

# **Summary of Discussions**

## **Workshop on Documents for Establishing the CGIAR Fund**

13 April 2010

Berlin, Germany

The Workshop was held to discuss the legal framework of the new CGIAR fund and in particular three draft documents that are central to the functioning and legal underpinnings of the CGIAR Fund. The participants included representatives of several donors, including those from respective legal and fiduciary units, and the Consortium Board (Attachment 1). The Workshop agenda (Attachment 2) called for identification and discussion of key issues related to the three documents:

1. **CGIAR Fund Governance Framework.** A stand-alone document to be adopted in its final form by the Fund Council, which will be incorporated by reference into the Contribution Agreements between donors and the Trustee of the CGIAR Fund. Includes a number of operational aspects of the CGIAR Fund in the interest of clarity and transparency among all Fund Council members (not all of whom will be signatories to Contribution Agreements).
2. **Contribution Agreement Between each Donor and the Trustee** (formerly called "Administration Agreement"). A template that sets forth the specific modalities on donor contributions and Trustee services for the CGIAR Fund as they affect the respective signatories.
3. **Joint Agreement among the Consortium, the Trustee and all Fund Donors.** Designed to combine the upstream (donors) and downstream (Consortium) elements in one contractual setting. Donors would become parties to the Joint Agreement through signature of a Contribution Agreement.

The Workshop was chaired by Iftikhar Mostafa, Governance Adviser, CGIAR Fund Office, who clarified that the purposes of the Workshop were twofold: (1) To put a marker on and discuss key issues around the *Governance Framework* (GF) and the *Contribution Agreement* (CA); (2) To comment on the approach and structure of the *Joint Agreement* (JA), the content of which is in a preliminary stage. He also clarified the timeline for the preparation of these documents, with the key dates as follows:

May	Documents requiring Consortium Board input to be submitted (for discussion by the Board at its meeting at the end of May)
Early June	Documents requiring Fund Council (FC) consideration to be submitted for discussion at its mid-July meeting
Oct/Nov	Target date for establishing the Fund, with at least one CA signed and possible disbursements made from Window 3

## Background

The drafting team provided a number of clarifications about the documents prior to their discussion.

- **Relationships among the proposed documents:** The three documents attempt to bridge the upstream and downstream aspects of fund flows through an integrated package. The CA (and the incorporated GF) covers the upstream connection from the donors to the Fund; the JA covers the downstream connection from the Fund to the Consortium. These three documents reflect the “contractual” aspects of the relationships among the entities. The “operational” aspects of the relationships would be handled through additional, non-contractual arrangements. Two of the latter include the *Common Operational Framework* between the Fund Council and the Consortium covering detailed, procedural aspects of the relationships (such as content of proposals, formats of reports, processes for monitoring, performance assessment, reviews, etc.) and a *Fund Council Operational Manual* including chapters on specific FC rules and procedures (such as rules of procedure for FC meetings, selection of ISPC members, criteria for assessment of Mega-Program (MP) proposals, etc.)
- **Role of the World Bank (WB):** The Bank will play four distinct roles in the New CGIAR: (1) Fund Donor; (2) Trustee; (3) non-voting FC Chair; (4) house of the Fund Office. Each of these roles is to be performed by different units (in some cases, different Vice-Presidencies) in the Bank, thereby minimizing possible conflicts of interest. The Trustee would perform services for all donors and manage inflows, outflows and investment of funds in an efficient and transparent manner. It has limited responsibilities in management of funds and no fiduciary responsibility beyond disbursement point, i.e. use of funds.
- **Windows and Sub-accounts:** The Fund will have three Windows. All unrestricted funds (i.e., funds available to the system as a whole) will be placed in Window 1. FC is responsible for making decisions on the use of the funds in this window. All funds designated for a specific MP or Platform will be placed in Window 2. Each MP or platform will be a separate sub-account under Window 2. This will be the lowest level of disaggregation for MP funding, i.e., there will be no “within MP” tagging of funds. Institutional, unrestricted funds designated for a specific Center will be placed in Window 3.
- **Fund Management and System Costs:** There are two types of non-research costs associated with coordinating the new CGIAR System: (1) costs of managing the CGIAR

Fund; and (2) costs of coordinating/managing the entire new CGIAR. The first category includes the costs of the Trustee and the Fund Council/Fund Office, based on annual budgets approved by the FC. These costs would be covered by Fund Donors only, through a levy on all Fund contributions.

The second category includes costs of activities that relate to the entire System, such as ISPC, Funders Forum (FF), Independent Evaluation Arrangement (IEA), dispute resolution mechanism, and the system-related non-research activities of the Consortium. These costs would be covered by all donors (Fund and bilateral) through a levy or another mechanism.

The Fund Office is updating the paper on System Costs circulated at the 2009 CGIAR Business Meeting to cover the above arrangements and will circulate a draft in May. This will be used by task forces from the Consortium and Fund Council to develop a proposed financing plan for endorsement at the Funders Forum.

- **CGIAR Secretariat vs. Fund Office (FO):** Unlike the CGIAR Secretariat, which served as *executive* secretariat for the CGIAR System and acted on behalf of the CGIAR, the FO is purely a support unit. It has no decision, fund allocation or implementation role; it exists to facilitate the business of the FC and the FF. Unlike the CGIAR Secretariat which was fully funded by the WB, the cost of the FO is covered by all the Fund Donors and its work program and budget are approved by the FC.

Andrew Bennett, who participated on behalf of the Consortium briefed the group on the development of the Consortium and clarified a number of questions. Accordingly, the draft Strategy and Results Framework (SRF) for the new CGIAR, descriptions of MPs, and proposals for fast tracking MPs will be completed by mid May and discussed by the Consortium Board in the last week of May. By the end of April, 75 percent of the Centers, the number required for effectiveness, are expected to have signed the agreement to establish the Consortium. While its establishment as an international organization is progressing, the Consortium would operate in the interim as a contractual joint venture hosted by one of the Centers.

### **Clarification of Key Questions**

During the discussion of the documents the participants raised a number of questions that were clarified collectively by the drafting team and the other participants.

## Governance Framework

1. *Can the donor constituencies for FC membership establish their own rules of representation and rotation? Yes, and the language used in the GF will be amended to reflect this.*
2. *Why should Window 3 be phased out? Some donors have structural difficulties to provide financing through other mechanisms. Two of the primary objectives of the reform program are (a) to shift from institutional funding to program funding; and (b) to harmonize donor actions through commingled funding and collective decision making on their use. Continuation of Window 3 beyond a transition period would run counter to these objectives and would perpetuate current modalities and behaviors. It became clear during the discussion that while there was agreement that Window 3 would be reviewed after two years, there were differing views on the continuation of Window 3: Centers and some donors prefer to have Window 3 as a longer term feature, others think it should be phased out quickly for the reasons cited above.*
3. *Continued use of Window 3 creates an **accountability gap** because the Consortium is not liable for the use of Window 3 funds and there is no contractual relationship between the Fund and the Centers. How could this gap be filled? This accountability gap was acknowledged, but is no different from the existing MDTF after which this window was modeled. Donors contributing to a Center through Window 3 could take individual measures to fill the gap, such as entering into a direct contract with the Center. On the other hand, such types of arrangements would not further the harmonization objective, for which Windows 1 and 2 are being established.*
4. *How would the over- and under-funding of MPs be handled? This is an area still to be worked on. In the case of over-funding, when an MP is fully funded, donor funds would need to be channeled to other programs or windows. One option would be to ask donors to include fall-back designations, including to Window 1, from the start. Another option would be to designate window 1 as the default fall back designation for excess funding. In the case of under-funding (even after all bilateral and center contributions to the MP are taken into account) Window 1 funds (if available) could be used to fill the gap, or the FC and the Consortium could discuss other options, such as scaling down the proposal. The agreements with the Consortium on MPs will all be subject to the availability of cash funds, whereas the Consortium could refer to contractual commitments for planning purposes.*

5. *Does the GA need to be a separate document, instead of being incorporated into the JA?*  
The FC needs a governance instrument for its own operations that is adopted by its members, some of whom are not Fund Donors (therefore, are not party to the CA or the JA.) Also, the JA is to be signed by the Consortium, which is not part of the Fund and should not have purview over the FC's governance.
6. *Can there be a cap on levies to cover system costs?* This is a possibility once the cost structure is understood. The system cost paper to be updated by the FO will clarify part of the costs. The Consortium will need to provide an estimate of its costs that could go under the "system costs" category.
7. *Who will have an overview on bilateral funding? How can the System ensure that bilateral funds contribute their fair share to the System costs?* A plan for burden sharing will need to be developed jointly by the Consortium and Fund Council task forces for the Funders Forum to consider. The most logical choice for who should have an overview on bilateral funding is the Consortium through its coordination role of the Centers that will be receiving bilateral funds.

#### Contribution Agreement

1. *Does the Trustee have any fiduciary responsibility?* Yes, the WB, as Trustee, has full fiduciary responsibility for the funds entrusted to it during the time it holds them. This is a *limited liability* arrangement, as compared with a *supervisory trustee* role, where the WB policies and rules (such as on procurement, safeguards, etc.) would apply during implementation--not the recipient's.
2. *Is there flexibility in drafting the CA so that it is not framed as a legally-binding agreement that would give rise to treaty status?* This applies to DFID and some other donors and involves use of the words like *arrangement, will and accept* in lieu of *agreement, shall and agree*. It was clarified that the Trustee could accommodate such needs (as has been done in other Trust Funds) for the Contribution Agreement, while still considering the contributions committed. It was also noted that this would be more problematic in connection with the JA, since that involves a number of other parties, including the Consortium that might have issues with weakening the binding force of the various rights and obligations.
3. *How will donors be able to trace the status of their contributions?* The Trustee will inform donors through reports and updates and has a "Client Connection" website through which donors can trace the status of their contributions as well as downstream

commitments made through window 3 and MP commitments through window 2.

4. *If a donor needs to see all its contributions used in a given year, how could this be channeled?* The question in return was what “use” means in this context? The answer would in part depend on how use needs to be measured or evidenced by the particular donor. One option regardless of definition would be to place these contributions in Window 1. Another option would be to take a “notional” approach in that funds disbursed or committed in that year could be deemed by that donor to have included its own funds. On a related front, one donor also mentioned the need to provide funding as an outright grant without being “held” by the Trustee or retrievable by the donor.

### Joint Agreement

1. *Does the existence of a JA (along with CA), which specifies the fiduciary responsibility and commitment of the recipient, satisfy the requirements of donors?* Several donors appreciated the benefits of being included as direct parties to the downstream arrangements. On the other hand, the European Commission (EC), whose representatives considered the JA a step in the right direction, did not view the pass-through arrangement, even with this direct contractual link to the recipient, sufficient to meet EC's requirements at this time (although they acknowledged that IO status of the Consortium could potentially solve the problem).
2. *As changes in the JA require FC agreement, donors who are not members of FC (but are signatories to the CA) will have no say on these changes. How could this gap be filled?* The rules of FC require each FC member to consult with the members in its constituency (which covers all Fund Donors) prior to decision-making. Therefore, the views reflected in FC are the collective views of each constituency.
3. *Intellectual property (IP) issues are not addressed in these documents. How could this void be filled?* One option is for donors interested in discussion of IP-related issues relevant to these documents to form a separate working group to identify the gaps and consider potential contract clauses. It is important to recognize that governments, as they will be contributing public funds, may insist that any IP that results from research funded through these funds be a public good, while one donor specifically mentioned its preference for allowing grantees and partners to own their IP produced from grants.
4. *Has any work been done on a dispute resolution mechanism?* A very preliminary work was done in connection with the development of the M&E Framework. There is also work done by the Alliance. FC and the Consortium will need to take this up as a joint

priority activity. This is expected to inform the remedies clauses in the CA and JA, which currently contain clauses that are basically placeholders for now.

### Donor Input into Program Development

1. *How can donors contribute to formulation of MPs before the proposals are submitted or approved?* Individual donors can communicate with Alliance teams working on individual program proposals. The Consortium will share the names of the members of these working groups with the donor community through the FO. It was agreed that there would be no coordinated FC input at this time, although it was also pointed out that individual donor views on MPs should not be taken as representative of the FC, which might or might not agree with such views.

### **Suggestions for Moving Forward**

Following the discussion of issues on the three documents the Chair posed three questions to the group to identify concrete steps for moving forward:

- Q1. Does the package of documents as presented represent an acceptable approach?
- Q2. What do donors want with respect to Consortium establishment?
- Q3. What do we need to do with the Governance Framework so that the Fund Council can adopt it in July?

### Does the package of documents as presented represent an acceptable approach?

The general view of the group was that the three documents and the overall approach to handling upstream and downstream aspects are useful. One donor (the EC) indicated that the package does not meet their legal requirements because of the absence of full fiduciary responsibility by the WB. Another (IFAD) expressed deep concern about the possibility of phasing out Window 3 and recommended a flexible approach to meet individual needs of donors. Several participants deferred final judgment on the documents until their review by their legal offices. One urged caution on excessive legal documentation and suggested simplification. Other suggestions included the following:

- Boundaries between the documents should be drawn more sharply, with little repetition.
- There is need to provide greater clarity on system costs and levies and how bilateral funds will contribute their share of system costs. The paper on system costs being updated by the FO should include an exhaustive list of items covering such costs and provide an indication of the magnitude of levies (as a percentage of resources

contributed) depending on different levels of contribution to the Fund. It should also be clarified whether the levies on bilateral funds will be at the same terms as the Fund levies.

- Individual donors and the Consortium needed to consider the request to treat the JA as an “arrangement” rather than an “agreement.”
- The flexibility some governments may require in the JA or the CA can, to the extent they do not affect the commingled funds and are otherwise consistent with the trust fund arrangements, be provided through an appropriate cover letter.
- Corruption-anticorruption clauses should cover more than the Consortium (i.e., the donors and the WB). Some terms (such as “terrorism”) should be neutralized. Donors were asked to consider the proposed language and provide any desired changes in mark-ups.
- To maintain parallelism with the Fund’s demands on the Consortium, the Consortium should have recourse if donor commitments are not met. One area to strengthen is the description of responsibilities and liabilities of individual donors, both Fund Donors and bilateral donors.
- Some donors have a requirement to have the right for unilateral reviews. The language in the GF can be improved to reflect this (e.g., as in the MDTF).

#### What do donors want with respect to Consortium establishment?

Several donor representatives indicated that they were very encouraged with the Consortium leadership. Strong demand was expressed for closer communication between the Fund Council and the Consortium. Having a Consortium Board Task Force tasked with this is a good step. Specific suggestions included the following:

- The Consortium Office should have the financial capacity to play its fiduciary role.
- The Consortium should avoid duplication of roles with the Centers.
- Setting up the Consortium as an International Organization would be costly and might not be necessary. The Joint Venture arrangement is more practical.
- There is need for better alignment and harmonization of Consortium establishment documents with those for the CGIAR Fund.
- The Consortium needs to demonstrate more clearly its commitment to partnerships.
- The Consortium’s oversight and supervision responsibility over the Centers is not clear. There is need to clarify this in order to avoid having an accountability gap.

What do we need to do with the Governance Framework so that the Fund Council can adopt it in July?

The GF should be amended to take account of the suggestions made above in this summary. Additional suggestions included the following:

- One area to strengthen is the area of partnerships and the Fund's commitment to it.
- FC should not decide who is eligible to participate in the FF.

**Next Steps**

1. All participants are invited to send further comments, including suggested language, on the three documents by April 26, 2010. A particular need is an expression by donors of their preference on the JA: Should it be framed as an *arrangement* rather than an *agreement*?
2. The FO will update the paper on system costs, with inputs from the Consortium on the list of Consortium's non-research system-level activities.
3. The FC/Consortium Task Force will produce a financing plan for system costs in time for discussion and endorsement by all donors at the Funders Forum (mid-July)
4. The FO will organize a teleconference on *donor risk, responsibility and liability* among interested legal experts and others. A separate invitation will be sent to all.
5. A similar teleconference will be organized to discuss *intellectual property* issues as they relate to the establishment of the Fund. The FO will send an invitation.
6. The Consortium will send to the FO the list of Alliance working groups engaged with MP proposal development. The FO will share this with the donors interested in contributing to program development.
7. A follow-up workshop focusing primarily on the JA could be organized, with Consortium participation. FO will schedule as needed.

Iftikhar Mostafa concluded the workshop by thanking all participants for their contributions as well as the GTZ and the World Bank Office in Berlin for their logistical support.

**Workshop to Discuss Documents for Establishing the CGIAR Fund**

**Berlin, Germany**

**April 13, 2010**

**List of Participants**

<b>NO.</b>	<b>ORGANIZATION / COUNTRY</b>	<b>NAME</b>
1	Bill and Melinda Gates Foundation	Flower, Aline
2	European Commission	Pallas, Tomas
3	European Commission	Zanarelli, Guglielmo
4	Germany	Witzel, Marc
5	Germany	Kienecker, Sylvia
6	IFAD	Mathur, Shantanu
7	IFAD	Mancini, Sylvia
8	IFAD	Garcia-Villanueva, Itziar
9	India	Mehrishi, Shri Rajiv
10	Nigeria	B.Y. Abubakar
11	Nigeria	Akintewe, Akinlolu
12	Norway	Heikki, Aas Jon
13	Norway (MoFA)	Hermansen, Anne Kristin
14	Norway (NORAD)	Martinsen, Anne Kristin
15	Sweden	Chiverton, Philip
16	Switzerland (SDC)	Guerber, Stephan
17	United Kingdom	Wadsworth, Jonathan
18	United Kingdom	Swift, Adair
19	Alliance Legal Counsel	Moore, Gerald
20	Representing Consortium Board	Bennett, Andrew
21	The World Bank	Hess, Ulrich
22	The World Bank	Stumpf, Andrea
23	The World Bank	Stangu, Darius
24	CGIAR Fund Office	Mostafa, Iftikhar
25	CGIAR Fund Office	Tata, Shey
26	Fund Office Consultant	Ozgediz, Selcuk
<b>Joining by Teleconference</b>		
27	Canada	Coleman, Catherine
28	Canada	Susanne Laberge
29	USAID	Bertram, Robert
30	USAID	Witte, Eric
31	The World Bank	Douglas, Fionna
32	The World Bank	Crivelli, Pamela
33	The World Bank	Drewnowski, Sophia

# Workshop on Documents for Establishing the CGIAR Fund

**April 13, 2010**

**Location: World Bank Office  
Reichpietschufer 20  
10785 Berlin, Germany**

## **Agenda**

- 9:00 a.m. Overview**
- 9:30 a.m.**
- **Draft Governance Framework**
  - **Preliminary Draft of “Joint Agreement” for demonstration purpose**
  - **Discussion**
- 10:30 a.m. Tea/Coffee Break**
- 10:45 a.m.**
- **Draft Contribution Agreement**
  - **Identify list of key issues for discussion**
- 12:30 p.m. Lunch**
- 2:00 p.m. Discussion on specific issues arising from the sessions on Governance Framework and Contribution Agreement**
- 3:00 p.m. Tea/Coffee Break**
- 3:30 p.m. Discussion on specific issues arising from the session on Governance Framework and Contribution Agreement (*continued*)**
- 4:30 p.m. Wrap-up and next steps**
- 5:00 p.m. Adjourn**