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Implementing the Plant Treaty's multilateral system of access and benefit-sharing in Rwanda

**Background analysis, recommendations and draft legal
text for consideration**

Marie Rose Turamwishimiye and Jean R. Gapusi

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*Jean R. Gapusi contributed to the initial development and drafting of this report. Jean passed away on 10 September 2016 before the finalization of the report. We acknowledge his contribution.

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Cover photo

A woman takes a break from hoeing cassava in Huye District, Southern Province, Rwanda, Africa. This field is cultivated by women for women, as part of a women's income-generation project in partnership with the George Washington University and the Rwanda Village Concept Project.

Credit: Jaishri Atri.

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List of Abbreviations and Acronyms

CAADP	Comprehensive Africa Agriculture Development Programme
CAVEM	College of Agriculture, Animal Sciences and Veterinary Medicine
CBD	Convention on Biological Diversity
CGIAR	The name CGIAR comes from the acronym for the Consultative Group on International Agricultural Research. In 2008, CGIAR underwent a major transformation. To reflect this and yet retain its roots, it has kept CGIAR as its name.
CIP	Crop Intensification Program
CITES	Convention on International Trade in Endangered Species (of Wild Flora and Fauna)
EDPRS	Economic Development and Poverty Reduction Strategy
FAO	Food and Agriculture Organization of the United Nations
FONERWA	National Fund for Environment
GATT	General Agreement on Tariffs and Trade
IPPC	International Plant Protection Convention
IPR	Intellectual property rights
ISAE	Higher Institute of Agriculture and Animal Husbandry (formerly)
ITPGRFA	International Treaty on Plant Genetic Resources for Food and Agriculture
LDCs	Least developed countries
LMOs	Living modified organisms
MINAGRI	Ministry of Agriculture and Animal Resources
MINECOFIN	Ministry of Finance and Economic Planning
MINIRENA	Ministry of Natural Resources
MINITERE	Ministry of Lands, Resettlement and Environment
Multilateral system	Multilateral system on access and benefit-sharing
NBSAP	National Biodiversity Strategy and Action Plan
NCA	National Competent Authority
NEPAD	New Partnership for Africa's Development
NFP	National Focal Point

PGRFA	Plant genetic resources for food and agriculture
RAB	Rwanda Agriculture and Animal Resources Development Board
RDB	Rwanda Development Board
REMA	Rwanda Environment Management Authority
SARDAE	School of Agriculture, Rural Development and Agricultural Economics
SMTA	Standard Material Transfer Agreement
SPTA	Strategic Plan for the Transformation of Agriculture
SPS	Sanitary and phytosanitary standards
TRIPS	Trade-related Aspects of Intellectual Property Rights
WIPO	World Intellectual Property Organization
WTO	World Trade Organization

1. Introduction

Rwanda ratified the International Treaty on Plant Genetic Resources for Food and Agriculture (ITPGRFA or Plant Treaty) on 14 October 2010. The ITPGRFA is an international agreement that promotes sustainable agriculture and food security through the conservation and sustainable use of the world's plant genetic resources for food and agriculture (PGRFA) and the fair and equitable sharing of benefits arising from the use of those resources, in harmony with the Convention on Biological Diversity (CBD).¹

The ITPGRFA establishes the multilateral system of access and benefit-sharing (multilateral system) to facilitate the accessibility of plant germplasm and equitable benefit-sharing. All plant genetic resources in the multilateral system are transferred using the Standard Material Transfer Agreement (SMTA), which was adopted by the ITPGRFA Governing Body at its First Session in 2006.² As a Contracting Party to the International Treaty, Rwanda is bound by all of the obligations of the ITPGRFA, including the obligation to implement the multilateral system. In return, public and private research and development organizations, community organizations, and individuals have the right to facilitated access to all PGRFA in the multilateral system in other Contracting Parties and international organizations that have signed agreements with the ITPGRFA Governing Body.

The multilateral system comprises the genetic resources of 64 crops and forages listed in Annex 1 of the ITPGRFA. These crops and forages were selected by the negotiators of the ITPGRFA based on their importance for food security and interdependence.³ Cumulatively, those 64 crops and forages provide for more than 80% of human calorie intake from plants (Kamau 2013, 344). The multilateral system does not include *all* of the PGRFA of the 64 crops and forages listed in Annex 1. Instead, it is limited to: i) those Annex 1 PGRFA that are under the management and control of the Contracting Parties and in the public domain; ii) additional Annex 1 PGRFA that are voluntarily included by natural and legal persons; and iii) Annex 1 PGRFA held in trust collections maintained by international institutions that sign agreements with the ITPGRFA Governing Body in accordance with ITPGRFA Article 15.⁴ Contracting Parties are required to adopt appropriate measures to encourage natural and legal persons within their jurisdiction who hold PGRFA listed in Annex 1 to include them in the multilateral system.⁵

The ITPGRFA and SMTA state that materials in the multilateral system should be used for the purposes of “utilization and conservation for research, breeding and training for food and agriculture provided that such utilization does not include chemical,

¹ International Treaty on Plant Genetic Resources for Food and Agriculture (ITPGRFA), 29 June 2004, Article 1, http://www.planttreaty.org/texts_en.htm (accessed 10 October 2017). Convention on Biological Diversity (CBD), 31 ILM 818 (1992).

² *Ibid.*, Articles 10–13. Standard Material Transfer Agreement (SMTA), 16 June 2006, <ftp://ftp.fao.org/ag/agg/planttreaty/agreements/smta/SMTAe.pdf> (accessed 19 October 2016).

³ ITPGRFA, Article 11.1.

⁴ *Ibid.*, Articles 11.1, 11.2, 11.5., 15

⁵ *Ibid.*, Article 11.3.

pharmaceutical and /or other non-food/feed industrial uses.”⁶ The ITPGRFA recognizes the underlying sovereign rights of the Contracting Parties over PGRFA. Pursuant to the ITPGRFA, Contracting Parties agree to exercise their sovereignty to create and participate in the multilateral system⁷ as both providers and recipients of materials.⁸ Rwanda, like all Contracting Parties, has agreed to “take the necessary legal and other appropriate measures to provide such access to other Contracting Parties through the Multilateral System”.⁹

Pursuant to the SMTA, all providers undertake, among other things, to make the materials available free of charge, or for a minimum cost, and to report all transfers to the Governing Body.¹⁰ Recipients accept that a representative of the third party beneficiary interests of the multilateral system may request information from them and may possibly initiate legal actions against them concerning the alleged non-compliance with the terms of the SMTA.¹¹ Recipients also agree not to claim any intellectual property or other rights that limit the facilitated access to the materials provided under the SMTA, or its genetic parts or components, in the form received from the multilateral system.¹² Recipients are allowed to commercialize new PGRFA products (e.g. new plant varieties) that are derived from material they receive through the multilateral system. However, if they do not make those new products available to others to use for the purposes of plant breeding or research, they are required to pay 1.1 percent of the sales of those products to the international benefit-sharing fund established by the Governing Body.¹³

The objective of this study is to develop a strategy for the implementation of the multilateral system of access and benefit-sharing in Rwanda. As part of this exercise, the authors have analyzed whether or not it would be useful or necessary, taking the political and legal culture of Rwanda into consideration, to develop new (or to amend existing) executive orders, regulations, legislation, policies or guidelines to implement the multilateral system. Where they have determined that such new or amended juridical instruments would be useful, they have made recommendations on the content and forms of those instruments. Of course, implementation of the multilateral system does not take place in a policy vacuum; therefore, other national policies and laws and international commitments Rwanda has made must be examined to ensure that there is “policy space” to implement the multilateral system, and to put systems in place that build on pre-existing mandates, responsibilities and organizations (Halewood et al. 2013, 73). Part 3 of this report analyzes Rwanda’s existing laws and policies. Parts 4 and 5 provide a step-by-step analysis of the particular issues to be taken into consideration when developing national policies to implement the multilateral system. The appendix at the end of this report consists of a first rough draft of a juridical instrument that corresponds to the conclusions of the analyses in Parts 4 and 5.

⁶ Ibid., Article 12.3(a).

⁷ Ibid., Article 10.2.

⁸ Ibid., Article 10.1.

⁹ Ibid., Article 12.2.

¹⁰ Ibid., Article 12.3 (b); SMTA, Article 5.

¹¹ SMTA, Article 6.

¹² Ibid., Articles 6.1, 6.2, 12.3(a), (d)

¹³ Ibid., Article 6.7, Annex 2.

Before proceeding, we wish to underline that policies and laws alone are not enough to allow people in Rwanda to take advantage of the multilateral system. The capacity of all potential users, including public and private sector breeders, genebanks, universities, farmers and non-governmental organizations must be strengthened, to identify potentially useful materials that are available in the multilateral system, access them and ultimately use them for food security, climate change resilience and other development goals. Clearly building such capacity is beyond the scope of this paper, but we want to highlight its importance for people involved in putting systems in place in Rwanda to implement the multilateral system.

2. Methodology

As part of our research, we conducted a literature review concerning the development and function of the multilateral system, as well as the current state of its implementation at national and international levels. We also analyzed a wide range of Rwandan environmental and agricultural policies and laws that we considered have some potential connection to, or influence on, the way in which the multilateral system should be implemented in Rwanda.

Parts 4 and 5 of this study were developed using a pre-publication discussion draft of the 'Decision-making Tool for National Implementation of the Plant Treaty's Multilateral System of Access and Benefit sharing', which was developed under the framework of the Plant Treaty's Joint Capacity Building Programme for Developing Countries on Implementation of the Treaty and its Multilateral System of Access and Benefit-sharing (Joint Capacity Building Programme 2018). That decision-making tool was developed in consultation with a range of national partners and experts, including one of the co-authors of this report. The discussion draft of the decision-making tool was piloted in a few national-level projects, including this one.¹⁴ The decision-making tool includes a number of modules that take readers through a series of questions they must address when developing policies for implementing the multilateral system at the national level. While the authors of the decision-making tool have been careful to underline that it is not necessary to develop new legal instruments (for example, executive orders, regulations, legislation) to implement the multilateral system, each module includes some sections of draft text that can be used to develop draft laws, if they are deemed necessary, considering the political and legal cultures of the country concerned. The text of the draft juridical instrument set out in the appendix at the end of this report was developed in part by selecting sections of 'baseline' text from each module in the decision-making tool, and then modifying them to fit the Rwandan political, institutional and legal culture contexts. The authors also developed completely new draft provisions where they felt it was necessary.

¹⁴ By sharing their observations on its strengths and weaknesses of the decision-making tool, the authors of this report contributed to its further development and improvement.

3. Policy and legal framework applicable to PGRFA in Rwanda

A. International legal and policy instruments

1. *Convention on Biological Diversity (CBD)*

The CBD was adopted at the 1992 United Nations Conference on Environment and Development, and entered into force on 29 December 1993. Rwanda signed the CBD on 10 June 1992 and ratified it on 29 May 1996. The CBD has three main objectives as stated in Article 1: Conservation of biological diversity, sustainable use of its components and fair and equitable sharing of the benefits arising out of the utilization of genetic resources. To implement the Convention, Rwanda developed its first National Biodiversity Strategy and Action Plan (NBSAP) in 2003 after identifying the major threats to biodiversity conservation (Rwanda, *National Biodiversity Strategy* 2003, 51). The 2003 NBSAP had five major objectives:

- i. Improved conservation of protected areas and wetlands
- ii. Sustainable use of the biodiversity of natural ecosystems and agrosystems
- iii. Rational use of biotechnology
- iv. Development and strengthening of policy, institutional, legal and human resource frameworks
- v. The equitable sharing of benefits derived from the use of biological resources (ibid, 51).

The 2003 NBSAP was revised in 2014 and updated in 2016. The new NBSAP's main objectives are to:

- i. Improve environmental stability for natural ecosystems and their biodiversity
- ii. Restore degraded ecosystems and maintain equilibrium among biological communities
- iii. Establish an appropriate framework for access to genetic resources and equitable sharing of benefits arising from biodiversity use and ecosystems services
- iv. Improve policy, legal and institutional framework for a better management and conservation of national biodiversity (Rwanda, *National Biodiversity Strategy* 2016, 3).

The new NBSAP has 19 targets that have been defined in line with the CBD objectives and its Aichi Biodiversity Targets for biodiversity conservation beyond 2010 (Rwanda, *National Biodiversity Strategy* 2016, 50–54). In addition, Rwanda adopted a Biodiversity Policy in 2011 and a Biodiversity Law in 2013 (which are discussed under paragraphs 3.B.2.b and 3.B.1.b below).

Rwanda's institutional framework for the CBD's implementation has been strengthened through the establishment of the Rwanda Environment Management Authority (REMA),¹⁵ the National Fund for the Environment (FONERWA),¹⁶ the CBD Steering Committee and the Centre of Excellence in Biodiversity and Natural Resources Management (Rwanda, Fifth National Report 2014, 10).¹⁷ All of these national measures were adopted to implement the CBD, which applies to the conservation of PGRFA as components of biodiversity.

2. Nagoya Protocol on Access to Genetic Resources and the Fair and Equitable Sharing of Benefits Arising from Their Utilization (Nagoya Protocol)

The Nagoya Protocol was adopted in 2010 and entered into force on 12 October 2014.¹⁸ Rwanda ratified the Nagoya Protocol on 12 October 2014. This Protocol is a supplementary agreement to the CBD. It provides a transparent legal framework for the effective implementation of one of the three objectives of the CBD – the fair and equitable sharing of benefits arising out of the utilization of genetic resources – and it applies to traditional knowledge associated with genetic resources and to the benefits arising from the utilization of such knowledge.¹⁹ The Protocol helps to ensure benefit-sharing when genetic resources are accessed from Contracting Parties. The Nagoya Protocol states that “[e]ach Party shall take legislative, administrative or policy measures, as appropriate, with the aim of ensuring that benefits arising from the utilization of genetic resources that are held by indigenous and local communities, in accordance with domestic legislation regarding the established rights of these indigenous and local communities over these genetic resources, are shared in a fair and equitable way with the communities concerned, based on mutually agreed terms.”²⁰ Rwanda has started implementing the Nagoya Protocol and is in the process of enacting a legal and institutional framework to facilitate its implementation.²¹ The Nagoya Protocol applies to genetic resources in general, including PGRFA, but cannot apply to PGRFA covered by the multilateral system.

¹⁵ The Rwanda Environment Management Authority (REMA) was first established in 2006 by Law no. 16/2006 of 03 April 2006 Determining the Organisation, Functioning and Responsibilities of Rwanda Environment Management Authority. This law was later replaced by Law no. 63/2013 of 27 August 2013 Law Determining the Mission, Organization and Functioning of Rwanda Environment Management Authority (REMA), Official Gazette (OG) no. 41, 14 October 2013.

¹⁶ The National Fund for the Environment (FONERWA) was first established by Law no. 16/2012 of 22 May 2012 Determining the Organization, Functioning and Mission of the National Fund for Environment, OG no. 26, 25 June 2012. This law was repealed by Law no. 39/2017 of 16 August 2017 Establishing the National Fund for Environment and Determining Its Mission, Organization and Functioning, OG no. Special, 18 August 2017.

¹⁷ The Center of Excellence in Biodiversity and Natural Resources Management has been established and is in the process of being officially launched. Its goal is to encourage, enable and support stakeholders to generate and apply knowledge on biodiversity and natural resources for sustainable development. For more information, see <https://coebiodiversity.com/goal-and-mission/> (accessed 19 October 2017).

¹⁸ Nagoya Protocol on Access and Benefit Sharing and the Fair and Equitable Sharing of Benefits Arising from Their Utilization, 29 October 2012, <http://www.cbd.int/abs/text/> (accessed 19 October 2017).

¹⁹ *Ibid.*, Articles 1, 3.

²⁰ *Ibid.*, Article 5.2.

²¹ draft Ministerial Order Governing the Access to Genetic Resources and the Fair and Equitable Sharing of Benefits Arising from their Utilization is in the process of being enacted.

3. Cartagena Protocol on Biosafety (Cartagena Protocol)

The Cartagena Protocol was adopted on 29 January 2000, as a supplementary agreement to the CBD, and entered into force on 11 September 2003.²² Rwanda ratified the Cartagena Protocol on 29 December 2003. The Cartagena Protocol aims to ensure the safe handling and use of living modified organisms (LMOs) resulting from modern biotechnology that may have adverse effects on the conservation and sustainable use of biological diversity or human health.²³ It protects biodiversity, which comprises PGRFA covered by the multilateral system, against negative effects that can result from the unsafe handling and use of LMOs resulting from modern biotechnology. With respect to the implementation of the Cartagena Protocol, Rwanda has established the National Biotechnology and Biosafety Policy, and it has begun developing the Draft Law on Biosafety, but has not yet enacted it.

4. International Plant Protection Convention (IPPC)

The IPPC was adopted in 1951 and came into force on 3 April 1952.²⁴ It was revised in 1997 and is administered by the Food and Agriculture Organization of the United Nations (FAO). Rwanda adhered to the IPPC on 26 August 2008. The IPPC aims to prevent and control the introduction and spread of pests of plants and plant products. It sets the standards for the issue of international phytosanitary certificates under the authority of the National Plant Protection Organization of the member state. It applies to the protection of the health of plants in general, including PGRFA covered by the multilateral system. In Rwanda, the Convention is implemented by the Rwanda Agriculture and Livestock Inspection and Certification Services, under the Ministry of Agriculture and Animal Resources (MINAGRI). A law on plant health protection was enacted in 2016, and supports the implementation of the IPPC.

5. Agreement on the Application of Sanitary and Phytosanitary Measures (SPS Agreement)

The SPS Agreement was negotiated during the Uruguay Round of the General Agreement on Tariffs and Trade and entered into force with the establishment of the World Trade Organization (WTO) at the beginning of 1995 (Miano 2006, 42–48).²⁵ It covers sanitary and phytosanitary (SPS) measures aimed at the protection of human, animal or plant life or health from certain risks. The Agreement identifies the IPPC as the organization providing international standards to ensure that measures implemented to protect plant health (phytosanitary measures) are harmonized and are not used as unjustified non-tariff barriers to trade.²⁶ The Agreement provides for the adoption of SPS measures to protect plant health in general, which consequently apply to the protection of the health of PGRFA governed by the multilateral system. Rwanda has been a member of the WTO since 22 May 1996 and a member of the General Agreement on Tariffs and Trade (GATT) since 1 January 1966.²⁷ Less information is available on this

²² Cartagena Protocol on Biosafety, 29 January 2000, 2226 UNTS 208.

²³ Ibid., Article 1.

²⁴ International Plant Protection Convention, 6 December 1951, 150 UNTS 67.

²⁵ Agreement on the Application of Sanitary and Phytosanitary Measures, 15 April 1994, 1867 UNTS

²⁶ Ibid., preamble.

²⁷ General Agreement on Tariffs and Trade, 15 April 1994, 1867 UNTS 187.

subject. Rwanda is therefore obliged to ensure the protection of plant health, which can apply to PGRFA, without imposing unjustified non-tariff barriers to trade.

6. Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS Agreement)

The TRIPS Agreement was negotiated at the end of the Uruguay Round of the GATT in 1994.²⁸ Administered by the WTO, it sets out minimum standards for many forms of intellectual property regulations (IPRs) as applied to the nationals of other WTO members, including intellectual property rights on new plant varieties.²⁹ Rwanda has developed the Intellectual Property Policy and Law in the context of international agreements on intellectual property, particularly the World Intellectual Property Organization (WIPO) and the WTO's TRIPS Agreement. These instruments provide guidelines for unifying countries' policies on IPRs, and they form a broad framework within which countries discuss and resolve disputes around IPRs. Rwanda acceded to the Convention establishing the World Intellectual Property Organization in 1983 and to the Paris Convention for the Protection of Industrial Property and the Bern Convention for the Protection of Literary and Artistic Works in the same year.³⁰ In 1996, Rwanda joined the WTO and has therefore been subject to the TRIPS Agreement ever since (Rwanda, *Rwanda Intellectual Property Policy* 2009, 4).

Additionally, Rwanda has been a participant in WIPO, particularly in the negotiations of the Council for the TRIPS Agreement at the WTO. Rwanda has played a leadership role by coordinating the least developed countries (LDCs) during the negotiations for the extension of the transition period for LDCs to implement the TRIPS Agreement. Regionally, Rwanda is a member to the African Regional Intellectual Property Organization.³¹ It has also participated in the European Union and the East African Community economic partnership agreements where intellectual property issues were discussed.³² The TRIPS Agreement is (indirectly) relevant to Rwanda's implementation of the multilateral system since, under the ITPGRFA, recipients may seek intellectual property rights over new PGRFA projects.³³ The intellectual property laws of Rwanda are informed by, and consistent with, Rwanda's obligations under TRIPS (and other intellectual property agreements).

7. Convention on Wetlands of International Importance especially as Waterfowl Habitat (Ramsar Convention)

The Ramsar Convention was signed on 2 February 1971, and entered into force on 21 December 1975.³⁴ It has been amended by the Paris Protocol of 3 December 1982, and the Regina Amendments of 28 May 1987. Rwanda has been a party to the Ramsar

²⁸ Agreement on Trade-Related Aspects of Intellectual Property Rights, 15 April 1994, 1869 UNTS 299.

²⁹ *Ibid.*, Article 1(3).

³⁰ Convention Establishing the World Intellectual Property Organization, 14 July 1967, 828 UNTS 3; Paris Convention for the Protection of Industrial Property, 14 July 1967, 828 UNTS 305; Bern Convention for the Protection of Literary and Artistic Works, 28 September 1979, 1161 UNTS 3.

³¹ African Regional Intellectual Property Organization, <http://www.aripo.org/about-aripo/membership-member-states> (accessed 30 August 2017).

³² *Ibid.*, 5.

³³ ITPGRFA, Article 12.3(f).

³⁴ Convention on Wetlands of International Importance especially as Waterfowl Habitat, 2 February 1971, 996 UNTS 245.

Convention since 29 December 2003, and it came into force on the 1 April 2006. The Ramsar Convention contributes to the sustainable use and conservation of genetic resources in general and includes those resources regulated by the multilateral system through the protection of wetland ecosystems declared wetlands of international importance.³⁵

8. Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES)

CITES was adopted in 1973 and amended twice in 1979 and 1983.³⁶ Rwanda acceded to this Convention on 20 October 1980, and it entered into force on 18 January 1981. CITES's main objective is to control or prevent international commercial trade in endangered species or products derived from such species, and it regulates by means of an international permit system (Thorson and Wold 2010). It applies to both plant and animal species threatened with extinction whose international import or export is strictly forbidden. For plant and animal species suffering decline, but still not facing extinction, international permits must be secured before importation or exportation can occur.³⁷ This facilitates the control and monitoring of the trade to avoid species extinction or decline. This applies to the trade of PGRFA.

9. African Convention on the Conservation of Nature and Natural Resources (African Conservation Convention)

The African Conservation Convention was first adopted in Algeria on 15 September 1968, entered into force on 16 June 1969 and revised on 11 July 2003.³⁸ Rwanda became a member to this Convention on 6 March 1980. The African Conservation Convention obliges parties to take appropriate measures for the conservation and management of genetic resources. It obliges parties to maintain and enhance genetic diversity and to establish and implement policies for the conservation and sustainable use of genetic resources. It also requires them to integrate species' *in situ* and *ex situ* conservation within land-use planning and preserve possible varieties, control intentional and accidental introduction of non-native species and eradicate invasive species that have been introduced.³⁹ This concerns all genetic resources, including PGRFA.

10. Comprehensive Africa Agriculture Development Programme (CAADP)

CAADP is "Africa's policy framework for agricultural transformation, wealth creation, food security and nutrition, economic growth and prosperity for all" (NEPAD Secretariat, n.d.). It is an integral part of the New Partnership for Africa's Development (NEPAD). CAADP is a framework for the restoration of agricultural growth, food security and rural development using an integrated and coordinated approach to alleviate poverty and eradicate hunger (ibid., 1). CAADP was endorsed in July 2003 by the African Union Heads of States as part of the NEPAD programme. Its main objective is to "...help African countries reach a higher path of economic growth through agriculture-led development, which eliminates hunger,

³⁵ Ibid., Articles 2(4), 2(5), 4(1).

³⁶ Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES), 3 March 1973, 993 UNTS 243.

³⁷ CITES, Articles II–VI.

³⁸ African Convention on the Conservation of Nature and Natural Resources, 15 September 1968, 1001 UNTS 4.

³⁹ Ibid., Article IX.

reduces poverty and food insecurity, and enables expansion of exports” (Mkomwa et al 2017, 7). CAADP aims to increase agriculture growth rates to a minimum of 6% per year to create the wealth needed for rural communities and households in Africa to prosper. To achieve this goal, CAADP is built on four pillars:

- i. Extending the area under sustainable land management and reliable water control systems
- ii. Improving rural infrastructure and trade-related capacities for market access
- iii. Increasing food supply, reducing hunger, and improving responses to food emergency crises
- iv. Improving agriculture research, technology dissemination and adoption (NEPAD 2003, 12–17).

The last two pillars are of importance with regard to the relationship between CAADP and the conservation of PGRFA. Increasing the supply of food, reducing hunger and responding to food emergency crises require, among many other things, the increase of agricultural productivity and stability and net returns of marketed surpluses from farming.⁴⁰ To meet these goals, a wide range of crops or PGRFA is needed (Lipper and Cooper 2009, 34). These crops need to be researched, improved and sustainably used to produce sufficient quantities of food. Additionally, improving agricultural research and technology dissemination and adoption applies to PGRFA, since research needs to be undertaken to improve the use of either traditional or modern technology in order to increase the food supply. The technology used, once it is proven effective, must be disseminated and adopted for the benefit of the different stakeholders involved in agriculture. This reflects the fact that countries are interdependent upon research and development, as well as on the related technologies for use in agriculture.

Rwanda was the first country to sign the CAADP Compact in 2007 and has since been a leader in embracing its principles and implementation (International Food Policy Research Institute 2013, 12; Africa Lead 2013, 12). As part of its implementation efforts, Rwanda initiated a programme known as the Crop Intensification Program (CIP) with the aim of increasing national food self-sufficiency and reducing food imports. The CIP imposes compulsory regional specialization, monoculture and grouping farmers into associations (MINAGRI 2011, 19). The implementation of CAADP in Rwanda has contributed to the notable development of more focused incentive-oriented agricultural policies, improved donor coordination and alignment with country priorities, the identification of programmes that would produce the best results, greater regional cooperation and better peer review and accountability mechanisms. The agricultural sector has also developed a dialogue and accountability framework that deals with strategic issues for the growth of agriculture and increased food security (Bizimana 2014).

In July 2013, the government of Rwanda, through MINAGRI, launched its second CAADP cycle (CAADP 2) in a semi-annual agricultural joint sector review, during

⁴⁰ New Partnerships for Africa's Development, Comprehensive Africa Agriculture Development Programme.

which it presented and discussed its proposed third five-year Strategic Plan for the Transformation of Agriculture (SPTA), which is comprised of four programmes and 24 sub-programmes. As part of the preparation for CAADP 2, a number of studies have been commissioned to inform the design of an agriculture investment plan. All of these initiatives towards the development of agriculture under the implementation of CAADP require the use of PGRFA. This fact strengthens the argument that the distribution, use, importation and exportation of PGRFA should be guided by a clear national policy and legal framework.

All of the international legal and policy instruments discussed above constitute “framework” or general instruments. In most cases, their national-level implementation requires the development of additional national-level laws, policies and/or administrative guidelines.

B. National legal and policy instruments

1. National laws and regulations

Rwanda has different laws and policies that apply to the conservation of genetic resources generally, including PGRFA, which are discussed below.

(a) Organic Law no. 08/2005 of 4 May 2005 Establishing Modalities of Protection, Conservation and Promotion of Environment in Rwanda (Environmental Framework Law)

The Environmental Framework Law was adopted in 2005 as the first law dedicated to environmental protection in Rwanda.⁴¹ As spelled out in its title, its main objective is to establish the modalities of protecting, conserving and promoting the environment in Rwanda. It is a framework law that contains general provisions on the protection and conservation of different aspects of the environment, including PGRFA, whether covered by the multilateral system or not. In its preamble, the Environmental Framework Law refers to different international environmental legal instruments, including the ones discussed above such as the CBD, the Cartagena Protocol and the Ramsar Convention. This means that the Environmental Framework Law contains different provisions that facilitate the implementation of international obligations related to the conservation of PGRFA contained in these conventions.

The Environmental Framework Law is a law of general application, but it contains a few provisions that are specific to PGRFA. It states that the introduction, importation and exportation of animals or plants of any species in Rwanda are governed by special rules.⁴² It also adds that the importation and exportation of wild animals or wild animal products and wild plants are governed by the permission of the competent authorities.⁴³ These two provisions play an important role in the management or control of the introduction, importation and exportation of PGRFA. Subjecting their importation and exportation for agricultural purposes to a prior authorization helps to manage

⁴¹ Organic Law no. 08/2005 of 4 May 2005 Establishing Modalities of Protection, Conservation and Promotion of Environment in Rwanda (Environmental Framework Law), OG no. 9, 1 May 2005.

⁴² Ibid., Article 20.

⁴³ Ibid., Article 24.

their introduction and exportation. These provisions also prevent the unsustainable management of wild or *in situ* PGRFA for different purposes, including agricultural ones. However, these two provisions are not sufficient to regulate the introduction, importation and exportation of plant species, including PGRFA, in Rwanda because they do not provide rules on the procedures of application for permission, the competent authority, the conditions that are required and the procedures to be respected. Article 20 specifically requires the adoption of special rules on the introduction, importation and exportation of any plant species in Rwanda.

Additionally, the Environmental Framework Law obliges the state to take the necessary measures to protect and respect the obligations stipulated in the international agreements and conventions that it has ratified, including those that are applicable to PGRFA.⁴⁴ Specifically, Rwanda is bound by the obligation to implement the multilateral system of the ITPGRFA. There is no conflict between these obligations, and they can be implemented in a mutually supportive way.

(b) Law no. 70 of 2 September 2013 Governing Biodiversity in Rwanda (Biodiversity Law)

The Biodiversity Law was adopted in 2013 to implement the CBD and its Cartagena Protocol, as specified in its preamble.⁴⁵ Article 1 aims to determine the modalities of the management and conservation of biodiversity in Rwanda. It should be applied generally to the two broad and interrelated categories of biodiversity: natural and agricultural biodiversity, which includes PGRFA. However, it does not contain specific provisions for each category of biodiversity. It establishes the general obligations to the conservation of biodiversity. With regard to genetic resources, the Biodiversity Law provides that activities concerning bioprospecting in, and the export of, indigenous biological resources shall be subject to a permit. The Biodiversity Law provides for the preconditions that are to be observed before a bioprospecting permit is issued. These include the interests of the person, the community and the state giving access to the indigenous biological resources, the traditional uses of the indigenous biological resources and the knowledge of, or discoveries about, the indigenous biological resources.⁴⁶ The permit must be issued by the competent authority, which can be the principal environment agency or any other organ provided by the relevant laws.⁴⁷ Currently, the agency in charge of the environment is REMA, but the Biodiversity Law allows that any other authority can be assigned to issue bioprospecting permits. Furthermore, the Biodiversity Law provides details on how the permit can be suspended, cancelled or discontinued and the related administrative procedures.⁴⁸ This applies to all biodiversity components, including PGRFA covered by the multilateral system. There is not a conflict between these obligations and the obligations for implementing the multilateral system. They can be implemented in a mutually supportive way. However, the provisions of the Biodiversity Law do not provide specific guidance on how to implement the multilateral system.

⁴⁴ *Ibid.*, Article 49(2).

⁴⁵ Law no. 70 of 2 September 2013 Governing Biodiversity in Rwanda, OG no. 38, 23 September 2013.

⁴⁶ *Ibid.*, Articles 27–29.

⁴⁷ *Ibid.*, Articles 2, 30.

⁴⁸ *Ibid.*, Articles 30–37.

(c) Law no. 43/2013 of 16 June 2013 Governing Land in Rwanda (Land Law)

The provisions of the Land Law that pertain to this report are those related to the categorization of land: urban and rural land, and individual and public land.⁴⁹ Here, an emphasis is put on state public land in the public domain that is to be used by the general public or land reserved for organs of state service and land reserved for environmental protection, which can be owned by the state or by the local government.⁵⁰ State public land, in the public domain, comprises land occupied by lakes and rivers, which are listed as natural resources; shores of lakes and rivers up to the length determined by the specific regulation; land occupied by springs and wells as determined by the specific regulations and land composed of natural forests, national parks, protected swamps, the state's public gardens and tourist sites.⁵¹ Most of these areas are good habitat for plant species that may include *in situ* PGRFA. The state can easily oversee the greater conservation of these areas as well as the *in situ* PGRFA found in them. As long as all of these areas make up state land, their use and management will generally not give rise to legal problems. The *in situ* PGRFA found in such areas are under the management and control of the national government and in the public domain, which means that they are automatically included in the multilateral system if they are mentioned in Annex 1 of the ITPGRFA. The legal provisions of the Land Law do not conflict with the provisions of the multilateral system. They can be implemented in a mutually supportive way.

(d) Law no. 47 bis/2013 of 28 June 2013 Determining the Management and Utilization of Forests in Rwanda (Forest Law)

While the Forest Law mainly concerns forest management and utilization, some of its provisions may assist in the conservation of PGRFA.⁵² First, it requires the reduction of adverse effects on forests resulting from various activities, which can include the collection of *in situ* PGRFA if they are found in forests.⁵³ Second, the population is obliged to conserve and protect forests and to inform the nearest authorities of prohibited activities that may negatively affect proper forest management.⁵⁴ Third, the Forest Law requires the collaboration of public and private institutions and non-governmental organizations in the protection of forests and allows for the planting of agroforestry trees.⁵⁵ All of these provisions play an important role in the conservation of forests and PGRFA. Allowing for the planting of agroforestry trees may have an impact on the conservation of PGRFA either by looking for those PGRFA that are suitable to be planted together with trees or by allowing access to PGRFA found in agroforested areas. These obligations do not contradict the provisions of the multilateral system, and they can be implemented harmoniously.

⁴⁹ Law no. 43/2013 of 16 June 2013 Governing Land in Rwanda, OG no. Special, 16 June 2013, Articles 9–11.

⁵⁰ *Ibid.*, Articles 12, 13.

⁵¹ *Ibid.*, Article 13.

⁵² Law no. 47 bis/2013 of 28 June 2013 Determining the Management and Utilization of Forests in Rwanda, OG no. 37, 16 September 2013.

⁵³ *Ibid.*, Article 19(1), (4).

⁵⁴ *Ibid.*, Article 20.

⁵⁵ *Ibid.*, Article 21.

(e) Law no. 005/2016 of 5 April 2016 Governing Seeds and Plant Varieties in Rwanda and Its Implementing Regulations (Seeds and Plant Varieties Law)

The Seed and Plant Variety Law aims to govern the regulation of seeds and plant varieties in Rwanda.⁵⁶ It provides for the establishment of a list of plant varieties accepted in Rwanda every year and is published in the Official Gazette.⁵⁷ For a plant to be registered on the list, it must first be evaluated and certified. Everyone wishing to have a new plant variety evaluated, certified and registered on the national plant variety list has to make an application before the competent committee.⁵⁸ The Seeds and Plant Varieties Law promotes the use of quality seeds and obliges anyone wishing to produce or market quality seeds to receive authorization and be registered on the list of recognized seed producers or the list of recognized seed dealers.⁵⁹ Quality seed must be inspected and tested by inspectors and seed analysts, and a seed quality certificate needs to be issued by an authority in charge of granting licenses for the importation and exportation of plants in Rwanda.⁶⁰ To get a seed quality certificate, all seeds must be tested by a recognized seed laboratory, following quality standards determined by the competent authority. However, seeds that are not produced in Rwanda can be imported if they have been subjected to certification schemes that are of equal to or higher standards than the certification scheme applied in Rwanda, which is internationally recognized. Expenses incurred for such inspection are borne by the seed importer. However, the Law allows that, in case of emergency resulting from a seed shortage in the country, the minister in charge of agriculture has the right to allow the use of seeds that have lower standards than those set by the Law.⁶¹

According to the Seeds and Plant Varieties Law, any person wishing to import and export seeds for marketing purposes must have a license for importation and exportation of plants in Rwanda and must be an authorized seed dealer.⁶² The importation or exportation of seeds for research purposes is also subject to a license issued by the authority in charge of granting licenses for the importation and exportation of plants in Rwanda.⁶³ Additionally, any person desiring to import certain kinds of seeds for neither sale nor distribution purposes may apply for a licence to import seeds, which is granted with specific requirements.⁶⁴ Seeds that have been imported contrary to the provided requirements are returned to the country of origin or destroyed and the cost of destruction will be covered by the importer.⁶⁵

For the first time in Rwanda, the Seeds and Plant Varieties Law provides for the protection of new plant varieties. The protection applies to any new variety for which the

⁵⁶ Law no. 005/2016 of 5 April 2016 Governing Seeds and Plant Varieties in Rwanda and Its Implementing Regulations (Seeds and Plant Varieties Law), OG no. Special, 20 April 2016, Article 1.

⁵⁷ *Ibid.*, Article 5.

⁵⁸ *Ibid.*, Articles 3, 4.

⁵⁹ *Ibid.*, Articles 8, 10.

⁶⁰ *Ibid.*, Article 15.

⁶¹ *Ibid.*, Articles 19, 20.

⁶² *Ibid.*, Article 13, para. 1.

⁶³ *Ibid.*, Article 13, para. 2.

⁶⁴ *Ibid.*, Article 13, para. 3.

⁶⁵ *Ibid.*, Article 13, para. 4.

plant breeder (any Rwandan or foreign breeder) has applied in writing to the registrar of plant breeders' rights, and the new variety must meet the required conditions of novelty, distinctness, uniformity and stability.⁶⁶ The application may be made by the plant breeder or by his or her appointed agent in conformity with the relevant laws.⁶⁷ When the plant variety protection and plant breeders' rights are granted, it has to be recorded in the plant breeders' rights register, which is maintained by the registrar, and a certificate thereof has to be issued.⁶⁸

The plant breeders' rights entitle him or her to sell, multiply or distribute his or her plant variety or to designate any other person to do so.⁶⁹ Any other person wishing to conduct seed-related actions, with respect to the propagation of the protected plant variety, must be authorized by the plant breeder, if such actions are meant for production or propagation, processing for the purpose of propagation, offering for sale or any other marketing form and exporting, importing and stocking for the purposes mentioned under the previous items. The plant breeders' rights also extend to the harvested material obtained from a protected plant variety used without the breeder's authorization, products made from the harvested material obtained from a protected plant variety used without authorization, any other plant variety that is not clearly distinguishable from the protected variety, a plant variety whose production requires repeated use of the protected variety and plant varieties that are essentially derived from the protected variety, where the protected variety itself is not a derived variety.⁷⁰ Plant breeders' rights become exhausted when these actions are either performed by the plant breeder or with the plant breeders' authorization whether in Rwanda or in countries bound by the International Convention for the Protection of New Varieties of Plants.⁷¹ However, when the enumerated actions involve further propagation of the variety or exportation of the propagating material, harvest or product of the harvest of the variety to countries without plant variety protection, the plant breeders' rights are not exhausted unless the exportation is meant for consumption.⁷²

In principle, the plant breeders' rights cannot be restricted, but the minister in charge of agriculture may authorize any person, on application for a compulsory licence, to use a protected plant variety without the plant breeders' authorization for specific cases of public interest such as social welfare, national security and environmental protection. However, in this case, the plant breeders must receive fair remuneration.⁷³

The plant breeders' right is granted for a period of 20 years from the date it is granted, except for trees and vines, which lasts for 25 years from the date of the granting of the plant breeders' right.⁷⁴ It can be assigned and transferred through a written document

⁶⁶ *Ibid.*, Articles 21–26, 33, 38.

⁶⁷ *Ibid.*, Article 32.

⁶⁸ *Ibid.*, Articles 30, 39, para. 1.

⁶⁹ *Ibid.*, Article 27, para. 2.

⁷⁰ *Ibid.*, Article 40.

⁷¹ International Convention for the Protection of New Varieties of Plants, 2 December 1961, available at <http://www.upov.int/en/publications/conventions/index.html> (accessed 17 October 2017).

⁷² Seeds and Plant Varieties Law, Article 42.

⁷³ *Ibid.*, Article 43.

⁷⁴ *Ibid.*, Article 44.

signed by both parties,⁷⁵ and it can be nullified if it was granted while some of the necessary requirements were not met, or cancelled if, after its granting, the requirements for its maintenance are not respected.⁷⁶ For its effective implementation, different ministerial orders have been adopted to supplement the Seeds and Plant Varieties Law. Such regulations provide details that facilitate the implementation of different aspects governed by the Law. They establish:

- Modalities for the assignment and transfer of plant breeder's rights⁷⁷
- Modalities for testing the novelty, distinctness, uniformity and stability of plant variety⁷⁸
- Format and content of the register in which all information related to the plant breeder's rights is recorded and the conditions for having access to such information⁷⁹
- Criteria for recognizing a seed testing laboratory⁸⁰
- Procedures for seed inspection and granting of seed quality certificates⁸¹
- Requirements for a person to be granted a license for importing and exporting seeds⁸²
- Information that a quality seed label and container have to bear and the criteria for putting seed varieties in categories and the colours of labels for each category⁸³
- Requirements for a person to be authorized to become a quality seed producer, conditioner or dealer⁸⁴
- Procedures for evaluation, certification and registration of plant varieties and the procedures for the withdrawal of certified plant varieties from the list and its format⁸⁵

⁷⁵ Ibid., Article 48.

⁷⁶ The plant breeder's right is nullified if, at the time of its granting, the protected variety does not meet the requirements of novelty, distinctness, uniformity and stability, if it was granted based essentially upon information and documents furnished by the applicant and if it was granted to a person who was not entitled to it unless it has been legally transferred. The plant breeder's right can be cancelled if the holder definitively relinquishes such a right and informs the registrar in writing of the protected plant variety, if the holder establishes that the conditions for uniformity and stability are no longer fulfilled, if the holder fails to submit to the registrar the information, documents and material necessary for the maintenance of the protection of the variety, if the holder fails to pay the specified fee to keep the plant breeder's right in force and if the holder fails to propose an appropriate denomination for the protected variety when it is requested (ibid., Articles 46, 47).

⁷⁷ Ministerial Order no. 002/11.30 of 11 April 2017, OG no. 16, 17 April 2017.

⁷⁸ Ministerial Order no. 003/11.30 of 11 April 2017, OG no. 16, 17 April 2017.

⁷⁹ Ministerial Order no. 004/11.30 of 11 April 2017, OG no. 16, 17 April 2017.

⁸⁰ Ministerial Order no. 005/11.30 of 11 April 2017, OG no. 16, 17 April 2017.

⁸¹ Ministerial Order no. 006/11.30 of 11 April 2017, OG no. 16, 17 April 2017.

⁸² Ministerial Order no. 007/11.30 of 11 April 2017, OG no. 16, 17 April 2017.

⁸³ Ministerial Order no. 008/11.30 of 11 April 2017, OG no. 16, 17 April 2017.

⁸⁴ Ministerial Order no. 009/11.30 of 11 April 2017, OG no. 16, 17 April 2017.

⁸⁵ Ministerial Order no. 010/11.30 of 11 April 2017, OG no. 16, 17 April 2017.

- Organization and functioning of the committee responsible for the evaluation, certification and registration of plant varieties and their withdrawal from the list⁸⁶
- Modalities for lodging an objection to the application for plant breeders' rights⁸⁷
- Requirements for authorizing an applicant to use a protected plant variety and requirements for defining fair remuneration.⁸⁸

The provisions of the Seeds and Plant Varieties Law and related ministerial orders can apply to PGRFA under the multilateral system that are transferred to recipients in Rwanda or to those exported from Rwanda to other Contracting Parties. They can apply to seeds of improved varieties that incorporate materials received from the multilateral system. There is no conflict between the obligations of this national law and the related regulations and the obligations of the multilateral system. They can and should be implemented in a mutually supportive way. However, this Law does create an additional layer of duties that could apply to materials that are transferred under the multilateral system.

(f) Law no. 16/2016 of 10 May 2016 on Plant Health Protection in Rwanda (Plant Health Protection Law)

The Plant Health Protection Law determines the modalities for plant health protection in Rwanda. It provides for strategies to control and contain the establishment of pests or diseases and matters connected with living organisms.⁸⁹ To protect the health of plants and the environment in Rwanda, this law requires anyone who wants to import any plant, plant product or any other article that can contribute to the spread of pests and diseases, to have a license and a phytosanitary certificate issued by the competent authority.⁹⁰ The license can only be issued if the person intending to import material fulfils the established requirements. In addition, any plant or plant product meant for importation into Rwanda or for exportation is subject to an inspection carried out by the competent authority. Anyone entering Rwanda by road or air with plants or plant products must declare them to the competent employees at the entry point. The importer may request that inspection be carried out when the plant has reached its destination due to justified reasons.⁹¹ When a plant or a plant product has entered the country illegally, it can be confined, held, treated or destroyed, together with any related article or its container. This is done without any compensation if it has entered without authorization or in violation of the license.⁹²

⁸⁶ Ministerial Order no. 011/11.30 of 11 April 2017, OG no. 16, 17 April 2017. It is important to note that the committee is composed of 10 members working on a permanent basis, appointed by the minister in charge of agriculture. These include one representative from the ministry in charge of agriculture, who is the chairperson of the committee; a registrar of plant breeders' rights; the registrar of the plant variety who is the secretary of the committee; three researchers consisting of one plant breeder, one pathologist or entomologist and one agronomist; one expert in seed legislation; one expert in an agricultural extension system; one representative of private seed dealers and one representative of a farmers' organization.

⁸⁷ Ministerial Order no. 015/11.30 of 06 November 2017, OG no. 46 of 13 November 2017.

⁸⁸ Ministerial Order no. 016/1.30 of 6 November 2017, OG no. 46 of 13 November 2017.

⁸⁹ Law no. 16/2016 of 10 May 2016 on Plant Health Protection in Rwanda, OG no. 22, 30 May 2016, Article 1.

⁹⁰ *Ibid.*, Article 3.

⁹¹ *Ibid.*, Article 10.

⁹² *Ibid.*, Article 11.

If the plant or plant product is infested with a pest or disease or presents a risk of the establishment of such a pest or disease, it will be confined by the inspector, upon notification of the importer, who may be ordered to treat it, return it to its place of origin or quarantine it. However, if the inspector establishes that the plant or plant product imported is infested with a quarantine pest, it will be destroyed immediately without compensation for expenses incurred by the owner.⁹³ The Plant Health Protection Law further provides for the modalities of inspecting the premises, vehicles, vessels, trains and aircrafts containing the plants and the modalities of confining the vessels, vehicles, trains, aircrafts or any other means of conveyance.⁹⁴ In addition, storage places, goods and other articles in transit that may have spread the pests and diseases will also be inspected.⁹⁵ Moreover, the consignment carrier has the obligation: to provide the inspector with all of the documents and other relevant information concerning what he/she carries; to complete an information request form concerning vessel, vehicle, train, aircraft or any other article he or she carries, as the inspector may require; and to prevent any plant or plant product from being unloaded unless otherwise permitted by the inspector.⁹⁶

With regard to exportation, any export of a plant or plant product requires a phytosanitary certificate issued by the competent authority, and such a certificate is issued to a person meeting the requirements set by the country of destination of the plant or plant product.⁹⁷ The Plant Health Protection Law is supplemented by three ministerial orders to facilitate its implementation. The first is Ministerial Order no. 012/11.30 of 2 August 2017, which determines the modalities for the importation of a pest, a plant or a plant product for scientific and research purposes and the modalities for the inspection of the plant or plant product and the format of the phytosanitary certificate. The second is Ministerial Order no. 013/11 30 of 2 August 2017, which determines the modalities and time limits for confining any means of conveyance and action to be taken with regard to unlawfully imported plants, plant products and regulated articles. The third is Ministerial Order no. 014/11.30 of 2 August 2017, which establishes a list of plants or plant products that do not require a license or a phytosanitary certificate for importation.⁹⁸ The provisions of the Plant Health Protection Law discussed above and the provisions of its implementing ministerial orders apply to all plants or plant products that are imported to, or exported from, Rwanda, including PGRFA in general and PGRFA governed by the multilateral system. These provisions do not conflict with the provisions of the multilateral system; they can be implemented in a mutually supportive way.

⁹³ *Ibid.*, Article 12.

⁹⁴ *Ibid.*, Articles 14, 17.

⁹⁵ *Ibid.*, Article 16.

⁹⁶ *Ibid.*, Article 15.

⁹⁷ *Ibid.*, Article 31.

⁹⁸ The three ministerial orders have been published in the Official Gazette no. 32, 7 August 2017.

(g) Law no. 63/2013 of 27 August 2013 Determining the Mission, Organization and Functioning of the Rwanda Environment Management Authority (Law Establishing REMA)

The Law Establishing REMA provides for the organization's responsibilities, and these responsibilities are relevant to the management of PGRFA in the multilateral system.⁹⁹ REMA is responsible for, among other things:

- Implementing government environmental policy, advising the government on policies, strategies and legislation related to environmental management and implementation of international environmental legal obligations
- Establishing measures designed to prevent climate change and cope with its impacts
- Undertaking research activities in the field of the environment and disseminating the findings
- Monitoring and assessing development programmes to ensure their compliance with the laws on the environment during their preparation and implementation.¹⁰⁰

According to the responsibilities of REMA, it is clear that the latter is the national authority in charge of supervising, monitoring and ensuring that issues relating to the environment are integrated in all national development programmes. This is a general mandate to ensure the protection of the environment, comprising different components including PGRFA.¹⁰¹ REMA is also entrusted with the implementation of government environmental policy, advising the government on the policies, strategies and legislation related to environmental management and the implementation of international environmental legal obligations. This applies to all national and international policy and legal instruments related to PGRFA in general as well as those covered by the multilateral system. REMA, therefore, is able to fulfil its responsibilities without infringing on the rules governing the multilateral system.

(h) Law no. 14/2017 of 14 April 2017 Establishing Rwanda Agriculture and Animal Resources Development Board and Determining Its Mission, Organisation and Functioning (Law Establishing the RAB)

This Law establishes the Rwanda Agriculture and Animal Resources Development Board (RAB) and determines its responsibilities. Under the supervision of MINAGRI, RAB has the general mission of developing agriculture and animal resources through research and the extension of agricultural and animal resources in order to increase agricultural and animal productivity. Its main responsibilities include:

- Contributing to the development of national policy and strategies in agriculture and animal resources

⁹⁹ Law no. 63/2013 of 27 August 2013 Determining the Mission, Organization and Functioning of the Rwanda Environment Management Authority, OG no. 41, 14 October 2013.

¹⁰⁰ *Ibid.*, Article 3.

¹⁰¹ *Ibid.*, Article 3.

- Implementing national policy, laws and strategies on agriculture and animal resources
- Coordinating activities aimed at promoting agriculture and animal resources infrastructure
- Searching, collecting, providing and disseminating to farmers, information, services and other agricultural and animal resource extension activities that increase the quantity and quality of productivity required on the market and by industries
- Conducting fundamental and applied research that promotes agriculture and animal resources
- Conducting research on the nature of forestry and agroforestry plants as well as plant varieties that are suitable for each area of the country
- Conducting research on horticulture
- Conducting research on climate change, its impact on agriculture, animal resources, forestry and putting into place strategies aimed at fighting such impact
- Conducting research on diseases and pests that attack field and stored crops and putting into place and implementing appropriate control measures to prevent and control them
- Establishing and managing a genebank for storing and conserving plant and animal genetic resources as well as any other living organisms related to agriculture and animal resources
- Coordinating, monitoring and supervising activities of agriculture, animal resources and related research carried out by RAB or other professional actors
- Developing a sufficient number of quality seeds and ensuring their multiplication and distribution
- Collecting, at the national and international level, new and required technologies and refining them for use in agriculture and animal resources
- Putting in place programmes for sensitizing farmers to operate in cooperatives and building their technical capacity in agriculture and animal resources.¹⁰²

According to its responsibilities, RAB is highly concerned with the management of PGRFA under the multilateral system. It must ensure the quality of agricultural inputs, including PGRFA. In addition, RAB offers advice and technical support to farmers and extension services that can apply to those services related to PGRFA covered by the multilateral system. It is responsible for developing sufficient quality seeds and ensuring their multiplication and distribution and for managing the genebank for storing and

¹⁰² Law no. 14/2017 of 14 April 2017 Establishing Rwanda Agriculture and Animal Resources Development Board and Determining Its Mission, Organisation and Functioning, OG no. 18 bis, 1 May 2017, Article 6.

conserving plant genetic resources. Such responsibilities imply its access to different PGRFA for research purposes, and it is therefore actively involved in the implementation of the multilateral system. As an institution in charge of agricultural research, RAB is highly concerned with the management and conservation of PGRFA. In carrying out research aimed at agricultural development, RAB is highly involved in research on PGRFA, including those resources covered by the multilateral system.

(i) Law no. 46/2013 of 16 June 2013 Establishing Rwanda Development Board and Determining Its Mission, Organisation and Functioning

The Rwanda Development Board (RDB) is a permanent and independent national organ with administrative and financial autonomy. It works under the supervision of the Office of the President of the Republic.¹⁰³ It has five departments, but this report will focus on the Department of Tourism and Conservation. This department's mandate is to conserve the rich biodiversity of the protected areas and to develop sustainable tourism in collaboration with the various stakeholders for the benefit of all Rwandan people. Its conservation division has the task of maintaining, enhancing and sustaining the ecological integrity, health and productivity of Rwanda's ecosystems, with priority given to the conservation of national parks. The role of the RDB in ensuring the protection of the national parks implies that controls activities that may infringe on the conservation of the national parks and their biodiversity. These activities include accessing and collecting *in situ* PGRFA that can be found in the national parks. The RDB is therefore concerned with PGRFA governed by the multilateral system, if that PGRFA is found in the national parks.

(j) Law no. 39/2017 of 16 August 2017 Establishing the National Fund for Environment and Determining Its Mission, Organization and Functioning (FONERWA)

FONERWA was first referred to by the 2005 Environment Framework Law¹⁰⁴ and was legally established in 2012 by Law no. 16/2012 of 22 May 2012. The latter has been recently repealed by Law no. 39/2017 of 16 August 2017 Establishing the National Fund for Environment and Determining Its Mission, Organization and Functioning. FONERWA is a national fund for the environment, which has a legal personality and enjoys administrative and financial autonomy. FONERWA's main responsibilities are to:

- Mobilize and manage resources used in financing activities aimed at protecting and preserving environment and natural resources
- Mobilize and manage funds to be used in the fight against climate change and its impact
- Collect and manage funds from public and private sources through a bilateral and multilateral partnership to achieve the country's objectives to advance national priorities in the field of environment and climate change

¹⁰³ Law no. 46/2013 of 16 June 2013 Establishing Rwanda Development Board and Determining Its Mission, Organisation and Functioning, OG no. Special, 16 June 2013, Articles 2, 5, para. 1.

¹⁰⁴ Environmental Framework Law, Article 71.

- Support public entities, associations and individuals for environment protection and conservation, research as well as the fight against climate change
- Coordinate and ensure that various financial partnership agreements related to the prevention and fight against climate change are prepared and effectively managed across the various national stakeholders
- Collaborate with other national, regional and international institutions with the same mission.¹⁰⁵

The law establishing FONERWA requires the minister in charge of the environment to adopt an order establishing the list of activities and projects to be financed by FONERWA.¹⁰⁶ Although the list is still to be adopted, it is assumed that FONERWA may be required to support projects related to the research, development and utilization of PGRFA covered by the multilateral system that can help in adapting to climate change. This may be done in the fulfilment of its responsibilities enumerated above. There is no conflict between the obligations of FONERWA and the implementation of the multilateral system of the ITPGRFA. They can be implemented in a mutually supportive way.

2. National policies

(a) 2003 National Environmental Policy

The National Environmental Policy was the first policy on the environment adopted in Rwanda. It sets out the main and specific objectives and fundamental principles of the improved environmental management. It lays out the foundation of the legal and institutional framework for environmental improvement and contains policy statements and strategic options for achieving improved environmental management in all sectors, including biodiversity conservation. Its implementation requires the involvement of all stakeholders in the social, political and economic sectors (Rwanda, *National Environmental Policy 2003*, 4–42, 30). With regard to biodiversity conservation, the policy aims to ensure the conservation and sustainable utilization of the biodiversity of natural ecosystems and agroecosystems in compliance with the equitable sharing of benefits derived from biological resources. To achieve this aim, the policy provides the following strategic options:

- To make an inventory of endemic native and/or less known species of economic importance
- To conserve *in situ* and *ex situ* the native genetic heritage
- To ensure the development of alternatives for the exploitation of biodiversity
- To conserve the genetic diversity of native plant and animal species
- To develop mechanisms for the control of imports and the dissemination of genetic materials

¹⁰⁵ Law no. 39/2017 of 16 August 2017 Establishing the National Fund for Environment and Determining Its Mission, Organization and Functioning (FONERWA), OG no. Special, 18 August 2017, Article 6.

¹⁰⁶ *Ibid.*, Article 7.

These strategic options are very relevant to PGRFA in general, including those covered by the multilateral system, and there is no conflict between this policy and the multilateral system. The National Environment Policy is of general application, and its implementation has been entrusted to REMA (42). However, this policy does not provide details of REMA's responsibilities in relation to each strategic option, which means that it does not provide concrete responsibilities with regard to the protection and conservation of PGRFA, including those covered by the multilateral system. The National Environmental Policy oversees the protection and conservation of the environment as a crosscutting issue. It encourages a multi-sectoral integrated management approach based on an institutional framework that is capable of enhancing the active and wide involvement of each person involved. REMA is entrusted with the responsibility of coordinating everyone (ibid, 41). With respect to the conservation, use and access to PGRFA covered by the multilateral system, the National Environment Policy does not provide concrete and detailed guidance. This is understandable since Rwanda ratified the ITPGRFA in 2010, while the National Environmental Policy was adopted in 2003. There are no clear strategic options guiding the implementation of the ITPGRFA provisions on the multilateral system in this policy.

(b) 2011 Rwanda Biodiversity Policy

The Rwanda Biodiversity Policy aims at “conserving biodiversity, sustaining integrity, health and productivity of biodiversity ecosystems and ecological processes while providing lasting development benefits to the country through the ecologically sustainable, socially equitable, and economically efficient use of biological resources” (Rwanda, *Rwanda Biodiversity Policy* 2011, 6). It applies to biodiversity in general. In relation to PGRFA, this policy contains some relevant objectives and strategic options. It recognizes that Rwanda is endowed with an extraordinary diversity of genetic material that has the potential to be used in a range of commercial and environmental applications. It also recognizes Rwanda's dependence on local and foreign genetic material for its agriculture, horticulture and forestry industries, which requires continued access to broad genepools of genetic resources (ibid, 26). The Biodiversity Policy acknowledges the benefits of bioprospecting and the necessity to have a strategy on access to genetic resources and benefit-sharing. This policy clearly states that it is in Rwanda's national interest to control access to its genetic resources and to ensure the sharing of benefits arising from the use and development of such resources. Importantly, this policy recognizes the country's interest in ensuring that this access is not unnecessarily restrictive. It states that access to Rwanda's genetic resources must be both regulated and facilitated in line with equity principles. It provides strategies to ensure the facilitated access to genetic resources, including:

- The development of detailed guidelines for biodiversity prospecting by domestic and foreign companies
- The legal establishment of a national clearing house to regulate and administer all exchanges of genetic resources and ensure that the collection of biological and genetic resources does not adversely affect the conservation status of genes, species, population, community, habitat, ecosystem or landscape

- The development and implementation of an efficient permit system for the collection of any biological or genetic resource to be used for research, trade or commercial purposes
- The requirement that benefit-sharing arrangements take into consideration the need to conserve biodiversity in Rwanda and to stimulate economic development in the most disadvantaged parts of the country; the rights of local communities, farmers, and others holding traditional knowledge to benefit from co-ownership of research data, patents and products derived from their knowledge; the need to adopt a multifaceted approach to sharing of benefits in the short and long term and the need to strengthen Rwanda's science and technology capacity (ibid, 27).

As far as the sharing of benefits is concerned, the Biodiversity Policy aims to share the benefits arising from the use of genetic resources in compliance with the CBD. To achieve this aim, the Policy states that the government must:

- Put in place mechanisms for the equitable sharing of benefits arising from the use and commercialization of Rwanda's plant genetic resources and related traditional knowledge among the current generations and between generations
- Ensure the equitable sharing of benefits arising out of the use of accessed plant genetic resources, their by-products, innovations and practices associated with their use and applications and related knowledge
- Ensure that benefits are channelled to the concerned holders of plant genetic resources or traditional knowledge in an equitable manner between men and women
- Ensure the participation of the concerned local community or communities in devising benefit-sharing schemes (ibid, 28).

These aims and strategic options with respect to access to PGRFA in general, including PGRFA covered by the multilateral system and the sharing of benefits arising from their utilization, have been guided by the Rwanda Biodiversity Policy. The Policy has even served as a model for the development of a draft Ministerial Order Governing the Access to Genetic Resources and the Fair and Equitable Sharing of Benefits Arising from their Utilisation in Rwanda. However, this policy is for general guidance only, and it does not provide specific guidance needed to govern facilitated access to PGRFA covered by the multilateral system and the sharing of benefits arising from their utilization.

The Rwanda Biodiversity Policy is implemented by two institutions: the Ministry of Environment and REMA. The ministry implements the policy at the supervisory level. It provides the overall policy guidance and supervision and monitors its implementation. REMA implements the Biodiversity Policy at the technical level as the implementing agency of the environment and biodiversity policies. It is responsible for technical operations and coordination with other agencies.¹⁰⁷ Although there is no conflict between

¹⁰⁷ Ibid., 36.

the Biodiversity Policy and the ITPGRFA's provisions on the multilateral system, the efficiency of the Rwanda Biodiversity Policy in the management, use, access and sharing of benefits arising from the utilization of PGRFA covered by the multilateral system is limited because this Policy only has a general application. It does not give clear guidelines on all of the procedures and the rules related to the competent authority and its responsibility, which are necessary for the effective implementation of the multilateral system.

(c) *Rwanda Vision 2020*

Rwanda Vision 2020 is a long-term development framework that was adopted in 2000 and revised in 2012. It presents key priorities and provides the guiding tools for the future. Rwanda Vision 2020 aims to transform Rwanda into a middle-income nation in which citizens are healthier, educated and more prosperous (Rwanda, *Rwanda Vision 2020* 2000, 11). Rwanda Vision 2020 has six pillars, including the pillar of productive and market-oriented agriculture.¹⁰⁸ It also includes three other crosscutting issues that deal with the protection of the environment and sustainable natural resources management (ibid, 11). With respect to the pillar of productive and market-oriented agriculture, Rwanda Vision 2020 aims to abandon poor performing agriculture and promote agricultural intensification to increase productivity and growth (agricultural transformation). To achieve agricultural transformation, the policy prioritizes the increase of extensive research and extension services, the use of high-yielding varieties and intensive input use, especially fertilizers, and environmental control measures to halt the decline in soil fertility (ibid, 17). These key areas in agricultural transformation were later developed in the SPTA in Rwanda. It is very clear that the PGRFA covered by the multilateral system are a significant concern of Rwanda Vision 2020, as it aims to increase agricultural production and research activities by using the high-yielding varieties to achieve its agricultural transformation.

For the crosscutting issue of environment and natural resources' management, Rwanda Vision 2020 recognizes the imbalance between the population and natural resources and calls for a sustainable management of natural resources. It demonstrates that this can be achieved through the implementation of adequate land and water management techniques and a sound biodiversity policy. Biodiversity policy and laws that are applicable to the management of PGRFA in general and those under the multilateral system are therefore rooted in Rwanda Vision 2020. Rwanda Vision 2020 does not conflict with the provisions of the ITPGRFA or the multilateral system. However, given the general nature of this policy, the long-term development strategy and its time of adoption (2000, which was before the adoption of the ITPGRFA), there are no details on the implementation of the multilateral system in it. Details were expected to be provided in the other policies rooted in Rwanda Vision 2020. However, these policies also do not provide clear guidance on the implementation of the multilateral system.

¹⁰⁸ Other pillars are: good governance and a capable state, human resource development and a knowledge-based economy, a private sector-led economy, infrastructure development and regional and international economic integration.

(d) Economic Development and Poverty Reduction Strategy (EDPRS)

The EDPRS provides a medium-term framework for achieving Rwanda Vision 2020 and the Millennium Development Goals. It was first established in 2002 and entitled *Poverty Reduction Strategy Paper (PRSP)* to guide the country's development endeavours for a period of five years (2002–2006). In this period, the focus was on six priority areas of rural development and agricultural development, human development, economic infrastructure, private sector development and capacity building (Rwanda, *Poverty Reduction Strategy Paper 2002*, 6). With respect to agricultural development, the objective was to transform agriculture through the use of new inputs, including new seeds to increase productivity, and strong support for agricultural research and extension.

In 2007, a new strategy was adopted that was entitled Economic Development and Poverty Reduction Strategy 1 (EDPRS 1) as the continuation of the 2002 *PRSP*. This strategy was adopted to guide national economic development and poverty reduction for a period of five years (2008–2012). EDPRS 1 prioritized the acceleration of growth, the creation of employment and the generation of exports under the flagship of sustainable growth for jobs and exports, Rwanda Vision 2020 *Umurenge* and good governance.¹⁰⁹ With respect to agriculture, EDPRS 1 prioritized, among other things, the intensification of agriculture in both crop cultivation and animal husbandry. With respect to the environment, EDPRS 1 targeted excellent management of the environment and optimal utilization of natural resources. The intensification of agriculture in crop cultivation requires higher levels of inputs, including seeds or crop genetic resources necessary to increase crop yields. This requires having access to a wider gene pool of PGRFA in general, including those governed by the multilateral system for the purpose of utilization and conservation, research, breeding and training for food and agriculture. In addition, the optimal utilization of natural resources involves the sustainable utilization of PGRFA, including those covered by the multilateral system. Sustainable utilization requires the regulation of access to such resources, which means that even if the EDPRS does not provide clear guidelines on the sustainable utilization of PGRFA, the priority of optimally utilizing natural resources can be the foundation for regulating access to PGRFA, including those under the multilateral system.

Since 2013, Rwandan economic development has been guided by EDPRS 2, which is a continuation of EDPRS 1. This strategy will again apply for a period of five years (2013–2018). EDPRS 2 has four priority areas: economic transformation, rural development, productivity and youth employment and accountable governance (Rwanda, *Economic Development and Poverty Reduction Strategy 2 2013*, 14). Two areas are relevant in this report: agricultural development and biodiversity conservation. For agriculture, EDPRS 2 intends to increase agricultural productivity by focusing on irrigation and land husbandry and the proximity of extension services and by connecting farmers to agribusinesses (44). Agricultural development and the conservation of biodiversity require regulating access to PGRFA in general as well as those under the multilateral system, which

¹⁰⁹ Vision 2020 *Umurenge* is the integrated rural development programme to eradicate extreme poverty and release the productive capacities of the poor.

must be regulated in accordance with the ITPGRFA. With respect to the environment, EDPRS 2 calls for, among other things, mainstreaming environmental sustainability into productive and social sectors and reducing vulnerability to climate change. These are general strategic options, but they are closely connected with the management of PGRFA in general, including those governed by the multilateral system, because these productive sectors include the agricultural sector where PGRFA, which are components of the environment, are mostly used. In addition, the good management of PGRFA is one of the strategies used to reduce vulnerability to climate change because, by using a large genetic pool of PGRFA, it becomes possible to diversify crops and varieties, adopt varieties that are tolerant to climate shocks such as drought and flooding or grow early-maturing varieties that are adapted to changes in the cropping season (Asfaw and Lipper 2012, 4). Such management involves having access to PGRFA from other countries or allowing access to PGRFA by nationals and foreigners, which requires a guiding policy and a regulatory framework.

There is no incompatibility between the implementation of EDPRS 2 strategic activities and the obligations of the multilateral system under the ITPGRFA. However, EDPRS 2 does not provide for an institution that is in charge of implementing strategic options connected to PGRFA specifically. This policy is of general application; its implementation is entrusted to ministries, districts and agencies that are budget implementers, with the Prime Minister's Office having the coordinating responsibility and working closely with the Ministry of Planning and Finance (Rwanda, *Economic Development and Poverty Reduction Strategy 2* 2013, 97). There is no clear guidance on the implementation of the multilateral system under the policy framework of EDPRS 2.

(e) Strategic Plan for the Transformation of Agriculture in Rwanda (SPTA)

The SPTA was first established in October 2004 (SPTA 1), following the National Agricultural Policy, and revised in 2009 (SPTA 2). SPTA 2 contains the short- to medium-term framework for the agricultural sector and is aligned with the national, long-term framework for development, as well as the regional development agenda set by NEPAD and CAADP (Gapusi et al. 2013, 7–8). Four programmes lie at the heart of the SPTA: intensification and development of sustainable production systems; support for the professionalization of producers; promotion of commodity chains and agribusiness development and institutional development. The intensification and development of sustainable production systems obviously involves the use of diversified PGRFA, including those governed by the multilateral system. They can be used for research, development or in agriculture. This means that SPTA 2 does not conflict with the obligations of implementing the multilateral system. They can be implemented in harmony. However, since SPTA 2 applies to the transformation of agriculture in general, it does not provide clear guidance on the use of PGRFA. The implementation of SPTA 2 is entrusted to MINAGRI, which works with agricultural decentralized entities and agencies that operate in this sector. The policy states that MINAGRI is responsible for implementing the strategy with wider responsibilities, and no concrete responsibilities related to the use of PGRFA have been formulated that will ensure the effective implementation of the multilateral system.

(f) Crop Intensification Program (CIP) Strategies

The Crop Intensification Program (CIP) began in September 2007 and is a flagship programme implemented by MINAGRI to attain the goal of increasing agricultural productivity under SPTA 2. It was initiated as a means of implementing CAADP. The CIP aims to accomplish the goal of increasing agricultural productivity by significantly increasing the production of food crops across the country. It currently uses various approaches that include the facilitation of inputs (improved seeds and fertilizers), the consolidation of land use, the provision of extension services and the improvement of post-harvest handling and storage mechanisms. The CIP programme focuses on six priority crops, namely maize, wheat, rice, Irish potatoes, beans and cassava.¹¹⁰ To increase agricultural productivity under the CIP, it is necessary to use different crop varieties that are likely to be obtained through the use of PGRFA, including the ones governed by the multilateral system. There is no conflict between the CIP and the provisions of the multilateral system. They can be implemented in a mutually supportive way. However, some issues need to be considered. The implementation of the CIP is the responsibility of MINAGRI, but the policy does not state clear responsibilities with regard to the access and use of the PGRFA covered by the multilateral system.

(g) Rice Policy

The goal of the Rice Policy is for Rwanda to become self-sufficient in rice production and well positioned to compete with local and regional markets, as a result of its significant improvements in quality and value. Among the objectives of the Rice Policy is improving the access to, and distribution of, inputs, including seeds to smallholder rice growers. The policy aims to ensure the timely availability of sufficient amounts of good quality rice seed. The Rice Policy strategically aims to boost research, regulate the varieties to be released, and privatize seed production and marketing (MINAGRI 2010, 16–18). If implemented proactively in Rwanda, the ITPGRFA, and the multilateral system, in particular, could provide important forms of support for the Rice Policy. It makes sense for public authorities and other stakeholders implementing the Rice Policy to be in contact with the national focal point and competent authorities for the multilateral system to investigate how they can benefit through the availability of rice germplasm (and related information) from around the world, which is available through the multilateral system.

To conclude, the different international and national policy and legal instruments discussed above are applicable to PGRFA governed by the multilateral system. There are clear links between the objectives of the laws and policies described above and the ITPGRFA, generally, and the multilateral system, in particular. The ITPGRFA and the multilateral system can lend useful forms of support to the realization of these objectives if there is good coordination and communication between the authorities and the stakeholders involved in their implementation. It is very much hoped that this report will help those public authorities and stakeholders to “find each other” and to start work on mutually supportive strategies for implementing their respective laws, policies

¹¹⁰ *Crop Production and Food Security*, <http://rab.gov.rw/departments/crop-production-food-security/cip/> (accessed 23 October 2016).

and programmes. However, the contribution of these policies, laws and regulations to the implementation of the multilateral system in Rwanda is very limited. They are not prescriptive in terms of dictating how the multilateral system should be implemented in Rwanda, nor do they directly address the specific aspects that need special attention in the implementation of the multilateral system. The following section discusses options for the policies, laws and guidelines that will need to be put into place to implement the multilateral system in Rwanda.

4. Developing a national policy to implement the multilateral system in Rwanda

The government of Rwanda, through MINAGRI, is in charge of implementing the ITPGRFA and the multilateral system. RAB is currently implementing some aspects of the multilateral system. However, there is no legal instrument that provides clear guidance on the responsibilities and powers of this department with regard to the multilateral system. Additionally, there are no clear legal rules that currently establish procedural rules of access to PGRFA covered by the multilateral system and rules on the sharing of benefits arising out of their utilization. Although some implementation has taken place, it is advisable to have a law that will reinforce the existing powers of RAB, cement its legitimacy, provide order and certainty and promote a commitment towards the effective and sustainable implementation of the multilateral system under the ITPGRFA. We appreciate that there is no obligation under the ITPGRFA to develop new legislation, regulations or executive orders to implement the multilateral system. Indeed, most countries that are implementing the multilateral system nationally are doing so without creating new legislative instruments (Halewood et al. 2013; Joint Capacity Building Programme 2018) However, we feel that such new legal instruments would be justified and useful as part of a strategy for effectively implementing the multilateral system in Rwanda. We revisit this issue, and our reasons for concluding a new legal instrument (or instruments) would be useful in the Rwandan context in the sections that follow.

A. Who is responsible for promoting/coordinating national implementation?

1. *National Competent Authority (NCA)*

The ITPGRFA does not mention the need to appoint a National Competent Authority (NCA) (or authorities) for the effective implementation of the multilateral system. However, in some countries, given their legal and political culture, it is advisable to officially appoint a NCA with clearly defined roles, responsibilities and powers, especially in relation to receiving, processing and deciding upon requests for access to PGRFA covered by the multilateral system. In the absence of such an official appointment, and the definition of its responsibilities, no individual or institution would have the convening power (or budget) to coordinate all the activities necessary to put systems in place to implement the multilateral system in Rwanda.

Considering its responsibilities, it seems that the Rwanda Agriculture and Animal Resources Development Board (RAB) is in the most appropriate position to be formally recognized as the NCA. As highlighted in the discussion of the law establishing the RAB in section 3 above, RAB is highly concerned with the management of PGRFA under the multilateral system. It is primarily responsible for searching, collecting, providing and

disseminating information, and services to farmers to increase agricultural productivity. RAB conducts fundamental and applied agricultural research in the areas of plant breeding, agronomy, and climate change impacts and adaptation. RAB manages a genebank for storing and conserving plant genetic resources as well as any other living organisms for use in agriculture. RAB's responsibilities are closely linked to the implementation of the multilateral system.

It is important to note that RAB has been implementing some aspects of the multilateral system already. RAB authored and sent Rwanda's notification letter (dated March 26, 2013) to the Secretary of the ITPGRFA confirming which PGRFA collections within Rwanda are available through the multilateral system. That notification letter specifies that further information about specific accessions in those collections can be requested from the heads of the relevant crop programmes or from the national genebank. The letter states that requests for material can be directed to RAB's Deputy Director General in charge of research.¹¹¹ Sending this message, and defining in advance who could receive requests for access to those materials, was an important step in the implementation of the multilateral system in Rwanda. However, to guarantee that the implementation of the multilateral system will be effective, certain and sustainable, it is recommended that RAB's role and/or mandates in relation to the implementation of the multilateral system be confirmed through adoption of a suitable legal instrument. The existing law defining RAB's powers and responsibilities does not contain provisions explicitly related to RAB's powers and responsibilities in relation to the multilateral system. In the absence of such a law underscoring its powers and responsibilities vis-à-vis the ITPGRFA, and multilateral system in particular, it will be difficult for RAB to coordinate the necessary actions and decision making to ensure the multilateral system is effectively implemented in Rwanda.

The NCA can authorize other institutions to receive and consider requests for materials in the multilateral system. Indeed, RAB's notification letter to the ITPGRFA Secretariat reflects this approach by, for example, stating that requests for materials conserved by the Higher Institute of Agriculture and Animal Husbandry (ISAE) (mostly beans, Irish potatoes and rice) should be directed to that organization.¹¹² However, the specific details mentioned in the notification letter may cause some confusion with respect to access to PGRFA under the multilateral system in the future, especially if there are other institutions that end up managing PGRFA that are in the multilateral system but those institutions are not included in the notification letter. It may be difficult to know who may be responsible to receive applications for access to materials held by other institutions.

¹¹¹ Rwanda Agriculture and Animal Resources Development Board (RAB), Notification Letter Regarding the Contribution of Rwanda to Multilateral System (Notification Letter), 25 March 2013, <http://www.fao.org/3/a-bb848e.pdf> accessed 23 October 2017).

¹¹² It is important to note that in 2013 all Rwandan public institutions of higher learning were merged to form the University of Rwanda. The ISAE became part of the College of Agriculture, Animal Sciences and Veterinary Medicine (CAVEM). The School of Agriculture and Rural Development became the School of Agriculture, Rural Development and Agricultural Economics (SARDAE). See Law no. 71/2013 of 10 September 2013 establishing the University of Rwanda and Determining Its Mission, Powers, Organization and Functioning (Law Establishing the University), OG no. 38, 23 September 2013.

With regard to the appointment, mandate and responsibilities of the NCA, it is proposed that related legal provisions be formulated as follows:

- *The National Competent Authority in charge of the implementation of the multilateral system under the ITPGRFA is the Rwanda Agriculture and Animal Resources Development Board*
- *The National Competent Authority will be responsible to:*
 - i. *Disseminate all information and raise awareness in relation to the multilateral system of access and benefit-sharing under the ITPGRFA*
 - ii. *Develop and strengthen capacity building activities and programmes necessary for the implementation of the multilateral system of access and benefit-sharing under the ITPGRFA*
 - iii. *Promote the implementation of the multilateral system of access and benefit-sharing under the ITPGRFA with key public and private institutions including organisations of farmers, producers and breeders*
 - iv. *Develop policies necessary for the implementation of the multilateral system of access and benefit-sharing under the ITPGRFA*
 - v. *Receive and decide upon the requests for access to Annex 1 PGRFA governed by the multilateral system*
 - vi. *Delegate authority to entities within the country to receive, consider and approve requests for facilitated access to Annex 1 materials in the multilateral system*
 - vii. *Coordinate with relevant institutions dealing with the implementation of access and benefit-sharing activities and programmes under other relevant international agreements*
 - viii. *Facilitate the communication and cooperation with hosted international centres holding article 15 collections*
 - ix. *Liaise with National Focal Point in the implementation of the multilateral system of the ITPGRFA*
 - x. *Report periodically on the status of the implementation of the multilateral system of the ITPGRFA*
 - xi. *Coordinate communications between natural and legal persons and the national genebank with regard to inclusion of PGRFA in the multilateral system by natural and legal persons*
 - xii. *Facilitate communication between natural or legal persons on the Rwandan territory and the Third Party Beneficiary*

- xiii. *Receive and compile copies of reports on transfer of materials using the SMTA submitted to the Governing Body*
- xiv. *Identify additional PGRFA to be included in the multilateral system of the ITPGRFA*
- xv. *Identify and establish incentives for voluntary inclusion of PGRFA in the multilateral system by natural and legal persons*
- xvi. *Coordinate and promote technical assistance to farmer, research, civil society organisations to be able to take advantage of the multilateral system including identifying potentially useful germplasm in the multilateral system, and making requests for that material, complying with phytosanitary regulations when receiving materials from other countries.*

2. Regarding a multi-stakeholder advisory committee to assist the NCA

We also recommend that Rwanda establishes an advisory committee constituted by different stakeholders. This committee may assist in providing guidance in policy formulation, monitoring implementation and deciding on “hard cases” that the NCA might refer to for assistance. It may also facilitate the sharing of views and expertise related to the implementation of the multilateral system between its members. It is important to note that the NCA cannot work in isolation from other institutions or individuals that are in one way or another linked to PGRFA under the multilateral system. The recommended advisory committee can include, and provide an important link to, competent authorities responsible for implementing the CBD and the Nagoya Protocol. It is therefore suggested that the legal provisions on the multi-stakeholder advisory committee be formulated in the following terms:

- *A multi-stakeholder advisory committee, hereafter ‘Advisory Committee,’ is hereby established*
- *The Advisory Committee shall be responsible for:*
 - i. *Advising the NCA on all the policy matters related to the implementation of the multilateral system of the ITPGRFA and on coordination with national policies and agencies relating to other genetic resources*
 - ii. *Providing guidance for the development of a coherent national position before the Governing Body and other relevant meetings of the ITPGRFA*
 - iii. *Advising and guiding on the policies and procedures required for the implementation of the multilateral system of the ITPGRFA*
 - iv. *Assisting in making decisions over ‘hard cases’ in accepting or rejecting requests for access to PGRFA covered by the multilateral system*

- *The Advisory Committee shall have ten members divided as follows:*
 - i. one (1) representative of the Ministry in charge of Agriculture*
 - ii. one (1) representative of the Ministry in charge of environment*
 - iii. two (2) representatives of agricultural research centres*
 - iv. two (2) representatives of farmers' organizations*
 - v. one (1) representative of environmental organizations*
 - vi. the competent authority and national focal point of the CBD and Nagoya Protocol*
 - vii. one (1) representative from a public university.*
- *Members of the Advisory Committee shall be nominated by their respective institutions and shall serve for a term of three years renewable once*
- *The Advisory Committee shall have a board composed by a President, a Vice President and a Secretary designated by the Committee members during the first meeting convened and chaired by the minister in charge of Agriculture*
- *The Advisory Committee shall meet twice (2) a year in ordinary sessions and can hold extraordinary sessions whenever deemed necessary*
- *In its meetings, the Committee may invite any person from whom it may seek advice on a certain item on the agenda. The invitee shall not be allowed to vote and shall only follow the debate on items for which advice is sought*
- *The Advisory Committee, in consultation with the NCA, will provide for its internal rules of procedure including matters related to quorum, conflict of interest, election of chair and other positions, reappointment, and others*

3. Regarding the National Focal Point (NFP)

A National Focal Point (NFP) was appointed on 3 November 2014 to facilitate correspondence with the Secretariat of the ITPGRFA. The NFP is an individual, not an institution or a department. The NFP works in RAB and has been appointed by the Director General of RAB on behalf of MINAGRI. No legal instrument was used to appoint the NFP, who was simply appointed through a letter addressed to the ITPGRFA Secretariat. This letter, however, does not explicitly state the NFP's powers and responsibilities. Nor are the NFP's responsibilities defined in the text of the ITPGRFA. Again, in Rwanda's legal and political culture, it would be advisable to have the NFP's powers and responsibilities defined in law to ensure the NFP has the authority and mandate needed to effectively carry out the job. It is recommended that the legal provisions outlining the responsibilities of the NFP include the following content:

- *A National Focal Point shall be appointed by the National Competent Authority*
- *The National Focal Point shall be responsible for:*
 - i. Receiving information, communicating and responding to information and other requests from the ITPGRFA Secretariat related to the Treaty implementation*
 - ii. Conveying the information or request(s) to the relevant institutions or other stakeholders when deemed appropriate*
 - iii. Raising awareness about the process of developing project proposals to be submitted to the International Benefit-sharing Fund*
 - iv. Submitting and following up on proposals for the Benefit-sharing Fund projects calls on behalf of the applicants to the ITPGRFA Secretariat*
 - v. Sending the reports on the implementation of the Treaty to the Governing Body and participate in its meetings and those of its subcommittees.*

B. What is facilitated access and who should have it?

Facilitated access under the ITPGRFA is subject to the terms and conditions of the SMTA, which was designed to keep transaction costs low and increase predictability and transparency. In the Rwandan socio-political context, it is important to get these commitments and principles reflected in national law, to ensure that they are operationalized. To this end, it would be useful in Rwanda to have a law that defines how providers of materials in the multilateral system need to make those materials available free of charge, or at a minimum cost. Inclusion in the law of text underscoring providers' obligation to report transfer to the Governing Body would similarly be useful in ensuring that providers fully understood their obligations, and therefore actually report. It is suggested that the related legal provisions incorporate the basic criteria, including:

- Legal certainty, clarity and transparency
- Fair and non-arbitrary rules and procedures
- Clear rules and procedures for prior informed consent.

Fair procedures and rules should be developed that will govern the facilitated access to PGRFA under the multilateral system, limit delays in processing requests for materials and provide transparency with respect to decision-making. Legal provisions should clearly define who has the right to access PGRFA under the multilateral system, under which conditions access will be allowed (which payments can be requested), for which purposes access will be accepted and what sort of timeline will be provided for access.

It is recommended that the legal provisions be formulated under the following terms:

- *Access to PGRFA covered by the multilateral system shall be provided to:*
 - i. All natural and legal persons located on Rwandan territory*
 - ii. All natural and legal persons under the jurisdiction of other Contracting Parties*
 - iii. International institutions that sign agreements under Article 15 of the Treaty*
- *Access shall be free, and when a fee is required, it shall not exceed the minimum cost involved.*
- *Access shall only be allowed for the purpose of utilization and conservation for research, breeding and training for food and agriculture excluding chemical, pharmaceutical and/or other non-food/feed industrial uses.*
- *Recipients shall not claim intellectual property rights or other rights that limit the facilitated access to the PGRFA, or their genetic parts or components, in the form received from the multilateral system. If any PGRFA is protected by intellectual property rights or other rights, its access shall respect relevant international agreements or national laws.*
- *When PGRFA that incorporates materials accessed from the multilateral system is still under development, the developer has discretion if and when to make it available. However, when such materials are made available, the developer must use the SMTA. The developer may add additional terms and conditions that are consistent with the SMTA.*
- *Access to PGRFA in the multilateral system that is found in situ conditions in protected areas shall be subject to national laws governing those protected areas.*

C. Who is responsible for authorizing access to PGRFA within the multilateral system?

Since the ITPGRFA is silent on who should be empowered among the member states to receive requests for access and to authorize access to PGRFA in the multilateral system, there is considerable flexibility in how to approach this issue in terms of the numbers and range of entities that are authorized to consider and grant access to PGRFA in the multilateral system. Decisions taken until now by competent authorities in Rwanda suggest that the intention is to authorize a range of public bodies holding PGRFA to receive requests, authorize and actually provide access. As mentioned above, a letter sent to the ITPGRFA's secretary in 2013 indicates that not only RAB can authorise access to PGRFA in the multilateral system, but also other institution mentioned in the letter can authorise access to specified PGRFA within the multilateral system. . Apart from the notification letter to the Secretariat, there is no other official policy document or law establishing who is responsible for authorizing access to PGRFA within the multilateral system. To ensure effectiveness and sustainability in the implementation of the multilateral system, and to encourage institutions to take responsibility, it is advisable that what is provided in the notification letter be strengthened through legal provisions that indicate clearly who is responsible to authorize access as well as the scope of their related responsibilities.

To strengthen this approach, ensure its sustainability, encourage taking responsibility and clearly establish the scope of responsibilities of access authorisers, it is advisable that this approach be legally defined. As an example, such legal provisions may state:

- *The National Competent Authority and all authorized public institutions holding PGRFA under the multilateral system have the powers to receive, process, approve or reject applications for facilitated access to PGRFA under the multilateral system they hold with respect to the terms and conditions provided in other provisions of this law.*
- *All authorized public institutions that have processed applications for facilitated access have to report to the National Competent Authority on every approval or rejection of an application.¹¹³*

¹¹³ It is important to note that this form of internal, domestic reporting is not required by the ITPGRFA or the SMTA. The SMTA says only that reports shall be made by providers to the Secretariat. However, it is understandable that to be able to coordinate all access activities, know how much the country is contributing to the MLS, identify internal successes or challenges and ensure harmonious access, internal reporting probably will be important.

D. What processes and criteria should be followed in considering requests for PGRFA under the multilateral system?

1. The process that access seekers should follow to make requests for material within the multilateral system

The terms and conditions related to access and benefit-sharing are already agreed and set out in the SMTA. The ITPGRFA does not set out details concerning processes for making requests for materials in the multilateral system or establish explicit procedural criteria for considering requests for PGRFA included in the multilateral system. Procedures for applying and communicating decisions could be addressed in a national legal instrument. The national legal instrument should be clear on who is responsible for receiving applications for access to PGRFA included in the multilateral system. This should avoid any uncertainties that a holding institution may feel when dealing with applications and making decisions. It will also help applicants easily identify to whom they should address their applications and what the established procedures are. For example, it is suggested that the legal provision could be formulated in the following terms:

- *An application for access to PGRFA in the multilateral system shall be addressed to the entity holding the material requested, including the National Competent Authority or any other authorized institution.*

2. Processes that decision makers should follow to consider requests for PGRFA included in the multilateral system

It is recommended that it should be clearly specified to whom the request will be addressed, the time necessary for decision making, the criteria on which the decision is based, and how the transfer will be completed.

Currently, there have been a number of transfers from Rwanda using the SMTA, but these have been carried out in a scattered way. There are no legal provisions regulating these exchanges explicitly, and the procedures that access seekers must follow are not set out. Instead, access seekers have to send requests to the authorities/administrators associated with the collections or *in situ* PGRFA through diverse channels. Decisions are made based on existing mandates, rights, obligations, decision-making powers and commitments that the country has made under the ITPGRFA. However, in order to harmonize the process and facilitate access seekers, it is suggested that procedures be legally established outlining what the receiving authority will do after receiving the application, what timeline a decision will follow and what will happen in complex or difficult cases. For example, the legal provision may be formulated using the following terms:

- *The National Competent Authority or any other authorized institution shall, after receiving the application, acknowledge reception of the application by sending a message to the applicant.*
- *The National Competent Authority or any other authorized institution shall decide and communicate its decision to the applicant within one (01) month counted from the date of reception of the application.*
- *For complex or hard cases, the National Competent Authority or any other authorized institution shall consult the Advisory Committee created to facilitate the implementation of the multilateral system of the ITPGRFA.*

3. Criteria to use in order to decide whether or not to authorize access

Contracting parties have undertaken to provide facilitated access to multilateral system materials using the SMTA, free of charge or for a minimum administrative cost. The ITPGRFA and the SMTA leave very few issues for consideration or negotiation between the access seeker and the potential provider. Providers may charge a minimal fee, and recipients need to agree to pay it if asked. Recipients also have to agree to receive the materials under the SMTA. Providers do not have to provide materials they conserve if they do not have adequate stocks of the requested materials on hand. Some countries may adopt the policy of only providing facilitated access under the ITPGRFA to natural and legal persons in other ITPGRFA Contracting Parties. In such countries, providers would be able to turn down requests from natural and legal persons resident in countries that are not ITPGRFA Contracting Parties. Although it is stated in the ITPGRFA, it is important to underline in a Rwandan national law that all transfers of materials in the multilateral system should use the SMTA and that the SMTA cannot be changed in any way.

Legal provisions addressing these issues could be formulate as follows:

- *Access to Annex 1 PGRFA in the multilateral system shall be allowed based on the following conditions:*
 - i. If requested for purposes listed in the multilateral system*
 - ii. The applicant agrees to receive the requested material under the SMTA*
 - iii. Availability of sufficient stores to provide the requested samples*
 - iv. Payment of minimum administration fees, if and when requested by the provider; and*
 - v. Location of the recipient in a Contracting Party*
- *Without prejudice to paragraph 1 of this article, access to in situ PGRFA in the multilateral system, may be subject to some other additional conditions as may be required by national laws concerning the conservation and management of parks and conservation areas.*

- *Access to PGRFA under development, including by farmers, is at the discretion of the developer. When access is granted, the material must be transferred under the SMTA.*
- *Holders of Annex 1 PGRFA, which are not yet included in the multilateral system, are encouraged to include them in the multilateral system.*
- *Access to Annex 1 PGRFA not included in the multilateral system shall follow rules and procedures established by other applicable national laws including potentially Access and Benefit-Sharing laws if they exist.*

E. How to address benefit-sharing?

The terms for benefit-sharing are provided in the ITPGRFA. In establishing legal provisions governing benefit-sharing, it is suggested that the legal provision refers to the provisions in the multilateral system under the ITPGRFA. It may also clearly sets out processes for natural and legal persons in Rwanda to submit proposals to the ITPGRFA Benefit-sharing Fund, including committing the NCA to supporting natural and legal persons who wish to develop such proposals. For example, the legal provision may be framed as follows:

- *The benefits resulting from facilitated access to PGRFA in the multilateral system from Rwanda shall be shared fairly and equitably, in accordance with the provisions of the ITPGRFA and the SMTA adopted by the Governing Body*
- *Natural and legal persons in Rwanda may develop proposals in response to calls for proposals from the Treaty Secretariat for projects supported by the international Benefit-sharing Fund*
- *The NFP will publish information in Rwanda about such calls for proposals and provide information to interested national and legal persons in Rwanda*
- *National and legal persons in Rwanda must submit their proposals to the NFP, who will in turn submit them to the Treaty Secretariat*

F. How to ensure legal space for the implementation of the multilateral system?

In Rwanda, although there is the Biodiversity Law and the draft Ministerial Order Governing Access to Biological and Genetic Resources and Sharing Benefits Resulting from Their Utilization (Draft Ministerial Order), these two instruments have been developed to implement Rwandan rights and obligations pursuant to the CBD and the Nagoya Protocol. At present, this Draft Ministerial Order includes in its scope

PGRFA that are included in the multilateral system in Rwanda. To ensure legal space for the implementation of the multilateral system, it is recommended that PGRFA in the multilateral system be exempted from the scope of application of the Draft Ministerial Order. This will allow for the development of a separate legal instrument that can contain all of the details important for the implementation of the multilateral system.

Article 2 of the Draft Ministerial Order currently states:

“This order applies to access to genetic resources or parts of genetic resources, whether naturally occurring or naturalised, including genetic resources bred for or intended for commercial purposes within Rwanda or for export, whether in in-situ or ex-situ conditions.

This order does not apply:

- a. to the exchange of genetic resources
 - i. where it is done by local communities within Rwanda among themselves and for their own consumption
 - ii. where it is for direct consumption which does not involve the use of genetic resources thereof
- b. to the transit of genetic resources through Rwanda
- c. to access to genetic resources derived from plant breeders as defined by the laws relating to plant breeding and plant variety
- d. to human genetic resources
- e. to approved research activities intended for educational purposes by Rwandan institutions recognized by the competent authority, and which do not result in access to genetic resources for commercial purposes or export to other countries.”

This sub-article should be revised to exclude PGRFA in Rwanda that are included in the multilateral system from the scope of the Draft Ministerial Order. It is recommended that the article be revised in the following way (with the introduction of sub-article 2 (a)):

Article 2: Scope

“This order applies to access to genetic resources or parts of genetic resources, whether naturally occurring or naturalized, including genetic resources bred for or intended for commercial purposes within Rwanda or for export, whether in in-situ or ex-situ conditions.

This order does not apply to:

- a. PGRFA under the Multilateral System of the International Treaty on Plant Genetic Resources for Food and Agriculture;
- b. the exchange of genetic resources –

- i. where it is done by local communities within Rwanda among themselves and for their own consumption;
 - ii. where it is for direct consumption that does not involve the use of genetic resources thereof;
- c. the transit of genetic resources through Rwanda;
- d. access to genetic resources derived from plant breeders as defined by the laws relating to plant breeding and plant variety;
- e. human genetic resources;
- f. approved research activities intended for educational purposes by Rwanda institutions recognised by the competent authority, and that do not result in access to genetic resources for commercial purposes or export to other countries.”

G. How to deal with requests for purposes that are (or may be) beyond the scope of the multilateral system?

Access to PGRFA for purposes that are beyond the multilateral system will likely be governed by the access and benefit-sharing laws or regulations adopted to implement the CBD and the Nagoya Protocol – namely, the Biodiversity Law and Draft Ministerial Order. Under Article 3 of the Draft Ministerial Order, REMA will be the competent authority to deal with such access requests since it is the institution in charge of the environment in Rwanda. It is hoped that RAB and REMA will be able to coordinate closely. The related provisions of the proposed legal instrument may be formulated in the following terms:

- *Access to Annex 1 PGRFA for purposes beyond those covered under the Multilateral System of the Treaty shall be governed by access and benefit-sharing laws implementing the CBD and the Nagoya Protocol, assuming the purpose of access is regulated by those laws.*
- *Requests for such access shall be addressed to the competent national authority (ies) identified in access and benefit-sharing laws implementing the CBD and Nagoya Protocol in Rwanda.*

H. Which PGRFA are automatically included in the multilateral system?

The multilateral system covers Annex 1 PGRFA that are “under the management and control” of the national government and “in the public domain.”¹¹⁴ The latter are automatically included in the multilateral system once the country has ratified or

¹¹⁴ Ibid., Article 11.2.

acceded to the ITPGRFA. In Rwanda, any PGRFA held by RAB in its various research centres and by the University of Rwanda are automatically included in the multilateral system. RAB is a public institution supervised by MINAGRI. Pursuant to the Law Establishing the RAB, RAB has the general mission of developing agriculture and animal resources through research, agriculture extension in order to increase agricultural and animal productivity. It carries out its functions on behalf of the government (as mandated by the law). In addition, its policy and management are subject to the direction of the government. RAB is funded by the government, which also appoints its management board.

The University of Rwanda is a public university established by Law no. 71 Establishing the University of Rwanda, and it has the mission of delivering quality education and developing innovative teaching and research that is meant to address the problems of the population, the students, the nation, the region and the world. Like RAB, the management board of the university is appointed by the government and is funded by the government.¹¹⁵ Therefore, the collections of beans, Irish potatoes and rice held by CAVEM at the University of Rwanda are under the management and control of the national government of Rwanda and are in the public domain. They are automatically included in the multilateral system. These collections are even named in the notification letter sent by RAB to the ITPGRFA's Secretariat, mentioned above.

Of course, the materials included in the multilateral system are not fixed or static. In the course of its day-to-day work, RAB and other organizations will acquire, conserve and use additional PGRFA that will be under the management and control of the national government and in the public domain. It makes sense therefore that the country occasionally reconsiders what materials are included in the multilateral system and sends updated letters to the ITPGRFA Secretariat about these resources. RAB previously coordinated a number of organizations to “think through” which materials in the country should be automatically included in the multilateral system in 2013. It is proposed that RAB continues to play this role, bringing relevant organizations and authorities together to consider what materials should be currently included in the multilateral system and to send a revised notification letter to the Secretariat with updated information.

To ensure certainty and sustainability in the implementation of this responsibility, we suggest it should be clearly established in a national law. As suggested above, RAB should be officially appointed as the NCA in matters related to the implementation of the multilateral system. RAB would thereafter have the authority to convene stakeholders within the country, to raise awareness about the ITPGRFA, to help confirm which PGRFA in the country are in the multilateral system, to liaise with natural and legal persons concerning voluntary inclusions of PGRFA in the multilateral system, and finally to send updated notifications to the Treaty Secretariat about such materials.

¹¹⁵ Ibid., Article 11.2.

I. Which regime applies to *in situ* PGRFA?

In Rwanda, Annex 1 *in situ* PGRFA found in areas that are under the management and control of the government and in the public domain are automatically included in the multilateral system. These areas include national parks, nature conservation areas and other areas that fall under the category of public land in the public domain, as discussed in previous sections. However, since such areas are managed by institutions other than RAB – namely, the RDB – it is recommended that it be explicitly stated in the proposed legal instrument that access to Annex 1 PGRFA found in such areas shall also follow other existing national laws governing the collection of materials from such areas. It should be clearly stated in the law that, if access is granted, the transfer will be made under the SMTA. In addition, it is advisable that the proposed related legal provisions provide for how to best coordinate to ensure implementation of the multilateral system in harmony with the implementation of other existing laws. The proposed legal provision may be formulated in the following terms:

- *Access to PGRFA in the multilateral system found in in-situ conditions shall respect national laws governing protected areas. For example, the 2005 Environmental Framework Law, the 2013 Biodiversity Law and laws governing different national protected areas.*
- *Applicants shall address their requests to the National Authority in charge of protected areas.*
- *If access and collection are granted, the material transfer shall be done using the SMTA by the National Authority in charge of the protected area.*
- *The National Authority shall submit a copy of the SMTA to the National Competent Authority responsible to implement the multilateral system.*
- *The National Authority in charge of protected areas shall notify the National Competent Authority for the ITPGRFA when such applications are made.*

J. How to encourage voluntary inclusions by natural and legal persons?

Under the ITPGRFA, the Contracting Parties agree that they will take policy measures to encourage natural and legal persons to voluntarily include additional Annex 1 materials in the multilateral system. Presumably, this means that under whatever other access and benefit-sharing law is adopted, there will be provisions encouraging such voluntary transfers. Voluntary inclusion of Annex 1 PGRFA held by natural or legal persons can be encouraged through the establishment of community-based agriculture organizations, such as the Imbaraga Farmer Federation, whose mission is to organize and coordinate Rwandan farmers' activities and strengthen their productive capacity for agricultural development. Its interventions cover the whole country and encompass:

- Advocacy for farmers' rights and position in the area of economic development
- Delivery of necessary agricultural advisory services to farmers and
- Assistance to farmers in agribusiness activities (seed production, inputs sales, food storage, processing and sales, among others) and the development of partnerships in the agricultural sector.¹¹⁶

The Imbaraga Farmer Federation contributes to the dissemination of varieties among farmers for food and agriculture purposes through seed production and marketing and works closely with RAB in participatory breeding programmes and on-farm variety development trials. Beans, cassava, Irish potatoes, rice, bananas, pineapples and passion fruit are the major crops of interest. The federation has taken the initiative of collecting and maintaining different varieties of indigenous vegetables with RAB's support. This collaboration with, and support for, farmers is vital. It is possible that organizations like the Imbaraga Farmer Federation would be willing to voluntarily include such materials in the multilateral system. Also individual farmers, or commercial research organizations could be potentially interested in making voluntary inclusions. However, they may not be aware of the possibility of making those voluntary inclusions, or how to actually make them.

It is suggested that there should be a clear legal provision in the national law implementing the ITPGRFA in Rwanda assuring natural and legal persons that they are able to make such voluntary inclusions. The law could go further, committing the NCA to provide natural and legal persons with various forms of support, such as contacting collection holders in the country to see if they would be willing to conserve and distribute such materials. Without a legal provision of this nature, natural or legal persons in Rwanda who may hold Annex 1 PGRFA may not feel they have permission or motivation to voluntarily include them in the multilateral system. Such a legal provision may be framed as set out below.

Before proceeding, it is important to underline that Annex 1 PGRFA held by natural and legal persons in Rwanda could be within the scope of a national law implementing the

¹¹⁶ See *Federation of Farmers and Pastoralists of Rwanda (IMBARAGA)*, [http://www.sfoap.net/countries/detail/?no_cache=1&dyna_feff\[uid\]=4012](http://www.sfoap.net/countries/detail/?no_cache=1&dyna_feff[uid]=4012) (accessed 27 October 2016).

Nagoya Protocol. If this is the case, then there needs to be some form of coordinated interface between the two laws and implementing agencies. One option would be for the inclusion of 'mirroring provisions' in national ABS laws implementing the CBD or Nagoya Protocol, whereby natural and legal persons are assured up front, in the law, that they are allowed to voluntarily include annex 1 PGRFA in the multilateral system, if those materials are otherwise covered by those national ABS laws. Another option would be to require them to go through whatever system is put in place for all other genetic resources covered by the national access and benefit-sharing law. The downside of this latter approach is that it does not recognise the Contracting Party's commitment under the ITPGRFA to provide incentives for national and legal persons to voluntarily include Annex 1 PGRFA in the multilateral system.

An alternative would be to include a commitment in the law implementing the ITPGRFA that the ITPGRFA NCA will assist natural and legal persons to contact and seek permission from the NCA for the Nagoya Protocol.

- *Natural and legal persons are encouraged to voluntarily include annex 1 PGRFA in the multilateral system*
- *Any natural or legal person holding annex 1 PGRFA who wishes to include them in the multilateral system shall be assisted through:*
 - i. Provision of information from the National Competent Authority on the process of inclusion in the multilateral system*
 - ii. National Authority contacting organizations hosting PGRFA collections within the country to see if they are willing to conserve and make such materials available through the multilateral system*
 - iii. Assistance from the National Competent Authority of the ITPGRFA in obtaining requisite approvals under other applicable ABS laws to make the material available under the multilateral system*
 - iv. Financial support for research and breeding activities aiming to duplicate and deposit PGRFA covered by the multilateral system into any RAB research Centre on condition that RAB agrees to redistribute the material freely; and*
 - v. Tax deduction for any taxable activity aiming at pooling an annex 1 PGRFA into the multilateral system*

K. How to deal with reporting obligations regarding transfers and sales?

Article 5 of the SMTA obligates providers to inform the ITPGRFA's Governing Body about the materials they are transferring under the SMTA. Currently, many of the transfers of materials using the SMTA are not reported. For this reason, a law for implementing the multilateral system in Rwanda, should underscore providers' obligation to inform the ITPGRFA following the procedures stipulated by the Governing Body. In addition, Rwandan government officials may want to know how the country is contributing to the multilateral system. To that end, the suggested national law could stipulate that, in addition to informing the ITPGRFA, providers in Rwanda should inform the NCA. The NCA can then synthesize information on materials going out of Rwanda. Note, however, that this is not a requirement of the ITPGRFA or the SMTA. This latter form of reporting is not required by the ITPGRFA or SMTA, but it is nonetheless an option that national policy makers may want to implement in Rwanda.

L. Who is in charge of monitoring the use of PGRFA within the multilateral system and enforcing the terms and conditions of the multilateral system?

Under the SMTA providers and recipients agree that the third party beneficiary of the SMTA (the FAO) may monitor the use of PGRFA transferred under the multilateral system and request information and initiate legal proceedings in cases of perceived malfeasance. Any natural or legal person who has reasonable grounds to believe that the recipient has not complied with the terms and conditions of the SMTA can notify the FAO as the third party beneficiary. However, under some circumstances, such as language barriers, it may be complicated for some natural or legal persons to contact the third party beneficiary directly. In this case, the NCA could facilitate communication between Rwandan natural or legal persons and the third party beneficiary.

1. Conclusion and recommendations

Rwanda has several policies and laws with the objectives of conservation of the environment, biodiversity, genetic resources and long-term economic and agricultural development. The implementation of the multilateral system in Rwanda can and should complement and support the implementation of these other policies and assist in the realization of their longer-term objectives. Of course, this will require good coordination and communication between the authorities and stakeholders involved in their implementation.

With one exception, these national policies and laws do not contain provisions that conflict with the full implementation of the multilateral system in Rwanda.

The one exception is the Draft Ministerial Order, which currently applies to all genetic resources, including PGRFA in the multilateral system. This Draft Ministerial Order

was drafted to implement the CBD and the Nagoya Protocol's provisions on access and benefit-sharing. It is recommended that the Draft Ministerial Order be amended to exempt PGRFA in the multilateral system from its scope and to "make space" for the effective and full implementation of the multilateral system under the ITPGRFA. The draft Ministerial Order, or future national ABS legislation implementing the Nagoya Protocol, should also accommodate, in some way, natural and legal persons who want to voluntarily include Annex 1 PGRFA in the multilateral system.

We conclude that it would also be useful to develop a single national law as part of the strategy for implementing the multilateral system in Rwanda. A new law would empower national competent authorities, national focal points, collection holders, managers of protected areas, and natural and legal persons to be able to act, and to make decisions, for the day to day operation of the multilateral system, as administrators, providers and recipients of materials. We fear that in the absence of clear definitions of rights and obligations of key actors linked to the multilateral system, those actors will not be empowered to act.

We feel the law should address the following issues:

- The scope of application
- Determining the NCA and its responsibilities
- Legally appointing the NFP and establishing his or her responsibilities
- Establishing a multi-stakeholder committee to facilitate the NCA in the implementation of the multilateral system
- Processes for applying for access to PGRFA under the multilateral system, including *in situ* PGRFA
- Determining who has access to PGRFA under the multilateral system
- Responsibilities of providers and the recipients
- Criterion for accepting/rejecting requests
- Dealing with requests for access to PGRFA in the multilateral system for purposes other than those envisaged by the multilateral system of the ITPGRFA
- Encouraging voluntary inclusion in the multilateral system of Annex 1 PGRFA that are not under the management and control of the government and not in the public domain
- Sharing benefits arising from the utilization of PGRFA governed by the multilateral system.

Article 95 of the Rwandan Constitution provides for the hierarchy of laws as follows: constitution, organic law, international treaties and agreements ratified by Rwanda, ordinary laws and orders. The proposed legal instrument may be an ordinary law that is

ranked fourth. It cannot be an organic law because the adoption of organic laws should be provided for in the Constitution itself, and this is not the case for a law governing PGRFA under the multilateral system, as it is not provided for anywhere in the Rwandan Constitution. It also cannot be a presidential or ministerial order since the adoption of orders must be provided for in an existing law, which can provide that a certain order will be adopted to facilitate its implementation. There is no law that requires the adoption of an order to regulate access to PGRFA in the multilateral system. The only possible option is to enact an ordinary law. A proposed draft of such a law is included in the appendix at the end of this report.

Appendix

Draft Law no. ____ / ____ of ____ establishing the modalities of implementing the Multilateral System of Access and Benefit-sharing of the International Treaty on Plant Genetic Resources for Food and Agriculture in Rwanda

We,

President of the Republic;

The parliament has adopted and we sanction, promulgate the following law and order it to be published in the Official Gazette of the Republic of Rwanda.

The parliament

The Chamber of Deputies, in its session of ____

Pursuant to the Constitution of the Republic of Rwanda of 04 June 2003 revised in 2015, especially in its articles 53, 64, 69, 70, 88, 90, 91, 106, 120, and 176;

Pursuant to the Organic Law n° 04/2005 of 08/04/2005 determining the modalities of protection, conservation and promotion of environment in Rwanda especially in its articles 20, 24 and 49;

Pursuant to the International Treaty on Plant Genetic resources for Food and Agriculture adopted on 3 November 2001 at Rome and entered into force on 29 June 2004 as accessed on 14 October 2010 and entered into force in Rwanda on 12 January 2011;

Pursuant to the International Convention on Biological Diversity and its Habitat signed in RIO DE JANEIRO in BRASIL on 5 June 1992 as ratified by Presidential Order no 017/01 of 18 March 1995;

Pursuant to the CARTAGENA Protocol on Biosafety to the Convention on Biological Diversity signed in NAIROBI, KENYA, from 15 to 26 May 2000 and in NEW YORK, United States of America, from 5 June 2000 to 04 June 2001 as ratified by the Presidential Order n° 51/01 of 31/12/2007;

Pursuant to the BONN Convention of 23 June 1979 on conservation of migratory species of wild animals as ratified by the Presidential Order n° 32/01 of 31/12/2007;

Pursuant to the Washington Convention of 03 March 1973 on International Trade in endangered species of Wild Flora and Fauna as ratified by the Presidential Order n° 211 of 25/06/1980;

Pursuant to the Convention on Wetlands of International Importance especially as Waterfowl Habitats adopted in Ramsar, IRAN in 1971, entered into force in 1975, and amended in 1982 and 1987 as ratified by the Presidential Order No. 51/01 of 31 December 2007;

Pursuant to the Law n°14/2017 of 14/04/2017 establishing Rwanda Agriculture and animal resources development board (RAB) and determining its mission, organisation and functioning;

ADOPTS:

CHAPTER 1: GENERAL PROVISIONS

Article 1: Scope and objectives of this Law

This law shall determine the modalities of implementing the multilateral system of access and benefit-sharing of the International Treaty on Plant Genetic Resources for Food and Agriculture in Rwanda, hereafter, 'International Treaty.' It aims at:

- a. Facilitating access to plant genetic resources for food and agriculture under the multilateral system of the International Treaty.
- b. Ensuring equitable sharing of benefits arising out the utilization of plant genetic resources covered by the multilateral system of the International Treaty.

Article 2: Definitions of terms

For the purpose of this law, the following terms shall have the following meanings:

- a. "*Ex situ* collection" means a collection of plant genetic resources for food and agriculture maintained outside their natural habitat.
- b. "*Ex situ* conservation" means the conservation of plant genetic resources for food and agriculture outside their natural habitat.
- c. "Genetic material" means any material of plant origin, including reproductive and vegetative propagating material, containing functional units of heredity.
- d. "*In situ* conservation" means the conservation of ecosystems and natural habitats and the maintenance and recovery of viable populations of species in their natural surroundings and, in the case of domesticated or cultivated plant species, in the surroundings where they have developed their distinctive properties.
- e. "Ministry" means the ministry that has agriculture in its responsibilities.
- f. "Plant genetic resources for food and agriculture" means any genetic material of plant origin of actual or potential value for food and agriculture.
- g. "Variety" means a plant grouping, within a single botanical taxon of the lowest known rank, defined by the reproducible expression of its distinguishing and other genetic characteristics.

CHAPTER 2: INSTITUTIONAL ARRANGEMENTS

Section 1: The National Competent Authority

Article 3: Designation of the National Competent Authority

Rwanda Agriculture and Animal Resources Development Board (RAB) is designated as the National Competent Authority in charge of the implementation of the multilateral system of the International Treaty.

Article 4: Responsibilities of the National Competent Authority

The national Competent Authority shall be responsible to:

- a. Disseminate all information and raise awareness in relation to the multilateral system of access and benefit-sharing under the International Treaty;
- b. Develop and strengthen capacity building activities and programmes necessary for the implementation of the multilateral system of access and benefit-sharing under the International Treaty;
- c. Promote the implementation of the multilateral system of access and benefit-sharing under the International Treaty with key public and private institutions including organisations of farmers, producers and breeders;
- d. Develop policies necessary for the implementation of the multilateral system of access and benefit-sharing under the International Treaty;
- e. Receive and decide upon the requests for access to Annex 1 PGRFA governed by the multilateral system;
- f. Delegate authority to entities within the country to receive, consider and approve requests for facilitated access to Annex 1 materials in the multilateral system;
- g. Coordinate with relevant institutions dealing with the implementation of Access and benefit-sharing activities and programmes under other relevant international agreements;
- h. Facilitate the communication and cooperation with hosted international centres holding article 15 collections;
- i. Liaise with National Focal Point in the implementation of the multilateral system of the International Treaty;
- j. Report periodically on the status of the implementation of the multilateral system of the International Treaty;
- k. Coordinate communications between natural and legal persons and the national genebank with regard to inclusion of PGRFA in the multilateral system by natural and legal persons;
- l. Facilitate communication between natural or legal persons on the Rwandan territory and the Third Party Beneficiary;

- m. Receive and compile copies of reports on transfer of materials using the Standard Material Transfer Agreement submitted to the Governing Body by institutions and individuals;
- n. Identify additional PGRFA to be included in the multilateral system of the International Treaty;
- o. Identify and establish incentives for voluntary inclusion of PGRFA in the multilateral system by natural and legal persons; and
- p. Coordinate and promote technical assistance to farmer, research and civil society organisations to be able to take advantage of the multilateral system including identifying potentially useful germplasm in the multilateral system, and making requests for that material, complying with phytosanitary regulations when receiving materials from other countries.

Section 2: The Multi-Stakeholder Advisory Committee

Article 5: Establishment and responsibilities of Multi-Stakeholder Advisory Committee

A multi-stakeholder advisory committee, hereafter, 'Advisory Committee,' is hereby established. It shall be responsible for:

- a. Advising the National Competent Authority on all the policy matters related to the implementation of the multilateral system of the International Treaty and on coordination with national competent authorities and agencies relating to other genetic resources.
- b. Providing guidance for the development of a coherent national position before the Governing Body and other relevant meetings of the International Treaty.
- c. Advising and guiding on the policies and procedures required for the implementation of the multilateral system of the International Treaty.
- d. Assisting the National Competent Authority in making decisions over 'hard cases' for accepting or rejecting requests for access to PGRFA covered by the multilateral system.

Article 6: Composition of the Advisory Committee

The Advisory Committee shall have ten (10) members divided as follows:

- a. one (1) representative of the Ministry in charge of Agriculture;
 - b. one (1) representative of the Ministry in charge of Environment;
 - c. two (2) representatives of agricultural research centres;
 - d. two (2) representatives of farmers' organizations;
 - e. one (1) representative of environmental organizations;
 - f. the competent authority and national focal point of the CBD and Nagoya Protocol;
- and

g. one (1) representative from public university.

Members of the Advisory Committee shall be nominated by their respective institutions and shall serve for a term of three years, renewable once.

Article 7: The Board of the Advisory Committee

The Advisory Committee shall have a board composed by a President, a Vice President and a Secretary designated by the committee member fellows during the first meeting convened and chaired by the Minister in charge of Agriculture.

Article 8: Meetings of the Advisory Committee

The Advisory Committee shall meet twice a year in ordinary sessions and can hold extraordinary sessions whenever deemed necessary.

In its meetings, the Committee may invite any person from whom it may seek advice on a certain item on the agenda. The invitee shall not be allowed to vote and shall only follow the debate on items for which advice is sought.

Article 9: Adoption of internal rules of procedure by the Advisory Committee

The Advisory Committee, in consultation with the NCA, will provide for its internal rules of procedure including matters related to quorum, conflict of interest, election of chair and other positions, reappointment, and others.

Section 3: The National Focal Point

Article 10: Appointment and responsibilities of the National Focal Point

A National Focal Point shall be appointed by the National Competent Authority. He/she shall be responsible for:

- a. Receiving information, communicating and responding to information and other requests from the International Treaty Secretariat related to the Treaty implementation;
- b. Conveying the information request(s) to the relevant institutions or other stakeholders when deemed appropriate;
- c. Raising awareness about the process of developing project proposals to be submitted to the International Benefit-sharing Fund;
- d. Submitting and following up proposals for the Benefit-sharing Fund projects' calls on behalf of the applicants to the International Treaty Secretariat;
- e. Sending the reports on the implementation of the International Treaty to the Governing Body; and
- f. Participating in the meetings of the Governing Body and its subcommittees.

CHAPTER 3: ACCESS TO PLANT GENETIC RESOURCES FOR FOOD AND AGRICULTURE COVERED BY THE MULTILATERAL SYSTEM

Section 1: Access requirements

Article 11: Persons who can have access

Facilitated access to plant genetic resources for food and agriculture in the multilateral system shall be available to

- a. All natural and legal persons located on Rwandan territory;
- b. All natural and legal persons under the jurisdiction of other Contracting Parties; and
- c. International institutions that sign agreements under Article 15 of the International Treaty.

Article 12: Access cost

The Access shall be free, and when a fee is required, it shall not exceed the minimum cost involved.

Article 13: Access conditions

The access shall only be allowed for the purpose of utilization and conservation for research, breeding and training for food and agriculture excluding chemical, pharmaceutical and/or other non-food/feed industrial uses.

Recipients shall not claim any intellectual property rights or other rights that limit the facilitate access to the plant genetic resources for food and agriculture, or their genetic parts or components, in the form received from the multilateral system. If any plant genetic resource for food and agriculture is protected by intellectual property rights or other rights, its access shall respect relevant international agreements or national laws.

In case a plant genetic resource for food and agriculture is still under development, the developer has full discretion over its access. However, when the material is made available, the developer must use the Standard Material Transfer Agreement when transferring that material. The developer may add additional terms and conditions that are consistent with the Standard Material Transfer Agreement.

The recipients who conserve received materials shall continue to make it available through the multilateral system under the Standard Material Transfer Agreement.

Article 14: Access to *in situ* plant genetic resources for food and agriculture

Access to plant genetic resources for food and agriculture in the multilateral system found in *in situ* conditions shall be subject to national laws governing protected areas.

Applicants shall address their requests to the competent authority in charge of protected areas.

If access to such *in situ* materials is granted, the material shall be transferred using the Standard Material Transfer Agreement. The authorizing authority for the national

protected area shall submit a copy of the completed SMTA to the National Competent Authority responsible for the implementation of the multilateral system.

Article 15: Requests for access to Annex 1 plant genetic resources for food and agriculture for purposes beyond the scope of the multilateral system

Access to Annex 1 plant genetic resources for food and agriculture for purposes beyond the scope of the multilateral system shall be governed by other applicable Rwandan laws, including potentially, access and benefit-sharing laws adopted to implement the Convention on Biological Diversity and its Nagoya Protocol.

Requests for such access shall be addressed to the competent national authorities identified in applicable laws.

Section 2: Authorization for access to plant genetic resources for food and agriculture under the multilateral system

Article 16: The competent authority

The National Competent Authority and all authorized public institutions holding plant genetic resources for food and agriculture under the multilateral system have the powers to receive, process, approve or reject applications for facilitated access to plant genetic resources for food and agriculture under the multilateral system they hold with respect to the terms and conditions provided in other provisions of this law.

All authorized public institutions that have processed applications for facilitated access have to report to the National Competent Authority on every approval or rejection of an application.

Section 3: Processes and criteria required to consider requests for access

Article 17: Application for access to plant genetic resources for food and agriculture covered by the multilateral system

An application for access to PGRFA in the multilateral system shall be addressed to the entity holding the material requested whether the National Competent Authority or any other authorized institution.

Article 18: Procedures to follow in decision making over access requests for plant genetic resources for food and agriculture covered by the multilateral system

The National Competent Authority or any other authorized institution shall, after receiving the application, acknowledge reception of the application by sending a message to the applicant.

The National Competent Authority or any other authorized institution shall decide and communicate its decision to the applicant, in writing, within one (01) month counted from the date of reception of the application.

The applicant who is not satisfied with the decision of the National Competent Authority or any authorized authority may appeal to the Ministry, which shall decide within fifteen (15 days) counted from the date of reception of the appeal.

For complex or hard cases, the National Competent Authority or any other authorized institution shall consult the Advisory Committee created to facilitate the implementation of the multilateral system of the International Treaty.

Article 19: Criteria for accepting or refusing an access request

Access to Annex 1 plant genetic resources for food and agriculture in the multilateral system shall be allowed basing on the following conditions:

- a. If requested for purposes listed in the multilateral system;
- b. The applicant agrees to receive the requested material under the Standard Material Transfer Agreement;
- c. Availability of sufficient stores to provide the requested samples;
- d. Payment of minimum administration fees, when requested; and
- e. Location of the recipient in a Contracting Party;

Without prejudice to paragraph 1 of this article, access to *in situ* plant genetic resources for food and agriculture in the multilateral system may be subject to some other additional conditions as may be required by national laws governing the conservation and management of protected areas.

Article 20: Access to plant genetic resources for food and agriculture under development

Access to PGRFA under development, including by farmers, is at the discretion of the developer. In case access is granted, the material must be transferred under the Standard Material Transfer Agreement.

Article 21: Access to Annex 1 plant genetic resources for food and agriculture not covered by the multilateral system

Access to Annex 1 PGRFA not included in the multilateral system shall follow rules and procedures established by other applicable national laws including potentially access and benefit-sharing laws if they exist.

Article 22: Access to Annex 1 plant genetic resources for food and agriculture for purposes that are beyond the scope of the multilateral system

Access to Annex 1 plant genetic resources for food and agriculture for non-food/feed purposes shall be governed by existing access and benefit-sharing laws adopted to implement the CBD and the Nagoya Protocol in case the purpose of access is regulated by those laws.

Requests for such access shall be addressed to the authority in charge of environment or any other authority that may be authorized to do it as provided by such access and benefit-sharing laws of Rwanda adopted to implement the CBD and Nagoya Protocol.

CHAPTER 4: SHARING THE BENEFITS ARISING OUT OF THE UTILIZATION OF PLANT GENETIC RESOURCES FOR FOOD AND AGRICULTURE COVERED BY THE MULTILATERAL SYSTEM

Article 23: Fair and equitable benefit sharing

The benefits resulting from facilitated access to plant genetic resources for food and agriculture in the multilateral system shall be shared fairly and equitably in accordance with the provisions of the International Treaty and the Standard Material Transfer Agreement

Article 24: Benefits to be shared

Benefits to be shared shall be benefits resulting from access to plant genetic resources for food and agriculture covered by the multilateral system as provided in the International Treaty and the Standard Material Transfer Agreement.

CHAPTER 5: VOLUNTARY INCLUSION OF ANNEX 1 PLANT GENETIC RESOURCES FOR FOOD AND AGRICULTURE HELD BY NATURAL OR PRIVATE LEGAL PERSONS

Article 25: Voluntary inclusion

Natural and private legal persons holding Annex 1 plant genetic resources for food and agriculture that are not yet included in the multilateral system are encouraged to include them in the multilateral system.

Subject to other potentially applicable national access and benefit-sharing laws, natural and legal persons may voluntarily include materials by making arrangements for depositing such materials in national plant genetic resources collections, or they may provide them directly to requestors using the SMTA.

Article 26: Incentives to encourage voluntary inclusion

Any natural or legal person holding annex 1 plant genetic resources for food and agriculture who wishes to include them in the multilateral system shall be assisted through:

- a. Provision of information from the National Competent Authority on the process of inclusion in the multilateral system;
- b. National Competent Authority contacting organizations hosting PGRFA collections within the country to see if they are willing to conserve and make such materials available through the multilateral system
- c. Assistance from the National Competent Authority of the ITPGRFA in obtaining requisite approvals under other applicable ABS laws to make the material available under the multilateral system.
- d. Financial support for research and breeding activities aiming to duplicate and deposit plant genetic resources for food and agriculture covered by the multilateral system into any Rwanda Agriculture and Animal Resources Development Board's research Centre on

condition that Rwanda Agriculture Board and Animal Resources Development agrees to redistribute the material freely; and

e. Tax deduction for any taxable activity aiming at pooling an annex 1 plant genetic resources for food and agriculture into the multilateral system.

Article 27: Dispute settlement

Any dispute arising from requests for access to plant genetic resources for food and agriculture under the multilateral system in Rwanda shall be settled in accordance with the dispute settlement's provisions of the Standard Material Transfer Agreement adopted by the Governing Body of the International Treaty.

CHAPTER 6: MISCELLANEOUS, TRANSITIONAL AND FINAL PROVISIONS

Article 28: Existing activities

All existing activities related to access to plant genetic resources for food and agriculture covered by the multilateral system of the International Treaty shall comply with the provisions of this law within a period of six (6) months from the publication of this Law in the Official Gazette of the Republic of Rwanda.

Article 29: Drafting, consideration and adoption of this Law

This Law was drafted in English, considered and adopted in Kinyarwanda.

Article 30: Repealing provision

All prior provisions contrary to this Law are hereby repealed.

Article 31: Commencement

This Law shall come into force on the date of its publication in the Official Gazette of the Republic of Rwanda.

Kigali, on ____

(sé)

.....

President of the Republic

(sé)

.....

Prime Minister

Seen and sealed with the Seal of the Republic

(sé)

.....

Minister of Justice / Attorney General

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