (WIPO) is preparing an inventory of regulations concerning access to genetic resources, with a view to developing model legal clauses relating to IPRs in access agreements. It is also considering the protection of traditional knowledge and the issue of prior art in the filing of patents. WIPO has given much support during the negotiating process for the International Treaty.

- Convention on Biological Diversity: During a meeting of the Ad Hoc Working Group on Access and Benefit Sharing in Bonn (Oct, 2001), guidelines for access and benefit sharing were developed. During a recent meeting of the Ad Hoc Working Group on Article 8J in Montreal, traditional knowledge was discussed. This meeting also recommended that COP members ratify the FAO Treaty.

- World Trade Organization: The ministerial declaration of the meeting in Doha (Nov. 2001) highlights, among other things, the review of TRIPS Article 27.3(b), the need to consider the relationship between TRIPS and the CBD, and the issue of protecting traditional knowledge.

27. Dr Victoria Henson Apollonio of CAS reported that Belgium has developed a regulation requiring that an applicant present a certificate of origin when filing a patent involving genetic resources.

Agenda Item 9: Expert Consultation on Implementing Farmers' Rights

28. Dr M.S. Swaminathan briefed the Committee on the outcome of the meeting, sponsored by MSSRF, FAO and SDC in Chennai, India in January, to consider issues concerning the practical implementation of Farmers Rights in the Asia-Pacific Region. While the meeting recognized that the International Treaty considers the implementation of Farmers' Rights to be a national concern, it was never-the-less noted that there are international dimensions, as recognized in the Preamble of the Treaty, and that the Centres are well placed to assist in their implementation, e.g. through the provision of appropriate information.

Any Other Business

Vavilov Institute, St. Petersburg, Russia:

29. Dr Thornström briefed the Committee on a visit he had made to the Vavilov Institute (VIR) in St Petersburg, Russia, in December 2001. He circulated a copy of a message he had sent to Geoff Hawtin following the visit, proposing that IPGRI and the CGIAR leadership should visit Moscow in 2002 to further encourage Russia´s membership of the CGIAR and its provision of technical assistance through VIR. The GRPC endorsed the proposal and asked Dr Thornström to forward it to the CGIAR Chair and CGIAR Executive Director for follow-up.

Statement on behalf of CGIAR at the World Summit on Sustainable Development, Johannesburg:

30. The GRPC prepared the following statement, as a contribution to the Statement to be made by Dr Ian Johnson, CGIAR Chairman, to the World Summit on Sustainable Development.

31. The Johannesburg Summit offers a unique opportunity for developing an agreed action plan for fostering harmony between humankind and nature and within the members of the human family. The Summit rightly places emphasis on poverty eradication, health and sustainable development, and protecting and managing the natural resource base of economic and social development. Experience in most developing countries has shown that agricultural progress represents the best safety net against hunger and poverty. This is because of the high percentage of the population depending for other livelihoods on crop and animal husbandry, inland and marine fisheries, forestry, and agroforestry and agro-processing. In families living in poverty, over 75% of the daily income goes to the purchase of food. Therefore, bridging the nutrition divide is the starting point for ensuring opportunities for a healthy and productive life.

32. Genetic resources of plants, animals and microorganisms constitute an invaluable component of the ecological foundations essential for sustainable agriculture. The Convention on Biological Diversity adopted at the Rio Earth Summit in June 1992, and the International Treaty on Plant Genetic Resources for Food and Agriculture adopted at the FAO General Conference in November 2001, represent important steps in global efforts to conserve genetic diversity at the level of genotypes, species and ecosystems for current and future use. In this global effort, the *ex situ* germplasm collections maintained by the Future Harvest Centres of CGIAR constitute an extremely important shield against food insecurity caused by biotic and abiotic stresses, shrinking per capita land and water resources and potential changes in precipitation, temperature, sea level and ultraviolet B-radiation.

33. The over 500,000 accessions of a wide range of food and fodder plants, including those which provided the raw material for the Green Revolution, and which are now maintained in Trust for the world community in CGIAR Gene Banks under agreements signed with FAO, are now providing genes for triggering an ever-green revolution capable of raising productivity in perpetuity without associated ecological harm. The new International Treaty on Plant Genetic Resources for Food and Agriculture recognizes the importance of these collections for world food security. Molecular methods of breeding or precision breeding are supplementing Mendelian breeding methods to produce novel genetic combinations that can lead not only to increased yield, but also improved nutritive, organoleptic and processing qualities. Genetic enrichment of basic staples in micronutrients like iron and Vitamin-A is likely to prove a valuable asset in the fight against hidden hunger caused by deficiencies of micronutrients in the diet. With the emergence of molecular breeding, we have an uncommon opportunity to continuously improve productivity and quality of food, an objective that befits a Challenge Programme. This is what the CGIAR Challenge Programme proposal, *Genetic Resources in the 21st Century: Exciting New Solutions for Intractable Problem,* is aiming at. It is a global endeavor involving a number of CGIAR centres and partners (national agricultural research systems (NARS) and advanced research institutions (ARIs)) focused on "unlocking the genetic potential and enhancing the use of public genetic resources in plant breeding programmes by the concerted generation, management, dissemination, and application of comparative biological knowledge."

34. The loss of genetic diversity, however, would limit our options for the future. WHO has rightly appealed "Save plants to save lives," since herbal medicines are increasingly becoming important components of an integrated health security system. Thus, the future of food, health, and livelihood security systems will depend upon the steps we now take to conserve and use sustainably and equitably genetic resources of plants, animals, and microorganisms.

35. CGIAR has therefore initiated steps, together with FAO and the World Bank, to establish a Global Conservation Trust, to help ensure the financial security of key collections of germplasm throughout the world, including the materials that the CGIAR holds in trust in its *ex situ* gene banks. There can be no sustainable development without eradication of hunger and poverty. Where hunger rules, peace cannot prevail. Continuous improvements in the productivity, profitability, stability, and sustainability of major farming systems are essential for ensuring both physical and economic access to food. This is why CGIAR considers that the implementation of

the provisions of the Convention on Biological Biodiversity, and of the FAO Treaty on PGRFA in both letter and spirit, as well as the establishment of an adequately funded Global Conservation Trust, are essential for the creation of the substrate conditions essential for ecologically, socially, and economically viable development.

Genetically Modified Maize in Mexico[1]

36. Prof. Tim Reeves informed the Committee of the various reports regarding the growing of GM maize in Mexico and the possible introgression of transgenic DNA into farmer maize varieties/criollos cultivated in Mexico, which is in the primary centre of diversity for maize. He also reported on a series of communications with CSOs on the issue, and of a letter sent by ETC, an NGO, to Dr. Ian Johnson, Chair of the CGIAR to Dr. Jacques Diouf, DG of FAO, and to Dr. M. S. Swaminathan, Chair, GRPC.

37. The GRPC takes this issue seriously. The GRPC studied the reports and other related communication and documents regarding the case. The conclusion reached by the GRPC is that there is not yet enough scientific evidence to conclusively prove the reported introgression, but understands that a major report will be released in the coming weeks by Mexican authorities.

38. However, the GRPC believes that the possibility of introgression of transgenic DNA into varieties planted in Mexico cannot be ignored; and notes that the CIMMYT genebank already has procedures in place to assess the status of their "in trust" accessions and safeguard their integrity. It is important that other Centres consider the implications of this situation in regard to the operating procedures employed by their genebanks, and take any action deemed appropriate.

39. The GRPC notes the Mexican policy that currently does not allow field-testing and cultivation of GM maize. The GRPC commends the Mexican government for informing the world community on the current situation and for its transparency in dealing with the situation.

40. The GRPC also commends CIMMYT and its Director General for taking prompt, transparent and responsible actions to assist the Mexican government with its studies and for its thorough and extensive testing to establish the status of its relevant genebank accessions.

41. The GRPC looks forward to the outcome of studies on the possible introgression of transgenic DNA into Mexican maize varieties and any implications of this for genetic diversity, genebank collections and intellectual property. The GRPC suggests that it may be appropriate that FAO, UNEP and UNESCO also consider the broader implications that may be involved.

Closing Remarks

[1] The representative of the NGOs attending the meeting has expressed his disagreement with the final wording of the GRPC report on this item.

42. The Chairman thanked all the participants and observers for such a constructive meeting and in particular expressed his thanks to Ron Cantrell and the staff of IRRI for all their help and hospitality. As this is the last meeting of the GRPC, at least in its current form, the Chairman expressed his appreciation to all who had been involved in supporting the Committee over the years, and in particular to Sheilah Ebel of IPGRI.

43. In turn, the participants at the meeting unanimously expressed their thanks and support for the excellent Chairing of the Committee by Dr M.S. Swaminathan since its inception.

ANNEX 1

GENETIC RESOURCES POLICY COMMITTEE

14th Meeting, IRRI, Los Banos, Philippines, 21-22 February 2002

PROVISIONAL AGENDA

1. Adoption of the Agenda

2. Presentation on genetic resources and related policy issues at IRRI

3. International Treaty on Plant Genetic Resources for Food and Agriculture: follow-up to the workshop.

4. Developments in the CGIAR:

    a. Change process: System Office, Science Council, Executive Council
    b. Future of GRPC - proposed review
    c. Challenge Programmes

5. Report on CGIAR CAS-IP

6. Report on SGRP

7. Report on the Global Conservation Trust

8. Johannesburg Earth Summit and developments in other international fora

9. GRPC Report to the CGIAR

10. Date and place of the next meeting

11. Any other business

ANNEX 2

DRAFT INTERIM MATERIAL TRANSFER AGREEMENT (MTA) [1]

Prepared at the Inter-Centre Workshop on the International Treaty, IRRI, 20/2/2002

The plant genetic resources for food and agriculture (hereinafter referred to as the "material") contained herein is being furnished by the [Centre] under the following conditions:

Designated Germplasm

The [Centre] is making the material described in the attached list available as part of its policy of maximizing the utilization of genetic material for research, breeding and training taking into account the provisions of the International Treaty on Plant Genetic Resources for Food and Agriculture adopted by the Thirty-first Session of the FAO Conference on 3 November 2001 and opened for signature on 3 November 2001. The material was either developed by the [Centre]; or was acquired prior to the entry into force of the Convention on Biological Diversity; or if it was acquired after the entering into force of the Convention on Biological Diversity, it was obtained with the understanding that it could be made freely available for any agricultural research or breeding purposes.

The material is held in trust under the terms of an agreement between the [Centre] and FAO dated 16 October 1994, and the recipient has no rights to obtain Intellectual Property Rights (IPR) on the material or related information.

The recipient may utilize and conserve the material for research, breeding and training for food and agriculture and may distribute it to other parties provided such other parties are also willing to accept the conditions of this agreement.[2]

The recipient, therefore, hereby agrees not to claim ownership over the material to be received, nor to seek IPR over that material or its genetic parts or components, in the form received, or related information. **[*see endnote*^{A}]**

Benefit Sharing [*see endnote*^{B}]

The recipient further agrees to ensure that any subsequent person or institution to whom he/she may make samples of the material available, is bound by the same provision and undertakes to pass on the same obligations to future recipients of the material.

The [Centre] makes no warranties as to the safety or title of 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

[1] The attention of the recipient is drawn to the fact that the details of the MTA, including the identity of the recipient, will be made publicly available.

[2] This does not prevent the first or subsequent recipients from releasing or reproducing the material for purposes of making it directly available to farmers or consumers for cultivation, provided that the other conditions set out in the MTA are complied with.

the material being furnished. The phytosanitary condition of the material is warranted only as described in the attached phytosanitary certificate. The recipient assumes full responsibility for complying with the recipient nation's quarantine/biosafety regulations and rules as to import or release of genetic material.

Upon request, the [Centre] will furnish information that may be available in addition to whatever is furnished with the material. Recipients are requested to furnish the [Centre] performance data collected during evaluations.
The material is supplied expressly conditional on acceptance of the terms of this Agreement. The recipient's acceptance of the material constitutes acceptance of the terms of this Agreement.

ENDNOTES

[A] The words used in Article 12.3(d) of the Treaty in respect of Annex 1 material are as follows:
" The recipient hereby agrees not to claim any intellectual property rights or other rights that limit the facilitated access to the plant genetic resources for food and agriculture, or their genetic parts or components, in the form received from the Multilateral System."

It may be difficult to include this new wording in the Interim MTA at this stage since it refers to a distinction between Annex 1 material and crops not included in Annex 1 and incorporates the whole concept of "facilitated access" to such material.

[B] The Commission on Genetic Resources for Food and Agriculture has asked the Director General of FAO and the Directors General of the CGIAR Centres to collaborate in the preparation of a revised MTA that will, as appropriate, take into account the provisions of the new Treaty and support an effective transition. An important innovation of the new Treaty is its provision on benefit sharing and in particular the provisions of Article 13.2(d)(ii), which requires that the standard MTA under which facilitated access is to be provided shall include a requirement that a recipient who commercializes a product that is a plant genetic resource for food and agriculture and that incorporates material accessed under the Multilateral System, shall pay into the mechanism set up under the International Treaty an equitable share of the benefits arising from the commercialization of that product, except whenever such a product is freely available without restriction to others for further research and breeding, in which case the recipient is not obliged, but is encouraged to make such a payment. The level, form and manner of the payment are to be determined by the Governing Body of the Treaty at its first meeting in line with commercial practice.

This provision could be reflected in the interim MTA using wording drawn from Article 13.2(d)(ii) of the Treaty such as the following:

If the material provided under this Material Transfer Agreement is incorporated in a product that is a plant genetic resource for food and agriculture that is commercialized, then the recipient shall pay into the mechanism set up under the International Treaty an equitable share of the benefits arising from the commercialization of that product, except whenever such a product is freely available without restriction to others for further research and breeding, in which case the recipient is not obliged, but is encouraged to make such a payment. The level, form and manner of the payment*

*shall be determined by the FAO Commission on Genetic Resources for Food and Agriculture in line with commercial practice***.*

The Commission may wish to give its guidance on whether such a provision on commercial benefit sharing would be appropriate in the revised interim MTA given that the Commission may not wish to prejudge the outcome of negotiations that will take place in the Governing Body on the operational aspects of the Treaty's commercial benefit sharing provision.

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*In the period prior to the establishment of such a mechanism by the Governing Body of the International Treaty on Plant Genetic Resources for Food and Agriculture, payment shall be made into a Trust Fund designated by FAO.

** Once the International Treaty on Plant Genetic Resources for Food and Agriculture enters into force, the Governing Body of the Treaty will determine the level, form and manner of such payment, in line with commercial practice.