



<b>Item 15 of the Draft Provisional Agenda</b>
<b>INTERNATIONAL TREATY ON PLANT GENETIC RESOURCES FOR FOOD AND AGRICULTURE</b>
<b>FIRST SESSION OF THE GOVERNING BODY</b>
<b>Madrid, Spain, 12-16 June 2006</b>
<b>RELATIONSHIP BETWEEN THE GOVERNING BODY AND THE GLOBAL CROP DIVERSITY TRUST</b>

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TABLE OF CONTENTS

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	<i>Page</i>
Introduction	1
Suggested Action by the Governing Body	2
<i>Appendix 1:</i> Draft Relationship Agreement between the Global Crop Diversity Trust and the Governing Body	3
<i>Appendix 2:</i> Procedures for the appointment of Members of the Executive Board of the Global Crop Diversity Trust	6
<i>Annex 1:</i> Profile of the Executive Board of the Global Crop Diversity Trust and the staggering of terms	9
<i>Annex 2:</i> Relevant provisions of the Constitution of the Trust	10



## INTRODUCTION

1. The Global Crop Diversity Trust is an international fund with its own legal personality established under the Agreement for the Establishment of the Global Crop Diversity Trust, which entered into force on 21 October 2004. The Establishment Agreement now has some 22 Parties.
2. The objective of the Trust is to ensure the long-term conservation and availability of plant genetic resources for food and agriculture with a view to achieving global food security and sustainable agriculture. For this purpose, the Trust has established an endowment fund to provide grants to support the maintenance of eligible collections and promote more effective, goal-oriented, economically efficient and sustainable global systems of *ex situ* conservation.
3. The governance of the Trust is provided by an Executive Board of Trustees (“the Executive Board”), composed of four members appointed by the Governing Body of the Treaty, four members appointed by the Donors’ Council of the Trust, one member each appointed by the Director General of FAO and the Chair of the Consultative Group on International Agricultural Research (CGIAR), the Executive Secretary as an *ex officio* member, and up to two other members co-opted by the Executive Board itself. The members of the Executive Board, apart from the Executive Secretary and the members appointed by the Director-General of FAO and the Chair of the CGIAR, serve in a personal capacity.
4. The plans to establish the Global Crop Diversity Trust, then referred to as the Global Conservation Trust, were reported to the FAO Commission on Genetic Resources for Food and Agriculture at its Ninth Regular Session in October 2002. In particular, after discussions with member States of the Commission, it was reported that “*the Trust would operate in the framework of the International Treaty, and be an essential element of its funding strategy. The overall policy guidance for the Trust would come from the Governing Body of the Treaty.*” The initiative to establish the Global Crop Diversity Trust was universally appreciated and supported by the Commission, and appeals were made to donors to assist in the establishment of the Trust.
5. The Constitution of the Trust provides in its Article 7 that the Trust will enter into a agreement with the Governing Body of the International Treaty on Plant Genetic Resources for Food and Agriculture defining the relationship of the Trust with the International Treaty. The Constitution further provides that the relationship shall include the following provisions:
  - (a) *recognition of the Trust as an essential element of the Funding Strategy of the International Treaty;*
  - (b) *the authority of the Governing Body of the International Treaty to provide overall policy guidance to the Trust on all matters within the purview of the International Treaty;*
  - (c) *reporting obligations of the Trust to the Governing Body of the International Treaty;*  
*and*
  - (d) *recognition that the Trust will be free to take its own executive decisions on disbursement of funds, within the general framework of the overall policy guidance of the Governing Body of the International Treaty.*
6. As noted above, the Constitution of the Trust further provides for four members of the Executive Board to be appointed by the Governing Body of the Treaty, or prior to the entry into force of the Treaty, by the FAO Commission on Genetic Resources for Food and Agriculture acting as Interim Committee for the Treaty. It was under these powers that the FAO Commission acting as Interim Committee for the Treaty, at its second session in November 2004, requested the Interim Panel of Eminent Experts, as currently constituted, to continue to oversee the affairs of the Trust. This interim arrangement should last until the Executive Board of the Trust had been constituted, in accordance with the Trust’s Constitution, following the nomination by the

Governing Body of its members on the Executive Board, at its first meeting. The Interim Committee further recommended that the Governing Body of the International Treaty should, at its first meeting, formalize its relationship with the Trust.

#### **SUGGESTED ACTION BY THE GOVERNING BODY**

7. A draft Relationship Agreement, prepared by the Secretariat, in cooperation with the Secretariat of the Trust, is attached as *Appendix 1* to this document. The Governing Body may wish to consider the draft and adopt this agreement.

8. The Governing Body may also wish to decide upon the appointment of four members of the Executive Board of the Trust. Possible procedures for the selection and appointment of the four members of the Executive Board are attached as *Appendix 2* for the guidance of the Governing Body. The Donors' Council will be in a position to report to the Governing Body on its own nominations for the Executive Board.

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**RELATIONSHIP AGREEMENT BETWEEN THE GLOBAL CROP DIVERSITY TRUST  
AND THE GOVERNING BODY OF THE INTERNATIONAL TREATY ON PLANT  
GENETIC RESOURCES FOR FOOD AND AGRICULTURE  
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**Preamble**

WHEREAS the Global Plan of Action for the Conservation and Sustainable Use of Plant Genetic Resources for Food and Agriculture adopted at the International Technical Conference on Plant Genetic Resources for Food and Agriculture in Leipzig in June 1996 (hereinafter referred to as the “Global Plan of Action”) provides for the development and support of a rational, efficient and sustainable system of genetic resources collections around the world;

WHEREAS the International Treaty on Plant Genetic Resources for Food and Agriculture (hereinafter referred to as the “International Treaty”) adopted by the Conference of the Food and Agriculture Organization of the United Nations (hereinafter referred to as “FAO”) at its Thirty-first Session in November 2001 provides for Contracting Parties to cooperate to promote the development of an efficient and sustainable system of *ex situ* conservation, and further provides for a Funding Strategy for the implementation of the International Treaty;

WHEREAS the International Treaty also provides that due attention be given to the need for adequate documentation, characterization, regeneration and evaluation, and for promoting the development and transfer of appropriate technologies for this purpose with a view to improving the sustainable use of plant genetic resources for food and agriculture, and further provides for the encouragement and development of international plant genetic resources networks and the development and strengthening of a global information system;

WHEREAS FAO and the Future Harvest Centres of the Consultative Group on International Agricultural Research (hereinafter referred to as the “CGIAR”) have promoted the establishment of a Global Crop Diversity Trust, in the form of an endowment with the objective of providing a permanent source of funds to support the long-term conservation of the *ex situ* germplasm on which the world depends for food security, to operate as an essential element of the Funding Strategy of the International Treaty, with overall policy guidance from the Governing Body of the International Treaty, and within the framework of the International Treaty;

WHEREAS the FAO Commission on Genetic Resources for Food and Agriculture, at its Ninth Regular Session in October 2002, recorded that the initiative to establish a Global Crop Diversity Trust was universally appreciated and supported, and appealed to donors to assist in its establishment;

WHEREAS at the invitation of FAO and the International Plant Genetic Resources Institute (hereinafter referred to as “IPGRI”) acting on behalf of the Future Harvest Centres of the CGIAR, a number of countries, acting on behalf of the international community, have established the Global Crop Diversity Trust, defined its Constitution, and provided it with international legal personality;

WHEREAS it was the understanding of the Parties to the Agreement for the Establishment of the Global Crop Diversity Trust that the Trust and the Governing Body of the

International Treaty<sup>1</sup>, would enter into a separate Agreement, recognizing the Trust as an essential element of the Funding Strategy of the International Treaty and providing that the Trust will operate under the overall policy guidance of the Governing Body of the International Treaty;

NOW THEREFORE the Parties hereto agree as follows:

### **Article 1 - Purpose of the Agreement**

The Global Crop Diversity Trust (hereinafter referred to as “the Trust”) and FAO shall cooperate in accordance with the terms and conditions set out in the present Agreement.

### **Article 2 - Recognition of the Trust**

The Trust is recognized as an essential element of the Funding Strategy of the International Treaty.

### **Article 3 - Relationship of the Trust with FAO and the Governing Body of the International Treaty**

(1) The Governing Body of the International Treaty shall provide overall policy guidance to the Trust on all matters within the purview of the International Treaty.

(2) In accordance with the Constitution of the Trust, the Governing Body shall appoint four members to serve on the Executive Board of the Trust, of whom at least two shall be from developing countries.

(3) The Executive Board shall submit an annual report on the activities of the Trust to the Governing Body of the International Treaty.

### **Article 4 - Executive independence of the Trust**

Subject to the provisions of Article 3, the Trust and its Executive Board shall have full executive independence in managing the operations and activities of the Trust and in taking decisions relating to the raising and investment of funds and the operation of the Trust including decisions relating to the allocation of grants from the Trust.

### **Article 5 - Settlement of disputes**

(1) Any dispute between the Parties concerning the interpretation or application of the present Agreement that cannot be settled amicably, shall be submitted, at the request of any Party to the dispute, to an arbitration tribunal, composed of three members. Each Party shall appoint one arbitrator and the two arbitrators thus appointed shall together appoint a third arbitrator as their chairperson.

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<sup>1</sup> As the Governing Body does not possess its own international legal personality, the agreement will be concluded by FAO acting on behalf of, and with the approval of, the Governing Body

(2) If one of the Parties fails to appoint its arbitrator and has not proceeded to do so within two months after an invitation from the other Party to make such an appointment, the latter Party may invite the President of the International Court of Justice to make the necessary appointment.

(3) If the two arbitrators are unable to reach agreement, in the two months following their appointment, on the choice of the third arbitrator, either Party may invite the President of the International Court of Justice to make the necessary appointment.

(4) In the event of a vacancy in the presidency of the International Court of Justice or of the inability of the President to exercise the functions of the presidency, or in the event that the President should be a national of the party to the dispute, the appointment herein provided for may be made by the vice-president of the court or, failing her/him, by the senior judge.

(5) Unless the Parties decide otherwise, the tribunal shall determine its own procedure. If the tribunal once constituted fails to reach agreement on its own procedure within six months, either Party may invite the President of the International Court of Justice, or in his absence the vice-president or senior judge, to determine the procedure to be followed by the Tribunal.

(6) The tribunal shall reach its decision by a majority of votes. Such decision shall be final and binding on the Parties to the dispute.

#### **Article 6 - Amendments of the Agreement**

This Agreement may be amended by mutual agreement between the Parties.

#### **Article 7 - Entry into Force**

This Agreement shall come into force upon its signature by the Parties hereto.

#### **Article 8 - Depositary**

The Director-General of FAO shall be the depositary of this Agreement.

#### **Article 9 - Authentic texts**

The Arabic, Chinese, English, French, Russian and Spanish texts of this Agreement are equally authentic.

Signed by the Parties hereto on \*\* \*\* \*\*\*\*\*

FAO on behalf of the  
Governing Body of the International  
Treaty on Plant Genetic Resources  
For Food and Agriculture

The Global Crop Diversity Trust

Signature: \_\_\_\_\_  
Name:  
Title:

Signature: \_\_\_\_\_  
Name:  
Title:





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**PROCEDURES FOR THE APPOINTMENT OF MEMBERS OF THE EXECUTIVE BOARD OF THE GLOBAL CROP DIVERSITY TRUST**

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Introduction

The Executive Board is the legal decision making authority of the Global Crop Diversity Trust, and a vital component of its capacity to deliver. Article 5 of the Constitution of the Trust provides for the composition of the Executive Board. Four Members, at least two of whom are to be from developing countries, are to be appointed by the Governing Body of the Treaty. A further four Members, at least one of whom is to be from a developing country, are to be appointed by the Donors' Council. The Director-General of FAO and the Chair of the Consultative Group on International Agricultural Research are to appoint one Member each. The Executive Secretary is to be an *ex officio* member and the Board may co-opt a further two members. Paragraph (2) of Article 5 provides that “[b]efore making their appointments, the parties appointing members of the Executive Board shall consult with each other and with the Executive Board with a view to ensuring that the Executive Board has the balance and the range of skills necessary for it to perform its functions effectively.” The present document, prepared by the Interim Panel of Eminent Experts, suggests possible ways in which such consultations may be held and appointments made by the parties concerned. Issues regarding the profile of the Executive Board and the staggering of terms are dealt with in *Annex 1* to this document. The relevant provisions of the Constitution of the Trust are attached as *Annex 2*.

**Considerations relating to the appointment procedures**

1. The Executive Board of the Trust is the highest policy organ of the Trust and exercises important functions with respect to the direction of the Trust. To a large extent the success of the Trust will depend on the effectiveness of the Executive Board. The effectiveness of the Executive Board in turn will depend to a large extent on the stature and competence of the members of the Executive Board and the extent to which they bring together the necessary coverage of technical, financial, legal, political and other skills.
2. The consultation process envisaged in Article 5(2) of the Constitution must necessarily be spread over a period of time if competent persons of high standing are to be sought out and a proper balance of expertise and experience is to be achieved.
3. Once suitable persons are identified, their willingness to serve as members of the Executive Board must be ascertained before their candidatures can be put forward.
4. The selection and appointment procedures should be designed to avoid unnecessary public embarrassment to unsuccessful candidates for membership of the Executive Board.
5. The identification and evaluation of candidates and the balancing of skills amongst Members may call for discussions in smaller groups with delegated powers. However, the appointment of Members of the Executive Board should, wherever possible, be a function of the highest body of the appointing party.

6. In view of logistical time constraints, it may be necessary to consider interim selection and appointment procedures for the first Members of the Executive Board.

#### Normal Selection and Appointment Procedures

The following procedures are suggested for the selection and appointment of Members of the Executive Board:

1. The Governing Body of the Treaty, at its regular session, should empower the Bureau to oversee the process of selection of candidates for appointment by the Governing Body to fill vacancies in the Board, including foreseen vacancies that will occur during the intersessional period, e.g. the appointment of members whose term will commence only at the beginning of the second year of the intersessional period. Alternatively the Governing Body could appoint a separate selection committee of restricted membership to oversee this process.
2. The Governing Body, during its regular session, may wish to decide on the procedures by which potential candidatures may be brought to the attention of the selection committee.
3. The Donors' Council should appoint a selection committee prior to or during the regular session of the Governing Body.
4. An initial meeting of the joint Bureau/selection committees, with the participation of one member each nominated by the Director-General of FAO and the Chair of the Consultative Group on International Agricultural Research, and the Executive Secretary, should be scheduled during the course of the Regular session of the Governing Body, to discuss questions of procedure and balance of skills.
5. The individual Bureau/selection committees should be invited to hold such sessions as may be necessary to agree upon their own candidates for nomination to the Executive Board.
6. A second session of the joint Bureau/selection committees, with participation as above, should be held as appropriate during the intersessional period to agree upon a joint and balanced slate of candidates to fill vacancies in the Executive Board.
7. The appointments should be made by the Governing Body at its next regular session and by the Donors' Council and other appointing parties prior to or at that regular session.
8. At its regular session the Governing Body should also agree upon a method for filling unforeseen vacancies that may arise during the intersessional period, for reasons such as retirement, death, incapacity or other such reasons. Such a method could involve, for example, the delegation of powers to appoint such replacements for members appointed by the Governing Body, to the Bureau of the Governing Body.
9. The appointment of two additional Members by the Executive Board to ensure overall balance amongst its membership should take place after the appointments by the other appointing parties are known.

#### Interim Selection and Appointment Procedures

Due to logistical constraints, including the heavy agenda expected at the First meeting of the Governing Body, it may be necessary to envisage a somewhat curtailed procedure for the

selection and appointment of the first members of the Executive Board to be appointed by the Governing Body. One possible way could be for the Governing Body to appoint its selection committee during the course of its first session, to allow for the consultation procedures outlined above, but to delegate the power of appointment to the Bureau of the Governing Body. In such a way, the appointment of the four members of the Executive Board by the Governing Body could be accomplished within a maximum period of six months following the end of the first session of the Governing Body.

#### Conclusions and recommendations

The Governing Body, the Donors' Council and the other appointing authorities are invited to consider the above suggestions and to decide upon procedures for the selection and appointment by the Governing Body of its Members of the Executive Board.

**Annex 1 to Appendix 2****PROFILE OF THE EXECUTIVE BOARD OF THE GLOBAL CROP DIVERSITY TRUST AND THE STAGGERING OF TERMS**

This Annex provides guidelines on the desired profile of the Executive Board and proposes a scheme for staggering the terms of appointment of its members in order to ensure continuity. The Annex is intended to help guide the Governing Body of the International Treaty, the Donor Council, the Director General of FAO and the Chair of the CGIAR in making their initial appointments to the Executive Board.

**Balance of skills, backgrounds and experience**

The Executive Board should comprise individuals of international stature and indisputable integrity, who have a proven capacity to deliver results. In addition to its responsibility for the policy and overall management of the Trust, the Executive Board's main functions include providing assistance to the Trust's fundraising efforts. It is thus critical that the members of the Executive Board be eminent personalities in their own right, well recognized internationally, and that they can open doors to influential individuals in the government and private sectors. While the Board as a whole will need to have an appreciation of the issues relating to plant genetic resources, technical expertise will be available to the Board through its technical committees. The Board members should be drawn from various sectors of society including, *inter alia*, government, private corporations, civil society – including farmers' organizations - philanthropic foundations, science and academia, and the media.

In order to carry out its functions effectively, the Executive Board not only needs high-profile members, but also needs to include a broad mix of skills and backgrounds among its membership. This is not designed to duplicate expertise already available within the Secretariat and its partners, but to add the appropriate international stature and provide high-level advice. While not all areas of expertise can be covered within a Board comprising 11 or 13 members, it is proposed that consideration be given to appointing individuals that have experience and expertise in one or more of the following areas:

- Fundraising
- Investment and financial management
- Grant-making
- *Ex situ* conservation and use of plant genetic resources
- Plant genetic resources policy
- Environment and development
- Communications and public awareness
- Legal matters
- Organizational management including planning, monitoring and evaluation

The Executive Board also needs to have a good mix of different social and cultural backgrounds. This is important for its effectiveness and for maintaining the confidence of a wide range of stakeholders, South and North, including those that own, maintain or use plant genetic resources as well as those who donate funds. Thus, to the extent possible, there should be an attempt to achieve a good balance of people from countries in different stages of development, geographic regions and gender.

### Staggering of terms

The Executive Board members appointed by the Governing Body of the International Treaty and the Donors' Council will normally be appointed for a first term of three years, renewable for a second three-year term. However, Article 5(5) of the Constitution states:

*To ensure continuity of policies and operations, the terms of members of the Executive Board shall be staggered. Members of the initial Board shall be appointed for such terms as the Interim Panel of Eminent Experts shall determine.*

Pursuant to Article 5(5) of the Constitution, the Interim Panel of Eminent Experts hereby determines that the initial terms of membership be staggered as follows:

- One of the four members appointed by the Governing Body of the International Treaty and one of the four members appointed by the Donor Council be given a term of one year, followed by a second three-year term;
- One of the four members appointed by the Governing Body of the International Treaty and one of the four members appointed by the Donor Council be given a term of two years, followed by a second three-year term; and
- Two the four members appointed by the Governing Body of the International Treaty and two of the four members appointed by the Donor Council be given terms of three years, with one of the two in each case being non-renewable and the other given a second three-year term.

Under such an arrangement, there would be continuity for the first three years, after which there would be a regular turnover.

**Annex 2 to Appendix 2****RELEVANT PROVISIONS OF THE CONSTITUTION OF THE TRUST****Article 5. The Executive Board**

(1) The Executive Board shall consist of the following members:

- (a) Four members, at least two of whom shall be from developing countries, appointed by the Governing Body of the International Treaty or, prior to the entry into force of the International Treaty, the FAO Commission on Genetic Resources for Food and Agriculture acting as Interim Committee for the International Treaty;
- (b) Four members, at least one of whom shall be from a developing country, appointed by the Donors' Council;
- (c) One member appointed by the Director-General of the Food and Agriculture Organization of the United Nations (hereinafter referred to as "FAO") who shall operate in a technical capacity only and shall not have the right to vote;
- (d) One member appointed by the Chair of the Consultative Group on International Agricultural Research (hereinafter referred to as the "CGIAR") who shall operate in a technical capacity only and shall not have the right to vote;
- (e) The Executive Secretary of the Trust as a member *ex officio*;
- (f) The Executive Board may appoint two additional members to ensure overall balance amongst its membership, in particular with regard to diversity in disciplinary backgrounds, geographical representation, gender, and competence in fundraising and financial management.

(2) Before making their appointments, the parties appointing members of the Executive Board shall consult with each other and with the Executive Board with a view to ensuring that the Executive Board has the balance and the range of skills necessary for it to perform its functions effectively.

(3) Subject to paragraph (5), and with the exception of the member appointed by the Director General of FAO under Article 5(1)(c), the member appointed by the Chair of the CGIAR under Article 5(1)(d), whose term shall be decided by the Chair of the CGIAR, and the Executive Secretary, who shall serve during the Term of his/her office as Executive Secretary, members of the Executive Board shall serve for terms of no more than three years as determined by the Executive Board. Vacancies among members by reason of retirement, death, incapacity, or any other cause shall be filled in the same manner as the original nomination and appointments. A new member appointed to replace a member during the latter's term may be appointed for the remaining term of the member being replaced or for some other term of no more than three years.

(4) Members of the Executive Board are eligible for reappointment to a second term, but shall not serve more than two successive terms, except that the member elected as Chairperson may have her/his term extended by the Executive Board, provided that he or she shall serve for no more than eight consecutive years on the Executive Board.

(5) To ensure continuity of policies and operations, the terms of members of the Executive Board shall be staggered. Members of the initial Board shall be appointed for such terms as the Interim Panel of Eminent Experts shall determine.

(6) The members of the Executive Board shall serve in a personal capacity, except for the Executive Secretary who will be a member *ex officio*, the member appointed by the Director General of FAO under Article 5(1)(c) and the member appointed by the Chair of the CGIAR under Article 5(1)(d).