

## MINUTES OF THE GENETIC RESOURCES POLICY COMMITTEE (GRPC)

### 23rd Session, ICARDA, Aleppo, 18-20 March 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)
- Excused absences: Benito Odala Eliasi (Farmers' Organizations), Chee Yoke Ling (NGOs).
- Members of Secretariat: Michael Halewood, Gerald Moore (Bioversity International).
- Resource Persons: Manuel Lantin (CGIAR Secretariat), Shakeel Bhatti (Secretary, Governing Body, International Treaty), Victoria Henson-Apollonio (CAS-IP), Selim Louafi (Senior Treaty Officer, International Treaty Secretariat).

### Tuesday 18 March

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

Mahmoud Solh, Director General of the International Center for Agricultural Research in the Dry Areas (ICARDA), welcomed participants to the meeting and to ICARDA, providing an introduction to ICARDA's principle programmes of work and its genetic resources-related activities in particular. The agenda, included as *Appendix 1* to these minutes, was adopted.

#### **B. Report of the intersessional activities of the Governing Body of the International Treaty**

Shakeel Bhatti provided an update on 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 very positive contributions of the CGIAR Centres to the early start-up of the Treaty's multilateral system; the policy announced by the Government of Norway to make a contribution of 0.1% of seed sales in Norway to the international fund under the Treaty; the fact that the Centres are now all using the SMTA with the footnote adopted by the Second Session of the Governing Body; and the Governing Body's adoption of three annexes to the Funding Strategy. He indicated that in 2008 there will be intersessional meetings of: the Bureau; the Ad Hoc Third Party Beneficiary Committee; legal expert group on the SMTA and Multilateral System; the Capacity Building Coordinating Mechanism; National Focal Points Week; the

Information Technology Consultations; and the Ad Hoc Advisory Committee on the Funding Strategy. Shakeel stressed the importance of CGIAR participation in a number of these meetings, with particular emphasis on the meetings of the legal experts.

The committee noted that it would be important to ensure that the legal expert group has access to, or includes, participants with plant breeding expertise. Orlando de Ponti informed the committee that the International Seed Federation (ISF) is organizing training for patent examiners regarding plant breeding. They will start with patent examiners from the European Patent Office (EPO), in 2008.

The GRPC recommended that the Chair of the CGIAR should a) inform CGIAR members about the message from the Secretariat of the Governing Body to Treaty parties requesting them to identify collections they may include in the MLS, and b) encourage CGIAR member representatives to support their own national authorities in replying to the Secretariat's request.

### **C. Report of the intersessional activities of the Commission on Genetic Resources for Food and Agriculture**

Dan Leskien provided an update on the relevant intersessional activities of the Commission on Genetic Resources for Food and Agriculture (the Commission). The Commission, at its 11th Session, had stressed the need to develop a detailed work plan to achieve the agreed outputs and milestones of the Commission's rolling Multi-Year Programme of Work. In 2009, the 12th session of the Commission will adopt a work plan for the years 2010-2017. Meanwhile, at its meeting in February 2008, the Bureau of the 11th Regular Session adopted a work plan for 2008-9. The 2008-9 work plan specifies the steps to be taken in the preparation of the 12th Session. The major outputs and milestones foreseen for the 12th Session are: finalization of the 2nd State of the World's PGRFA; follow-up on the Interlaken Conference; an analysis of key issues in forest genetic resources, for *The State of the World's Forest Genetic Resources* (the presentation of which is foreseen for the 14th Session); a scoping study on micro-organisms and invertebrates; consideration of policies and arrangements for access and benefit-sharing for GRFA; and preparation of the 2010-2017 work plan.

Regarding access and benefit-sharing, the work plan anticipates the development of six sector-specific studies. Dan stressed the importance of the CGIAR Centres' participation in the development of these papers.

### **D and J. 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 (since GRPC 22, held in November 2007) from the December 2007 meeting of the Alliance Executive/Alliance Board, and subsequently from the Alliance Executive members and the Inter-centre Working Group – Genetic Resources (ICWG-GR).

The revised draft policy is included as *Appendix 3* to these minutes. The GRPC will forward the draft policy to ExCo for consideration during its May 13-14, 2008 meeting, and to the Alliance Executive for adoption during its May 20-22, 2008 meeting.

**E. Using the SMTA, including:**

- **Identifying materials distributed by Centres as PGRFA under Development.**
- **Are research tools containing plant DNA or RNA considered PGRFA under the Treaty?**
- **Distributing materials for direct use.**
- **Options for additional conditions to be included in an ancillary document to the SMTA for PGRFA under Development, (including consideration of financial compensation for access).**
- **Best practices concerning information made available with the SMTA.**
- **Reporting to the Governing Body.**

Gerald Moore and Michael Halewood introduced the agenda items, highlighting the fact that all of the issues were included on the agenda of the February 2008 meeting of the ICWG-GR.

*Identifying materials distributed by Centres as PGRFA under Development*

The committee noted the importance of the principle that the CGIAR Centres should make PGRFA as widely and openly available as possible. The committee further noted that the Centres' practices and policies in this regard may represent precedents for countries to follow. The vast majority of materials distributed by the Centres as PGRFA under Development since January 1, 2007 has not been subject to additional conditions, and therefore could have been distributed as PGRFA. The committee recommended that the Centres adopt a 'best practice' of distributing improved germplasm as PGRFA, and only distribute it as PGRFA under Development when it is necessary to have additional conditions to those included in the SMTA.\* Those conditions must be consistent with the Treaty, the SMTA, and the Policy of the Alliance of CGIAR Centres on Intellectual Assets, when it has been adopted.

The committee noted that while the Centres' designation of their improved germplasm as PGRFA under Development should be limited to special circumstances, it should still be open for Centres to do so, where appropriate, including where that germplasm is derived from materials accessed from the in trust collections before the entry into force of the Agreements between the Centres and the Governing Body of the Treaty.

*Are research tools containing plant DNA or RNA considered PGRFA under the Treaty?*

The committee considered the issue of whether or not research tools including DNA and or RNA should be transferred under the SMTA, taking note of the extensive system-wide consultations concerning the issue that have already taken place. The committee decided to refer the issue to the meeting of legal experts to be convened by the Secretariat of the Governing Body of the International Treaty. The GRPC Secretariat will work closely

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\* Article 6.6 of the SMTA states: "Entering into a material transfer agreement under paragraph 6.5 [i.e., as PGRFA under Development] shall be without prejudice to the right of the parties to attach additional conditions, relating to further product development, including, as appropriate, the payment of monetary consideration."

with the Secretariat of the Governing Body to develop a document in which a number of issues, including this one, will be brought to the attention of the meeting of legal experts.

*Distributing materials to farmers for direct use and to organizations who will commercialize those materials*

The SMTA provides for the transfer of PGRFA for the purposes of conservation and utilization for research, breeding and training for food and agriculture. In their Joint Statement at the time of signature of the agreements with the Governing Body, the CG Centres stated that they interpreted the agreements as not precluding the Centres from making PGRFA directly available to farmers or others for cultivation, as is the current practice, whether this is unimproved or improved PGRFA. Sometimes the Centres distribute materials directly to farmers. More frequently, however, the Centres distribute material to public and private organizations that multiply seeds (or other reproductive material) for distribution and or commercialization.

The committee noted that in the majority of cases, recipient NARS actually do engage in some form of further development (e.g., selection) of the material before making it available to farmers for direct use. In these cases the Centres should use the SMTA when transferring the materials to the NARS.

The committee noted that it was not aware of instances of the Centres entering into multiplication contracts, other than in situations where the multiplication was carried out as a service contract for the Centre concerned and the material was returned to the Centre without any transfer to third parties taking place. For such service contracts, the SMTA need not be used, because the material is being returned to the Centre. For all other distributions of PGRFA, the Centres should use the SMTA.

*Reporting to the Governing Body*

The committee noted that the Governing Body of the Treaty had not yet given guidance on the form, content and frequency of reports to be submitted by Providers of PGRFA under the SMTA. The committee further noted that the uniform report submitted by the System-wide Genetic Resources Programme (SGRP) to the Second Session of the Governing Body on the experience of Centres in the implementation of the Multilateral System had been well received.

The committee recommended that, pending more detailed guidance from the Governing Body, similar reports be presented to future sessions of the Governing Body, on an annual basis, covering the experience of the Centres with the implementation of the Multilateral System, with the following modifications:

1. The table should be broken down by crop and should include information on the type of provider (including developed country, developing country, public sector, private sector commercial, private sector farmer, academic institution); and on the type of recipient (including developed country, developing country, public sector, private sector commercial, private sector farmer, academic institution).

2. In accordance with the committee's recommendation on identifying products of Centres' research as PGRFA under Development, the table should list separately improved germplasm and PGRFA under Development.
3. For PGRFA under Development, the table should indicate the general content of any additional conditions.
4. The table should include information also on the transfer of non-Annex 1 PGRFA under SMTAs.
5. The table should provide links to the detailed databases maintained by the Centres regarding SMTA transactions.

The Committee further recommended that the CG Centres should maintain a publicly searchable database of the SMTAs they have distributed, including links to URLs about material included in Annex 1 of those SMTAs. It was noted that IRRI, for example, already maintains such a database, and that the International Treaty website maintained by the Secretariat of the Governing Body includes a link to the IRRI database. The Secretary of the Governing Body welcomed the recommendation of the committee, underscoring the importance of all Centres maintaining such databases and informed that Information Technology consultations would be convened by the Treaty Secretariat, to which the common database and dataset formats could be presented as a basis for developing a general, common dataset for SMTA reporting.

*Options for additional conditions to be included in an ancillary document to the SMTA for PGRFA under Development, (including consideration of financial compensation for access)*

The committee recognized that finalizing the template would not be possible before the policy on intellectual assets is finalized. Once it is finalized, the Secretariat should develop a draft template for consideration by the committee. Meanwhile, committee members are invited to send comments on the draft template to the Secretariat.

*Best practices concerning information made available with the SMTA*

The committee expressed its appreciation to the ICWG-GR for raising this issue. Ultimately, the issue was addressed by the committee in the revised draft intellectual assets policy which states (at least in its current form) that Centres "will publish their research results in a timely manner that allows open access". It was also addressed in the context of reporting SMTA transfers to the Governing Body, wherein the committee recommended that the Centres should maintain publicly searchable databases of the SMTAs they distribute, including links to associated information listed in Annex 1 of each SMTA.

#### **F. Draft guidelines for Centres' germplasm acquisition**

The committee revised the draft guidelines and the Germplasm Acquisition Agreement, which are attached as *Appendix 4* to these minutes. They will be forwarded to the Alliance Executive for adoption.

### **G. Distributing materials for purposes other than conservation, research or training for food and agriculture**

The committee reaffirmed the draft policy it had approved during GRPC 22, and the principle that the MTA associated with the policy should be based, as much as possible, on the text of the SMTA. The committee requested the Secretariat to develop the draft MTA. The draft policy and associated MTA will be referred to the AE for consideration/approval. The committee also decided that the matter should be brought to the attention of the group of legal experts being convened by the Secretariat of the Governing Body.

**Wednesday March 19, 2008**

### **H. Question and Answer session regarding update papers**

*Update regarding the Sixth Session of the Ad Hoc Open-ended Working Group on Access and Benefit-sharing (ABS WG-6)*

The committee noted the importance of the CGIAR continuing its representation at these meetings. Orlando de Ponti informed the committee that the ISF is in favour of the sectoral approach.

*Update on the enola bean and maca cases*

CAS-IP is monitoring the patent office website for the results of the case on a daily basis. CAS-IP will circulate the draft press release from the CGIAR Secretariat concerning the enola bean case to the committee.

### **I. Guidelines for Centres concerning working with traditional knowledge holders and or obtaining and using information provided by them**

Victoria Henson-Apollonio introduced the draft guidelines as revised by CAS-IP since the last meeting of the GRPC. Taking into consideration comments received since GRPC 22, the committee further revised the guidelines and the background paper concerning the guidelines. The draft guidelines are attached as *Appendix 5* to these minutes.

The committee recommended that, once they are approved, the guidelines should be submitted for information to WIPO's Intergovernmental Committee on Intellectual Property and Genetic Resources, Traditional Knowledge and Folklore. The guidelines should also be forwarded for information-sharing purposes to the United Nations Permanent Forum on Indigenous Issues. The guidelines will be forwarded to the AE for approval.

### **L. Beyond the genebank: policy issues faced by Centres developing and distributing improved germplasm**

Mahmoud Solh introduced ICARDA scientists who made the following presentations for the session.

*Policy development for promoting in situ on-farm conservation and sustainable use of dryland agrobiodiversity.*

Ahmed Amri made a presentation which focused on a multiyear GEF/UNDP/ICARDA regional project entitled, 'Dryland Agrobiodiversity in the Fertile Crescent'. Through the project, ICARDA worked with national partners in Jordan, Lebanon, the Palestinian

National Authority and Syria, focusing on biodiversity management, which included the development of national policy frameworks, national agrobiodiversity programmes, increased use of indigenous wild fruit tree species in reforestation, and the creation of protected areas for crop wild relative conservation. The project was completed with an MOU being signed, establishing a regional alliance to facilitate the exchange of genetic resources among those same countries. Recently, three additional countries – Egypt, Saudi Arabia and Yemen - joined this alliance. The most significant policy initiatives arising from the project so far include: the reforestation policy; the introduction of biodiversity to the school curriculum, and the creation of market outlets for local products at tourist sites in order to provide incentives to farmers for preserving indigenous crops/trees.

*Current state of biosafety regulation for the deployment of transgenics in the region*

Michael Baum informed the committee about the capacity of countries in the region to undertake biotech-related work and the state of the development of living modified organisms (LMOs) in the region. As far as its transgenic work is concerned, ICARDA only conducts tests in Syria under containment, as Syria is a centre of origin for the crops concerned. Of course, these tests are conducted in conformance with, and pursuant to, Syrian biosafety laws. ICARDA is now testing transgenics in other countries in the region that are not centres of origin of the crops concerned. Thirteen countries in the region have completed their national biosafety frameworks. ICARDA, UNEP and FAO held a Regional Consultation on “Biotechnology and Biosafety for Agriculture and the Environment in WANA Region,” which led to the submission of a concept note to GEF on capacity-building, regional policy harmonization, and the integration of biotechnology and biosafety. A number of countries have endorsed the concept note. Meanwhile, a regional biotechnology network has been established under the umbrella of the Association of Agricultural Research Institutions in the Near East and North Africa (AARINENA). ICARDA has recently received financial support to build a bio-containment facility.

*Harmonization of Seed Regulatory Frameworks in CWANA: Looking Beyond National Frontiers*

Zewdie Bishaw described the seed regulatory frameworks of countries in the CWANA region. He then reviewed the most salient aspects of the CWANA regional seed network established by ICARDA to help countries implement harmonized seed legislation. ICARDA’s work is divided among the three subregions: WANA (West Asia and North Africa), the Arabian Peninsula and ECO (the Economic Cooperation Organization, which includes Afghanistan, Armenia, Azerbaijan, Georgia, Iran, Pakistan, Kazakhstan, Kyrgyzstan, Tajikistan, Turkey, Turkmenistan and Uzbekistan). ICARDA and FAO have developed a project entitled ‘Strengthening Seed Supply System in ECO’. The project’s first workshop was held in Pakistan last year.

It was noted in subsequent discussion that ‘formal sector’ seed laws are not necessarily appropriate for the ‘informal’ seed systems. For example, the varieties developed through participatory plant breeding (PPB) may not be distinct, uniform and stable (DUS), and it may be difficult to maintain formal sector seed quality standards. The committee noted that while taking into account international obligations, harmonized frameworks need to

be flexible enough that they do not create disincentives for conservation and use (including farmers' innovation) in informal systems.

It was noted that a number of Centres are engaged in policy work addressing the interface of informal/formal seed systems. The committee recommended that the Centres should communicate more with one another with respect to these activities; coordinate project planning when appropriate; and explore the possibility of harmonized approaches to the relevant policy issues.

**K. Terms of reference for the GRPC paper on (cross) sectoral approaches to ABS for GRFA**

The committee endorsed the revised terms of reference attached to these minutes as *Appendix 6*. The committee also recommended that the GRPC Secretariat should continue to work closely with Commission Secretariat to exploit efficiencies. The terms of reference will be forwarded to the Commission Secretariat to assist its development of terms of reference for its six sector specific studies.

The committee noted the possibility that some of the work anticipated in the terms of reference – as far as agricultural microbial genetic resources are concerned - could be undertaken in association with, and as a follow-up to, the workshop entitled 'Designing the microbial research commons' organized by Université Catholique de Louvain, in association with a number of organizations, including Bioversity, in June, 2008.

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

The committee decided that it would include consideration of ethical issues, for example, the involvement of CG Centres in biofuel-related research, at its next meeting. Mike Gale informed the committee that the third Science Council-commissioned study on 'Ethics and the CGIAR mission' will consider biofuel resources in relation to benefits for the poor. The study is expected for the Science Council's 10<sup>th</sup> session in September 2008.

**Thursday 20 March**

**N and O. Review/update of the GRPC work plan**

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

**P. AOB and next meetings**

The committee identified the following dates and places for its 24<sup>th</sup> and 25<sup>th</sup> sessions:

GRPC 24, Tuesday September 9 – Thursday September 11, 2008, Bioversity;

GRPC 25, Tuesday March 17 – Thursday March 19, 2009, World Fish Centre. The Secretariat will confirm with the Director General of the World Fish Centre.

*Appendix 1:*

**GENETIC RESOURCES POLICY COMMITTEE  
23rd Session,  
International Centre for Agricultural Research  
in the Dry Areas (ICARDA)  
Aleppo, Syria  
18-20 March, 2008  
DRAFT AGENDA**

**Tuesday 18 March**

- 09.00 - 09.30 **A.** Welcome, introductions, logistics, adoption of agenda.  
*(Introduced by Carlos Correa, Mahmoud Solh, Emile Frison)*  
*Documents*  
A.1. Agenda  
A.2. ICWG-GR teleconference concerning GRPC 23
- 09.30 - 10.15 **B.** Report on the intersessional activities of the Governing Body of the International Treaty  
*(Introduced by Shakeel Bhatti)*
- 10:15 - 10.45 **C.** Report on intersessional activities of the Commission on Genetic Resources for Food and Agriculture  
*(Introduced by Dan Leskien)*
- 10.45 - 11.15 *Coffee/Tea break*
- 11.15 - 13.00 **D.** Revising/developing system-wide policy on intellectual assets  
*(Introduced by Emile Frison)*  
*Documents*  
D.1. Concerning the development of the Policy of the Alliance of CGIAR Centres on Intellectual Assets
- 13.00 - 14.00 *Lunch*
- 14.00 - 16.00 **E.** Using the SMTA, including:
  - Identifying materials distributed by Centres as PGRFA under Development.
  - What is included within the meaning of PGRFA.
  - What constitutes commercialization.
  - Options for additional conditions to be included in an ancillary document to the SMTA for PGRFA under Development, (including consideration of financial compensation for access).
  - Best practices concerning information made available with the SMTA.
  - Reporting to the Governing Body.*(Introduced by Emile Frison, Gerald Moore, Michael Halewood)*  
*Documents*  
E.1. Identifying the products of Centres' research as PGRFA under Development.

- E.2. Are research tools including plant DNA considered PGRFA?
- E.3. Distributing materials to farmers (and intermediary recipients) for direct use.
- E.4. Draft ancillary document to the SMTA for PGRFA under Development.
- E.5. Reporting on the Centres' use of the SMTA.

16.00 - 16.15 *Coffee/Tea break*

16.15 – 16:45 **F.** Draft guidelines for Centres' germplasm acquisition  
(*Introduced by Michael Halewood*)

16.45 – 17.15 **G.** Distributing materials for purposes other than conservation, research or training for food and agriculture.  
(*Introduced by Michael Halewood*).

*Group dinner*

### **Wednesday 19 March**

08.00 – 09.00 Visit of ICARDA Genebank

09.00 - 9.30 **H.** Question and Answer session regarding update papers  
*Documents*

- H.1. Update on the CBD's 6<sup>th</sup> meeting of the Ad Hoc Open-ended Working Group on Access and Benefit-sharing.
- H.2. Updates on the enola bean and maca cases.

9.30 - 10.30 **I.** Guidelines for Centres concerning working with traditional knowledge holders and or obtaining and using information provided by them (*Introduced by Victoria Henson-Apollonio*)

*Documents*

- I.1. Draft guidelines for the acquisition and use of traditional knowledge by the CGIAR Scientists
- I.2. Background document: A Report on the Survey of Practice for the Acquisition and Use of Traditional Knowledge (TK) by CGIAR scientists:
- I.3. Comments received from the Centres on the Draft Guidelines for Acquisition and Use of TK by CGIAR Scientists

10.30 - 11.00 *Coffee/Tea break*

11:00 – 12:30 **J.** Revising/developing system-wide policy on intellectual assets (cont'd)

12.30 - 13.30 *Lunch*

13.30 – 14.15 **K.** Terms of reference for the GRPC paper on (cross)sectoral approaches to ABS for GRFA.

(*Introduced by Michael Halewood*).

*Documents*

- K.1. Terms of reference

- 14.15 - 15.30 **L.** Beyond the Genebank: policy issues faced by Centres developing and distributing improved germplasm  
*(Introduced by Mahmoud Solh and ICARDA scientists)*
- 15.30 - 16.00 *Coffee/Tea break*
- 16.00 – 16.30 **L.** Beyond the Genebank *(cont'd)*
- 16.30 – 17.30 **M.** Roundtable on additional genetic resources policy issues of relevance to the CGIAR  
*(Introduced by Carlos Correa)*
- 19.30 – 21.00 *Optional evening session to continue work on outstanding issues*

### **Thursday 20 March**

- 09.00 - 10.30 **N.** Review/update of the GRPC work plan  
*(Introduced by Emile Frison)*  
*Documents*  
N.1. minutes GRPC 22
- 10.30 - 11.00 **O.** Adoption of main conclusions, action list and report
- 11.00 - 11.30 *Coffee/tea break and group photo*
- 11.30 - 12.00 **O.** Adoption of main conclusions, action list and report (continued)
- 12.00 - 12.30 **P.** AOB, next meeting, closing
- 12.30- 13.30 *Lunch*
- 14.00 – 18.00 Visit to Aleppo

**Appendix 2: GRPC Work Plan (as amended at GRPC 23)**

<b>Issue</b>	<b>Activity/Input</b>	<b>Outputs</b>	<b>Timetable</b>
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 submission to the legal expert group.	Document for the legal expert group	
Reporting on uses of the SMTA	Secretariat will communicate the relevant recommendations to the AE and the ICWG-GR.	E-mail message to AE and ICWG-GR. Consideration by AE	
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	Consideration by AE	May 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 24
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	June 2008
Ethical issues	Secretariat will select papers on ethical issues based on work by the FAO panel	Draft papers circulated	GRPC 24

<b>Issue</b>	<b>Activity/Input</b>	<b>Outputs</b>	<b>Timetable</b>
Distributing materials for non-food/feed purposes	Secretariat will develop the MTA  The draft policy document will be forwarded to the AE for approval.	Draft MTA  Approved or revised draft policy and draft MTA  Report to GRPC 24	April 2008  May 2008  GRPC 24
Guidance for Centres' research involving traditional knowledge	Secretariat will forward the draft guidelines to the AE for approval  CAS-IP will prepare information document to be sent to WIPO and UN Permanent Forum for Indigenous Peoples.	Considered/approved guidelines  Information document	May 2008
Policy on intellectual assets	Secretariat will forward the draft policy to ExCo (meeting May 13-14) and the AE (meeting May 20-22).  ExCo, which meets first, will forward comments, collected by the Secretariat, to the AE.	Messages to ExCo and AE  Commented on, or adopted, policy	March 2008  May 2008
Implementation of the IA policy	CAS-IP to conduct a survey of current and future capacity in legal and IP across the Centres.	Survey for consideration of GRPC 24	GRPC 24
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 24
Demand driven GRPC agenda setting process	Secretariat will continue to consult systematically with the ICWG-GR, AE	Update papers GRPC by Secretariat	GRPC 24

<b>Issue</b>	<b>Activity/Input</b>	<b>Outputs</b>	<b>Timetable</b>
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 24
Cartagena Protocol on Biosafety	Secretariat will finalized development of collective submission from the Centres to COP/MOP 4 and possibly assist in coordinating side event.  Workshop on CGIAR biotechnology network, IRRI, April 2008	Submission to COP/MOP 4  Side event at COP/MOP 4  Secretariat or Science Council report of the meeting to the GRPC	COP/MOP 4   GRPC 24
(Cross)-sectoral approaches to ABS	Secretariat will coordinate the drafting of a paper analyzing relevant sectoral issues.  Secretariat may hire consultants to develop all or portions of the paper.  Secretariat may coordinate some research activities in association with participants attending the ‘Designing the microbial research commons’ workshop, June 2006.	Draft paper and or progress report	GRPC 24
Patents	CAS-IP will circulate draft press release to committee members.	Press release	April 2008
GRPC at AGM	Chair to report to business meeting	Chair’s report	December 2008

### *Appendix 3:*

#### **DRAFT Policy of the Alliance of CGIAR Centres on Intellectual Assets<sup>† ‡</sup>**

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 international public goods. All aspects of the Centres' policy on intellectual assets are subservient to these two principles. 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 for use by, and for the benefit of, the poor, especially farmers in developing countries.

Intellectual assets resulting from Centres' research include improved germplasm, technologies, software, information, publications, vaccines, databases, methodologies and know-how, which are used to support the mission of the CGIAR.

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).<sup>§</sup>

In line with the CGIAR mission:

1. The Centres will, as a general principle, make their intellectual assets globally, publicly available.
2. The Centres may, in highly exceptional cases, grant exclusive rights over their intellectual assets when it is necessary for their further development or transfer, for example, when Centres or NARS are unable to further develop them. Any such exclusive rights shall be limited to a defined market segment for a defined period of time. All intellectual assets, however, will remain openly available to public NARS in developing

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<sup>†</sup> This policy addresses the acquisition, management, and release of publications, PGRFA and other intellectual assets of the CGIAR. It does not yet include issues relating to stewardship and liability. It is anticipated that the policy will be revised to address those issues in the future.

<sup>‡</sup> This policy replaces the 'Guiding Principles for the Consultative Group on International Agricultural Research Centres on Intellectual Property and Genetic Resources,' 1996. All other policies of Centres that affect the acquisition, management and release of publications, PGRFA and other intellectual assets should be in conformity with this policy.

<sup>§</sup> [The text of these agreements is available at: http://www.sgrp.cgiar.org/InTrustCollections/Agreements/AgreementwithCentresfinal1.doc](http://www.sgrp.cgiar.org/InTrustCollections/Agreements/AgreementwithCentresfinal1.doc)

countries for further research, development and use, including commercialization, and to ARIs for further research and development in support of the CGIAR mission. The NARS' right to commercialize the asset may be limited or excluded if necessary for its further development or transfer.

3. The Centres may, in highly exceptional cases, seek or assert or allow third parties to seek or assert intellectual property rights over their intellectual assets only if necessary for their further development or transfer. In such cases, the Centres shall ensure that the intellectual assets remain freely available to public NARS in developing countries for further research, development and use, and to ARIs for research and development in support of the CGIAR mission. In no case shall third parties seek or assert intellectual property rights over Centres' intellectual assets without the prior and explicit consent of the Centre concerned.

4. The Centres shall not exploit their intellectual assets with the sole intention to raise income. However, 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. All intellectual assets of the Centres shall remain available at no cost (except, possibly, for minimum administrative costs) to public NARS in developing countries.

5. The Centres shall use third party intellectual assets that are subject to intellectual property or contractual rights as inputs to the development of Centres' intellectual assets only when the resulting products may be made available in a manner consistent with this policy.

6. The Centres will make public the justification for, and describe the conditions of, their granting exclusive rights over their intellectual assets, or seeking or asserting intellectual property rights (other than copyright) over them. The source of income received as compensation for providing access to intellectual assets will be made publicly available.

7. The Centres will publish their research results in a timely manner that allows open access. This includes results of research 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.

8. The Centres should take action, as appropriate, to pre-empt intellectual property claims over their intellectual assets by others.

9. The Centres will distribute improved germplasm which incorporates materials accessed from their in-trust collections using the standard material transfer agreement adopted by the Governing Body of the International Treaty.

10. 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 use and publication of their traditional knowledge.

## ***Appendix 4:***

### ***Draft Guidelines for the Alliance of CGIAR Centres acquiring germplasm***

#### ***Background***

These guidelines and attendant model germplasm acquisition agreement are concerned with the acquisition by the Centres of new materials to be included in their ex situ collections, and to be subsequently made globally, publicly available. It does not cover material acquired by the Centres for research or breeding purposes and that is not intended for further distribution in the form received.

#### **Acquiring germplasm for redistribution under the SMTA**

Where the following conditions are met:

- the country from which the germplasm is to be acquired is a Contracting Party to the Treaty; and
- the germplasm is PGRFA of a crop listed in Annex 1 of the Treaty; and
- the PGRFA is under the management and control of the Contracting Party and in the public domain, or has been placed voluntarily in the Multilateral System;

then the acquisition of the germplasm will fall under the Multilateral System established by the Treaty, and the PGRFA should be acquired by the Centres under the SMTA.

When any of these conditions are not fulfilled, germplasm should be acquired under the 'germplasm acquisition agreement for materials not included in the Treaty's multilateral system' (included in Annex 1 to this document).

Non Contracting Parties may choose to make materials available using the SMTA.

Access to materials in *in situ* conditions will be obtained subject to national law, and, for annex 1 materials, or in the absence of such law, pursuant to standards as may be set by the Governing Body. So far, the Governing Body has not set any such standards. It is therefore recommended to follow the International Code of Conduct for Plant Germplasm Collecting and Transfer, adopted by the FAO Conference in November 1993.

#### **Acquiring germplasm to be distributed for non-food/feed purposes (under the MTA-nff)**

Where Centres want to be able to redistribute any material for non-food/feed research or direct use, including materials otherwise in the MLS, they should obtain it using the 'Germplasm Acquisition Agreement for materials not included in the International Treaty's Multilateral System of Access and Benefit Sharing' (in *Annex 1* to this document) inserting the optional clause 5.

*Annex 1 (to Appendix 3):*

Draft Model  
Germplasm Acquisition Agreement  
for materials not included in the International Treaty's Multilateral System  
of Access and Benefit Sharing

1. *[Supplier]* grants germplasm and related information to *[Centre]* under the terms and conditions of this agreement. The germplasm being provided as identified in the attached list, which forms part of this agreement, is outside the International Treaty's multilateral system of access and benefit sharing (MLS).
2. *[Supplier]* warrants that it is legally free to provide the germplasm to *[Centre]*, and that all necessary permissions have been obtained.
3. *[Centre]* will hold the germplasm in trust for the international community in accordance with the terms of the agreement between the *[Centre]* and the Governing Body of the Treaty signed on 16 October 2006, place it in its genebank, periodically regenerate it, duplicate it for security reasons, and provide long-term conservation.
4. *[Centre]* will be free to use, or make available to third parties, the germplasm and related information available for the purpose of utilization and conservation for research, breeding and training for food and agriculture in accordance with the standard material transfer agreement currently in use.
5. *Optional clause* --*[Centre]* will be free to use, or make available to third parties, the germplasm and related information available for the purpose of non-food/feed research and direct use.

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Signed

Signed

## *Appendix 5:*

### **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)\*\* , the relevant stakeholders and representatives will be identified and informed of the research plan of proposed activities and research products to be disseminated.*

*- 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**

*- 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.*

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\*\* “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.

*- 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*

*Appendix 6:*

**Developing terms of reference for a GRPC commissioned study  
concerning access and benefit-sharing for GRFA**

The GRPC-commissioned study should be designed to assist the Commission on Genetic Resources for Food and Agriculture:

identify scientifically grounded principles to guide the development of access and benefit-sharing norms affecting genetic resources for food and agriculture; and

investigate the extent to which those principles and norms are sector/user-community specific and or cut across sectors/user-communities.

To these ends, the study should examine, on a sector-by-sector (and or user-community-by-user-community) basis,:

the actual use of the genetic resources concerned;  
the extent to which countries/regions are interdependent on the genetic resources in question (this will include consideration of ancestral pedigrees, the quantum and international patterns of geneflow);  
their importance to food security;  
the extent to which their movement/use is subject to legal and or technological restrictions;  
whether they are pooled nationally, regionally or globally and made available as public or common goods, (and the means by which they are pooled and made available);  
the relative roles and importance of public and private sector actors within the sectors/user-communities ;  
the state of, and threats to, conservation, and  
other conditions identified in the course of the research.

Given the shortness of time before the 12<sup>th</sup> Session of the CGRFA, and the relatively small amount of money available to support this work, the Centres' study (or studies) should be based on reviews of existing literature/documentation in the relevant fields. The literature reviews could be supplemented by interviews with experts in the relevant user-communities and or surveys.

While the study should not necessarily be limited in scope to the CGIAR, the researchers' point of departure in all cases should be CGIAR experiences (and CGIAR experts). Probably the most efficient way forward would be to have sector/user-community experts from within the CGIAR lead the initial work on each of the selected sectors/user-communities. The GRPC could develop a generic list of questions to guide these experts in their work. The cross-cutting, meta analysis could be conducted by a lead researcher, and reviewed by the GRPC.

One of the first tasks will be to tentatively identify the sectors/user-communities to be studied. For example, the scope of the GRPC commissioned paper 'Technical issues  
Final minutes of the 23<sup>rd</sup> Session of the GRPC.

related to Agricultural Microbial Genetic Resources, including their Characteristics, Utilization, Preservation and Distribution,' did not extend to microbial genetic resources used in food processing. Similarly, it seems likely that aquatic genetic resources should be divided into at least two separate subsectors: aquaculture genetic resources, and wild harvested aquatic genetic resources. While it is possible that the planned-for research will identify unforeseen divisions between sectors/user-communities, it is necessary to provide the researchers with an initial tentative division to facilitate the organization of their work.

Work in this area should be closely coordinated with the Secretariat of the CGRFA. Its 'Work Plan 2008-2009 for the Implementation of the Multi-Year Program of Work' anticipates "six sector-specific studies on use and exchange of genetic resources in the various sectors of food and agriculture".<sup>††</sup> If the terms of reference for these studies overlap significantly with the proposed GRPC-sponsored research, perhaps, in the interest of overall efficiency, the GRPC-sponsored research could focus primarily on one or two sectors/use-communities. Meanwhile, other organizations, coordinated by the Secretariat of the CGRFA, could take the lead on researching/drafting similarly structured analyses of other sectors/user-communities. This would have the advantage of allowing the GRPC-supported research to be narrower in scope, and therefore deeper in focus.

Bioversity will be involved in at least two meetings in mid-2008 that are directly relevant to the proposed research: i) 'Designing the Microbial Research Commons' as collaborators with the Université Catholique de Louvain and other organizations, and ii) a half day session organized by ICIPE during the XXIII International Conference on Entomology, focusing on policies governing access to biocontrol agents and benefit sharing. The GRPC Secretariat will make efforts to ensure that maximum advantage is taken of these, and any other relevant meetings, to engage experts in the advance of this research. For example, the GRPC Secretariat has already discussed with ICIPE the possibility of its making contributions, concerning biocontrol agents, to the study. We are also discussing with the organizers of 'Designing the Microbial Research Commons' possible means by which participants at that meeting could be engaged in providing useful inputs.

A progress report (and possibly preliminary drafts) will be provided to GRPC 24. Towards the end of 2008, the first complete draft will be circulated for comment to GRPC members. If GRPC 25 meets before the 12th Session of the CGRFA, the penultimate draft can be then submitted to the committee for approval.

Ultimately, the final paper will be submitted to the CGIAR and the 12th Session of the CGRFA. It could also be distributed at future meetings of the CBD's Ad Hoc Open-ended Working Group on Access and Benefit Sharing. Early results may be shared at other meetings. A few policy briefs may be also be developed based on the research.

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<sup>††</sup> Report of the First Meeting of the Bureau of the 11<sup>th</sup> Regular Session of the CGRFA, 18-20 February 2008, CGRFA-11 Bureau 1/08/Report, at page 16, (distributed to GRPC members as an information document).