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| | 联合国粮食及农业组织 | |
| | FOOD AND AGRICULTURE ORGANIZATION OF THE UNITED NATIONS | |
| | ORGANISATION DES NATIONS UNIES POUR L'ALIMENTATION ET L'AGRICULTURE | |
| | ORGANIZACION DE LAS NACIONES UNIDAS PARA LA AGRICULTURA Y LA ALIMENTACION | |

COMMISSION ON PLANT GENETIC RESOURCES

First Extraordinary Session

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THE INTERNATIONAL NETWORK OF *EX SITU* GERMPLASM COLLECTIONS:

Up-dating of the Progress Report on Agreements with the International
Agricultural Research Centres

THE INTERNATIONAL NETWORK OF EX SITU GERMPLASM COLLECTIONS:

Up-dating of the progress report on agreements with the International Agricultural Research Centres

1. Article 7.1(a) of the International Undertaking on Plant Genetic Resources calls for the development of *"an internationally coordinated network of national, regional and international centres, including an international network of base collections in gene banks, under the auspices or the jurisdiction of FAO"*.
2. In line with the International Undertaking and as a follow-up to an invitation by the Director-General in 1988, the CGIAR Centres offered in 1992 to place their collections under the auspices of FAO. At its Fifth Session, in April 1993, the Commission on Plant Genetic Resources (CPGR) *"welcomed the offer made by the CGIAR Centres"* (CPGR/93/REP, Paragraph 72) and *"... requested the Director-General to negotiate and, if satisfied, to conclude agreements with the CGIAR Centres, taking into account the concerns it had expressed..."* (CPGR/93/REP, Paragraph 76).
3. The FAO Conference, at its Twenty-seventh Session, in November 1993, *"... noted that progress on the negotiations would be reported to the Working Group of the CPGR and to the Commission itself."* (C 93/REP, Paragraph 111).
4. A progress report on the agreements (Document CPGR/94/WG9/6)¹ was presented to the Ninth Session of the Working Group of the CPGR, held in May 1994. The Working Group agreed that the changes incorporated in the latest version of the agreement substantially met the concerns voiced by the CPGR and endorsed the proposal that the Centres and FAO make a joint statement on their common understanding concerning certain provisions of the agreement, in particular regarding the interpretation of the expression *"without restriction"* in Article 9.
5. Further discussions have been held between FAO and the CGIAR Centres leading to the agreed final text of the basic agreement and of a Joint Statement to be presented to the CPGR. The text of the agreement is identical to that presented to the Working Group in May 1994, with the addition, at the beginning of Article 9, of the expression *"Subject to the provisions of Article 10 below"*. The text of the agreement is attached as Annex 1. The Joint Statement refers to the interpretation of Article 3(b), Article 9, and Article 10; indicates that the expression *"without restriction"* should be interpreted consistently with the Convention on Biological Diversity; and states that the conclusion of the agreement represents but one stage of a continuing, dynamic process. The Joint Statement is attached as Annex 2.

¹ Document CPGR/94/WG9/6, of the Ninth Session of the Working Group, is available as CPGR-Ex I/94/Inf 5.

6. Governments also discussed these matters outside FAO. During the Second Session of the Intergovernmental Committee on the Convention on Biological diversity (Nairobi, Kenya, 20 June - 1 July 1994), many delegates addressed the issue, and *"strongly supported the efforts to bring these resources under the auspices of FAO. Delegates expressed strong support for finalizing the agreement between FAO and the International Research Centres as soon as possible"* (UNEP/CBD/COP/1/4, Paragraph 233(c)).

7. On 26 October 1994, twelve Centres and FAO signed the agreement. To this effect, each of the Centres has delegated to the Chairman of the CGIAR powers to sign the agreement on its behalf.

AGREEMENT BETWEEN [Name of Centre] AND THE FOOD AND AGRICULTURE ORGANIZATION OF THE UNITED NATIONS (FAO) PLACING COLLECTIONS OF PLANT GERMPLASM UNDER THE AUSPICES OF FAO.

PREAMBLE

The [Name of Centre] (hereinafter referred to as the "Centre"), supported by the Consultative Group on International Agricultural Research (hereinafter referred to as "CGIAR"), and the Food and Agriculture Organization of the United Nations (hereinafter referred to as "FAO");

Considering the importance to humanity of protecting and conserving plant germplasm for future generations;

Considering the International Undertaking on Plant Genetic Resources adopted by the FAO Conference at its Twenty-second Session in 1983 (Resolution 8/83) and in particular Article 7 thereof; and the Annexes of the Undertaking adopted by the FAO Conference in 1989 and 1991;

Considering that the FAO Commission on Plant Genetic Resources (hereinafter referred to as the "Commission"), as the relevant intergovernmental body in this field, has the responsibility for monitoring of the implementation of Article 7 of the International Undertaking on Plant Genetic Resources;

Considering the Memorandum of Understanding Between the Food and Agriculture Organization of the United Nations and the International Board for Plant Genetic Resources (IBPGR) dated September 21, 1990, on the respective roles of the two organizations in establishing, maintaining and managing germplasm collections and setting standards for these collections;

Considering the strong support FAO, as one of the co-sponsors, has provided and continues to provide to the CGIAR;

Considering the importance of the plant germplasm collections held by the International Agricultural Research Centres (IARCs), supported by the CGIAR, as part of a global strategy for germplasm conservation;

Considering that the CGIAR adheres to a policy on plant genetic resources which is based on the unrestricted availability of germplasm held in their genebanks;

Considering that the germplasm accessions have been donated or collected on the understanding that these accessions will remain freely available and that they will be conserved and used in research on behalf of the international community, in particular the developing countries;

Considering that the Centre has expressed the wish that its designated germplasm be recognized as part of the international network of *ex situ* collections (as per the International Undertaking on Plant Genetic Resources) under the auspices of FAO;

Have agreed as follows:

Article 1

APPLICATION OF THIS AGREEMENT

This Agreement shall be construed and applied in a manner consistent with the provisions of the Convention on Biological Diversity and the International Undertaking on Plant Genetic Resources.

Article 2

BASIC UNDERTAKING

The Centre hereby places under the auspices of FAO, as part of the international network of *ex situ* collections provided for in Article 7 of the International Undertaking on Plant Genetic Resources, the collections of plant genetic resources listed in the Appendix hereto (hereinafter referred to as the "designated germplasm"), as catalogued and published by the Centre in print or machine-readable form, in accordance with the terms and conditions set forth in this Agreement. The list of designated germplasm will be updated every two years as new accessions are added to the collection.

Article 3

STATUS OF DESIGNATED GERmplASM

- (a) The Centre shall hold the designated germplasm in trust for the benefit of the international community, in particular the developing countries in accordance with the International Undertaking on Plant Genetic Resources and the terms and conditions set out in this Agreement.
- (b) The Centre shall not claim legal ownership over the designated germplasm, nor shall it seek any intellectual property rights over that germplasm or related information.

Article 4

PREMISES

- (a) The premises in which the designated germplasm is conserved shall remain in the charge of the Centre.
- (b) FAO shall have a right of access to the premises at any time and the right to inspect all activities performed therein directly related to the conservation and exchange of the designated germplasm.

Article 5

MANAGEMENT AND ADMINISTRATION

- (a) The Centre undertakes to manage and administer the designated germplasm in accordance with internationally accepted standards, including, with respect to the storage, exchange and distribution of seeds, the international Genebank Standards endorsed by the Commission, as soon as possible applying the "preferred standards" where these are specified, and ensuring that all the designated germplasm is duplicated in order to ensure its safety.
- (b) FAO may recommend action, if it considers such action to be desirable, in order to ensure the proper conservation of the designated germplasm.
- (c) If the orderly maintenance of the germplasm collection of the Centre is impeded or threatened by whatever event, including *force majeure*, FAO shall assist in the evacuation and/or transfer of the collections, to the extent possible. The cost of such an operation will be covered by the Centre concerned.

Article 6

POLICIES

The Centre recognizes the intergovernmental authority of FAO and its Commission in setting policies for the International Network referred to in Article 7 of the International Undertaking and undertakes to consult with FAO and its Commission on proposed policy changes related to the conservation of, or accessibility to, the designated germplasm, subject, always, to the provisions of Article 9 hereinafter. The Centre shall give full consideration to any policy changes proposed by the Commission.

Article 7

STAFF

- (a) Staff responsible to manage and administer the designated germplasm shall be employed and remunerated by the Centre.
- (b) As and when deemed appropriate, FAO shall furnish technical backstopping on request by the Centre.

Article 8

FINANCES

The Centre shall remain entirely responsible for financing the maintenance of the designated germplasm.

Article 9

**AVAILABILITY OF DESIGNATED GERMPLASM AND
RELATED INFORMATION**

Subject to the provisions of Article 10 below, the Centre undertakes to make samples of the designated germplasm and related information available directly to users or through FAO, for the purpose of scientific research, plant breeding or genetic resource conservation, without restriction.

Article 10

**TRANSFER OF DESIGNATED GERMPLASM AND
RELATED INFORMATION**

Where samples of the designated germplasm and/or related information are transferred to any other person or institution, the Centre shall ensure that such other person or institution, and any further entity receiving samples of the designated germplasm from such person or institution, are bound by the conditions set out in Article 3 (b) and, in the case of samples duplicated for safety purposes, to the provisions of Article 5 (a).

This provision shall not apply to the repatriation of germplasm to the country that provided such germplasm.

Article 11

DURATION

This Agreement is concluded for a period of four years and shall be automatically renewed for further periods of four years unless notice of non-renewal is given in writing by either party not less than one hundred and eighty (180) days before the end of any four-year period.

Article 12

TERMINATION

- (a) Either FAO or the Centre may terminate this Agreement at any time by giving notice to the other, one year in advance of the termination date.
- (b) FAO and the Centre shall, in such case, take all necessary measures to wind-up joint activities in an appropriate manner and, within the limits of their respective competence, to ensure the continued conservation of and access to the designated germplasm.

Article 13

SETTLEMENT OF DISPUTES

- (a) Any dispute concerning the implementation of this Agreement shall be settled by mutual consent.
- (b) Failing mutual consent, such dispute may be submitted, at the request of either FAO or the Centre, to an arbitral tribunal composed of three members. Each party shall appoint one arbitrator. The two arbitrators thus appointed shall designate by mutual consent the third arbitrator, who will act as the presiding arbitrator of the tribunal.
- (c) If within two months after the receipt of a party's notification of the appointment of an arbitrator the other party has not notified the first party of the arbitrator he has appointed, the first party may request the Secretary-General of the United Nations to appoint the second arbitrator.
- (d) If within two months after the appointment of the second arbitrator the two arbitrators have not agreed on the choice of the presiding arbitrator, such presiding arbitrator shall be designated by the Secretary-General of the United Nations at the request of either party.
- (e) Unless the parties to the dispute decide otherwise, the tribunal shall determine its own procedure.
- (f) A majority vote of the arbitrators shall be sufficient to reach a decision which shall be final and binding for the parties to the dispute.

Article 14

AMENDMENT

- (a) FAO or the Centre may propose that the Agreement be amended by giving notice thereof.
- (b) If there is mutual agreement in respect of the amendment, the amendment shall enter into force on whatever date is set, and be reported to the next session of the Commission.

Article 15

DEPOSITARY

The Director-General of FAO shall be the Depositary of this Agreement. The Depositary shall:

- (a) send certified copies of this Agreement to the Member Nations of FAO and to any other Government which so requests;

- (b) arrange for the registration of this Agreement, upon its entry into force, with the Secretariat of the United Nations in accordance with Article 102 of the Charter of the United Nations;
- (c) inform FAO Members Nations of:
 - (i) the signature of this Agreement in accordance with Article 16; and
 - (ii) the adoption of amendments to this Agreement in accordance with Article 14.

Article 16

COMING INTO FORCE

This Agreement shall come into force upon signature by the authorized representative of FAO and the Centre.

**United Nations Food and Agriculture
Organization**

[Name of Centre]

by:.....
(signature)

By.....
(signature)

Date:.....

Date.....

Appendix

DESIGNATED GERMPLASM

- a) List of germplasm accessions covered by this agreement
- b) List of locations where material is held

**JOINT STATEMENT OF FAO AND THE CGIAR CENTRES ON THE
AGREEMENT PLACING CGIAR GERMPLASM COLLECTIONS UNDER THE
AUSPICES OF FAO.**

The International Agricultural Research Centres of the Consultative Group on International Agricultural Research (the Centres), which hold plant genetic resources in trust in their genebanks, listed at the end of this joint statement, have placed these collections under the auspices of FAO as part of the International Network of Ex Situ Collections, under agreements signed with FAO (the Agreement).

The text of the Agreement is essentially that approved by the Commission on Plant Genetic Resources (CPGR) in April 1993 and the FAO Conference in November 1993 with the modifications introduced into the text to reflect the concerns expressed by the CPGR on certain points. The modifications deal with (i) clarification of the concept of trusteeship and beneficiary, in particular as it relates to the concept of ownership; (ii) obligations with respect to the conservation of germplasm and its availability that would flow from the concept; (iii) the policy role of the CPGR; and (iv) the duration of the agreement and opportunities for its review by the CPGR.

The modified draft agreement was further commented on by the Working Group of the CPGR at its ninth session (Rome, 11-12 May 1994), which expressed its concern that the draft agreement, substantially in its present form should be concluded as soon as possible. In so doing the Working Group drew attention to the need to clarify the implication of the words "without restriction" at the end of Article 9, in the light of the Convention on Biological Diversity and the ongoing process of renegotiation of the International Undertaking on Plant Genetic Resources. It was suggested that the words either be deleted or be clarified in a joint statement, by the parties to the agreement, to be presented to the CPGR. The text of the Agreement to be signed on 26 October 1994 is identical to that presented to the Working Group in May 1994, with the addition, at the beginning of Article 9, of the expression "Subject to the provisions of Article 10 below".

In considering the final text of the Agreement, the common understanding of the parties concerning certain of its provisions is hereby communicated to the Commission on Plant Genetic Resources, as follows:

1. Article 3(b): This article does not prevent the Centres from using instruments such as material transfer agreements when they are designed to ensure the materials distributed remain in the public domain as is required under Article 10.
2. Article 3(b): The words "related information" at the end of Article 3(b) refer to information which has been compiled with respect to individual accessions. Such information includes passport and characterization data and, when available in the databases of the respective genebanks, evaluation data and information on indigenous knowledge.
3. Article 9: The words "without restriction" at the end of Article 9 should be interpreted consistently with the Convention on Biological Diversity and as not in any way affecting the rights of countries of origin under this Convention.

4. Article 9: The words "Subject to the provisions of Article 10 below" were added at the beginning of the Article to clarify that the words "without restriction" in Article 9 are not interpreted as a limitation on the ability of the Centres to obtain commitments from persons and entities receiving samples of designated germplasm as stated in Article 10.
5. Article 10: With respect to the transfer of samples of designated germplasm, the requirements of Article 10 will be satisfied by arrangements, such as material transfer agreements, that require the recipient not to seek intellectual property protection on the material and to pass on the same obligation to subsequent recipients. Similarly, with respect to the transfer of duplicates of collections, or parts thereof, for safety purposes, the requirements of Article 10 will be satisfied by an agreement under which the recipient institution undertakes to observe the maintenance obligations set out in Article 5(a). However, in neither case will the source Centre be under an obligation to monitor the compliance of the recipient with these undertakings; the obligation of the source Centre will be limited to obtaining such undertakings on the part of the recipient.
6. The parties to the Agreement recognize that the conclusion of the Agreement represents but one stage of a continuing, dynamic process and agree to continue the dialogue in the context of the implementation of the Convention on Biological Diversity and the FAO Global System on Plant Genetic Resources. They will consult from time to time to review these matters and to consider such modifications as may be appropriate in the circumstances.

Centro Internacional de Agricultura Tropical (CIAT)
Centro Internacional de Mejoramiento de Maiz y Trigo (CIMMYT)
Centro Internacional de la Papa (CIP)
International Center for Agricultural Research in the Dry Areas (ICARDA)
International Center for Research in Agroforestry (ICRAF)
International Crops Research Institute for the Semi-Arid Tropics (ICRISAT)
International Institute for Tropical Agriculture (IITA)
International Livestock Centre for Africa (ILCA)
International Plant Genetic Resources Institute (IPGRI)/International Network
for the Improvement of Banana and Plantain (INIBAP)
International Rice Research Institute (IRRI)
West Africa Rice Development Association (WARDA)
Centre for International Forestry Research (CIFOR).

End of text of Joint Statement

Note by the Secretariat

The above list of Centres comprises those that signed up to 26 October 1994.