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COMMITTEE ON CONSTITUTIONAL AND LEGAL MATTERS

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Update on the FAO Policies on Protection of Data and Intellectual Property Rights

(i) Update on the FAO Data Protection Policy

(ii) Draft FAO Policy on Intellectual Property Rights

I. Background

1. At its 115th Session, the Committee on Constitutional and Legal Matters (CCLM) welcomed document CCLM 115/3 “*Update on the FAO policies on Protection of Data and Intellectual Property Rights*” and looked forward to considering, at its 117th Session, FAO’s intellectual property (IP) policy.¹

2. At its 170th Session, the Council agreed that “*the Data Protection Policy should be promulgated with a view to its early implementation, revised in accordance with the recommendations of the CCLM, and that informal consultations should be held with Members, as recommended by the CCLM*”.²

II. The Data Protection Policy and its implementation

3. The Data Protection Policy (“the DP Policy”) was promulgated on 8 July 2022, applicable to all FAO operations with immediate effect. Prior to its promulgation, the text was revised to address the Council’s guidance. The promulgated DP Policy is available on the Legal Office internet site at https://www.fao.org/fileadmin/user_upload/legal/docs/AC2022-06.pdf.

4. The Oversight Advisory Committee (OAC) received a briefing from the Office of the Inspector General (OIG) concerning audit recommendations related to data protection in June 2022

¹ [CL 170/13](#), paragraph 20. Due to the convening of an unscheduled session in June 2022, the scheduled autumn session will be the 117th of the Committee, not the 116th Session.

² [CL 170/REP](#), paragraph 33 (c).

Documents can be consulted at www.fao.org

and made recommendations with respect to the DP Policy. The OAC will receive an update on steps taken to operationalise the DP Policy at its next meeting in October 2022.

A. Institutional arrangements

5. The Data Protection Unit (DPU) is located in the Legal Office on an interim basis until 31 December 2022, after which it will be located as an independent unit under the Office of the Director-General, reporting to the Director-General, as is the Ethics Office, the Ombudsman, the Office of the Inspector General, and the Legal Office. Recruitment for posts to be assigned to the DPU will be initiated in 2022 with a view to being operational as a standalone unit in January 2023.

6. The Data Protection Oversight Committee (DPOC), which reports to the Director-General on data protection matters, will be constituted during September/October 2022. The Director-General has nominated the Chief Economist to chair the DPOC, ensuring coordination on data protection matters with broader data management issues.

B. Review of existing practices, procedures and instruments for alignment with the DP Policy

7. Upon its promulgation, all units and decentralized offices across the Organization were instructed to ensure that all procedures and guidelines are in conformity with the DP Policy.

8. Existing policies and procedures related to FAO statistics, private sector engagements, and science and innovation are being reviewed to ensure that they are fully aligned with the DP Policy. At the time of preparation of this document, it was confirmed that most statistical principles and guidelines (on data dissemination and data confidentiality) are already aligned with the DP Policy, but additional work needs to be done to ensure full and exhaustive compliance.

9. In addition, the Organization has contracted the World Bank Data Privacy Office (WB DP Office) to support the development of detailed operational guidance in key areas (such as procurement, processing beneficiaries' data, operational and implementing partners, data security, data retention, managing data providers' requests, data protection impact assessments and data breach response) assisting effective implementation of the DP Policy. This work includes the review of existing arrangements and making recommendations for adjustments where necessary.

C. Learning and sensitization

10. To strengthen the data protection and privacy culture within the Organization, a series of internal communications have been issued introducing the DP Policy to personnel. With the support of the WB DP Office, a data protection training module is being developed. This will be incorporated into the Organization's e-learning platform as mandatory training for all personnel.

III. Redress mechanisms in data protection

11. At its last Session, the Committee recommended, among other things, that "*informal consultations be held with Members concerning redress mechanisms, observing that this could take place after the promulgation of the Policy*".³ This recommendation was endorsed by the Council. A consultation is scheduled to take place on 16 September 2022. In preparation, sister UN system agencies are being consulted. In light of the deadlines for preparation of documents for the Committee, an oral briefing will be provided on the outcome of the consultations at the Committee's 117th Session.

12. There is no internationally endorsed definition of "redress" in the context of data protection. Redress is generally understood to mean "*to put right a wrong or give payment for a wrong that has*

³ [CL 170/13](#), paragraph 23.

been done".⁴ In national jurisdictions, redress mechanisms are generally founded on laws establishing rights, accompanied by institutions through which those rights can be enforced. Widely recognized remedies for breaches of data protection rights include the right to object to processing of data, access to data, correction/rectification and deletion. In domestic fora, remedies may also include financial compensation, as well as civil or criminal penalties.

13. The Organization's activities are governed only by its legal framework. As reflected in the Convention on the Privileges and Immunities of the Specialized Agencies, the Organization enjoys immunity from every form of legal process except insofar as it has expressly waived its immunity, and no waiver of immunity extends to any measure of execution. In light of the Organization's status, the assessment of breaches and actions of FAO rules and processes cannot be undertaken by or through national authorities. An alleged breach by the Organization of a national or regional data protection rule, or its own rules, cannot validly give rise to a process against the Organization through a national mechanism.

14. Furthermore, within its legal framework, the Organization cannot provide all the remedies that may be available under various national or regional legal systems. National or regional mechanisms can rely on administrative or judicial authorities which are empowered to investigate, enforce and compel compliance, penalize and, in some instances, award monetary compensation in case of a breach of a right recognized under the relevant laws. The Organization does not have these powers. Moreover, its financial resources are limited to those provided by its Members and donor partners.

15. Nevertheless, the DP Policy establishes a redress mechanism through which data providers may make requests for access, correction and deletion, or object to the processing of their data by the Organization at any time.

16. A dedicated email account (FAO-Data-Privacy@fao.org) was created in 2022 to which data providers can make such requests, lodge complaints or objections, and send questions or concerns related to their data. The mechanism is managed by the DPU, a standalone unit, avoiding potential conflicts of interest. Requests will be handled and responded to in a timely and efficient manner in accordance with the DP Policy. The requests and complaints received, as well as actions taken, will be reflected in the reporting to the DPOC in its reports on the implementation of the DP Policy.

17. In addition to the dedicated mechanism under the DP Policy, the usual mechanisms for addressing grievances are also available:

- a) Any individual or entity may report misconduct by FAO personnel through the complaint mechanism of the Office of the Inspector General (OIG) that may lead to disciplinary measures.⁵
- b) Providers of goods and services to the Organization may trigger the dispute settlement mechanisms under the applicable procurement contracts.
- c) Staff may initiate complaints through OIG and/or, if administrative decisions have given rise to their grievances, may initiate the appeals process, ultimately leading to the Administrative Tribunal of the International Labour Organization, which may award pecuniary damages.

18. The redress mechanisms in place at the Organization are consistent with the practices of other UN system agencies that have developed personal data protection policies and mechanisms.

⁴ *Cambridge Dictionary* ([REDRESS | meaning in the Cambridge English Dictionary](#)).

⁵ *Office of the Inspector General* ([fao.org](#)). The Policy confirms that a breach of the FAO [Code of Ethical Conduct](#) or the [Standards of Conduct for the International Civil Service](#) may be grounds for disciplinary action. The Code of Ethical Conduct explicitly addresses the use and protection of information.

IV. The Policy on Intellectual Property

19. The draft Policy on Intellectual Property (the “IP Policy”), annexed to this document, would apply to all FAO internal activities involving intellectual property or intellectual property rights, whether owned by the Organization or third parties. It incorporates the overarching guiding principles on intellectual property (the “Intellectual Property Principles”) reviewed by the CCLM at its 113th Session in October 2021, as well as international and UN system practices and standards,⁶ and reflects the Organization’s status and constitutional mandate.⁷

20. The draft IP Policy is an internal corporate policy that does not aim at providing regulatory guidance for FAO Members and, in particular, does not set out guidance for FAO Members or third parties on their management of intellectual property and intellectual property rights related to nutrition, food and agriculture.

21. Additionally, all other internal rules, policies, procedures and guidelines addressing specific aspects of intellectual property⁸ and intellectual property rights at the Organization would be interpreted and implemented in accordance with the IP Policy, which shall prevail in the case of any inconsistency. Thus, while it sets out the specific procedures for products that are typically created by FAO, or provided by partners in the context of FAO’s mandated activities, it also establishes the guiding principles to apply to products that may require case-by-case approaches.

V. Suggested action by the Committee

22. The Committee is invited to take note of the progress made in the development of the Organization’s data protection and intellectual property frameworks. It may, in particular, wish to note the draft Policy on Intellectual Property, and provide comments thereon.

⁶ CCLM 115/3, paragraph 7 and CCLM 113/4, paragraph 33-49.

⁷ Article I of the FAO Constitution mandates the Organization to “*collect, analyse, interpret and disseminate information relating to nutrition, food and agriculture*”, and to “*promote and, where appropriate, (...) recommend national and international action with respect to [among others] scientific, technological, social and economic research relating to nutrition, food and agriculture*” and “*the spread of public knowledge of nutritional and agricultural science and practice*”.

⁸ For example, FAO Open Access Policy, FAO Open Data Licensing for Statistical Databases Policy, and Software Development Policy.

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FAO POLICY ON INTELLECTUAL PROPERTY

I. INTRODUCTION

1. The Organization is mandated by its Basic Texts, specifically Article I of its Constitution, to “*collect, analyse, interpret, and disseminate information relating to nutrition, food and agriculture*”, and to “*promote and, where appropriate, (...) recommend national and international action with respect to [among others] scientific, technological, social and economic research relating to nutrition, food and agriculture*” and “*the spread of public knowledge of nutritional and agricultural science and practice*”.
2. The Organization undertakes a wide variety of activities in furtherance of this constitutional mandate. The intellectual outputs of these activities generate Intellectual Property (“IP”).

II. THE DEFINITION OF “INTELLECTUAL PROPERTY”

3. IP refers to “*creations of the mind, such as inventions; literary and artistic works; designs; and symbols, names and images*”.¹
4. IP rights include, but are not limited to the following:²
 - i. “Copyright” protects creative, literary and artistic works in digital or any tangible formats, such as books, music, photographs and films, paintings, apps, computer software code and programs, databases, advertisements, maps, and technical drawings.
 - ii. A “trademark” protects a sign, symbol or phrase – such as a logo or brand – that distinguishes the goods or services of one enterprise from those of other enterprises.
 - iii. A “patent” protects a technical invention, such as a new product or a process, and can include, for example, mechanical processes, machine designs, or chemical compositions.

¹ Definition from the [World Intellectual Property Organization \(WIPO\)](#).

² Further information on the different kinds of IP, as well as other forms of IP (i.e. industrial designs, geographical indications, and trade secrets) can be found on the WIPO website. Industrial designs, geographical indications and trade secrets are not normally relevant to the Organization’s own activities. If activities take place giving rise to these types of IP, these will be addressed on a case-by-case basis in accordance with the Intellectual Property Principles set out in this Policy.

III. SCOPE AND APPLICATION

5. This Policy sets out the overarching principles governing the Organization's management of IP and applies to all FAO internal activities involving IP and IP rights, whether owned by the Organization or third parties.
6. This Policy is an internal corporate policy that does not aim at providing regulatory guidance for FAO Members. In particular, this Policy does not set out guidance for FAO Members or third parties on their management of IP rights related to nutrition, food and agriculture.
7. FAO personnel³ are responsible for compliance with this Policy. All other rules, policies, procedures and guidelines addressing specific aspects of IP and IP rights must be interpreted and implemented in accordance with this Policy. In the case of any inconsistency, this Policy will prevail.

IV. THE INTELLECTUAL PROPERTY PRINCIPLES

8. The Organization is committed to managing IP fairly and with integrity, responsibility and accountability. It is also committed to respect the IP rights of third parties, including but not limited to FAO Members, beneficiaries, partners, indigenous peoples, and other stakeholders. These commitments are reflected in the Principles set out below.
9. The general practice of the Organization in managing IP is set out in Sections VI, VII and VIII below. Where there is no specific procedure in place, matters related to IP will be addressed on a case-by-case basis, guided by the Principles.

PRINCIPLE 1. Global public goods

10. The materials created by, or on behalf of the Organization, in its role as a global knowledge organization delivering its mandate, must be considered as global public goods, and subject to broad and unrestricted dissemination whenever possible. Cost or geographical location should not serve as a barrier to access the Organization's public goods.
11. The enjoyment of, and access to, cultural heritage, scientific knowledge, technology, and opportunities to contribute to scientific enterprise, without discrimination to the benefits of science and its applications, is a fundamental consideration. Access must be provided as openly as possible to all scientific knowledge and their applications owned by the Organization and/or produced on the Organization's behalf.
12. Notwithstanding the above, IP containing sensitive material including confidential or strictly confidential data must be addressed in accordance with the Data Protection Policy set out in [Administrative Circular 2022/06](#) and related guidance (see paragraph 20 below).

PRINCIPLE 2. Dissemination through ownership of IP rights

13. The ownership of IP rights by the Organization is an integral part of the delivery of its technical mandate, enabling the Organization to secure the widest possible dissemination of knowledge through the materials it produces.

³ "FAO personnel" refers to staff members and other individuals engaged by the Organization, within the meaning of Staff Regulation 301.13.6, which includes, *inter alia*, all staff members, whether on continuing, fixed-term or short-term contractual arrangements, as well as all non-staff personnel such as consultants, subscribers to Personnel Services Agreements, Volunteers, Interns, National Project Personnel and any other type of personnel recruited for services in the Organization.

14. Ownership of IP rights also ensures that the Organization can prevent the inappropriate use of its materials and that the dissemination of such materials is not restricted in a manner inconsistent with its mandate and policies.

PRINCIPLE 3. Dissemination for impact

15. The Organization's global public goods must be disseminated for maximum impact. This will be achieved through "open" standards for information access.
16. Notwithstanding the above, the Organization will not disseminate information or materials subject to confidentiality obligations, existing third-party rights and restrictions for the utilization of such third-party information or materials, unless otherwise agreed with the IP owner.

PRINCIPLE 4. Respect for third party IP rights

17. The IP rights of third party collaborators that transfer data and information to the Organization, or otherwise allow the Organization to use their materials for the advancement of its mandate, must be respected.
18. The Organization will not claim ownership of IP rights of third parties and will not transfer or disclose such materials to others without the consent of the IP owner.
19. When the Organization is allowed to use a third party's materials, the terms and conditions for this use must be documented and strictly complied with.

PRINCIPLE 5. Sensitive or confidential information or materials

20. FAO personnel may handle IP that includes sensitive, confidential or strictly confidential information (e.g. databases containing sensitive project data or personal data). This type of information, including data provided to the Organization by third parties, must be processed, protected and, where necessary, disclosed strictly in accordance with the Data Protection Policy.

V. APPLICABLE LAW, PRIVILEGES AND IMMUNITIES

21. The Organization's activities are governed by the rules of international law and the Organization is not subject to national or regional laws, including national or regional laws addressing IP. This IP Policy is without prejudice to the status of the Organization, and its privileges and immunities, in particular the inviolability of its property and assets (including its IP), and immunity from every form of legal process.⁴
22. The Organization is granted privileges and immunities to enable it to deliver its mandate. They are not intended to deprive legitimate claimants of remedies in case of wrongdoing by the Organization or its personnel. Accordingly, where allegations of breach of IP rights arise, they must be addressed appropriately (see paragraphs 37 and 38 below).

⁴ See Section 125 of the FAO Administrative Manual. In particular, Section 4 of the Convention on the Privileges and Immunities of the Specialized Agencies provides that "[t]he specialized agencies, their property and assets, wherever located and by whomsoever held, shall enjoy immunity from every form of legal process except in so far as in any particular case they have expressly waived their immunity. It is, however, understood that no waiver of immunity shall extend to any measure of execution".

VI. INTELLECTUAL PROPERTY OF THE ORGANIZATION

The Organization's ownership of IP rights

23. The Organization will normally be the sole owner of the IP rights in materials acquired, created or generated by it. This includes, but is not limited to, studies, publications and information materials, statistics, digital platforms including databases, apps and software, web content, photographs and videos. This position is reflected in the standard agreements concluded by the Organization, such as Memoranda of Understanding, contribution and other agreements governing voluntary contributions, and standard terms and conditions for procurement contracts.
24. The Organization owns the IP in materials created by FAO personnel in the course of their employment with the Organization, as well as materials created on the Organization's behalf, such as materials developed through services procured under Letters of Agreement under Section 507 of the FAO Administrative Manual or contracts under Section 502 of the FAO Administrative Manual. Breach of the Organization's IP rights by FAO personnel or service providers will be addressed in accordance with the applicable terms and conditions of the concerned contractual arrangements.

Sharing or transfer of ownership of IP rights

25. The Organization may agree to share its IP rights with other UN system entities or intergovernmental organizations, provided that those other entities have provided a substantial intellectual contribution to the material in question.
26. The Organization may agree to share IP rights with an FAO Member if that Member has provided a substantial intellectual contribution to the material in question.
27. The Organization may agree to transfer ownership of IP rights to a Member Nation in products developed under country-specific activities. This allows the relevant Member Nation to assume responsibility for ongoing maintenance and development of the material beyond the intervention of the Organization. This may be necessary to ensure compliance with Financial Regulation 6.7, which provides that the Organization cannot accept voluntary contributions that may result in any additional budgetary burden for all its Members without approval of the FAO Conference.⁵ In these cases, in recognition of its technical contribution, the Organization should obtain a license from the IP owner to use the product for other mandated activities.
28. The provision of the voluntary contributions used by the Organization to create a product does not provide a basis for a resource partner to own or share the IP rights in that product.
29. The sharing or transfer of IP rights must be reflected in written agreements (such as relevant project agreements).

Open licensing and commercial use

30. In most cases, individual permissions are not required for the use of the Organization's products. All publications and documents available in the [FAO Document Repository](#) are subject to the Organization's [Open Access Policy](#). Specific statistical databases are subject to the [Open Data](#)

⁵ For example, a software programme developed for a beneficiary country using voluntary contribution should not entail long-term maintenance costs to be charged to the FAO Regular Programme budget after the project has closed. Instead, the IP rights in that programme should be transferred to the beneficiary Government at the end of the project.

[Licensing for Statistical Databases Policy](#).⁶ The use of other materials may be subject to terms and conditions set out on FAO websites or in specific policies.⁷

31. Pursuant to the Principles and its Policies, the Organization generally authorizes third parties to reuse, redistribute, translate and adapt its materials for non-commercial purposes without prior permission. This type of use is subject to the full attribution to the Organization as the source and copyright holder, and provided that any derivative works are subject to the same licensing conditions as the original work.
32. IP owned or otherwise produced on behalf of the Organization is generally restricted to non-commercial use. Permission for commercial purposes is granted on a case-by-case basis, subject to a formal request and explicit written authorization by the Organization, which may include specific limitations on the purpose and other conditions. For the purposes of this Policy, “commercial use” means any use by, or on behalf of, a for-profit entity, or use by any natural person or legal person (non-profit entity) to generate revenue.
33. The Organization may enter into individual legal agreements (licenses) on a case-by-case basis for use of its products that:
 - a) are not automatically subject to its Open Access Policy, Open Data Licensing for Statistical Databases Policy, or other standard terms and conditions; or
 - b) third parties wish to use for commercial purposes.
34. Requests for advice and templates for standard agreements should be addressed to Copyright@fao.org.

VII. INTELLECTUAL PROPERTY OF THIRD PARTIES

35. The Organization faces legal and reputational risks if its personnel or service providers use or share IP owned by third parties in an unauthorized manner.⁸ Although it is not subject to national or regional IP laws, the Organization must respect the IP rights of third parties. This requires FAO personnel to:
 - a) use the Organization’s materials as far as possible;
 - b) if a third party’s IP must be used, check the terms and conditions on which it can be used and, if applicable, seek a license from the IP owner;
 - c) maintain a record of the terms and conditions for use; and
 - d) strictly comply with these terms and conditions.
36. Requests for advice on the legal clauses⁹ included in third party agreements/licenses can be addressed to the Legal Office.

⁶ At the time of issuance of this Circular, FAO publications issued after 2018 and selected FAO databases were subject to a Creative Commons Attribution Non-Commercial-Share Alike 3.0 IGO licence ([CC BY-NC-SA 3.0 IGO](#)).

⁷ See, for example, the FAO mediabase for the [Terms and Conditions \(fao.org\)](#) applicable to FAO photographs, and the [FAO Software Development Policy](#) for FAO-developed software.

⁸ For example, unauthorized use of photographs in technical publications, newsletters and online platforms have led to claims against the Organization for compensation and threats of legal action.

⁹ In particular, clauses on dispute settlement, applicable law, and privileges and immunities.

37. Where FAO personnel become aware of any breaches by the Organization or its personnel of the IP rights of third parties, they must promptly notify their Head.¹⁰ The Head should immediately take appropriate action to remedy and/or mitigate the breach of IP. If claims of unauthorized use of IP are received and threaten litigation, the matter should be referred to the Legal Office, with all relevant background information and documentation.
38. Breaches of the IP rights of third parties by FAO personnel may result in administrative action, including disciplinary action for unsatisfactory conduct pursuant to Section 330 of the FAO Administrative Manual.

VIII. THE USE OF THE FAO NAME, LOGO/EMBLEM

39. The FAO logo and the FAO name (in all FAO official languages) are registered and protected under Article 6^{ter} of the Paris Convention for the Protection of Industrial Property, an international treaty administered by the World Intellectual Property Organization.
40. Units/divisions/offices becoming aware of unauthorised use of the FAO logo by a third party should first ask that third party to cease using that logo until authorization is obtained from the Organization. If no action is taken by the third party in response to that request, the matter should be referred to the Legal Office, with as much background information and documentation as possible. The Legal Office may, *inter alia*, request the relevant Member Nation(s) to enforce the Organization's rights through national mechanisms.
41. Use of the FAO logo must comply with the procedures and rules addressing these matters, which are available on the [OCC intranet site](#).

IX. COORDINATION FOR IP MATTERS

42. Subject to the contact points identified elsewhere in this Policy or other rules and guidelines, IP queries should be addressed to:
 - a) the Office of the Chief Statistician (OCS) (Chief-Statistician@fao.org) for IP queries concerning statistics, statistical databases, the Food and Agriculture Microdata Catalogue (FAM), and other data and micro-data related activities conducted under Article 1 of FAO Constitution, including but not limited to, their collection, acquisition, compilation, dissemination, terms of use and, where applicable, licensing through appropriate legal agreements (e.g. data licensing agreements);
 - b) the Office of Communications (OCC) (copyright@fao.org) for IP queries concerning copyright, publications, copublishing agreements, licenses for contribution in external journal articles/book chapters, promotional and communications materials, the use of the FAO name and logo, and digital media (e.g. photography, audio, video, webcasting and social media); and
 - c) OCC can be consulted for advice on other IP queries not covered by sub-paragraph (a) and (b) above.
43. OCS and OCC will coordinate in respect of the IP queries addressed to them, consulting relevant units/divisions/offices, as may be appropriate.

¹⁰ For FAO headquarters, "Head" means the Head of Office, Centre or Division at headquarters. For Decentralized Offices, this means the concerned Assistant Director-General/Regional Representative, Sub-regional Coordinator, FAO Representative or Head of a Liaison Office.

X. EFFECTIVE DATE

44. This Administrative Circular has immediate effect.