

October 2005



منظمة الأغذية  
والزراعة  
للأمم المتحدة

联合国  
粮食及  
农业组织

Food  
and  
Agriculture  
Organization  
of  
the  
United  
Nations

Organisation  
des  
Nations  
Unies  
pour  
l'alimentation  
et  
l'agriculture

Organización  
de las  
Naciones  
Unidas  
para la  
Agricultura  
y la  
Alimentación

Item 5 of the Draft Provisional Agenda

**COMMISSION ON GENETIC RESOURCES FOR FOOD AND AGRICULTURE  
ACTING AS  
INTERIM COMMITTEE OF THE INTERNATIONAL TREATY  
ON PLANT GENETIC RESOURCES FOR FOOD AND AGRICULTURE**

**Open-Ended Working Group on the Rules of Procedure and the Financial Rules of the  
Governing Body, Compliance, and the Funding Strategy**

Rome, 14 – 17 December 2005

**COMPILATION AND ANALYSIS OF GOVERNMENTS' FURTHER VIEWS ON  
COMPLIANCE WITH THE INTERNATIONAL TREATY ON PLANT GENETIC  
RESOURCES FOR FOOD AND AGRICULTURE**

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For reasons of economy, this document is produced in a limited number of copies. Delegates and observers are kindly requested to bring it to the meetings and to refrain from asking for additional copies, unless strictly indispensable.  
The documents for this meeting are available on Internet at <http://www.fao.org/ag/cgrfa/ico1.htm>.

## I. INTRODUCTION

1. The Second meeting of the Commission on Genetic Resources for Food and Agriculture acting as the Interim Committee for the International Treaty on Plant Genetic Resources for Food and Agriculture in November 2004 reviewed the document, *Compilation and Analysis of Governments' Views on Compliance with the International Treaty on Plant Genetic Resources for Food and Agriculture*.<sup>1</sup> It noted that “*the issue of compliance was both complex and important*”,<sup>2</sup> and “*agreed that countries could submit further views on compliance to the Secretariat for compilation and for placing on the Commission's web-site.[...] The Interim Committee decided that the issue of compliance should be forwarded to an Open-ended Working Group..., prior to being submitted to the Governing Body, for consideration at its first session.*”<sup>3</sup>

2. On 3 February 2005, a Circular State Letter was issued, inviting countries to submit further views on compliance with the Treaty to the Secretariat (*Appendix I*). At the time of preparing this document (1 September 2005), further submissions had been received from India, Romania, Sierra Leone, Trinidad & Tobago, and Vietnam. They were posted on the Commission's web-site, at <http://www.fao.org/ag/cgrfa/compliance.htm>. They are also in *Appendix II* to this paper. If further submissions are received, they will be posted on the web-site and made available, in the language in which they are received, to the Open-Ended Working Group.

## II. COMPILATION AND ANALYSIS OF FURTHER SUBMISSIONS

3. The current document supplements, and should be read together with the earlier compilation of views.<sup>4</sup> These further views have been compiled, in the same format used in the earlier document, in the tables below.<sup>5</sup> A number of countries made more general comments. These have not been incorporated in the tables, but can be found in the submissions in *Appendix II*.

4. The Open-Ended Working Group is invited to consider the elements that may form the basis of the effective procedures and operational mechanisms to promote compliance and address the issue

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<sup>1</sup> Document CGRFA/MIC-2/04/3 available at <http://www.fao.org/ag/cgrfa/ico1.htm>.

<sup>2</sup> See the *Report of the Second Meeting of the CGRFA acting as Interim Committee for the International Treaty on Plant Genetic Resources for Food and Agriculture*, CGRFA/MIC-2/04/REP, paragraph 15.

<sup>3</sup> Document CGRFA-MIC-2/04/REP, paragraph 16.

<sup>4</sup> Document CGRFA/MIC-2/04/3 available at <http://www.fao.org/ag/cgrfa/ico1.htm>.

<sup>5</sup> The methodology followed draws on Background Study Paper No. 20, *Compliance Building under the International Treaty on Plant Genetic Resources for Food and Agriculture*, by Maas Goote and René Lefebvre, available at <ftp://ext-ftp.fao.org/ag/cgrfa/BSP/bsp20e.pdf>. It should be noted that the presentation of submissions in this way is not intended in any way to interpret them, but merely to list them systematically.

of non-compliance, which the Governing Body is required to consider and approve at its first meeting.<sup>6</sup>

5. The Open-Ended Working Group may wish to prepare and adopt draft procedures and mechanisms to promote compliance and to address issues of non-compliance, for submission to the Governing Body, for consideration at its First Session.

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<sup>6</sup> See Article 21 of the Treaty.

**Table 1****VIEWS EXPRESSED ON THE OBJECTIVES, PRINCIPLES AND NATURE OF COMPLIANCE**

Party	Objectives	Principles and nature	Functions
India	<ul style="list-style-type: none"> <li>to identify and establish the cause of compliance difficulties and formulate responses and provide advice to correct any state of non-compliance</li> </ul>	<ul style="list-style-type: none"> <li>transparent</li> <li>cooperative</li> <li>non-judicial</li> <li>non-punitive</li> <li>different from a “dispute settlement procedure”</li> <li>voluntary</li> </ul>	<ul style="list-style-type: none"> <li>identification of special needs of developing countries and, in particular, diversity-rich countries</li> <li>provision of guidance on such issues as institutional support, development of national policy guidelines on benefit-sharing, Farmers’ Rights and intellectual property rights.</li> </ul>
Romania	<ul style="list-style-type: none"> <li>to promote compliance with the Treaty and to address issues of non-compliance.</li> </ul>	<ul style="list-style-type: none"> <li>transparency.</li> <li>public access to information.</li> </ul>	<ul style="list-style-type: none"> <li>development of guidelines on compliance, which would focus on the provision of advice and technical, legal and financial assistance, when needed, in particular to developing countries and countries with economies in transition.</li> <li>capacity-building, including technical and financial support, in order to maintain and develop institutions involved in national programmes on plant genetic resources.</li> </ul>
Sierra Leone		<ul style="list-style-type: none"> <li>Simple.</li> <li>Flexible.</li> <li>Not adversarial.</li> </ul>	<ul style="list-style-type: none"> <li>Guaranteeing of parity between small and big countries, developed and developing countries, and countries with economies in transition, in the use of plant genetic materials for food and agriculture covered by this Treaty.</li> </ul>

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Trinidad & Tobago			<ul style="list-style-type: none"><li>• ensuring of compliance with, in particular, Article 13 of the Treaty on exchange of information, access to and transfer of technology, capacity-building, and sharing monetary and other benefits of commercialization</li><li>• provision of advice and assistance, particularly to developing countries and countries with economies in transition</li></ul>
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**Table 2****VIEWS EXPRESSED ON INSTITUTIONAL STRUCTURE, TRIGGERS AND PROCEDURAL SAFEGUARDS**

Party	Institutional structure	Triggers	Procedural safeguards
India			<ul style="list-style-type: none"> <li>• transparent procedures</li> </ul>
Romania	<ul style="list-style-type: none"> <li>• establishment of a Compliance Committee.</li> <li>• establishment of national institutional networks for enforcement activities.</li> <li>• designation of national focal points responsible for coordination of plant genetic resources activities.</li> </ul>		<ul style="list-style-type: none"> <li>• transparency</li> <li>• public access to information</li> </ul>
Sierra Leone			
Trinidad & Tobago	<ul style="list-style-type: none"> <li>• establishment of a Transaction and Resolution Expert Committee to guide Contracting Parties within the framework of the Treaty.</li> </ul>		
Vietnam	<ul style="list-style-type: none"> <li>• the Governing Body and its Secretary must identify a detailed suitable working mechanism.</li> </ul>		

**Table 3****VIEWS EXPRESSED ON SOURCES OF INFORMATION, RESPONSES AND INSTITUTIONAL EMBEDDING**

Party	Sources of information	Responses	Institutional embedding
India		<ul style="list-style-type: none"> <li>• advice on compliance to be provided before corrective measures are taken.</li> <li>• corrective measures should be considered, such as withdrawal of certain privileges from parties in certain circumstances.</li> </ul>	
Romania			
Sierra Leone	<ul style="list-style-type: none"> <li>• relevant experience relating to compliance in similar international treaties or conventions already in force should be used</li> </ul>		
Trinidad & Tobago		<ul style="list-style-type: none"> <li>• provision of advice and assistance particularly in the case of developing countries and countries with economies in transition.</li> </ul>	

**Table 4****VIEWS EXPRESSED ON SCOPE AND MONITORING, AND OTHER VIEWS**

Party	Scope	Monitoring	Other views
India			<ul style="list-style-type: none"> <li>• compliance procedures should be different from a dispute settlement procedures; disputes between Contracting Parties of the Treaty regarding access to particular PGRFA may arise, but this does not necessarily mean non-compliance.</li> </ul>
Romania		<ul style="list-style-type: none"> <li>• monitoring of the implementation of the Treaty through a standardized reporting format; timely reporting on the implementation of obligations under Treaty, and evaluation of specific difficulties in compliance, and the adoption of measures aimed at improving compliance.</li> </ul>	



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*Appendix I*

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**CIRCULAR STATE LETTER OF 3 FEBRUARY 2005 INVITING COUNTRIES TO SUBMIT  
FURTHER VIEWS ON PROCEDURES AND OPERATIONAL MECHANISMS TO  
PROMOTE COMPLIANCE**

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Our Ref.: G/LE-70

3 February 2005

International Treaty on Plant Genetic Resources for Food and Agriculture

Effective Procedures and Operational Mechanisms  
to Promote Compliance with the Treaty

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The Director-General of the Food and Agriculture Organization of the United Nations has the honour to refer to the International Treaty on Plant Genetic Resources for Food and Agriculture.

Article 21 of the Treaty, *Compliance*, requires that the first session of the Governing Body of the Treaty “*consider and approve cooperative and effective procedures and operational mechanisms to promote compliance with the provisions of this Treaty and to address issues of non-compliance*”.

Conference Resolution 3/2001 decided that the Commission on Genetic Resources for Food and Agriculture should act as Interim Committee for the Treaty, and requested it to undertake various tasks to prepare for the entry into force of the Treaty, including to “*prepare, for consideration at the first session of the Governing Body, proposed procedures to promote compliance in accordance with Article 21*”.

In October 2002, the Interim Committee met for the first time, and “*decided to establish an Open-Ended Expert Working Group, with appropriate technical support, to meet in the inter-sessional period ...*” to address, *inter alia*, “*... procedures to promote compliance with the Treaty,*” and in this context, “*requested the Director-General to collect countries’ views on compliance with the Treaty*”. By a Circular State Letter of 23 June 2003, the Director-General sought such views. The views received were made available on the FAO Internet web-site, and may be found at <http://www.fao.org/ag/cgrfa/compliance.htm>.

The second meeting of the Interim Committee in November 2004 reviewed document CGRFA/MIC-2/04/3, *Compilation and Analysis of Governments’ Views on Compliance with the International Treaty on Plant Genetic Resources for Food and Agriculture*, which can be found at <http://www.fao.org/ag/cgrfa/docsic2.htm>, and “*agreed that countries could submit further views on compliance to the Secretariat for compilation and for placing on the Commission’s web-site. [...] The*

*Interim Committee decided that the issue of compliance should be forwarded to an Open-ended Working Group, to be convened subject to the availability of extra-budgetary funds, ..., prior to being submitted to the Governing Body, for consideration at its first session.”*

The Organization therefore takes pleasure in inviting States to forward their views on compliance with the International Treaty on Plant Genetic Resources for Food and Agriculture, by 31 May 2005, to:

Mr José T. Esquinas-Alcázar  
Secretary, Commission on Genetic Resources for Food and Agriculture  
FAO  
Viale delle Terme di Caracalla  
00100 Rome, Italy  
email address: [jose.esquinas@fao.org](mailto:jose.esquinas@fao.org)

In accordance with the request of the Interim Committee, the Secretariat will ensure that the submissions of countries are available on the FAO Internet web-site, and will prepare a compilation of the replies to assist the Open-ended Working Group in its deliberations.

As noted, the convening of the Open-ended Working Group is subject to the availability of adequate extra-budgetary resources. As and when these resources become available, information regarding the date and venue of the meeting will be forwarded to Members.

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*Appendix II*

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**FURTHER SUBMISSIONS RECEIVED**

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**INDIA**

The department of Agriculture & Cooperation in the Ministry of Agriculture, New Delhi is the nodal agency for implementation of the various provisions of the ITPGRFA and the Joint Secretary (Seeds) is the focal point. The Treaty is being implemented through National Bureau of Plant Genetic Resources, New Delhi. As mentioned under Article 21 of the ITPGRFA, the compliance procedures and mechanisms should be transparent, cooperative, non-judicial and non-punitive so as to achieve the goals of the Treaty.

India is also one of the seven countries for the establishing of the National Information Sharing Mechanism on the Implementation and Monitoring of the GPA for the Conservation and Sustainable Utilization of the Plant Genetic Resources for Food and Agriculture, as enshrined under Article 14 of the Treaty. We are of the opinion that the Commission on Plant Genetic Resources/FAO may provide special financial/technical assistance to the countries, especially in Asia and Africa, which are primary centre of origin in respect of certain crops.

We have following comments to offer in respect of compliance procedures to the Treaty as under:

1. The objective of the compliance procedures should be to identify compliance difficulties, establish the cause of such difficulties and formulate responses and advise to correct the state or non-compliance.
2. It should be different from a "dispute settlement procedure". The disputes between contracting parties of the ITPGRFA regarding access to particular PGRFA may arise, but this does not necessarily mean non-compliance.
3. The special needs of the developing countries and diversity rich countries in particular should be identified. These could be guidance on specific issues like institutional support, development of suitable national policy guidelines on benefit sharing, farmer rights and IPR issues.
4. The corrective measures like withdrawal of certain privileges to parties to non-compliance due to circumstances beyond the parties controls should be considered and advise to comply should be provided, before such measures are taken.
5. The procedures should be transparent as far as possible, and voluntary in nature for confidence building among parties.

A brief report on the compliance measures is enclosed as annexure.

## Compliance Measures:

Art.	Statement	Action	Compliance
Art. 5	Conservation, Exploration, Collection, Characterization, Evaluation and Documentation of Plant Genetic Resources for Food and Agriculture	<p>Survey and inventory plant genetic resources for food and agriculture (PGRFA), taking into account the status and degree of variation in existing populations including those that are of potential use and, as feasible, assess any threats to them.</p> <p>Promote the collection of PGRFA and relevant associated information on those plant genetic resources that are under threat or are of potential use.</p>	<p>The focus of NBPGR is on germplasm collection and conservation. Assessment of variability in the field have been undertaken by the NBPGR since its inception. In 1999 intensive gap analysis was carried out for variability collected and conserved and the areas which had not been explored. Since 1999 to March 2005, about 90,000 accessions comprising landraces, local cultivars, trait specific germplasm of crop plants and their wild relatives have been collected through 1,718 explorations. Focused attention has been laid on collection of vegetables, horticultural species, fibre crops, medicinal plants and under utilized plant species, landraces/ primitive cultivars of crops, endangered crop species, lesser-known crops, backyard cultigens and wild relatives of crop plants.</p>
			<p>Special missions were primarily planned in areas suspected to lose the diversity due to natural or man caused disturbances. Besides need based missions were also launched in Cyclone hit areas of Orissa, Earthquake hit areas of Gujarat and Tsunami hit areas of A&amp;N Islands.</p>
Art. 6	Sustainable Use of Plant Genetic Resources strategies and regulations	Reviewing, adjusting, breeding concerning variety release and seed distribution.	<p>Plant breeding strategies to promote sustainable utilization being initiated are:</p> <ul style="list-style-type: none"> <li>• Use of diverse parents</li> <li>• Wide hybridization</li> <li>• Use of locally adapted varieties</li> <li>• Participatory plant breeding</li> </ul>
Art. 9	Farmers' Rights	Protection of traditional knowledge relevant to plant genetic resources for food and agriculture.	<p>Traditional knowledge relevant to PGRFA, wherever available, is documented at the time of collection of material from farmers and local communities since 1999 (Passport data sheets).</p>

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Art. 14	Global Plan of Action	To implement the Global Plan of Action for the Conservation and Sustainable Use of PGRFA is important to this Treaty.	A project to monitor the Implementation of Global Plan of Action is being implemented through Establishment of an Information Sharing Mechanism. All major stakeholders dealing with management of PGRFA are being involved in the process.
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### **ROMANIA**

As regards to “Procedures and Mechanisms to promote Compliance with International Treaty on Plant Genetic Resources for Food and Agriculture”, Romania supports the development of national, regional and global tools and legislation necessary for the implementation, enforcement and compliance with IT.

In this respect the following aspects would be considered:

- Establishment of a Compliance Committee aimed to promote compliance with IT, and to address non-compliance issues;
- Development of guidelines on compliance with obligations under the Treaty, that would be focused on offering advice and/or technical, legal and financial assistance, when needed, in particular to developing countries and countries with economies in transition;
- Monitoring on the implementation of the IT provisions by adopting a standardized reporting format;
- Need for transparency and public access to information.

Actions to be undertaken at national level:

- Capacity building including technical and financial support in order to maintain and develop institutions (i.e. National Genebank, Breeding Stations and Agricultural Research Institutes) involved in National Program on Plant Genetic Resources;
  - Designation of a national focal point responsible for coordination plant genetic resources activities;
  - Establishment of an institutional network to carry out enforcement activities;
  - Timely reporting on the implementation of obligations under Treaty, and evaluation of specific difficulties in compliance and adoption of measures aimed at improving compliance.
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### **SIERRA LEONE**

As this is a new Treaty with no previous experience on matters relating to compliance I wish to make the following suggestions:

1. Any relevant experiences relating to compliance in similar international treaties or Conventions already in force should be used with respect to resolving any issues on compliance involving the Treaty as they arise in future.
  2. That these measures be simple, flexible and not adversarial in nature.
  3. That parity between small and big countries; developed and developing countries, and these countries with economies in transition be guaranteed in the use of plant genetic materials for food and agriculture covered by this Treaty.
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### **TRINIDAD & TOBAGO**

On the issue of compliance with the Treaty, the Government is of the view that particular attention should be paid to Article 13, which specifies benefit sharing in the Multilateral System with regard to:

- Exchange of information
- Access to and transfer of technology
- Capacity building
- Sharing monetary and other benefits of commercialization

Trinidad and Tobago further recommends that non-compliance with the Treaty should be treated according to Article 21, where the mechanism for compliance includes offering advice and assistance particularly in the case of developing countries with economies in transition.

In view of these considerations, Trinidad and Tobago wishes to suggest that the Open-ended Working Group consider the establishment of a Transaction and Resolution Expert Committee to guide contracting parties within the framework of the Treaty.

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## VIETNAM

Vietnam realizes that the plant genetic resources for food and agriculture (PGRFA) plays a key role on food security and sustainable agriculture and are at the meeting point between agriculture, environment and commerce. It is therefore, Vietnam applies effective measures to implement the Global Plan of Action for the Conservation and Sustainable Utilization of PGRFA. In Vietnam, the conservation and utilization of PGRFA are managed by the Ministry of Agriculture and Rural Development (MARD) and the Ministry of Sciences and Technology. In 2004 the National Assembly of Vietnam issued the Ordinance on Plant Varieties that includes important items to ensure conservation and promoting sustainable utilization of PGRFA. On institutional aspect, in 1996 MARD established the Plant Genetic Resources Center at the Vietnam Agricultural Science Institute as a focal point to implement and coordinate all research activities related to PGRFA in Vietnam.

Article 5 of the International Treaty on PGRFA specifies the conservation, exploration, collection, characterization, evaluation and documentation of PGRFA. Vietnam considers that in order to effectively promote the conservation and sustainable utilization of PGRFA, it needs to synchronize social and technical approaches. Followings are our social approaches:

- Raising community awareness of position and importance of PGRFA on socio-economic development,
- Defining proper economic mechanism and regulation for PGRFA conservation and utilization,
- Developing and perfecting the legal documents on PGRFA conservation.

And following are technical approaches:

- Developing the National Crop Genebank,
- Promoting the in-situ conservation of PGRFA together with the conservation of agro-ecological systems.
- Promoting research on evaluation and exploitation of PGRFA,
- Diversifying the gene pool in agricultural production.

The concept that the Treaty is managed by its Governing Body is too general. The Governing Body and its Secretary must identify their detailed suitable working mechanism.

One of the priorities of the Governing Body of the Treaty is to promote to soon adopt the Material Transfer Agreement (MTA). The MTA serves as basis to regulate benefit sharing arising from the exploitation and utilization of PGRFA, which is a sensitive issue.

PGRFA are common concern of all human kind, but major part of plant diversity, traditional farming system and indigenous knowledge linked with PGRFA conservation, exploitation and utilization have been found in developing countries where lack of capacity. An available part of the treaty budget must be invested to solve the problems at the least developed countries.

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