



AGREEMENT BETWEEN

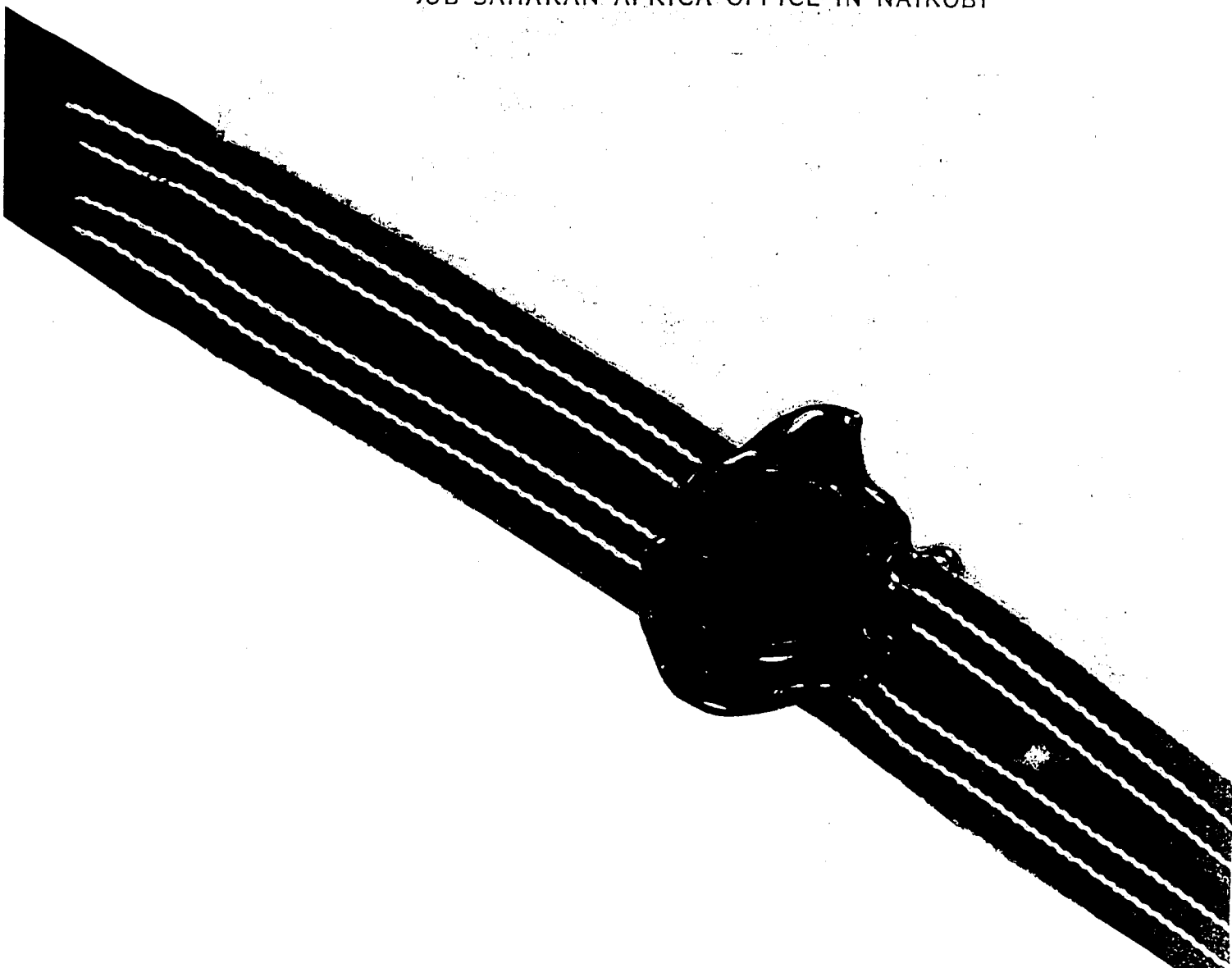
THE INTERNATIONAL PLANT GENETIC RESOURCES INSTITUTE (IPGRI)

AND

THE GOVERNMENT OF THE REPUBLIC OF KENYA

REGARDING

THE ESTABLISHMENT AND OPERATION OF IPGRI'S
SUB-SAHARAN AFRICA OFFICE IN NAIROBI





**AGREEMENT BETWEEN THE INTERNATIONAL PLANT GENETIC RESOURCES
INSTITUTE (IPGRI) AND THE GOVERNMENT OF THE REPUBLIC OF
KENYA REGARDING THE ESTABLISHMENT AND OPERATION OF IPGRI'S
SUB-SAHARAN AFRICA OFFICE IN NAIROBI**

PREAMBLE

Whereas, the International Plant Genetic Resources Institute was established
in Rome on 9 October, 1991;

Whereas, the Government of the Republic of Kenya is one of the five
Governments which established the International Plant Genetic Resources
Institute;

Whereas, the Government of the Republic of Kenya and the International
Plant Genetic Resources Institute agree to establish the Office for Sub-
Saharan Africa of the International Plant Genetic Resources Institute,
in Nairobi

Whereas, the Kenya Agricultural Research Institute (KARI) is one of
the main collaborators of the International Plant Genetic Resources Institute
in Kenya;

The Government of Kenya and the International Plant Genetic Resources
Institute, having regard to Articles 2 and 18 of the Constitution of the
International Plant Genetic Resources Institute;

Desiring to define the privileges and immunities referred to in Article
18 of said Constitution for the establishment and operation of the Office
for Sub-Saharan Africa of the International Plant Genetic Resources
Institute;

Have agreed as follows:

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and other members of the staff of the Institute appointed by or on behalf of the Director General to IPGRI's Sub-Saharan Africa Office.

- (h) "Director" means the Senior Official designated by IPGRI to be in-charge of the IPGRI Office.

ARTICLE II ESTABLISHMENT OF IPGRI OFFICE

1. (a) IPGRI is authorized to establish its Sub-Saharan Africa Office in Nairobi in the Republic of Kenya;

(b) Any building outside Nairobi which may be used with the concurrence of the Government for any of the goals of the Institute shall be temporarily included as part of the IPGRI Office as provided in paragraph 1.(a) of this Article.
2. The Institute shall conduct research, training and other programmes in the Sub-Saharan Africa in accordance with its constitutional aims.
3. The IPGRI Office shall be headed by a Director and staffed by such other personnel as may be appointed by IPGRI.

ARTICLE III INVIOABILITY OF THE IPGRI OFFICE

1. The IPGRI Office shall be inviolable. No person exercising any public authority within Kenya shall enter the IPGRI Office to perform any duties except with the consent of the Director.
2. In the event of a natural disaster, fire or any other emergency constituting an immediate threat to human life, the consent of the Director is presumed.



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3. The IPGRI Office shall not be used in any manner incompatible with the Institute's functions.

ARTICLE IV PROTECTION OF THE IPGRI OFFICE

The appropriate Kenya Authorities shall take such measures as may be practicable to ensure the security and tranquillity of the IPGRI Office.

ARTICLE V PUBLIC SERVICES AT THE IPGRI OFFICE

To enable the Institute to carry out its functions smoothly, the Government shall take such measures as may be practicable to ensure that the necessary public services are provided at the IPGRI Office.

ARTICLE VI THE INSTITUTE AND ITS PROPERTY

1. The Institute shall enjoy immunity from every form of legal process relating to any act or acts whether of a public or private nature, except in so far as in any particular case the Director General shall have waived its immunity. Waiver of such immunity shall not be held to imply waiver of immunity in respect of execution of a judgement, for which a separate waiver shall be necessary.
2. The property of the Institute and its archives, wherever located and by whomsoever held, shall be immune from search, attachment, requisition, confiscation, expropriation and any other form of interference.

ARTICLE VII JURIDICAL PERSONALITY

The Government recognizes that the Institute is an international organization with international legal personality and capacity to perform legal acts



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required for the performance of its constitutional aims, in particular, to conclude treaties, to contract, to acquire and dispose of movable and immovable property, and to be a defendant party in judicial proceedings when the Director General has waived immunity.

ARTICLE VIII COMMUNICATIONS

1. All communications directed to the Institute, or to staff of the Institute at the IPGR Office, and all outward communications of the IPGR Office, by whatever means or in whatever form transmitted, shall not be subject to censorship or any other form of interception or interference. This exemption shall also extend, inter alia, to publications, computer records, still and motion pictures, films and sound recordings.
2. The Institute shall have the right to use codes and to despatch and receive official communications by courier or in sealed bags, which shall have the same privileges and immunities as are accorded to diplomatic couriers and bags.

ARTICLE IX FINANCIAL FACILITIES

Subject to Kenyan Exchange Control Laws and Regulations, and in order to achieve its constitutional aims, the Institute may freely:

- (a) purchase or receive any funds, securities and currencies through authorized channels and hold and dispose of them;
 - (b) maintain and operate foreign or local currency accounts, funds, endowments, or other financial facilities in any currency in or outside of Kenya;
 - (c) transfer its funds, securities, currencies to or from Kenya, to or from any other country, or within Kenya and convert any currency other than Kenya currency held by it into any other currency.
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ARTICLE X SOCIAL SECURITY SCHEMES

The Institute shall ensure that members of its staff are covered by adequate social security provisions. In implementation of this Article the Institute may adopt its own provisions, or arrange for all or part of its staff to be covered by the social security provisions of Kenya or of some other State.

ARTICLE XI TRANSIT AND SOJOURN

1. The Government shall take all measures necessary to facilitate the entry into, sojourn in and departure from Kenya of the Institute's staff, their families and members of their household, participants in the Institute's programmes and persons visiting the IPGRI Office on official business, irrespective of their nationality. The Government shall not impede the transit of such persons to and from the IPGRI Office.
2. The Director shall communicate the names of persons referred to in paragraph 1 of this Article to the Government, to the extent practicable, in advance.

ARTICLE XII EXEMPTION FROM TAXES

1. For the carrying out of its constitutional aims the Institute, its property and operations, including in particular loans, grants and contributions derived from outside Kenya, shall be exempt from all forms of direct taxation.
1. The Institute shall be exempt from customs duties, value added tax, prohibitions and restrictions on materials, equipment and any other goods, including motor vehicles and spare parts imported or purchased by the Institute for its official use provided the said goods and vehicles are imported or purchased prior to clearance through customs.



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Goods or items imported or purchased free of duties and taxes shall not be transferred or sold within Kenya unless the appropriate duties and taxes are paid or the items sold or transferred to similarly privileged persons or organizations or re-exported.

3. The exemptions and facilities provided for in this Article shall not extend to taxes and levies which are no more than payment for services rendered.

ARTICLE XIII STAFF OF THE INSTITUTE

1. The staff of the Institute shall enjoy, within and with respect to Kenya, the following privileges and immunities:

- (a) immunity from preventive detention;
- (b) immunity from inspection and from seizure of official baggage;
- (c) immunity from legal process of any kind, with respect to words spoken or written, and all acts performed by them in their official capacity, it being understood that such immunity shall continue notwithstanding that the persons concerned may have ceased to be on the staff of the Institute;
- (d) exemption from national service and social security obligations;
- (e) exemption of the non-resident members of staff from income tax on salaries, emoluments, indemnities, pensions and any other income or benefits paid to or received by them from sources outside Kenya;
- (f) exemption with respect to themselves, their spouses, and relatives dependent on them, from all forms of immigration restrictions and alien registration;



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- (g) for members of the staff who are not Kenyan nationals, freedom to maintain within Kenya or elsewhere, foreign securities, foreign currency and accounts in any currency, other movable property and immovable property. Such staff may freely transfer their foreign securities and currency outside Kenya;
- (h) exemption of the non-resident members of staff from customs duties and value added tax on importation or purchase prior to clearance through customs of their personal and household effects, including one motor vehicle per family provided the said effects and motor vehicle are imported or purchased during the first three months of first arrival in Kenya; items imported or purchased free of duties and taxes shall not be transferred or sold within Kenya unless appropriate duties and taxes are paid or the items transferred or sold to similarly privileged persons or re-exported;
- (i) the right for non-resident members of staff to replace motor vehicles for personal use in accordance with the laws and regulations prevailing in Kenya at the time of such replacement.

The Institute shall communicate annually to the Government a list of its staff based at the IPGRI Office and any changes thereto.

The Government shall issue as soon as possible gratis resident visas to staff employed by IPGRI in Kenya.

The Government shall issue to the Institute's staff, their spouses and relatives dependent on them who are entitled to privileges and immunities and facilities, an identity card specifying the holder's status.

In addition to the privileges and immunities specified in paragraph 1 of this Article, the Director and any senior member of staff acting on behalf of the Director during his absence from duty, shall be accorded ~~mutatis mutandis~~ the privileges, immunities and facilities granted to Heads of Mission, insofar as they are not citizens of Kenya.



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ARTICLE XIV

PURPOSE OF PRIVILEGES AND IMMUNITIES AND CO-OPERATION WITH THE KENYAN AUTHORITIES

1. The authorities specified in paragraph 2 of this Article shall have the right and the duty to waive immunity whenever it would impede the course of justice. Such waiver of immunity shall be without prejudice to the interests of the Institute.
2. The authorities referred to in paragraph 1 of this Article shall be:
 - (a) the Director General with respect to the Director and the Institute itself;
 - (b) the Director with respect to other members of the staff employed by IPGRI in Kenya and official visitors to the IPGRI Office.
3. The Institute and its staff shall co-operate with the Kenyan Authorities to facilitate the proper administration of justice, to secure the observance of police regulations and to prevent the occurrence of any abuse in connection with the privileges and immunities provided for in this Agreement.
4. Without prejudice to the privileges and immunities conferred by this Agreement, it is the duty of all persons enjoying such privileges and immunities to respect the laws and regulations of Kenya. Such persons also have a duty not to interfere in the internal affairs of that State.

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ARTICLE XV SETTLEMENT OF DISPUTES

Any dispute between the Institute and the Government concerning the interpretation or application of this Agreement or any question affecting the IPGRI Office or the relationship between the Institute and the Government, which is not settled by negotiation or other agreed mode of settlement, shall be referred to arbitration, by a tribunal composed of three arbitrators: one to be appointed by the Director General, one to be appointed by the Government, and the third, who shall be Chairman of the tribunal, to be appointed by the first two arbitrators. Should the first two arbitrators fail to agree upon the third within six months of the date on which both of them had been appointed, such third arbitrator shall be appointed by the President of the International Court of Justice at the request of either party. A majority vote of the arbitrators shall be sufficient to reach a decision, including decisions on procedural matters, which shall be final and binding on the parties.

ARTICLE XVI ARBITRATION

The Institute shall establish appropriate procedures for the settlement of disputes with all its staff. The Institute shall insert clauses in contracts with all other persons, whether physical or corporate, providing for the settlement of disputes by arbitration in a manner complying with generally accepted legal principles as regards impartiality and such matters as the right of the parties to state their cases.

In addition, the Institute shall maintain adequate insurance or take other such measures to enable it to meet claims of a non-contractual nature.

ARTICLE XVII FINAL PROVISIONS

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Consultations with respect to the amendment of this Agreement will be entered into at the request of either party.

This Agreement shall remain in force unless it is terminated at any time by mutual agreement or on 180 days notice by a letter from either of the parties. IPGRI will be allowed 12 months to arrange for its departure subsequent to the date of termination.

DONE at NAIROBI on this ... 21st ... Day of ... DECEMBER ... 1994, in duplicate, in the English language.

FOR THE INTERNATIONAL
PLANT GENETIC RESOURCES
INSTITUTE

ADEYEMI FRANCK ATTERE
DIRECTOR
REGIONAL OFFICE
FOR SUB-SAHARA
AFRICA

FOR THE GOVERNMENT OF
THE REPUBLIC OF KENYA

HON STEPHEN KALONZO
MUSYOKA EGH, M.P.
MINISTER FOR FOREIGN AFFAIRS
& INTERNATIONAL CO-OPERATION