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para la
Agricultura
y la
Alimentación

COMMISSION ON GENETIC RESOURCES FOR FOOD AND AGRICULTURE

Tenth Regular Session

Rome, 8 – 12 November 2004

AGREEMENT BETWEEN THE TROPICAL AGRICULTURAL RESEARCH AND HIGHER EDUCATION CENTER (CATIE) AND THE FOOD AND AGRICULTURE ORGANIZATION OF THE UNITED NATIONS (FAO) PLACING COLLECTIONS OF PLANT GERMPLASM UNDER THE AUSPICES OF FAO

The agreement attached is made available for the information of the Commission, in relation to the International Network of *Ex Situ* Collections under the Auspices of FAO. The agreement came into force on 13 May 2004. This matter is discussed in para. 21 of document CGRFA-10/04/6, *Report on the International network of Ex Situ Collections under the Auspices of FAO*. CATIE has also provided a separate report on its programmes and activities of relevance to the Commission; see para. 5-9 of document CGRFA-10/04/11.1.

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**AGREEMENT BETWEEN THE TROPICAL AGRICULTURAL RESEARCH AND
HIGHER EDUCATION CENTER (CATIE) AND THE FOOD AND AGRICULTURE
ORGANIZATION OF THE UNITED NATIONS (FAO) PLACING COLLECTIONS OF
PLANT GERMPLASM UNDER THE AUSPICES OF FAO**

PREAMBLE

The Tropical Agricultural Research and Higher Education Center (hereinafter referred to as the “Centre”), 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 the implementation of Article 7 of the International Undertaking on Plant Genetic Resources;

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

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

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

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

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

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

Have agreed as follows:

Article 1

APPLICATION OF THIS AGREEMENT

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

Article 7

STAFF

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

Article 8

FINANCES

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

Article 9

AVAILABILITY OF DESIGNATED GERMPLOSM AND RELATED INFORMATION

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

Article 10

TRANSFER OF DESIGNATED GERMPLOSM AND RELATED INFORMATION

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

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

Article 11**DURATION**

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

Article 12**TERMINATION**

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

Article 13**SETTLEMENT OF DISPUTES**

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

Article 14**AMENDMENT**

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

Article 15**DEPOSITARY**

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

- (a) send certified copies of this Agreement to the Member Nations of FAO and to any other Government which so requests;
- (b) arrange for the registration of this Agreement, upon its entry into force, with the Secretariat of the United Nations in accordance with Article 102 of the Charter of the United Nations;
- (c) inform FAO Member 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