

Policy of the International Institute of Tropical Agriculture (IITA) on Intellectual Property

Preamble

IITA was established in 1967 by Decree No. 32 of the Federal Government of Nigeria, with support from the Ford and Rockefeller Foundations. In 1971, IITA became part of the Consultative Group on International Agricultural Research (CGIAR), an informal association of over 40 governments and 15 international organizations and private foundations, under the sponsorship of the World Bank, the Food and Agriculture Organization of the United Nations, and the United Nations Development Program.

As a Future Harvest Institute of the CGIAR, IITA aims to enhance the food security, income and well being of resource-poor people primarily in the humid and sub-humid zones of sub-Saharan Africa. To accomplish its mission, IITA conducts research and related activities to increase agricultural production, improve food systems, and manage natural resources in a sustainable manner, in partnership with national and international stakeholders.

Guiding Principles

IITA generates international public goods through the research carried out by the scientists working in the Institute and in partnership with others, particularly the National Agricultural Research Systems (NARS) of the countries of Sub-Saharan Africa (SSA).

IITA considers that every effort should be made to ensure that research knowledge and products developed by the Institute are actively disseminated, adopted and utilized by and for the benefit of people in the developing world, particularly in SSA, and for society in general. IITA believes that access to its outputs should be fair and equitable.

Therefore, as its basic policy, IITA pursues publication and full disclosure and the open sharing of IITA data, information and knowledge through the release of IITA research findings and products into the public domain. IITA respects the rights of others when using their materials, data, and other intellectual property, in research for development.

IITA considers that excluding others from accessing IITA research products and results is contradictory to its mandate and mission. Therefore, IITA does not seek to secure patents or plant breeders rights unless such protection is deemed necessary to keep IITA materials or technologies available and freely accessible to its beneficiaries.

IITA does require recipients and users of data, knowledge and any technology originating from the Institute, to publicly acknowledge IITA as the source of the original information, material or research product. In addition, IITA respects the IP rights of others, and will acknowledge and obtain appropriate permission for the use of other's data, knowledge and technology.

Management of Intellectual Property

1. IITA, as part of the CGIAR, acts according to the CGIAR Center Statements on Genetic Resources, Intellectual Property Rights and Biotechnology, jointly approved by the Center Directors and Center Board Chairs of the CGIAR. These statements include the CGIAR's Ethical Principles Relating to Genetic Resources and the Guiding Principles for the CGIAR Centers on Intellectual Property and Genetic Resources.
2. IITA adheres to the principles contained in the Convention on Biological Diversity, the FAO-CGIAR Agreement on Genetic Resources, and the International Treaty on Plant Genetic Resources for Food and Agriculture. Therefore, IITA uses material transfer agreements (MTAs) and germplasm acquisition agreements to facilitate access and ensure the continued free exchange of genetic materials and bio-control agents (**Annex I to Annex VI**). The main objective of these MTAs is to maintain these materials in the public domain and to ensure the protection from ownership by others
3. All rights to data, whether in raw form or after significant manipulation, laboratory and field notebooks, and material contained in such notebooks, and research results (including formal or informal reports) and products shall belong to IITA. IITA does not permit its employees to claim any intellectual property rights arising out of their work for the Institute. This is clearly stated in the employment contract signed by the employees. Likewise, visiting scientists, research fellows, and other non-IITA employees may be asked to sign appropriate agreements as a condition to their association with the Institute.
4. IITA will strive to manage all issues associated with intellectual property rights with integrity, equity, responsibility and accountability in accordance with the above stated guiding principles. Under normal circumstances, IITA will not seek to secure patent or plant breeder's rights for germplasm, materials or technologies developed by IITA in any jurisdiction
5. IITA will not allow any of its research partners to protect information, data, knowledge or invention resulting from this cooperation through any form of statutory or non-statutory intellectual property rights mechanism without express written approval from the Institute. Such approval may be withheld if contrary to the interest of IITA's developing country partners.
6. IITA does not regard intellectual property protection as a mechanism for securing funding upon which it may depend. To the extent that such returns may be generated in specific circumstances, they will be invested in specific tasks and projects that are compatible with the mission of the Institute, and with particular emphasis on a fair and equitable sharing of benefits.
7. IITA will strive to comply with national laws that are relevant for the use of protected intellectual property in all locations where it operates. In this regard, IITA recognizes that international trade has significant implications on the use of intellectual property, particularly in protected market jurisdictions. IITA will

inform and educate, to the extent that resources allow, its beneficiaries and partners on these issues.

8. IITA, following responsible behaviour and good stewardship, does not condone willful infringement of any legitimate and legally established third party rights. Further, IITA strongly urges all of its beneficiaries and partners to similarly eschew such infringement. Nonetheless, IITA will actively negotiate to minimize any restrictions of third party intellectual property for innovative technology associated with its mission and which may benefit people in developing countries. In this regard, IITA will engage the private sector, universities, advanced research institutes, NARS, and other organizations to access its research products in order to bring them to bear on the opportunities of people, particularly in sub-Saharan Africa. Any arrangements with third parties associated with access, joint creation, use of and exploitation of intellectual property, protected materials or technologies will be properly researched.
9. IITA accepts that securing or providing freedom to operate with technologies, processes, germplasm, breeding lines, bio-control agents and other research products in many jurisdictions has become exceedingly difficult in the current economic and policy climate of globalization. Therefore, IITA will cooperate and participate actively in international efforts to secure suitable freedom to operate for innovators, particularly in sub-Saharan Africa.
10. IITA encourages the wide dissemination of IITA's printed and electronic publications, such as databases, reports, training and public awareness materials, artwork and audiovisuals to the global research community, particularly those targeting sub-Saharan Africa. IITA incorporates standard copyright notification statements in its publications but permits the reproduction of IITA materials in a manner consistent with fair use

Implementation

This policy applies to all IITA activities, divisions, AEZ teams, projects, units and offices, and all references to IITA in this policy document shall be construed to include references to all these entities. Responsibility for implementing this policy rests with the Director General of IITA. With input from the IITA IP Committee, the Director General shall decide on, clarify and interpret any matter not expressly stated in this document.

Effective Date

This policy is effective from 9th May 2001, and shall remain in force until superseded, cancelled or suspended by the authority of the Board of Trustees of IITA.

Transfer of Designated Germplasm Important Notice

On October 26, 1994, the International Institute of Tropical Agriculture (IITA) signed an agreement with the United Nations Food and Agriculture Organization (FAO) placing germplasm collections maintained by IITA under the auspices of FAO, as part of the international network of *ex situ* collections provided for in Article 7 of the International Undertaking on Plant Genetic Resources, to be held in trust by IITA. The Agreement is attached herewith.

The Agreement recognizes the intergovernmental authority of FAO and its Commission on Plant Genetic Resources in setting policies for the International Network referred to in Article 7 of the International Undertaking on Plant Genetic Resources. The materials covered by the Agreement are listed as "designated germplasm" in an annex to the Agreement. "Designated Germplasm" is indicated as such on the seed list attached to the Shipment Notice, and on each packet of seeds.

IITA has traditionally adhered to a policy of unrestricted availability of germplasm held in its genebank(s). In the interest of keeping this material available for future research and utilization, IITA has undertaken, under Article 3 (b) of the Agreement with FAO, not to claim legal ownership over the designated germplasm, or to seek any intellectual property rights over that germplasm or related information. To ensure continued free availability of designated germplasm, IITA has also agreed to pass on the same obligations to all future recipients of designated germplasm.

Accordingly, the recipient must agree:

- a) not to claim ownership over the designated germplasm received, or to seek intellectual property rights over that germplasm or related information;
- b) to ensure that any subsequent person or institution to whom he or she makes samples of the germplasm available, is bound by the same provision.
- c) to assume full responsibility for complying with the recipient nation's quarantine/biosafety regulations and rules as to import or release of genetic material.

The phytosanitary condition of the material is warranted only as described in the attached phytosanitary certificate. IITA makes no warranties as to the safety or title of the material, nor as to the accuracy or correctness of any passport or other data provided with the material. Neither does it make any warranties as to the quality, availability, or purity (genetic or mechanical) of the material being furnished.

Rules for the future exchange of plant germplasm for food and agriculture are currently being debated in the FAO Commission on Genetic Resources in coordination with the Conference of the Parties to the Convention on Biological Diversity. IITA and the Consultative Group on International Agricultural Research (CGIAR) are actively participating in this debate with the aim of assuring that any future arrangements will facilitate exchange and utilization of this precious global resource and the fair and equitable sharing of the benefits derived from the commercial or other utilization of the germplasm.

**MATERIAL TRANSFER AGREEMENT
FOR PLANT GENETIC RESOURCES HELD IN TRUST
BY THE INTERNATIONAL INSTITUTE OF TROPICAL AGRICULTURE¹**

¹ This MTA covers materials which are being transferred before the entry into force of the International Treaty on Plant Genetic Resources for Food and Agriculture. The Treaty envisages that the International Institute of Tropical Agriculture (IITA) will enter into an agreement with the Governing Body of the Treaty, once the Treaty enters into force. The IITA has indicated its intention to conclude such an agreement with the Governing Body. This agreement, in line with the Treaty, will provide for new MTAs and benefit-sharing arrangements for materials transferred after the entry into force of the agreement.

MATERIAL TRANSFER AGREEMENT
FOR PLANT GENETIC RESOURCES HELD IN TRUST
BY THE INTERNATIONAL INSTITUTE OF TROPICAL AGRICULTURE¹

The plant genetic resources (hereinafter referred to as the “material”) contained herein are being furnished by the International Institute of Tropical Agriculture (hereafter IITA) under the following conditions:

The IITA is making the material described in the attached list available as part of its policy of maximizing the utilization of material for research, breeding and training. The material was either developed by the IITA; or was acquired prior to the entry into force of the Convention on Biological Diversity; or if it was acquired after the entering into force of the Convention on Biological Diversity, it was obtained with the understanding that it could be made available for any agricultural research, breeding and training purposes under the terms and conditions set out in the agreement between the IITA and FAO dated 26 October 1994.

The material is held in trust under the terms of this agreement, and the recipient has no rights to obtain Intellectual Property Rights (IPRs) on the material or related information.

The recipient may utilize and conserve the material for research, breeding and training and may distribute it to other parties provided such other parties accept the terms and conditions of this agreement.²

The recipient, therefore, hereby agrees not to claim ownership over the material, nor to seek IPRs over that material, or its genetic parts or components, in the form received. The recipient also agrees not to seek IPRs over related information received.

The recipient further agrees to ensure that any subsequent person or institution to whom he/she may make samples of the material available, is bound by the same provisions and undertakes to pass on the same obligations to future recipients of the material.

The IITA makes no warranties as to the safety or title of the material, nor as to the accuracy or correctness of any passport or other data provided with the material. Neither does it make any warranties as to the quality, viability, or purity (genetic or mechanical) of the material being furnished. The phytosanitary condition of the material is warranted only as described in the attached phytosanitary certificate. The recipient assumes full responsibility for complying with the recipient nation's quarantine and biosafety regulations and rules as to import or release of genetic material.

Upon request, the IITA will furnish information that may be available in addition to whatever is furnished with the material. Recipients are requested to furnish the IITA with related data and information collected during evaluation and utilization.

The recipient of material provided under this MTA is encouraged to share the benefits accruing from its use, including commercial use, through the mechanisms of exchange of information, access to and transfer of technology, capacity building and sharing of benefits arising from commercialization. The IITA is prepared to facilitate the sharing of such benefits by directing them to the conservation and sustainable use of the plant genetic resources in question, particularly in national and regional programmes in developing countries and

¹ The attention of the recipient is drawn to the fact that the details of the MTA, including the identity of the recipient, will be made publicly available.

² This does not prevent the recipients from releasing the material for purposes of making it directly available to farmers or consumers for cultivation, provided that the other conditions set out in this MTA are complied with.

countries with economies in transition, especially in centres of diversity and the least developed countries.

The material is supplied expressly conditional on acceptance of the terms of this Agreement. The recipient's acceptance of the material constitutes acceptance of the terms of this Agreement.

Germplasm Acquisition Agreement (GAA) for Material Intended for Designation

1. [Nation or Supplier] grants germplasm and related information to IITA under the terms and conditions of this agreement. The germplasm being provided is identified in the attached list which forms part of this agreement.
2. [Nation or Supplier] warrants that it is legally free to provide the germplasm to IITA, that [Nation] is the country of origin of the germplasm, and that all necessary permissions have been obtained.
3. IITA will hold the germplasm in trust under the terms of an agreement between the IITA and FAO, place it in its genebank, periodically regenerate it, duplicate it for security reasons, and provide long-term conservation.
4. IITA will be free to make the germplasm and related information, its progeny, and genes in it available to any third party for agricultural research purposes, but may do so only under a material transfer agreement, with terms intended to restrict the recipient from obtaining intellectual property rights on the material itself and to require similar commitments from any further recipients.
5. IITA obligations of paragraph 4 of this agreement shall expire at the end of 30 years after the date of the agreement.

Signed(Nation or Supplier)

Signed (for IITA)

Material Acquisition Agreement (MAA)
(for Material not Intended for Designation)

1. [Nation or Supplier] grants **the research product** (in the form of seed/vegetative propagules/tissue samples/DNA/bio-control agents or _____) and related information to the International Institute of Tropical Agriculture (IITA) under the terms and conditions of this agreement. The material being provided is identified in the attached list that forms part of this agreement.
2. [Nation or Supplier] warrants that it is legally free to provide the **research product** (as defined above) to IITA, or that [Nation] is the country of origin of the research product, and that all necessary permissions have been obtained.
3. IITA will be free to make the **research product** and related information, its progeny† and genes† in it available to any third party for agricultural research purposes, but may do so only under a material transfer agreement, with terms intended to restrict the recipient from obtaining intellectual property rights on the material itself and to require similar commitments from any further recipients.
4. IITA obligations of paragraph 3 of this agreement shall expire at the end of ___ years after the date of the agreement.

Signed(Nation or Supplier)

Signed (for IITA)

† This is only for genetic materials such as seed/vegetative propagules/tissue samples/
DNA /bio-control agents or any other living organism

IITA
Standard Order Form for Research Products

Consecutive Number: SOF/Year/Number

I/We order from the International Institute of Tropical Agriculture, Ibadan, Nigeria the following research product in the form of seed/vegetative propagules/tissue samples/DNA/bio-control agents or _____:

I/we agree:

- a) not to claim ownership over the material received from the International Institute of Tropical Agriculture (IITA), nor to seek intellectual property rights over that research product or related information provided by IITA;
- b) to ensure that any subsequent person or institution to whom I/we make samples of the research product available from IITA, is bound by the same provision.

Place/date

Name of person or institution requesting the research product

Address

Shipping address (if different from the above)

Authorized signature _____

(to be attached with list of materials to the Shipment Notice on the packet/box)

**Standard Distribution Form
(Material Transfer Agreement)
for Research Products Developed by IIT A**

In so far as this research product has been developed by the International Institute of Tropical Agriculture (IIT A) with public funds provided through the Consultative Group on International Agricultural Research (CGIAR) by donors from around the world, I/we agree that the material contained herein is furnished by IIT A under the provisions of the IIT A Policy on Intellectual Property and specifically under the following conditions:

1 IIT A is making the material indicated or in the attached list available as part of its policy of maximizing the utilization of research products for research. The material developed by IIT A is made freely available for any agricultural research or breeding purposes, and will continue to be made freely available to any interested party.

2 Recipients are free to commercialise IIT A research products in the form they are provided with due notification to IIT A. Prior to the application of any form of intellectual property rights (IPR) on this research product and related information, written permission must be obtained from IIT A. Moreover, while IIT A recognizes the validity of IPR, it reserves the right to distribute all material in accordance with paragraph (1) above.

3 The recipient agrees that any subsequent person or institution to whom they provide samples of this material is bound by these same provisions.

4 Although the material and associated information being supplied by IIT A were developed following careful and comprehensive research, IIT A makes no warranties as to the safety or title of the material nor as to the accuracy or correctness of any passport or other data provided with the material. Neither does it make any warranties as to the quality, viability, or purity (genetic or mechanical) of the material being furnished. The phytosanitary condition of the material is warranted only as described in the attached phytosanitary certificate. The recipient assumes full responsibility for complying with the recipient nation's quarantine or biosafety regulations and rules as to import or release of genetic material.

5 The recipients agree to furnish IIT A performance data collected during evaluations. Recipients should give due acknowledgement to IIT A in their reports for having provided the source material used for their research or to derive a process or product.