

TERMS OF REFERENCE

Review of CGIAR's Policy on Intellectual Assets 2017



Independent
Evaluation
Arrangement

Background and context

Introduction

The CGIAR is a global research partnership aiming to contribute to development outcomes through agricultural research. The CGIAR Research Centers (hereafter Centers), currently 15, are independent research organizations that implement CGIAR research activities with their partners. Since the reform agreed in 2009, research implementation has been through CGIAR Research Programs (CRP). CGIAR regards the results of its collaborative research for development activities as global public goods, and is committed to their widespread diffusion and use.¹

CGIAR has a number of system-wide policies. One of these policies concerns intellectual assets: CGIAR Principles on the Management of Intellectual Assets (IA Principles).² The independent Centers are custodians, producers and users of intellectual assets. These assets comprise, as per IA Principles, “all results or products of research and development activities of any nature whatsoever” and include the collections of agriculturally important crops and their wild relatives held by 11 Centers in their genebanks. Although the policy is applicable to intellectual assets “produced or acquired by the CGIAR System Organization and/or the Centers”, this scope is understood to apply to intellectual assets produced or acquired in the course of implementing the CGIAR Strategy and Results Framework irrespective of funding source or implementing entity, as per the common operational framework in place at the time the policy was approved.

Rationale and context

The IA Principles were approved in March 2012. These IA Principles constitute a policy that provides a common position and framework for governing the production, acquisition, management and dissemination of intellectual assets (IA) and use of Intellectual Property Rights (IPR) with an aim of maximizing global accessibility of CGIAR IA for achieving broadest possible impact on target beneficiaries.

The IA Principles stipulates that they shall be reviewed every two years “in light of experiences gained”. In 2014, the (then) CGIAR Consortium, in consultation with the Centers, and the (then) Fund Council Intellectual Property Group conducted a brief appraisal of progress in implementing the IA Principles during their first two years of operation.

¹ Annex A ‘Guiding Principles for the Governance of the CGIAR System’, CGIAR System Framework, June 2016.

<https://library.cgiar.org/bitstream/handle/10947/4371/CGIAR%20System%20Framework%20-%20WEB.pdf?sequence=4>

² <https://library.cgiar.org/bitstream/handle/10947/4486/CGIAR%20IA%20Principles.pdf?sequence=1>

In 2016 when the second biennial review was due, the CGIAR went through governance transition in which the CGIAR Consortium rebranded as the CGIAR System Organisation (legal name change pending) and changed its internal governance structure to comprise a System Management Board (SMB) and System Management Office (SMO), while the oversight role of the Fund Council transitioned to a System Council with newly defined responsibilities and constituency. Preceding the transition, the CGIAR Consortium in consultation with the Centers agreed that the second biennial review should be more thorough than the “light review” undertaken in 2014, and proposed that the Independent Evaluation Arrangement (IEA) in charge of system-level evaluations in CGIAR would undertake the review. This approach is laid out in the 2015 CGIAR Intellectual Assets Report³. Consequently, the IEA included the review in its work schedule for early 2017.

Brief description of CGIAR IA Principles

The IA Principles (the policy) reaffirm CGIAR’s position on generating global public goods for achieving large-scale impact and are intended to further the CGIAR’s Vision: “A world free of poverty, hunger and environmental degradation”. However, the policy also recognises that restrictions to global accessibility may be necessary in some cases with more nuanced approaches and flexibility for managing intellectual assets, including through intellectual property rights and licensing arrangements, for targeting impacts to intended beneficiaries. Such arrangements may apply most often to outputs, derived for example from crops and livestock research, for further product development and scaling through commercialization by the private sector. The policy sets the conditions for the latter with the aim of serving transparency as well as maximum impact. Thereby it balances between the requirement for broad access to international public goods (Principle 1) and facilitating scaling through partnerships and restricted use of IP (Principles 2 and 5). The policy concerns matters that are critical for the reputation of CGIAR. At the time of the Policy’s approval, it was considered to reflect a compromise that “balances trust and Center autonomy with accountability and transparency.”⁴

The policy defines twelve principles, summarised here.

It acknowledges the commitment of CGIAR to developing **international public goods**, which requires broad access to and diffusion of results from CGIAR’s research. It also recognises the necessity of CGIAR to work in **partnerships**, both for accessing new knowledge and competences and for delivery and scaling for impact.

Two of the principles deal specifically with **plant genetic resources**, presenting the International Treaty on Plant Genetic Resources for Food and Agriculture (the Treaty) as the overarching context. **Farmers’ rights** are to be recognised and promoted as part of the efforts farmers, indigenous communities and agricultural professional conserving and improving genetic resources. The eleven CGIAR centers that have signed agreements with the Governing Body of the International Treaty on Plant Genetic Resources for Food and Agriculture are bound by the Treaty to facilitate access to genetic resources under the purview of the treaty and support their effective conservation and use.

³ <http://library.cgiar.org/bitstream/handle/10947/4372/2015%20CGIAR%20IA%20Report.pdf?sequence=4>

⁴ 7th Fund Council Meeting Summary, 2012.

Sound management of IA and IPR require compliance with all applicable laws, as well as integrity, fairness, equity, responsibility and accountability in managing IA and IPR in ways that enhance development and delivery of products and services while exercising due diligence concerning third party IPR.

For **maximizing global accessibility and impact**, the policy requires prompt and broad dissemination of research results and regulates exclusivity, incorporation of third party IA, and use of IPR over the Centers’ IA. It accepts charging of **fees** providing that this is done in line with and revenue used for furthering the CGIAR’s vision, and not applied to plant genetic resources where facilitated access is provided.

The principles also include procedural ones, including putting in place and sufficiently resourcing **capacity** to implement the principles; **implementation** in terms of guidance and consistency across policies, guidelines and practices; **reporting** to the System Organization and System Council for compliance and transparency while preserving essential confidentiality at all levels of reporting; provision for **audit**; as well as **review and amendment**.

In June 2013 the (then) CGIAR Consortium approved Implementation Guidelines for the CGIAR IA Principles intended to guide the interpretation of the policy and ensuring its coherent implementation at operational level.

Purpose and users

The purpose of the review will be to assess whether the IA Principles and their implementation is advancing the achievement of their intended purpose to maximize the global accessibility and impact of CGIAR research. The policy has a provision for the IA Principles to be amended in light of experienced gained that this review will gauge. The review will present recommendations concerning the IA Principles and their implementation for enhancing the effectiveness of the policy towards the long-term objective and for furthering the CGIAR vision.

Considering the significant lead time for upstream CGIAR-outputs to generate downstream impact and the diminishing control of CGIAR Centers over CGIAR partners and downstream intermediaries involved in scale-up along the impact value chain, assessing whether the IA Principles are achieving their intended purpose is a challenging task given the relatively limited evidence base available in the less than 5 years since the policy was approved.

Accordingly, the review will focus on providing lessons from the experience so far and in assessing the extent to which the IA Principles have been effective in the shorter-term in both promoting global accessibility of the intellectual assets produced or acquired by CGIAR Centers through the prudent and strategic management of their intellectual property rights, and and in facilitating the use of restricted arrangements permitted under the IA Principles when necessary for enhancing Center competitiveness and eventual impact from CGIAR’s research. The review will also consider operational and administrative efficiency, prudent use of IPR, and transparency of decision-making concerning IA. The review will provide lessons both on the use and implementation of the IA Principles by the Centers and the intended and unintended effects of the policy in Center operations and relations with partners, CGIAR System-level decisions and reputation at all levels.

The review will make recommendations for addressing any deficiencies or opportunities for improvement of the IA Principles as identified.

The major users of the review findings are the System Organization and System Council as well as the 15 CGIAR Centers. The CGIAR Legal and IP Network (CLIPnet) is an important group of stakeholders of this review. The review has also importance to the CRPs that plan and implement CGIAR research for outcomes and impact. The review also serves the CGIAR’s external partners.

Scope

The review will cover the IA Principles in a comprehensive manner regarding coverage, adequacy and appropriateness of the policy. The IA Principles fall into three types:

- Principles stating general intent (1-5);
- Principles implying best practice management or compliance (6-7); and
- Principles concerning process (8-12)

Principles 1 (International Public Good), 2 (Partnerships) and 4 (Genetic Resources for Food and Agriculture) form an important context for this review against which other Principles, their implementation and effects will be assessed.

Principle 3 (Farmers’ Rights) relates to specific IA. Activities for supporting the implementation of this Principle, as per the Implementation Guidelines, could include a number of “good practices” in specific circumstances. The review will cover such implementation aspects and their effects in limited scope focusing on lessons learnt from experience of implementation.

In addressing the effects of the implementation of the Principles, the review will focus on challenges that concern IA management and compliance at Center/System Organization level (6-7), particularly as experienced by Centers at implementation of research and delivery of its results. While, particular attention will be given to applying Principle 6 to plant genetic materials, given their central importance to CGIAR research and delivery and the importance of the International Treaty on Plant Genetic Resources for Food and Agriculture to the CGIAR, the review will also consider other genetic resources in light of other international agreements and the broad range of other knowledge outputs resulting from CGIAR research. The review will also give specific attention to the dissemination of research results, with reference to CGIAR’s Open Access and Data Management Policy, and any implications that adherence to the IA Principles will have on implementation of the Open Access policy. The latter policy will be evaluated in parallel in the first half of 2017, and there will be close linkage between the two reviews.

The review will assess issues and lessons concerning Capacity (Principle 8), including availability and requirement for resources necessary for implementing the policy, and review process of Implementation, Reporting and Audit (Principles 9-11). For fulfilling the Principle 12, the review will provide lessons, evidence and recommendations to the System Management Board and System Council, which may lead to the amendment or adjustments of the IA Principles.

It will also review the Implementation Guidelines alongside with the policy for their focus, clarity and detail and for understanding better the intent of the IA Principles.

It will assess trends in compliance and management practices promoted as well as trends in activities that reflect implementation of the policy and have implications to how well the overall objectives of the policy can be reached.

The review will assess the governance of the policy and oversight exercised by the System Organization (previously Consortium Board and Office), the IP group of the System Council (previously Fund Council IP group) and the System Council (previously the Fund Council).

Review criteria and questions

The review will assess both appropriateness and effectiveness of the IA principles and the efficiency and transparency of their implementation. It will also assess any reputational issues that may arise from the manner by which CGIAR manages and governs its IA, including through the policy.

A set of tentative review questions is presented below. The specific review questions will be refined and elaborated by the review team in consultation with relevant stakeholders.

Appropriateness

- Do the IA Principles represent a concise policy for intellectual assets management across Centers and CGIAR System Organization that is clear and unambiguous in terms of its interpretation?
- Is the scope of the IA Principles appropriate given the CGIAR mandate, nature of its IA and modality of work in partnerships?
- Are the IA Principles flexible enough to take into account technical advances that alter the nature of IA and the total spectrum of assets and outputs that the CGIAR deals with?⁵

Effectiveness

- Have the IA Principles and guidelines enhanced good practice and compliance in IA management at Center level within the scope of the policy?
- Have the IA Principles led to more active dissemination and improved accessibility of CGIAR research results and outputs?
- Have the IA Principles stimulated optimal use of exclusivity arrangements as permitted for furthering CGIAR vision?
- To what extent have the IA Principles enhanced or hindered CGIAR’s engagement in partnership for furthering CGIAR vision?
- Are the Implementation Guidelines appropriate in terms of coverage, and useful for clarifying the intent of the IA Principles and promoting best practice?
- Have there been major constraints concerning adherence to the policy, such as related to [increased] transactions costs and/or [insufficient] capacity in CGIAR, buy-in from donors?

Efficiency and transparency

- Are the IA Principles enhancing efficiency and transparency in IA related decision-making at Centers?
- Are the processes for implementing and reporting efficient and transparent (taking confidentiality requirements of individual cases into account)?

⁵ Examples are genetic material of molecular nature, dematerialization of genetic resources and trends in open data and knowledge management

- Has governance of the policy at the System level been efficient, including reviewing, reporting and decision-making?
- Are the IA Principles enhancing CGIAR’s reputation regarding its mission?

Effectiveness of System governance

- Has the System Organization (previously Consortium Board and Office) played its role optimally for enhancing effective and consistent management of IA and IP?
- Are the efforts to coordinate and harmonize IA management and reporting optimal considering the range of mandates of the Centers?
- Have CGIAR funders supported effective implementation of the IA Principles through adequate resourcing of necessary capacity?
- Has the System Council (previously Fund Council) demonstrated effective engagement in policy oversight?

Approach, methods

The review will be primarily summative assessing how the IA Principles have been used and what their effects have been against the overall objective of the policy to further CGIAR’s vision. The review will be desk-based relying primarily on document review and interviews. While preserving the review team’s independence, the review will be conducted in close collaboration with the SMO and consultation with Center leadership.

Document review will cover all documentation on the current policy and some historic documents, including:

- IA Principles and Implementation Guidelines
- IA annual reports
- Internal IA Principles biennial review undertaken in 2014
- Minutes of FC meetings concerning reporting on policy implementation
- Other CGIAR policy documents that have relevance to the review, policy on Open Access and Data Management, in particular
- Historic or background documents preceding the policy
- CLIPnet meeting records
- Relevance documents concerning the process and issues prior to approval of the IA Principles (e.g. documents of the Genetic Resource Policy Committee and Central Advisory Service – Intellectual Policy)

Interviews will be done with several stakeholder groups some of which will be covered comprehensively and others through sampling. The following is a tentative list of groups to be covered in interviews

- All Center IP focal points and legal staff (CLIPnet)
- Selected staff whose responsibilities relate to IP, public-private partnerships and other areas relevant to the review
- Senior management – representatives of all Centers and CRPs
- Selected partners knowledgeable about or dealing with IA with Centers; within them private sector partners as important sub-group

- Potential partners for whom IA/IP matters are of particular interest
- Beneficiary organizations or representatives concerning Farmer’s Rights issues
- All members of the FC/SC Intellectual Property Group (SC IP Group) who have served over the past years
- Other donors – a sample
- Center governing bodies –a sample
- Staff at SMO concerning research, data management, partnerships, IA and legal issues and auditing
- External experts knowledgeable about IA and IP

Surveys will be used if certain information needs to be collected in a systematic manner from large number of informants.

These sources of evidence will be used to collect data and information on a final set of review questions to be developed on the basis of the tentative questions in these TORs. In reaching its findings and conclusions, the team will triangulate the evidence.

Organization and timing

The review will be conducted by two independent experts, one taking a lead role. The team member will have expertise in legal and conceptual aspects concerning intellectual assets and property in international settings. At least one team member will have specific expertise on biological assets, and sufficient knowledge on international agreements and laws related to these assets, the Treaty in particular. The team will also have expertise on other kinds of intellectual assets including knowledge products, processes and technical tools. The team will have knowledge of agricultural and research and at least one team member will be familiar with the CGIAR. The team will have knowledge of issues addressed by the CGIAR policy on Open Access, and Data Management, particularly related to research and innovation concerning publishing, dissemination, access and disclosure.

In the course of acquiring evidence from different sources, the team members will sign confidentiality agreements with Centers, following process established by the Center, prior to requesting access to confidential information if that be deemed important for the review.

The policy stipulates for the policy to be reviewed every two years following an initial review in 2014 that was conducted internally by the then Consortium Office. The independent review is scheduled to take place between January and April 2017 and be completed for presentation to the System Council in May. It will thus be approximately on schedule. It will include the phases as shown in Table 1.

While the review is independent, it will be organized, including development of the TORs, and conducted in consultation with the CGIAR System Organization and the Centers. Table 1 also includes a plan for consultation with these stakeholders.

Table 1. Schedule and phases of the review

Phase	Period	Main outputs	Responsibility
Preparatory Phase	Nov – Dec 2016	Terms of Reference Review team recruited Consultation with Centers/SMO	IEA
Inception Phase	Jan	Inception Report	Team and IEA
Inquiry phase	Feb-March	End of phase: presentation of preliminary findings to Centers/SMB/SMO	Review team
Reporting phase	April	Draft review report circulated for comment to Centers/SMO Final Review Report	Review team

Preparatory phase

Preparatory Phase is the responsibility of the IEA and involves consultation with the SMO and Centers as key stakeholders. It includes the following:

- Finalize the Terms of Reference reflecting feed-back from SMO, Centers and the SC IP Group;
- In consultation with the SMO, run a search for team members;
- Select the review team leader and member;
- Collect preliminary documentation for desk review

Inception phase

The inception phase is the responsibility of the review team in collaboration with IEA. Given the specific scope of the review, the inception phase is short and intended for (i) finalization of the set of review questions; and (ii) elaboration of the methods including confirming the scope of document review, interview lists and questions, and use of any other methods, such as surveys. The tasks during the inception phase include:

- Review and synthesis of key documents concerning CGIAR intellectual assets and IP issues;
- Refinement of the review questions, development of an analytical framework for the review, and development of a review matrix that identifies means of addressing the questions, including document sources and key informants;
- Plan for consultation regarding preliminary findings and draft report;
- Indicative review report outline and division of responsibilities among team members.

These elements will be drawn together in a brief inception report that expands the TOR and, once agreed between the team and the IEA, represents the basis for the team’s work.

Inquiry phase

During the inquiry phase, the team will follow the review plan as specified in the inception report. It will focus on collecting data and information as per the review design, analysis of the evidence and formulation of findings. At the end of the inquiry phase, the team will share its preliminary findings with the Centers and the SMO.

Review Governance

The **review team leader** has final responsibility for the review report and all findings and recommendations, subject to adherence to CGIAR evaluation standards. The team leader is responsible for submitting the deliverables as outlined in Table 1.

The **IEA** will be responsible for planning, initial design, and management of the review. An IEA Senior Evaluation Officer will manage the review and an IEA Evaluation Analyst will support the team in coordination, information gathering and providing inputs to analysis. The IEA will also be responsible for quality assurance of the review process and outputs, communication about the review to stakeholders and dissemination of the results.

Dissemination of findings

The **Review Report** is the main output of the review. It will present the findings, conclusions, and recommendations, based on the evidence collected during the inquiry phase. The recommendations will be informed by evidence, clearly formulated, strategically relevant and targeted to specific stakeholders in CGIAR for guidance and action. The main findings and recommendations will be summarized in an executive summary.

Presentations will be given by the team leader for disseminating the report and its findings to targeted audiences, as agreed with the IEA. The form of these presentations will be planned during the inception phase.

The IEA will interact with the System Management Board and Office for development of a **management response**. In the response, action items could be identified for addressing recommendations that may be specifically targeted to specific bodies of the System or collectively across System actors. The new System Council will be the ultimate recipient of the review report and the response with the SC IP Group facilitating the discussion decisions on the report.

The review report and the response will be public documents. IEA will develop a dissemination strategy during the review process in consultation with the SMO.