

To: Ismail Serageldin, Chair, CGIAR
From: Walter Falcon, Chair, CBC
Geoffrey Hawtin, Chair, CDC

Brasilia, Brazil, 28 May 1998

Dear Ismail,

The Center Board Chairs and Directors are pleased to transmit the attached series of documents relating to genetic resources, biotechnology, and intellectual property rights. These statements are in direct response to the requests contained in your opening remarks to MTM'98.

The Centers are convinced of the need for consistent policies and procedures across the System, and are further convinced of the need to make public these policies. The Chairs and Directors would also like to entrust you or your designate to speak for and protect the rights of the Centers in relevant international fora.

One final point is in order. The statements that are attached refer to Center policies and procedures which will - indeed must - be carried out within the aegis of all relevant national and international laws and agreements.

The Directors and Chairs hope that you and other at MTM'98 will receive these statements with the same enthusiasm that they are being forwarded to you.

Respectfully submitted.

**CENTERS' POSITION STATEMENT
ON
GENETIC RESOURCES, BIOTECHNOLOGY
AND
INTELLECTUAL PROPERTY RIGHTS**

The centers have developed a set of policies and instruments to guide and provide coherence to their work with genetic resources in fulfillment of the mission of the CGIAR. These now include:

1. CGIAR-endorsed Ethical Principles Relating to Genetic Resources, addressing the subject of Equity; Trusteeship of Genetic Resources; Respect, Responsibility and Integrity in Science; and Social Benefits. (*Att. 1*)
2. Agreements with FAO covering 500,000 accessions. (*Att. 2*). IPGRI, on behalf of the CGIAR, will continue to work with FAO to address issues concerning the interpretation and implementation of these Agreements. In addition, IPGRI, in consultation with other Centers through the System-wide Genetic Resources Programme, will complete a set of draft guidelines on designation by September 1998, to assist Centers in determining which materials to place under the Agreements with FAO.
3. A common Germplasm Acquisition Agreement (*Att. 3*) for use in acquiring materials intended for designation under the Agreements with FAO.
4. A common Material Transfer Agreement for designated germplasm available in two formats - one in contract form (*Att. 4a*) requiring a signature and the other using the "software" protection approach wherein the recipient is deemed to have accepted the terms of the MTA by virtue of opening the package and accepting the materials (*Att. 4b*). IPGRI shall keep a watching brief on the efficacy of MTAs in implementing the FAO-CGIAR Agreements, and, in consultation with FAO and the Centers, propose any changes in the MTAs which might be needed in the future. Revisions to the MTAs will be adopted and implemented on a system-wide basis.
5. A statement endorsed by the Genetic Resources Policy Committee, the CDC, and the CBC, on the steps centers will take when they believe that a Material Transfer Agreement may have been violated. (*Att. 5*)
6. Guiding Principles on Intellectual Property Rights, which will be further discussed and developed under the leadership of the CDC Committee on IPR, with the aim that a revised draft will be ready by ICW, 1998. (*Current version attached; Att. 6*)
7. An agreed statement on Principles Involving Center Interaction with the Private Sector and Others on Proprietary Technology (*Att. 7*)
8. An agreed position statement on Biotechnology (*Att. 8*)

20/05/98

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 security¹ 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.

¹ 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.

**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 [Name of Centre]
Organization

by: -----
(signature)

by: -----
(signature)

Date: -----

Date: -----

Appendix

DESIGNATED GERMPLOSM

- (a) List of germplasm accession covered by this agreement
- (b) List of location where material is held

**GERMPLASM ACQUISITION AGREEMENT (GAA)
FOR MATERIAL INTENDED FOR DESIGNATION**

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

Signed

Signed

**TRANSFER OF DESIGNATED GERmplasm
IMPORTANT NOTICE**

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

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

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

Accordingly, no designated germplasm will be released in future unless the recipient signs the attached Standard Order Form by which the recipient agrees -

- a) not to claim ownership over the designated germplasm received, or to seek intellectual property rights over that germplasm or related information.
- b) to ensure that any subsequent person or institution to whom he or she makes samples of the germplasm available, is bound by the same provision.

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

[CENTER]

STANDARD ORDER FORM

Consecutive Number: SOF/Year/number

I/we order the following material :

In so far as this material is "designated germplasm" under the Agreement between **[Center]** and the Food and Agriculture Organization of the United Nations (FAO) Placing Collections of Plant Germplasm under the Auspices of FAO dated 26 October 1994²,

I/we agree

- a) not to claim ownership over the material received, nor to seek intellectual property rights over that germplasm or related information.
- b) to ensure that any subsequent person or institution to whom I/we make samples of the germplasm available, is bound by the same provision.

Place/date

Name of person or institution requesting the germplasm

Address

Shipping address (if different from the above)

Authorized signature

² Whether or not the material is "designated germplasm" will be indicated on the seed list attached to the Shipment Notice and on the seed packets.

[CENTER]

SHIPMENT NOTICE

Consecutive Number: SN/Year/number

In response to your request signed and dated you are receiving with this notice the following germplasm samples as indicated on the attached seed list.

[Center] does not warrant the safety, quality, viability or purity (genetic or mechanical) of the germplasm nor the accuracy of passport or other data provided with it. Its phytosanitary condition is only warranted as described in the attached phytosanitary certificate.

It is the recipient's responsibility to comply with the recipient's country's biosafety and import regulations and any of the recipient's country's rules governing the release of genetic material.

Please note that samples indicated as "Designated Germplasm" on the seed list or on the seed packets are subject to the Agreement between *[Center]* and the Food and Agriculture Organization of the United Nations (FAO) placing collections of plant germplasm under the auspices of FAO, dated 26 October 1994, and are thus subject to the following conditions:

- a) The recipient agrees not to claim ownership over the material received, nor to seek intellectual property rights over that germplasm or related information.
- b) The recipient agrees to ensure that any subsequent person or institution to whom the recipient makes samples of the germplasm available, is bound by the same provision.

Name of recipient

Institution

Address

Date

For *[Center]*

(Signature)

(Name and title)

**MATERIAL TRANSFER AGREEMENT
(MTA)**

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

Designated Germplasm

[Center] 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 *[Center]*; 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 agricultural research or breeding purposes.

The material is held in trust under the terms of an agreement between *[Center]* and FAO, and the recipient has no rights to obtain Intellectual Property Rights (IPR) on the germplasm or related information.

The recipient may reproduce the seed and use the material for agricultural research and breeding purposes and may distribute it to other parties provided the recipient is also willing to accept the conditions of this agreement.

The recipient, therefore, hereby agrees not to claim ownership over the material to be received, nor to seek IPR over that germplasm or related information. He/She further agrees to ensure that any subsequent person or institution to whom he/she may make samples of the germplasm available, is bound by the same provision.

[Center] makes no warranties as to the safety or title of the material, nor as to the accuracy or correctness of any passport or other data provided with the material. Neither does it make any warranties as to the quality, availability, or purity (genetic or mechanical) of the material being furnished. 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/biosafety regulations and rules as to import or release of genetic material.

Upon request, *[Center]* will furnish information that may be available in addition to whatever is furnished with the seed. Recipients are requested to furnish *[Center]* performance data collected during evaluations.

The material is supplied expressly conditional on acceptance of the terms of this agreement. The recipient's acceptance of the material constitutes such agreement to the conditions above.

**STATEMENT ON THE IMPLEMENTATION AND ENFORCEMENT
OF ARTICLES 3 AND 10 OF THE AGREEMENTS BETWEEN THE CGIAR
CENTRES AND THE FOOD AND AGRICULTURE ORGANIZATION OF
THE UNITED NATIONS (FAO) PLACING COLLECTIONS OF PLANT
GERMPLASM UNDER THE AUSPICES OF FAO**

On 26 October 1994, CGIAR Centres holding *ex situ* collections of plant genetic resources entered into Agreements with FAO whereby those Centres agreed to hold designated germplasm "in trust for the international community". The Agreements recognize that the CGIAR "adheres to a policy on plant genetic resources which is based on the unrestricted availability of germplasm held in their genebanks." They further note 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 developing countries."

The Agreements specify in Article 3 (b) that Centres "shall not claim legal ownership over the designated germplasm," nor shall they "seek any intellectual property rights over that germplasm or related information." Consistent with CGIAR policy mentioned above, Article 9 of the Agreements states that Centres will undertake "to make samples of the designated germplasm and related information available directly to users or through FAO, for the purpose of scientific research, plant breeding or genetic resource conservation, without restriction." Article 10, however, states that "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)." In a joint statement of FAO and the CGIAR Centres on the Agreements placing CGIAR germplasm collections under the auspices of FAO, it was explained that "With respect to the transfer of samples of designated germplasm, the requirements of Article 10 (namely, that the Centres ensure that recipients of germplasm not seek intellectual property rights over the germplasm or related information) 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."

The CGIAR continues to give its full support to the Agreements concluded with FAO in 1994. Though it claims no ownership over the 500,000 accessions held in its genebanks and designated in the Agreements with FAO, the CGIAR has assumed responsibilities for their long-term conservation. Each year, the Centres distributed hundreds of thousands of accessions to researchers and plant breeders consistent with the goals, objectives and provisions of the Agreements with FAO. These accessions are routinely made available under the terms of Material Transfer Agreements (MTAs) in fulfillment of the Centres' responsibilities to ensure that the material continues to remain the public domain. Centres disclose details of transfers of designated material publicly, e.g., through SINGER.

While Centres distribute genetic material 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. When Centres become aware of a possible violation for 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 that 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.a. 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.
- 2.b. 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 and transgression of the Agreements with FAO.

The Centres reserve the right to take other actions, including legal actions, 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.

It is understood that FAO, through the Commission on Genetic Resources for Food and Agriculture, may also wish to take actions in support of the objectives of the Agreements between the CGIAR Centres and FAO. The CGIAR would welcome and support all such appropriate initiatives.

Endorsed by the CGIAR Genetic Resources Policy Committee, 4th May 1998

Guiding Principles for the Consultative Group on International Agricultural Research Centers on Intellectual Property and Genetic Resources³

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 Centers 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;
- Centers 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"⁴, 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 Centers 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 Centers have revised their guiding principles on intellectual property. While it is envisaged that there may well be further revisions as changing circumstances warrant, the Centers 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.

³ This paper was adopted as an interim working paper by the CGIAR at its ICW'96 meeting, Washington, D.C. 1996.

⁴ 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 Centers 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 Centers, and FAO is to provide policy advice to the Centers in the execution of their responsibilities. The Centers agree to conserve, maintain, study, improve, and distribute germplasm world-wide for use in agricultural research and development. As trustees of the designated germplasm, the Centers 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 Centers aim to promote ready access to both the designated germplasm and the Centers' research products, including biotechnological processes arising from their research.

National Sovereignty

- The Centers 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 Centers 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 Centers recognize the contributions of farming and indigenous communities to genetic resources conservation and enhancement. In order to convert this concept into reality the Centers are prepared to contribute to national and international efforts to develop appropriate policies and procedures for the recognition of Farmers' Rights. The Centers 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 center research products

- The Centers 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 Centers, whether designated germplasm or the products of the Centers' 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 Centers.** Based on the conviction that their research will continue to be supported by public funds, the Centers 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 Centers 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 Centers will disclose the reasons for seeking protection.

- The Centers 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 Center 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 Center and the objectives of the CGIAR.
- Any intellectual property protection of Centers' output will be done on behalf of the Centers and not individual scientists. All staff in the Centers will be required to disclose innovations and assign all rights on these to the Centers.
- **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 Centers may be protected by recipients only with the agreement of the supplying Center. Centers 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.⁵, and would require that the original material remains available for the public good.
- **Center 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 Centers 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 Centers 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 Center Directors Committee.
- The Centers will adopt specific policies for the distribution and use of improved germplasm and biotechnological products following the above Guiding Principles.

⁵ 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.

PRINCIPLES INVOLVING CENTER INTERACTION WITH THE PRIVATE SECTOR AND OTHERS

- The CGIAR Centers 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 centers 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 centers 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
- Centers' collaboration with other institutions will be conducted in accordance with the CGIAR Ethical Principles Relating to Genetic Resources which have been adopted formally at MTM 98. In the event centers secure financial returns as a result of commercialization by others of protected property, they will be applied to furthering the mandate of centers involved and the objectives of the CGIAR.
- The Guiding Principles for the CGIAR International Agricultural Research Centers on Intellectual Property and Genetic Resources (agreed to informally as operating guidelines during MTM 96) 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 centers, as well as ensuring broad access to designated germplasm and center's research outputs, including biotechnological research processes and products. These principles specify the responsibilities and procedures for centers in dealing with:
 - National sovereignty (rights of states over their genetic resources)
 - Farmers' rights
 - Intellectual property protection for designated germplasm and center research products
 - Plant breeders' rights
 - Defensive protection by centers
 - Patenting
 - Center access to materials protected by others
 - Biosafety and Bioethics
- In collaboration with industry or other institutions, centers 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, centers 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 centers in international decision-making fora including but not limited to WTO (specifically with respect to TRIPS), WIPO, CBD, UPOV and FAO.

May 28, 1998

**CENTERS' POSITION STATEMENT
ON
BIOTECHNOLOGY**

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

- Biotechnology must be viewed as one of the critical tools for providing food security for the poor.
- The Centers 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 Centers view biotechnology as an important means for ensuring environmental protection over the long term.
- The Centers 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 Centers are committed to increasing their partnerships with ARIs, both public and private, north and south, to ensure ready access of Center scientists and our partners in the south to advanced technologies.
- The Centers 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 Centers 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 Centers to provide important options for meeting the food security and environmental challenges of the future.
- The Centers 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 Centers will seek partnerships with institutes that have such frameworks in place (thus our commitment to policy and capacity building in this area).

20/05/98

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