



# Booklet of CGIAR Centre Policy Instruments, Guidelines and Statements on Genetic Resources, Biotechnology and Intellectual Property Rights

Version II

Updated with new MTA  
for in trust plant collections

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Produced by the System-wide Genetic Resources Programme (SGRP)  
with the CGIAR Genetic Resources Policy Committee

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## Introduction

A number of international conventions, agreements and guidelines govern the use of genetic resources and the related issues of biotechnology and intellectual property rights. The Future Harvest Centres, supported by the Consultative Group on International Agricultural Research (CGIAR), are committed to operating in conformity with all such international instruments. The Centres have developed and agreed on various policy instruments, guidelines and position statements to guide and validate their decisions regarding genetic resources, biotechnology and IPR.

This booklet contains the common genetic resources related policies of the Future Harvest Centres. These policies have been endorsed for System-wide use by the CGIAR Members, the Genetic Resources Policy Committee (GRPC) and/or the Centre Directors Committee. The System-wide Genetic Resources Programme (SGRP), through the Inter-Centre Working Group on Genetic Resources and in consultation with FAO, formulates, reviews and recommends for System-wide adoption, policy instruments and guidelines concerning the management of genetic resources, including those governing the in-trust plant genetic resources collections held in accordance with agreements signed between Centres and the FAO in 1994.

A number of individual Centres have produced similar booklets for their Centre or on behalf of the CGIAR System. This compilation produced by the SGRP and GRPC contains the current versions of the System-wide policy documents. The legal and policy environment surrounding genetic resources, biotechnology and intellectual property rights is highly dynamic. For example, Centres anticipate that they will soon associate themselves formally with the recently-adopted International Treaty on Plant Genetic Resources for Food and Agriculture. The Governing Body of the Treaty will formulate a new Material Transfer Agreement in line with the provisions of the Treaty. When it does so, Centres will begin to employ that MTA. The policies described herein are, as a consequence of developments such as this, subject to change over time and updated versions of this booklet will be produced as needed.

The first section of the booklet concerns the policies and guidelines for managing the in-trust plant genetic resources collections. The second section concerns the policies for acquiring, managing and transferring animal, aquatic and microbial genetic resources. The final section presents CGIAR and Centre Committee statements on a number of genetic resources and related issues.

The booklet is intended primarily as a reference for the Future Harvest Centres. It is available to outside parties upon request.

**The 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 Agriculture Research Centres (IARCs), supported by the CGIAR, as part of the 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 accession 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* collection (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 managed 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**

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 resources 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 conducted 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 a 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 National Food and Agriculture Organization

[Name of Centre]

by: .....  
(signature)

by: .....  
(signature)

Date: .....

Date: .....



**Appendix**

**DESIGNATED GERMPLASM**

- (a) List of germplasm accession covered by this agreement
- (b) List of location 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)

**Second Joint Statement of FAO and the CGIAR Centres on the Agreement  
Placing CGIAR Germplasm Collections  
under the Auspices of FAO**

A Joint Statement issued by FAO and the CGIAR in conjunction with the signing of the FAO-CGIAR Agreements placing CGIAR Germplasm Collections under the auspices of FAO observed that:

The parties to the Agreement recognize that the conclusion of the Agreements 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 modification as may be appropriate in the circumstances.

FAO and the CGIAR have consulted frequently since the Agreements were concluded in 1994 in order to review the implementation of the Agreements.

The Parties understand and agree that:

While Centres distribute germplasm designated under the FAO/CGIAR Agreements through Material Transfer Agreements which prohibit the recipient, or any subsequent recipient, from taking out intellectual property rights, the CGIAR cannot guarantee that recipients will abide by the terms of the MTA. Violations may take place. However, in such cases the Parties commit themselves to taking appropriate remedial action, in accordance with the following agreed procedures:

When Centres become aware of a possible violation of their MTAs by a recipient of germplasm, the Centres will henceforth voluntarily undertake the following actions in response to the perceived violation.

1. The Centres will request an explanation. Upon failure to receive a satisfactory and timely explanation for the situation from the germplasm recipient, the Centres will notify the recipient that a violation is thought to have occurred and request that the recipient cease and desist in its efforts to obtain intellectual property rights over the material, or renounce such rights or ownership if they have already been granted or claimed.
2. The Centres will notify the proper regulatory body in the relevant country of the possibility that the MTA has been violated, and bring to their attention the fact that the grant of intellectual property rights may, therefore, have been inappropriate in the case of the material obtained from the CGIAR.
3. The Centres will notify IPGRI and the FAO Commission on Genetic Resources for Food and Agriculture, through its Secretariat, of the possible violation of the MTA under the Agreements with FAO.

The Centres reserve the right to take other action, including legal action, as they might deem feasible and appropriate to enforce the MTAs and preserve the integrity of the Agreements with FAO. In this regard, it would be the intent of the Centres to work in cooperation with FAO, under whose auspices the materials are held in trust by the CGIAR for the benefit of the international community.

The Centres recognize that many accessions designated under the Agreements with FAO, were distributed to plant breeders and researchers prior to designation in keeping with the CGIAR policy for providing "unrestricted availability" to germplasm - as noted in the Preamble of Agreements. In dealing with this situation, Centres will request and urge that no intellectual property rights be sought for designated germplasm that was distributed prior to its designation under the FAO-CGIAR Agreement.

Periodic reports will be presented to the Commission on Genetic Resources for Food and Agriculture on the actions taken in support of the objectives of the Agreements between the CGIAR Centres and FAO.

In considering the text of the Agreement, the common understanding of the parties concerning certain of its provisions is, as follows:

Under the terms of the Agreements (Article 9), the Centres undertake "to make samples of the designated germplasm available directly to users or through FAO for the purpose of scientific research, plant breeding or genetic resource conservation, without restriction." It is implicit in this undertaking that users will make only reasonable requests for these specific purposes, and that the liability of the Centres would not extend to the fulfillment of unreasonable requests.

Sound management practices as well as practical or even biological constraints (such as seed availability or the health status of a sample) may at times make it difficult or inappropriate for centres to provide germplasm designated under the Agreements for the purposes spelled out in Article 9. It is understood that centres must use some discretion in determining the size and number of samples to be provided at any given time to a particular recipient. Centres are not obligated to distribute seed or other designated materials when such distributions would reduce stocks below accepted levels for conservation purposes, or when the request is for such a number of samples or quantity of a particular accession as to pose an undue burden on the financial or technical resources of the centre or on its ability to meet requests from others. In such cases, the centre may ask that the recipient cover the actual costs of multiplying the relevant accessions. In cases of limited supplies, immediate availability of materials cannot be guaranteed. Such availability will follow a process of multiplication. Centres are not obligated to supply quantities of a sample which exceed basic requirements for the purposes stated in Article 9. Recipients are advised that they may need to undertake their own seed multiplication when existing sample sizes are small (such as in the case with many accessions of wild relatives) or when demand for a particular sample exceeds supply. In filing requests for material for conservation purposes alone, users are invited to note the Global Plan of Action's objectives of "safeguarding as much existing unique and valuable diversity as possible in *ex situ* collections," while reducing "unnecessary and unplanned redundancy in current programmes."

In cases when a centre cannot fully or immediately meet a request, the centre will enter into a discussion with the requesting entity to develop and agree upon a plan and schedule for the supply of materials. This process might establish an agreed list of accessions to which priority would be given.

Some designated accessions cannot be multiplied without considerable cost. For example, certain accessions of woody species may take upwards of 10 hectares of land and 30 years to multiply. Similarly, supplying materials of vegetatively propagated species can involve very time-consuming and expensive procedures. While centres endeavour to supply materials free of cost, in such circumstances it would be unreasonable to expect that centres could guarantee unlimited quantities or immediate availability of all designated germplasm. Users are encouraged to exercise good judgement and appropriate constraint in requests for such

materials. At their discretion, centres may request that users cover all or part of the costs involved in multiplication.

Centres are neither obligated nor advised to distribute samples that do not meet health or quarantine standards, or whose transfer could pose the danger of a spread of pests or disease. Centres will inform those requesting materials of the danger which might be posed by invasiveness in those cases where they perceive such dangers to be significant, and of the need for the prior informed consent of the recipient Government for the import of such materials. Materials will then be supplied upon receipt of such prior informed consent.

Article 2 provides that “The list of designated germplasm will be updated every two years as new accessions are added to the collection.” This does not preclude Centres from adding new germplasm to the list of designated germplasm without having to wait for the biennial updating of the lists. In such cases, the status of particular germplasm as “designated germplasm” becomes effective immediately upon a centre’s determining that it is designating the germplasm under the Agreement and managing the germplasm under the terms of the Agreement. The additional designations will be consolidated into updated lists, which will be notified to FAO every two years or more frequently as may be appropriate.

As management and information systems improve and as genomic information about accessions becomes available, centres will update the list of materials covered under the Agreements. In addition to adding new materials, centres may find, for example, that particular accessions have been designated more than once; that an accession’s registration number conveyed to FAO on the list of designated germplasm referred to in Article 2, may be incorrect or no longer correspond to an actual accession in the centre’s genebank; or that an accession may, through natural or accidental causes, have lost viability. Logically, such “accessions” will no longer be considered as designated under the terms of the Agreement. The Centre or Centres concerned will notify FAO of any proposals for the deletion of accessions from the list of designated germplasm for such reasons and will provide FAO with a statement of the reasons therefore.

All language versions in Appendix

**MATERIAL TRANSFER AGREEMENT  
FOR PLANT GENETIC RESOURCES HELD IN TRUST  
BY THE [CENTRE]<sup>1</sup>**

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

**MATERIAL TRANSFER AGREEMENT  
FOR PLANT GENETIC RESOURCES HELD IN TRUST  
BY THE [CENTRE]<sup>1</sup>**

The plant genetic resources (hereinafter referred to as the “material”) contained herein are being furnished by the [Centre] under the following conditions:

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

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

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

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

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

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

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

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

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

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

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



### **Steps to be Taken to Implement the New CGIAR System-wide Material Transfer Agreement**

At International Centres Week 1998 (ICW1998), a new Material Transfer Agreement (MTA) for germplasm designated under the agreements with FAO was endorsed and approved for system-wide use. The text of this MTA had previously been discussed with and approved by FAO. [Editor's note: On 1 May 2003, the Centres implemented the use of an updated MTA, as recommended by the FAO Commission on Genetic Resources for Food and Agriculture in October 2002. The steps to be taken to implement the latest MTA do not differ from those required for previous versions, thus.]

This MTA does not require the signature of the recipient of the germplasm. Instead, it utilizes the so-called "software" approach, which binds the recipient to the terms and conditions spelled out in the MTA, provided it can be shown that the recipient had (or should reasonably be expected to have had) knowledge of the MTA and its terms, and provided, of course, that the recipient accepts and retains the material. The key to ensuring the legality and enforceability of the new MTA, thus, lies in making the MTA and its terms well known.

It is now understood and agreed that Centres will use only the MTA approved at ICW1998 [Editor's note: Now superseded by the MTA approved in 2003] and/or the Arabic, Chinese, French, and Spanish language translations provided by FAO for germplasm designated under the agreements with FAO. All departments and programmes within Centres (*inter alia*, genebanks, breeding programmes, etc.) are expected and required to use the MTA in all cases where designated germplasm is transferred outside of the Centre itself.

The Inter-Centre Working Group on Genetic Resources endorses the following steps to be taken, system-wide, in the use of the approved MTAs covering "designated" germplasm under the agreements with FAO.

1. Whenever feasible, Centres should send a copy of the MTA, drawing attention to its terms, in a letter or email acknowledging receipt of the request for germplasm. This letter should ask that the Centre be notified immediately if the terms are unacceptable, in order to avoid unnecessary and inappropriate shipment of materials.
2. The MTA should be attached to the package of germplasm in such a way that the recipient will have to tear it off to get inside the package and gain access to the materials. (In cases where a shipment contains both designated and non-designated germplasm, a separate notice has been approved for attaching to the outside of the shipment container.)
3. A separate copy of the MTA is to be enclosed in every package of designated germplasm.
4. The MTA will be posted prominently on all Centre web sites, and on the CGIAR web site.
5. Those who request materials through a Centre's web site, should be led through a screen containing the MTA and then be required to click on a box saying that they have read, understood and agreed to the terms of the MTA.
6. As appropriate, Centres should reference and append the MTA to letters of agreement or contracts which deal in any way with transfers of germplasm.

In addition to these steps, each Centre will seek to inform their partners, through a mailing, of the terms of the MTA. The International Seed Federation (ISF) and other seed trade organizations will be notified of the MTA and will be requested to inform their membership. Centres will, as soon as possible, publish a small article containing the text of the MTA in their Centre newsletter.

The MTA, in all official FAO languages, will be made available to countries at the next regular session of the FAO Commission on Genetic Resources for Food and Agriculture, and will be highlighted in the CGIAR's submission to the Commission.

### **IMPORTANT NOTICE –READ CAREFULLY BEFORE OPENING**

This package contains germplasm which has been “designated” in an agreement with the Food and Agriculture Organization of the United Nations (FAO). The terms and Conditions on which this “designated germplasm” is being made available to you are set out in the Material Transfer Agreement enclosed with the “designated germplasm.” These terms and conditions have been widely publicized and can also be viewed on our web site [http://www.\\*\\*\\*](http://www.***)

This package may also contain germplasm that is not “designated germplasm” but is also covered by a separate Material transfer Agreement enclosed with that germplasm.

In accepting the germplasm you are thereby accepting the terms and conditions on which the germplasm is made available in accordance with the respective Material transfer Agreement.

If you have any queries regarding the above, please contact \*\*\*\*.

## **Guidelines for Germplasm Acquisition Agreements**

### **Background**

As of 29 December 1993, the date on which the Convention on Biological Diversity entered into force, access to genetic resources, where granted, shall be on "mutually agreed terms" and shall be subject to the "prior informed consent of the Contracting Party providing such resources, unless otherwise determined by that Party." (Article 15 of the Convention on Biological Diversity). Contracting Parties are countries which have signed and formally ratified the Convention. Article 15 further states that the genetic resources being provided are "only those provided by Contracting Parties that are countries of origin of such resources or by the Parties that have acquired the genetic resources in accordance with this Convention."<sup>1</sup>

It is absolutely necessary that Centres obtain proper, formal permission from the relevant authorized government body, prior to mounting a collecting mission. This permission may be included in a letter of agreement (which may address other matters as well), in a specific Germplasm Acquisition Agreement (GAA), or in other legal documents, contracts, or agreements.

Once genetic resources are properly obtained by a Centre through prior informed consent and on the basis of mutually agreed terms, they are managed and exchanged according to the terms agreed with the country that provided them. (The Convention does not dictate or spell out what those terms shall be. Terms and conditions are determined by the country and the recipient and are spelled out in the agreement they make together.) If the material can be and subsequently is designated under the agreement with FAO, then it would be the terms of that agreement that would henceforth govern the management and disposition of the material.

### Terms of Access

The CGIAR has historically adhered to a policy on plant genetic resources which is based on the unrestricted availability of germplasm. Thus, consistent with this position and as a first priority, Centres should attempt to acquire germplasm without conditions which would restrict future availability. If possible, resources should be acquired in a way which would allow those resources and related information to be placed and managed under the terms of the agreement with FAO placing CGIAR germplasm collections "in trust" under the auspices of FAO.

Countries providing material may wish to impose certain restrictions on its further availability, however. Centres will need to evaluate, on a case-by-case basis, whether those terms are acceptable, and act accordingly. In such circumstances, Centres may wish to consider the potential usefulness and need of the germplasm and weigh that against the political, scientific, and management difficulties which restrictions on use and availability may cause.

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<sup>1</sup> It is neither necessary nor advisable that centers assume the responsibility of ascertaining whether countries providing genetic resources are, as a matter of law, the countries of origin as defined by the Convention. (Equally, it is not necessary for Centers to confirm or endorse a country's claim to such a status, when the Center describes in its databases the germplasm thus obtained.) The Convention contains dispute settlement procedures to address such conflicts as may arise, including those concerning claims of the status of country of origin.

### Suggested Elements of GAAs and Other Agreements Authorizing Access

The agreement should specify that the supplier is legally free to provide the germplasm and that necessary permissions have been obtained.

The agreement should clearly spell out the terms on which access is being granted, and any obligations assumed by the recipient (the Centre), including restrictions on the use or exchange of the material by the Centre or those who may subsequently acquire the material from the Centre.

If the Centre intends to designate the material under the terms of the FAO agreement, then the agreement with the country supplying the material should contain language (such as that found in the attached sample GAA) to the effect that the germplasm will be placed in trust under the terms of an agreement between the Centre and FAO, and that the Centre will be free to make the “germplasm and related information” available to third parties in accordance with the terms found in the agreement with FAO. It is important that “related information” be included, as the CGIAR’s agreements with FAO cover not just germplasm, but also “related information.”

GAAs and other agreements often contain clauses which specify the length of time the agreement will be in effect. In regards to germplasm to be designated under the FAO agreements, Centres should take care to ensure that the GAA or agreement with the country providing the material does not contain a clause which could result in the withdrawal of the germplasm from the “in-trust” agreement with FAO. Once designated with FAO, it is logical that the terms of that agreement should henceforth determine the status and disposition of the material, otherwise designated accessions will have to be “de-designated” as GAAs expire, causing potentially serious management and legal problems for Centres and subsequent recipients of the germplasm.

### Putting Agreements into Practice

All relevant Centre employees should be informed of the necessity of acquiring materials properly, in conformance with international agreements and CGIAR policy.

Centres should maintain a central file containing copies of all agreements relating to access to genetic resources. If there are restrictions on further access and use (i.e., if the materials cannot be designated under the FAO agreements) then these restrictions should be duly noted in genebank records, and in SINGER.

**Model  
Germplasm Acquisition Agreement (GAA)  
for Material Intended for Designation**

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

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Signed

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Signed

## **Guidelines for the Designation of Accessions Under the FAO Agreements**

### I. Background

In October 1994, FAO and eleven CGIAR Centres (those holding plant genetic resources, *ex situ*) signed Agreements placing collections of plant germplasm under the auspices of FAO, as part of the International Network of *Ex Situ* Collections. Centres hold germplasm designated under these Agreements “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 the Agreements.

Under the Agreements, each relevant Centre is committed to a number of actions and principles, *inter alia*, it:

- “...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 designated germplasm is duplicated in order to ensure its safety.” (Article 5a)
- “...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 9)

Furthermore, each Centre agrees that:

- “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 3b)
- “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).” (Article 10)

To date, FAO and the CGIAR have issued two Joint Statements, which address various issues of interpretation and implementation of the Agreements. In these Statements, FAO and the CGIAR agree, *inter alia*:

- “With respect to the transfer of samples of designated germplasm, the requirement of Article 10 will be satisfied by arrangements, such as material transfer agreements...” The wording of a standard material transfer agreement (MTA) for use by all Centres has been agreed by FAO and the CGIAR.
- That Centres will follow certain specified procedures when they have reason to believe that an MTA may have been violated.
- That Centres are not expected to meet unreasonable requests for germplasm (either in terms of quantity of accessions requested or the amount of material requested of a single accession), nor are they obliged to transfer material when such a transfer would pose a risk of introducing pests or diseases.

On their own initiative, Centres designate germplasm to be included in the International Network and under the terms and conditions of the Agreements with FAO. Germplasm acquires its status as “designated” germplasm at the moment the Centre determines that it considers it as such, and is willing to manage it in accordance with the FAO Agreements. Every two years, Centres are required to provide FAO with an updated list of designated germplasm. It is recognised in the second Joint Statement that in certain circumstances, specific designated germplasm will cease to be considered as designated (e.g., loss of viability of an accession, and administrative situations such as the discovery that an accession identifier previously provided FAO does not actually correspond to a physical sample, etc.)

The Agreements call for the Centres to append a list of "designated germplasm" included in the International Network, and to update the list every two years as new accessions are added to the collections.

These Guidelines for Designation have been developed on the initiative of and through the System-wide Programme on Genetic Resources and endorsed by the Inter-Centre Working Group on Genetic Resources. The promulgation of these Guidelines demonstrates that Centres accept a certain responsibility towards the international community to designate materials under the Agreements with FAO in a consistent and transparent manner, and on the basis of clearly enunciated criteria. While these Guidelines are aimed at helping Centres determine whether to designate materials under the FAO Agreements and at making that decision-making process more transparent to the general public, it should be noted that a number of other documents have relevance to the Agreements themselves and to their implementation, *inter alia*, the FAO/CGIAR-agreed Material Transfer Agreement (MTA), the first and second “Joint Statement(s) of FAO and the CGIAR Centres on the Agreement Placing CGIAR Germplasm Collections Under the Auspices of FAO,” and certain other CGIAR policies and statements concerning plant genetic resources and intellectual property rights.

## II. Criteria To Consider In Determining Whether Material Should Be Designated

For decades, Centres have safeguarded genetic diversity and attempted to develop it in the public interest. Centres have never claimed to own this genetic material. In keeping with this tradition and practice, Centres now designate material if it is eligible for designation (i.e., not acquired with restrictions preventing a Centre from managing it in accordance with the FAO Agreements), and, as noted below, if the Centre is prepared to manage it in accordance with the Agreements. Centres should not consider the value or potential usefulness of the material, nor attempt to make any value judgement about whether the material should be in the public domain, or not, when deciding whether to designate an accession.

The understanding and principle underlying the Agreements with FAO is that each Centre will designate all accessions (see Section III, below, for more detail) that are part of their holdings, or are subsequently acquired, which have not already been designated by another Centre or institution and which will be administered and managed by the Centre in compliance with the terms and conditions of the Agreement with FAO.

In designating germplasm, Centres commit themselves to:

- A. long term conservation
- B. unrestricted availability

The CGIAR Policy on Genetic Resources (1989) declared for the first time that collections were being held “in trust” for the world community. Implicit in such a declaration - and explicit in the Agreements with FAO - is the understanding that Centres do not claim ownership of

this genetic material. Thus, Centres have a responsibility to designate all germplasm which (1) they undertake to conserve under accepted standards (in most cases, long-term); and (2) they can make available without restriction for “scientific research, plant breeding or genetic resource conservation”. (See section V below, for a more detailed treatment of how Centres should interpret the term, “without restriction”).

### III. Types of Germplasm to be Designated

Accessions which a Centre is prepared to conserve long-term and make available without restriction should be designated irrespective of whether they are wild species, landraces, farmer varieties, obsolete varieties, advanced varieties, breeding lines, genetic stocks, etc.). In cases where materials have been received with the understanding that they will be conserved and will remain available, it is incumbent upon the Centre to designate them. It is understood that Centres may have sound scientific and management reasons for not designating all breeding lines, experimental populations, genetic stocks, or products of breeding programmes such as advanced cultivars. Commitment to long-term conservation and unrestricted availability may not be appropriate in all such cases. In such circumstances, the material in question would not be designated. Non-designation, however, would not prevent the Centre from making the material available appropriately and at the proper time in furtherance of Centre and CGIAR goals and principles.

Accessions held by Centres for others under “black box” arrangements should not be designated. (Some Centres hold “black box” collections - collections of others who may be temporarily unable to care for the material. In these cases, the Centre typically conserves the material, but usually does not open, examine, test or engage in research on the materials. While the Centre may be committed to long-term storage of such materials, the Centre has no right or authority to designate them.)

Furthermore, Centres should endeavour to designate particular accessions only once - confusion will result if accessions and their duplicates stored at other Centres are all designated.

#### A. Accessions acquired by the Centre before the coming into force of the Convention on Biological Diversity (29 December 1993)

In the vast majority of cases, materials acquired before 29 December 1993 were, in fact, acquired with the understanding that they would enter the collection of the Centre, be conserved, and be made available to all bona fide users. Such materials should be designated. In some cases (e.g. advanced products of formal breeding programmes), materials may have been acquired with certain restrictions regarding their use or distribution. Such materials should not be designated, as the Centre could not meet the requirements of the Agreements with FAO.

#### B. Accessions acquired by the Centre after the coming into force of the Convention on Biological Diversity (29 December 1993)

Materials acquired after the coming into force of the CBD can and ordinarily should be designated under the Agreements with FAO provided they have been acquired with the understanding that they will remain in the “public domain” and that the Centre will conserve them and make them available without restriction as called for in the FAO Agreements. In such a case, the same principles guiding the designation of pre-CBD materials apply: the Centre must intend to manage and administer the material in accordance with the FAO Agreements. Central to the decision to designate post-CBD acquired material (as with pre-CBD acquired materials) is that the Centre be willing to commit to long-term conservation and unrestricted availability.



It is understood that acquisition of materials should be based on the express written permission of the relevant government authority. Centres should seek to determine which institute or agency has this legal authority. If materials are acquired with restrictions on their access or use, then it follows that they cannot be designated. Materials held with such restrictions cannot be considered as being kept by the Centre "in trust for benefit of the international community..." (Article 3a)

#### IV. Conservation of Designated Germplasm

The FAO-CGIAR Agreements state: "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." (Article 5) This means, in effect, that Centres must endeavour to conserve materials in a manner consistent with international standards, adopting "preferred standards" (i.e., those most appropriate for long-term conservation of the material in question) as quickly as possible.

The decision about whether or not to designate material should be made without regard to the form in which the material is to be conserved (seed, *in vitro* culture, whole plant, other) or the current/initial technical conditions of storage (long-term, medium-term, cryopreserved, etc.).

#### V. Availability of Designated Germplasm and Related Information

Designation can only apply to accessions that are available without administrative, legal or policy restriction. In other words, the availability of germplasm cannot be limited by contractual agreements with the supplier of the germplasm, by intellectual property laws, or by any policy or administrative regulation of the Centre (with the exception of relevant health and quarantine regulations).

Accessions should be designated irrespective of any current technical constraints to making them physically available. In a Second Joint Statement issued by FAO and the CGIAR, it was agreed that Centres could not be expected to fill all requests for materials immediately, or fill requests for unreasonable numbers of accessions or quantity of seed or clones, for example. It was agreed that Centres should not distribute designated germplasm when such distribution posed a risk of introducing pests and/or diseases. In other words, it is understood that certain factors may constrain the ability of a Centre to distribute designated materials - the fact that an accession may be temporarily unavailable does not affect the decision to designate it, or its status as designated later. The Agreements with FAO call for a good faith approach to the Agreements on both the part of the party requesting materials and the Centres. (See the Second Joint Statement for more detailed information on this subject.)

**Material Transfer Agreement (MTA)  
for Non-Plant Genetic Materials  
(Including Micro-Organisms, Animals, and Aquatic and Marine Materials)**

The material contained herein is being furnished by [Centre] under the following conditions:

[Centre] is making the material described in the attached list available as part of its policy of maximizing the utilization of genetic material for research. The material was either developed by [Centre]; or was acquired prior to the entry into force of the Convention on Biological Diversity; or if it was acquired after the entering into force of the Convention on Biological Diversity, it was obtained with the understanding that it could be made freely available for any research or breeding purposes.

The recipient may reproduce and use the material for research and breeding purposes and may distribute it to other parties provided the recipient is also willing to accept the conditions of this agreement.<sup>1</sup>

The recipient, therefore, hereby agrees not to claim ownership over the germplasm to be received, nor to seek intellectual property rights over that germplasm or related information. The recipient further agrees to ensure that any subsequent person or institution to whom he/she/it may make samples of the germplasm available, is bound by the same provision and undertakes to pass on the same obligations to future recipients of the germplasm.

[Centre] makes no warranties as to the safety or title of the material, nor as to the accuracy or correctness of any passport or other data provided with the material. Neither does it make any warranties as to the quality, viability, or purity (genetic or mechanical) of the material being furnished. It is not possible for [Centre] to guarantee that this material is completely free from pathogens and parasites. The recipient assumes full responsibility for complying with the recipient nation's quarantine/biosafety regulations and rules as to import or release of genetic material.

Upon request, [Centre] will furnish information that may be available in addition to whatever is furnished with the germplasm. Recipients are requested to furnish [Centre] with data and information collected during evaluations of the material.

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

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<sup>1</sup> This does not prevent the recipient from making the germplasm directly available to farmers or consumers for cultivation, use or consumption, provided that the other conditions set out in the MTA are complied with.

## **Guidelines for the Acquisition and Transfer of Germplasm: Micro-Organism, Animal, and Aquatic and Marine**

### **Background**

As of 29 December 1993, the date on which the Convention on Biological Diversity entered into force, access to genetic resources, where granted, shall be on “mutually agreed terms” and shall be subject to the “prior informed consent of the Contracting Party providing such resources, unless otherwise determined by that Party.” (Article 15 of the Convention on Biological Diversity). Contracting Parties are countries which have signed and formally ratified the Convention. Article 15 further states that the genetic resources being provided are “only those provided by Contracting Parties that are countries of origin of such resources or by the Parties that have acquired the genetic resources in accordance with this Convention.”<sup>1</sup>

It is absolutely necessary that Centres obtain proper, formal permission from the relevant authorized government body, prior to collecting or acquiring any germplasm. This permission may be included in a letter of agreement (which may address other matters as well), in a specific Germplasm Acquisition Agreement (GAA)<sup>2</sup>, or in other legal documents, contracts, or agreements.

Once genetic resources are properly obtained by a Centre through prior informed consent and on the basis of mutually agreed terms, they are managed and exchanged according to the terms agreed with the country that provided them. (The Convention does not dictate or spell out what those terms shall be. Terms and conditions are determined by the country and the recipient and are spelled out in the agreement they make together.)

### **Terms and Modalities of Access**

The CGIAR has historically adhered to a policy on plant genetic resources which is based on the unrestricted availability of germplasm. Thus, consistent with this position and as a first priority, Centres should attempt to acquire animal, microbe, and aquatic and marine germplasm without conditions which would restrict future availability.

Countries providing material may wish to impose certain restrictions on its further availability, however. Centres will need to evaluate, on a case-by-case basis, whether those terms are acceptable, and act accordingly. In such circumstances, Centres may wish to consider the potential usefulness and need of the germplasm and weigh that against the political, scientific, and management difficulties which restrictions on use and availability may cause.

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<sup>1</sup> It is neither necessary nor advisable that centers assume the responsibility of ascertaining whether countries providing genetic resources are, as a matter of law, the countries of origin as defined by the Convention. (Equally, it is not necessary for Centers to confirm or endorse a country's claim to such a status, when the Center describes in its databases the germplasm thus obtained.) The Convention contains dispute settlement procedures to address such conflicts as may arise, including those concerning claims of the status of country of origin.

<sup>2</sup> A model GAA (intended for use specifically with plant genetic resources for food and agriculture) was previously developed, and endorsed by the Inter-Centre Working Group on Genetic Resources. This document should be helpful in constructing GAAs for non-plant materials.

### Suggested Elements of GAAs and Other Agreements Authorizing Access

The agreement should specify that the supplier is legally free to provide the germplasm and that necessary permissions have been obtained.

The agreement should clearly spell out the terms on which access is being granted, and any obligations assumed by the recipient (the Centre), including restrictions on the use or exchange of the material by the Centre or those who may subsequently acquire the material from the Centre.

### Putting Germplasm Acquisition Policies and Agreements into Practice

All relevant Centre employees should be informed of the necessity of acquiring materials properly, in conformance with international agreements and CGIAR policy.

Centres should maintain a central file containing copies of all agreements relating to access to genetic resources. If there are restrictions on further access and use, then these restrictions should be duly noted in genebank records, and in SINGER.

### **Terms and Modalities of Transfer**

Consistent with CGIAR policies, Centres will typically transfer germplasm under terms and instruments which guarantee its future unrestricted availability<sup>3</sup>. (In cases where Centres *acquired* materials with restrictions, Centres will, of course, honour those terms if/when they distribute the germplasm and related information.) Products of Centre breeding and research may, however, be transferred under agreements which restrict access or set certain conditions on use.

In all cases, germplasm should be transferred under a Material Transfer Agreement, and relevant sanitary regulations must be followed.

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<sup>3</sup> A Model MTA intended to ensure future unrestricted availability of the material has been developed, and endorsed by the Inter-Centre Working Group on Genetic Resources. In using this MTA, Centers should follow procedures agreed previously for use of the MTA for designated accessions of PGRFA.

## The CGIAR's Ethical Principles Relating to Genetic Resources

### Introduction

The CGIAR was founded on the ethical imperative of eliminating hunger and starvation and has, since its inception, followed certain ethical principles. Increasing food security<sup>1</sup> and alleviating poverty have long been central to the system's science-based humanitarian mission. With the growing complexity of the problems being addressed by the research of the Centres, the expanding number of partners with whom they work and the rapidly evolving scientific, social and economic environment within which they operate, an increasing need has been felt for a clearer enunciation of the System's underlying ethical principles. Greater transparency about what the CGIAR really stands for is important in enabling strong and unambiguous relationships to be forged with a wide range of partners.

The main ethical principles are presented under four headings: Equity; Trusteeship of Genetic Resources; Respect, Responsibility and Integrity in Science; and Social Benefits. These are intended to encapsulate the essential principles followed by the CGIAR in relation to its work on genetic resources and in the pursuance of its goal: to contribute through agricultural and natural resources research and partnerships to sustainable food security and the alleviation of poverty.

### Equity

- The CGIAR works for the attainment of equity in the conservation, sustainable use and the sharing of benefits derived from genetic resources. This commitment to fairness requires that emphasis be given to the needs of resource poor communities and to disadvantaged members of society.
- The CGIAR recognizes the contribution of many different communities and individuals, especially of women, to the conservation and enhancement of genetic diversity of potential use for food and agriculture, and will strive to ensure they benefit from such contributions. The CGIAR will avoid situations where a foreseeable reduction of local communities' access to, and benefits from, genetic resources might occur.
- The CGIAR recognizes that its major strength lies in its partnerships with national agricultural research systems and other organizations, and is committed to sharing credit in an equitable manner.

### Trusteeship of Genetic Resources

The CGIAR Centres hold genetic resources in trust for the international community. In the case of plant genetic resources for food and agriculture this is, to a great extent, recognized through agreements with FAO. As trustees of genetic resources the CGIAR Centres recognize their responsibility to be impartial, transparent and fair in their administration of the trust; to respect and observe national regulations and international conventions, in particular the Convention on Biological Diversity; to be accountable for their actions; and to exercise due care and diligence in conserving the material for the use of present and future generations and in making it readily available for use for the public good.

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<sup>1</sup> According to the definition in the World Food Summit Plan of Action, food security exists when all people, at all times, have physical and economic access to sufficient, safe and nutritious food to meet their dietary needs and food preferences for an active and healthy life.

**Respect, Responsibility and Integrity in Science**

- The CGIAR's work on genetic resources respects the general scientific principles of good faith and the search for truth. However, the CGIAR is guided by its particular humanitarian and equity-based concerns, and not the pursuit of knowledge for its own sake.
- The CGIAR's scientific work, including that on biotechnology, is based on the principles of accountability, responsibility and precautionary action. For any undertaking, potential benefits shall clearly outweigh foreseeable risks, emphasizing broad societal interests such as food security, poverty alleviation and environmental sustainability.
- The CGIAR recognizes and respects the integrity of culture, tradition and the relationship of local people with their natural environments. Likewise the CGIAR respects the aspirations and culture of partner institutions and the societal context within which they operate.
- The CGIAR adheres to national regulations and to relevant internationally accepted codes of behaviour and conduct in areas of plant and animal biology; the collection and transfer of genetic resources; biosafety; animal welfare; and intellectual property.

**Social Benefits**

- The CGIAR aims to promote lasting social benefit through its research and partnerships for the international public good. In its activities on genetic resources the CGIAR strives to increase individual, local and national food and livelihood security in developing countries through sustainable advances in productivity, nutritional quality, stability and through promoting biological and food diversity. For this purpose it is accountable for the dimensions of social and gender equity and environmental sustainability in its research, human resource development and capacity building programmes. The CGIAR aims to support the building of national capacity and institutions to manage, develop and conserve genetic resources.

**Conclusion**

The above principles, while not exhaustive, are intended to provide an overall statement of ethical principles relating to the CGIAR's work in genetic resources. They are also intended to provide a basis on which individual Centres can further elaborate their own guiding ethical principles or codes of conduct, and set up monitoring mechanisms, as appropriate. In implementing the above principles, the CGIAR Centres will work in partnership with national systems and other relevant organizations.

## **Statement of the Centre Directors Committee and the Committee of Board Chairs on Respect for and Support of the FAO-CGIAR Agreements**

On 26 October 1994, FAO and centres of the CGIAR took an historic step, together, to lay the foundations for an effective multilateral system for plant genetic resources for food and agriculture. The agreements signed that day placed collections of plant germplasm under the auspices of FAO, formally recognized the status of germplasm designated under the agreements, and laid out the precise terms under which that germplasm would be conserved and made available, "in a manner consistent with the provisions of the Convention on Biological Diversity and the International Undertaking on Plant Genetic Resources."

The agreements also acknowledged that "the CGIAR adheres to a policy on plant genetic resources which is based on the unrestricted availability of germplasm held in their genebanks" and noted 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."

The agreements with FAO are consistent with and supportive of the mission of the CGIAR. They are contractual in nature, and are legally binding on their signatories. Moreover, the legitimacy and intent of these agreements have been confirmed and reconfirmed by the FAO Commission on Genetic Resources for Food and Agriculture, the relevant intergovernmental body, which is comprised of more than 160 member governments. CGIAR support for the agreements is unequivocal.

In this period when a multilateral system for plant genetic resources for food and agriculture is beginning to take shape, we feel it is timely to reaffirm our commitment to the FAO-CGIAR agreements, which have recently been extended pending the outcome of the renegotiation of the FAO International Undertaking. We reaffirm our collective resolve to implement the agreements with FAO faithfully and vigorously, and in particular to ensure that designated germplasm remains in the public domain, available to all without restriction. We call upon all members of the CGIAR to assist us and to support us in this effort.

CGIAR Mid-Term Meeting  
Beijing, China  
28 May 1999

## **Guiding Principles for the Consultative Group on International Agricultural Research Centres on Intellectual Property and Genetic Resources<sup>1</sup>**

### **BACKGROUND**

The CGIAR is committed to the conservation and use of genetic resources in an expeditious, cost-effective and equitable manner. In recent years the CGIAR's activities have been increasingly conditioned by a rapidly changing intellectual property rights environment, the issue of Farmers' Rights and the growing importance of the private sector. In this context the CGIAR, at its Mid-Term Meeting, Istanbul in May 1992, agreed on a set of working principles on genetic resources and intellectual property. These were published in the proceedings of the meeting and were largely based on a set of guiding principles on plant genetic resources and related intellectual property rights issues adopted by the International Agricultural Research Centres in 1991.

Significant changes have occurred since the CGIAR decisions in 1992 that affect the exchange and use of genetic resources:

- The Convention on Biological Diversity came into force 29 December 1993;
- Centres signed agreements with FAO on 26 October 1994, bringing their germplasm collections under the auspices of FAO, as part of the International Network of *Ex Situ* Collections. Materials covered in these agreements referred to as "designated germplasm"<sup>2</sup>, are listed in the appendices to the agreements.
- The Multilateral Trade Agreement which came into force 1 January 1995 embodies provisions on Trade Related Intellectual Property (TRIPS). As a result, many countries are now developing and enacting intellectual property rights legislation, including plant variety protection.

Against this background, the CGIAR convened a panel on intellectual property rights in September 1994 under the Chairmanship of Dr. M.S. Swaminathan. The report of the panel was endorsed at International Centres Week in October 1994.

Based on the agreed recommendations made in this report and, pending the emergence of international consensus on a range of issues arising, the CGIAR Centres have revised their guiding principles on intellectual property. While it is envisaged that there may well be further revisions as changing circumstances warrant, the Centres consider it essential to clearly state these guiding principles for the benefit of the NARSs, donors, NGOs, the private sector and our other partners in research and development.

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<sup>1</sup> This paper was adopted as an interim working paper by the CGIAR at its ICW1996 meeting, Washington, D.C. 1996.

<sup>2</sup> The majority of materials currently held in Center genebanks has already been designated as coming under the agreement with FAO. Further material is being designated (as stocks are cleaned and multiplied) with the result that only those materials carrying special conditions imposed by the supplier would remain undesignated. (In 1996, such material accounts for less than 5 percent of the total holdings.)



## **GUIDING PRINCIPLES**

- The germplasm designated by the Centres is held in trust for the world community in accordance with the agreements signed with FAO. Through the agreements, official inter-governmental recognition is given to this role of the Centres, and FAO is to provide policy advice to the Centres in the execution of their responsibilities. The Centres agree to conserve, maintain, study, improve, and distribute germplasm worldwide for use in agricultural research and development. As trustees of the designated germplasm, the Centres also affirm their responsibility for safe and secure conservation of these genetic materials for present and future generations, including their duplication in at least one other location for safety.
- Through their guiding principles on intellectual property protection, the Centres aim to promote ready access to both the designated germplasm and the Centres' research products, including biotechnological processes arising from their research.

### **National Sovereignty**

- The Centres recognize that the acquisition of germplasm after the coming into force of the Convention on the Biological Diversity is subject to the provisions of the said Convention, and in particular to the sovereign rights of states over their genetic resources. The Centres will strive to reach an understanding on mutually agreed terms with national governments, either individually or collectively, facilitating the fair and equitable sharing of benefits arising from the collection, conservation and utilization of such germplasm, besides providing ready access to these genetic resources.

### **Farmers' Rights**

- The Centres recognize the contributions of farming and indigenous communities to genetic resources conservation and enhancement. In order to convert this concept into reality the Centres are prepared to contribute to national and international efforts to develop appropriate policies and procedures for the recognition of Farmers' Rights. The Centres also recognize the expertise of many national and international NGOs on equity, gender, conservation and sustainability issues and where appropriate partnerships with them and others in order to integrate these concerns in research on genetic resources conservation and use.

### **Intellectual Property protection: designated germplasm and centre research products**

- The Centres will not claim legal ownership nor apply intellectual property protection to the germplasm they hold in trust, and will require recipients of the germplasm to observe the same conditions, in accordance with the agreements signed with FAO.
- **Plant Breeders' Rights.** Materials supplied by the Centres, whether designated germplasm or the products of the Centres' breeding activities, may be used by recipients for breeding purposes without restriction. Recipients, including the private sector, may protect the products of such breeding through plant variety protection that is consistent with the provisions of UPOV or any other *sui generis* system, and that does not preclude others from using the original materials in their own breeding programs.
- **Defensive Protection by Centres.** Based on the conviction that their research will continue to be supported by public funds, the Centres regard the results of their work as international public goods. Hence full disclosure of research results and products in the public domain is the preferred strategy for preventing misappropriation by others. Consequently, the Centres

will not assert intellectual property control over derivatives except in those rare cases when this is needed to facilitate technology transfer or otherwise protect the interests of developing nations. In all such cases, the Centres will disclose the reasons for seeking protection.

- The Centres do not see the protection of intellectual property as a mechanism for securing financial returns for their germplasm research activities, and will not view potential returns as a source of operating funds. In the event that a Centre secures financial returns as a result of the commercialization by others of its protected property, appropriate means will be used to ensure that such funds are used for furthering the mandate of the Centre and the objectives of the CGIAR.
- Any intellectual property protection of Centres' output will be done on behalf of the Centres and not individual scientists. All staff in the Centres will be required to disclose innovations and assign all rights on these to the Centres.
- **Patenting.** We recognize that there is an increasing use of patenting in both the private and public sectors. Cells, organelles, genes or molecular constructs isolated from materials distributed by Centres may be protected by recipients only with the agreement of the supplying Centre. Centres will only give such approval after consultation with the country, or countries, of origin of the germplasm where this is known or can be readily identified. This consultation would include consideration of an appropriate sharing of any benefits, whether bilateral or multilateral, flowing from subsequent commercial development of the protected material.<sup>3</sup>, and would require that the original material remains available for the public good.
- **Centre Access to Material Protected by Others.** To promote the availability to developing nations of germplasm and scientific innovations that have been protected by others, the Centres may enter into agreements with the holders of such rights. Acceptance of any limitations on the distribution and use of derived and associated materials would have to be consistent with the goals and objectives of the CGIAR, and the benefits of such agreements should outweigh the potential disadvantages.

#### **Biosafety**

- The Centres will continue to give overriding importance to biosafety concerns and will follow collaborating country guidelines concerning biosafety.

#### **General Procedures**

- These Guiding Principles will be reviewed at regular intervals and revised as need be in the light of international developments. This revision will be carried out by the Centre Directors Committee.
- The Centres will adopt specific policies for the distribution and use of improved germplasm and biotechnological products following the above Guiding Principles.

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<sup>3</sup> It is recognized that this requirement for the granting of permission by a Center before a recipient can take out patent protection represents a significant departure from the current position in which the Centers do not require any such permission. While this is not specifically required under the terms of the agreements signed with FAO, nevertheless the CGIAR feels that such a requirement is needed both to protect the interests of countries of origin and to bring CGIAR policy in line with the spirit of the Convention on Biological Diversity (CBD). While the CGIAR Centers can not themselves be party to the Convention, it is nevertheless recognized that the majority of CGIAR members and partner countries have signed and ratified the CBD.

### **CDC Statement on the Guiding Principles on Intellectual Property Rights Relating to Genetic Resources**

The Directors General of the Future Harvest Centres, supported by the Consultative Group on International Agricultural Research, in their meeting of 19 October 2000, considered proposed new text for the Guiding Principles on Intellectual Property Relating to Genetic Resources. In doing so they reaffirmed their full commitment to upholding the Agreements signed with FAO in 1994 that recognized the trusteeship status of the Centres with regard to the plant genetic resources collections, and placed the collections within the FAO International Network of *Ex situ* Collections.

Furthermore the Centre Directors reaffirmed that, in accordance with the Agreements, they:

- 1) will continue to safely conserve, maintain, study and distribute this germplasm world-wide for use in agricultural research and development,
- 2) recognize the intergovernmental authority of FAO and its Commission on Genetic Resources for Food and Agriculture in setting policies for the International Network of *Ex situ* Collections, of which the designated germplasm is part,
- 3) confirm that they will not seek legal ownership nor seek intellectual property protection over the designated germplasm or related information and ensure, through the use of material transfer agreements, that any recipient of the material is bound by the same conditions.

The Centre Directors recognized, however, that there have been different and conflicting interpretations concerning certain aspects of the Agreements, particularly with respect to intellectual property protection, and that these need to be resolved as soon as possible. The lack of such resolution risks seriously hampering crop improvement work for the benefit of developing countries.

Under the terms of the 1994 Agreements with FAO, it is not within the power or authority of the Centres to set policies unilaterally on matters concerning the designated germplasm. Such resolution is to be provided by FAO and its Commission on Genetic Resources for Food and Agriculture. However, the Centre Directors also recognized the difficulties faced by the FAO Commission in attempting to provide such resolution in the short term, especially prior to concluding the renegotiation of the International Undertaking. They thus call upon FAO, and the international community in general, to use whatever offices are appropriate to bring this issue to an expeditious conclusion.

The Centre Directors have decided that, pending resolution of these issues, no new guiding principles on intellectual property relating to plant genetic resources will be adopted.

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### **Principles Involving Centre Interaction with the Private Sector and Others**

- The CGIAR Centres recognize the increasing importance of the private sector and other institutions in the invention and development of materials and advanced technologies that could be applied to the CGIAR goals of alleviation of poverty, enhancement of food security and protection of natural resources.
- The CGIAR centres engage the private sector, universities, advanced research institutes, NARS, and other institutions to access these materials and technologies and bring them to bear on the problems and opportunities of poor farmers. This may include licensing of products and technologies and engaging in partnerships to develop and deliver new technology to poor farmers and others in developing countries.
- CGIAR centres derive benefits from relationships with other institutions and the private sector through access to and use of:
  - proprietary technology and expertise (know-how)
  - proprietary materials, reagents, and products
  - manufacturing and production capabilities
  - delivery systems for research and information products
- Centres' collaboration with other institutions will be conducted in accordance with the CGIAR Ethical Principles Relating to Genetic Resources which have been adopted formally at MTM1998. In the event centres secure financial returns as a result of commercialization by others of protected property, they will be applied to furthering the mandate of centres involved and the objectives of the CGIAR.
- The Guiding Principles for the CGIAR International Agricultural Research Centres on Intellectual Property and Genetic Resources (agreed to informally as operating guidelines during MTM1996) will apply to all agreements with the private sector and other institutions. These principles define or describe responsibilities related to germplasm held in trust by the centres, as well as ensuring broad access to designated germplasm and centre's research outputs, including biotechnological research processes and products. These principles specify the responsibilities and procedures for centres in dealing with:
  - National sovereignty (rights of states over their genetic resources)
  - Farmers' rights
  - Intellectual property protection for designated germplasm and centre research products
  - Plant breeders' rights
  - Defensive protection by centres
  - Patenting
  - Centre access to materials protected by others
  - Biosafety and Bioethics

- In collaboration with industry or other institutions, centres will adhere to policies and procedures for the conservation and use of genetic resources and biodiversity as defined under the terms of the:
  - Convention on Biological Diversity
  - FAO-CGIAR Agreement on Genetic Resources
  - FAO International Undertaking on Plant Genetic Resources for Food and Agriculture
- In compliance with contemporary legal and ethical obligations, centres will undertake good faith negotiations with owners of proprietary technologies they use or plan to use, including patented materials and legally protected trade secrets
- The Chair of the CGIAR or his designee is entrusted to represent and protect the interests of the CGIAR and its centres in international decision-making fora including but not limited to WTO (specifically with respect to TRIPS), WIPO, CBD, UPOV and FAO.

### **Centres' Position Statement on Biotechnology**

Given the immensity of the long-term food security and environmental conservation challenges confronting countries of the South, the Centres firmly believe in the following propositions:

- Biotechnology must be viewed as one of the critical tools for providing food security for the poor.
- The Centres advocate the prudent application of the full range of biotechnology tools to achieve substantial and sustainable growth in agricultural productivity in poor countries. These tools include, but are not limited to, molecular markers, genetic engineering, and recombinant vaccines.
- The Centres view biotechnology as an important means for ensuring environmental protection over the long term.
- The Centres have a clear comparative advantage in ensuring access by the countries of the South to the advanced tools of biotechnology. This advantage accrues by virtue of its present credible mass in biotechnology, its global network of partnerships within and among countries of the South, and its increasingly close linkages to advance research institutions of the north, both public and private.
- Given the extremely rapid pace of new developments in biotechnology, the Centres are committed to increasing their partnerships with ARIs, both public and private, north and south, to ensure ready access of Centre scientists and our partners in the south to advanced technologies.
- The Centres make adequate investments in the arena of biotechnology in order to: 1) maintain their own credible scientific mass, 2) be proactive in assisting countries of the South to establish effective biosafety regulations, and 3) contribute substantially to developing the human capital needed to ensure the judicious application of appropriate biotechnology tools to important food security and environmental problems.
- The Centres are firmly committed to the application of genomics (molecular genetics, molecular markers) for immediate use in better understanding and manipulating the genomes of plants, animals, and their pathogens and pests.
- The development and deployment of transgenics (via genetic engineering), is seen by the Centres to provide important options for meeting the food security and environmental challenges of the future.
- The Centres will carry out all of their activities in the arena of biotechnology under high standards of appropriate and approved biosafety regulatory frameworks, both within individual countries and institutions. The Centres will seek partnerships with institutes that have such frameworks in place (thus our commitment to policy and capacity building in this area).

## **CGIAR Policy Statement on Genetic Use Restriction Technologies**

“The Genetic Resources Policy Committee endorsed a CGIAR policy statement on the implications of the gene technology preventing seed germination for consideration by the Group (ICW):

‘The CGIAR will not incorporate into its breeding materials any genetic systems designed to prevent seed germination. This is in recognition of concerns over potential risks of its inadvertent or unintended spread through pollen; the possibilities of the sale or exchange of inviable seed for planting; the importance of farm-saved seed, particularly to resource-poor farmers; potential negative impacts on genetic diversity; and the importance of farmer selection and breeding for sustainable agriculture.’

....The Group accepted the GRPC's recommendation that the CGIAR adopt a statement concerning "terminator genes technology." Noting that the CGIAR's science exists to serve the poor, the Group decided that:

‘The International Agricultural Research Centres supported by the Consultative Group on International Agricultural Research system, which are engaged in breeding new crop varieties for resource poor farmers, will not incorporate into their breeding material any genetic systems designed to prevent seed germination.’”

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**Appendix**

**Official Language Versions of the  
Material Transfer Agreement for Plant Genetic Resources Held In Trust**



**MATERIAL TRANSFER AGREEMENT  
FOR PLANT GENETIC RESOURCES HELD IN TRUST  
BY THE [CENTRE]<sup>1</sup>**

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

**MATERIAL TRANSFER AGREEMENT  
FOR PLANT GENETIC RESOURCES HELD IN TRUST  
BY THE [CENTRE]<sup>1</sup>**

The plant genetic resources (hereinafter referred to as the “material”) contained herein are being furnished by the [Centre] under the following conditions:

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

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

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

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

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

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

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

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

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

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

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

**ACCORD DE TRANSFERT DE MATÉRIEL POUR LES RESSOURCES  
PHYTOGÉNÉTIQUES DÉTENUES EN FIDUCIE PAR LE [CENTRE] <sup>1</sup>**

<sup>1</sup> Le présent ATM porte sur le matériel transféré avant l'entrée en vigueur du Traité international sur les ressources phylogénétiques pour l'alimentation et l'agriculture. Ce Traité prévoit que le [Centre] conclura un accord avec l'Organe directeur du Traité, quand le Traité sera entré en vigueur. Le [Centre] a indiqué son intention de conclure un tel accord avec l'Organe directeur. Cet accord, conformément au Traité, prévoit de nouveaux ATM et de nouveaux arrangements de partage des avantages pour le matériel transféré après l'entrée en vigueur de l'accord.

## ACCORD DE TRANSFERT DE MATÉRIEL

### POUR LES RESSOURCES PHYTOGÉNÉTIQUES DÉTENUES EN FIDUCIE PAR LE [CENTRE]<sup>1</sup>

Les ressources phytogénétiques ci-jointes (ci-après appelées “le matériel”) sont fournies par le [Centre] sous réserve des dispositions suivantes:

Le [Centre] met à disposition le matériel décrit dans la liste ci-jointe dans le cadre de sa politique d'utilisation maximale du matériel génétique à des fins de recherche, de sélection et de formation. Ce matériel a été élaboré par le [Centre] ou acquis avant l'entrée en vigueur de la Convention sur la diversité biologique, ou, s'il a été acquis après l'entrée en vigueur de la Convention sur la diversité biologique, il l'a été sous réserve de pouvoir être mis à disposition à des fins de recherche agricole, de sélection et de formation selon les modalités indiquées dans l'accord entre le [Centre] et la FAO daté du 26 octobre 1994.

Le matériel est détenu en fiducie aux termes de cet accord et le bénéficiaire n'est pas autorisé à acquérir des droits de propriété intellectuelle (DPI) sur ledit matériel ou sur des informations s'y rapportant.

Le bénéficiaire est autorisé à utiliser et à conserver ce matériel à des fins de recherche, de sélection et de formation et il est autorisé à le distribuer à d'autres parties sous réserve que celles-ci acceptent les modalités de cet accord.<sup>2</sup>

Le bénéficiaire s'engage donc à ne pas revendiquer la propriété du matériel qu'il recevra, ni à chercher à acquérir de droits de propriété intellectuelle sur ce matériel ou sur ses parties ou composantes, sous la forme reçue. Le bénéficiaire s'engage également de ne pas chercher à acquérir de DPI sur les informations s'y rapportant qu'il recevra.

Le bénéficiaire s'engage en outre à s'assurer que toute personne ou institution à laquelle il permettrait ultérieurement de disposer d'échantillons de ce matériel soit soumise aux mêmes conditions et s'engage à soumettre à son tour aux mêmes obligations les futurs bénéficiaires de ce matériel.

Le [Centre] décline toute responsabilité quant à la sécurité du matériel ou au titre y afférant, ainsi qu'à l'exactitude ou à la véracité de tout passeport ou autre donnée accompagnant le matériel. Il ne garantit par ailleurs ni la qualité, ni la viabilité, ni la pureté (génétique ou mécanique) du matériel fourni. L'état phytosanitaire du matériel n'est garanti que par les dispositions du certificat phytosanitaire ci-joint. Le bénéficiaire est intégralement responsable du respect des règles et règlements phytosanitaires et de biosécurité du pays bénéficiaire en matière d'importation ou de distribution de matériel génétique.

Sur demande, le [Centre] fournira des informations dont il pourra disposer en plus de celles qui sont données avec le matériel. Les bénéficiaires sont priés de communiquer au [Centre] les données et informations pertinentes recueillies durant l'évaluation et l'utilisation du matériel.

Le bénéficiaire du matériel fourni au titre du présent ATM est encouragé à partager les avantages découlant de son utilisation, y compris à titre commercial, par le biais de mécanismes d'échange d'informations, d'accès et de transfert de technologies, de renforcement des capacités et de partage des avantages découlant de la commercialisation. Le [Centre] est disposé à faciliter le partage de ces avantages en les dirigeant vers la conservation et l'utilisation durable des ressources phytogénétiques en question, en particulier dans les programmes nationaux et régionaux des pays en développement et des pays à économie en transition, plus spécialement dans les centres de diversité et dans les pays les moins avancés.

Le matériel est fourni sous réserve expresse de l'acceptation des dispositions du présent accord. L'acceptation du matériel par le bénéficiaire constitue une acceptation des dispositions du présent accord.

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<sup>1</sup> L'attention des bénéficiaires est appelée sur le fait que les détails de l'ATM, y compris l'identité du bénéficiaire, seront rendus publics.

<sup>2</sup> Cette disposition n'interdit pas aux bénéficiaires de distribuer ce matériel pour le mettre directement à la disposition des agriculteurs ou des consommateurs pour leurs cultures, sous réserve que les autres dispositions de l'ATM soient respectées.

**ACUERDO DE TRANSFERENCIA DE MATERIAL (ATM) REVISADO  
PARA LOS RECURSOS FITOGENÉTICOS MANTENIDOS EN DEPÓSITO POR [CENTRO]<sup>1</sup>**

<sup>1</sup> El presente ATM abarca los materiales transferidos antes de la entrada en vigor del Tratado Internacional sobre los Recursos Fitogenéticos para la Alimentación y la Agricultura. El Tratado estipula que el [Centro] concertará un acuerdo con el órgano rector del Tratado una vez que éste haya entrado en vigor. El [Centro] ha manifestado su intención de concertar dicho acuerdo con el órgano rector. En este acuerdo se estipularán, de conformidad con el Tratado, los nuevos ATM y las disposiciones relativas a la distribución de los beneficios para los materiales transferidos tras la entrada en vigor del acuerdo.

## **ACUERDO DE TRANSFERENCIA DE MATERIAL REVISADO PARA LOS RECURSOS FITOGENÉTICOS MANTENIDOS EN DEPÓSITO POR [CENTRO]<sup>1</sup>**

El [Centro] suministra los recursos fitogenéticos (en lo sucesivo denominados el “material”) con las siguientes condiciones:

El [Centro] pone a disposición el material descrito en la lista adjunta como parte de su política de aprovechamiento máximo del material genético con fines de investigación, mejoramiento y capacitación. El material se obtuvo en el [Centro]; o se adquirió antes de la entrada en vigor del Convenio sobre la Diversidad Biológica; o bien, si se adquirió después de la entrada en vigor del Convenio sobre la Diversidad Biológica, se obtuvo quedando entendido que podría ponerse libremente a disposición con fines de investigación agrícola, mejoramiento y capacitación, en las condiciones establecidas en el acuerdo entre el [Centro] y la FAO de fecha 26 de octubre de 1994.

El material se mantiene en depósito con arreglo a las condiciones del presente acuerdo y el receptor no tiene derecho a obtener derechos de propiedad intelectual (DPI) sobre el material o la información conexas.

El receptor puede utilizar y conservar el material con fines de investigación, mejoramiento y capacitación y lo puede distribuir a otras partes, siempre que éstas acepten las condiciones del presente acuerdo<sup>2</sup>.

Por consiguiente, el receptor acuerda por la presente no reclamar la propiedad sobre el material ni solicitar DPI sobre ese material o sus partes o componentes genéticos, en la forma recibida. El receptor también acuerda no solicitar DPI sobre la información conexas recibida.

El receptor acuerda asimismo garantizar que cualquier persona o institución a disposición de la cual pueda poner posteriormente muestras del material disponible esté vinculada por las mismas disposiciones y se comprometa a transmitir las mismas obligaciones a receptores futuros del material.

El [Centro] no ofrece garantías en cuanto a la seguridad del material o a la titularidad sobre el mismo, ni en cuanto a la exactitud o corrección de cualquier dato del pasaporte o de otro tipo suministrado con el material. Tampoco ofrece ninguna garantía en cuanto a la calidad, la viabilidad o la pureza (genética o mecánica) del material que suministra. La situación fitosanitaria del material se garantiza sólo con arreglo a lo descrito en el certificado fitosanitario adjunto. El receptor asume la plena responsabilidad del cumplimiento de la reglamentación o normas de cuarentena y bioseguridad del país receptor en cuanto a la importación o distribución de material genético.

Previa solicitud, el [Centro] facilitará la información que pueda estar disponible además de la que se proporciona con el material. Los receptores deberán aportar al [Centro] los datos y la información correspondientes obtenidos durante la evaluación y la utilización.

Se alienta al receptor del material suministrado en virtud del presente ATM a compartir los beneficios que se deriven de su utilización, incluida la comercial, por medio de mecanismos de intercambio de información, acceso a la tecnología y su transferencia, creación de capacidad y distribución de los beneficios derivados de la comercialización. El [Centro] está dispuesto a facilitar la distribución de tales beneficios orientándolos hacia la conservación y la utilización sostenible de los recursos fitogenéticos en cuestión, particularmente en programas nacionales y regionales de los países en desarrollo y los países con economía en transición, sobre todo en centros de diversidad y en los países menos adelantados.

El material se suministra con la condición expresa de que se acepten las condiciones del presente Acuerdo. La aceptación del material por parte del receptor constituye la aceptación de las condiciones del presente Acuerdo.

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<sup>1</sup> Se señala a la atención del receptor el hecho de que se harán públicos los detalles del TAM, incluida la identidad del receptor.

<sup>2</sup> Esto no impide a los receptores distribuir el material con el fin de ponerlo directamente a disposición de los agricultores o consumidores para su cultivo, siempre que se cumplan las demás condiciones estipuladas en el ATM.

# [中心]<sup>1</sup> 托管的 植物遗传资源材料转让协定

<sup>1</sup> 本《材料转让协定》涉及《粮食和农业植物遗传资源国际条约》生效之前转让的材料。《条约》设想，《条约》一旦生效，[中心]将与《条约》管理机构签订一项协定。[中心]已表明愿意与管理机构签订这样一项协定。与《条约》一致，这项协定将为其生效后转让的材料规定新的材料转让协定和利益分享安排。

## [中心]<sup>1</sup>托管的植物遗传资源材料转让协定

本协定中的植物遗传资源（以下称“材料”）由[中心]按以下条件提供：

[中心]提供所附清单中说明的材料，作为其尽量为研究、育种和培训利用材料的政策的一部分。材料或由[中心]培育；或是在《生物多样性公约》生效之前获得；若是在《生物多样性公约》生效之后获得，其获得时达成的谅解是，可按照 1994 年 10 月 26 日[中心]与粮农组织签订的协定中规定的条件，为任何农业研究、育种如培训目的提供材料。

材料按本协定委托保存，接收方无权获得该材料或有关信息的知识产权。

接收方可为研究、育种和培训利用和保存材料，并可供其它各方，但这些有关方面须接受本协定的条件。<sup>2</sup>

因此，接收方借此同意不提出对材料的所有权，也不寻求对收到形式的该材料或其基因部分或成份的知识产权。接收方还同意不寻求对收到的有关信息的知识产权。

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[中心]对材料的安全和所有权以及随材料提供的任何通行证或其它资料的精确性或正确性不作任何保证。对所供材料的（遗传或机械）质量、活性或纯度也不作任何保证。材料的植物检疫状况仅按所附的植物检疫证书的描述加以保证。接收方承担遵守接收方国家有关输入或发放遗传材料的检疫和生物安全条例和规则的全部责任。

[中心]将根据请求提供随材料提供的任何情况之外可能获得的资料。要求接收方向[中心]提供评价和利用期间收集的有关数据和资料。

鼓励按本材料转让协定提供的材料的接收方分享利用该材料所产生的利益，包括商业利用，通过信息交流机制、获得和转让技术、能力建设和分享商业化所产生的利益。[中心]愿意促进这些利益的分享，将这些利益用于有关植物遗传资源的保存和可持续利用，特别是在发展中国家和转型经济国家的国家和区域计划中，尤其是在多样性中心和最不发达国家中。

材料的提供以接受本协定的条款为明确条件。接收方接受材料则构成对本协定的条款的接受。

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<sup>1</sup> 提请接收方注意下述事实，即将公开提供材料转让协定的细则，包括接收方的身份。

<sup>2</sup> 这并不妨碍接收方为直接提供给农民或消费者栽培而发放该材料，但须遵守本材料转让协定中规定的其它条件。



## الاتفاقية لنقل المواد

المتعلقة بالموارد الوراثية النباتية التي يحتفظ بها [المركز] بصفة أمانة<sup>1</sup>

<sup>1</sup> تغطي هذه الاتفاقية الخاصة بنقل المواد، المواد التي يجري نقلها قبيل بدء سريان المعاهدة الدولية بشأن الموارد الوراثية النباتية للأغذية والزراعة. وتتوخى المعاهدة أن يبرم [المركز] اتفاقاً مع الجهاز الرياسي للمعاهدة بمجرد دخولها حيز التنفيذ. وقد أوضح [المركز] عزمه على إبرام هذا الاتفاق مع الجهاز الرياسي. وسوف تنص هذه الاتفاقية، التي تتسق مع المعاهدة، على اتفاقيات نقل المواد الجديدة، وترتيبات تقاسم المنافع الخاصة بالمواد التي يتم نقلها بعد دخول الاتفاق حيز التنفيذ.

## اتفاقية لنقل المواد

### الخاصة بالموارد الوراثية النباتية للأغذية والزراعة

#### التي يحتفظ بها [المركز] <sup>1</sup> بصفة أمانة

يقدم [المركز] المواد الوراثية النباتية للأغذية والزراعة (المشار إليها فيما يلي بـ "المواد") الواردة في هذه الاتفاقية بموجب الشروط التالية:

يؤقر المركز المواد الموصوفة في القائمة المرفقة كجزء من سياسته الرامية إلى تعظيم الاستفادة من المواد في أغراض البحوث والتربية والتدريب. وهذه المواد إما قد استتبقت من جانب [المركز] أو اقتنيت قبل سريان الاتفاقية المتعلقة بالتنوع البيولوجي، أو تم الحصول عليها - إذا كانت قد اقتنيت بعد سريان الاتفاقية المتعلقة بالتنوع البيولوجي - بمفهوم أنه يمكن توفيرها لأي أغراض تتعلق بالبحوث الزراعية والتربية والتدريب وفقا للشروط والأوضاع الواردة في الاتفاق المعقود بين [المركز] والمنظمة في 1994/10/26.

ويحتفظ بهذه المواد على سبيل الأمانة بموجب هذه الاتفاقية. وليس للمتلقي حقوق في الحصول على حقوق الملكية الفكرية على المواد أو المعلومات المتصلة بها.

ويجوز للمتلقي استخدام المواد وصيانتها لأغراض البحوث والتربية والتدريب ويجوز له أن يوزعها على أطراف أخرى شريطة أن تكون مستعدة بدورها لقبول شروط هذا الاتفاق<sup>2</sup>.

وعلى ذلك، يوافق المتلقي بموجب هذا الاتفاق على ألا يطالب بملكية هذه المواد التي سيستلمها، وألا يلتمس حقوقا للملكية الفكرية على تلك المواد أو أجزائها أو مكوناتها الوراثية بالشكل الذي يتلقاها بها. ويوافق المتلقي أيضا على عدم التماس حقوق الملكية الفكرية على المعلومات ذات الصلة المتلقاة.

يوافق المتلقي كذلك على ضمان أن يتقيد أي شخص تالٍ أو مؤسسة تالية يوقر لها عينات من المواد بنفس الأحكام، وأن يتعهد بأن ينقل هذه الالتزامات ذاتها إلى المتلقين التاليين لهذه المواد.

لا يقدم [المركز] أي ضمانات إزاء سلامة أو ملكية المواد، ولا بشأن دقة أو صواب أي بيانات تتعلق بالبيانات الأساسية أو أي بيانات أخرى تقدم مع المواد. ولا تقدم أي ضمانات بشأن نوعية المادة المقدمة أو توافرها أو نقائها (الوراثي أو الميكانيكي). وليس هناك ضمان للظروف الصحية النباتية للمواد إلا كما يرد في شهادة الصحة النباتية المرفقة. ويتحمل المتلقي المسؤولية الكاملة عن الامتثال للوائح وقواعد الحجر الزراعي والسلامة الحيوية لبلده فيما يتعلق باستيراد المادة الوراثية أو الإفراج عنها.

<sup>1</sup> يسترعى نظر المتلقي إلى أن تفاصيل اتفاقية نقل المواد، بما في ذلك هوية المتلقي، ستنشر علنا.

<sup>2</sup> هذا لا يمنع المتلقين من الإفراج عن البذور أو إكثارها بغرض توفيرها بصورة مباشرة للمزارعين أو المستهلكين لزراعتها، شريطة الامتثال للشروط الأخرى المحددة في اتفاقية نقل المواد.

سيوفر [المركز]، عند الطلب، المعلومات التي قد تكون متاحة علاوة على كل ما أُدّم مع المواد. ويطلب من المتلقين أن يوفرُوا [للمركز] البيانات والمعلومات التي تم جمعها أثناء عمليات التقييم والاستخدام.

يشجع المتلقي للمواد المقدمة بموجب اتفاقية نقل المواد على تقاسم المنافع الناجمة عن استخدامها، بما في ذلك الاستخدام التجاري، من خلال آليات تبادل المعلومات والحصول على التكنولوجيا ونقلها وبناء القدرات وتقاسم المنافع الناشئة عن إضفاء الطابع التجاري. [والمركز] مستعد لتيسير تبادل المنافع من خلال توجيهها إلى صيانة الموارد الوراثية النباتية المعنية واستخدامها المستدام وخاصة في البرامج القطرية والإقليمية في البلدان النامية والبلدان التي تمر اقتصادياتها بمرحلة تحول، ولاسيما في مراكز التنوع والبلدان الأقل نمواً.

وتوردّ المواد بالشرط الصريح القاضي بقبول شروط هذه الاتفاقية. ويشكل قبول المتلقي للمواد قبولاً بشروط هذه الاتفاقية.