



**Food and Agriculture
Organization of the
United Nations**



**International Treaty
on Plant Genetic Resources
for Food and Agriculture**

Item 9.1 of the Provisional Agenda

TENTH SESSION OF THE GOVERNING BODY

Rome, Italy, 20–24 November 2023

**The Status of Implementation of the CGIAR Principles on the Management of
Intellectual Assets**

Executive Summary

By Resolution 2/2022 on the *Implementation and Operations of the Multilateral System of Access and Benefit-Sharing*, the Governing Body, inter alia, invited the CGIAR System to continue reporting on the application of the CGIAR Principles on the Management of Intellectual Assets to germplasm managed under the framework of the International Treaty, parts thereof, or information generated from the use of the germplasm.

This document contains the CGIAR System report, as received.

The status of implementation of the CGIAR Principles on the Management of Intellectual Assets: a submission from CGIAR to the Tenth Session of the Plant Treaty's Governing Body

Introduction

This is the third report from CGIAR to the Governing Body of the International Treaty on Plant Genetic Resources for Food and Agriculture (Plant Treaty) concerning the status of the implementation of the CGIAR Principles on the Management of Intellectual Assets (CGIAR IA Principles).¹

The first and second reports² were submitted to the Eighth and Ninth Sessions of the Governing Body in 2019 and 2022 respectively.

The Ninth Session adopted Resolution 2/2022 which stated that the Governing Body:

11. Thanks the CGIAR System for the submission of the report on the Status of Implementation of the CGIAR Principles on the Management of Intellectual Assets and the increased transparency in Centers' communications when entering into restrictive agreements concerning plant germplasm or information generated from the use of such germplasm;
12. Invites the CGIAR System to continue reporting on the application of the CGIAR Principles on the Management of Intellectual Assets to germplasm managed under the framework of the International Treaty, parts thereof, or information generated from the use of this germplasm.

CGIAR is pleased to submit this report in response to the Governing Body's request in Resolution 2/2022.

Annual CGIAR Intellectual Assets Management Reports

CGIAR hereby submits the link to the 2021 CGIAR Intellectual Assets Management Report which was published after the submission of CGIAR's report to the Ninth Session of the Governing Body in 2022.

- CGIAR Intellectual Assets Management Report for 2021 (Available at cgspace.cgiar.org/bitstream/handle/10568/120060/CGIAR-2021-Intellectual-Assets-Report.pdf?sequence=1&isAllowed=y)

The CGIAR Intellectual Assets Management Report covering 2022 was not finalized as of the date of submission of this report. However, once approved by the CGIAR System Board, it will be published, prior to the Governing Body meeting in November 2023, on the URL managed by the CGIAR System Organization (System Organization) with links to all of the annual CGIAR Intellectual Assets Management Reports that have been published since the CGIAR IA Principles were adopted in 2012: www.cgiar.org/food-security-impact/intellectual-assets-reports/.

In addition to submitting annual reports to the System Organization with respect to their compliance with the CGIAR IA Principles that serve as the basis for the annual CGIAR Intellectual Assets Management Reports that are being shared with the Governing Body, CGIAR Centers also publish public disclosures on their institutional websites concerning the Limited Exclusivity Agreements and/or Restricted Use Agreements they enter into, and/or the intellectual property applications they make, or allow third parties to make, with respect to their intellectual assets. The System Organization maintains on CGIAR's website the following webpage entitled 'CGIAR Intellectual Asset Management' which compiles links to public disclosures published by the Centers and reported to the System Organization in Centers' annual reports: www.cgiar.org/how-we-work/accountability/cgiar-intellectual-asset-management/

¹The full text of the CGIAR Principles on the Management of Intellectual Assets is available at hdl.handle.net/10947/4486. The Implementation Guidelines for the CGIAR Principles on the Management of Intellectual Assets are available at hdl.handle.net/10947/4487.

² These first and second reports were submitted in response to resolutions adopted by the Seventh Session of the Governing body (Resolution 4/2017), and Eighth Session of the Governing Body (Resolution 4/2019) respectively. These reports are available on the websites for the Eighth and Ninth Sessions of the Governing Body, respectively at www.fao.org/3/nb208en/nb208en.pdf and www.fao.org/plant-treaty/meetings/meetings-detail/en/c/1259571/

Resolution 2/2022, like Resolutions 4/2017 and 2/2019 previously adopted by the Eighth and Ninth Sessions of the Governing Body respectively, makes specific reference to "germplasm that the CGIAR Centers manage under the framework of the International Treaty, parts thereof, or information generated from the use of such germplasm". All plant germplasm or information generated from the use of such germplasm that is the subject of a Restricted Use Agreement, Limited Exclusivity Agreement or Intellectual Property Application as reported in the annual CGIAR Intellectual Assets Management Reports, were developed, at least in part, through the use of plant genetic resources held in trust by the Centers, or from plant genetic resources acquired by the Centers under a Standard Material Transfer Agreement.

The paragraphs that follow provide background information about the content of the CGIAR IA Principles, the annual reporting and compliance monitoring cycle that has been adopted across the CGIAR System, and some of the ways in which the annual CGIAR Intellectual Assets Management Reports have evolved in light of relevant Resolutions adopted by the Governing Body. Much of this contextual information was included in our 2019 and 2021 reports to the Governing Body; however, given the relevance of the CGIAR IA Principles to this report, the most salient points are repeated below.

CGIAR IA Principles

The CGIAR IA Principles were developed to provide a framework for Centers as they balance their traditional approach to treating all intellectual assets as international public goods with the recognition that they occasionally need to restrict global access, where justified, to create incentives for other organizations to contribute to further develop those assets or increase their availability to farmers through market mechanisms. The default position of the CGIAR IA Principles is that "CGIAR regards the results of its research and development activities as international public goods [...]". However, the CGIAR IA Principles permit Centers to apply for patent or plant variety protection, enter into Limited Exclusivity Agreements or into Restricted Use Agreements, when 'necessary for the further improvement of such Intellectual Assets or to enhance the scale or scope of impact on target beneficiaries, in furtherance of the CGIAR Vision.'

The CGIAR IA Principles underscore that each Center will manage in trust germplasm in accordance with Centers Article 15 agreements with the Plant Treaty's Governing Body. Furthermore, the CGIAR IA Principles impose limitations on the Centers discretion under the Plant Treaty framework when they manage improved assets derived from in trust germplasm (e.g., PGRFA under Development, new Products). In particular, the CGIAR IA Principles address (and limit) the kinds of restrictions that Centers can place on Center-improved materials and establish criteria that Centers must satisfy for applying such restrictions.

Three types of restrictions are potentially permitted pursuant to the CGIAR IA Principles. First, Centers may enter into Limited Exclusivity Agreements to grant exclusive rights to third parties to commercialize the materials they have (co)developed, provided the exclusivity is limited in scope (e.g., country specific, time limited, and/or field of use), and the restrictive arrangement is necessary for the further development of the innovation or to maximize the scale and scope of impact. Importantly, the CGIAR IA Principles require that the materials that are subject to such limited exclusivity agreements continue to be made available to public research organizations for non-commercial research and breeding, and for emergency use.

Second, Centers may enter into a Restricted Use Agreement to acquire and use proprietary technologies from third party providers on terms that may restrict the global accessibility of products or services that incorporate downstream intellectual assets developed by the Centers using such proprietary technologies. In such cases, Centers must ensure that those technologies are not available from alternative sources under less restrictive conditions and the products and services in question will further CGIAR's mission in the countries in which they are made available.

Third, Centers may file or authorize a third party to file a patent or plant variety protection over CGIAR Centers technologies and/or germplasm provided such protection is necessary for the further development or to maximize the scale and scope of impact, of the technologies or germplasm concerned. In each instance, the restriction is permissible only if it furthers the CGIAR Vision.

The CGIAR IA Principles are reviewed periodically. Reviews have taken various forms, including an independent external review coordinated by the CGIAR Independent Evaluation Arrangement published in 2017 and available online.³

Monitoring Centers compliance with the CGIAR IA Principles

The annual reporting/monitoring cycle to review Centers' compliance with the CGIAR IA Principles includes the following elements: The respective Boards of Trustees/Governing Boards of the Article 15 Centers must provide an annual statement to the System Organization that their Center is in compliance with the CGIAR IA Principles. Each CGIAR Center provides an annual report to the System Organization concerning their implementation of the CGIAR IA Principles using a standardized template. The Centers reports include very detailed information about any Limited Exclusivity Agreements, Restricted Use Agreements, and intellectual property applications the Centers have entered into in the reporting period. Those reports are scrutinized by the System Organization and an independent System Council Intellectual Property Group (SC IP Group). For the three most recent reporting cycles, covering 2020, 2021, and 2022, the System Organization involved the Genebank Initiative's genetic resources policy group in reviewing Centers' reports, particularly with respect to compliance with the Plant Treaty and other applicable access and benefit sharing laws and policies.

These three bodies review the restrictive arrangements and intellectual property applications and justifications reported by Centers and assess whether such arrangements comply with the CGIAR IA Principles. Over the course of these reviews, the System Organization and the SC IP Group can, and often do, request additional information from the Centers concerned. The System Organization publishes an annual report concerning the CGIAR Centers' implementation of the CGIAR IA Principles. That report includes a section authored by the independent SC IP Group setting out its findings (both positive and negative) with respect to the process and content of issues that arise in the course of the annual reporting/monitoring cycle, highlighting, when necessary, the need for responses or further action by Centers concerned. Each years report summarizes the responses to the SC IP Group's recommendations the previous year.

Response to Governing Body Resolutions within the CGIAR System

Resolution 4/2017 of the Seventh Session of the Plant Treaty's Governing Body, which was the first calling for these reports from CGIAR, was considered at the highest levels of governance within the CGIAR System, by the then-called CGIAR System Management Board⁴ and the General Assembly of CGIAR Centers⁵. The System Management Board directed CGIAR Centers, and staff of the System Organization, with support from the Genebank Initiative's genetic resources policy group, to share additional information of potential interest to the Governing Body in the annual CGIAR Intellectual Assets Management Reports, and in the form of independent disclosures published by the Centers. As a result, each annual CGIAR Intellectual Assets Management report since 2017 includes summary information about all Limited Exclusivity Agreements, Restricted Use Agreements, patent and plant variety protection applications entered into or made by the Centers during the relevant year (including the name of the Center, the technology concerned, the kind of licensing agreement, and if subject to intellectual property, the territory covered by, and the state of progress of, the application).

All of the reports since 2017 also include case studies of the patent and plant variety protection applications, Restricted Use Agreements, and Limited Exclusivity Agreements reported in the relevant year.

The CGIAR System Board was briefed again in 2020 with respect to Resolutions 4/2017 and 2/2019. It has also reviewed and approved this current report.

To assist Centers with the development and improvement of their public disclosures, in 2018, the Genebank Initiative's genetic resources policy group developed a 'Guidance Note on CGIAR Research Center Public Disclosures related to the Management of Intellectual Assets'. The System Organization and Genebank

³ See Bennett, A, Correa, C. (2017) Review of CGIAR Intellectual Assets Principles: an IEA Review, available at iea.cgiar.org/2018/03/21/evaluation-of-intellectual-assets-principles-of-cgiar/

⁴ For more information about the composition and terms of reference of the CGIAR System Board, see www.cgiar.org/how-we-work/governance/system-organization/system-management-board/

⁵ For more information about the composition and terms of reference of the General Assembly of CGIAR Centers, see www.cgiar.org/how-we-work/governance/centers-general-assembly/

Initiative also organized training sessions with all Centers Intellectual Property Focal Points and Genebank Managers for the purpose of raising Centers awareness about the Governing Body's resolutions calling for these reports, and the need to increase transparency in Centers communications when entering into restrictive arrangements, and the usefulness of the guidance note on public disclosures and other supporting tools at the Centers disposal. The standard template used by Centers to report to the System Organization was amended in 2019 to include additional questions concerning whether or not the genetic resources used by the Center to develop the intellectual assets that are the subject of the patent or plant variety protection applications, Restricted Use Agreements or Limited Exclusivity Agreements were acquired under the Plant Treaty's Standard Material Transfer Agreement or subject to other access and benefit-sharing (ABS) laws, and also the due diligence that the Center exercised to ascertain whether or not such laws apply. The template also requires Centers to explain, in the context of each specific patent or plant variety protection application, any Restricted Use Agreement or Limited Exclusivity Agreement reported, if (and how) a downstream entity commercializing the intellectual assets (or derivatives) will be bound by benefit sharing requirements in circumstances in which such requirements are applicable.

In 2019, the Genebank Initiative's genetic resources policy group developed a 40-hour, 7-module training course entitled 'Genetic Resource Policies for CGIAR Scientists'. The course includes training materials concerning CGIAR scientists' compliance with the CGIAR IA Principles (and applicable ABS rules) when acquiring genetic resources for inclusion in genebank collections or research and development programs, and when distributing materials from the genebanks or breeding programs. To date, approximately 150 CGIAR genebankers, plant breeders, intellectual property focal points and legal officers have taken the course. More editions of the course will be conducted in 2024 and beyond.

CGIAR representatives will attend the Tenth Session of the Governing Body of the Plant Treaty in Rome in November 2023. They will seek to meet with all regional groups and observer-stakeholders in advance of the meeting to provide an opportunity to discuss issues raised in this report. And of course, they will participate in plenary sessions.