Consortium of European Taxonomic Facilities (CETAF)

Code of Conduct and Best Practice for Access and Benefit-Sharing

In Memoriam

This Code of Conduct and Best Practice has been developed by the CETAF Legislation and Regulation core team, who wants to expressly dedicate it to Johan Bodegård, deputy Director of the Natural History Museum of Stockholm (SE) whose wise guidance, permanent support and judicious advice have made this possible. Our respected colleague passed away on 31st August 2017.

Contents

Introduction

CETAF, the Consortium of European Taxonomic Facilities, is a networked consortium of non-commercial scientific institutions in Europe formed to promote training, research and understanding of systematic biology and palaeobiology. Together, CETAF institutions hold very substantial biological (zoological and botanical), palaeobiological, and geological collections and provide the resource for the work of thousands of researchers in a variety of scientific disciplines.

CETAF has developed and adopted this Code of Conduct for Access and Benefit-Sharing, together with the annexed Best Practice, as a response to Article 20 in the Nagoya Protocol, *Regulation 511/2014 of the European Parliament and Council of 16 April 2014 on compliance measures for users from the Nagoya Protocol on Access to Genetic Resources and the Fair and Equitable Sharing of Benefits Arising from their Utilization in the Union* (hereafter the 'EU Regulation') and the subsequent *Commission Implementing Regulation (EU) 2015/1866 of 13 October 2015 laying down detailed rules for the implementation of Regulation (EU) No 511/2014 of the European Parliament and of the Council as regards the register of collections, monitoring user compliance and best practices* (hereafter the 'Implementing Act') and specifically in response to Articles 8 and 13 of the EU Regulation. Throughout the Code of Conduct, Best Practice and other annexed documents, the term 'Biological material' is to be read as including the genetic resources that are within that material.

The principles and practices stated below are designed to fully support CETAF members' operations as taxonomic collection-holding and non-commercial biological research institutions in complying with Access and Benefit Sharing (ABS) legal and ethical requirements[1]. The documents (i) outline the Code of Conduct governing principles under which collections are managed and collection-based research conducted in CETAF member institutions; (ii) provide details of best practices to ensure implementation of those principles, and guidance on ABS-relevant actions to be taken by institutions and individuals in common workflows (Best Practices, **Annex 1**); (iii) provide a selection of tools and check lists to support the advice given (Practical Guidance, **Annex 5**).

The CETAF Code of Conduct was developed by CETAF's *Legislations and Regulations Liaison Group*. They drew on their understanding of the processes and practices of their institutions, their understanding of the Nagoya Protocol and its implications, and a wide range of existing Codes of Conduct and Best practice documents, including particularly the *Principles on Access to Genetic Resources and Benefit-Sharing* for Botanic Gardens[2], the Swiss Academy of Sciences model Agreement on Access and Benefit Sharing for Non-Commercial Research[3], and the Code of Conduct of the International Plant Exchange Network (IPEN)[4].

The Code of Conduct document below has several mutually-supporting sections annexed:

The Code of Conduct. This sets out the basic principles to which CETAF members will abide.

Best Practice (**Annex 1**)**.** This provides detail of how the Code of Conduct should be implemented in practice to manage ABS inside institutions.

Use of Biological Materials statement (**Annex 2**). This is a tool for use when seeking permission to access biological material, whether for utilization or not. If proposed clauses are

[1)] For EU members, enabling them to comply with the EU Regulation and subsequent Implementing Act
[2)] http://www.bgci.org/resources/article/0007/
[3)] http://abs.scnat.ch/downloads/index.php
[4)] http://www.bgci.org/resources/Description_of_IPEN/

inapplicable or fail to meet the particular needs of either contracting party, or are rejected by the providing country, they may be deleted. Annexing this statement to an agreement is intended to provide legal certainty over possible use of any material acquired.

Glossary (**Annex 3**). This explains the terms used elsewhere in the document.

Non-monetary benefits (Annex 4). Non-exhaustive but indicative list from the Nagoya Protocol Annex.

Practical Guidance (**Annex 5**). This provides a set of checklists as a tool to help users and their institutions be sure that compliance requirements are met.

Complementary Documentation (A): Material Transfer Agreements. These are models for use in acquiring material or transferring it temporarily or permanently to third parties. They may be modified according to the individual needs of an institution.

Complementary Documentation (B): Data use statement. This may be included in any publication to inform subsequent users that the original material was accessed under conditions that might preclude a change in use.

CETAF Code of Conduct for Access and Benefit-sharing

CETAF Member Institutions commit themselves to the following Code of Conduct on access to genetic resources and benefit-sharing. This Code of Conduct applies to biological material[5] that is accessed, i.e. acquired newly from a Providing Country, after the entry into force of the *Nagoya Protocol on Access to Genetic Resources and the Fair and Equitable Sharing of Benefits Arising from their Utilization to the Convention on Biological Diversity* (hereafter referred to as the *Nagoya Protocol*). Participating institutions are encouraged to apply this Code of Conduct, as far as reasonably possible, also to all other biological material in their collections[6].

[5)] The term '*biological material*' is used throughout the documents because it describes all material in CETAF Member Institution collections, regardless if it contains 'functional units of heredity' or not. 'Genetic resources' is used when specifically referring to 'utilization' within the scope of the Nagoya Protocol. The CBD and the Nagoya Protocol define '*genetic resources'* as 'genetic material of actual or potential value', and '*genetic material'* as 'any material of plant, animal, microbial or other origin containing functional units of heredity'.

[6)] While reasonable efforts will be made, no responsibility is accepted for any retroactive claims, such as benefit-sharing.

Convention on Biological Diversity and laws related to access to genetic resources and associated traditional knowledge and benefit-sharing

Participating institutions will:

- Honour the letter and spirit of the Convention on Biological Diversity (CBD), The Nagoya Protocol, and other relevant international agreements.
- Abide by international and national laws and regulations relating to Access and Benefit-sharing[7] . If GRs and particularly TKaGR is obtained from indigenous and local communities, the views and position of the indigenous and local communities holding the GRs or TKaGR should be taken into account and may be reflected in mutually agreed terms, even if this is not required by the national legislation.
- Comply with Prior Informed Consent (PIC), Mutually Agreed Terms (MAT) and other agreements entered into with the Providing Country and Providers within that country.

Acquisition of biological material

Participating institutions will:

- In order to obtain Prior Informed Consent, provide a full explanation of the purposes for which biological material will be used and how genetic resources will be utilized (within current technical understanding).
- When acquiring biological material from *in situ* conditions, obtain information on the Providing Country's access laws.
- If required by legislation or regulation in the Providing Country, (i) obtain information on the Providing Country's procedures for obtaining Prior Informed Consent and relevant permits and for agreeing Mutually Agreed Terms, and (ii) obtain Prior Informed Consent and relevant permits from the Government of the Providing Country and other relevant stakeholders as required under national law, and (iii) agree terms, according to applicable law and best practice.
- When acquiring biological material from *ex situ* collections, agree terms with the body governing the *ex situ* collection under which the material can be used.
- When acquiring or otherwise receiving biological material for purposes other than utilization of genetic resources from *ex situ* sources, whether from scientific collections, commercial sources or individuals, evaluate provenance and available documentation. Where necessary, take appropriate further steps to ensure that the biological material was acquired in accordance with applicable law and that the legal status of the material is clear. For subsequent utilization see first bullet point under *Utilization of genetic resources* below; requirements are explicit.

[7)] In case of conflict between national law in the home country of the institution and the CETAF code of conduct, national law will take precedence.

- When receiving genetic resources for the purposes of utilization from *ex situ* sources, whether from scientific collections, commercial sources or individuals, evaluate provenance and available documentation and, where necessary, take appropriate further steps to ensure that the genetic resources were accessed and can be utilized in accordance with applicable law.

Utilization of genetic resources

Participating institutions will:

- Only utilize genetic resources after performing due diligence to ensure that they were accessed in accordance with applicable ABS legislations or regulations and can legally be utilized, and obtaining documentation to demonstrate this.
- Utilize genetic resources on terms and conditions consistent with those under which they were accessed or otherwise acquired.
- Renegotiate Prior Informed Consent and Mutually Agreed Terms if the participating institution wishes to utilize genetic resources in a different way to those set out in the original agreements.

Supply of biological material to Third Parties

Participating institutions will:

- Supply biological material to Third Parties on loan only on terms and conditions consistent with those under which it was acquired.
- Supply biological material for subcontracted work on genetic resources, such as to sequencing companies, only in compliance with the terms and conditions under which they were acquired, and set conditions in a contract that prohibit independent utilisation.
- Supply biological material permanently to Third Parties only on terms and conditions consistent with those under which they were acquired and with copies of the documentation showing agreements with the Providing Country, where applicable, including Prior Informed Consent, Mutually Agreed Terms or other relevant documents.

Use of written agreements

Participating institutions will:

- Acquire biological material using written agreements providing legal certainty and ensuring that there is a record of relevant documents such as Prior Informed Consent (PIC) and Mutually Agreed Terms (MAT).

- Supply biological material to Third Parties using written Material Transfer Agreements (MTAs), setting out the terms and conditions under which the biological material may be acquired, used and supplied and resulting benefits shared.

Traditional Knowledge associated with Genetic Resources

Participating institutions will:

- Acquire Traditional Knowledge associated with genetic resources using written agreements providing legal certainty and ensuring that there is a record of relevant documents such as Prior Informed Consent (PIC) and Mutually Agreed Terms (MAT).
- Use and supply Traditional Knowledge associated with genetic resources only in accordance with the terms and conditions under which it was acquired.

Benefit-sharing

Participating institutions will:

- Share benefits arising from their utilization of genetic resources and associated Traditional Knowledge fairly and equitably with the Providing Country and other appropriate stakeholders[8].
- Strive to share benefits arising from the new utilization of genetic resources accessed or otherwise acquired prior to the entry into force of the Nagoya Protocol, as far as reasonably possible, in the same manner as for those acquired thereafter[9].

Benefits may include any of those listed in the Annex to the Nagoya Protocol, although because of the not-for-profit nature of the work of the Participating Institutions are most likely to be non-monetary, *inter alia*: scientific training, education, capacity building, transfer of technologies, collaboration on scientific work programmes, and the mutual sharing of research results and of associated publications (see **Annex 4** to this document).

Curation

Participating institutions will develop appropriate internal mechanisms and procedures based on information in this Code of Conduct and its annexes to:

[8] as agreed in Prior Informed Consent and Mutually Agreed Terms at the time of Access, or as renegotiated following a subsequent change of use

[9] While reasonable efforts will be made, no responsibility is accepted for any retroactive claims, such as benefit-sharing.

- record the terms and conditions under which biological material is accessed or otherwise acquired, but always including the original Prior Informed Consent and Mutually Agreed Terms / permit conditions, when such agreements were issued by the provider country;
- record relevant information on their utilization of genetic resources or traditional knowledge associated with genetic resources, and benefits arising from that utilization;
- record supply of biological material to Third Parties permanently or on loan, including the terms and conditions of supply; and
- record when and how biological material or traditional knowledge associated with genetic resources passes permanently out of custodianship, including complete consumption of samples or disposal.

Policies

Participating institutions will:

- Prepare, adopt and communicate institutional policies setting out how the Participating Institution will implement this Code of Conduct.
- Prepare a transparent policy on utilization of genetic resources and traditional knowledge associated with genetic resources.