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GROUP OF TECHNICAL EXPERTS ON AN
INTERNATIONALLY RECOGNIZED
CERTIFICATE OF ORIGIN/SOURCE/
LEGAL PROVENANCE

Lima, 22-25 January 2007

Item 3 of the provisional agenda*

**COMPILATION OF SUBMISSIONS PROVIDED BY PARTIES, GOVERNMENTS,
INDIGENOUS AND LOCAL COMMUNITIES, INTERNATIONAL ORGANIZATIONS AND
RELEVANT STAKEHOLDERS REGARDING AN INTERNATIONALLY RECOGNIZED
CERTIFICATE OF ORIGIN/SOURCE/LEGAL PROVENANCE**

Addendum

**SUBMISSION BY THE INTERNATIONAL AGRICULTURE RESEARCH CENTRES OF THE
CONSULTATIVE GROUP ON INTERNATIONAL AGRICULTURE RESEARCH (CGIAR)**

Note by the Executive Secretary

1. The Executive Secretary has the honour to circulate herewith the attached submission received from the International Agriculture Research Centres of the Consultative Group on International Agriculture Research (CGIAR) in response to paragraph 5 of decision VIII/4 C and Secretariat notification 2006-043 of 29 May 2006 and 2006-048 of 30 May 2006,.
2. The submission is being circulated in the form and the language in which it was received by the Secretariat of the Convention.

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SUBMISSION TO THE CBD SECRETARIAT CONCERNING THE STATUS OF THE SMTA UNDER THE INTERNATIONAL TREATY VIS-À-VIS OTHER POSSIBLE ABS REGIMES THAT INVOLVE CERTIFICATES OF SOURCE/ORIGIN/PROVENANCE

1. Introduction

The purpose of this communication is to bring to the notice of the Secretariat of the Convention on Biological Diversity the fact that, on 16 October 2006, the eleven Future Harvest Centres of the Consultative Group on International Agricultural Research holding *ex situ* collections of plant genetic resources for food and agriculture (PGRFA), have signed agreements under Article 15 of the International Treaty on PGRFA, whereby they have placed these *ex situ* collections (some 600,000 accessions of the world's most important crops) in trust within the purview of the Treaty. The Tropical Agricultural Research and Higher Education Center (CATIE) also signed such an agreement on the same date. By these agreements, the Centres recognize the authority of the Governing Body of the Treaty to provide policy guidance relating to their *ex situ* collections. As from 1 January 2007, all transfers of PGRFA listed in Annex 1 to the Treaty will be subject to the Standard Material Transfer Agreement (SMTA) adopted by the Governing Body of the Treaty at its first session in June 2006. The SMTA attests to the fact that the provenance of the PGRFA being transferred is the Multilateral System of Access and Benefit-sharing established under the Treaty. Non-Annex 1 PGRFA will be transferred subject to the Material Transfer Agreement currently in use by the Centres, as amended by the Governing Body no later than its second session. The Future Harvest Centres request that this be reflected in the elaboration of the background papers for the meeting of technical experts to explore and elaborate possible options for an internationally recognized certificate of origin/source/legal provenance (Lima, Peru, 22-25 January).¹

2. The Special Nature of Plant Genetic Resources for Food and Agriculture

A combination of factors distinguishes PGRFA from other categories of genetic resources. Human intervention has been key to the creation and maintenance of today's crops; in its absence, those crops would disappear. PGRFA are widely spread around the world and countries are interdependent upon them for their food security. The interdependence of countries on PGRFA is reflected both at the level of international exchanges of plant genetic materials in support of research, breeding and production, and at the level of individual cultivars, which incorporate PGRFA from numerous countries and regions. These factors make it extremely difficult, and in many cases impossible, to identify countries of origin for crops that have been widely exchanged and that may have developed their distinctive properties in any number of different areas.² This is very different from the situation of wild endemic plant species, which have evolved without human intervention and have not been subjected to frequent exchanges with other countries.

¹ The issues presented in this note have been raised in the following submissions to the CBD Secretariat by the CGIAR Centres:

SGRP. 2006. Policy Brief: *Developing access and benefit-sharing regimes, plant genetic resources for food and agriculture* (Submitted by the System-wide Genetic Resources Programme of the CGIAR to the Ad Hoc Open-ended Working Group on Access and Benefit-sharing at its third meeting, Bangkok, Thailand, 14-18 February 2005).

SGRP. 2006. *Annotated Bibliography addressing the international pedigrees and flows of plant genetic resources for food and agriculture*. (Submitted by the System-wide Genetic Resources Programme of the CGIAR to the Ad Hoc Open-ended Working Group on Access and Benefit-sharing at its fourth meeting, Granada, Spain, 30 January- 3 February 2006, and the Eight Conference of the Parties to the Convention on Biological Diversity, Curitiba, Brazil, 20-31 March 2006).

Compilation of Submissions relating to the Matrix on the Analysis of Gaps, UNEP/CBD/WG-ABS/INF/4, 15 December 2005, pp. 122-136, Annex III, "Submissions from Relevant Organizations and Stakeholders: the International Plant Genetic Resources Institute".

² Identifying the country of origin of domesticated species under the CBD turns upon being able to ascertain "the surrounding where they have developed their distinctive properties"

3. The Standard Material Transfer Agreement under the International Treaty on Plant Genetic Resources for Food and Agriculture and Certificates of Origin/Source/Provenance

These facts concerning interdependence and food security were taken into consideration by the international community in the negotiation of the International Treaty on Plant Genetic Resources for Food and Agriculture (the Treaty). The Treaty is in harmony with the CBD. The scope of the Treaty is all PGRFA. The Treaty creates, *inter alia*, a multilateral system of access and benefit-sharing (MLS). Pursuant to the Treaty, Parties agree to provide facilitated access to the PGRFA of crops and forages listed in Annex 1 to the Treaty, in accordance with the provisions of the Treaty (Article 12.1) These crops and forages are selected “according to criteria of food security and interdependence” (Article 11.1). Which crops are covered by Annex 1 at any one time is a matter to be decided by the Governing Body in accordance with the procedures set out in the Treaty (Article 24.2). The MLS will contain PGRFA that are in the public domain and under the management and control of Contracting Parties or are placed voluntarily in the MLS by their holders, for the purposes of research, breeding and training for food and agriculture. The MLS does not cover only PGRFA held by States. Under Article 15 of the Treaty, international institutions may sign agreements to place their *ex situ* collections under the auspices of the International Treaty, and as noted above, the eleven CGIAR Centres have done so.

Access to PGRFA of such crops and forages is to be provided free or at a minimal cost. In this way, the Multilateral System constitutes a common pool of genetic material available for all for the purposes of research, breeding and training.

All transfers of Annex 1 materials within the MLS will be accompanied by the standard material transfer agreement (SMTA) that was adopted by the First Meeting of the Governing Body of the Treaty in June 2006. The SMTA includes a mandatory monetary benefit-sharing clause that is triggered when recipients commercialize new products that are PGRFA that incorporate materials accessed from the MLS, and where those products are not available without restriction for use by others for further research or breeding. In such instances, the SMTA states that the commercializer will make a contribution of 1.1% of gross sales (minus 30% to allow for sales costs) to the international benefit-sharing fund created by the Treaty. Provision is made for the encouragement of voluntary payments where the products are available without restriction. The use of such funds is under the control of the Treaty’s Governing Body. The benefits arising from the use of PGRFA shared under the MLS will flow primarily to farmers in all countries, especially in developing countries and those with economies in transition who conserve and sustainably utilize PGRFA. In this way, the Treaty provides both for multilateral access and for multilateral benefit-sharing.

The multilateral system of access and benefit-sharing is created by governments in the exercise of their sovereignty (Article 10.2). By pooling these resources, they disassociate the sharing of benefits from the identification of the country or origin or supply of genetic resources. Access and benefit-sharing under the multilateral system are both structured on a multilateral basis; materials are received from the MLS, and benefits flow back to the MLS.

It is important to note that the SMTA also accompanies subsequent transfers of materials accessed from the MLS to third, fourth and so on recipients, thereby transferring the same benefit sharing provisions forward with each transfer. In this sense, the SMTA functions as a certificate of source, with the source or origin of the PGRFA being the MLS itself.

As major stakeholders in the management of PGRFA that are crucial for the achievement of Millennium Development Goals 1 and 7, the Future Harvest Centres, wish to bring the following to the attention of the CBD Secretariat:

- The negotiations of an international regime on access and benefit-sharing in the framework of the CBD and particularly the discussions on a certificate of origin/source/legal provenance should

take into consideration these facts about the functioning of the MLS created by the Treaty in general, and the function of the SMTA as a certificate of source in particular.

- We submit that the balance of rights and obligations already worked out in the context of the Treaty's MLS cannot (and should not) be encumbered in any way with additional conditions or requirements of any kind.
- The role of the SMTA in the MLS is a model and precedent for the Expert Group to consider. The way in which the specificities of PGRFA were taken into consideration in the development of the MLS created by the Treaty illustrates the importance of taking a sectorial approach to developing access and benefit sharing regulations and related instruments.
