

August 2004



Item 7 of the Draft Provisional Agenda

**COMMISSION ON GENETIC RESOURCES FOR FOOD AND AGRICULTURE**

**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**

Rome, 15 - 19 November 2004

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

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Appendix III: Submissions Received:  
Argentine  
Benin  
Bhutan  
Burkina Faso  
Egypt  
European Community  
Kenya  
Mauritius  
Pakistan  
Switzerland  
Syrian Arab Republic  
United Arab Emirates  
United States of America

## I. INTRODUCTION

1. Article 21 of the Treaty requires that

“The Governing Body shall, at its first meeting, 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. These procedures and mechanisms shall include monitoring, and offering advice or assistance, including legal advice or legal assistance, when needed, in particular to developing countries and countries with economies in transition.”

2. The First 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 considered the document, *Procedures to promote compliance with the International Treaty on Plant Genetic Resources for Food and Agriculture*,<sup>1</sup> which analysed practice in other forums. It decided to establish an Open-ended Expert Working Group on Draft Rules of Procedure for the Governing Body, Draft Financial Rules for the Governing Body, and Compliance.<sup>2</sup> In preparation for the meeting of the Open-ended Working Group, the Interim Committee:

“requested the Director-General to collect countries’ views on compliance with the Treaty. It was agreed that countries’ submissions in this process should be placed on the FAO Internet web-site. The Interim Committee for the Treaty requested the Secretariat to compile and analyse the replies, and produce a report that might form the basis of the Working Group’s deliberations on this question. It decided that the Working Group would submit the results of its deliberations to the Interim Committee for the Treaty”.<sup>3</sup>

3. The Director-General accordingly issued a Circular State Letter on 23 June 2003 (*Appendix I*), inviting FAO Members and Non-Member countries to submit their views on compliance with the Treaty, which is the subject of Article 21 of the Treaty. On 14 June 2004, a further Circular State Letter was issued, extending the deadlines for submissions (*Appendix II*). At the time of preparing this document (27 August 2004), the submissions of Argentina, Benin, Bhutan, Burkina Faso, Egypt, the European Community, Kenya, Mauritius, Pakistan, Switzerland, the Syrian Arab Republic, the United Arab Emirates and the United States of America had been received and posted on the Commission web-site, at <http://www.fao.org/ag/cgrfa/compliance.htm>. They are also given in *Appendix III* to this paper. If further submissions are received, they will be posted on the web-site and made available to the Interim Committee.

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<sup>1</sup> Document CGRFA/MIC-1/02/07.

<sup>2</sup> “The Working Group would address, firstly, the Rules of Procedure of the Governing Body [...] It would then address the Draft Financial Rules of the Governing Body [...] Finally, it would address procedures to promote compliance with the Treaty”.

<sup>3</sup> See the *Report of the First Meeting of the CGRFA acting as Interim Committee for the International Treaty on Plant Genetic Resources for Food and Agriculture*, document CGRFA/MIC-1/02/REPORT. It should be noted that, due to the lack of extra-budgetary resources, it was not been possible to convene the meeting of the Open-ended Working Group prior to the current Meeting of the Interim Committee.

## II. COMPILATION AND ANALYSIS OF SUBMISSIONS, AND GUIDANCE SOUGHT FROM THE INTERIM COMMITTEE

4. As requested, the current document compiles and analyses the views expressed by countries in their submissions. As far as possible, these have been compiled into the tables that follow.<sup>4</sup> In addition, views on monitoring, other views on compliance, as well as other views not relating to compliance that were submitted, are presented. A number of countries made more general comments: these have not been incorporated in the tables, but are available in the submissions at *Appendix III*.

5. The Interim Committee is invited to review the views expressed by countries and to consider the elements which may form the basis of the effective procedures and operational mechanisms to promote compliance, which the Governing Body must approve.

6. Noting that Article 21 of the Treaty foresees that the Governing Body will “consider and approve” such procedures and mechanisms at its first meeting, the Interim Committee may also wish to consider whether the Open-ended Working Group established by the First Meeting of the Interim Committee should be asked to meet prior to the First Meeting of the Governing Body and, if so, which aspects of compliance in particular it might consider.

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<sup>4</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.

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

Party	Objectives	Principles and nature	Functions
Argentina	<ul style="list-style-type: none"> <li>• to facilitate compliance with added emphasis on capacity building, exchange of information, cooperation among Parties, and reciprocal provision of advice</li> </ul>	<ul style="list-style-type: none"> <li>• non-adversarial</li> <li>• simple</li> <li>• not punitive</li> </ul>	<ul style="list-style-type: none"> <li>• provision of cooperation to developing countries</li> <li>• provision of technical assistance to developing countries</li> </ul>
European Community	<ul style="list-style-type: none"> <li>• to promote compliance (see Article 21 IT/PGRFA)</li> <li>• to address issues of non-compliance (see Article 21 IT/PGRFA)</li> <li>• to prevent of disputes and cases of non-compliance</li> </ul>	<ul style="list-style-type: none"> <li>• non-adversarial</li> <li>• non-judicial</li> <li>• cooperative</li> <li>• transparent</li> <li>• effective</li> <li>• forward-looking</li> </ul>	<ul style="list-style-type: none"> <li>• examination of individual cases of non-compliance</li> <li>• provision of advise and facilitation of assistance to Parties experiencing compliance difficulties</li> <li>• adoption of recommendations or decisions on measures</li> <li>• report to Governing Body on its activities</li> <li>• monitoring (see below)</li> </ul>
Kenya	<ul style="list-style-type: none"> <li>• to assist Parties to comply with the IT/PGRFA, in particular developing countries and economies in transition</li> <li>• to assist the Governing Body in timely handling non-compliance</li> </ul>	<ul style="list-style-type: none"> <li>• transparent</li> <li>• tolerant</li> <li>• non-coercive</li> <li>• friendly</li> <li>• voluntary</li> </ul>	<ul style="list-style-type: none"> <li>• provision of technical and legal advice</li> <li>• provision of material and institutional support</li> <li>• provision of special assistance to developing countries and economies in transition to comply with specific elements of the IT/PGRFA</li> </ul>

Mauritius			<ul style="list-style-type: none"> <li>• provision of guidance to developing countries for development of an institutional framework, national laws and capacity building</li> </ul>
Switzerland			<ul style="list-style-type: none"> <li>• report to Governing Body on its activities</li> <li>• monitoring (see below)</li> </ul>
United Arab Emirates	<ul style="list-style-type: none"> <li>• to promote compliance</li> </ul>	<ul style="list-style-type: none"> <li>• simple</li> <li>• flexible</li> <li>• removed from penalty-based approach</li> </ul>	<ul style="list-style-type: none"> <li>• development of training plans for personnel entrusted with the protection and management of genetic resources</li> <li>• provision of expertise and assistance by determine crops designated as genetic resources for agriculture, in particular to developing countries</li> <li>• verification of non-compliance and examination of its reasons, scope and frequency</li> </ul>
United States		<ul style="list-style-type: none"> <li>• cooperative</li> <li>• non-confrontational</li> <li>• simple</li> <li>• flexible</li> <li>• transparent</li> <li>• cost-effective</li> <li>• not to be developed in a vacuum</li> <li>• no differentiation between categories of Parties</li> </ul>	

**Table 2**  
**VIEWS EXPRESSED ON INSTITUTIONAL STRUCTURE, TRIGGERS AND PROCEDURAL SAFEGUARDS**

Party	Institutional structure	Triggers	Procedural safeguards
Argentina			
European Community	<ul style="list-style-type: none"> <li>• suggests establishment of standing compliance committee</li> <li>• committee to be small (about 7 members)</li> <li>• members to have technical and legal expertise</li> <li>• members to serve in personal capacity</li> <li>• membership to be based on equitable geographical representation of FAO regions</li> <li>• considers possible role of IARCs</li> </ul>	<ul style="list-style-type: none"> <li>• suggests self-trigger</li> <li>• suggests Party-to-Party trigger</li> <li>• suggests to consider other triggers, e.g.:               <ul style="list-style-type: none"> <li>• secretariat trigger</li> <li>• compliance committee trigger</li> <li>• IARCs trigger</li> </ul> </li> </ul>	<ul style="list-style-type: none"> <li>• notes positive correlation between type &amp; nature of procedural safeguards and permission to trigger the procedure, available range of measures &amp; decision making power of compliance committee</li> <li>• Parties concerned to be informed of the issue and to be allowed to make representations</li> <li>• clear time-limits</li> <li>• submissions to be supported by corroborating information</li> <li>• ill-founded or de minimis cases to be excluded</li> <li>• openness and confidentiality rules</li> </ul>
Kenya	<ul style="list-style-type: none"> <li>• suggests establishment of compliance committee</li> </ul>		
Mauritius	suggests that FAO provides guidance for development of institutional framework, national laws and capacity building		

Switzerland	<ul style="list-style-type: none"> <li>• suggests establishment of standing compliance committee</li> <li>• members to have technical, legal, public policy and management expertise</li> <li>• members to serve as government representatives</li> <li>• membership to be based on model used for Expert Group on standard MTA</li> </ul>	<ul style="list-style-type: none"> <li>• suggests self-trigger</li> <li>• suggests Party-to-Party trigger</li> <li>• suggests compliance committee trigger on the basis of consideration of national reports</li> </ul>	<ul style="list-style-type: none"> <li>• Party concerned to be allowed to full participation in the process, but not in the elaboration and adoption of decisions</li> <li>• decisions should include finding and responses</li> </ul>
United Arab Emirates	<ul style="list-style-type: none"> <li>• suggests that Commission on Genetic Resources develop training plans</li> <li>• suggests FAO provides expertise and assistance to determine crops designated as genetic resources for agriculture</li> <li>• suggests that Commission [on Genetic Resources], at its first meeting, verifies and examines non-compliance</li> </ul>		
United States	<ul style="list-style-type: none"> <li>• suggests that compliance is handled on an ad-hoc basis instead of creating any standing, permanent body</li> </ul> <p>notes that only Governing Body has legal authority to respond to a Party in material breach of the IT/PGRFA</p>		<ul style="list-style-type: none"> <li>• transparent procedures</li> </ul>

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

Party	Sources of information	Responses	Institutional embedding
Argentina		<ul style="list-style-type: none"> <li>• suggests collective response to prevent continued unauthorised use of material</li> </ul>	
European Community	<ul style="list-style-type: none"> <li>• compliance committee to be allowed to draw on a wide range of source of information</li> <li>• mentions as examples: information from a Party involved, individuals and NGOs</li> </ul>	<ul style="list-style-type: none"> <li>• suggests availability of a range of responses, taking into account cause, type, degree, and frequency of non-compliance</li> <li>• mentions as examples: provision of advice; facilitation of technical, financial and legal assistance; development of an action plan</li> <li>• primarily facilitative</li> <li>• need for stronger measures is under consideration and will depend on type and nature of provisions of IT/PGRFA</li> </ul>	<ul style="list-style-type: none"> <li>• Governing Body to provide policy guidance to compliance committee</li> <li>• envisages decision making power of the compliance committee</li> </ul>
Kenya		<ul style="list-style-type: none"> <li>• suggests suspension of parties and withdrawal of privileges, but only as a last option</li> <li>•</li> </ul>	

Mauritius			
Switzerland	<ul style="list-style-type: none"> <li>• compliance committee to be allowed to seek or receive relevant information from Parties, experts and competent IGOs and NGOs</li> </ul>	<ul style="list-style-type: none"> <li>• responses to take into account cause, type, degree, and frequency of non-compliance</li> <li>• primarily facilitative</li> </ul>	<ul style="list-style-type: none"> <li>• decisions to be taken by compliance committee</li> </ul>
United Arab Emirates		<ul style="list-style-type: none"> <li>• provision of advise</li> <li>• provision of assistance</li> </ul>	
United States		<ul style="list-style-type: none"> <li>• primarily facilitative</li> <li>• suggests provision of advise</li> <li>• suggests provision of assistance</li> <li>• no determinations of non-compliance</li> <li>• no adoption or recommendation to Governing Body of punitive actions</li> </ul>	

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

Party	Scope	Monitoring	Other views
Argentina	<ul style="list-style-type: none"> <li>• compliance with MTAs to be subject to national regulations</li> </ul>		
European Community	<ul style="list-style-type: none"> <li>• compliance with MTAs not to be part of compliance procedure</li> </ul>	<ul style="list-style-type: none"> <li>• suggests establishment of a national reporting system</li> <li>• suggests monitoring of consequences of action taken to resolve situations of non-compliance</li> <li>• possible role of IARCs in relation to monitoring mechanism is under consideration</li> </ul>	<ul style="list-style-type: none"> <li>• compliance procedure not to prejudice provision on settlement of disputes</li> <li>• review clause is under consideration</li> </ul>
Kenya			<ul style="list-style-type: none"> <li>• suggests designation of focal points</li> </ul>
Mauritius			
Switzerland	agreements of Governing Body with international institutions referred to in Article 15 IT/PGRFA to be subject to compliance procedure	<ul style="list-style-type: none"> <li>• suggests effective (standard format) and timely (periodical) national reporting system</li> </ul>	

United Arab Emirates			<ul style="list-style-type: none"><li>• suggests submission of country reports on crops designated as genetic resources and distribution of a synthesis of such reports</li></ul>
United States	<ul style="list-style-type: none"><li>• compliance with MTAs not to be part of compliance procedure</li></ul>		<ul style="list-style-type: none"><li>• stresses need for tailor-made procedures</li><li>• suggests adoption of initial procedures before adoption of more extensive procedures</li><li>• stresses that compliance procedure is not a substitute for domestic action to ensure compliance as of date of entry into force</li></ul>

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**CIRCULAR STATE LETTER OF 23 JUNE 2003 INVITING COUNTRIES TO SUBMIT VIEWS  
ON PROCEDURES AND OPERATIONAL MECHANISMS TO PROMOTE COMPLIANCE**

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Our Ref.: LE-67

23 June 2003

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 which was approved by the FAO Conference at its Thirty-first Session in November 2001, through Resolution 3/2001, in accordance with Article XIV of the FAO Constitution.

Article 21 of the Treaty, Compliance, requires the first meeting of the Governing Body of the Treaty, which will take place after the Treaty has been ratified by 40 States, to 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.

Paragraph 6 of Resolution 3/2001 gave the task of acting as Interim Committee for the Treaty to the Commission on Genetic Resources for Food and Agriculture and requested it to undertake various tasks to prepare for the entry into force of the Treaty. Paragraph 8(d) of the Resolution mandated the Interim Committee 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 Commission on Genetic Resources for Food and Agriculture met for the first time as Interim Committee for the International Treaty on Plant Genetic Resources for Food and Agriculture. As noted in paragraph 13 of the attached Report of the Interim Committee, it, “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”.

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 22 August 2003 to:

Mr José T. Esquinas-Alcázar  
Secretary, Commission on Genetic Resources for Food and Agriculture  
FAO Headquarters  
00100 Rome, Italy

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

As noted in paragraphs 14, 21 and 22 of the Report of the Interim Committee, the convening of the Open-Ended Expert 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 of the Working Group will be forwarded to Members.

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**CIRCULAR STATE LETTER OF 3 MARCH 2004,  
EXTENDING THE DEADLINE FOR SUBMISSIONS**

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Our Ref.: G/LE-69

3 March 2004

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 Circular State Letter dated 23 June 2003, informing that the Commission on Genetic Resources for Food and Agriculture, acting as Interim Committee for the International Treaty on Plant Genetic Resources for Food and Agriculture, had met for the first time in October 2002. At that meeting, the Interim Committee “decided to establish an Open-ended Expert Working Group ...” to address, inter alia, “... procedures to promote compliance with the Treaty” and “... requested the Director-General to collect countries’ views on compliance with the Treaty”. The Interim Committee also “... agreed that countries’ submissions in this process should be placed on the FAO Internet web-site”.

The above-mentioned Circular State Letter invited countries to forward their views by 22 August 2003. A number of replies have been received and are now being posted on the FAO Internet web-site at <http://www.fao.org/ag/cgrfa/news.htm>, together with a Background Study Paper that explores the development of compliance provisions in other international agreements and their possible relevance for the International Treaty, which may be helpful to those that are still considering their positions.

The original deadline for receipt of comments on compliance had been established on the basis that the First Meeting of the Open-ended Expert Working Group would take place during 2003. This was dependent on the availability of adequate extra-budgetary resources, which have so far not been forthcoming. Consequently, the meeting will be held during the first half of 2004, provided that by that date sufficient extra-budgetary resources become available. The deadline for receipt of Members’ views on compliance with the Treaty has therefore been extended to 16 April 2004. All such replies should be forwarded to:

Mr José T. Esquinas-Alcázar  
Secretary  
Commission on Genetic Resources for Food and Agriculture acting as Interim Committee for the  
International Treaty on Plant Genetic Resources for Food and Agriculture  
FAO Headquarters  
00100 Rome, Italy

In accordance with the request of the Interim Committee, the Secretariat will ensure that country submissions are made available on the above-mentioned FAO Internet web-site, and will compile and

analyse the replies and produce a report that might form the basis of the Open-ended Expert Working Group's deliberations on this question.

The date and venue of the meeting of the Working Group will be forwarded to Members as soon as the necessary extra-budgetary resources become available.

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**SUBMISSIONS RECEIVED**

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**ARGENTINA**

El art. 21 del Tratado establece que las Partes en su primera reunión deberán examinar procedimientos de cooperación y mecanismos operacionales para promover la observancia del Tratado. En virtud de ello, durante primera reunión del Comité Interino para el Tratado sobre Recursos Fitogenéticos para la Alimentación y la Agricultura se decidió establecer un grupo de trabajo de composición abierta para examinar varios temas jurídicos, y entre ellos el tema de los procedimientos para promover el cumplimiento con el Tratado. A esos efectos, se solicita a los países que presenten sus opiniones sobre el cumplimiento con este Tratado y se ha preparado el documento CGRFA/MIC-1/02/7 en el cual se analizan los regímenes existentes en este momento para promover la observancia en otros tratados multilaterales.

Con los comentarios preliminares sobre el tema de cumplimiento del Tratado, la Argentina considera que deben enfatizarse aquellos aspectos relacionados con la creación de capacidades, la cooperación entre las Partes y el asesoramiento. Es necesario crear un sistema orientado hacia la facilitación de la observancia de las normas por parte de los Estados Partes del Tratado.

Teniendo en cuenta que el Tratado establece un sistema de acceso facilitado para ciertos cultivos con el fin de garantizar la seguridad alimentaria a nivel mundial, se considera que el régimen de observancia no debiera ser de tipo sancionatorio sino, por el contrario, uno de tipo simplificador y no-controversial.

En el caso de los países en desarrollo, la provisión de cooperación y asistencia técnica para promover la observancia del Tratado es fundamental.

Asimismo, con respecto a las cláusulas que se incluyan en los Acuerdos de Transferencia de Materiales, éstas deben regirse por las normas que regulan los contratos privados. En cada contrato en particular podrán preverse, sanciones por incumplimiento.

En este sentido será necesario prever mecanismos para asegurar que existan procedimientos adecuados para garantizar que se respete el objetivo del Tratado que es garantizar la seguridad alimentaria a través del uso autorizado del material genético. Si en algún caso no se respetara el objetivo del Tratado, y se diera un uso no autorizado al material, todos los Estados deberán cooperar para evitar que aquellos que dieran tal uso puedan continuar haciéndolo. En particular, el Estado donde funciona el organismo que recibe el material deberá procurar el cumplimiento del art. 12.3 del Tratado, facilitando la ejecución de las penas previstas en el contrato de transferencia de material e impidiendo que se le dé un uso diferente al previsto.

Para ello será necesario promover el establecimiento de normas nacionales de reconocimiento de sentencias que garanticen el respeto por las cláusulas establecidas en los Acuerdos de Transferencia de Materiales y permitan a las partes ejecutar las penalidades previstas en los mismos cuando exista un incumplimiento contractual. En efecto, el Tratado prevé que las partes deben garantizar la posibilidad de presentar un recurso, en consonancia con los requisitos jurisdiccionales aplicables, en virtud de sus sistemas jurídicos, en caso de que surjan controversias contractuales en el marco de tales acuerdos.

En síntesis, se considera que el Artículo 21 del Tratado debe implementarse reforzando los aspectos relacionados con la creación de capacidades, la cooperación entre las Partes, el

intercambio de información y el asesoramiento mutuo con el fin de permitir a los países generar los marcos jurídicos adecuados para el cumplimiento del Tratado, así como los sistemas y procedimientos internos tendientes al cumplimiento de los Acuerdos de Transferencia de material.

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### **BENIN**

La République du Bénin a activement pris part aux différentes phases des discussions qui ont abouti à l'élaboration et l'adoption du Traité international sur les ressources phytogénétiques pour l'alimentation et l'agriculture. L'Institut national des recherches agricoles du Bénin (INRAB) a été présent à chacune des invitations de la FAO.

Le Gouvernement du Bénin a déjà élaboré les outils relatifs à la ratification et à la signature dudit traité et les a soumis à l'Assemblée nationale pour son adoption.

Aussi voudrais-je vous confirmer que le Bénin n'au aucune objection particulière quant à l'application dudit traité.

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### **BHUTAN**

This is with reference to your letter No: G/LE-69 of 3 March 2004 with regard to the comments on the International Treaty on Plant Resources for Food and Agriculture for the First Meeting of the Open-ended Expert Working Group. In this context, I am pleased to inform you that the 81st Session of the National Assembly of Bhutan has endorsed the International Treaty on Plant Genetic Resources for Food and Agriculture in August 2003.

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### **BURKINA FASO**

Il me plaît de vous traduire tout l'intérêt que mon pays porte pour le Traité international sur les ressources phytogénétiques pour l'alimentation et l'agriculture et le souhait de le voir entrer en vigueur dans les meilleurs délais. Le Burkina Faso après avoir activement pris part aux différentes négociations ayant abouti à l'adoption du Traité a très vite signifié son intérêt en signant ledit Traité le 9 novembre 2001.

Depuis lors, notre point focal ayant pris part à ces négociations, a organisé des ateliers de sensibilisation à l'adresse des départements ministériels directement ou indirectement impliqués dans la gestion des ressources phytogénétiques.

Le Conseil des Ministres du Burkina Faso a soumis à notre Assemblée Nationale un avant projet de loi en vue de permettre la ratification. Me référant à toutes ces actions, j'ai l'avantage de vous rassurer que des dispositions diligentes sont prises pour une ratification très prochaine dudit Traité.

Tout en poursuivant les processus de ratification selon les règles de mon pays, nous soulignons l'importance et l'impact des articles 22 dans son alinéa 22.3 (a) que nous rappellerons lors de notre ratification. Nous nous permettrons d'approcher nos juristes pour mieux appréhender l'article 12 particulièrement dans ses alinéas 12.3 (d) et (e).

Je tiens particulièrement à vous renouveler toute ma reconnaissance et tous mes remerciements à votre excellence et à travers vous le Directeur Général de la FAO, pour vos soutiens et appuis

multiples qui ont permis à notre Représentant/Point focal de prendre part durant les sept (7) ans de négociations, aux différentes rencontres.

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## EGYPT

The Agriculture Research Centre, representing the Ministry of Agriculture and Agrarian Reform, and being the competent authority responsible for applied agricultural research and the exchange of the majority of plant genetic resources, especially with the International Agriculture Research Centres, will take a number of actions to promote compliance with the provisions of the International Treaty on Plant Genetic Resources for Food and Agriculture, signed by Egypt on 29 August 2002, as follows:

1. Establish a special mechanism in the form of a committee comprising specialists in the field of plant genetic resources and their use in the various breeding programmes, to be provided with the necessary information on plant genetic resources, both indigenous and foreign, and their origins and uses according to the Treaty.
2. Develop a protocol for the work of this committee as regards means to implement the Treaty, and dealings of the Committee with other parties relevant to plant genetic resources according to national legislation and international law, and establish necessary standards to promote compliance with the treaty and implement legislation on the exchange of material, both indigenous and foreign.
3. The Committee will take required measure to promote compliance, and provide advice and guidance to concerned parties, and inform them of the provisions of the treaty to avoid violations and disputes.
4. Strengthen institutional links between bodies concerned with the exchange of plant genetic resources, and to ensure communications and cooperation with relevant international organizations.
5. Coordinate guidance and educational efforts as regards the compliance with the provisions of the treaty and its implementation.
6. Establish continuous contacts with FAO Commission for Plant Genetic Resources for Food and Agriculture, and study its conclusions and recommendations with a view to their implementation in Egypt.

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## EUROPEAN COMMUNITY

### *Introduction*

Many multilateral agreements have developed compliance mechanisms or are in the process of developing them. The EU's submission draws on existing compliance mechanisms and those still under development. It highlights the key elements of these compliance mechanisms, identifies options and sets out the EU's views on a number of important elements.

Parties to the International Treaty on Plant Genetic Resources for Food and Agriculture ("International Treaty") are obliged under international law to comply with their obligations under the Treaty. To assist Parties to meet these obligations the International Treaty includes a provision which states that "the Governing Body shall, at its first meeting, 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. The procedures and mechanisms shall include monitoring, and offering advice or assistance, including legal advice or legal assistance, when needed, in particular to developing countries and countries with economies in transition.” (Article 21 of the International Treaty).

In accordance with Article 21, the EU believes that the procedure should be non-adversarial, non-judicial, cooperative, transparent, effective and forward-looking. It should help to prevent the occurrence of disputes and cases of non-compliance.

Non-compliance procedures differ fundamentally from dispute settlement procedures and so should not prejudice the provision on settlement of disputes. In addition, it should be noted that the compliance procedures and mechanisms address non compliance by Parties with provisions of the International Treaty and not disputes arising between individuals over terms of a MTA.

### *Elements of a Compliance Procedure*

The following elements are commonly found in compliance mechanisms:

- A. Objectives
- B. Size and composition of any committee established
- C. Function and mandate
- D. Actors entitled to raise compliance issues in the procedure
- E. Potential measures
- F. Sources of information

In addition, Article 21 states that the mechanisms and procedures shall include monitoring. These elements will be considered in more detail below:

#### **A. Objectives**

The objective of the compliance regime of the International Treaty is to promote compliance with the provisions of this Treaty and to address issues of non-compliance (see Article 21).

#### **B. Size and composition of any committee established**

A Compliance Committee is usually established by a decision of the Conference of the Parties, in this case the Governing Body of the International Treaty. The Committee would administer the compliance regime. In establishing the Committee the following elements should be considered:

- Size
- Expertise of the members
- Capacity of the members
- Division of seats in the Committee

The EU favours a small (e.g. about 7 members) Committee composed of technical and legal experts who serve in their personal capacity. The mandate would provide for the terms of office and could include staggered terms to allow for continuity as well as the input of new thinking. The seats in the Committee should be divided on the basis of a formula that secures an equitable geographical representation of experts from different FAO regions. Consideration should be given to the role of IARCs within the Committee.

#### **C. Function and mandate**

The EU considers that the Governing Body would establish a standing Committee and provide its mandate. The Governing Body should also provide further policy guidance as and when appropriate. The Committee could:

- Examine individual cases of non-compliance as well as general compliance issues.

- Advise Parties and facilitate assistance to Parties experiencing difficulties, including follow up actions.
- Recommend or decide on measures.
- Report to the Governing Body on its activities.

There should also be procedural safeguards to ensure the proper functioning of a compliance mechanism, which could include:

- Parties concerned to be informed of the issue and allowed to make representations.
- Clear time-limits.
- Submissions to be supported by corroborating information.
- Exclusion of the basis of ill-founded or *de-minimis* cases.
- Openness and confidentiality rules.

The type and nature of the safeguard measures is closely related to the decision making function of the Committee, the range of measures that are available to the Committee and who is permitted to trigger the procedure. The more decision making power the Committee has the greater the importance of having effective safeguard measures.

#### **D. Actors entitled to raise compliance issues in the procedure**

This is a key element of any compliance regime: Who may initiate the process (often referred to as “triggering”) and bring matters to the attention of the Committee?

With respect to individual cases of non-compliance, the following actors should be permitted to trigger the compliance procedure:

- Self-trigger
- Party to Party trigger

Consideration should be given to whether, and to what extent, other actors should be permitted to trigger the compliance procedure, for example:

- Submission by Secretariat
- Committee itself
- IARCs

#### **E. Potential measures**

A range of measures could be available to the Committee so that it can act quickly and flexibly taking into account such factors as the cause, type, degree, duration frequency of non-compliance: Examples of such measures are:

- Provision of advice
- Facilitation of technical, financial and legal assistance
- Request to concerned Party to develop an Action Plan to bring it back into compliance

Some compliance procedures include stronger measures such as issuance of cautions, declarations of non-compliance and, where necessary, partial or full suspension of specific rights and privileges of the Party concerned in accordance with international law. The need for stronger measures will be dependent on the type and nature of the provisions in the Treaty. In accordance with Article 21, we consider that the primary focus should be on supportive measures such as the facilitation of advice and assistance. Also, consideration should be given to who, i.e. the Committee or the Governing Body, should take measures.

## **F. Sources of information**

Consideration should be given to the sources of information the Committee may take into account when considering cases of specific and general compliance. A wide range of sources of information are available e.g. information gained from monitoring; information may also be available from individuals or NGOs. The Committee should be able to draw on a wide range of information which it considers relevant, including information from a Party involved in a case of non-compliance.

### *Monitoring*

Article 21 specifically states that the procedures and mechanisms shall include monitoring. Such monitoring could include, for example, national reporting and the monitoring of the consequences of action taken to resolve situations of non-compliance. The role of the IARCs should be considered.

### *Possible Review*

Also, consideration should be given to the inclusion of a review clause to examine the effectiveness of the mechanism.

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## **KENYA**

Pursuant to paragraph 45 -on the report of the interim committee for the International Treaty on Plant Genetic Resources for food and Agriculture, and the Director General's request for views from member states on compliance with the treaty, Kenya hereby submits its views as follows.

1. The contracting parties should identify a reference point known to the Governing Body for the implementation of this Treaty.
2. The Governing Body should use the instrument for compliance to assist contracting parties particularly developing countries and countries with economies in transition to comply to the Treaty through:
  - (a) Technical and legal advice
  - (b) Material and Institutional Support.
3. Developing countries and economies in transition should get special assistance to comply to certain elements of the Treaty e.g. Farmers Rights, Benefit Sharing and IPR issues.
4. For clarity in compliance the terms used should be clearly defined to avoid different interpretations by parties.
5. The Governing Body should put in place a mechanism for monitoring compliance to assist in timely handling of non-compliance.
6. Transparency and tolerance should be the key to the Governing Body's, procedures and mechanisms, this will in return foster compliancy and confidence. It should be non-coercive, friendly and voluntary in nature.
7. Compliance Committee or Secretariat to remove the burden from the Governing Body. A compliance committee could be constituted to handle day to day issues arising from non-compliance. This could be constituted from parties' representatives to the FAO.

8. The suspension of parties or withdrawal of certain privileges to parties due to non-compliance should be the last option to be thought of. This presupposes that non-compliance is due to circumstances beyond the parties' control who need assistance to comply.

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### MAURITIUS

1. The idea of establishing an open ended Expert Working Group to address, inter alia procedures to promote compliance with the treaty is being supported. This will assist developing countries to participate in establishing procedures to promote compliance.

2. For effective national enforcement, developing countries would require guidance from the FAO for the development of appropriate institutional framework, drafting of appropriate national laws and regulations and in capacity building.

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### PAKISTAN

#### *Preamble*

The places of initial domestication of different crops are called "Centres of Origin", many of which are located in developing countries and are source of germplasm to develop new high yielding varieties adapted to biotic and a-biotic stresses. Since no nation has within its borders the desired spectrum of genetic resources, international collection and exchange occurs. Not all participants in this exchange, however, view the benefits as fairly balanced between donors and recipients. Another issue is that valuable genetic resources not yet collected and preserved may be endangered by land use change in some countries. Considering the importance of genetic resources, the FAO in 1983 adopted an undertaking for conservation of these resources to be exchanged openly and with a minimum restriction. On the other hand, the 1993 "Convention on Biological Diversity (CBD)" provides a framework for dealing with all biodiversity, re-cognizing that it is a subject to the jurisdiction of states which have a sovereign right to regulate access to it and to set the terms under which such access will be granted. Due to conflicts in two International Treaties, the FAO has adapted a new treaty on "Plant Genetic Resources for Food and Agriculture" in 2001. The new treaty will enter into force and govern the international exchange of designated crop genetic resources. It will also attempt to resolve longstanding issues over how the benefits derived from the use of genetic resources are shared. In order to proceed further, the FAO has constituted an Interim Committee, the meeting of which had held on 9-11 October, 2002.

#### *Brief and Comments*

International Treaty on Plant Genetic Resources for Food and Agriculture was adopted by the 31st Session of FAO Conference. The international treaty would facilitate the global plan of action for the Conservation and Sustainable Use of Plant Genetic Resources for Food and Agriculture. The plan of action is a set of recommendations prepared from country reports and which mainly covers the following:

- 1- Conservation of Plant Genetic Resources for Food Security.
- 2- Sustainable Utilization of Genetic Resources.
- 3- Fair and Equitable Sharing of Benefit Arising from Genetic Resources.
- 4- Assistance of Countries and Institutions to Identify Priority of Action.
- 5- Strengthen existing Programmes and Enhance Institutional Capacity.

Eighty countries have ratified this treaty for its implementation. Since Plant Genetic Resources are primary building blocks for the evaluation of high yielding, wider adaptability and superior traits crop varieties so great emphasis has been placed in this treaty on their conservation and sustainable use and capacity building of the organization concerned with conservation of genetic resources. Moreover, this agreement is going to be quite significant in managing and utilizing the Plant Genetic Resources held in genebank.

It is evident from the report that the objectives of the treaty would be supported by a number of initiatives, such as plans to establish a global "Conservation Trust". The Trust would provide funds to help national government and institutions to develop an economically efficient and sustainable system for *ex-situ* conservation. An appeal has been made to all countries to ratify the treaty as soon as possible. This agreement is going to be quite significant in managing and utilizing the Plant Genetic Resources held in genebank. Due to importance of the FAO treaty on Plant Genetic Resources for Food and Agriculture in conservation and exchange on mutually agreed terms, the Government of Pakistan with approval of Cabinet has already deposited its "Instrument of Accession" to the treaty with the Director-General, FAO.

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## SWITZERLAND

Switzerland welcomes the possibility to make comments on the application of the International Treaty (IT) with a view elaborating co-operative and effective procedures and operational mechanisms to promote compliance with the provisions of the IT and to address issues of non-compliance, pursuant to Article 21 of the Treaty.

Switzerland believes that the effective procedures and mechanisms for assessing and promoting compliance, preventing non-compliance, and restoring compliance are very important to achieve the objectives of the IT. Switzerland therefore welcomes and will actively support the elaboration of such procedures and mechanisms.

On the core elements and possible outcomes of such a regime, Switzerland has the following views:

### *Institutions*

A standing committee (the Compliance Committee) should be established by the Governing Body to guide the procedures and mechanisms related to compliance.

The Compliance Committee should consist in Government representatives with knowledge in the relevant sciences (legal, technical, public policy and management). It should be composed of members of all the FAO regional groups, *in analogiam* to the decision adopted at the first meeting of the CGRFA acting as the Interim Committee of the IT on the composition of the Expert Group on the terms of the Standard MTA.

### *Reporting*

Information is a key element for reviewing Contracting Parties' compliance with the IT. Therefore and effective and timely reporting systems should be periodical and in a standard form ensuring comparability of the reports.

The reports should be addressed to the Compliance Committee and contain information on the implementation by the Contracting Parties of the all legal obligations, including Art. 12.5. Consequently the assessment of the Compliance Committee should cover all the respective elements contained in the reports. On the other hand, the implementation of MTAs between

providers and users of the plant genetic resources for food and agriculture shall not be subject to the compliance procedure but, pursuant to Art. 12.5, be dealt with under the national legal systems of the Contracting Parties concerned.

The Secretary of the Governing Body of the IT should also act as the Secretary of the Compliance Committee.

#### *Submissions*

Apart from the information contained in the reports, the Compliance Committee should also consider questions on compliance based on information submitted by a Party with respect to itself or with respect to another Party.

#### *Procedures and outcomes*

On the basis of the reports, the Compliance Committee will have to assess whether a Party is in compliance with its obligations and, if compliance has not been demonstrated, trigger the compliance procedure.

The Party concerned should be entitled to participate fully in the process, but not in the elaboration and adoption of the decision.

The Compliance Committee may seek or receive relevant information from Parties, experts and/or competent IGOs and NGOs.

The Compliance Committee takes a decision on every case treated. The decision should state whether the Party concerned is in compliance or not. If a Party is found to be in no-compliance, the decision should include consequences and measures. Such consequences and measures should primarily be aimed at assisting the Party concerned to fulfill its obligations and come back into compliance. They should take into account the cause, type, degree and frequency of non-compliance.

The Compliance Committee should report to the Governing Body on its work, the cases treated and the decisions taken.

#### *IARCs*

Based on the agreements signed by the IARCS and the other relevant international institutions with the Governing Body, the IARCs should also be subject to the compliance procedures and mechanisms. However, they may be adapted to take into account the specific status of the IARCs or the other relevant international institutions.

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### **SYRIAN ARAB REPUBLIC**

The Ministry of Agriculture and Agrarian Reform presents its compliments and refers to the Director-General's letter Ref. LE-67 concerning the "Effective Procedures and Operational Mechanisms to Promote Compliance with the Treaty on Plant Genetic Resources for Food and Agriculture".

We have the pleasure to inform you that the following measures and procedures have been undertaken:

1. The Syrian Arab Republic undertakes legal procedures to ratify the Treaty and issuing related Presidential Decree.

2. The Ministry of Agriculture and Agrarian Reform has prepared, in cooperation with FAO, a project on Formulation of a Legislation on Plant Genetic Resources. The draft legislation is in harmony with the International Treaty on Plant Genetic Resources and it will be endorsed after obtaining the necessary legal approval from the relevant units.
3. The General Commission for Agricultural Research has been identified as a National Focal Point coordinating all issues related to the Plant Genetic Resources.
4. The General Commission for Agricultural Research conducts campaigns to collect, assess, maintain and preserve Genetic Resources by both medium and deep cooling. Field activities to maintain the Genetic Resources in situ, and awareness campaigns for farmers to participate in managing these sites are also conducted.
5. Additional administrative support has been given to carry out scientific activities related to Genetic Resources. From managerial point of view, the Department of Genetic Resources has been separated to act as an independent unit linked to the General Director of the General Commission for Scientific Agricultural Research aiming at activating and facilitating its tasks.

Through the International Treaty on Genetic Resources, our Ministry aims that FAO and donors work on the following:

- Provide appropriate technical training for staff working on Genetic Resources.
- Identify operational and efficient mechanisms aiming to provide the required technical assistance from the Governing Body of the Treaty.

Kindly accept our highest consideration.

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#### **UNITED ARAB EMIRATES**

1. The Commission on Genetic Resources, represented by FAO, shall develop training plans for personnel in the relevant ministries and institutes who are entrusted with the management and protection of genetic resources for food security and sustainable agriculture. The purpose would be to explain the objectives of the Treaty and technical and scientific aspects for its implementation, and introduce them to all crops designated genetic resources and ways to manage and conserve these crops, prevent their deterioration and their uses in agriculture.
2. FAO shall provide member countries, in particular developing countries, with expertise and assistance to determine crops designated genetic resources for agriculture.
3. The Commission, represented by FAO, shall require signatory countries to submit initial reports- as country reports- on crops designated as genetic resources on the basis of surveys, and a synthesis of such reports to be distributed to signatory countries for use by plant breeders in these countries.
4. Ensure transparency between the Commission and signatories to the Treaty, and compliance requirements should be simple, flexible, easy to implement and removed from the traditional approach based on the imposition of penalties on states that do not comply with the Treaty. Instead, the Commission should provide advice and assistance to these states with the view of promoting compliance with the Treaty.

5. The Commission shall, in its first meeting, verify those countries that failed to comply with the Treaty, and to examine the reasons for non-compliance, its scope and frequency. The Commission shall, however, assist these countries to overcome obstacles in this respect, and thus ensure compliance with the Treaty as required.

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### UNITED STATES OF AMERICA

Pursuant to paragraph 13 of the Report of the Interim Committee for the International Treaty on Plant Genetic Resources for Food and Agriculture (CGRFA-MIC-1/02/REP) and the Director General's 23 June 2003 notice, the United States hereby submits its views on compliance with the International Treaty on Plant Genetic Resources for Food and Agriculture. (IT-PGRFA).

Article 21 of the IT-PGRFA states: "The Governing Body shall, at its first meeting, 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. These procedures and mechanisms shall include monitoring, and offering advice or assistance, including legal advice or legal assistance, when needed, in particular to developing countries and countries with economies in transition."

The compliance procedures and mechanisms should be cooperative and non-confrontational.

United States supports non-confrontational compliance procedures and mechanisms focused on promoting compliance and assisting any Parties experiencing difficulties meeting their obligations. The procedures and mechanisms should be simple, flexible and primarily facilitative in nature. This view is in line with Article 21, whose textual focus is on the cooperative side of avoiding and addressing compliance problems. A confrontational, quasi-judicial regime that makes "determinations" of non-compliance would be inconsistent with this mandate. Moreover, there are separate procedures available for Parties that seek a judicial process. They may pursue dispute settlement under Article 22.

The focus of the compliance procedures and mechanisms should be on offering advice and assistance. While, as noted below, Parties should have taken the necessary steps to be in compliance before ratifying the Treaty, it is possible that unexpected situations might arise leading to non-compliance with a particular Treaty provision. Assistance to address such situations is what is envisioned by the reference in Article 21 to developing a "cooperative" compliance system that "promotes" compliance by offering "advice or assistance, including legal advice or assistance.

They should not be punitive. Consistent with the overall compliance promoting focus of Article 21, it would be inappropriate for the mechanisms and procedures to take or recommend punitive actions against parties perceived to be in non-compliance. As a legal matter, only the Governing Body, and not a sub-entity, has legal authority to respond to a Party in material breach of the agreement, as provided in Article 60 of the Vienna Convention on the Law of Treaties. Furthermore, even recommending punitive measures to the Governing Body would be inconsistent with the mandate of Article 21 and would be counter-productive to the goal of promoting compliance.

Procedures and mechanisms should suit the unique needs of the Treaty. The compliance procedures and mechanisms must be designed to fit the specific needs and unique features of the IT-PGRFA. Although elements from other regimes (environmental and/or non-environmental) may ultimately be adapted for IT-PGRFA purposes, a wholesale adoption of a regime from a separate agreement is not appropriate.

Transparency is essential. The procedures and mechanisms should be as transparent as possible. Transparency is likely to foster compliance, as well as confidence on the part of both Parties and the public that the compliance process is credible, fair and effective.

Compliance procedures and mechanisms should not be developed in a vacuum. Rather, they should respond to the actual compliance problems Parties are facing. Although the first meeting of the Governing Body might choose to approve initial limited procedures and mechanisms to promote compliance, it would be advisable to wait until we have a better understanding of the actual compliance problems faced by Parties in the first years of Treaty implementation. Then, more extensive procedures and mechanisms could be developed if needed to specifically address real compliance issues.

Compliance procedures and mechanisms must be cost-effective. Given the limited budget and secretariat resources available, the Contracting Parties need to be mindful about the possible costs in creating any new standing, permanent treaty bodies and instead should handle compliance on an *ad hoc* basis. It is important to consider whether the money to be spent on particular procedures or mechanisms more productively could be spent on other mechanisms or activities that would efficiently and directly advance Treaty compliance and other objectives.

Countries should ensure that they have the domestic authority to comply prior to becoming Parties to IT-PGRFA. As noted in both the UNEP Guidelines on Compliance and Enforcement and the recently adopted ECE Guidelines on the same topic, it is vital that States only join a treaty, including this one, once they have ensured that all the necessary domestic laws and institutions are in place to be in compliance once they join. Thus, the compliance procedures and mechanisms should not be viewed as a substitute for countries' development of their own domestic authority, rather it should be viewed as a tool in helping Parties respond to compliance issues that may arise once their initial domestic authority has been obtained.

There should be no differentiation within the compliance procedures and mechanisms. The compliance procedures and mechanisms should apply equally to all Parties to the Treaty. The Treaty does not differentiate among categories of Parties with respect to the core control obligations, and the compliance mechanism should not do so either. Indeed there is no treaty basis providing otherwise, and the compliance regime should be designed to support the Treaty's basic design, not alter it.

Compliance procedures and mechanisms should not include contractual enforcement of MTA. The Article 21 procedures and mechanisms focus on improving Parties compliance with their international obligations under the IT-PGRFA, not an individual contract developed between two entities under the multilateral system. Indeed the Treaty separately provides for treatment of disputes arising under the MTA, see Article 12.5. Therefore the compliance mechanisms and procedures should not include enforcement matters under the MTA.