

AGREEMENT ON THE ESTABLISHMENT OF THE INTERNATIONAL PLANT GENETIC RESOURCES INSTITUTE

Preamble

WHEREAS, the Consultative Group on International Agricultural Research (hereinafter referred to as "CGIAR") is a group of national governments, multilateral aid agencies, private foundations and others that are supporting a number of international research centres for the purpose of improving and increasing agricultural production throughout the developing world;

WHEREAS, the members of the CGIAR in 1974 established the International Board for Plant Genetic Resources (hereinafter referred to as "IBPGR"), as an international entity operating under the aegis of the CGIAR and located in the Food and Agriculture Organization of the United Nations (hereinafter referred to as "FAO"), and also created a Trust Fund in FAO to finance IBPGR through a Letter of Agreement signed by representatives of the Federal Republic of Germany, the Kingdom of the Netherlands, the Kingdom of Sweden and the United Kingdom of Great Britain and Northern Ireland;

WHEREAS, FAO and IBPGR having agreed to their respective roles and responsibilities and their specific areas of collaboration in the field of plant genetic resources, signed a Memorandum of Understanding on programme cooperation on 21 September 1990 setting forth that agreement;

WHEREAS, with the intention of promoting the development and strengthening of plant genetic resources activities worldwide, both within and outside the CGIAR system, the CGIAR has decided to establish an International Plant Genetic Resources Institute (hereinafter referred to as "IPGRI" or "the Institute"), which will assume all the tasks and functions of IBPGR, and succeed IBPGR as the party to the Memorandum of Understanding referred to in the preceding paragraph;

WHEREAS, IPGRI is intended to be an integral part of the CGIAR system;

WHEREAS, the Parties to this Agreement wish to create IPGRI as an independent institution with suitable governance, juridical personality, and appropriate international status, authorities, privileges and immunities and other conditions necessary to enable it to operate effectively towards the attainment of its objectives;

NOW THEREFORE, the Parties signatory hereto agree as follows:

Article 1 Establishment

There shall be established an independent international organization entitled the "International Plant Genetic Resources Institute" (hereinafter referred to as "IPGRI" or "the Institute") as an integral part of the CGIAR system, which is to operate in accordance with the Constitution appended hereto and made an integral part hereof, as such Constitution may be amended from time to time in accordance with Article 19 thereof.

Article 2 Consent to be bound

(i) The consent of a State or of an International Organization to be bound by this Agreement, is expressed through a written notification from a duly authorized representative of that State or of that International Organization that the formalities required by its legislation have been accomplished. Such a consent shall not constitute any obligation whatsoever to provide financial support to IPGRI beyond voluntary contributions. Nor shall such consent imply any responsibility, individually or collectively, for any debts, liabilities or obligations of the Institute.

(ii) This Agreement shall be open for signature by States and International Organizations at the Ministry of Foreign Affairs of the Republic of Italy. It shall remain open for signature for a period of two years from 1 June 1991, unless such period is extended prior to its expiry by the Depositary at the request of the Board of Trustees of IPGRI.

(iii) The Government of the Republic of Italy shall be the Depositary of this Agreement.

(iv) The consent to be bound by this Agreement shall be undertaken by the signatories in accordance with their own laws, regulations and procedures.

Article 3 Accession

(i) After the expiration of the period specified in Article 2, paragraph (ii), the present Agreement shall remain open for accession by any State and any International Organization which has the capacity to conclude treaties, contingent upon approval by the Board of Trustees of IPGRI by simple majority.

(ii) An instrument of accession of an International Organization shall contain a declaration that it has the capacity to conclude treaties.

(iii) The instruments of accession shall be deposited with the Depositary of this Agreement.

Article 4 Settlement of Disputes

(i) Any dispute between the Parties concerning the interpretation or application of the present Agreement which cannot be settled amicably, shall be submitted, at the request of any Party to the

dispute, to an arbitral tribunal, composed of three members. Each Party shall appoint one arbitrator and the two arbitrators thus appointed shall together appoint a third arbitrator as their chairperson.

(ii) If one of the Parties fails to appoint its arbitrator and has not proceeded to do so within two months after an invitation from the other Party to make such an appointment, the latter Party may invite the President of the International Court of Justice to make the necessary appointment.

(iii) If the two arbitrators are unable to reach agreement, in the two months following their appointment, on the choice of the third arbitrator, either Party may invite the President of the International Court of Justice to make the necessary appointment.

(iv) In the event of a vacancy in the presidency of the International Court of Justice or of the inability of the President to exercise the functions of the presidency, or in the event that the President should be a national of the party to the dispute, the appointment herein provided for may be made by the vice-president of the court or, failing him, by the senior judge.

(v) Unless the Parties decide otherwise, the tribunal shall determine its own procedure.

(vi) The tribunal shall reach its decision by a majority of votes. Such decision shall be final and binding on the Parties to the dispute.

Article 5 Entry into Force

(i) This Agreement and the Constitution appended thereto shall come into force immediately upon receipt by the Depositary of written notifications by three state parties to this Agreement that the formalities required by the national legislation of such parties with respect to this Agreement have been accomplished.

(ii) For each State or International Organization notifying that the formalities required have been accomplished, or depositing an instrument of accession, after the entry into force of this Agreement, this Agreement will enter into force on the first day of the month after the date of receipt by the Depositary of the notification.

Article 6 Termination

Any party to this Agreement may, by written instrument to the Depositary, denounce this Agreement. Such termination of the consent to be bound shall become effective three months after the date on which such instrument is received.

Article 7 Authentic text

The authentic text of the present Agreement, including the Constitution appended thereto, shall be in the English language.

IN WITNESS WHEREOF, the undersigned Plenipotentiaries, being duly authorized by their respective Governments, have signed this Agreement in a single original in the English language.

Done at Rome on 3th October, 1981
For the Government of ITALY

Chaulherna

Done at Rome on
For the Government of KENYA

[Signature]

Done at Rome on
For the Government of SWITZERLAND

F. Pianta

Done at Rome on
For the Government of *[illegible]*

[Signature]

Done at Rome on
For the Government of China

MR GI GONG-OU

Done at Rome on
For

CONSTITUTION OF THE INTERNATIONAL PLANT GENETIC RESOURCES INSTITUTE

Article 1 Status

(i) The International Plant Genetic Resources Institute (hereinafter referred to as "IPGRI" or "the Institute") is an integral part of the Consultative Group on International Agricultural Research (hereinafter referred to as the "CGIAR"). It shall operate as a non-profit autonomous organization, international in status and non-political in management, staffing and operations. The Institute shall be organized exclusively for scientific and educational purposes.

(ii) IPGRI shall possess full juridical international personality and enjoy such legal capacities as may be necessary for the exercise of its functions and the fulfilment of its purposes.

Article 2 Headquarters Location

The country of location of IPGRI's headquarters shall be designated by the Board of Trustees of IPGRI after consultation with the CGIAR, and in accordance with the requirements for the exercise of the functions and the fulfillment of the purposes of IPGRI. The Board of Trustees may establish offices in other locations as required to support the Institute's programme.

Article 3 Aims

The aims of IPGRI shall be threefold:

(a) to initiate and stimulate both within and outside the CGIAR system the action needed to establish and sustain an international programme for the conservation and utilization of plant genetic resources;

(b) to promote, encourage, support and engage in activities to strengthen plant genetic resources conservation and utilization worldwide through the implementation of a programme of research, training, dissemination of information and field activities designed to enhance the capabilities of national and international programmes in plant genetic resources;

(c) to provide, on request, scientific and technical advice to the Food and Agriculture Organization of the United Nations (hereinafter referred to as "FAO") and other bodies concerned with plant genetic resources.

Article 4 Guiding Principles

(i) IPGRI shall initiate, catalyze, promote and coordinate plant genetic resources efforts in partnership with national, regional and international institutions to achieve the aims described in Article 3 hereof.

- (ii) IPGRI shall base its approach to plant genetic resources on the following principles:
- (a) that plant genetic resources should be freely available to all bona fide users;
 - (b) that the needs of the plant genetic resources community change in response to changes in physical, scientific, political and social environments, necessitating a flexibility in responding to these needs;
 - (c) that national, regional and international organizations and programmes in plant genetic resources all have essential roles in conserving and utilizing these resources;
 - (d) that the Institute's work on the conservation of plant genetic resources should form part of the total effort in the conservation of the world's biodiversity;
 - (e) that the total genepool of a crop, including its wild relatives, is the basic unit for conservation, study, and utilization;
 - (f) that priorities for work on crop genepools should be set collectively;
 - (g) that an integrated approach to conservation involving collaborative action and using complementary and compatible methods provides the best option for securing the long term safety of crop genepools;
 - (h) that the needs of developing countries should be given particular attention in all activities undertaken by the Institute;
 - (i) that sociological issues, including the gender variable, should be considered in all aspects of operations undertaken by the Institute;
 - (j) that there should be no discrimination on the basis of sex, race, creed or colour in the employment practices of the Institute.

Article 5 Activities

(i) IPGRI shall formulate a research programme to develop and maintain the necessary scientific and technological base and the necessary staff expertise to underpin the science of plant genetic resources conservation and use. This programme shall be directed towards innovation and technology development and the transfer of the results of such work to IPGRI's user community. This activity shall include the development of integrated conservation strategies for different crop genepools, using complementary conservation methods.

(ii) IPGRI shall develop the concept of crop genetic resources networks, whereby all activities on the genetic resources of a crop genepool are coordinated through a network, to promote full collaboration among all participants, including both conservationists and users, and a sharing of responsibilities for the conservation, study and use of the particular genepool. The Institute shall act as a catalyst to initiate crop networks and shall assist the further development of the networks, if and when required.

(iii) IPGRI shall provide or arrange for assistance to national plant genetic resources programmes, recognizing that different national programmes have different requirements, but giving priority to those of developing countries. Such assistance will include direct inputs by the Institute with respect to formulating overall plant genetic resources policies and strategies, designing organizational and institutional arrangements for carrying out plant genetic resources programmes and projects, identifying pos-

sible financial resources and having the Institute's staff provide scientific advice in the execution of such programmes or projects.

(iv) IPGRI shall act as a catalytic and coordinating body and shall promote collaboration, share expertise and encourage joint planning in all plant genetic resources activities.

(v) IPGRI shall collaborate with FAO in developing an effective programme to monitor the status of plant genetic resources in the world and shall work towards the development of national, regional and international programmes. The Institute shall obtain and process information on plant genetic resources and act as a central distributor of this information where and when it is needed.

(vi) IPGRI shall keep abreast of policies, practices and capabilities of other agencies active in the field of plant genetic resources and on related issues such as intellectual property rights, and shall, upon request, serve in an advisory role on these matters within and outside the CGIAR system.

(vii) IPGRI shall perform such other activities as its Board of Trustees may find necessary or useful in furtherance of the aims set forth in Article 3 hereof.

Article 6 Powers

(i) In furtherance of the aforesaid aims and activities, IPGRI shall have the following powers:

(a) to receive, acquire or otherwise lawfully obtain from any governmental authority or from any corporation, company, association, person, firm, foundation or other entity whether international, regional or national, such charters, licenses, rights, concessions or similar rights, and assistance - financial or otherwise - as are conducive to and necessary for the attainment of the aims of the Institute;

(b) to receive, acquire or otherwise lawfully obtain from any governmental authority or from any corporation, company, association, person, firm, foundation or other entity, whether international, regional or national, by donation, grant, exchange, devise, bequest, purchase or lease, either absolutely or in trust, contributions consisting of such properties, real, personal, or mixed including funds and valuable effects or items, as may be useful or necessary to pursue the aims and activities of the Institute and to hold, operate, administer, use, sell, convey or dispose of the said properties;

(c) to enter into treaties and contracts;

(d) to employ persons according to its own regulations;

(e) to institute, and defend in, legal proceedings;

(f) to perform all acts and functions as may be found necessary, expedient, suitable or proper for the furtherance, accomplishment or attainment of any and/or all of the purposes and activities herein stated, or which shall appear, at any time, as conducive to or necessary and useful for the aims and activities of the Institute.

(ii) No part of the earnings of the Institute shall inure to the benefit of, or be distributable to, its members, trustees, officers, or other private persons, except that the Institute shall be authorized and

empowered to pay reasonable compensation for services rendered and to make payments and distributions in furtherance of the aims set forth in Article 3 hereof.

Article 7 Organs

The organs of IPGRI shall be:

- (a) The Board of Trustees (hereinafter referred to as the "Board");
- (b) The Director General.

Article 8 Composition of the Board

(i) The Board shall consist of fifteen members, selected as follows:

(a) four members elected by the Board upon nomination by the CGIAR, and eight members-at-large elected by the Board. Regard shall be paid especially to proposed members' professional experience and qualifications, to appropriate geographical distribution, and to agencies or countries which have concern for and provide substantial support to the Institute;

- (b) one member appointed by the host country;
- (c) one member appointed by FAO;
- (d) the Director General of IPGRI as a member ex officio.

(ii) The members of the Board, except the Director General who serves as a member for her/his whole term of office and the members appointed by FAO and the host country, shall be appointed for terms of no more than three years as determined by the Board in advance of the appointment. Vacancies among members nominated by the CGIAR and among the members-at-large by reason of their retirement, death, incapacity, or any other cause shall be filled in the same manner as the original appointments. A new member appointed to replace a member during the latter's term, may be appointed for the remaining term of the member being replaced or for some other term of no more than three years.

(iii) The members of the Board are eligible for reappointment to a second term, but shall not serve more than two successive terms, except that the member elected as Chairperson may have her/his term extended by the Board in order to coincide with her/his appointment as Chairperson, provided that no member shall serve for more than eight consecutive years on the Board. To ensure continuity of policies and operations, members shall serve staggered terms as determined by the Board.

(iv) The members of the Board - other than the Director General and the members appointed by FAO and by the host country - serve in a personal capacity and are not considered, nor do they act, as official representatives of governments or organizations.

v) The term of office and the selection of the member appointed by the host country will be determined by the host country.

(vi) The term of office and the selection of the member appointed by FAO will be determined by FAO.

(vii) The Board of IPGRI at the time it is established shall have the same composition as the Board of IBPGR immediately prior to that time and the term of office of each member of IPGRI's initial Board shall be the term originally set for the member in IBPGR's Board.

Article 9 Functions and Powers of the Board

(i) The Board governs IPGRI in all affairs of the Institute. Its role shall be to ensure that:

(a) the Institute has objectives, programmes and plans that are consistent with its aims and with the goals and purposes of the CGIAR system of which it is a part;

(b) the Institute is managed effectively by the Director General in harmony with the agreed objectives, programmes and budgets, and in accordance with legal and regulatory requirements;

(c) the future well-being of IPGRI and of the CGIAR system of which it is a part is not jeopardized by exposing its financial resources, its staff or its credibility to imprudent risks.

(ii) To this end, the Board shall have the following duties:

(a) definition of objectives and approval of plans to meet the Institute's aims and to monitor the achievement of these aims;

(b) specification of policies to be followed by the Director General in pursuing the specified objectives;

(c) appointment of the Director General, determination of her/his terms of employment, monitoring her/his performance and dismissal of the Director General if her/his performance is inadequate;

(d) approval of the Institute's broad organizational framework;

(e) approval of personnel policies including scales of salaries and benefits;

(f) determination of priorities relating to major elements within and between the Institute's programmes;

(g) approval of the Institute's programme and budget and the Institute's Annual Report;

(h) ensuring the Institute's cost-effectiveness, financial integrity and accountability;

(i) appointment of an external auditor and approval of an annual audit plan;

(j) approval of an investment policy and monitoring of its implementation;

(k) overseeing of major borrowing, major expansion including the acquisition of major equipment and facilities, and the disposal of major assets;

(l) ensuring that the Institute conducts its activities in accordance with system-wide policies laid down by the CGIAR;

(m) ensuring that due consideration is given to the recommendations and suggestions made by CGIAR-approved reviews pertinent to the Institute's operation and activities;

(n) ensuring that Board members have no conflict of interest;

(o) maintaining the composition of the Board with respect to the expertise needed to discharge

the full range of its responsibilities, monitoring the performance of its members and evaluating its performance;

(p) perform all other acts that may be considered necessary, suitable and proper for the attainment of any or all of the aims of the Institute as set forth in Article 3 hereof.

(iii) The Board may designate an executive committee of its members which shall have the power to act for the Board in the interim between Board meetings, and on matters which the Board delegates to it. All interim actions of the executive committee shall be reported to the full Board at its next meeting.

(iv) The Board may establish such other subsidiary Committees as it deems necessary for the performance of its functions.

Article 10 Voting by the Board

Voting by the Board of Trustees is regulated as follows:

(a) each member of the Board has one vote except for the member appointed by FAO, who, at the request of FAO, is a non-voting member;

(b) decisions of the Board shall be made by majority of the voting members present except as specified otherwise in this Constitution;

Article 11 Procedure of the Board

(i) The Board shall elect one member as Chairperson. The normal term of the Chairperson shall be three years. The Board may re-elect its Chairperson for a second term of not more than three years.

(ii) The Board shall meet at least once annually.

(iii) The Board shall adopt its own rules of procedure.

(iv) A majority of the members shall constitute a quorum for Board meetings.

Article 12 Appointment of the Director General

The appointment of the Director General of IPGRI, her/his term of office, and any termination for cause will be decided by a two-thirds majority of all voting members of the Board.

Article 13 Functions and Powers of the Director General

(i) The Director General is responsible to the Board for the operation and management of IPGRI and for assuring that its programmes and objectives are properly developed and carried out. He/she is the chief executive officer of the Institute.

(ii) The Director General shall implement the policies determined by the Board, follow the guidelines laid down by the Board for the functioning of the Institute and carry out the directions of the Board. Specifically, the Director General, under the supervision of the Board, shall:

(a) develop a strategic plan for the operation of the Institute and keep this plan under continuing review;

(b) develop programme and budget submissions in accordance with established practices within the CGIAR, and prepare the Institute's Annual Report;

(c) supervise the planning and direction of the Institute's plant genetic resources activities to ensure effective programming and project implementation, analysis and evaluation of on-going programmes and to provide vision and comprehension in developing strategies for future programmes;

(d) recruit and manage highly qualified staff;

(e) keep and have available for review by the Board and other appropriate parties, financial accounts and other records on a current basis;

(f) have made annually an independent audit of the financial records;

(g) keep the Chairperson of the Board advised on matters of consequence that relate to the Institute;

(h) perform such other functions as are delegated to her/him by the Board.

(iii) The Director General is the legal representative of IPGRI. He/she shall sign all deeds, contracts, agreements, treaties and other legal documents which are necessary to ensure the normal operation of the Institute. The Board may stipulate the extent to which these powers may be delegated by the Director General. Contracts, agreements and treaties which affect the governance, objectives, location, expansion or dissolution of IPGRI, or major issues of the relationship to the host country are subject to approval by the Board.

Article 14 Staffing

(i) The staff shall be appointed by the Director General under staff regulations approved by the Board.

(ii) The paramount consideration in the employment of staff and in the determination of the conditions of service shall be the necessity of securing the highest standards of quality, efficiency, competence and integrity.

(iii) Salary scales, insurance, pension schemes and any other terms of employment shall be laid down in staff regulations, and shall in principle be comparable and in line with those of other institutions within the CGIAR system.

Article 15 Financing

(i) The core budget of IPGRI shall be funded by members of the CGIAR. The financial opera-

tions of the Institute shall be governed by financial regulations to be adopted by the Board in accordance with the established principles of the CGIAR. The Institute is also authorized to receive contributions from other sources in order to finance operations which are not covered by the core budget.

(ii) The budget of the Institute is approved annually by the Board and submitted to the CGIAR for endorsement.

(iii) A full financial audit of the operations of the Institute shall be conducted on an annual basis by an independent international accounting firm appointed by the Board upon recommendation by the Director General. The results of such audits shall be made available by the Director General to the Board for its consideration and approval and to the CGIAR.

Article 16 Relationship with the CGIAR

IPGRI is an integral part of the CGIAR system and participates fully in this system. As such, the Institute shall submit to the CGIAR its annual programme and budget, which will be mutually agreed upon by the CGIAR and the Institute. In addition, the Institute shall be subject to periodic review of its programme and of its management by an independent review panel appointed by the Technical Advisory Committee of the CGIAR and the CGIAR Secretariat.

Article 17 Relationships with other organizations

(i) In order to achieve its objectives in the most efficient way, IPGRI may enter into agreements for close cooperation with relevant national, regional or international organizations, foundations and agencies.

(ii) The relationship of the Institute with FAO is regulated in the Memorandum of Understanding on programme cooperation signed by FAO and IBPGR on 21 September 1990, as it may be amended from time to time.

Article 18 Rights, Privileges and Immunities

(i) IPGRI shall make arrangements with its host country to ensure that the Institute, its staff members and official visitors shall enjoy in the territory of the host country the same rights, privileges and immunities as customarily accorded to other International organizations, their officials, staff and official visitors. Such rights, privileges and immunities shall be specifically defined in a Headquarters Agreement with the host country.

(ii) Similarly, IPGRI may, pursuant to Article 2 hereof, enter into agreements with the other countries in which it works for the purpose of granting IPGRI, its officials and staff such privileges and immunities as are required for such work.

(iii) The privileges and immunities referred to in the preceding paragraphs are to be provided solely to ensure in all circumstances the unimpeded functioning of IPGRI, and the complete independence of the persons to whom they are accorded.

Article 19 Amendments

This Constitution may be amended by the Board by a three-fourths majority of all voting members of the Board, provided notice of such a proposed amendment together with its full text shall have been mailed to all members of the Board at least eight weeks in advance of meeting, or such notice is waived by all members of the Board. Any amendments to the Constitution shall be, in addition, subject to approval by the CGIAR.

Article 20 Dissolution

(i) Subject to approval by the CGIAR, IPGRI may be dissolved by a three-fourths majority of all voting members of the Board, if it is determined that the purposes of IPGRI have been achieved to a satisfactory degree or if it is determined that IPGRI will no longer be able to function effectively.

(ii) In case of dissolution, the assets of IPGRI situated in the host or other countries shall be transferred to such countries for use for similar purposes or distributed to institutions having purposes similar to those of IPGRI in the respective countries after agreement between the Government of those countries and the Board in consultation with the CGIAR.