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**Charting the CGIAR's Future – A New Vision for 2010**

**Report of the Genetic Resources Policy Committee**

Attached is the report of the Genetic Resources Policy Committee which is circulated for information under Agenda Item 9 “Committee Recommendations and Reports”.

# CGIAR Genetic Resources Policy Committee

IPGRI, Rome, Italy

1-3 March 2000

## Meeting Report

**Participants:** M.S. Swaminathan, Chairman  
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**Observer:** Fernando Chaparro, Executive Secretary, GFAR  
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### **Agenda Item 1: Renegotiation of the International Undertaking**

1. Progress is being made in the development of a new International Undertaking (IU). The work of the negotiators has been aided by several informal meetings in which perspectives have been shared and common ground staked out. The CGIAR has played an active role in the deliberations, for example by providing technical analyses, through active participation as resource persons in the negotiating sessions, and by contributing to a series of informal meetings among key countries. An example of the progress in the negotiations is that countries are now focusing clearly on the development of a Multilateral System of Facilitated Access and Benefit-Sharing, rather than bilateral approaches. Major areas under discussion include the range of crops to be covered under a Multilateral System (scope), the terms of access thereto, and the means to generate and share benefits, within this multilateral framework. The overall effort is seen as addressing the special needs of agriculture and food security in harmony with the Convention on Biological Diversity (CBD).
2. The Committee sees both the possibility of progress as well as some potential pitfalls in the path ahead. Consensus language has been reached on Farmers' Rights, which is seen as being focussed at the national level. On the matter of scope, it has been agreed that the revised IU will cover all plant genetic resources for food and agriculture. Within this framework, countries are developing a Multilateral System, and discussions continue on several possibilities for its coverage, ranging from just a few to many crops. At present, a compromise is emerging in which major food crops important to global food security, and where substantial international interdependence exists, would be covered by the Multilateral System. Access would

be facilitated, at low transaction costs, to the germplasm of crops included within the Multilateral System, in order to maintain germplasm flows important to plant breeding and food security. Examination of benefit-sharing presents a major challenge, but opportunities exist to underscore access-related benefits associated with a Multilateral System, as well as specific activities in the areas of conservation, use and capacity building. A number of positive incentives for countries and institutions associated with the Multilateral System are being explored.

3. As a minimum, the CGIAR would look to the new IU to establish a Multilateral System covering the major mandate crops of the CGIAR centres. The CGIAR also needs a policy atmosphere that will permit continued free movement of germplasm and assurance that the CGIAR can continue to generate and distribute germplasm-based international public goods in the form of varieties, stocks, segregating populations etc., and relevant information. By clarifying benefits associated with the Multilateral System, countries may increasingly contribute new genetic material to the international genebanks and germplasm screening and improvement networks.
4. Concerning the ultimate legal and institutional status of the IU, a number of options are possible for linking to both the CBD and FAO. There is general agreement among the members of the Commission on Genetic Resources for Food and Agriculture that the IU should be legally binding. In connection with the global food security and conservation objectives of the Commission's work, it is in the interest of the CGIAR and the larger objectives of international public goods research that the IU be concluded at an early date. A completed IU should ideally clarify and secure the status of the germplasm held in trust by the CGIAR centres, under the FAO-IARC agreements; this "designated germplasm" is the foundation of many CGIAR and NARS efforts to provide international public goods and increase food security, globally and at the local level. Clear information on the past and present impacts associated with use of a wide range of plant genetic resources around the world will be very useful in quantifying benefits and communicating them to important audiences around the World. The studies commissioned by the Impact Assessment and Evaluation Group will help communicate the impact of CGIAR and the benefits associated with multilateral cooperation and unrestricted access.
5. A number of actions could be taken by the CGIAR to help Governments reach a positive outcome to these negotiations, and establish an effective, transparent and non-bureaucratic Multilateral System that addresses the special needs of agriculture. Examples include:
  - surveys and analyses of germplasm flows
  - transactional costs
  - genetic erosion
  - genetic interdependence
  - the feasibility of using the Convention on Biological Diversity's definition of "country of origin" as a basis for bilateral negotiations, and
  - funding needs and opportunities.
6. In addition, analyses could be undertaken to construct alternative scenarios as a means of informing decision-makers and increasing awareness of the negotiations. It may be necessary to describe the situation in terms of risks, as well as benefits. Topics might include:
  - bilateral vs. multilateral frameworks
  - the scope of the Multilateral System (numbers of species/crops covered)
  - impacts of including/excluding forages, horticultural species, or minor or underutilized crops

- the expected extent of germplasm flows under different regimes, and
  - the issue of "country of origin" for PGRFA under the CBD.
7. The Committee's view is that the CGIAR and IPGRI in particular should remain important sources of technical and policy input to the on-going negotiations. The negotiations may highlight the role of the Global Plan of Action, which was developed under the guidance of the Commission on Genetic Resources for Food and Agriculture, and adopted by 150 countries at the 1996 Leipzig Conference on Plant Genetic Resources for Food and Agriculture. Many of the 20 activity areas discussed in the plan are central to genetic resources activities of the CGIAR centres.
  8. The Committee also discussed the eventual legal status of the International Undertaking. Several options are possible, from a protocol under the CBD to a free-standing FAO agreement. Matters relating to the Governing Body and implementation approaches will be significant considerations in developing an acceptable and effective status for an eventual agreement.
  9. **Conclusion: The GRPC encourages all CGIAR members to work actively to further advance the renegotiation of the FAO International Undertaking. Special attention should be given to ensuring an appreciation amongst all relevant governmental bodies at the national level of the importance of an early conclusion to the renegotiation to ability of the CGIAR to achieve its research and global food security objectives.**

## **Agenda Item 2: National Legislation**

10. Over 50 countries are currently considering legislation governing access to biodiversity, in the context of the CBD; few countries appear to be making provisions for the special needs of agriculture with respect to exchange and recombination of germplasm. For example, the OAU has endorsed model legislation that provides no special status for agricultural germplasm. Legislation is also being prepared in relation to Article 27.3 (b) of the WTO/TRIPS Agreement. An unintended effect of many of these new laws could be to greatly reduce access to agricultural biodiversity, hindering agricultural germplasm exchange and increasing transaction costs. Such legislation could, if adopted, make it more difficult for countries to subscribe to a Multilateral System, since the passage of such legislation will have established a bilateral, transactions-based approach. Furthermore, the prospect of revising recent legislation might involve further delay. For these reasons, a pro-active approach that seeks to accommodate the special needs of agriculture under a new Multilateral System would be helpful. Even if a Multilateral System is adopted fairly soon, some CGIAR centres and NARS may in the meantime face problems in their distribution of, and access to, germplasm. Many of the countries that the centres' work in, however, are also members of the CGIAR, are active in the renegotiation of the IU, and have a strong interest in protecting the efficiency and effectiveness of the Centres.
11. The Committee welcomed the recommendation from a CBD-convened panel of experts last October that called on countries drafting national legislation regarding access to biodiversity to leave open options for adopting a multilateral approach to PGRFA. The Committee noted the constructive participation of several CGIAR-affiliated experts on this panel. The CGIAR endorsement of the spirit of the Panel's recommendation at ICW 1999 was a positive move. The Committee also noted that the 1999 FAO Conference had also stressed the importance for countries that are developing relevant legislation to do so in such a way that would enable them to take into account and allow for the elements of this new international agreement.

12. **Recommendation: That CGIAR delegations seek to ensure that national legislation in their respective countries take into account the needs for contingencies that allow for the eventual requirements of a Multilateral System for Plant Genetic Resources for Food and Agriculture in selected crops.**
13. Centres' agreements with the Host Countries follow a variety of models, but all are clearly designed to respect national law. In a few instances, special mention was made of the need for free movement of germplasm (respecting quarantine, etc.), but it is not clear how strong these provisions will remain in a changing policy and legislative environment. In the event that new legislation limiting the movement of agricultural germplasm is adopted, restrictions on the ability of centres to distribute even designated germplasm could result. Such a situation would soon compromise the effective operating of the centres at the international, as well as host country, levels. It would pose a significant handicap to the effective functioning of centres, hindering their ability to serve national programs and other partners in developing countries, and possibly providing impediments to their ability to attract funding from traditional or new sources.
14. **Recommendation: That CGIAR members hosting individual centres seek to ensure that legislation takes into account the importance of open germplasm flow, to make it possible for the centres to serve their many partners, within and beyond the host country.**

### **Agenda Item 3: Implementing the FAO-Centre Agreements**

15. Centres are in the process of assembling updated lists of designated material to provide to FAO. Through the Systemwide Genetic Resources Program (SGRP), centres are undertaking a review of the degree to which they have implemented the agreed procedures for using MTAs. While all centres are now using the standardized MTA, not all have completed the agreed procedures for publicizing the new terms and conditions. The Committee encourages speedy completion of this process, and welcomes the adoption of the standardized format. The Committee was also informed of the work of the SGRP to develop a streamlined labelling system that would cover mixed shipments of designated and non-designated germplasm.
16. **Recommendation: The Committee endorsed the actions of the centres to standardize practice with respect to MTAs for designated germplasm. The Committee recommends that all centres move with deliberate speed to implement and publicize the procedures used with the standardized MTA format.**
17. The Committee received a report from the SGRP about a new MTA that has been developed for non-plant genetic resources (micro-organisms, aquatic animals, livestock). Explanatory guidelines for the acquisition and transfer of such germplasm have also been drafted. Both were endorsed by the ICWG-GR at its February meeting. The Committee also reviewed a funding plan for upgrading IARC genebanks following the System-wide Genebank Review. The plan will be presented to TAC for consideration at its upcoming meeting
18. **Recommendations: The Committee commended the SGRP for its efforts to develop documentation necessary for the conservation and distribution of agriculturally significant microorganisms. The Committee also acknowledged the significant progress made in reviewing genebank standards, and commended the SGRP for developing a comprehensive plan and related budgets for meeting appropriate operational and infrastructural requirements.**

**The Committee looked forward to TAC's review of the upgrading plan, and believes that undertaking a system-wide effort to upgrade genebank standards would be an important step in seeking substantial, non-traditional sources of support for the conservation of the genetic diversity held in trust in CGIAR genebanks, which constitute a critical bulwark for agricultural sustainability and global food security.**

#### **Agenda Item 4: Designated Germplasm under FAO Agreements**

19. The IARC-FAO agreements governing access to designated germplasm have now been in effect for nearly 6 years. A key means for implementing those agreements has been the through the use of Material Transfer Agreements. Centres' experience with using MTAs has been satisfactory, but over time, some areas have emerged where greater clarity is needed.
20. IPGRI has produced a thorough and informative analysis of various possible interpretations of the term "germplasm and related information" in the context of FAO-IARC agreements, and how derivatives might be determined for the purpose of permitting applications for intellectual property rights. In this context, it appears that the word "germplasm" is usually understood to mean "accessions". This is in line with current CGIAR practice, in which trusteeship responsibilities are viewed as requiring centres to ensure that individual designated accessions remain in the public domain and fully available for use. The paper considers that if "germplasm" were to be considered to mean genes or alleles, this could lead to greatly diminished interest in, and use of, the collections by a wide range of breeders in both the public and the private sector.
21. A second area for interpretation is how derivatives are treated - i.e., how much genetic change must occur in order for a recipient to be able to apply for intellectual property protection over material derived from such accessions, and still be in conformity with the terms of the MTA. The Committee reviewed the various alternative mechanisms examined in the paper for quantifying changes that could occur in the breeding process (allelic differences, allelic frequencies, phenotypic differences, specific breeding steps, and combinations thereof). Another way to consider these matters, also presented in the paper, was whether or not the material (at accession and/or genetic level) would remain available for direct use and for developing further derivatives. This last approach takes as its starting point the objective of the agreements with FAO governing designated material: that the material remain in the public domain, available for use. The paper suggests that, in line with such an approach, it was necessary to "employ a definition which, while allowing for IPRs, aims to ensure that the designated accession or the designated accession and its components remain available for use by other recipients in defined ways." The paper points out that the goal of this approach would be to keep the material in the public domain while encouraging research on, and use of, designated accessions
22. Reflecting new developments in scientific research, an MTA might thus need to incorporate an unambiguous reference to the permissibility of recipients applying for intellectual property rights on innovations produced using the designated material, provided that they are not permitted to claim rights that would restrict further use of the accession or related information by others.
23. The Committee recognized that Governments were currently negotiating a number of related questions in the context of the International Undertaking. Interpretation of such matters would thus need to be provisional, pending completion of the

negotiation of the new IU, including any eventual provisions on benefit sharing. It was noted that clarity on access and use provisions as a result of the completion of the revision of the IU would help the centres' collections to grow and to be used.

24. **Recommendation: The Committee expressed its thanks to IPGRI for moving forward the analysis of the implications of new research techniques and changing policy environment on CGIAR trusteeship responsibilities. The issues that remain are complex, and should be a principal focus of the GRPC's work in the coming months. The Committee plans a fuller report on these matters for CGIAR members, following its September, 2000 meeting. In the interim it commends the IPGRI paper to the CDC for its consideration.**

#### **Agenda Item 5: Central Advisory Service**

25. The Committee received an update of progress in the development of the new Central Advisory Service (CAS) on Intellectual Property located at ISNAR. Most of the IPR audits commissioned last year have now been completed. Although the focus of those audits was on the appropriate use by the centres of proprietary technology owned by others, the Committee noted that the centres are also monitoring their own innovations, to ensure adequate protection for both continued development and delivery to partners. There is a need to review, and possibly revise, the IPR Guidelines, and there is much to be gained from centres working together to exchange experiences and strategies. An initial step would be for the CAS to work with the centres to develop a report on their experiences with IPR. The Committee hoped that it would be able to review such a report at its next meeting.
26. Concerns were raised about the actual and potential effects of IPR on the functioning of international or regional trials coordinated by centres. These trials often include lines from a variety of sources (e.g., NARS), but they could be affected as IPR are increasingly being used to protect materials under development.
27. **Recommendation: The Committee recommended that CAS work with centres to exchange experiences with respect to IPRs, including in the context of national legislation. The Committee plans to review this issue further at its next meeting.**

#### **Agenda Item 6. Global Forum Report on Genetic Resources Policy-related activities**

28. Dr. Fernando Chaparro presented a report on GFAR and its activities concerning plant genetic resources for food and agriculture. GFAR is planning an in-depth program on agro-biodiversity and the importance for NARS of the emerging Multilateral System, at its upcoming meeting in Dresden (May 20-23). The meeting will highlight the special nature of plant genetic resources for food and agriculture (PGRFA), and the actual and potential benefits of a multilateral approach to their conservation and use. GFAR is working with FAO, IPGRI and others to develop a series of briefs on strategic issues (e.g., legislation, IPR, germplasm flows, generation and sharing of benefits), and plans to follow up with stakeholders on these matters.
29. **Recommendation: The Committee welcomed this initiative, and expressed its hope that the effort would underscore the unique nature of PGRFA and the important role of *in situ*/on-farm conservation in general and women in particular. Some concern was expressed that the initiative take into account the special needs and opportunities in countries with smaller NARS, particularly in connection with the TRIPS agreement and the CBD.**

## **Agenda Item 7: Updates on developments in International Fora**

30. Biosafety Protocol: The "Cartagena Protocol", which was completed in Montreal in late January, 2000, addresses the safe transfer, handling and use of living modified organisms (LMOs) that may have an adverse effect on biodiversity with a specific focus on transboundary movements. It was pointed out that the protocol should help provide greater clarity for centres working with transgenic technologies. The protocol will likely lead to more countries enacting biosafety regulations which would, in turn, be helpful to the centres, since they do not work on certain biotechnologies, such as gene transformation, in countries lacking an adequate regulatory framework.
31. WTO/TRIPS: IPGRI presented a summary of recent events surrounding the WTO agreements including TRIPS, and the Agreement on Agriculture. A new round of global trade negotiations was held in December 1999 in Seattle, Washington, USA, but the talks were suspended as a result of protests by non-governmental organizations and complaints by developing countries of marginalization in the process. At subsequent meetings, member countries have discussed reforms in the areas of institutional transparency and capacity building in developing countries. The TRIPS Agreement is due to be reviewed in the year 2000.
32. WIPO: IPGRI provided a briefing on WIPO activities in two areas: biotechnology and indigenous knowledge. IPGRI is represented on the Working Group on Biotechnology and is thus able to monitor progress closely and make others aware of CGIAR activities.
33. UPOV: UPOV now has 44 members, 11 of which have ratified UPOV 91. In addition, some 90-100 countries have or are currently considering legislation to implement PVP.

## **Agenda Item 8: Underutilized and Neglected Crops**

34. The Committee reviewed progress of on-going efforts by IPGRI and the MSSRF in the area of underutilized crop species. The activity is building on the GRPC-sponsored workshop held in early 1999. Discussions with IFAD and other potential donors are underway. IFAD has indicated interest in these crops, particularly with respect to food security and the income needs of the poor, and proposed that a consortium of donors support this initiative. Some important objectives include: enhanced food security through a broadly based production system; links to income generation and poverty alleviation; nutrition enhancement; and adaptation of some species to drier and other less favoured production environments. Marketing was highlighted as a matter of special significance, and one where expanded research efforts by CGIAR centres might be appropriate.
35. A policy area related to underutilized crops that is of some concern is what crops Governments would finally agree to include in the list of crops to be included in the Multilateral System under the revised International Undertaking on Plant Genetic Resources. At present, the list is being discussed on the basis of two criteria: food security and interdependence. Most, if not all, of the CGIAR mandate crops are likely to be included on the agreed lists. Nevertheless, based on current negotiations it does not appear likely that most species that are categorized as underutilized, neglected or minor crops will be included. Many such species may, however, be critically important for food security at the local or national level and may to some degree be conserved by CGIAR genebanks.

36. Further consideration needs to be given to the special conservation and utilization needs associated with such crops. Moreover, concerns were raised as to whether their exclusion from an eventual Multilateral System might lead to a decline in the already scarce resources allocated to research on, and conservation of, such crops. From a policy standpoint, the Committee believes that a further analysis is warranted of the implications of a Multilateral System that does not encompass all the centres' in-trust germplasm holdings (e.g., thousands of genebank accessions of underutilized and non-mandate crops) and that this should be taken up in a future meeting.
37. **Recommendations:** The Committee agreed that this is an opportune time to consider the role of the CGIAR with respect to underutilized crop species, particularly as part of a review of centre mandates and a consideration of how these may evolve in the future. The Committee noted that the upcoming Global Forum at Dresden includes discussion of a GFAR brief that reviews the importance of links between production of a crop and its ultimate consumption. From a policy standpoint, the Committee plans to explore the implications of a Multilateral System that might not encompass the full holdings of CGIAR in-trust germplasm.

#### **Agenda Item 9: Date and Place of Next Meeting**

38. It was agreed that the next meeting of the Committee would take place from 6 to 8 September in The Hague, The Netherlands, at the invitation of ISNAR.