June 2012

The International Treaty
ON PLANT GENETIC RESOURCES FOR FOOD AND AGRICULTURE

Item 8 of the Draft Provisional Agenda

THIRD MEETING OF THE *AD HOC* ADVISORY TECHNICAL COMMITTEE ON THE STANDARD MATERIAL TRANSFER AGREEMENT AND THE MULTILATERAL SYSTEM

New Delhi, India, 26 – 28 June 2012

HANDBOOK TO THE IMPLEMENTATION OF THE MULTILATERAL SYSTEM OF THE INTERNATIONAL TREATY ON PLANT GENETIC RESOURCES FOR FOOD AND AGRICULUTURE[1]

I. INTRODUCTION

1. At its second meeting, the Committee considered the document, *Draft outline of options and guide on practices, procedures and measures for the implementation of the Multilateral System*.[2] The draft document was renamed *Handbook to the Implementation of the Multilateral System of the International Treaty on Plant Genetic Resources for Food and Agriculture* (Handbook), in order to avoid any misreading of the nature and status of the document, which contained largely factual information, based on decisions of the Governing Body and the work of its subsidiary bodies.

2. The Committee favorably appraised the draft Handbook, as a useful additional information tool to provide assistance to users of the Multilateral System and the SMTA. The Committee encouraged the Secretary to continue the development of the draft Handbook, including through its progressive updating with the decisions of the Governing Body and the outcomes of the work by its subsidiary bodies as well as with relevant information received from Contracting Parties, users of the Multilateral System and other stakeholders.

3. Members of the Committee further agreed that they would provide whatever inputs and information they could, in the course of the further development of the Handbook, including on inclusion of material in the Multilateral System by natural or legal persons.

4. However, only one set of comments was received by the Secretary and the initiative was not considered by the Governing Body at its Fourth Session.

5. A slightly updated version of the Handbook, reflecting the comments received, is in the Appendix of this document.

II. ELEMENTS FOR CONSIDERATION BY THE COMMITTEE

[1] In accordance with the request of the *Ad Hoc* Technical Advisory Committee, and the Terms of Reference established by the Governing Body, this document was prepared for the exclusive purpose of facilitating the Committee's deliberations. Any opinion or position expressed in the document is not to be attributed to the Secretariat of the International Treaty on Plant Genetic Resources for Food and Agriculture.

[2] IT/AC-SMTA-MLS/2/10/10, distributed in-session.

6. The Secretariat has received some enquiries about the status and further development of the Handbook, and would wish to seek the views of the Committee on the possible next steps, in particular, in the context of some of the collaborative capacity building initiatives currently being undertaken by the Secretariat.

Appendix

DRAFT HANDBOOK TO IMPLEMENTATION OF THE MULTILATERAL SYSTEM OF ACCESS AND BENEFIT-SHARING OF THE INTERNATIONAL TREATY ON PLANT GENETIC RESOURCES FOR FOOD AND AGRICULTURE

June 2012.

Disclaimer

Handbook for reference purposes only

This Handbook is intended as a reference to assist Contracting Parties and other users of the Multilateral System in the implementation of the Multilateral System of Access and Benefit Sharing of the International Treaty on Plant Genetic Resources for Food and Agriculture. The Handbook is not intended, and shall not be construed so as, to affect the rights and obligations of any Contracting Party or user or to affect the interpretation of the Treaty or its subsidiary instruments and documents. Reference should always be made to the complete original texts of the Treaty, the Standard Material Transfer Agreement and to the reports of the sessions of the Governing Body..

Review of Handbook

This Handbook will, from time to time, be reviewed as the implementation of the Treaty and its Multilateral System evolves, and will be updated by the Secretary, as appropriate.

SECTION	PAGE
Title	
Disclaimer	
Table of Contents	
Background	
1. Introduction	
1.1 Overview of the Treaty and the Multilateral System	
1.1.1 The Treaty	
1.1.2 The Multilateral System of Access and Benefit Sharing	
1.1.3 The Standard Material Transfer Agreement	
1.1.4 The Benefit Sharing Fund	
1.2 Scope and objectives of the Handbook	
1.3 Methodology	
2. Institutional arrangements	
2.1 Summary	
2.2 Examples of institutional structures	
2.3 Relevant articles from the IT-PGRFA	
2.4 Decisions and resolutions of the Governing Body	
3. Notification or inclusion of PGRFA in the Multilateral System	
3.1 Summary	
3.2 Implementation steps	
3.2.1 How to identify or include PGRFA in the Multilateral System	
3.2.2 Information of, and to, relevant stakeholders	
3.2.3 Incentives to other holders of plant genetic resources for food and agricultural, including natural and legal persons	
3.3 Experiences in inclusion	
3.3.1 National	
3.3.2 National genebanks	
3.3.3 International	
3.3.4 Regional	
3.3.5 By private holders	
3.4 Role of contracting parties and national focal points	
3.5 Relevant articles from the IT-PGRFA	
3.6 Decisions and resolutions of the Governing Body	
4. Application of standard material transfer agreement	
4.1 Summary	
4.2 Nature of standard material transfer agreement	
4.3 Filling out the standard material transfer agreement	
4.3.1 For the provider	
4.3.2 For the recipient	
4.4 Acceptance of standard material transfer agreement	
4.5 Provision of PGRFA	
4.6 Benefit sharing	
4.7 Monitoring and reporting	
4.7.1 For the Provider	
4.7.2 For the Recipient	
4.8 Dispute settlement	
4.9 Third Party Beneficiary	

4.10 Languages of the standard material transfer agreement	
4.11 Non-contracting parties	
4.12 PGRFA or uses outside the Multilateral System	
4.13 Relevant articles from the IT-PGRFA	
4.14 Decisions and resolutions of the Governing Body	
5. Benefit sharing	
5.1 Summary	
5.2 Measures relevant to the various forms of benefit sharing	
5.2.1 Facilitated access to plant genetic resources for food and agriculture	
5.2.2 Exchange of information	
5.2.3 Access to and transfer of technology	
5.2.4 Capacity building	
5.2.5 Sharing of monetary and other benefits of commercialisation	
5.2.6 Voluntary funds in the Multilateral System	
5.3 Relevant articles of the IT-PGRFA	
5.4 Decisions and resolutions of the Governing Body	
6. Compliance	
6.1 Summary	
6.2 Relevant articles of the IT-PGRFA	
6.3 Decisions and resolutions of the Governing Body	
6.4 Draft procedures and operational mechanisms to promote compliance and address issues of non-compliance	
7. Tools For Implementation	
7.1 Legal tools	
7.2 Administrative tools	
7.3 Information technology tools	
7.4 Languages	
7.5 Relevant articles of the IT-PGRFA	
7.6 Decisions and resolutions of the Governing Body	
8. Roadmap For Implementation	
8.1 Capacity building for implementation	
8.2 Review of MLS operation by the Governing Body	
8.3 Information sharing	
8.4 Relevant articles of the IT-PGRFA	
8.5 Decisions and resolutions of the Governing Body	

Background to the Handbook

Factors limiting implementation

The Treaty requires Contracting Parties to take steps to operationalize the Multilateral System and start utilizing the SMTA to transfer PGRFA that is in the Multilateral System. However, there are indications that, because of a wide range of factors, relatively few countries have as yet taken the necessary steps to implement these critical components of the Treaty. These factors include lack of capacity and resources and the fact that some countries appear to be quite uncertain on how best to proceed.

Second session of the Governing Body

At the Second Session of the Governing Body, Contracting Parties requested help to develop information packages on key elements of the Treaty as a means to enhance their implementation activities.[3] Contracting Parties and other stakeholders have also individually sought the assistance and advice of the Secretariat on the implementation of the Treaty, especially the Multilateral System and the SMTA.

2008/2009 Work Programme and Budget

The Programme of Work and Budget 2008/09 of the Treaty foresaw several activities and initiatives geared towards providing Contracting Parties with toolkits, information packages and other resources to assist their implementation of the Treaty, especially activities and obligations related to the Multilateral System. Several modules of the Work Programme and Budget also made reference to, or were related to the need to develop an 'Options and Guide' and information packages.

Sub-Module A.2 made provision for Policy Guidance on the Operation and Evolution of the Multilateral System..

Activity A.2.1 covered documenting concrete practices and procedures used by Contracting Parties, their state and para-statal institutions and natural and legal persons under their jurisdiction, to, address problems that might arise during national and regional implementation of the Multilateral System, and to create solutions which respect the spirit of the Treaty;[4]

More specifically Activity A.2.2, based on the documentation gathered under Activity A.2.1, established a process for the development of an 'Options and Guide' on practices, procedures and measures that respect the spirit of the Treaty within different legal systems, policy areas, sectorial contexts, including documentation on the ways in which they address problems that arise and find solutions which help Contracting Parties..

Third session of the Governing Body

In Resolution 4/2009, the Multilateral System of access and benefit sharing, the Governing Body stressed the importance of assisting developing countries to take the policy, legal and administrative measures necessary for their national plant genetic resource systems, and natural and legal persons within their jurisdictions, to be able to use the Standard Material Transfer Agreement to provide facilitated access to plant genetic resources for food and

[3] Paragraph 65, Document IT/GB-2/07/Report, *Report of the Second Session of the Governing Body of the International Treaty on Plant Genetic Resources for Food and Agriculture.*

[4] for example where a government may not have direct ownership of material which is held by universities and institutes which are funded from government funds

agriculture.[5] In the same Resolution, the Governing Body also requested the Secretary to give priority to assisting users of the Standard Material Transfer Agreement to overcome any implementation problems.[6]

The Handbook was initially developed as the proposed 'options and guide', with an outline reviewed by an independent body of experts, during the 2008/2009 biennium. Information gathering was also initiated during this period but, despite the receipt of a series of queries and requests for information it proved difficult to collect systematically across the range of subjects the necessary information for a full overview of the implementation of the Multilateral System. A more detailed outline, including annotations and the preliminary drafts of some sections was developed early in the 2010/2011 biennium. At this point it was decided to alter the title to 'Handbook' to better reflect the aim of producing a reference book that would be periodically updated according to the experiences of parties and the decisions of the Governing Body. The Handbook has been, and will continue to be, further developed as the Multilateral System evolves and information on national level experiences becomes available.

[5] Paragraphs 12 and 13, Resolution 4/2009.
[6] Paragraph 15, Resolution 4/2009.

1. Introduction

This section gives an overview of the Multilateral System highlighting the relevant Treaty provisions, explaining what the standard material transfer agreement is, and the process and reasons for its adoption. It then continues to describe the scope and objectives of the Handbook and the methodology used in its development and updating. Sections 2 through to 6 describe particular issues and areas providers and recipients of PGRFA may encounter in using the Multilateral System and, wherever possible, provide examples from the experiences of different parties to the Treaty. For ease of reference, the relevant provisions of the Treaty and decisions and resolutions of the Governing Body are included at the end of each section. Section 7 furthers the use of examples highlighting tools for the implementation of the Multilateral System that have been developed by parties and that may provide useful references for others. Section 8 focuses on the future with a summary of mechanisms to support and consolidate implementation as well as to review the functioning of the Multilateral System.

1.1 Overview of the Treaty and the Multilateral System

1.1.1 The Treaty

Nature of the Treaty

The International Treaty on Plant Genetic Resources for Food and Agriculture is the only internationally agreed, legally binding framework governing conservation, sustainable use and benefit-sharing for genetic resources of agricultural crops, with the aim of securing global food security. While it, thereby, supports agricultural development and poverty alleviation for small-holder farmers, the Treaty also addresses the three major global challenges of the 21st century, namely:

Global challenges addressed by Treaty

a. **the global food crisis**, by ensuring that a global genepool of crops is accessible to all for breeding more high-yielding and productive varieties that are resistant to diseases and other challenges and that can adapted to local conditions;
b. **biodiversity loss and genetic erosion** in agriculture, by conserving plant genetic diversity in the fields, on the farms, and in genebanks;
c. **climate change adaptation**, by allowing the conservation and pooling of genes, including those that may relevant for tolerance to altered climatic conditions;

Intersectoral character of the Treaty

It also recognises the way in which the features of PGRFA, and the problems faced in their effective management, make them distinct from other categories of biological resources. As a result, the Treaty operates at the nexus of environmental, agricultural, trade and development policies.

Scope of Treaty

All plant genetic resources for food and agriculture fall within the scope of the Treaty. Under the Treaty, Contracting Parties have agreed to promote the implementation of integrated national approaches to the exploration, collection, characterization, evaluation, conservation and documentation of their PGRFA. Countries have also agreed to develop and maintain appropriate policies and

legal measures to promote the sustainable use of PGRFA, including: the wider use of diversity in on-farm management; strengthening research that enhances and conserves biological diversity; promoting plant breeding efforts that strengthen capacity to develop locally adapted varieties; broadening the genetic bases of crops; and, expanding the use of locally adapted crops, varieties and underutilized species.

Farmers' Rights

Another key element of the Treaty is the recognition of Farmers' Rights. The Treaty recognizes the enormous contribution that the local and indigenous communities and farmers of all regions of the world have made, and will continue to make, to the conservation and development of plant genetic resources. It provides a framework for the iteration of Farmers' Rights at the national level and a forum for their discussion at the international level.

1.1.2 The Multilateral System of Access and Benefit Sharing

Coverage of the Multilateral System

Uses under Multilateral System

Additional PGRFA in the Multilateral System

In addition to the broad policy commitments of the Treaty, it established the Multilateral System of Access and Benefit-Sharing (MLS), including its Benefit-sharing Fund. The Multilateral System covers the genetic resources of the 64 genera of major food crops and forage species listed in Annex 1 to the Treaty.[7] Food crops and forage species were selected for inclusion in Annex I on the basis of the criteria of food security and the interdependence of states on those genetic resources. The Multilateral System includes all PGRFA listed in Annex 1 that are under the management and control of the Contracting Parties and in the public domain[8] and establishes multilaterally agreed conditions for access and benefit-sharing, where access is sought for utilisation and conservation in research, breeding and training. The Contracting Parties are also to encourage natural and legal persons within their jurisdiction who hold plant genetic resources for food and agriculture listed in Annex 1 of the Treaty to include them in the Multilateral System.[9] Also included in the Multilateral System are PGRFA listed in Annex 1 and held by the International Agricultural Research Centres of the Consultative Group on International Agricultural Research (CGIAR) and other international centres that have concluded agreements with the Governing Body to that effect under Article 15.[10]

1.1.3 The Standard Material Transfer Agreement

Pool of available resources

Facilitated access and material transfer agreement

Sovereign nations share PGRFA and the benefits derived from their use through the Multilateral System. The 64 genera included in the Multilateral System make up a global genepool of more than 1 million genetic samples that can be readily accessed under multilaterally-agreed terms and conditions. These terms and conditions are included in the text of the Treaty and are implemented through the Standard Material Transfer Agreement (SMTA) adopted by the Governing Body, which contains the provisions of Articles 12.3a, 12.3d and 12.3g, as well as the benefit-sharing provisions set forth in

[7] Article 11.1 of the Treaty. The list is reproduced at Appendix … to this Handbook.
[8] Article 11.2 of the Treaty
[9] Article 11.3 of the Treaty.
[10] Articles 11.5 and 15 of the Treaty.

Article 13.2d(ii), and other relevant provisions of the Treaty. Under Article 12.4 of the Treaty, facilitated access to the Multilateral System must be provided pursuant to the SMTA .

Adoption of the standard material transfer agreement

The Governing Body, at its First Session, through Resolution 2/2006, adopted the Standard Material Transfer Agreement, emphasising that the SMTA is crucial for the implementation of the Treaty. The Governing Body further noted that the SMTA "should ensure the efficient and transparent implementation of the Multilateral System". Parties who want to provide or receive PGRFA listed in Annex 1 and covered by the Multilateral System must use the Standard Material Transfer Agreement as adopted.

Terms of the standard material transfer agreement

The Governing Body also recognized "that the terms of the Standard Material Transfer Agreement should be attractive to both providers and recipients of plant genetic resources for food and agriculture accessed from the Multilateral System, in order to encourage their participation in the Multilateral System" and urged "Contracting Parties to the Treaty to take measures necessary for the implementation of the Standard Material Transfer Agreement".

1.1.4 The Benefit Sharing Fund

Purpose of benefit sharing fund

This access mechanism is supported by a Funding Strategy, including an international Benefit-sharing Fund, to promote the conservation and sustainable use of PGRFA and, thereby, ensure global food security; the whole within a binding legal architecture to which more than 120 countries are party.

Aim of funding strategy

Complementing the MLS, the Funding Strategy of the Treaty aims at mobilising funds for activities, plans and programmes to support the implementation of the Treaty, in particular in developing countries. The Treaty provides for the establishment of a Benefit-sharing Fund, which channels those funds of the Strategy that are under the direct control of the Treaty's Governing Body, including the monetary benefits from commercialization paid in accordance with the MLS. Additionally, the Strategy includes other funds which are not under the direct control of the Governing Body.

Treaty as unique and predictable mechanism

Taken as a whole, the Treaty offers a unique and predictable mechanism to safeguard global food security through the conservation and sustainable use of crop diversity in the context of accelerating climate change and other global challenges such as biodiversity loss, hunger and poverty.

1.2 Scope and objectives of the Handbook

The objectives of this Handbook are:

Facilitate implementation

- to facilitate the implementation of the Multilateral System and utilisation of the SMTA by assisting governments, providers and recipients of plant genetic resources for food and agriculture under the Multilateral System, and other interested parties;

Share information and experiences

- to share information and experiences on approaches in the operationalization of the Multilateral System; and

Simplify work of implementers

- to simplify the work of providers and recipients of genetic resources in accordance with the provisions of the Treaty.

2. Institutional arrangements

2.1 Introduction

No Treaty provisions on institutions

The Treaty itself makes no reference to the institutional arrangements that Contracting Parties should establish for its implementation. The Governing Body has also generally left the matter to the discretion of Contracting Parties. One exception is that, at its second session, the Governing Body recognised national focal points as having a significance that goes beyond facilitating correspondence. In paragraph 65 of the Report of its Second Session, the Governing Body recognises national focal points as a key source of information regarding the status of Treaty implementation in contracting parties. In Part II of Appendix D.3, "Operational procedures for the use of resources under the direct control of the Governing Body", the Governing Body assigns part of the responsibility for advertising calls for proposals under the benefit sharing fund to national focal points. The Secretary has requested Contracting Parties to nominate national focal points to facilitate the rapid distribution of Treaty related correspondence to the relevant officials and to aid communication between Contracting Parties.[11]

Focal points

Governing Body recognition of focal points

National level structures

At a national level, contracting parties have adopted a variety of institutional approaches from centralised to decentralized and devolved according to their particular needs and situations. These structures implement, oversee or contribute to the implementation of the Multilateral System. Some may result from existing governmental structures, others from institutional traditions while some may be completely new institutional structures.

2.2 Examples of institutional structures

***Editorial note**: The intention is to include further national examples prior to publication but this depends upon the availability of information from Contracting Parties.*

a) Switzerland

Switzerland is a federal state and, at the federal level, the Office Federal de L'Agriculture (OFAG), which is part of the Departement Federal de L'Economie (DFE), has responsibility for matters relating to the Treaty. This includes coordinating representation at Governing Body sessions and policy oversight at the national level. The technical implementation of the Multilateral System, and the Treaty more generally, involves a wide range of stakeholders, principally through the activities of the National Genebank and the Swiss Commission for the Conservation of Cultivated Plants (Commission Suisse pour la Conservation des Plantes Cultivées).

Day to day implementation of the Multilateral System is more diverse with the National Gene Bank, principally represented by the Research Institute Agroscope Changins-Wädenswil, at its heart. The National Gene Bank brings all of Switzerland's national collections into the Multilateral System but, in

[11] http://www.planttreaty.org/members_en.htm.

addition, through an innovative mechanism, brings in much of the cantonal and private collections held in the country. This mechanism revolves around the Commission Suisse pour la Conservation des Plantes Cultivées (CPC), which is ultimately part of l'Académie Suisse des Sciences Naturelles (ASSN). The CPC, through its association with the ASSN, is an independent institution whose collaborating partners include all of the approximately 25 private organizations dealing with plant genetic resources, mainly working with fruit trees, berries, grapevine and potatoes. OFAG provides funding to these organizations under the National Plan of Action on PGRFA, which was developed to implement the 1996 Leipzig Global Plan of Action. The contracts for this funding stipulate that accessions conserved, characterized or evaluated are part of the National Genebank. This way, all these accessions of Swiss private organizations which are financed by the National Plan of Action are included into the MLS.

The CPC is also responsible for the maintenance of the national PGRFA database, the Base de Données National Suisse (BDN), which provides information on all the collections discussed above.

2.3 Relevant articles from the IT-PGRFA

No Treaty provisions on institutions

The Treaty does not make any direct or indirect reference to the institutional measures that a Contracting Party may wish to take in implementing the Treaty beyond the general requirement that each Contracting Party ensure the conformity of its laws, regulations and procedures with the obligations as provided in the Treaty.

2.4 Decisions and resolutions of the Governing Body

Second Session of the Governing Body of the International Treaty on Plant Genetic Resources for Food and Agriculture: Report

Focal points to provide information on PGRFA inclusion

65. The Governing Body considered document, *Progress in the Inclusion of Plant Genetic Resources for Food and Agriculture in the Multilateral System*. It requested the Secretary to continue gathering information on the assessment of progress in the inclusion of plant genetic resources in the Multilateral System, through cost-effective means, including gathering information from National Focal Points. Contracting Parties requested help to develop information packages on key elements of the Treaty as a means to enhance their implementation activities. The Governing Body noted with appreciation that almost 100,000 samples had already been distributed under the terms of the Standard Material Transfer Agreement by the International Agricultural Research Centres of the Consultative Group on International Agriculture, within the first nine months of 2007.

Appendix D.3: Operational procedures for the use of resources under the direct control of the Governing Body

II. Project Cycle

The project cycle (the period between the meetings of the Governing Body) will normally have a duration of two years and consist of:

1. Opening a call for proposals

a. issued by the Governing Body, in the official languages of the Treaty, and containing relevant information and procedures – priority areas; concept note and project documents format; eligibility, selection and approval criteria; timing and deadlines; expected funds available;

Focal points to advertise call for proposals

b. advertisement on the Treaty website and through the national focal points;

c. responsibility: prepared by the Secretariat, under the guidance of the Bureau, and implemented on the decision of the Governing Body.

3. Notification of PGRFA in the Multilateral System

3.1 Summary

Availability of PGRFA and the Multilateral System

The foundation of the Multilateral System is the PGRFA that is made available through the System. Without the availability of PGRFA, there is no Multilateral System and, the more PGRFA that is made available, the more valuable the System becomes for all the Parties to it.

PGRFA from Parties

Sub-Articles 11.1 and 11.2 establish the basic foundation of the PGRFA that is available through the Multilateral System as part of the Treaty's agreement among states. This is the PGRFA of species listed in Annex I that Parties, exercising their sovereignty in accession to the Treaty, have agreed to make available. While this PGRFA becomes legally available to users of the Multilateral System at the point of a Party's accession to the Treaty, to make the PGRFA available in practical terms, the Secretariat, Bureau and Governing Body have recognised that Parties should provide notification, through the Secretary, of the details of available PGRFA and its source.

PGRFA from natural and legal persons

Sub-Article 11.2 makes reference to the inclusion in the Multilateral System of PGRFA held by others than Parties to the Treaty. This is expanded upon in Sub-Article 11.3, which makes reference to the inclusion of PGRFA by natural and legal persons.[12] The availability through the Multilateral System of PGRFA held by natural and legal persons is at the discretion of those persons. As a consequence, natural and legal persons must expressly place any PGRFA they hold in the Multilateral System for that PGRFA to be available.

PGRFA from international institutions

Sub-Article 11.5 refers to PGRFA held by international institutions. Prior to the entry into force of the Treaty, PGRFA held by the research centres of the Consultative Group on International Agricultural Research (CGIAR Centres) was held in trust under the auspices of the Food and Agricultural Organization of the United Nations for the benefit of the international community. The Multilateral System has superseded this arrangement and the CGIAR Centres have accordingly concluded agreements with the Governing Body for the management of PGRFA. The CGIAR Centres have published a guide on their management of PGRFA under the Multilateral System,[13] which includes addressing the identification and notification of available PGRFA. Other international, including regional, institutions are invited to make PGRFA available through the Multilateral System through measures similar to those applicable to the CGIAR Centres.

This section provides a brief description of the principal activities related to the inclusion of PGRFA in the Multilateral System. The section then provides a series of examples from the national and international levels to supplement the description of the principal activities.

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[12] 'Natural and legal persons' is legal terminology designed to cover both individuals and legally recognised groups, such as organisations, societies, institutions or companies.

[13] The 'Guide for the CGIAR Centres' use of the Standard Material Transfer Agreement' is available at: http://sgrp.cgiar.org/?q=node/171.

3.2 Implementation steps

Central elements of processes for notification or inclusion

This subsection draws from the examples and experiences described elsewhere in this section to highlight what have, to date, proven to be the central elements of processes for the notification or inclusion of PGRFA in the Multilateral System. The exact details of approaches vary slightly according to authority, mandate and constituency, as shown in the examples provided later, but it may be noted that the basic elements are remarkably consistent regardless of particular contexts.

The more PGRFA, the more valuable the system

Notification and inclusion represent part of a virtuous circle, where, the more PGRFA that is included, the more valuable participation in the system becomes. Recognising this fact, particular attention is paid to encouraging the widest possible notification of PGRFA automatically included in the Multilateral System by Contracting Parties and to encouraging the maximum voluntary inclusion of PGRFA that might not automatically fall within the Multilateral System.

3.2.1 How to identify or include PGRFA in the Multilateral System

Contracting Parties

For Parties to the Treaty, who place PGRFA in the Multilateral System at the moment of accession to the Treaty, the key necessary activities are the identification and notification of the relevant PGRFA. While these activities may often be challenging, due to resource and information constraints, the steps involved are straightforward and clear.

Identify sources of PGRFA

Identify what sources of plant genetic resources for food and agriculture, in both *in situ* and *ex situ* conditions, are considered as being under the management and control of the Party and as being available in the public domain. The understanding of 'under the management and control of the Party and available in the public domain' has been discussed by the Ad Hoc Advisory Technical Committee on the Standard Material Transfer Agreement and the Multilateral System of the Treaty, whose opinions, while not binding, may be useful to Parties.[14]

In situ PGRFA

It should be noted that the Treaty recognises that while PGRFA in *in situ* areas may be automatically included in the Multilateral System if it meets the criteria set out in Article 11.2, access to that PGRFA is subject to national legislation, or in the absence of such legislation, to such standards as may be set by the Governing Body (paragraph 12.3(h)). Where *in situ* areas are concerned, it is possible that no further detailing of the PGRFA available from that area will be necessary once the geographic description, and possibly contact point for access, is provided.

Identify Annex I PGRFA

Having identified the sources of PGRFA that fall within the Multilateral System, attention can then move to focus on the specific accessions that are

[14] See Appendix 3 of document IT/AC-SMTA-MLS 1/10/Report.

included. The main criterion here is to identify accessions that fall within the list of crops and forages in Annex I to the Treaty. In most cases, the list is constructed in broad terms with all, or at least most, of the species within a given genus being included in the Multilateral System but care must be given to the instances where a more limited range of species is listed. The comprehensiveness that any given collection can achieve in this task will depend upon the level of detail in its existing documentation but collections are encouraged to make information available as they collate it; waiting for comprehensive documentation of entire collections is unnecessary.

Identify any restrictions on particular accessions

Having identified PGRFA available from collections that are under the management and control of the Contracting Party and generally publicly available and then identified accessions of Annex I species, the remaining task is to see if there are any circumstances or restrictions that might affect the status of a particular accession. One possibility is where an accession is under development and, therefore, access may be limited or subject to conditions. This is most likely to occur where the collection in which a particular accession is held by a research institution, whether for working or conservation purposes. There may also be restrictions affecting the control or public domain status of an accession, particularly where it originates outside the country in which the collection is held. 'Black box' status[15] falls in this category, as may restrictions that are placed on accessions acquired from outside the Multilateral System.

Notification to Secretary

Having identified the PGRFA available in the Multilateral System, the final step for Contracting Parties is to notify the Secretary of this information. Recognising the dynamic nature of collections, the trend has been for Contracting Parties to notify the Secretary of world wide web addresses that contain the relevant information, rather to provide lists directly. These notifications are then placed on the Treaty website and provide regularly updated information on available PGRFA.

Non-sovereign persons

Where a non-sovereign person (i.e. any individual or organisation other than a national government) wishes to include PGRFA in the Multilateral System, the main difference from the process for Contracting Parties is as regards the first of the steps described above. Where a Contracting Party identifies the *ex-situ* collections under its management and control, a non-sovereign actor will identify the collections, or elements thereof, that it wishes to make available and notify the Secretary and the Governing Body to this effect. In the case of international centres, this will involve reaching a formal agreement with the Governing Body, a process that will be facilitated by the Secretary.[16] In the case of other natural and legal persons, including private companies, a simple notification can be provided to the Secretary, although it may also be useful for such natural and legal persons to collaborate with the Contracting Party in whose jurisdiction they are found for the purposes

[15] In this context 'black box' refers to material that is held on condition that it will only be maintained and that no research activities are authorised. This is most commonly material considered to be significant for conservation purposes and held for safety duplication.

[16] The agreements between the research centres of the CGIAR and the Governing Body will be useful references in such instances. These agreements may be found at http://www.planttreaty.org/inclus_en.htm.

of linking with the Multilateral System's information mechanisms.[i]

3.2.2 Information of, and to, relevant stakeholders

Ensuring that all stakeholders are informed about the Multilateral System and that parties have reliable information of what PGRFA is available for inclusion, as well as what use is being made of, and what benefits are being derived from, PGRFA that is already included, encourages participation in the Multilateral System and the further inclusion of PGRFA.

In identifying the PGRFA that it is included in the Multilateral System, a Contracting Party will often need to inform several institutions under its jurisdiction of the nature and objectives of the System and to seek their cooperation in the actual process of PGRFA identification. In addition, it may be useful to make information about the Multilateral System more widely available, particularly to breeders and any natural or legal persons holding plant genetic resources for food and agriculture. This can help to build up a constituency supporting participation in the Multilateral System while also making it easier for natural and legal persons to make their collections available where they deem this appropriate. This information provision will often be closely linked to maximising the benefits derived from participation in the Multilateral System, as discussed later in this handbook, reflecting the System's linked aspects of access and benefit sharing.

3.2.3 Incentives to other holders of plant genetic resources for food and agriculture, including natural and legal persons

Some parties have developed incentive patterns to encourage the participation in the Multilateral System of non-sovereign actors within their jurisdictions. Incentives can come in various forms but the provision of information and advisory services as well as conditions on access to national or international grant funding are perhaps some of the most common examples.

For example, in Switzerland the Federal Office for Agriculture is finances projects dealing with the inventory, conservation, characterization, evaluation and sustainable use of PGRFA. The present budget for these projects is about 3 million Swiss francs per year and is available to both private and public organizations. The contracts between the Swiss Government and the organizations in charge of these projects stipulate that accessions conserved, characterized or evaluated are part of the national genebank. All accessions in the national genebank are included in the Multilateral System, regardless of whether they are Annex I crops or not. In Switzerland, there are approximately 25 private organizations dealing with plant genetic resources, mainly working with fruit trees, berries, grapevines and potatoes. All these private and public organizations are collaborating in the Swiss Commission for the Conservation of Cultivated Plants. Through this mechanism, all these accessions of Swiss private organizations that are financed by the National Plan of Action are included in the Multilateral

System.[17]

Similar to the Swiss example, the Treaty's own benefit sharing fund makes its support conditional upon any PGRFA conserved, characterised, evaluated or developed in its projects being made available through the Multilateral System.

3.3 Experiences in inclusion

A number of parties to the Treaty and international centres began implementing the mechanisms that make up the Multilateral System relatively early after the entry into force of the Treaty. As such, a body of experience has already been developed that may be of use to others seeking to implement, or otherwise make use of, the Treaty as well as in periodically reviewing implementation.

3.3.1 National

The collections of plant genetic resources for food and agriculture held by Parties to the Treaty form the foundation of the Multilateral System. Although the PGRFA held in these collections that fits the conditions of Article 11.2, i.e. that are "under the management and control of the Contracting Part[y] and in the public domain", is automatically included in the Multilateral System, it is important for each Contracting Party to provide the Secretary with information as to what PGRFA is available as part of their commitment to providing facilitated access. Two examples of the process of identification of PGRFA and information provision are provided here as a reference for those who are yet to complete their own activities.

It is important to note that plant genetic resources for food and agriculture included in the Multilateral System by Parties upon their accession to the Treaty include PGRFA that may be found in *in situ* conditions provided that this PGRFA is also held under the conditions described in Sub-Article 11.2, i.e. that are "under the management and control of the Contracting Part[y] and in the public domain". However, as discussed under the section on the standard material transfer agreement, *in situ* PGRFA may be subject to further conditions of access that are not applicable to PGRFA held *ex situ*.

a) Germany
The Federal Ministry of Food, Agriculture and Consumer Protection (BMELV) led the process of identifying German held PGRFA included in the Multilateral System. Its first step was to use the National Inventory on Plant Genetic Resources (PGRDEU) to identify all of the providers of PGRFA of Annex I species. Having done this, collections were categorised and approached as follows:

- Collections under the direct control of the Federal Ministry were

[17] 'Legal and administrative measures in Switzerland to include PGRFA into the MLS', Communication to the Secretariat by Geert Kleijer, Head National Genebank.

instructed to use the SMTA for Annex I species

- Collections under the control of Laender (states) or local authorities were requested to introduce the SMTA.
- All other collection holder (mixed, private) were invited to used the SMTA as appropriate.

In at least one instance, that of the Genebank of the Leibniz Institute of Plant Genetics and Crop Plant Research (IPK) in Gatersleben, an institution amended its constituting statutes to accommodate the Multilateral System.

Once the key institutions or collections that will contribute to the Multilateral System were identified, the process of identifying the actual PGRFA that is included in the System was undertaken. This began with identifying accessions of Annex I species through the taxonomic part of documentation systems. Given that, for food crops, Annex I generally defines a crop through its respective genus or genera[18], crops of all species of a crop genepool could be marked as Annex I. It is noted that this can be a time consuming process that needs to be conducted with care.

Along with Annex I identification, a determination as to public domain status needs to be made. In this instance, the existence of possible restrictions (e.g. black box designation) was the prime criterion.

A cross-referencing of the Annex I and public domain criteria then allows for the documentation system to flag PGRFA as belonging to the Multilateral System. Once the Annex I and public domain status identifications are added to the standard routines of a collection, all new or taxonomically re-determined PGRFA can be automatically categorised.

The information regarding information available under the Multilateral System was then collated through the National Inventory for Plant Genetic Resources (PGRDEU)[19], which is designed to be compatible with the European wide EURISCO format. The addition of a field "MLS status" allowed the ready recognition of PGRFA available under the Multilateral System.

The final step in the process was to inform the Secretary of the International Treaty on Plant Genetic Resources for Food and Agriculture about PGRFA from German collections available under the Multilateral System. This took the form of a general notification of the collections that hold relevant PGRFA and a reference to the website of the National Inventory for Plant Genetic Resources for any further detail.[20]

3.3.2 National genebanks[ii]

National genebanks or PGRFA conservation networks are central to the Multilateral System. Their collections of plant genetic resources for food and

[18] The limited exceptions including, for example, instances where particular species are excluded (such as musa textilis) or where only limited species are included (such as manihot esculenta).
[19] The website of the National Inventory for PGR is available at http://www.genres.de/pgrdeu/.
[20] A model letter for notifying the Secretary of material available under the Multilateral System, as well as the notifications provided by Parties to date, are available at http://www.planttreaty.org/inclus_en.htm.

agriculture almost invariably provide the bulk, if not the entirety, of PGRFA placed in the Multilateral System by Parties. Even where the national focal point for the Treaty is hosted by an administrative or executive authority the genebank, as the lead technical agency, frequently takes the leading role in identifying PGRFA that fulfils the criteria for inclusion in the Multilateral System and in managing the necessary documentation systems to make PGRFA available. The national genebank is also often a major source of information and support for others who hold PGRFA or for those seeking access to PGRFA from other countries.

3.3.3 International

The collections held by international institutions, particularly those of the CGIAR Centres, are provided for under Article 11.5. The Mutant Germplasm Repository of the FAO/IAEA Joint Division has placed its collection in the Multilateral System pursuant to this Sub-Article, as have the CGIAR Centres. A sample of the agreements between these international institutions and the Governing Body is included as Annex xx. The CGIAR Centres have committed themselves to including the maximum proportion possible of their collections in the Multilateral System. However, they hold PGRFA of different categories. Some PGRFA is included in the System, some is not but is treated in a manner as similar as is possible to the Multilateral System (mostly non-annex I PGRFA) and some other PGRFA that may not be treated in a similar manner for specific reasons, particularly PGRFA held under 'black box' conditions.

As part of their guide to the Standard Material Transfer Agreement (the "CGIAR Guide"),[21] the Systemwide Genetic Resources Programme of the CGIAR has provided an outline of a suggested approach to the identification and notification of PGRFA in their collections that is available under the Multilateral System. The key elements of that suggested approach are described below.

The CGIAR Guide notes that it has been developed with the idea of an internet based system in mind but that the Guide's basic principles and decision points are applicable to other systems for the distribution of PGRFA.

The inclusion and notification process included in the CGIAR Guide is described as 'preparatory work' and consists of three main steps:

a) Documenting the PGRFA under the management of a particular research centre that falls within the broad scope of the Treaty. This is identified as PGRFA that has historically been considered as 'In Trust' or that has been acquired within the Treaty framework subsequent to its entry into force.
b) As a subset of the PGRFA documented under a), documenting what

[21] The 'Guide for the CGIAR Centres' use of the Standard Material Transfer Agreement' is available at: http://sgrp.cgiar.org/?q=node/171.

PGRFA falls under Annex I of the Treaty. (While not specifically noted in the CGIAR Guide, but as noted elsewhere in this handbook, in most instances this will involve noting all accessions of crops of all species of a crop genepool).

c) For PGRFA acquired after the entry into force of the Treaty, i.e. post June 2004, was the PGRFA acquired under a standard material transfer agreement? If so, it is part of the Multilateral System and, even if not listed in Annex I and not part of the Multilateral System, it must be handled in the same manner as PGRFA in the Multilateral System.

Within the specific circumstances of the research centres of the CGIAR, the first two of these three steps are equivalent to the determinations of management and control and Annex I listing that the Treaty sets out for Parties to the Treaty. The CGIAR Guide describes several further steps that may need to be considered either in the initial documentation of PGRFA available under the Multilateral System or as and when PGRFA is actually being provided.

a) The public domain status of PGRFA, and hence its availability through the Multilateral System, may be affected by any special restrictions or conditions, such as those applying to 'black box PGRFA', that may be applicable to particular accessions. The CGIAR Guide notes that this is unlikely to occur very often, as PGRFA with restrictions or conditions is unlikely to have been considered historically as 'In Trust' and, for PGRFA acquired after the entry into force of the Treaty (i.e. June 2004) centres are being encouraged to accept PGRFA for conservation in their genebanks only where there are no special conditions that would preclude making the PGRFA available to others in a similar way to Annex 1 PGRFA under the Treaty.
b) PGRFA under development that is derived, but distinct, from PGRFA available under the Multilateral System and not yet released for commercialisation may be made available on a discretionary basis. The scope of discretion may include making PGRFA available subject to conditions beyond those contained in the Standard Material Transfer Agreement, such as monetary consideration.
c) The CGIAR Guide highlights that, in some instances, PGRFA may be moved without actually constituting a "transfer of PGRFA", as understood within the scope of the Multilateral System. The movement constitutes a "transfer of PGRFA" if the recipient is assigned rights over the PGRFA. The examples of PGRFA moved for safety deposit under black box conditions or for the sole purpose of testing by an outside laboratory are given for movements of PGRFA that do not constitute transfers. The CGIAR Guide also highlights that such 'non-transfer' movements of PGRFA must be done under specific agreements highlighting the limits of permitted activities.
d) A further point raised by the CGIAR Guide may be considered as part of the question of the inclusion of PGRFA in the Multilateral System or in the context of the application of the Standard Material Transfer Agreement; that of whether the purpose for which access is being requested falls within those relevant to the Multilateral System under Paragraph 12.3(a) of the Treaty? Only the use of PGRFA for accepted

purposes is within the Multilateral System (the use of Annex I PGRFA for other purposes would be outside the Multilateral System).

3.3.4 Regional[iii]

Regional collections occupy a position between the international and national systems that frequently involves unique policies and practices blending elements of closed and open systems of exchange and, potentially if not always, benefit sharing. This includes the degree to which PGRFA they hold, or may have access to, is PGRFA that might be included in the Multilateral System.

Several regional collections have already placed significant quantities of PGRFA of global significance in the Multilateral System through agreements concluded with the Governing Body under Article 15.5 of the Treaty, namely:

- Tropical Agricultural Research and Higher Education Centre (CATIE)
- International Coconut Genebank for African and the Indian Ocean
- International Coconut Genebank for the South Pacific
- Centre for Pacific Crops and Trees
- International Cocoa Gene Bank

3.3.5 By private holders[iv]

As an agreement between sovereign states, the Treaty is only binding upon the parties that ratify or otherwise accede to or accept it. However, as provided for in Sub-Articles 11.2 and 11.3, the Treaty asks Parties to encourage non-sovereign actors to collaborate with the Treaty and to make PGRFA in their custody available through the Multilateral System. The Treaty seeks to encourage non-sovereign private, as well as public, actors to collaborate and places the primary responsibility for encouraging this on the Contracting Parties to the Treaty. Several parastatal and private organisations of varying characters have already placed their collections in the Multilateral System, including:

- **Association pour l'Etude et l'Amélioration du Maïs (Pro-Maïs) and the National Institute for Agricultural Research of France (INRA)** have informed the Secretary of collections of Maize with a total number of 500 accessions which are included in the Multilateral System.

- **Association Française des Semences de céréales à paille et autres espèces Autogames (AFSA), and the National Institute for Agricultural Research of France (INRA)** have informed the Secretary of French collections of bread wheat with a total of 1800 accessions which are included in the Multilateral System of the Treaty.

3.4 Role of contracting parties and national focal points[v]

From the above examples of the inclusion and notification of PGRFA available under the Multilateral System, it is clear that Parties, and often particularly their representative national focal points, play a pivotal role in

Treaty implementation. National focal points have played an active role in identifying collections and PGRFA that is included in the Multilateral System, as well as in encouraging and assisting natural and legal persons to include collections under their control.

3.5 Relevant articles from the IT-PGRFA

Article 11 – Coverage of the Multilateral System

Article 12 – Facilitated access to plant genetic resources for food and agriculture within the Multilateral System. Particularly 12.3 (a), (e), (g) and (h).

Article 15 - Ex Situ Collections of Plant Genetic Resources for Food and Agriculture held by the International Agricultural Research Centres of the Consultative Group on International Agricultural Research and other International Institutions

3.6 Decisions and resolutions of the Governing Body

First Session of the Governing Body

Assessment of progress in the inclusion in the Multilateral System of plant genetic resources for food and agriculture held by natural and legal persons

Para. 29. Inclusion by natural and legal persons

29. The Governing Body re-emphasised the importance of Contracting Parties taking appropriate measures to encourage natural and legal persons within their jurisdiction, who hold plant genetic resources for food and agriculture listed in Annex I of the Treaty, to include such plant genetic resources for food and agriculture in the Multilateral System.

Approval of draft agreements between the Governing Body and the international agricultural research centres, and other relevant international institutions

Para. 32. Agreement with international institutions

32. The Governing Body reviewed and approved the model agreement, as attached in Appendix K to this Report, for use with the IARCs and, mutatis mutandis, with the other international institutions. It noted with pleasure that these would now all enter into agreements in accordance with Article 15 of the Treaty. The statement made by the Alliance of Future Harvest Centres of the CGIAR is attached as Appendix L to this Report.

Second Session of the Governing Body

Implementation of the Multilateral System of Access and Benefit Sharing

Para. 65. Information from national focal points

65. The Governing Body considered document, *Progress in the Inclusion of Plant Genetic Resources for Food and Agriculture in the Multilateral System*. It requested the Secretary to continue gathering information on the assessment of progress in the inclusion of plant genetic resources in the Multilateral System, through cost-effective means, including gathering information from National Focal Points. Contracting Parties requested help to develop information packages on key elements of the Treaty as a means to enhance their implementation activities. The Governing Body noted with appreciation that almost 100,000 samples had already been distributed under

the terms of the Standard Material Transfer Agreement by the International Agricultural Research Centres of the Consultative Group on International Agriculture, within the first nine months of 2007.

Third Session of the Governing Body

RESOLUTION 4/2009: THE MULTILATERAL SYSTEM OF ACCESS AND BENEFIT-SHARING
THE GOVERNING BODY,

Para. 4. Parties to make information available

4. ***Requests*** all Contracting Parties to report on their plant genetic resources for food and agriculture that are in the Multilateral System, in accordance with Article 11.2 of the International Treaty, and, according to national capacities, to take measures to make information on these resources available to potential users of the Multilateral System;

Para. 8. Information on natural and legal persons

8. ***Reiterates*** the urgency of obtaining the appropriate information it needs to assess progress in the inclusion in the Multilateral System of plant genetic resources for food and agriculture held by natural and legal persons within the jurisdictions of Contracting Parties. Such information should comprise:
- The holders of the collections;
- The crops included;
- The total number of accessions;

Para. 9. National plant genetic resources systems

9. ***Encourages*** Contracting Parties, as appropriate, in reporting on their plant genetic resources for food and agriculture in the Multilateral System, to provide information on the collections of legal persons not part of the government, whom they regard as forming part of their national plant genetic resources systems and who are willing to make such information available.

Para. 10. Measures to encourage natural and legal persons

10. ***Further invites*** all Contracting Parties to include in their reports on the plant genetic resources for food and agriculture in the Multilateral System information on the appropriate measures that they are taking, in accordance with Article 11.3 of the Treaty, to encourage natural and legal persons within their jurisdictions to include plant genetic resources for food and agriculture in the Multilateral System, according to national capacities;

4. Application of the SMTA

4.1 Introduction

Editorial note: To be added, a brief step-by-step explanation of the process of using the standard material transfer agreement providing a quick reference guide to the discussion contained in the various sub-sections 4.2 – 4.14 below. This is particularly important given the complexity of the section.

4.2 Nature of the Standard Material Transfer Agreement

The Standard Material Transfer Agreement is a mandatory template for parties wishing to provide and receive PGRFA under the Multilateral System. It is the result of lengthy negotiation among the Contracting Parties to the Treaty and may not be varied or abbreviated in any way. However, as a template, there are some paragraphs and sections of the Standard Material Transfer Agreement that need to be completed to individualise it for each transaction that takes place using it.

Material transfer agreements using the standard template are private agreements between the particular providers and recipients but the Governing Body, through FAO as the Third Party Beneficiary, is recognised as having an interest in the agreements. The standard template has been developed to ensure that the provisions of the Treaty regarding the transfer of PGRFA under the Multilateral System are enforceable on users of the Multilateral System.

4.3 Filling out the Standard Material Transfer Agreement

The Standard Material Transfer Agreement may not be amended but it does require the completion of several elements, mostly by the provider but also, at least minimally, by the recipient.

4.3.1 For the Provider

- Name and address of the Provider and Recipient. Where an official has been authorised to act on behalf of a Contracting Party or institution, the standard material transfer agreement should refer to the Contracting Party or institution that the official represents and not the individual. The footnote to Article 1.2 indicates that it is not necessary to include the names and addresses of the Provider and Recipient where the "shrink-wrap" and "click-wrap"[22] form of agreement are to be used.
- Only the acceptance clause relevant to the approach to offer and acceptance chosen by the parties, discussed in 4.4 below, should be retained.
- Annex 1 to the Standard Material Transfer Agreement should include a description of the PGRFA being provided. Parties should provide a reasonably sufficient description of the PGRFA that is the subject matter of

[22] The meaning of "shrink wrap" and "click wrap" are discussed in 4.4, below.

the agreement, including "all available passport data and, subject to applicable law, any other associated, available, non-confidential descriptive information" along with the PGRFA being transferred to the Recipient. Where the relevant information is already available, for instance on the internet, it may be sufficient to make reference in annex 1 of the SMTA to the location of the relevant information.

4.3.2 For the Recipient

There are two areas where the recipient is required to take action in completing the Standard Material Transfer Agreement:

- First is that the recipient should indicate their preferred mode of acceptance of the Standard Material Transfer Agreement to the provider and then sign or confirm the Agreement according to the agreed mode of acceptance, as discussed in 4.4 below.
- The second area where the recipient may be required to take action in completion of the Standard Material Transfer Agreement is if the recipient intends to opt for the alternative payment scheme provided for under 6.11 in place of the requirements of 6.7. If the recipient takes the 6.11 option, sub-paragraph 6.11(h) obliges them to notify the Governing Body of this decision.

4.4 Acceptance of the standard material transfer agreement

4.4.1 Authority for offer and acceptance of the Standard Material Transfer Agreement

Once the standard material transfer agreement has been filled in by the provider and the recipient, it constitutes an offer by the provider to deliver the specified PGRFA on the terms and conditions described in the agreement. The recipient must then accept this offer.

In considering acceptance, the first issue is who has the authority both to make the offer to provide PGRFA and who has the authority to accept the PGRFA and the associated obligations imposed by the Standard Material Transfer Agreement. On behalf of a provider, this will need to begin with an identification of who has the right to manage and control the PGRFA in question. Where this is an individual,[23] the matter is simple, as that individual has the necessary authority. Where the rights holder is a Contracting Party or an institution, officials should be formally designated as having the authority to make an offer to provide PGRFA under the Standard Material Transfer Agreement.

The situation is similar for recipients. Where the recipient is an individual, the matter is again straightforward as one may assume that they are competent to enter into an agreement on their own behalf. Where the recipient is a Contracting Party or an institution the question is again one of whether they have been

[23] The Treaty and its related documents use the formal legal language of 'natural person' to refer to individuals and 'legal person' to refer to corporate entities such as institutions or companies.

formally designated as having the authority to accept the obligations of the standard material transfer agreement on behalf of their government or institution. In the case of Contracting Parties, it should be noted that it is frequently likely that a senior official may be authorised to act on behalf of the Contracting Party and then delegate that authority to multiple individuals or institutions who are actually involved in the day to day management of PGRFA. It may also be possible for legislative or executive authorities to directly delegate authority to multiple institutions or authorities.

In all cases, providers and recipients may reasonably presume that their counterparts have the necessary authority to offer or accept. The paragraph on signature of the Standard Material Transfer Agreement is explicit that the individual offering or accepting legally commits that they have that necessary authority and in most jurisdictions accepting shrink wrap or click wrap this would be taken to be implicit.

4.4.2 Forms of offer and acceptance

Where the authority to offer and accept PGRFA under a material transfer agreement is known, attention turns to the form of offer and acceptance that will be used. The familiar form of offer and acceptance for most people is by each party signing the agreement. However, the rise of mass produced goods and, in particular, the growth in the trading of information products through the medium of the internet have led to the increasing acceptance of others forms of offer and acceptance. Two of these, commonly known as ‘shrink-wrap’ and ‘click-wrap’ have been incorporated, along with the traditional signature, as possible means of accepting a standard material transfer agreement.

It is the responsibility of the provider and recipient to determine the form of offer and acceptance to be used in each individual case. This may depend upon what forms of offer and acceptance are acceptable in the provider and recipient’s legal jurisdictions.

a) Signature
Some jurisdictions require the physical signature of an agreement for it to be enforceable. In such cases, a copy of the standard material agreement, duly completed by the provider, should be sent to the recipient for signature. In most cases, this should be sent and completed by the recipient prior to the delivery of PGRFA.

b) Shrink-wrap
A more efficient form of offer and acceptance can be made with the ‘shrink-wrap’ approach, so named because of its common use with shrink wrapped software. Here, the agreements terms and conditions are included as part of the packaging and the recipient is deemed to agree to them by opening the package and, sometimes, also by making use of the contents. Normally the entire text of the agreement must be visible prior to opening the package (to ensure that the recipient is fully aware of what they are agreeing to). In some cases it may be acceptable for the packaging to make reference to where the full terms and conditions of the agreement may be found, usually on the world wide web. This

latter option is particularly important in the case of the standard material transfer agreement because its length makes it difficult to attach to the packaging of a germplasm shipment so as to be readily visible.

Even when using the shrink-wrap approach, the Systemwide Genetic Resources Programme of the Consultative Group on International Agricultural Research has recommended that the Group's research centres respond, where possible, to requests for PGRFA with an immediate letter or e-mail. This should acknowledge receipt of the request for germplasm, include the standard material transfer agreement and ask that the recipient immediately notify the provider if the agreement terms are unacceptable, in order to avoid the unnecessary and inappropriate shipment of PGRFA.

c) Click-wrap

The click-wrap approach to offer and acceptance is conducted entirely via the internet. When a potential recipient makes a request for PGRFA, they are shown the full terms and conditions of the agreement and asked to check a box or click on a button to indicate acceptance. With the catalogues of many collections now available via the internet, this approach is expected to become increasingly widespread. As an additional precaution, it is probably wise to also follow common commercial practice and include a copy of the duly completed standard material transfer agreement with any shipment, even where it has been completed using a click-wrap approach. Of course, where the provider is equipped to conduct transactions via a click-wrap approach, it is not necessarily the case that the potential recipient will be able to make use of this because of restrictions in their jurisdiction. To allow for such situations, even a click-wrap based internet system will need to allow for the possibility of the signature, and perhaps shrink-wrap, option.

In addition to the measures described above, the Systemwide Genetic Resources Programme of the Consultative Group on International Agricultural Research has recommended that the Group's research centres take further precautionary measures to ensure the legal validity of agreements, regardless of which of the three approaches to offer and acceptance is used. These include: placing copies of the standard material transfer agreement on all institutional web sites; referencing and appending the standard material transfer agreement to all agreements that deal in any way with transfers of PGRFA; and, placing the following notice on the outside of any package including Annex I PGRFA:

> **IMPORTANT NOTICE:**
>
> **This package contains Plant Genetic Resources for Food and Agriculture (PGRFA) of crops listed in Annex 1 to the International Treaty on Plant Genetic Resources for Food and Agriculture (the Treaty) and thus subject to the terms of the Multilateral System of Access and Benefit-sharing set up by the Treaty. The transfer of these PGRFA is subject to the terms and conditions of the Standard Material Transfer Agreement (SMTA), adopted by the Governing Body of the Treaty in June 2006. The completed SMTA governing the enclosed PGRFA is included in this package. Your acceptance of the PGRFA will constitute acceptance of the terms and conditions of the SMTA, including its conditions related to payments due on**

commercialisation of a Product incorporating the PGRFA. If you do not wish to accept the SMTA, then you must return the PGRFA to [Centre] immediately without using the PGRFA."

4.5 Provision of PGRFA

The actual delivery of PGRFA may take place subsequent to the completion of the offer and acceptance process, as in the case of signature or click wrap, or may take place simultaneously with the offer and acceptance process, as in the case of shrink wrap agreements. Providers of PGRFA are generally at liberty to deliver the PGRFA as they see fit, however, the Treaty does impose some basic requirements.

Article 12.3 provides for these basic requirements. Paragraph (b) provides that "access shall be accorded expeditiously…and free of charge, or, when a fee is charged, it shall not exceed the minimal cost involved." This requirement to provide PGRFA expeditiously may be considered to be subject to a reasonable standard such that, in situations such as where large amounts of PGRFA are requested or there are problems with the phytosanitary condition of the PGRFA, some delay is to be expected. The fact that the transfer of PGRFA under the Treaty remains subject to normal phytosanitary measures is particularly important to note. The reference to fees not exceeding the minimal cost involved is likely to be interpreted as meaning that direct costs incurred for the postage and, where relevant, duplication of a particular delivery may be recovered.

Paragraph (c) of Article 12.3 provides a further basic requirement associated with delivery. This is that all available passport data and other associated descriptive information shall be made provided along with any transfer of PGRFA. This is limited by a provision that information protected by law or otherwise held as confidential need not be provided. This limitation is most likely to apply to situations involving intellectual property rights claims or the protection of undisclosed information.

4.6 Benefit sharing

Benefit sharing is a major element of the Treaty in both political and practical terms. The general subject of benefit sharing under the Multilateral System is discussed in section 5 of the handbook and discussion here will focus on the specific measures required for honouring obligations under the Standard Material Transfer Agreement.

The benefit sharing requirements of the Standard Material Transfer Agreement are to be found in Articles 6.7 through to 6.11 of the Agreement and broadly reflect the provisions of Article 13 of the Treaty, albeit with a particular emphasis on monetary benefits resulting from commercialisation.

Article 6.7 provides for situations where recipients commercialize a product incorporating PGRFA from the Multilateral System and where that product is not freely available to others for further research and breeding. The Standard Material

Transfer Agreement provides definitions of the terms ‘product’ and ‘commercialize’ to assist in the identification of such cases. Payments under 6.7 are made as a fixed percentage of gross income from sales of the product, currently set at 1.1% of gross income less 30%. Details of how to make payments are included in the Standard Material Transfer Agreement. It is important to note that the provisions of Article 6.7 do not apply to sales of a product as a commodity.

Article 6.8 of the Standard Material Transfer Agreement is similar to 6.7, and is also drawn from Article 13.2(d)(ii) of the Treaty, but provides for situations where commercialized products are freely available to others for further research and breeding. In these instances, payments are voluntary rather than mandatory as under 6.7.

Article 6.9 of the Standard Material Transfer Agreement provides for the non-monetary benefit sharing measures found in Article 13.2(a), (b) and (c). Following Article 13.2(a), recipients are required to make all non-confidential information resulting from research and development on PGRFA from the Multilateral System available. Technology transfer and capacity building are encouraged. Recipients are also encouraged to place PGRFA that has been the subject of intellectual property rights into collections that are part of the Multilateral System once those intellectual property rights have expired.

Article 6.10 of the Standard Material Transfer Agreement mirrors the requirements of the Standard Material Transfer Agreement on ensuring that any third party transfers of PGRFA continue to be subject to the Agreement. Where a recipient transfers intellectual property rights on products developed from PGRFA obtained from the Multilateral System, they must ensure that the third party accepting the intellectual property rights also accepts the benefit sharing obligations of the Standard Material Transfer Agreement.

Article 6.11 provides for an alternative to the mandatory payments triggered by the commercialisation of products that are set out in Article 6.7. As noted elsewhere, the option under Article 6.11 must be claimed through notification to the Governing Body and, under 6.11(b), the option may be exercised for ten year periods, renewable at the recipient’s discretion. In place of the 1.1% less 30% of gross sales of a particular product payable under 6.7, the 6.11 option requires 0.5% payments on the gross sales of all products of the same crop as the PGRFA accessed from the Multilateral System. Article 6.11(d) stresses that the 0.5% payment is payable independent of whether or not a product is available without restriction.

4.7 Reporting

The Standard Material Transfer Agreement imposes basic reporting requirements on both providers and recipients of PGRFA under the Multilateral System. The Governing Body considers such reporting to be important for the functioning of the Multilateral System and has requested the Secretary to develop, in consultation with relevant organizations, appropriate and cost-effective processes to facilitate the submission, collection and storage of required information. It is

important to note that the Governing Body has also requested the Secretary to apply adequate measures to ensure the integrity of information and, where required, confidentiality of the information so provided.

4.7.1 For the Provider

Under paragraph 5(e) of the standard material transfer agreement, the provider shall inform the Governing Body, periodically, about all material transfer agreements entered into in regard to PGRFA under the Multilateral System in accordance with the schedule established by the Governing Body.

At its Third Session, the Governing Body further elaborated upon the requirements of paragraph 5(e) in the context of the procedures for the Third Party Beneficiary. Providers are required to either transmit copies of the completed standard material transfer agreements or, in the event that they do not transmit the agreements themselves, a set of information regarding standard material transfer agreements entered into, as follows:

i) confirmation that the completed standard material transfer agreement will be at the disposal of the Third Party Beneficiary as and when needed, including where it is stored and how it may be obtained;
ii) The identifying symbol or number attributed to the standard material transfer agreement by the Provider;
iii) The name and address of the Provider;
iv) The date on which the Provider agreed to or accepted the Standard Material Transfer Agreement, and in the case of shrink-wrap, the date on which the shipment was sent;
v) The name and address of the Recipient, and in the case of a shrink-wrap agreement, the name of the person to whom the shipment was made;
vi) The identification of each accession in Annex I to the standard material transfer agreement, and of the crop to which it belongs.

4.7.2 For the Recipient

The reporting requirements for recipients of PGRFA under the Multilateral System are all of a nature that they are only triggered in particular situations, namely:

a) If the recipient opts for the alternative mode of payment under Article 6.11 of the Standard Material Transfer Agreement, they should immediately inform or notify the Governing Body;
b) Where a recipient, or its affiliates, contractors, licensees or lessees makes sales of a product or products incorporating PGRFA from the Multilateral System it must report such sales, the amount of payment due to the Multilateral System and information on any restrictions that may have given rise to the benefit-sharing payment within 60 days of the end of the calendar year in which the sales occurred; and,
c) When the recipient transfers PGRFA received under the Multilateral System to another person or entity, they are required to inform or notify the Governing Body in the same way that any other provider of PGRFA under the

Multilateral System is required to.

4.8 Dispute settlement

Dispute settlement under the Standard Material Transfer Agreement follows a common tiered form moving from amicable discussion through mediation to arbitration. Experience suggests that dispute resolution may not be needed very frequently but, when it is, the parties to the dispute need a sound understanding of how to proceed and to have confidence in the process. While parties to a standard material transfer agreement may directly raise and address issues for dispute settlement between themselves, it is expected that they will, at least, inform the Governing Body of alleged cases of non-compliance. Parties may also refer concerns about breaches of the standard material transfer agreement to the Third Party Beneficiary, as discussed immediately below. While such cases may involve concerns about compliance with the Treaty, dispute settlement under the standard material transfer agreement should not be considered as synonymous with compliance issues, as discussed in section 6 of this handbook.

4.9 Third Party Beneficiary

The Standard Material Transfer Agreement confers rights on what is known as the Third Party Beneficiary, in particular the right to initiate dispute settlement procedures regarding the rights and obligations of the provider and the recipient of a Material Transfer Agreement. The concept of the Third Party Beneficiary, though not explicitly mentioned, is implicit in the International Treaty, since the benefits under the Standard Material Transfer Agreement, including monetary and other benefits of commercialization, are not to flow to the individual provider but to the Multilateral System. The Governing Body oversees the Multilateral System but, as the Governing Body has no independent legal status, it has invited FAO to fulfil the functions of the Third Party Beneficiary on its behalf.

The role and responsibilities of the Third Party Beneficiary cover the gathering of information and the initiation of dispute settlement procedures regarding rights and obligations of the parties of the material transfer agreement in question. While the Standard Material Transfer Agreement gives the Third Party Beneficiary the right to initiate dispute settlement procedures it does not oblige it to do so. However, the Third Party Beneficiary has to exercise its discretionary powers under “under the direction of the Governing Body,” as stated in operative paragraph 8 of Resolution 2/2006 on the Standard Material Transfer Agreement.

At its Third Session, the Governing Body adopted procedures for the operation of the Third Party Beneficiary, although it also envisaged the development of further operational guidelines in the area of dispute resolution. The first, and probably predominant, activity of the Third Party Beneficiary is the receipt and maintenance of information regarding all standard material transfer agreements entered into under the Multilateral System. The nature of this information is discussed in 4.7 of this Handbook, on reporting. The purpose of the Third Party Beneficiary receiving this information is to ensure that it has sufficient basic

information to make preliminary assessments in the event of any dispute or allegation of non-compliance with the provisions of a material transfer agreement.

The second area of activity of the Third Party Beneficiary is to receive and assess information on possible non-compliance with the obligations of the provider and recipient under a Standard Material Transfer Agreement from the parties under the Standard Material Transfer Agreement or any other natural or legal persons. Information received will, to the extent appropriate, be considered as confidential and will only be used to assess the need for, or to initiate, dispute settlement procedures. It is important to note that the Third Party Beneficiary is not obliged to act on information it receives. The Third Party Beneficiary has the right to supplement any information it receives by requesting further information, including samples of PGRFA where relevant, from the parties to a given standard material transfer agreement.

The third area of activity of the Third Party Beneficiary is, where necessary, to initiate and lead the three levels of dispute settlement provided for in the Standard Material Transfer Agreement. Where the Third Party Beneficiary has reason to believe that obligations under a Standard Material Transfer Agreement may not have been complied with it will initially provide a 'summary of information' regarding the possible non-compliance and seek to negotiate an amicable resolution within six months of the issuance of the 'summary of information'. If no amicable resolution is reached, the Third Party Beneficiary may commence, or encourage the parties to the dispute to commence, mediation proceedings under the supervision of a neutral third party mediator. The neutral third party mediator may be agreed by the parties to the dispute or selected from a list of experts established by the Governing Body. In the event that mediation does not achieve a resolution with six months of its initiation, the Third Party Beneficiary may refer a dispute to arbitration. Similar to the situation with mediation, the Third Party Beneficiary may propose an arbitrator from a list of experts established by the Governing Body.

At its Third Session, the Governing Body decided to establish a list of experts in mediation and arbitration. The Secretary coordinates the naming of experts by Contracting Parties in accordance with criteria annexed to the Third Party Beneficiary Procedures.

4.10 Languages of the SMTA

Six FAO languages valid for Treaty related documents

Following the list of languages formally in use at FAO, Article 35 of the Treaty recognises that the Arabic, Chinese, English, French, Russian and Spanish texts of the Treaty are equally authentic. In other words, each of these language versions of the text may be relied on equally as being legally valid. By extension, this applies to the subsidiary instruments of the Treaty and the reports and decisions of its Governing Body, including the standard material transfer agreement. Material transfer agreements under the Treaty can thus be produced in any of these six languages. Texts of the Treaty, its subsidiary instruments and reports and decisions of the Governing Body that are not in the language versions produced by the Secretary may not be relied upon as legally valid.

However, the Contracting Parties to the Treaty, and even more so the users of the Multilateral System, include highly diverse national and local linguistic traditions that may not be catered for by the six FAO languages. It is important to the legitimacy and validity of the standard material transfer agreement that parties to it should be able to understand the content and implications of the agreement. To assist in the understanding of parties to material transfer agreements not adequately provided for by the six FAO languages, some countries and organisations have produced what have been described as 'courtesy' translations of the standard material transfer agreement. While these are not legally valid for the purposes of the Treaty and should not be used to record actual PGRFA transfers, and must be highlighted as such, they can often provide sufficient understanding for a party to access one of the authentic language versions and safely enter into the agreement or, at a minimum, gain sufficient understanding for them to seek clarification from their national focal point or the Secretary.

'Courtesy' translations to assist understanding

4.11 Non-contracting parties

Article 31

Sub-Article 12.2

Sub-Article 15.2

The Treaty provides for the matter of non-parties in Article 31, which is limited to encouraging them to become contracting parties. The Treaty also provides, in sub-Article 12.2, that facilitated access to plant genetic resources in the Multilateral System shall be provided to Contracting Parties, and natural and legal persons from the jurisdictions of Contracting Parties.[24] Furthermore, in sub-Article 15.2 the Treaty provides that Contracting Parties will provide facilitated access to the international agricultural research centres of the Consultative Group on International Agricultural Research that have reached agreements with the Governing Body. The Treaty is, therefore, silent on the matter of providing access, facilitated or otherwise, to non-parties.

Treaty silent on non-party access

Material transfer agreements binding on non-parties.

It is important to note that the acceptance by a non-party, or a natural or legal person from the jurisdiction of a non-party, of a material transfer agreement in a specific instance will make the relevant provisions of the Treaty, as incorporated in the agreement, binding in that specific instance. As a private agreement between the provider and recipient of PGRFA, the material transfer agreement has independent legal force.

4.12 PGRFA or uses outside the Multilateral System

Two main factors delineating the Multilateral System

Access to plant genetic resources for food and agriculture under the Multilateral System is clearly delineated by two main factors: whether or not the genus or species from which PGRFA comes is included in Annex I of the Treaty as provided for in Article 11; and, whether or not the proposed activity of the recipient of the PGRFA is included in the provisions of Article 12. PGRFA not included in Annex I and uses of Annex I PGRFA that are not provided for in Article 12 are not included in the Multilateral System. Access to such PGRFA, or for such uses, will be at the discretion of the provider or according to any other policies or practices that the provider may have established, such as in compliance with the Convention on Biological Diversity.

[24] Subject to the provisions of sub-Article 11.4.

The question of whether or not the genus or species from which PGRFA comes is included in Annex I of the Treaty has been addressed in Section 3 of this Handbook, 'Notification or inclusion of PGRFA in the Multilateral System'. The question of the uses of PGRFA that fall within the Multilateral System is provided for in Paragraph 12.3(a). The full text of paragraph 12.3(a) is provided below but the operative element for discussion here is as follows:

Uses under the Multilateral System

> Access shall be provided solely for the purpose of utilization and conservation for research, breeding and training for food and agriculture, provided that such purpose does not include chemical, pharmaceutical and/or other non-food/feed industrial uses…

Where a person requesting access to PGRFA under the Multilateral System has not disclosed their intended purpose, there is no need for the provider to actively clarify the matter. The relevant language of paragraph 12.3(a) is incorporated as paragraph 6.1 of the standard material transfer agreement and is, therefore, a binding obligation upon recipients.

Article 12 of the Treaty also provides for several possible limitations, although not exclusions, on access to PGRFA under the Multilateral System, namely:

Limits on access

i) 12.3(e) Access to plant genetic resources for food and agriculture under development, including PGRFA being developed by farmers, shall be at the discretion of its developer, during the period of its development;
ii) 12.3(f) Access to plant genetic resources for food and agriculture protected by intellectual and other property rights shall be consistent with relevant international agreements, and with relevant national laws;
iii) 12.3(h) Without prejudice to the other provisions under this Article, the Contracting Parties agree that access to plant genetic resources for food and agriculture found in *in situ* conditions will be provided according to national legislation or, in the absence of such legislation, in accordance with such standards as may be set by the Governing Body.

Access to non-Annex I PGRFA from CGIAR centres

Paragraph 15.1(b) of the Treaty, through decisions made by the second and third sessions of the Governing Body, has evolved as an exception that slightly expands the use of the Standard Material Transfer Agreement beyond the scope of Annex I, although remaining subject to the use restrictions and other limitations of Article 12. This has occurred because the Governing Body has decided[25] that non-Annex I PGRFA held by the CGIAR Centres and collected before the entry into force of the Treaty will be made available using the Standard Material Transfer Agreement.[26]

There have also been reports of Contracting Parties using the standard material transfer agreement for non-Annex I PGRFA. Such practices may represent an informal additional exception to the Annex I limitation of the use of the Standard Material Transfer Agreement.

[25] As reported in paragraph 68 of the report of the Governing Body's Second Session and paragraph 39 of the report of its Third Session.

[26] Explanatory footnotes have been added to the text of the standard material transfer agreement to accommodate this practice.

4.13 Relevant articles of the IT-PGRFA

Article 12 – Facilitated access to plant genetic resources for food and agriculture within the Multilateral System

Article 13 - Benefit-sharing in the Multilateral System. Particularly 13.2.

Article 19 – Governing Body. Particularly 19.3 (a) and (f).

4.14 Decisions and resolutions of the Governing Body

First Session of the Governing Body

Resolution 2/2006: The Standard Material Transfer Agreement

THE GOVERNING BODY:

Resolution 2/2006 adopting the SMTA

[*ten preambular paragraphs are omitted for reasons of space*]

1 ***Adopts*** the Standard Material Transfer Agreement;

2. ***Requests*** the Secretary of the Treaty to review the implementation and operation of the Standard Material Transfer Agreement, and report to the Governing Body at its third session, in particular on the benefit-sharing provisions and the modalities of payment;

3. ***Urges*** Contracting Parties to the Treaty to take measures necessary for the implementation of the Standard Material Transfer Agreement;

4. ***Urges*** Contracting Parties to take the steps necessary to implement the non-monetary benefit-sharing provisions of the Treaty, as articulated in Article 13 of the Treaty;

5. ***Invites*** users of material received under the Standard Material Transfer Agreement to make voluntary contributions to the Multilateral System, and to share the non-monetary benefits arising from the use, including commercial, of plant genetic resources for food and agriculture fairly and equitably, through the exchange of information, access to and transfer of technology, and capacity-building, taking into account the Priority Activity Areas in the rolling *Global Plan of Action for the Conservation and Sustainable Utilization of Plant Genetic Resources for Food and Agriculture*;

6. ***Welcomes*** the decisions of the International Agricultural Research Centres of the
Consultative Group on International Agricultural Research that hold *ex situ* collections in trust to sign agreements with the Governing Body of the Treaty, under which the Centres shall make available material included in the Multilateral System, in accordance with the Standard Material Transfer Agreement, and ***invites*** other relevant international institutions to enter into similar agreements with the Governing Body;

7. ***Urges*** all other holders of the plant genetic resources for food and agriculture listed in *Annex I* to the Treaty to include these plant genetic resources in the Multilateral System, and ***urges*** Contracting Parties to take appropriate measures, in accordance with Article 11.3 of the Treaty;

8. ***Invites*** the Food and Agriculture Organization of the United Nations, as the Third

Party Beneficiary, to carry out the roles and responsibilities as identified and prescribed in the Standard Material Transfer Agreement, under the direction of the Governing Body, in accordance with the procedures to be established by the Governing Body at its next session;
9. ***Decides*** to review the levels of payment periodically, in conformity with Article
13.2d(ii) of the Treaty, starting from the third session of the Governing Body.

Second Session of the Governing Body

FAO acceptance of role as third party beneficiary

IMPLEMENTATION OF THE MULTILATERAL SYSTEM OF ACCESS AND BENEFITSHARING

61. The Governing Body considered document, *Draft Procedures for the Third Party Beneficiary*. It thanked the Director-General for having accepted in principle, its invitation for FAO to carry out, as the Third Party Beneficiary, the roles and responsibilities as identified and prescribed in the Standard Material Transfer Agreement, under its direction. It recognised that this acceptance was subject to formal approval upon review of the procedures to be established by the Governing Body.

Footnotes to clarify use of SMTA for non-Annex I PGRFA

CONSIDERATION OF THE MATERIAL TRANSFER AGREEMENT TO BE USED BY INTERNATIONAL AGRICULTURAL RESEARCH CENTRES FOR PLANT GENETIC RESOURCES FOR FOOD AND AGRICULTURE NOT INCLUDED IN *ANNEX I* OF THE TREATY

68. Recognizing that the application of the amended MTA would concern plant genetic resources for food and agriculture other than those listed on *Annex I* of this Treaty and collected before its entry into force that were held by IARCs, the Governing Body endorsed the option that an interpretative footnote or series of footnotes would be included to relevant provisions of the SMTA indicating that these provisions should not be interpreted as precluding the use of the SMTA for transfers of non-*Annex I* material, collected before the entry into force of the Treaty as detailed in option 2 of *Annex 2* (para 9 of IT/GB/2/07/13 rev.1). The interpretative footnote or footnotes should not be seen as amendments to the SMTA, so much as clarifications of its meaning. They would be included in all versions of the SMTA used by the IARCs under Article 15.1(b), and thus avoid the need for two versions of the SMTA. The Governing Body decided that it would review these measures during its consideration of the SMTA at its Third Session.

Third Session of the Governing Body

39. The Governing Body noted that at its Second Session it endorsed that interpretative footnotes or series of footnotes would be included to relevant provisions of the Standard Material Transfer Agreement (SMTA) for transfers of non-*Annex I* material collected before the entry into force of the International Treaty to be used by the International Agricultural Research Centres (IARCs) of the Consultative Group on International Agricultural Research. The Governing Body also noted that the IARCs commenced using the Standard Material Transfer Agreement with footnotes on 1 February 2008, and that the IARCs still have only limited experience with the use to date. The Governing Body further noted that although the IARCs have used the SMTA for a relatively short time, the impression of the Centres is that the SMTA is attracting increasing acceptance by

potential recipients as they become more familiar with its terms. The Governing Body decided that it would further review these measures at its Fourth Session.

RESOLUTION 4/2009: THE MULTILATERAL SYSTEM OF ACCESS AND BENEFIT-SHARING

THE GOVERNING BODY,

12. ***Requests*** all Contracting Parties to take the policy, legal and administrative measures necessary for their national plant genetic resource systems, and natural and legal persons within their jurisdictions, to be able to use the Standard Material Transfer Agreement to provide facilitated access to plant genetic resources for food and agriculture;

14. ***Urges*** developed country Contracting Parties to provide appropriate assistance to developing countries, bilaterally, or through established multilateral frameworks for:

· capacity-building;
· awareness-raising;
· promotion of the exchange of experiences among those responsible for implementing the Standard Material Transfer Agreement at national level;
· electronic management of the Standard Material Transfer Agreement and related reporting.

15. ***Requests*** the Secretary to give priority to assisting users of the Standard Material Transfer Agreement to overcome any implementation problems such as those identified at the First Meeting of Experts on the Standard Material Transfer Agreement, including, subject to the availability of funds, through the convening of an *Ad Hoc* Advisory Technical Committee on the Standard Material Transfer Agreement and the Multilateral System, taking into account regional representation, according to the terms of reference as contained in the *Annex* to this Resolution.

RESOLUTION 5/2009: PROCEDURES FOR THE THIRD PARTY BENEFICIARY

1. ***Adopts*** these *Procedures for the Operation of the Third Party Beneficiary* ('Third Party Beneficiary Procedures'), as in *Annex 1* to this Resolution;

5. ***Calls*** upon Contracting Parties, States that are not Contracting Parties, intergovernmental organizations, non-governmental organizations and other entities to contribute periodically, as necessary, to the Third Party Beneficiary Operational Reserve, in order to maintain it at a level commensurate with the needs;

14. ***Decides*** that the parties to the Standard Material Transfer Agreement shall provide to the Governing Body and Third Party Beneficiary, in accordance with the relevant provisions of the Standard Material Transfer Agreement and in order for the Third Party Beneficiary to be able to effectively carry out its roles and responsibilities, the information contained in Parts III and IV of *Annex 2* to the Third Party Beneficiary Procedures;

15. ***Accordingly decides*** that the information required in accordance with Article 5e of the Standard Material Transfer Agreement shall be provided according to the following schedule; at least once every two calendar years or within an interval that shall be, from time to time, decided by the Governing Body;

16. ***Stresses*** the importance of the Provider and the Recipient fulfilling their reporting obligations as foreseen in the Standard Material Transfer Agreement of the Treaty;

17. ***Requests*** the Secretary to develop, in consultation with relevant organizations, appropriate and cost-effective processes to facilitate the submission, collection and storage of such information in the implementation of Article 4.1 of the Third Party Beneficiary Procedures. In so doing, the Secretary shall apply adequate measures to ensure the integrity of information and, where required, confidentiality of the information so provided.

Annex 2
Operations of the Third Party Beneficiary
Part III. Information to be provided to the Governing Body by parties to the SMTA
For the purpose of carrying out its roles and responsibilities in accordance with the Third Party Beneficiary procedures, the Third Party Beneficiary shall need the following information provided by the parties to the Standard Material Transfer Agreement (SMTA).
A. The Provider transmitting a copy of the completed SMTA,
or
B. In the event that the Provider does not transmit a copy of the SMTA
i. ensuring that the completed SMTA is at the disposal of the Third Party Beneficiary as and when needed;
ii. stating where the SMTA in question is stored, and how it may be obtained; and
iii. providing the following information:
a) The identifying symbol or number attributed to the SMTA by the Provider;
b) The name and address of the Provider;
c) The date on which the Provider agreed to or accepted the Standard Material Transfer Agreement, and in the case of shrink-wrap, the date on which the shipment was sent;
d) The name and address of the Recipient, and in the case of a shrink-wrap agreement, the name of the person to whom the shipment was made;
e) The identification of each accession in *Annex I* to the SMTA, and of the crop to which it belongs.

5. Benefit sharing

5.1 Summary

Benefit sharing a core objective

One of the core objectives of the Treaty, as described in Article 1, is to ensure a fair and equitable sharing of the benefits that are derived from the conservation and sustainable use of plant genetic resources for food and

agriculture. As the Multilateral System contains the key operative elements of the Treaty, benefit sharing becomes an important element of the System that is integral to the process of access, as described in Article 10. The provision of benefits under the Treaty goes well beyond the Multilateral System, as can be seen by various references to technical assistance and cooperation in several articles of the text. However, the Treaty's central benefit sharing provisions are concentrated in Article 13. There are various elements to benefit sharing under this Article and these have already been developed significantly by the Governing Body and the Secretary, with a first round of grants being made under the Funding Strategy at the Third Session of the Governing Body in 2009.

Article 13 - benefit sharing

Diverse elements to benefit sharing

Both the efficient delivery and reception of benefits require at least minimum levels of action on behalf of parties implementing the Treaty. These consist mostly of the provision of information but, particularly where the receipt of benefits is concerned, it seems likely that greater organisation and coordination are likely to be rewarded.

Maximising benefits

5.2 Measures relevant to the various forms of benefit sharing

5.2.1 Facilitated access to plant genetic resources for food and agriculture[vi]

Both providers and recipients to facilitate access

In any particular instance of facilitated access, the situations of both the provider and recipient of PGRFA need to be considered. To make the best use of the Multilateral System and for transfers of PGRFA to be completed smoothly, some effort will be required on both parts.

Providers to notify of or include PGRFA

On the part of the provider, the first, and arguably most important step, is to have completed the necessary steps for the notification or inclusion of PGRFA in the Multilateral System, as discussed in section 3, above. Once the information about available PGRFA has been made available through the Treaty mechanisms, attention switches to the requirements that apply in the event of a request for PGRFA. The key elements of facilitated access are set out in the Treaty itself, in particular paragraphs b and c of sub-Article 12.3:

Elements of facilitated access

- Access shall be expeditious
- Without need to track individual accessions
- Free of charge or, when a fee is charged, it shall not exceed the minimal cost involved
- Passport data and other associated information shall be made available

Legal responsibility to provide access

As with all other requirements, that of the expeditious access is subject to reasonable standards and expectations. Issues related to the standard material transfer agreement are addressed in section 4, but, suffice it to say for purposes here, that it is important to identify those that are legally responsible to provide access and, as a consequence, to sign a material transfer agreement. This will provide a readily identifiable contact point for anybody seeking access to particular PGRFA and allow for expeditious processing by a clear line of authority. Where possible, the requirement for the provision of

Provision of information

passport data and other associated information (which is subject to confidentiality limitations) appears to be most easily addressed through online documentation systems, which contain this information in a manner that is open to the public.

In situ conditions

In the case of access to PGRFA that is found in *in situ* conditions, the main action that a provider may take is to consider access under the Multilateral System in any national legislation, whether primary or subsidiary, or perhaps even according to national policy. Provided that such legislation or policies take due consideration of the specifics of the Multilateral System, this will create a predictable framework for both providers and users. It should be noted that the Treaty, in paragraph 12.3(h), provides for the Governing Body to agree on appropriate standards for *in situ* access in situations where there is no national legislation or policy in place.

Awareness among recipients

Role of focal points

As a potential recipient of PGRFA, the first, and most important, issue will be ensuring awareness of what is available under the Multilateral System and from where. In a world of perfect information, all potential users of PGRFA would know where to find such information but, given the limitations imposed by reality, often this may not be the case. As such, a Contracting Party may see some advantage in promoting awareness in its jurisdiction among potential users of PGRFA. This might even extend to focal points acting as national information points. If possible, it may also be desirable for focal points to provide information on what users should expect when seeking access to PGRFA from the Multilateral System. If potential users are aware of the details of how the standard material agreement, and associated information management mechanisms, may function in different circumstances,[27] they will probably find the Multilateral System easier to navigate. This may be particularly important where a user is seeking access to *in situ* PGRFA, which is a more complex issue than the transfer of PGRFA that is held *ex situ*.

In situ PGRFA

5.2.2 Exchange of information

Value of information exchange

Confidentiality

The exchange of information about plant genetic resources for food and agriculture, such as characterisation and evaluation information as well as the results of any research or breeding involving a particular accession can be particularly valuable to future users. The results of research or breeding activities can sometimes be sensitive as commercial secrets, and the Treaty makes allowance for this concern, but, as a general rule, the Treaty seeks to promote the exchange of information about PGRFA available under the Multilateral System.

In some respects, the situation with information exchange can be seen as similar to that with PGRFA itself, particularly regarding the fact that users may not know it exists unless it is made readily available. For that reason,

[27] While the aim of the standard material transfer agreement is to harmonise the terms and conditions of access as much as possible, there are a limited number of variations that may arise, such as regarding authorised signatures and the form of signature, that might prove confusing to those not familiar with such matters.

Databases and catalogues

providers of PGRFA are encouraged to maximise the availability of any associated information. This appears to be most effectively done through internet based catalogues, which can vary from relatively simple institutional databases to far more complex regional and international networks. It appears that there may be considerable opportunities for promoting the compatibility of information systems, thereby further facilitating access.

5.2.3 Access to and transfer of technology

Editorial note: To be developed.

5.2.4 Capacity building

Editorial note: To be developed.

5.2.5 Sharing of monetary and other benefits of commercialisation

Collaboration with the private sector

The sharing of the benefits of commercialisation is seen as falling into two possible categories. The first of these, described in sub-paragraph 13.2(d)(i), focuses on the promotion of collaboration with private sector companies and organisations as a means of developing research and technology development capacities.[vii]

Sharing of monetary benefits

The sharing of monetary benefits, as described in sub-paragraph 13.2(d)(ii), developed relatively early in the life of the Treaty, particularly through voluntary contributions from some Contracting Parties to the benefit sharing fund. The benefit sharing fund has been developed as the most effective mechanism for multilaterally collecting and distributing monetary benefits in line with Articles 13.2, 13.3 and 13.4 while also falling within the mandate of the Governing Body as provided for in Article 19.3(f). As the Multilateral System develops, the benefit sharing fund is expected to include both voluntary contributions and the proceeds of the mandatory and voluntary benefit sharing provisions included in the standard material transfer agreement. It is important to note that funds are contributed to the benefit sharing fund under the Multilateral System and then distributed according to the priorities and criteria established by the Treaty and through mechanisms established by the Governing Body and not according to any bilateral arrangements. As of the Second Session of the Governing Body, the Bureau oversees this process with support provided by the Secretary. The process established includes several steps:

Steps in approval of proposals for funding

i) periodic publicly issued calls for proposals
ii) proposals submitted to Secretary through national focal points
iii) pre-screening of proposals based on basic eligibility criteria such as relevance to Annex I crops and origination from Contracting Parties
iv) technical review of proposals by members of a international panel of independent experts
v) final review and approval by the Bureau

There is a clear need for farming communities and farmers' organisations to

Assistance to farmers

receive support to enable them to develop and submit clear and well constructed proposals. The first round of grants under the benefit sharing fund was enormously oversubscribed meaning that competition was intense.

Role of focal points

The assigning of a role in the project submission process to focal points makes an immediate requirement of parties in implementation. Focal points need to be empowered to perform this function, which may be done in a more or less complex manner. At the simple end, the focal points would simply receive and forward proposals. A middle role might involve some minimal screening to ensure eligibility, which would lessen the burden on the Bureau and, perhaps, assist in enhancing the quality of proposals from that party. At the more complex end of the spectrum, the focal point could engage in activities including promoting the call for proposals, providing advice and assistance in the development of proposals and even assistance in project implementation where projects are successful.

5.2.6 Voluntary funds in the Multilateral System

Voluntary funds

With limited exceptions, funds voluntarily provided by parties or others are not, strictly speaking, part of the Multilateral System but, rather, part of the funding strategy of the Treaty as a whole. However, where voluntary funds are directed to the benefit sharing fund, they become part of the Multilateral System.

Contracting party initiatives

Contracting parties may wish to develop initiatives for the support of the benefit sharing fund. Spain, Italy and Switzerland made early voluntary donations to the fund while Norway was the first party to establish a long term framework for voluntary contributions to the benefit sharing fund by committing to contribute funds to the value of 0.1% of its annual seed sales. These types of payments are not legal obligations under the Treaty and Multilateral System but are valuable in reinforcing the dual access and benefit sharing nature of the Multilateral System while also contributing to the maintenance and expansion of the System through conservation and research and breeding activities.

The cases where voluntarily provided funds are clearly part of the Multilateral System include the provision of funds under Article 13.2(d)(ii) where “a product is available without restriction to others for further research and breeding”. They also include the proposed consideration of a strategy to encourage voluntary contributions from Food Processing Industries under Article 13.6, which, at the time of writing, has no implication for national implementation but may come to in the future.

5.3 Relevant articles of the IT-PGRFA

Article 1 – Objectives. Particularly 1.1.

Article 7 – National Commitments and International Cooperation. Particularly 7.2(b).

Article 10 – Multilateral System of Access and Benefit-sharing. Particularly 10.2.

Article 12 – Facilitated access to plant genetic resources for food and agriculture within the Multilateral System Particularly, 12.1, 12.2, 12.3(b), (c) & (h), 12.4

Article 13 - Benefit-sharing in the Multilateral System

Article 14 – Global Plan of Action

Article 17 – The Global Information System on
Plant Genetic Resources for Food and Agriculture. Particularly 17.1.

Article 18 – Financial Resources. Particularly 18.4(e), 18.5.

5.4 Decisions and resolutions of the Governing Body

First Session of the Governing Body

No directly relevant decisions or resolutions were made except for those considered as part of the standard material transfer agreement.

Second Session of the Governing Body

Implementation of the funding strategy of the Treaty

Adoption of elements of the Funding Strategy

45. The Governing Body adopted, as *annexes* to the Funding Strategy, Priorities; Eligibility Criteria; and Operational Procedures for the use of resources under its direct control, as contained in *Appendices D.1, D.2* and *D.3*, respectively.

Delegation of responsibility for project approval

47. The Governing Body decided to delegate responsibility for project approval between sessions to the Bureau, under exceptional circumstances and for smaller scale projects.[viii]

Third Session of the Governing Body

Resolution 3/2009: Implementation of the funding strategy of the Treaty

The Governing Body,
Part II
The Strategic Plan for the Implementation of the Benefit-Sharing Fund of the Funding Strategy

Eligibility for funding

2. ***Welcomes*** the Strategic Plan for the implementation of the Benefit-sharing Fund of the Funding Strategy, as contained in *Appendix 2* of document *Report of the Co-Chairs of the Ad Hoc Committee on the Funding Strategy: Draft Strategic Plan for the Implementation of the Benefit sharing Fund of the Funding Strategy*, and ***agrees*** that this plan will constitute a basis for the implementation of the Benefit-sharing Fund of the Funding Strategy by the Secretariat and the Contracting Parties.

Developing countries to be eligible

Part III
Operationalization of the Funding Strategy

Annex I PGRFA and related information to be made available

9. ***Decides*** that:

i. any governmental or non-governmental organization, including genebanks and research institutions, farmers and farmers' organizations, and regional and international organizations, based in countries that are Contracting Parties to the International Treaty, may apply for grants under the Benefit-sharing Fund;

ii. the list of Contracting Parties eligible to apply for support under the Benefit-sharing Fund will be prepared by the Secretary for each round of the project cycle, based on a complete list of developing countries derived from the most recent World Bank's classification of economies;

Information on benefit sharing

iii. plant genetic resources for food and agriculture listed in *Annex 1* of the International Treaty resulting from projects funded by the Benefit-sharing Fund shall be made available according to the terms and conditions of the Multilateral System, and information generated by projects funded through the Benefit-sharing Fund shall be made publicly available within 1 year of the completion of the project;

Norwegian payments

Appeal for resources

Resolution 4/2009: The Multilateral System of access and benefit-sharing

The Governing Body,

5. ***Requests*** the Secretary to prepare a comprehensive report to its Fourth Session on the status of non-monetary and monetary benefit-sharing, as provided for in Articles 13.2a, b, c and d of the International Treaty, and for this purpose to request information from Contracting Parties, international institutions having signed agreements under Article 15, and private sector entities;

18. ***Welcomes*** the decision of Norway to make an additional annual payment of 0.1% of the value of all seeds sold in its territory;

19. ***Appeals*** to other Contracting Parties to take similar decisions, with the aim of providing the International Treaty's Benefit-sharing Fund with substantial and reliable resources;

6. Compliance

6.1 Summary

Principle

The question of compliance reflects one of the oldest principles of international law, i.e. that agreements among states should be kept.[28]

Treatment and relevance

Compliance is addressed twice in the text of the Treaty, with Article 4 reiterating the principle and Article 21 providing for measures to promote compliance and address instances of non-compliance. While both Article 4 and Article 21 have obvious direct impacts on the national and regional implementation of the Treaty, Article 21 is of particular ongoing relevance. Under Article 21, it is expected that Parties will be able to seek assistance with implementation, as well as have a means of raising any concerns about implementation in other Parties.

Status

The procedures and operational mechanisms proposed under Article 21 had not been finalised by the close of the Third Session of the Governing Body and the decision of the First Session of the Governing Body providing for an interim procedure and operational mechanism[29] remain valid.

Reference

The preamble, objectives and principles of the draft procedures and operational mechanisms considered by the Third Session of the Governing Body are included for reference purposes.[30]

6.2 Relevant articles of the IT-PGRFA

Article 4 - General Obligations

Article 21 – Compliance

6.3 Decisions and resolutions of the Governing Body

First Session of the Governing Body

Resolution 3/2006.

THE GOVERNING BODY,

4. ***Decides***, so as to provide for provisional procedures and operational mechanisms on compliance, that a Contracting Party may, in advance of a session of the Governing Body, raise any matter concerning its compliance with the Treaty, including potential noncompliance with the Treaty. The Governing Body shall consider the matter, and shall decide on an appropriate approach for addressing the matter raised by the Contracting Party, which may include, *inter alia*, designating a Contracting Party or Contracting Parties to meet intersessionally with the Contracting Party raising the matter, in order to offer advice or assistance, including legal advice or legal assistance, where needed.

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[28] Formally, this is the principle known in Latin as 'pacta sunt servanda' (Article 26, Vienna Convention on the Law of Treaties 1969).

[29] Paragraph 4, Resolution 3/2006.

[30] The full draft procedures and operational mechanisms are available as an Annex to Resolution 2/2009, which may be found as Appendix A.2 of document IT/GB-3/09/Report.

Second Session of the Governing Body

RESOLUTION 1/2007: Compliance
THE GOVERNING BODY,
(i) ***Decides***, pursuant to Article 21 of the Treaty, to consider and approve procedures and operational mechanisms on compliance at its Third Session, on the basis of the draft procedures and operational mechanisms to promote compliance and address issues of non-compliance, which are contained in *Appendix I* to the Report of the First Session of the Governing Body, and the submissions made by Parties and observers;

Third Session of the Governing Body

RESOLUTION 2/2009: PROCEDURES AND OPERATIONAL MECHANISMS TO PROMOTE COMPLIANCE AND TO ADDRESS ISSUES OF NON-COMPLIANCE
THE GOVERNING BODY,

1. ***Decides*** to put the issue of compliance high on the agenda of the Fourth Session of the Governing Body;

2. ***Decides*** to establish and convene, subject to the availability for that purpose of funds from the Special Fund for Agreed Purposes, an ad hoc working group which shall negotiate and finalise the procedures and operational mechanisms to promote compliance and address issues of non-compliance, on the basis of the text contained in the Annex to this Resolution, with a view to their approval at the Fourth Session of the Governing Body;

6.4 Draft procedures and operational mechanisms to Promote compliance and address issues of non-compliance

Preamble

The following procedures and mechanisms are developed in accordance with Article 21 of the International Treaty on Plant Genetic Resources and are separate from, and without prejudice to, the dispute settlement procedures and mechanisms established by Article 22 of the International Treaty on Plant Genetic Resources.

Objectives

I. OBJECTIVES

1. The objective of the compliance procedures and mechanisms shall be to promote compliance with all the provisions of this Treaty and to address issues of non-compliance. These procedures and mechanisms include monitoring, offering advice or assistance, including legal advice or legal assistance, when needed and requested, in particular to developing countries and countries with economies in transition.

Principles

II. PRINCIPLES

1. The compliance procedures and mechanisms shall be simple, cost-effective, facilitative, nonadversarial, non-judicial, legally non-binding and cooperative in nature.
2. The operation of the compliance procedures and mechanisms shall be guided by the principles of transparency, accountability, fairness, expeditiousness, predictability, good faith, and reasonableness [and shall take into account capacities of Contracting Parties].

7. Tools for implementation

Examination, based on information gathered on current practices, of possible pathways to implementing the Multilateral System – possible legal, administrative and policy measures for the different aspects of the Multilateral System. Information in this section will, for the most part, be a distillation[ix] of information already provided in the context of broader discussions in earlier sections.

Are there other tools, or types of tool, that are not adequately covered by the sub-titles in this section?

7.1 Legal tools

As presented here, legal tools refers to primary and secondary legislation that has been adopted or adapted, fully or partially, for the purpose of implementing the Treaty and, in particular the Multilateral System and the SMTA.

What laws, or subsidiary regulations, have been adopted or adapted to implement the Multilateral System and the SMTA? Have there been any TCPs that give us enough to use here or is there any other ready source?[x]

7.2 Administrative tools[xi]

As presented here, administrative tools refers to rules, orders or policies that may be adopted or adapted, fully or partially, for the purpose of implementing the Treaty and, in particular the Multilateral System and the SMTA at an executive level. This section will include incentive and facilitation programmes and other similar 'soft' measures. It may also include institutional policies and practices adopted by parastatal agencies and other bodies.

What rules, orders or policies have been adopted or adapted under general executive mandates to implement the Multilateral System and the SMTA?

7.3 Information technology tools

A number of parties, and institutions under the jurisdictions of parties, as well as the Treaty Secretariat, have developed or adapted information technology tools to assist with the fulfilment of obligations under the Multilateral System and the SMTA, in particular relating to reporting requirements.

What information technology tools have been developed to achieve different purposes in the implementation of the Multilateral System?

What problems are these tools designed to address and what are their particular strengths?

Provide flow charts of the structure and functioning of any information technology tools of which you are aware?

7.4 Languages

As discussed earlier, language may present a significant challenge to the use of the SMTA in, or between, some jurisdictions. The ways in which some parties have overcome this may well be of significant benefit to others seeking to implement the Multilateral System.[xii]

What alternative language texts or accompanying explanatory descriptions have been developed? Please provide where available.

7.5 Relevant articles from the IT-PGRFA

7.6 Decisions and resolutions of the Governing Body

8. Roadmap for implementation

The Treaty itself recognises the evolutionary nature of implementation with its provisions for capacity building and review. This section provides a periodically updated overview of relevant initiatives that may provide useful examples for parties and other stakeholders, as well as being an important input into the work of the Governing Body.

8.1 Capacity building for implementation

Capacity building initiatives in technical and administrative aspects of the implementation of the Treaty began soon after its entry into force. These are important in terms of their contribution to the implementation of sub-article 13.2 of the Treaty, as well as for the indications they provide as to problem areas and balanced implementation. Many programmes may also be replicable or adaptable by, or in the jurisdictions of, parties other than the original implementers.

At the level of the Governing Body and the Treaty Secretariat, two particular capacity building programmes have been of note.

The first of these is the Joint Capacity Building Programme for Developing Countries set up by the International Treaty, FAO and Bioversity International to provide technical assistance with implementation of the Treaty and in particular its Multilateral System of Access and Benefit-sharing. Based on available funding, assistance is provided on request to developing countries. An important element of the project is capacity-building among government officials, politicians, farmers and other stakeholders.

The second capacity building programme operating at the level of the Governing Body and Treaty Secretariat is the Capacity Building Coordination Mechanism, which provides a forum to ensure that capacity is built in a coherent, coordinated, equitable and regionally balanced way in order to reflect the actual needs of Contracting Parties and stakeholders as well as follow the guidance of the Governing Body. The first meeting of the mechanism laid the foundations for a platform of providers of capacity building to serve organizations and institutions involved in capacity building activities for the implementation of the Treaty as a central point for information exchange and coordination on capacity building initiatives.

8.2 Review of MLS operation by the Governing Body

The Governing Body will be keeping the operation of the Multilateral System under constant review. At different meetings, different elements of the System may come under particular scrutiny. The fuller and more accurate the information available to the Governing Body, the more effective the review process will be.

In addition to the submission to the Governing Body of information on the implementation of the MLS submitted by Contracting Parties, the Secretary may periodically convene an Ad Hoc Advisory Technical Committee on the Standard Material Transfer Agreement and the Multilateral System. The Ad Hoc Committee is to advise the Secretary on implementation questions raised by users of the Standard Material Transfer Agreement, which the Secretary brings to their attention on the basis of questions addressed and forwarded to the Secretary by Contracting Parties, international centres having signed agreements with the Governing Body under Article 15 of the Treaty and other users of the Standard Material Transfer Agreement.

8.3 Information sharing

As illustrated by this guide, information sharing is a fundamental element of the Treaty process. Ensuring that stakeholders are as aware of all information sharing initiatives as is reasonably possible

What information sharing activities are being implemented by parties and other stakeholders, particularly those targeted at farmers, breeders and other PGRFA user groups?

8.4 Relevant articles from the IT-PGRFA

Article 6 – Sustainable Use of Plant Genetic Resources. Particularly 6.2(c).

Article 7 – National Commitments and International Cooperation. Particularly 7.1 and 7.2(a) and (b).

Article 8 – Technical Assistance

Article 13 - Benefit-sharing in the Multilateral System. Particularly 13.2(a) & (c), 13.4.

Article 14 – Global Plan of Action

Article 17 – The Global Information System on Plant Genetic Resources for Food and Agriculture. Particularly 17.1.

Article 18 – Financial Resources. Particularly 18.5.

Article 19 – Governing Body. Particularly 19.3(a) & (b).

Article 21 – Compliance

8.5 Decisions and resolutions of the Governing Body

Governing Body

Second session of the Governing Body

Establishment of the 'Coordinating Mechanism for Capacity Building'

RESOLUTION 3/2007: Programme of Work and Budget 2008-09
THE GOVERNING BODY,
…
(vx) ***Decides*** to create a "Coordinating Mechanism for Capacity Building" for the national implementation of the Treaty, subject to the availability of funds, whose operation shall for the 2008-09 biennium be funded from voluntary contributions to the Special Funds referred to in Rule VI.2b of the Financial Rules of the Treaty.17
…

Third session of the Governing Body

Cooperation with other International Organizations, including Agreements between the Governing Body and the International Agricultural Research Centers of the Consultative Group on International Agricultural Research and other Relevant International Institutions.

Highlighting of capacity building activities

51. The Secretariat introduced document, *Progress report on partnerships, synergies and cooperation with other organizations*. The Governing Body and other international organizations highlighted progress of capacity building activities related to the International Treaty's scope and objectives that had been carried out in cooperation with the International Treaty Secretariat.

Appendix A.4
Resolution 4/2009
The Multilateral System of Access and Benefit-Sharing
Part III. Implementation and Operation of the Standard Material Transfer Agreement

Convening of the Ad Hoc Advisory Technical Committee

15. ***Requests*** the Secretary to give priority to assisting users of the Standard Material Transfer Agreement to overcome any implementation problems such as those identified at the First Meeting of Experts on the Standard Material Transfer Agreement, including, subject to the availability of funds, through the convening of an *Ad Hoc* Advisory Technical Committee on the Standard Material Transfer Agreement and the Multilateral System, taking into account regional representation, according to the terms of reference as contained in the *Annex* to this Resolution.

Annex

Terms of reference for the Ad Hoc Advisory Technical Committee

Terms of Reference for the *Ad Hoc* Advisory Technical Committee on the Standard Material Transfer Agreement and the Multilateral System

1. The *Ad Hoc* Advisory Technical Committee will advise the Secretary on implementation questions raised by users of the Standard Material Transfer Agreement, which the Secretary brings to their attention on the basis of questions addressed and forwarded to the Secretary by Contracting Parties, international centres having signed agreements with the Governing Body under Article 15 of the Treaty and other users of the Standard Material Transfer Agreement. The *Ad Hoc* Advisory Technical Committee shall take into account implementation problems such as those identified at the First Meeting of Experts on the Standard Material Transfer Agreement.

Appendix A.8
Resolution 8/2009
Cooperation with other International Organizations, including Agreements between the Governing Body and the International Agricultural Research Centers of the Consultative Group on International Agricultural Research and other Relevant International Institutions.

Secretary to oversee the Joint Capacity Building Programme

3. ***Requests*** the Secretary to continue overseeing the Joint Capacity Building Programme for Developing Countries set up by the International Treaty, FAO and Bioversity International to provide technical assistance with implementation of the Treaty and in particular its Multilateral System of Access and Benefit-sharing as well as ***invites*** on a voluntary basis additional funding and partners for its expansion;

Meetings of the Capacity Building Coordination Mechnnism

4. ***Requests*** the Secretary to convene, in accordance with the terms of references appended to this Resolution, the second and third meetings of the Capacity Building Coordination Mechanism to exchange information and coordinate capacity building initiatives for implementation of the Treaty by relevant organizations and institutions as well as indicate areas where further guidance from the Governing Body may be required based on experiences and lessons learned;