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DRAFT INTERNATIONAL CODE OF CONDUCT FOR
PLANT GERMPLASM COLLECTING AND TRANSFER

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INTRODUCTION

The Commission on Plant Genetic Resources (CPGR) at its third session in 1989 noted that most countries do not request any kind of license or permit for collecting plant genetic resources in their territories and discussed the need for international regulations in the collecting and transfer of plant germplasm which would allow countries to exercise sovereignty over, and to benefit from, their plant genetic resources. It recommended that the Secretariat, in cooperation with the Working Group of the Commission draft an International Code of Conduct for Plant Germplasm Collecting and Transfer.

The Secretariat accordingly sent a questionnaire to a wide range of experts throughout the world, to seek their advice as to the issues to be addressed, and the objectives and content of the proposed Code of Conduct. Those surveyed included germplasm collectors and curators, sponsors, plant breeders, biotechnologists, botanists and policy makers; national and international organizations, non-governmental organizations, and industry were all covered. Material for the preparation of the draft Code was also assembled from national codes and regulations, and reviews of the literature, as well as through discussions with experts, particularly experienced collectors.

A first draft Code of Conduct was presented in 1990 to the Working Group of the Commission which expressed its satisfaction with the document but felt that the final version should include fewer technical details, which could instead be incorporated in a field manual for collectors. A revised draft of the Code was subsequently presented to the Commission at its Fourth Session in 1991 for consideration. The Commission endorsed the provisions of the draft Code, in principle, and agreed on its voluntary nature, noting that many of the practical, technical and administrative measures in the draft Code were already standard practice. The draft Code was discussed by the 26th session of FAO Conference which, in general, agreed with its contents but returned it to the Commission for further elaboration.

The present draft Code has been revised, taking into account the comments received from several member countries and the advice of legal experts, and also to ensure consistency and complementarity with the Convention on Biological Diversity. Notes explaining the revisions are provided in appendix 2. The Code could contribute to the objectives of the Convention which are relevant to plant genetic resources for food and agriculture (PGRFA), primarily for those provisions on access and sharing of benefits, particularly in the interim period pending the entry into force of the Convention.

A primary function of the Code is to serve as a point of reference until such time as individual countries establish their own codes, or regulations for germplasm collection, conservation, exchange and use. The Code may serve as source of ideas, both for individual countries in preparing their own national regulations on germplasm collection, and for the possible development, at future time, of an international legally binding instrument, for example as a Protocol of the Convention on Biological Diversity. Although the terms of this Code relate primarily to international collecting missions, as requested by the FAO Commission on Plant Genetic Resources, its ethical standards, and the principle of fully involving local communities, may also provide guidance for national collecting missions.

Unlike other codes of conduct for plant collectors that have been developed and implemented by governments and professional bodies, this Code not only provides ethical standards of field behaviour for collectors; it maintains that sponsors, curators and users have long-term responsibilities for the planning and approval of collecting missions, the management of germplasm collections, and the transfer, conservation and use of germplasm.

The Code of Conduct does not and cannot affect in any way the sovereign rights of nations over their plant genetic resources. It is intended as a set of standards for those who voluntarily adhere to the principles it embodies. It is intended that the Code should not put undue restrictions on plant collectors, while extending the network of shared responsibilities, so as to protect both collectors and donors of germplasm.

The present draft is presented for the endorsement of the Commission; a draft resolution is appended.

**DRAFT INTERNATIONAL CODE OF CONDUCT FOR PLANT GERMPLASM
COLLECTING AND TRANSFER**

CHAPTER I

Objectives and Definitions

Article 1: Objectives

This Code has the following objectives:

- 1.1 to promote the conservation, collection and use of plant genetic resources, in ways that respect the environment and local traditions and cultures;
- 1.2 to foster the direct participation of farmers, scientists and organizations in countries where germplasm is collected, in programmes and actions aimed at the conservation and use of plant genetic resources;
- 1.3 to avoid genetic erosion and permanent loss of resources caused by excessive or uncontrolled collection of germplasm;
- 1.4 to promote the safe exchange of plant genetic resources, as well as the exchange of related information and technologies;
- 1.5 to help ensure that any collecting of germplasm is undertaken in full respect of national laws, local customs, rules and regulations;
- 1.6 to provide appropriate standards of conduct and to define obligations of collectors;
- 1.7 to promote the sharing of benefits derived from plant genetic resources between the donors and users of germplasm, related information and technologies by suggesting ways in which the users may pass on a share of the benefits to the donors, taking into account the costs of conserving and developing germplasm;
- 1.8 to bring recognition to the rights and needs of local communities and farmers, and those who manage wild and cultivated plant genetic resources and in particular to promote mechanisms:
 - a) to facilitate compensation of local communities and farmers for their contribution to the conservation and development of plant genetic resources; and
 - b) to avoid situations whereby benefits currently derived from plant genetic resources by these local communities and farmers are undermined by the transfer or use by others of the resources.

Article 2: Definitions

- 2.1 "Collector" means a legal or natural person that collects plant genetic resources and related information;
- 2.2 "Curator" means a legal or natural person that conserves and manages plant genetic resources and related information.
- 2.3 "Farmers' Rights" means the rights arising from the past, present and future contributions of farmers in conserving, improving, and making available plant genetic resources, particularly those in the centres of origin/diversity. These rights are vested in the International Community, as trustee for present and future generations of farmers, for the purpose of ensuring full benefits to farmers, and supporting the continuation of their contributions, as well as the attainment of the overall purposes of the International Undertaking.¹
- 2.4 "*Ex situ* conservation" means the conservation of plant genetic resources outside their natural habitat.
- 2.5 "Genetic erosion" means loss of genetic diversity;
- 2.6 "*In situ* conservation" means the conservation of plant genetic resources in the areas where they have naturally evolved, and, in the case of cultivated species or varieties, in the surroundings where they have developed their distinctive properties;
- 2.7 "Plant genetic resources" or "plant germplasm" - means the reproductive or vegetative propagating material of plants;
- 2.8 "Sponsor" means a legal or natural person that sponsors, financially or otherwise, a plant collecting mission;
- 2.9 "User" means a legal or natural person that utilizes and benefits from plant genetic resources and related information.

1. This definition is extracted from the FAO Conference Resolution 5/89

CHAPTER II

Nature and Scope of the Code

Article 3: Nature of the Code

- 3.1 The Code is voluntary.
- 3.2 The code recognizes that conservation of plant genetic resources is a common concern of humankind and that nations have sovereign rights over their plant genetic resources in their territories;
- 3.3 The Code is addressed primarily to governments. All relevant legal and natural persons are also invited to observe its provisions, in particular those dealing with plant exploration and plant collection, agricultural and botanical activities and research on endangered species or habitat conservation, research institutes, botanical gardens, harvesting of wild plant resources, agro-industry and the seed trade.
- 3.4 The provisions of the Code should be implemented through collaborative action by governments, appropriate organizations and professional societies, field collectors and their sponsors, and curators and users of plant germplasm.
- 3.5 FAO and other competent organizations, are invited to promote full observance of the Code.
- 3.6 The Code provides a set of general principles which governments may wish to use in developing their national regulations, or formulating bilateral agreements on the collection of germplasm.

Article 4: Scope

- 4.1 The Code describes the shared responsibilities of collectors, donors, sponsors, curators and users of germplasm so as to ensure that the collection, transfer and use of plant germplasm is carried out with the maximum benefit to the international community, and with minimal adverse effects on the evolution of crop plant diversity and the environment. While initial responsibility rests with field collectors and their sponsors, obligations should extend to parties who fund or authorize collecting activities, or donate, conserve or use germplasm. The Code emphasizes the need for cooperation and a sense of reciprocity among donors, curators and users of plant genetic resources. Governments should consider taking appropriate action to facilitate and promote observance of this Code by sponsors, collectors, curators and users of germplasm operating under their jurisdiction.

- 4.2 The Code should enable national authorities to permit collecting activities within its territories expeditiously. It recognizes that national authorities are entitled to set specific requirements and conditions for collectors and sponsors and that sponsors and collectors are obliged to respect all relevant national laws as well as adhering to the principles of this Code.
- 4.3 The Code is to be implemented within the context of the FAO Global System on Plant Genetic Resources, including the International Undertaking and its annexes. In order to promote the continued availability of germplasm for plant improvement programmes on an equitable basis governments and users of germplasm should endeavour to give practical expression to the principles of Farmers' Rights.

Article 5: Relationship with the other legal instruments

- 5.1 The Code is to be implemented in harmony with:
- a) the Convention on Biological Diversity and other legal instruments protecting biological diversity or parts of it;
 - b) the International Plant Protection Convention (IPPC) and other agreements restricting the spread of pests and diseases;
 - c) the national laws of the host country; and
 - d) any agreements between the collector, host country, sponsors, and the gene bank storing the germplasm.

CHAPTER III

Collectors' permits

Article 6: Authority for Issuing Permits

- 6.1 States have the sovereign right, and accept the responsibility, to establish and implement national policies for the conservation and use of their plant genetic resources, and within this framework, should set up a system for the issuance of permits to collectors.
- 6.2 Governments should designate the authority competent for issuing permits. This authority should inform proposed collectors, sponsors, and the other agencies of the government's rules and regulations in this matter, and of the approval process to be followed, and of follow-up action to be taken.

Article 7: Requesting of permits

To enable the permit issuing authority to arrive at a decision to grant or to refuse a permit, prospective collectors and sponsors should address an application to the issuing authority to which they:

- a) undertake to respect the relevant national laws;
- b) demonstrate knowledge of, and familiarity with, the species to be collected, their distribution and methods of collection;
- c) provide indicative plans for the field mission - including provisional route, estimated timing of expedition, the types of material to be collected, species and quantities - and their plans for evaluation, storage and use of the material collected; where possible, the sort of benefits the host country may expect to derive from the collection of the germplasm should be indicated;
- d) notify the host country of the kind of assistance, that may be required to facilitate the success of the mission;
- e) indicate, if the host country so desires, plans for cooperation with national scholars, scientists, students, non-governmental organizations and others who may assist or benefit from participation in the field mission or its follow-up activities;
- f) list, so far as it is known, the national and foreign curators to whom the germplasm and information is intended to be distributed on the completion of the mission; and
- g) supply such personal information as the host country may require.

Article 8: Granting of permits

The permit issuing authority of the country in which a field mission proposes collecting plant genetic resources should expeditiously:

- a) acknowledge the application, indicating the estimated time needed to examine it;
- b) communicate to the collectors and sponsors of the proposed collecting mission its decision. In case of a positive decision, conditions of collaboration be established as soon as possible before the mission arrives in the country, or begins field work. If the decision is to prohibit or restrict the mission, whenever possible, the reasons should be given, and where appropriate, an opportunity should be given to modify the application.

- c) indicate, when applicable, what categories and quantities of germplasm may or may not be collected or exported, and those which are required for deposit within the country; indicate areas and species which are governed by special regulation;
- d) inform the applicant of any restrictions on travel or any modification of plans desired by the host country;
- e) state any special arrangement or restriction placed on the distribution or use of the germplasm, or improved materials derived from it;
- f) if it so desired, designate a national counterpart for the field mission, and/or for subsequent collaboration;
- g) define any financial obligation to be met by the applicant including possible national participation in the collecting team, and other services to be provided; and
- h) provide the applicant with the relevant information regarding the country, its genetic resources policy, germplasm management system, quarantine procedures, and all relevant laws and regulations. Particular attention should be drawn to the culture and the society of the areas through which the collectors will be travelling.

CHAPTER IV

Responsibilities of Collectors

Article 9: Pre-collection

- 9.1 Upon arrival in the host country, collectors should acquaint themselves with all research results, or work in progress in the country, that might have a bearing on the mission.
- 9.2 Before field work begins, collectors and their national collaborators should discuss, and to the extent possible, decide on practical arrangements including: (i) collecting priorities, methodologies and strategies, (ii) information to be gathered during collection, (iii) processing and conservation arrangements for germplasm samples, associated soil/symbiont samples, and voucher specimens, and (iv) financial arrangements for the mission.

Article 10: During collection

- 10.1 Collectors should respect local customs, traditions, and values, and property rights and should demonstrate a sense of gratitude towards local communities. Collectors should respond to their requests for information, germplasm or assistance, to the extent feasible.
- 10.2 In order not to increase the risk of genetic erosion, the acquisition of germplasm should not deplete the populations of the farmers' planting stocks or wild species, or remove significant genetic variation from the local gene pool.
- 10.3 When collecting cultivated or wild genetic resources, it is desirable that the local communities and farmers concerned be informed about the purpose of the mission, and about how and where they could request and obtain samples of the collected germplasm. If requested, duplicate samples should be also left with them.
- 10.4 Whenever germplasm is collected, the collector should systematically record the passport data, and describe in detail the plant population, its diversity, habitat and ecology, so as to provide curators and users of germplasm with an understanding of its original context. For this purpose, as much as local knowledge about the resources (including observations on environmental adaptation and local methods and technologies of preparing and using the plant) should be also documented; photographs may be of special value.

Article 11: Post-collection

- 11.1 Upon the completion of the field mission, collectors and their sponsors should:
 - a) process, in a timely fashion, the plant samples, and any associated microbial symbionts, pests and pathogens that may have been collected for conservation; the relevant passport data should be prepared at the same time;
 - b) deposit duplicate sets of all collections and associated materials, and records of any pertinent information, with the host country and other agreed curators;
 - c) make arrangements with quarantine officials, seed storage managers and curators to ensure that the samples are transferred as quickly as possible to conditions which optimize their viability;

- d) obtain, in accordance with the importing countries' requirements, the phytosanitary certificate(s) and other documentation needed for transferring the material collected;
 - e) alert the host country and the FAO Commission on Plant Genetic Resources about any impending threat to plant populations, or evidence of accelerated genetic erosion, and make recommendations for remedial action; and
 - f) prepare a consolidated report on the collecting mission, including the localities visited, the confirmed identifications and passport data of plant samples collected, and the intended site(s) of conservation. Copies of the report should be submitted to the host country's permit issuing authority, to national counterparts and curators, and to the FAO for the information of its Commission on Plant Genetic Resources and for inclusion in its World Information and Early Warning System on PGR.
- 11.2 Collectors should take steps to promote observance of the Code by the curators and users to whom they have passed the germplasm which they have collected. Where appropriate, this might be by means of agreements with curators and users consistent with Articles 13 and 14.

CHAPTER V

Responsibilities of Sponsors, Curators and Users

Article 12: Responsibilities of Sponsors

- 12.1 Sponsors should take steps to ensure, as far as is possible and appropriate, that collectors of collecting missions which they sponsor abide by the Code, particularly Articles 9, 10 and 11.
- 12.2 Sponsors should, as far as is possible and appropriate, establish agreements with curators of the germplasm collected under missions that they sponsor to ensure that curators abide by the Code particularly Article 13. Such agreements should, as far as is possible and appropriate ensure that subsequent curators and users of the collected germplasm also abide by the Code.

Article 13: Responsibilities of Curators

- 13.1 In order to be able to identify in the future the origin of the samples, curators should ensure that the collectors' original identification numbers, or codes, continue to be associated with the samples to which they refer.

- 13.2 Curators of the collected germplasm, should take practical steps to ensure, as far as is possible and appropriate, that future enquiries from the local communities and farmers who have provided the original material, and the host country, are responded to, and the samples of the plant germplasm collected are supplied upon request.
- 13.3 Curators should take practical steps, *inter alia* by the use of material transfer agreements, to promote the objectives of this code including the sharing of benefits derived from collected germplasm by the users with the local communities, farmers and host countries as indicated in Article 14.

Article 14: Responsibilities of Users

Without prejudice to the concept of Farmers' Rights, and taking into account Articles 1.7 & 1.8, users of the germplasm, should, to benefit the local communities, farmers and the host countries, consider providing some form of compensation for the benefits derived from the use of germplasm such as:

- a) facilitating access to new, improved varieties and other products, on mutually agreed terms;
- b) support for research of relevance to conservation and utilization of plant genetic resources, including community-based, conventional and new technologies, as well as conservation strategies, for both *ex situ* and *in situ* conservation;
- c) training, at both the institutional and farmer levels, to enhance local skills in genetic resources conservation, evaluation, development, propagation and use;
- d) facilitate the transfer of appropriate technology for the conservation and use of plant genetic resources;
- e) support for programmes to evaluate and enhance local land races and other indigenous germplasm, so as to encourage the optimal use of plant genetic resources at national, sub-national, and farmers and community level and to encourage conservation;
- f) grants or other appropriate support for farmers and communities for conservation of indigenous germplasm of the type collected by the mission; and
- g) scientific and technical information obtained from the germplasm.

CHAPTER VI

Reporting, Monitoring and Evaluating the Observance of the Code

Article 15: Reporting by Governments

- 15.1 Governments should periodically inform the FAO Commission on Plant Genetic Resources of actions taken with regard to the application of this Code. When appropriate, this may be effected in the context of the yearly reports provided under Article 11 of the International Undertaking on Plant Genetic Resources.
- 15.2 Governments should inform the FAO Commission on Plant Genetic Resources of any decision to prohibit or restrict proposed collecting missions.
- 15.3 In cases of non-observance by a collector or sponsor of the rules and regulations of a host country regarding the collecting and transfer of plant genetic resources, or the principles of this Code, the government may wish to inform the FAO Commission on Plant Genetic Resources. The collector and sponsor should receive copies of this communication, and have the right to reply to the host country with copy to the FAO Commission. At the request of collectors or their sponsors, FAO may provide a certificate stating that no unresolved complaints are outstanding about them under this Code.

Article 16: Monitoring and Evaluating

- 16.1 Appropriate national authorities and the FAO Commission on Plant Genetic Resources should periodically review the relevance and effectiveness of the Code. The Code should be considered a dynamic text that may be brought up to date as required, to take into account technical, economic, social, ethical and legal developments and constraints.
- 16.2 Relevant professional associations and other similar bodies accepting the principles embodied in this Code may wish to establish peer review ethics committees to consider their members' compliance with the Code.
- 16.3 At a suitable time, it may be desirable to develop procedures for monitoring and evaluating the observance of the principles embodied in this Code, under the auspices of the FAO Commission on Plant Genetic Resources which, where invited to do so by the parties concerned, may settle differences that may arise.

DRAFT RESOLUTION

International Code of Conduct for Plant Germplasm Collecting and Transfer

[The Commission on Plant Genetic Resources] [The Conference]

reaffirming that

- the conservation of plant genetic resources is a common concern of humankind;
- nations have sovereign rights over their plant genetic resources in their territories;
- plant genetic resources should be made available for plant breeding and other scientific purposes of human benefit;

noting that

- the best way to guarantee the maintenance of plant genetic resources is to ensure their effective and beneficial utilization, in all countries;
- the farmers of the world have, over the millennia, domesticated, conserved, nurtured, improved and made available plant genetic resources, and continue to do so today;

recognizing

- the close and traditional dependence of many indigenous and local communities embodying traditional lifestyles on plant genetic resources;

[recommend to the Conference] [agree] the voluntary International Code of Conduct for Plant Germplasm Collecting and Transfer the over-riding purpose of which is to contribute, within the context of the FAO Global System on Plant Genetic Resources, to the conservation and rational use of plant genetic resources for sustainable development by providing broad guidelines for plant germplasm collection and transfer.

EXPLANATORY NOTES

These notes explain the substantive changes between the version of the code discussed by the FAO Conference in 1991 and the latest draft. No reference is made to minor changes of wording.

Chapter 1: Objectives and Definitions

Article. 1. Objectives:

- word "collection" added to 1.1 at request of Member State;
- art. 1.3 clarified (collection is referred to as a possible cause of erosion rather as a means to avoid erosion) and qualified (only excessive and uncontrolled collection is a potential cause of loss).
- 1.5: specific request to quarantine unnecessary;
- 1.7: language simplified, revised to incorporate article 1.9 of the previous version, and reference to costs added at request of a Member State;
- 1.8: language simplified;
- 1.10 of previous version: moved to article 3.

Article 2: Definitions:

- definition of "caretakers" removed as requested by a number of Member States; the need for a definition has been avoided by modifying the language in the relevant parts of the Code (1.8 & 10.3).
- other definitions changed to ensure consistence with Convention on Biological Diversity.

Chapter II: Nature and Scope of the Code

Article 3: Nature of the Code:

- 3.2 added.
- 3.3 simplified;
- 3.4 previous 3.2;
- 3.5 previous 3.4; simplified;
- 3.6 based on previous 1.10.

Article 4. Scope:

- 4.1: last sentence added to clarify the link between Governments (to whom the Code is primarily addressed) and to other actors (for which there are specific provisions in the Code);
- 4.3: reference to the Global System moved from the introduction; reference to Farmers' Rights moved from Chapter V, since it is not an operative part of the Code.

Article 5: Relationship with other legal instruments:

- provisions of this article have been re-ordered and specific reference to the Convention on Biological Diversity made.

Chapter III: Collector's permits

Title simplified, and the term "permits" rather than "license" used since "permits" is already in common use and to meet the request of a Member State.

Article 7(c): elements concerned with provision of duplicates and information deleted since they are covered in Chapter V.

Article 8(b): reference to FAO deleted.

Chapter IV: Responsibilities of Collectors

Title simplified.

Article 11 part .2 is new, in line with objective 1.9 of the previous version, and consistent with the reformulated Chapter V.

Chapter V. Responsibilities of Sponsors, Curators and Users

Following requests from Member States that the provisions of this Chapter be clarified, the Chapter has been reformulated by giving separate articles each to "sponsors", "curators" and "users". Suggestions for facilitating the passing on of a share of the benefits derived from collected germplasm are proposed, as per article 1.7.

Article 12: Responsibilities of sponsors, proposes that sponsors should promote the objectives of the code through agreements with collectors, and with curators and users where appropriate.

Article 13: Responsibilities of curators, retains articles 12.1 and 12.4 of the previous version, and proposes that curators should promote the objectives of the code through agreements with subsequent curators and users, where appropriate.

Article 14: Responsibilities of Users, retains the provisions of article 12.3 of the previous version.

Article 12.2 of the previous version has been moved to Chapter II, Article 4.3.

Chapter VI: Reporting, monitoring and evaluating the observance of the code

Article 15: Reporting by Governments, retains the provisions of article 13 of the previous version.

Article 14 of the previous version (reporting by collectors and sponsors) has been deleted since it is covered by articles 11 & 12.

Article 16. Monitoring and Evaluating, retains the provisions of article 15 of the previous version.