



The scope of access and benefit-sharing under the International Treaty

Policy brief

The International Treaty on Plant Genetic Resources for Food and Agriculture (the Treaty) creates an international plant genetic resources commons within which state parties, international organizations and other legal persons provide facilitated access to plant genetic resources for research, breeding, conservation and training, and commit to contribute part of the monetary benefits arising from the use of those resources to an international fund managed by the Governing Body of the Treaty. The Treaty creates the multilateral system of access and benefit-sharing (Multilateral System). The Multilateral System includes the 35 crop and 29 forage genera listed in Annex 1 of the Treaty which are: under the management and control of the Contracting Parties and in the public domain; hosted in the *ex situ* collections of international organizations like the Centres of the Consultative Group on International Agricultural Research (CGIAR), and or voluntarily included by other legal persons, for example, companies or private collectors.

To make the Multilateral System operational, in June 2006, the First Session of the Governing Body of the Treaty adopted the standard material transfer agreement (SMTA) which sets out the legal conditions that apply to both suppliers and recipients of material in the Multilateral System. The SMTA provides facilitated access to these genetic resources and establishes benefit-sharing obligations when recipients commercialize new plant genetic resources for food and agriculture that incorporate materials received from the system.

During the negotiations of the Treaty, and in the Treaty itself, countries recognized the importance of the collections of the Centres of the CGIAR and the need to ensure that plant genetic resources for food and agriculture held in these and other relevant international collections were subject to the principles of the Treaty and, in particular, the terms and conditions of its multilateral system of access and benefit-sharing. This is reflected in Article 15 of the Treaty, which calls upon the CGIAR Centres and other relevant international institutions to sign agreements with the Governing Body of the Treaty, covering both the Annex 1 and non-Annex 1 materials

they host. On October 16, 2006, the eleven CGIAR Centres holding *ex situ* collections of plant genetic resources signed agreements with the Governing Body of the Treaty placing the 650 000 accessions of crop and forage species they hold within the framework of the Treaty and recognizing the authority of the Governing Body to provide policy guidance relating to *ex situ* collections held by the Centres and subject to the provisions of the Treaty. Those agreements became legally binding as of January 2007, which is why the Centres started using the SMTA that same month for their distributions of Annex 1 materials. In the first eight months of the year 2007, the Centres cumulatively distributed 97 500 samples under the terms and conditions of the SMTA.

With respect to non-Annex 1 materials, the Treaty stated that the CGIAR Centres should continue using their pre-Treaty MTA, until the Governing Body, at its Second Session, would have the opportunity to amend that MTA. During its Second Session, 29 October - 2 November 2007, the Governing Body decided that the CGIAR Centres should use the same SMTA, with explanatory footnotes, when transferring all plant genetic resources for food and agriculture they hold in trust, whether or not they are included in Annex 1 of the Treaty. This decision ensures that the benefit-sharing provisions that were adopted by the Governing Body in the SMTA extend to distributions by the Centres of all material.

The practical scope of the Governing Body's decision is not limited to the CGIAR Centres. Some other international organizations that have signed agreements with the Governing Body under Article 15.5 of the Treaty will be following similar procedures. To date, the eleven CGIAR Centres hosting *ex situ* collections of PGRFA, the Tropical Agricultural Research and Higher Education Centre (CATIE), the International Coconut Genebank for Africa and the Indian Ocean, the International Coconut Genebank for the South Pacific and the Mutant Germplasm Repository of the Joint Division of FAO and the International Atomic Energy Agency (IAEA) have signed agreements with the Governing Body. It is anticipated that additional international organizations will make agreements of this nature with the Governing Body.

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The practical effect is that distributions of non-Annex 1 materials from these organizations, and subsequently redistributed by down-stream recipients, are carried out according to terms and conditions identical to those that prevail in the Treaty's Multilateral System. This kind of incremental growth of the material included under the scope of the Treaty's access and benefit-sharing rules is not a historical accident or unintended outcome. It is what was explicitly intended by the negotiators of the Treaty, and was clearly anticipated by Article 15 of the Treaty. This

growth of coverage is under the guidance and policy oversight of the Governing Body of the Treaty.

The number of non-Annex 1 materials that will be subject to the same terms and condition as the Multilateral System is not necessarily limited to the number of accessions held by these organizations at any given time: non-Annex 1 materials which are included in their collections in the future could also be distributed under the SMTA (as long as this is consistent with the terms under which they are legally

acquired vis-à-vis the Convention on Biological Diversity or other applicable law).

The International Regime on access and benefit-sharing, which is currently being negotiated under the auspices of the Convention of Biological Diversity (CBD), must take into account the potential extension of Annex 1 of the Treaty; it must also leave room for international organizations to distribute non-Annex 1 materials using the SMTA, pursuant to the agreements that they have already signed, or will sign in the future, with the Governing Body, as explicitly anticipated by the Treaty.

Following the decision of the Second Session of the Governing Body of the Treaty, the CG Centres will distribute samples of some species of the following list of genera, which are not included in Annex 1, but which are held under the purview of the Treaty, using the SMTA, for the purpose of research, breeding and training for food and agriculture:

Abrus, *Acacia*, *Aeschynomene*, *Alysicarpus*, *Amaranthus* (cn. amaranth), *Amblyopyrum*, *Anthyllis*, *Arachis* (incl. cn. groundnut), *Argyrobium*, *Astragalus*, *Bauhinia*, *Biserrula*, *Bothriochloa*, *Brachiaria*, *Calliandra*, *Calopogonium*, *Canavalia*, *Canna*, *Cassia*, *Cenchrus*, *Centrosema*, *Chamaecrista*, *Chenopodium* (incl. cn. quinoa), *Chloris*, *Christia*, *Clitoria*, *Codariocalyx*, *Coronilla*, *Cratylia*, *Crotalaria*, *Cymbopogon*, *Cynodon*, *Dactyloctenium*, *Dendrobium*, *Desmanthus*, *Desmodium*, *Digitaria*, *Dioclea*, *Dolichos*, *Dunbaria*, *Echinochloa*, *Eragrostis*, *Eriosema*, *Erythrina*, *Faidherbia*, *Flemingia*, *Galactia*, *Gliricidia*, *Glycine* (incl. cn. soya bean), *Graminea*, *Hedysarum*, *Heteropogon*, *Hippocrepis*, *Hymenocarpus*, *Hyparrhenia*, *Indigofera*, *Lablab* (incl. cn. hyacinth bean), *Lasiurus*, *Lepidium*, *Leucaena*, *Lotononis*, *Lotus*, *Lupinus*, *Macroptilium*, *Macrotyloma*, *Manihot*, *Medicago*, *Melilotus*, *Melinis*, *Mimosa*, *Mucuna*, *Musa*, *Neonotonia*, *Onobrychis*, *Ononis*, *Ornithopus*, *Oxalis*, *Pachyrhizus* (incl. cn. yam bean), *Panicum*, *Paracalyx*, *Paspalum*, *Phaseolus*, *Phyllodium*, *Prosopis*, *Pseudarthria*, *Psophocarpus* (incl. cn. asparagus pea), *Pueraria*, *Pycnospora*, *Rhynchosia*, *Scorpiurus*, *Sehima*, *Senna*, *Sesbania*, *Setaria*, *Smalanthus*, *Solanum*, *Sphenostylis*, *Stipa*, *Stylosanthes*, *Tadehagi*, *Tamarindus* (incl. cn. tamarind), *Tephrosia*, *Teramnus*, *Tetragonolobus*, *Thymus* (incl. cn. thyme), *Trifolium*, *Trigonella*, *Tropaeolum*, *Ullucus*, *Urarica*, *Urochloa*, *Voandzeia* (incl. cn. bambara groundnut), *X Aegilotriticum*, *Zea*, *Zornia*.

For more details concerning the species and varieties currently held by CG Centres, see the System-wide Information Network for Genetic Resources (SINGER) at <http://singer.grinfo.net>.

CATIE will use the SMTA to distribute non-Annex 1 materials of the following genera: *Amaranthus* (cn. amaranth), *Annona* (incl. cn. soursop), *Capsicum* (cn. peppers), *Coffea* (cn. coffee), *Crotalaria*, *Cucurbita* (cn. cucurbits), *Herrania* (wild cacao species only), *Licania*, *Lycopersicon* (incl. cn. tomato), *Macadamia* (incl. cn. macadamia nut), *Physalis*, *Pouteria* (incl. cn. star apple), *Psidium* (incl. cn. guava) and *Theobroma* (incl. cn. cacao); and of the species: *Bactris gasipaes* (cn. peach palm), *Bixa orellana* (cn. achiote), *Byrsonima crassifolia* (cn. nance), *Chrysophyllum cainito* (cn. cainito), *Ipomoea batatas* (cn. sweet potato), *Lablab purpureus* (cn. hyacinth bean), *Lagenaria siceraria* (cn. bottle gourd), *Litchi chinensis* (cn. lychee), *Manilkara zapota* (cn. sapodilla), *Pachyrhizus erosus* (cn. yam bean), and *Psophocarpus tetragonolobus* (cn. asparagus pea).

Non-Annex 1 materials to be made available under the SMTA and which are held by the Mutant Germplasm Repository of the FAO/IAEA Joint Division, the International Coconut Genebank for Africa and the Indian Ocean, and the International Coconut Genebank for the South Pacific, are, respectively, *Linum usitatissimum* (cn. flax) and *Cocos nucifera* (cn. coconut).

cn. = common name.

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