Strengthening national capacities to implement the International Treaty on Plant Genetic Resources for Food and Agriculture

A proposal for follow-up activities to the Genetic Resources Policy Initiative (GRPI), prepared by Bioversity International

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Executive Summary
Plant genetic resources for food and agriculture (PGRFA) are vital for human food security. They are the basic building blocks of plant breeding, and by extension, plant-based food production. All countries are now mutually dependent upon PGRFA located within each others’ borders. The mutual reliance of countries on PGRFA will increase even more as a result of climate change-related pressures.

In the early 1980s, issues concerning access to genetic resources, and the sharing of benefits associated with their use, became extremely politicized. Previously settled patterns of exchange of PGRFA were called into question, with widespread reports of research being frustrated as a result of blocked germplasm flows. Efforts at international levels to ease matters by settling the legal status of PGRFA and access and benefit-sharing terms were largely unsuccessful until 2004, when the International Treaty on Plant Genetic Resources for Food and Agriculture (the Treaty) came into force. The Treaty establishes a multilateral system of access and benefit-sharing through which countries create an international pool of PGRFA to be used for research, training and breeding. In exchange for putting their own PGRFA in the pool, countries obtain access to PGRFA of all other countries, along with the collections held by international organizations that have signed agreements with the Governing Body of the Treaty. The Treaty sets out mandatory benefit-sharing requirements for when recipients commercialize new PGRFA products that incorporate material from the multilateral system. The Treaty also provides a constructive framework for additional international norm-setting concerning the conditions under which developing countries can get access to materials that are protected by intellectual property rights (and which are not in the multilateral system).

To date, very few countries have implemented the means to participate in the Treaty’s multilateral system. Many countries, however, have requested technical assistance in this regard from Bioversity International, the Treaty Secretariat and the Food and Agriculture Organization of the United Nations (FAO). Plans by these three organizations to coordinate their support for countries implementing the Treaty (the Joint Programme) were welcomed by the Governing Body of the Treaty, in 2007.

Bioversity recently ‘wrapped-up’ the six-year Genetic Resources Policy Initiative (GRPI), which supported research and capacity-building activities in support of policy-making related to genetic resources in six countries and two sub-regions. GRPI demonstrated the effectiveness of creating opportunities within countries for representatives from different stakeholder groups, sectors and disciplines to work together to identify policy gaps, and develop research and capacity-building agendas to support the development and approval of appropriate policies. The new project proposes to follow-up on GRPI, employing methods informed by lessons learned through GRPI, focusing on
Treaty implementation. It will support work in countries, with many of the same partners, where GRPI worked before, and additional countries.

In the context of GRPI follow-up, and the Joint Programme, Bioversity now proposes to work with partners in eight countries to: a) establish the requisite policy, legal, administrative and information-technology infrastructures and capacities to be able to participate in the multilateral system of the Treaty, and b) to take advantage of other forms of benefit-sharing under the framework of the Treaty, that is, international information-sharing and technology transfers on preferential terms. In addition, the proposed project will support activities to ‘ratchet up’ lessons-learned and progress-made within the eight countries through complementary, sub-regional awareness-raising and capacity-building activities.

Expected outputs of the project include:

- Draft policies, laws and or administrative guidelines for the implementation of the multilateral system in eight countries (in some cases they will actually be passed into law and practice);
- Agreements among primary stakeholders in eight countries regarding who needs to be involved in day-to-day decision-making to implement the Treaty;
- A critical density of stakeholders, including technical experts, policy makers, providers and recipients of PGRFA, in eight countries, with the collective capacity to support long term implementation (and exploitation) of the Treaty’s multilateral system;
- Recommendations for information systems, or information systems put in place, for eight countries to participate in the multilateral system;
- Recommendations for how to promote access to proprietary technology on most favourable terms in the eight countries;
- Guidance from the Governing Body on a number of issues brought to its attention by the project, and possible spin-off programmes of work, adopted by the Governing Body, related to some of the issues raised;
- Endorsement/recognition by regional agricultural research organizations and regional economic organizations of the importance of implementing the Treaty, and attendant tools to assist countries in their regions to do so, including draft policies, laws or administrative guidelines and background papers to assist national-level players to make decisions among options available to them;
- Governing Body’s consideration of a set of implementation guidelines for other countries to follow, and
- Publications that capture lessons learned and research results based on the forgoing activities.

Start-up activities will be staggered over the course of the first year of the project. In each country, project oversight committees will be formed to guide project activities. The committees will include representatives from relevant government departments, farmers’ organizations, civil society and private industry. They will be chaired by the country’s national Treaty focal point, or
by higher level political officials within the ministries of environment. Activities in each country will be divided into two phases. In Phase 1, national oversight committees will be established. Their first task will be to develop terms of reference for national base-line studies, including surveys of stakeholders’ key challenges and priority actions, and then oversee their execution. These studies will be used to inform what further research and capacity-building is required in the country in support of Treaty implementation, and to establish a base-line against which subsequent progress can be measured. In Phase 2, project partners will carry out the requisite research and capacity-building activities. This will include, among other things, identifying options for Treaty implementation in the countries concerned, and drafting policies, laws or administrative guidelines in furtherance of those options. Phase 2 activities will also include supporting ‘champions’ to follow-up on and promote the political decisions that need to be made in each country to get all of the requisite infrastructure approved and in place.

A project-wide Project Coordinator’s office will provide substantial technical support to project partners in each country, either directly from that office, or in the form of international experts brought in to work with the national partners. The Project Coordinator’s office will also promote linkages between the eight countries, and pursue opportunities with sub-regional organizations to promote lessons learned in the countries. Finally, it will ensure optimal coordination, through the Joint Programme, with other related activities in other countries and or sub-regions.

Bioversity will be responsible for establishing the Project Coordinator’s office, staffed by two scientists and an administrative assistant. Bioversity will draft letters of agreement with the ministries of agriculture in the eight countries. The ministries of agriculture will in turn be responsible for chairing the national oversight committees, and reporting back to Bioversity. Bioversity will coordinate project activities, through the Joint Programme. In this context, Bioversity will work closely with FAO and the Treaty Secretariat for the final country selection, reviewing project outputs, and developing final research products. The Secretary of the Treaty oversees activities coordinated through the Joint Programme. Project activities will be reported to the Governing Body.

Tangible products developed over the course of the project will be posted on the websites of Bioversity International and the International Treaty as maintained by the Treaty Secretariat. One of the most significant of such products will be a set of options and guidelines for other countries to follow. These guidelines will also be based on experiences in other countries where work is being coordinated through the Joint Programme. These guidelines will be presented to the Governing Body for consideration/approval. A subset of all of the materials generated will also be published as a book and or a special edition of a peer reviewed journal.
1. Background
The importance and international governance of pooled PGRFA

Plant Genetic Resources for Food and Agriculture (PGRFA) are vital to food security. They are the basic building blocks for plant breeding. We rely upon the genepools of domesticated species (and their wild relatives) as sources of resistance to biotic and abiotic stresses. As pressures associated with climate change increase, so too will our reliance on PGRFA.

Countries and continents around the globe are interdependent on genetic resources, that is to say, they are mutually dependent upon PGRFA located within each others borders. This interdependence is a function of the history of crop domestication and the global movement of crops and associated agricultural technologies around the globe as a result of exploration, colonialism, free trade, economic development, and the associated ‘globalization’ of a number of foods. It is estimated that today, 60% of calories consumed by humans worldwide come from just four crops: rice, wheat, maize and sugar. Our interdependence on PGRFA can be seen in the pedigrees of modern varieties that are grown all over the world, with ‘end point progenitors’ from tens of different countries from two or more continents. Our interdependence can also be seen in the global movement of PGRFA. Each year, gene banks and breeding programmes send millions of samples of PGRFA across international borders in support of plant breeding, research, and conservation.

Until fairly recently, there was no formal governance structure or rules concerning the international management and use of pooled PGRFA. At international levels, PGRFA were treated as part of the public domain, with anyone able to use resources for any purposes. (Of course, some countries sought to control access to some materials within their borders, but these situations were rather the exception than the rule.) In the 1970s and 1980s, however, issues associated with the management and use (including commercialization) of PGRFA became highly politicized, polarized between developed and developing countries. As a result, international flows of materials have been interrupted, leading to frequent reports of frustrated research and conservation efforts being put on hold.

These tensions came close to being resolved, in 1983, when the Food and Agriculture Organization of the United Nations (FAO) Conference adopted the International Undertaking on Plant Genetic Resources for Food and Agriculture (IU)\(^1\). The IU proclaimed ‘the universally accepted principle that plant genetic resources are a heritage of mankind and consequently should be available without restriction.’ (Article 7). However, this important principle was not actually universally accepted; eight countries abstained from adopting the IU on the basis that, among other things, it did not recognize the

primacy of plant breeders’ rights over the need to provide unrestricted availability. Efforts to accommodate the abstaining countries, and to mollify those who did not like the compromises necessary to do so, led to the adoption, in 1989, of a resolution allowing for the recognition of plant breeders’ rights within the IU framework, and another resolution recognizing the concept for farmers’ rights. Most significantly, as far as norms affecting the pooling of PGRFA are concerned, in 1991, the Commission on Genetic Resources for Food and Agriculture (the Commission) adopted a third resolution which recognized the sovereign rights of countries to regulate access to PGRFA within their borders. This resolution is hard to reconcile with the ‘universally accepted principle’ of ‘common heritage of humankind’. The friction between these two principles never really got to be ‘played out’ as events at the Commission concerning the IU were overtaken, in 1992, by the adoption of the Convention on Biological Diversity.

In 1992, the Convention on Biological Diversity (CBD) was adopted. The CBD recognized ‘the sovereign rights of States over their natural resources, the authority to determine access to genetic resources rests with the national governments and is subject to national legislation.’ The CBD came into force in 1993. Between the 1991 resolution of the Commission, and the CBD, the concept of an international legal framework designed to support international pooling of PGRFA was almost entirely eradicated.

In 1993, the FAO Conference requested the Commission to host intergovernmental negotiations for the revision of the IU in harmony with the CBD, considering the issue of access to plant genetic resources, including ex situ collections that are not addressed by the CBD; and farmers’ rights. These negotiations took longer than anyone imagined they would. After seven long years, they led to the adoption of the text of the International Treaty on Plant Genetic Resources for Food and Agriculture (the Treaty).

The International Treaty on Plant Genetic Resources for Food and Agriculture – challenges for national implementation

In principle, the Treaty provides a solution for a range of problems that the IU was unable to achieve. The Treaty creates the ‘multilateral system of access and benefit-sharing,’ which is, de facto, a single PGRFA pool, subject to intergovernmental guidance, provided by the Governing Body of the Treaty. All contracting parties agree to place ex situ and in situ materials that are ‘in the management and control’ of the national governments concerned ‘and in the public domain’ into a common pool. In return, they get access to everyone else’s material in the pool. In addition, the Treaty invites international organizations, like the Centres of the Consultative Group on International

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2 Resolution 4/89 (on breeders’ rights) and Resolution 5/89 (on farmers’ rights) of the Third Session of the Commission on Plant Genetic Resources, held in Rome from 17 to 21 April 1989, were adopted by the FAO Conference at its twenty-fifth session in 1989. See FAO Conference Report, available at URL: http://www.fao.org/docrep/x5588E/x5588E00.htm.


4 CBD, supra note 7, Article 15.1.
Agricultural Research (CGIAR), to make agreements with the Governing Body of the Treaty to place their collections under the Treaty’s framework, and to distribute materials using the standard material transfer agreement (SMTA). State parties are encouraged to motivate national and legal persons within their boundaries to voluntarily include collections within the multilateral system.

The operation of the multilateral system can and should facilitate a gradual readjustment in the roles countries and international organizations play in the maintenance and use of the global PGRFA pool. Some countries and organizations will increase their capacity to conserve and supply quality germplasm. Other countries and organizations, because they have guaranteed access to germplasm through the multilateral system, will be able to dedicate less of their resources to maintaining their own collections. Instead, they can consider assuming more internationally oriented roles in support of the multilateral system. For example, they could, through internationally coordinated research agreements, assume responsibility for evaluating, characterizing, and or regenerating materials that other countries are holding and supplying through the multilateral system.

The multilateral system does not, however, extend to all PGRFA; it is limited to a list of 64 crop and forage genera included in Annex 1 of the Treaty. Genera not included in the list are, by default, covered by whatever other existing rules apply. In most cases, that means the CBD. Nor is the multilateral system entirely global. Contracting parties are not legally bound to make materials available to non-Parties. At present, 120 countries have ratified the Treaty. A few very big countries are among those that have not ratified: China and the United States. Privately held collections (e.g. held by companies, civil society organizations, individuals, or private universities) are not mandatorily included in the multilateral system. The owners of those collections can voluntarily include them, but it is not automatic under the Treaty. A significant proportion of the potentially beneficial materials are currently under intellectual property protection. Such materials are not however, included in the multilateral system, unless the owners voluntarily place them in it.

The Treaty also establishes mandatory benefit-sharing rules associated with the multilateral system. Recipients who incorporate multilateral system germplasm into new products, which they commercialize, and prohibit others from using for research or breeding, must pay 1.1% of gross sales (minus 30% for shipping, etc.) into an international fund established under the Treaty. That fund will be used to support conservation and use related activities in developing countries and countries with economies in transition. Another form of benefit-sharing promoted by the Treaty is access to scientific information regarding PGRFA. A third form of benefit-sharing promoted by

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5 The CGIAR Centres, when signing agreements with the Governing Body, issued a statement stating that they would continue to distribute materials to all countries, including non-contracting parties to the Treaty.
the Treaty is the transfer of technologies that are subject to intellectual property rights (and not, therefore, in the multilateral system) to developing countries “under fair and most favorable terms”. Unfortunately, the Treaty does not state what those terms actually are, but it does provide a useful context and legal framework in which governments can constructively consider options, best practices, and possibly even guidelines.

The Treaty came into force in 2004, but the multilateral system could not start to operate until all contracting parties had agreed upon the terms and conditions to be included in the SMTA, which would accompany all transfers of materials under the multilateral system. Negotiations for the creation of the SMTA took on a life of their own, and were not concluded until June 2006, when the SMTA was adopted by the First Session of the Governing Body of the Treaty. From that moment forward, enough of the international architecture in support of the multilateral system has been in place for countries to start participating actively in the multilateral system, both as recipients and providers of material. Since then, eleven CGIAR Centres and five other international organizations have signed agreements with the Governing Body, placing their collections under the Treaty’s framework.

Countries, however, have been slow to put in place the legal and administrative structures to participate in the multilateral system. To date, only a few countries have publicly announced that they are using the SMTA when making materials available from ex situ collections. Furthermore, no country has announced legal and administrative means to make in situ material available under the multilateral system. There are a number of explanations for the relative slowness of state parties to implement the Treaty’s multilateral system. The reasons include:

- Uncertainty, in some cases, among high-level political representatives, concerning the benefits of membership in the Treaty, and ability to participate in the multilateral system in particular;
- Lack of awareness within countries about PGRFA in general, and the Treaty in particular, with the result that Treaty implementation is not a priority for most governments;
- Uncertainty about the content and condition of ex situ collections in the country and even more uncertainty about the status of in situ materials
- Uncertainty about whether to approach implementation of access and benefit-sharing rules pursuant to the CBD and the Treaty at the same time, or separately. If together, in most countries, at least two ministries will need to be jointly involved: agriculture and environment. There are uncertainties or insecurities in a lot of countries about embarking on such joint activities, given histories of tension or at least lack of cooperation between these ministries;
- Uncertainty about which ministries or departments have authority to regulate access to different classes of PGRFA within the country, for example, wild relatives of Annex 1 species in in situ conditions, or non-Annex 1 PGRFA.
- Uncertainty about what is meant by the term ‘genetic resources’ and how to address that uncertainty in the context of implementing the Treaty’s multilateral system and under the CBD (since, they appear to assume slightly different working definitions, despite the fact that the definitions in both the Treaty and the CBD are the same);
- Uncertainty about what materials within the country are actually ‘under the management and control’ of the national government, and ‘in the public domain,’ and therefore automatically within the Treaty’s multilateral system;
- Uncertainty about how to address providing access to in situ materials under the Treaty;
- Uncertainty about how to encourage organizations within the country that are not formally part of the government to participate in the multilateral system, both as providers and recipients
- Uncertainty about whether legislation is necessary, given the political-legal traditions in the country, or whether some form of administrative decision-making will suffice;
- Uncertainty about what the form and content of a national law should actually be, since no one has yet developed a national law as a precedent to look to. Countries do not know what the range of options are for them to choose from, to craft particularly well-suited approaches to implementation that respond to their different capacities and needs. Even less is known about how countries can re-orient their activities to be part of internationally-coordinated activities in support of conserving and using PGRFA;
- Uncertainty about whether pre-existing policies and laws are compatible with implementing the Treaty and the multilateral system, or whether some such policy and laws need to be amended first. Uncertainty about whether it would be better to develop regionally harmonized means of implementing the Treaty, and what the process should be for taking such a regionally harmonized approach;
- Uncertainty about how implementation of the multilateral system relates to the implementation of other Treaty components such as conservation and sustainable use of PGRFA, and farmers’ rights;
- Uncertainly about the requisite combination of national institutional capacities to support, and take advantage of, the multilateral system;
- Lack of capacity in many countries to address the uncertainties in the previous bullet points; and
- Lack of digital information systems to collect and ‘publish’ information about the materials within the country that are part of the multilateral system.

Countries that negotiated, signed, and later ratified or acceded to the Treaty understood the ‘big picture’ in terms of what the Treaty achieves, requires and allows. On the other hand, it is clear that many countries, particularly developing countries and countries with economies in transition require additional forms of assistance – in the form of targeted capacity-building,
research and awareness-raising – to be able to move beyond ratification to the implementation of the Treaty.

In 2007, the Treaty Secretariat conducted a survey of contracting parties’ needs vis-à-vis implementing the Treaty. Technical assistance to address policy and legal questions was one of the most frequently listed demands.

Despite the coming into force of the Treaty, the adoption of the SMTA, and the relatively positive outcomes of the three meetings of the Governing Body of the Treaty so far, the Treaty is still slow in implementation at country level. If there is not more significant progress implementing the Treaty at national levels, it is possible that the Treaty will become ‘a dead letter’ and the opportunity it provides members of the global community to move forward, together, using and conserving PGRFA, will be squandered. There seems to be some inherent challenges, driven mainly by the various levels of uncertainty surrounding some implementation steps, and also by lack of capacities in countries in a number of key domains. These barriers need to be removed.

The Joint Programme to coordinate technical assistance to developing countries for implementing the Treaty

Given that numerous countries have approached the Treaty Secretariat, Bioversity and FAO for technical assistance implementing the Treaty, the three organizations agreed to coordinate their efforts, to maximize efficiencies. The coordination mechanism is called the Joint Programme. Under this Joint Programme, the Treaty Secretariat, FAO and Bioversity meet regularly to coordinate their activities to ensure that projects are overall regionally balanced and thematically consistent, with the result that the Treaty is implemented in internationally complementary ways. Staff from all three organizations work closely together in planning/coordination of activities; in addition FAO staff participate in Bioversity-lead activities, and vice versa, as appropriate. The Secretary of the Treaty provides overall supervision and guidance for Joint Programme activities, ensuring that all its activities are in accordance with the guidance of the Governing Body, as set out in the Work Programme adopted at its second session.

The Swedish government has provided to the Treaty Secretariat, 1 million USD to support Treaty implementation-related activities, for two years, under the auspices of the Joint Programme. With this support, under the overall coordination of the Joint Programme, Bioversity and FAO have been involved in activities in Morocco, Syria, the Philippines, Malaysia, Zambia; and in sub-regionally based activities through the Association for Strengthening Agricultural Research in Eastern and Central Africa (ASARECA), the Arab Organization for Agricultural Development (AOAD) of the Arab League, the

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Southern Africa Development Community (SADC) Plant Genetic Resources Centre (SPGRC) and the Secretariat of the Pacific Community. A number of additional countries have formally indicated interest in being partners in activities coordinated through the Joint Programme, focusing primarily on implementing their access and benefit-sharing related obligations under the multilateral system. Some of those countries have also indicated an interest in simultaneously addressing issues concerning the promotion of farmers’ rights, and the sustainable use of PGRFA, both of which are also addressed by the Treaty.

The Treaty Secretariat provided the Third Session of the Governing Body, in June 2009, with information about the Joint Programme. The Governing Body welcomed the work coordinated to date under the auspices of the Joint Programme and requested the Treaty Secretary “to continue overseeing the joint capacity building programme for developing countries set up by the Treaty, FAO and Bioversity International to provide technical assistance with implementation of the Treaty and in particular its Multilateral System of Access and benefit-sharing” The Governing Body invited “additional funding and partners for its expansion.” The Governing Body also recognized “the need to expand […] the number of countries that receive assistance” from the Joint Programme.

Through the Joint Programme, Bioversity would ensure that the activities supported through this proposal would also be executed in a coordinated, complementary manner with other Treaty implementation activities in which FAO and the Treaty Secretariat are involved. The work proposed in this document would involve a wider range of stakeholders, in more consultations and in more in-depth research and capacity building activities, over longer periods of time (with more financial and technical support transferred to the national partners) than is currently being supported through the Swedish grant to the Treaty Secretariat under the Joint Programme.

Building upon the Genetic Resources Policy Initiative
From June 2002 to December 2007, Bioversity successfully implemented a project entitled, the Genetic Resources Policy Initiative (GRPI), in partnership with the International Development Research Centre (IDRC); the Directorate-General for International Cooperation of the Ministry of Foreign Affairs of the Netherlands (DGIS); the German Federal Ministry for Economic Cooperation and Development/the German Agency for Technical Cooperation (BMZ/GTZ); and the Rockefeller Foundation. The GRPI project was designed to support research and capacity-building activities related to genetic resources policy-making in countries. The project worked in six case-study countries: Vietnam, Nepal, Egypt, Zambia, Peru, and Uganda. It also supported sub-regional activities in East Africa, Central and West Africa, and to a much lesser extent, South America.
GRPI operated through what came to be called the “3M” approach: multi-stakeholder, multi-disciplinary, multi-sectoral. In each country and sub-region, GRPI supported task forces, comprised of representatives of a broad range of stakeholders, sectors and disciplines within the countries or regions concerned, to oversee national surveys to identify opportunities for genetic resources policy-related interventions, and to develop research and capacity-building activities in support of those policy-focused interventions. GRPI then supported those same task forces to oversee the research and capacity-building activities. Over the course of the project, the task forces proved to be very useful mechanisms for providing overall positioning of project activities among the existing constellation of organizations, mandates and actors, and for promoting the ‘uptake’ of project products in policy-development processes (and for kick-starting those processes in a number of cases).

The 3M methodology used by GRPI proved to be fundamental for instituting policy awareness and formulation in relation to PGRFA within the countries. The task forces in GRPI countries also proved themselves to be effective mechanisms for carrying out genetic resources policy-related research and capacity-building involving a broad range of participants. Part of the reason they were so effective is that they could draw upon a lot of expertise spread amongst different departments, ministries, private industry, civil society, and so on. Another reason they were effective is that they generally enjoyed a considerable degree of political support and legitimacy.

The Treaty was not in force when GRPI was initiated, nor had the negotiations of the SMTA even begun. As time progressed, and the SMTA was adopted, more and more of the issues covered by GRPI came to be understood as fitting within the overall framework of the Treaty, and promoting some of its key objectives and related articles. By the end of the project, many partners identified Treaty implementation, and the multilateral system (and farmers’ rights) as priority future activities. We have, of course, maintained contact with many of our GRPI partners. And many of them have indicated a desire for support to work through GRPI-like modalities to support Treaty implementation in their countries. This proposal is designed to do precisely that.

2. Introduction: a project to facilitate national implementation of the International Treaty

In response to the situation outlined above, as follow-up to GRPI project, and in the context of the Joint Programme, Bioversity is submitting this proposal to support national partners in eight countries to implement the International Treaty. The project would focus primarily on implementing the access and benefit-sharing provisions of the Treaty (including the multilateral system, information sharing and technology transfer).

Best practices and lessons learned through GRPI would inform how project activities focused on Treaty implementation are structured, both in countries where GRPI did have a presence, as well as in those that were not directly
involved with GRPI. The project would seek to work through bodies closely resembling the GRPI task forces – and the GRPI task forces themselves in so-called ‘GRPI countries’ -- to conduct background research, awareness-raising and capacity-building targeted to support the implementation of the Treaty. These project oversight committees would initially decide what kinds of research and capacity-building are most relevant given the particular circumstances of the country. Once agreed upon, the project would support the implementation of those activities. The overall focus of the new proposed project activities – Treaty implementation, with a particular focus on access and benefit-sharing - is more directed than in the GRPI project. Correspondingly, the expected outcomes of the new proposed project – new draft laws, policies and procedures, either adopted or well on their way to being adopted by the end of the project – will be more comparable, and the project will be able to benefit from comparisons of results across the eight countries.

3. Objectives of Project
The objectives of the proposed project are to:
- Promote countries’ participation in the multilateral system of access and benefit-sharing of the Treaty;
- Identify means by which countries are best able to obtain access to proprietary PGRFA on ‘fair and most favourable terms’; and
- Assist countries in identifying options for the implementation of other, supportive or closely-related aspects of the Treaty.

4. Approach and Methodology:
A country-driven focus
The project will have a strong country-focus in its implementation. It will support work in countries that are able to make high-level political commitments to putting legal and administrative mechanisms in place in order to implement the multilateral system of the Treaty. To that end, it will require formal requests for support/partnership from countries, mainly through the national Treaty focal point or higher-level political authority in countries concerned. One of the lessons-learned in GRPI was that it is important to secure the initial buy-in and continued involvement of key national policy makers in project activities. GRPI did not require statements of commitment from such policy makers as a precondition for supporting national level activities, but in retrospect, it clearly would have been helpful. Another means of maintaining policy makers’ interest over the longer term in project activities would be to provide those same policy makers, or their offices, or at organizations they designate, the opportunity to chair the multi-stakeholder national project coordinating committees that would guide project activities within each country. In the GRPI project, the Ministry of Agriculture and Rural Development (MARD) appointed the Hanoi Agricultural University as the GRPI task force chair. This approach proved to be a very useful; as the Ministry’s designated task force Chair, the University was able to ensure that MARD both a) paid attention to important project developments, and b) provided guidance on key policy issues as they arose.
A number of countries have formally indicated interest to partner Joint Programme activities; more than can currently be supported with the money provided by the Swedish government.

The project will focus on developing countries. It will seek to achieve a rough balance of activities between countries in Africa, Latin America, South and East Asia, and Central West Asia and North Africa. Country partners will have ratified or will be close to ratifying the Treaty.

The project will seek to involve, and will give some priority to, countries that were involved in the GRPI project, thereby taking advantage of the infrastructure that GRPI helped to create and sustain, and the GRPI national task forces in particular. That said, those same countries will also need to channel requests from the national Treaty focal points, or higher level political authority, as will any partner country. So, for example, while the Peru and Egypt GRPI task forces were chaired by NGOs, requests for support for Treaty implementation under this proposal would have to come from the national Treaty focal point or higher political authority in the ministry of agriculture.

Regional engagement
The project also intends to work with and make use of existing sub-regional organizations and protocols in the implementation of the project goals and in the scaling up of project outcomes and products. In this regard, the project will seek to engage both sub-regional agricultural research organizations (SROs) and sub-regional or regional economic community (REC) organizations. Another lesson learned in GRPI was that participation of REC organizations is strategically very important for increasing the possibility of follow-through. It is not sufficient to only engage technical PGRFA experts through regional agricultural research organizations if high level political support is required for successful project outcomes. Once significant progress has been made in a country, the project will seek to highlight those activities, as models to be considered by neighbouring countries, through additional, complementary, regional processes through these regional bodies.

Project management within countries
As stated above, given the nature of the project, and what it hopes to achieve, it will be useful for the project activities, in each country, to be overseen by a committee composed of representatives from a range of interested groups, including the ministries of agriculture, environment, and whatever ministry is responsible for actually developing and ushering through legal texts. The national oversight committee should also include representatives from public genebanks, agricultural research organizations, plant breeders, extension services, farmers’ organizations, seed companies, and civil society organizations. GRPI demonstrated how such oversight committees can promote national partners’ sense of ownership of the project, and legitimize project outputs in the eyes of people in the country-concerned. Another
lesson-leaned in GRPI was the importance of getting the appropriate mix of disciplinary expertise represented on project oversight committees and in project activities, from the very beginning. In particular, in most of the countries where GRPI supported activities, there was a paucity of natural resource and institutional economists with knowledge of genetic resources-related issues. It took a long time to find such people within the country, or to develop adaptive strategies to introduce specialists from outside the country to provide technical support. One of the earliest tasks under this proposal will be to assess the presence (or absence) of people with requisite disciplinary expertise in the countries concerned, and to develop with partners strategies to address imbalances.

As stated above, it is critically important that the national oversight committee is convened and chaired by the country’s Treaty focal point, or by a higher-level competent authority in the ministry of agriculture. Alternatively, they should be chaired by people (or organizations) designated by the Treaty focal point or a higher level competent authority. The Chair will ultimately be responsible for appointing members of the oversight committee, taking into consideration the participatory modus operandi of the project. The Project Coordinator will be very clear about expectations of the project in this regard.

**National level activities**

**Phase 1 activities within countries**

The national oversight committees will organize project initiation workshops in each country to introduce participants to the objectives and methodology of the project. They will also use the workshop to get feedback from participants about particularly important issues vis-à-vis Treaty implementation in the country, and to obtain commitments from participants to be involved/engaged in future project activities. It will also assess whether there are additional stakeholder groups that should be involved, that are not at the first meeting, with the intention that the chair will invite representatives from those groups to join the committee.

The oversight committees will consider the terms of reference for the base-line studies that will be necessary to a) inform decision-making about how to ‘tailor’ Treaty implementation to the particular circumstances of the country; and b) to provide benchmarks against which progress can be measured at a later date. To assist the process, the Project Coordinator will provide the oversight committees with a tentative list of subject areas to address in those studies such as those included in Table 1, below. The oversight committees will decide if any additional fields of information are relevant, or if some of the listed fields should be dropped from the study. The oversight committees will then determine how much of the information can be gathered from existing sources (e.g. the national reports in support of the Second State of the World Report on PGRFA, or the National Information Sharing Mechanism) and where additional research is required to complete the studies (e.g. through national surveys of stakeholders’ priorities and challenges, surveys of
PGRFA users, desk studies, participatory research, etc). The oversight committee will inform the Project Coordinator about their plans to conduct additional research for comment/approval. Subsequently, the oversight committees will oversee the hiring of consultants to conduct the requisite studies, and forge links between researchers and people they need access to for their research.

In each country, after the base-line study is complete, the oversight committee will hold national workshops to:

- Raise awareness about the Treaty and the multilateral system in particular;
- Review the baseline studies;
- Confirm ‘road maps’ for the development of appropriate policies, laws, and administrative procedures, and develop the requisite institutional capacities for the country’s participation in the multilateral system of the Treaty;
- Identify which additional research or capacity-building components are needed to follow the ‘road map’;
- Assess whether there is a need for technical support in developing information systems to support the country’s participation in the multilateral system of the Treaty;
- Consider information gathered concerning efforts to obtain proprietary technology outside the multilateral system, and consider what additional national-level research and capacity-building may be necessary to address this issue more fully; and
- Encourage the continued interest and involvement of high-level policymakers in project activities and their support for related policy development activities in the country.

<table>
<thead>
<tr>
<th>Table 1: Non-exhaustive list of issues to be addressed in Phase 1 national base-line studies</th>
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<tr>
<td>Among the issues that the national base-line studies would take into consideration are the following:</td>
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<td>- Stakeholders’ surveys concerning most pressing needs, and related challenges;</td>
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<td>- The status of PGRFA in the country;</td>
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<td>- Identification of PGRFA users and uses, including farmers, public sector researchers and breeders, and private companies;</td>
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<td>- Trends in the experiences of different users in obtaining PGRFA from various sources (this would include consideration of both ‘normal’ PGRFA, and that which is subject to intellectual property rights);</td>
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<td>- Past and present patterns in flows of PGRFA into, out of, and within the country;</td>
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<tr>
<td>- Evidence of current and future shifts in patterns of use and conservation of PGRFA in the country;</td>
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<tr>
<td>- Review of past and current experiences with international cooperation focusing on PGRFA conservation and use;</td>
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<tr>
<td>- Identification of information systems used to keep track of PGRFA and</td>
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related information;
- Case studies and trends in obtaining access to proprietary materials for inclusion in research, breeding and production;
- Review of policies and laws that either complement, or impede, implementation of the Treaty’s multilateral system, including access and benefit sharing policies, laws and practices, and
- Review of the distribution of relevant policy-making mandates across ministries, and processes for policy and policy-making or revision.

Numerous authors, with expertise in different disciplines will be required to undertake components of the base-line studies. They will likely need to engage in a range of activities, e.g. surveys, desk studies, field research, and so on. It is possible that instead of a single base-line study, a number of smaller studies and papers will be produced.

**Phase 2 activities within countries**

Within each country, Phase 2 activities will be dedicated to the following activities:
- Actually developing draft policies, laws and or administrative procedures identified at the end of Phase 1, according to the road map identified in the earlier national workshop. This will involve, among other things, additional targeted research, awareness-raising and capacity-building activities. It will also certainly involve consulting with competent authorities and stakeholders throughout that process, and supporting national partners in introducing those drafts through appropriate channels for formal adoption. Depending upon the requisite procedures in each country, the project may end before the policies or laws are adopted. Where the policies, laws or administrative procedures are put in place before the end of the project, the project will monitor their implementation;
- Raising the capacity of a wide range of stakeholders within the country to execute responsibilities under the Treaty, and equally importantly, to take advantage of its multilateral system of access and benefit sharing;
- Conducting follow-up research and capacity-building concerning organizational mechanisms and processes in support of transfers of proprietary technology (parallel and complementary to the multilateral system). This would involve comparing the situation of the country concerned with other countries that have taken some proactive steps to address this issue; considering trends in user needs within the country, shifts in the international policy environment and the behaviour of ‘owners’, and identifying options for possible organizational and policy responses; and
- Liaising with the office of the Treaty Secretariat to obtain information technology support (with additional funds made available through the Treaty Secretariat).

**Project wide, cross-cutting activities**
In addition to the national level activities and products, the project will conduct a number of activities that cut across the activities in the eight countries.

Perhaps the most important of such activities will be to draw on the collective insights and lessons learned in the eight countries to develop a set of guidelines to be followed by other countries in the future. The process of developing these guidelines will include reflection on country-specific activities, consultation with international experts, workshop testing, and submission for consideration by the Governing Body.

Another ongoing activity conducted on a project-wide basis will be the identification and analyses of legal and policy issues that arise in the context of project activities. Given the nature of some of these issues, the Project Coordinator will again consult with the national oversight committees, international experts, and the Treaty Secretary. The Project Coordinator will also seek to refer particularly difficult issues to meetings of the international experts on the multilateral system (which is periodically convened by the Secretariat to provide advice on difficult legal issues associated with the use of the SMTA). In some cases, the Project Coordinator may seek the guidance of the Governing Body itself. Ultimately these issues and their resolutions will be the basis of research papers and policy briefs associated with the resolution of policy and legal challenges, and comparative analyses of factors contributing to the progress (or lack thereof) of the eight countries implementing the Treaty.

The Project Coordinator’s office will develop reports of project activities for submission to the Secretary of the Treaty and, through him when appropriate, to the Bureau of the Treaty (comprised of representatives of each region), the Expert Group on the Multilateral System and the SMTA (created by the Secretary), and the Governing Body itself. The Project Coordinator will be responsible for coordinating project-wide adjustments in response to decisions or recommendations of those bodies, when appropriate.

In support of all of these project-wide activities and outputs, the Project Coordinator’s office will organize meetings of the national oversight committee chairs. Representatives of other country-based activities supported under the Joint Programme will also be invited to those meetings.

5. Outputs and products
The outputs supporting the first objective – the implementation of the multilateral system - will include:

- A critical density of people in eight countries, representing a wide range of perspectives, will have advanced technical expertise concerning the Treaty and how it should be implemented in their country. They will have the capacity to address how the multilateral system interfaces with other aspects of the Treaty (including farmers rights, sustainable use, etc) and other international laws that apply in
the country (e.g., the Convention on Biological Diversity). These people will be well positioned ‘champions’ to support follow-up implementation efforts;

- A mutual understanding between representatives of ministries of environment and agriculture concerning who has authority to grant access to different kinds of genetic resources in different situations;
- Draft policies, legislation, and administrative guidelines for the implementation of the multilateral system in eight countries. In some cases, these will be adopted and made operational in the lifetime of the project. Where they are not, the project will develop action plans to guide follow-up activities by the partners, after the official end of the project;
- Complementary benefit-sharing components, including the exchange of information, and provision of access to proprietary technologies ‘on most favourable terms’.
- Guidelines for other countries (beyond the eight involved in the project) to follow in their own efforts to implementing the Treaty, and the multilateral system. These guidelines will be reviewed and endorsed by the Governing Body; and
- Increased awareness at the level of sub-regional agricultural and economic organizations in two sub-regions concerning the Treaty in general, and the multilateral system in particular. Increased commitment, and technical capacity, of those organizations to promote the implementation of the Treaty by countries in the region. Endorsement or adoption by those regional organizations of ‘road maps’ for the implementation of the Treaty in those regions, along with precedents of draft (or adopted) national laws, policies or administrative practices to be considered by national authorities.

Products associated with these outputs will be as follows:

- Eight national base-line studies as referred to in Table 1 above, addressing elements that are most relevant to the multilateral system;
- National-level research papers, based partly on the base-line studies, addressing:
  - Results of surveys of stakeholders’ priorities and challenges
  - Potential legal and administrative hurdles that have to be overcome to implement the Treaty, with a particular focus on the multilateral system;
  - Different possible approaches to implementing the Treaty, and the multilateral system in particular, with an eye towards complying with international legal obligations; taking full advantages of membership in the Treaty for the country concerned; administrative efficacy; and strengthening PGRFA-use pathways in the country;
  - Identification/evaluation of the role that the country concerned (or organizations within the country) can play in the context of the multilateral system and the interconnected world of research partnerships the Treaty promotes, for example, as recipients or
providers of materials, or in complementary roles, characterizing materials, evaluating their performance in different settings, or regenerating them for distributors, etc.;

- Sixteen national awareness-raising and capacity-building workshops. Reports of those workshops; and
- Four regional awareness-raising and capacity-building workshops. Reports of those workshops.

- Approximately four in-depth research papers, coordinated by the Project Coordinator’s office, concerning legal and policy issues associated with the implementation of the multilateral system that arise in more than one country; and

The outputs supporting the second objective - technology transfer ‘on most favourable terms’ - will include:

- Increased awareness among a range of stakeholders within eight countries concerning organizational, legal and strategic options for promoting access to proprietary technologies. Increased awareness of the institutional capacities is necessary to effectively implement such options. Increased awareness of how other countries and organizations have attempted to address the issue. Increased awareness also about how this issue fits within the framework of the Treaty, and can perhaps be addressed in future meetings of the Governing Body;

- In some of the eight countries, there may be policy decisions made to pursue a particular option, for example, to establish technology transfer offices or other mechanisms to assist nationals in their efforts to obtain access to proprietary technologies;

- Consideration by countries represented at sub-regional meetings about priority technologies to which they require access, and the means for promoting that access, coordinated at a sub-regional level; and

- Consideration, within the eight countries and sub-regional bodies, about when and in what manner, to introduce the issue into deliberations of the Governing Body. If the climate within the Governing Body is such that a constructive discussion could take place, one or more countries (jointly, or on their own, or through their regional group) will make submissions to the Governing Body.

Products associated with these outputs will be as follows:

- Contributions to eight national base-line studies as referred to in Table 1 above, addressing elements that are most relevant to promoting access to technologies subject to intellectual property rights;

- National-level research papers, based partly on the base-line studies, addressing:
  - Opinions/perspectives of stakeholders within the country on what kinds of proprietary technologies they need the most, and what kinds of administrative or policy options they think are most appropriate to promote such access;
  - The degree to which approaches in other countries may, or may not, be appropriate in each of the eight countries;
The process it would be necessary to follow in the country to proactively implement public or parastatal mechanisms to promote technology transfer; and

- Sections of sixteen national and four sub-regional awareness-raising and capacity-building workshops dedicated to technology transfer issues.

- Approximately three research papers, coordinated by the Project Coordinator’s office, concerning a) precedents set in other countries; b) legal and policy issues associated with establishing mechanisms at the national level in the eight countries; and c) raising the issue for consideration at the level of the Governing Body.

The outputs supporting the third objective of the project - assisting countries with identifying options for the implementation of other, supportive or closely related aspects of the Treaty – are harder to predict than in the case of the first two objectives. As stated in the Background section, some countries have proposed that, in addition to working on the implementation of access and benefit-sharing measures under the Treaty, they would like to examine measures to implement farmers’ rights (under Article 9 of the Treaty). Others have indicated an interest in simultaneously exploring options to implement policies and laws in support of sustainable use of PGRFA (under Article 6 of the Treaty). The principle point of entry for all project activities will be the multilateral system, information sharing and technology transfer – all of which fall under the rubric of access and benefit-sharing in the Treaty. However, since the project is already engaged in Treaty implementation issues in the countries concerned, it should be possible to ‘layer-on’ some additional activities concerning these other closely related aspects of the Treaty in some of the countries that express a strong desire to do so. These activities could include gathering and synthesizing information, considering policy options and requisite institutional capacities for the implementation of those options, and in some cases, assisting in the development of draft policies or laws. Of course, such activities would be consistent with guidance from the Governing Body with respect to the areas on question, for examples, as mentioned above, farmers’ rights or sustainable use.

Additional outputs that are more generally associated with the overall project include:

- A dedicated set of web pages maintained by Bioversity, with much of the material also posted on the official website of the Treaty, where much of the material generated by the project could be made globally, publicly available;

- At least one research paper that will provide a comparative analysis of factors contributing to project success and challenges across the eight countries; and

- At least one book or special issue of a peer-reviewed journal, which would include a number of the products listed above, such as the final guidelines, research papers, samples of draft (or adopted) policies and laws, highlights and or cross-cutting analyses of national level papers,
and so on. The book or journal will be subject to an open source license, so that materials can be made globally publicly available.

The project will also produce two external evaluations: one mid-term and one final evaluation. It will also produce eight final national level project reports and one final report for the project overall.

6. Anticipated Outcomes

National policy-makers in eight countries will use project outputs to develop/adopt policies, laws and administrative practices to facilitate their country’s participation in the Treaty’s multilateral system of access and benefit-sharing. In this context, they will take advantage of opportunities to strengthen ‘user pathways’ within their own country to improve access to plant breeders, universities, civil society organizations, private sector and farmers, of materials that are available through the multilateral system. They will also go through processes to decide which PGRFA within the country are in the multilateral system, and put in place mechanisms to be able to provide access to that material under the terms and conditions of the Treaty’s multilateral system. They will notify the Treaty Secretary about which of the collections in their countries are included in the multilateral system; that information will be posted on the Treaty’s website. A number of ‘best practices’ for encouraging legal persons within their borders to voluntarily place additional materials in the multilateral system will be documented. In approximately five of these countries, partners will identify their information technology needs for participating meaningfully within the multilateral system. They will be supported by the Project Coordinator in applying to the Secretariat of the Treaty for additional technical assistance to adopt and use information systems to publish accession level information about the materials they will make available under the multilateral system (in ways that contribute to the global information system anticipated in Article 17 of the Treaty).

At the same time, in many countries, policy-makers will develop access and benefit-sharing norms concerning materials that are not included in the multilateral system. They will do so in ways that are consistent with both the Treaty and other applicable international laws, for example, the CBD.

A range of users within contracting parties will have substantially improved access to the millions of accessions of PGRFA that will eventually be available through the multilateral system, and through complementary policies, laws and practices extending to materials outside the multilateral system.

As a result of the implementation efforts of these countries, the Treaty’s multilateral system, and the Treaty overall, will receive a significant boost in terms of being made fully operational. A number of additional countries are likely to follow the example of the eight countries supported through this project, using guidelines, options and written evaluations of lessons learned in the eight countries (and other countries in which the activities are being
coordinated under the Joint Programme). The Governing Body will consider and adopt or endorse those guidelines and reports. Sub-regional workshops, held during the four years of the project will raise awareness of other countries about precedents for implementation, and provide (limited) technical assistance for additional countries wishing to follow suit.

National project partners will use project outputs to assess how they should approach the issue of obtaining advanced technologies that are subject to intellectual property protection and outside the multilateral system, for inputs into their agricultural research programmes and production systems. They will also engage in comparative analysis of information gathered from other countries to identify options and best practices. In so doing, they may establish administrative procedures to assist legal persons within the country gain access to proprietary material. Perhaps most significantly, project partners will investigate possible means of raising the visibility of the issue at the level of the Governing Body of the Treaty. Eventually, it is possible that the Governing Body could consider voluntary guidelines addressing this issue, pursuant to Treaty Article 13.2.b.

In some countries, priority actions for the development of domestic policies, laws and administrative procedures in support of farmers’ rights and or sustainable use will be identified, based on national information gathering exercises and syntheses. In some cases, it is possible that draft policies, laws or administrative practices will be developed. It is possible, even, that they would be implemented. Progress made in these areas would also be reported to the Governing Body by Bioversity International, and probably also by the Secretariat.

7. Intended Beneficiaries
In the short-term, national policy-makers with the responsibility of implementing the Treaty will be the immediate beneficiaries. In the medium-term, the beneficiaries will be individuals and organizations within the countries concerned who will gain access to materials through the multilateral system, and additional proprietary materials on preferential terms. These beneficiaries include breeders, farmers and conservationists. The longer-term beneficiaries are all those who will gain from the use of improved varieties; both those that were subject to IPRs and not included in the multilateral system, and those that have been developed using materials accessed from the multilateral system. These longer-term beneficiaries include farmers, consumers, seed companies, and all of those who benefit, even indirectly, through the conservation of crop and forage genetic diversity.

8. Project Management
Bioversity would be the executing agency, ultimately responsible for the successful completion of the project. As such, it will employ the full-time project coordinator, scientific assistant to the project coordinator, and administrative assistant. Together, these three staff would form the Project Coordinator’s office. The Project Coordinator’s office will provide leadership
and technical assistance to the national partners introducing experts, perspectives and lessons learned from project activities outside the country. In this capacity, the Project Coordinator’s office will provide guidance on the composition and function of the oversight committees; review plans for carrying out base-line studies; review the studies themselves; and advise on steps involved in the development of road-maps and strategies for ensuring ‘up take’ of project products in national policy-making processes. When appropriate, the Project Coordinator’s office will organize for the participation of additional, international experts in national activities. Given their geographic proximity, familiarity with many of the national actors, and the issues, the Regional Directors of Bioversity’s regional offices for Sub-Saharan Africa, Asia Pacific and Oceania, and the Americas will play a significant role in project start-up and monitoring. When possible, they will be assisted in this role by representatives of FAO’s regional offices. Bioversity will involve other CGIAR Centres that are active in the countries or regions concerned. Due to the experiences gained in hosting some of the biggest and most active ex situ collections of PGRFA in the world, the Centres can bring a lot of practical experience and insight to national and regional level meetings. Bioversity will also make contracts with additional international experts when necessary.

Through the Joint Programme the Treaty Secretary, along with Bioversity and FAO, will ensure that activities coordinated by Bioversity under this proposal complement those coordinated by FAO with support from the Swedish government, and any other possible Treaty implementation related projects in the future. The Joint Programme, under the overall guidance of the Secretary of the Treaty, will ensure that all of these activities are regionally balanced, thematically coherent, and contribute to a cumulative body of work that is in line with the priorities established by the Governing Body. The Secretary will act as a conduit between the project, and the Bureau and the Governing Body. A representative of the Global Crop Diversity Trust participates in related meetings as an observer.

As part of the Joint Programme, representatives of FAO, Bioversity and the Treaty Secretariat meet approximately 1-2 times a month, review progress of activities in the various countries and regions and make decisions about the relative merits of additional opportunities to work with additional countries and regions.

Within each country, activities will be overseen by the national oversight committees. Those committees will be convened by the Chair of the oversight committee. The chair will be either the national Treaty focal point, or a higher level government official, or someone appointed by them. Bioversity will execute letters of agreement (LOAs) with the ministry or government department concerned. The LOAs will establish that the oversight committee chairs will report to the Project Coordinator, at Bioversity.

9. Partners
Partners in the project will include: The chairs of the national oversight committees (with whom letters of agreement will be made), the members of the oversight committees (including representatives from civil society and farmers organizations, private companies, a number of government departments and so on), and people that the oversight committee engages to undertake studies and training on its behalf; sub-regional agricultural research organizations and sub-regional economic organizations; FAO; the Treaty Secretariat; and other CGIAR Centres, either on their own, or through the System-wide Genetic Resources Programme (SGRP) of the CGIAR or the Central Advisory Service – Intellectual Property (CAS-IP).

10. Location of Project
The project coordination office would be located in Rome, at Bioversity headquarters. The Treaty Secretariat and FAO are also located in Rome. The eight countries have yet to be determined.

11. Time Frame
Activities in each country would last for three years. Start times among those countries will be staggered, with the overall project lasting four years.