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Item 9 of the Draft Provisional Agenda

**INTERNATIONAL TREATY ON PLANT GENETIC RESOURCES
FOR FOOD AND AGRICULTURE**

FIRST SESSION OF THE GOVERNING BODY

Madrid, Spain, 12-16 June 2006

**DRAFT PROCEDURES AND OPERATIONAL MECHANISMS
TO PROMOTE COMPLIANCE AND TO ADDRESS
ISSUES OF NON-COMPLIANCE**

1. The *Open-ended Working Group on the Rules of Procedure and the Financial Rules of the Governing Body, Compliance, and the Funding Strategy*, which met in Rome, Italy, from 14-17 December 2005, reviewed written submissions from governments on procedures and mechanisms to promote compliance and to address issues of non-compliance. During the meeting, countries and regions made comments and submissions. The Open-ended Working Group then consolidated the submissions into a draft resolution, and agreed that this should be submitted for consideration by the Governing Body. It is contained in this document.
2. The Open-ended Working Group also noted that, in addition the comments and submissions provided by delegations in the meeting of the Open-ended Working Group, and the earlier written submissions by governments¹, should be taken into account.
3. The Open-ended Working Group invited further submissions and comments by countries and regions, including on the draft resolution and its Annex and requested the Interim Secretariat to post these on the Commission's web-site. These submissions and comments are available on Internet at: <http://www.fao.org/ag/cgrfa/compliance.htm> and are reflected in the document, *Compilation of submissions and comments on draft procedures and mechanisms to promote compliance and to address issues of non-compliance*.²
4. The Governing Body is invited to finalize and adopt the draft Resolution, taking into account, as appropriate, the documents referred to in paragraphs 2 and 3 above.

¹ CGRFA/MIC-2/04/3; CGRFA/IC/OWG-1/05/5; and CGRFA/IC/OWG-1/05/5 Add. 1.

² IT/GB-1/06/Inf.7.

DRAFT RESOLUTION FOR THE CONSIDERATION OF THE GOVERNING BODY**[RESOLUTION */2006 OF THE GOVERNING BODY
COMPLIANCE****The Governing Body,**

[1. **Hereby** [*establishes* a Compliance Committee,] / [*resolves* to progressively establish compliance procedures and mechanisms,] pursuant to Articles 19 and 21 of the Treaty [on the basis of the *annex* hereto and the submissions made by countries and regions, for further consideration and possible finalization] [, which shall commence its work following the approval of cooperative and effective procedures and operational mechanisms on compliance]];

[2. **Decides** to [consider such procedures and operational mechanisms, with a view to their approval at its [*] Session, on the basis of the *annex* hereto [and the submissions made by countries and regions, for further consideration and possible finalization]; and] / [**Decides** to adopt the procedures and operational mechanisms included in the *Annex* hereto];

[3. **Decides**, so as to provide for provisional procedures and operational mechanisms on compliance, that a Party may, in advance of a Session of the Governing Body, raise any matter concerning its compliance with the Treaty, including potential non-compliance with the Treaty. The Governing Body shall consider the matter, and shall decide on an appropriate approach for addressing the matter raised by the Party, which may include, *inter alia*, designating a Party or Parties to meet intersessionally with the Party raising the matter, in order to offer advice or assistance, including legal advice or legal assistance, where needed.]

[3bis. **Decides** to consider such additional procedures and operational mechanisms, with a view to their approval at its [*] Session.]]

[ANNEX TO THE DRAFT RESOLUTION ON COMPLIANCE

**DRAFT PROCEDURES AND MECHANISMS ON COMPLIANCE
UNDER THE INTERNATIONAL TREATY ON PLANT GENETIC RESOURCES FOR
FOOD AND AGRICULTURE**

The following procedures and mechanisms are developed in accordance with Article 21 of the International Treaty on Plant Genetic Resources and are separate from, and without prejudice to, the dispute settlement procedures and mechanisms established by Article 22 of the International Treaty on Plant Genetic Resources:

I. OBJECTIVES

1. The objective of the compliance procedures and mechanisms shall be to promote compliance with the provisions of this Treaty, to address issues of non-compliance by Parties, to monitor activities under the treaty, and provide advice or assistance, where appropriate.

II. PRINCIPLES

1. The compliance procedures and mechanisms shall be simple, facilitative, non-adversarial, and cooperative in nature.

2. The operation of the compliance procedures and mechanisms shall be guided by the principles of transparency, fairness, expedition, predictability.

3. The operation of the compliance procedures and mechanisms shall take into account and adequate balance between developed and developing countries.

III. INSTITUTIONAL MECHANISMS

1. A Compliance Committee, hereinafter referred to as “the Committee”, is hereby established pursuant to Articles 19 and 21 of the Treaty Protocol to carry out the functions specified herein.

2. The Committee shall consist of 14 members nominated by Parties and elected by the Governing Body to the Treaty on the basis of two from each of the seven regional groups of the United Nations.

3. Members of the Committee shall have recognized competence in the field of Genetic resources or other relevant fields for the treaty, including legal or technical expertise, and they shall serve in their individual capacity.

4. Members shall be elected by the Governing Body to the Treaty for a period of four years, this being a full term. At its first meeting, Governing Body to the Treaty shall elect seven members, one from each region, for half a term, and seven members for a full term. Each time thereafter, the Governing Body to the Treaty shall elect for a full term, new members to replace those whose term has expired. Members shall not serve for more than two consecutive terms.

5. The Committee shall meet twice a year, unless it decides otherwise. The Secretariat shall service the meetings of the Committee.
6. The Committee shall submit its reports including recommendations with regard to the discharge of its functions to the next meeting of the Governing Body to the Treaty for consideration and appropriate action.
7. The Committee shall develop and submit its rules of procedure to the Governing Body for its consideration and approval.
8. The Committee shall elect its Chair and a Vice-Chair, who will rotate among the FAO regions.

IV. FUNCTIONS OF THE COMMITTEE

1. The Committee shall, with a view to promoting compliance and addressing cases of non-compliance, and under the overall guidance of the Governing Body to the Treaty, have the following functions:
 - a) Address individual issues of non-compliance and identify the specific circumstances and possible causes of referred to it;
 - b) Consider information submitted to it regarding matters relating to compliance and cases of non-compliance;
 - c) Provide advice and/or assistance, as appropriate, to the concerned Party, on matters relating to compliance with a view to assisting it to comply with its obligations under the Treaty;
 - d) Review general issues of compliance by Parties with their obligations under the Treaty, taking into account the information submitted by the Parties and following the guidance of the Committee;
 - e) Take measures, as defined in VII below, or make recommendations, as appropriate, to the Governing Body;
 - f) Monitor the activities of the Treaty supported by the Secretariat and information supplied by the Parties;
 - g) Carry out any other functions as may be assigned to it by the Governing Body of the Treaty;
 - h) Report to Governing Body on its activities.

V. PROCEDURES

1. The Committee shall receive, through the Secretariat, any submissions relating to compliance from:
 - a) Any Party with respect to itself;
 - b) Any Party with respect to another Party; or

- c) The Governing Body.
2. Upon reception of submissions on possible non-compliance, the Secretariat will initiate a process of dialogue with the Party or Parties involved in order to overcome the situation. Such dialogue will be especially implemented in cases where developing countries are concerned.
3. In the event that such dialogue process will not reach its aim within thirty days, the Secretariat shall, within fifteen days of receipt of submissions make the submissions available to the Party concerned, and will publish it, encouraging the submission of any information from other sources, about it. The Party concerned and any other source interested will have sixty days to submit responses and related information to the secretariat. The Secretariat, within fifteen days of receipt of these responses and related information, shall transmit the submission, the response and information to the Committee. The Committee will have ninety days to analyse and produce the recommendation or to adopt any measure, as proceeds, to ensure compliance in order to address the issue.
4. A Party that has received a submission regarding its compliance with the provision(s) of the Treaty should respond and, with recourse to the Committee for assistance if required, provide the necessary information preferably within three months and in any event not later than six months. This period of time shall commence on the date of the receipt of the submission as certified by the Secretariat. In the case where the Secretariat has not received any response or information from the concerned Party within the six months as referred to above, it shall transmit the submission to the Committee.
5. A Party, in respect of which a submission is made or which makes a submission, is entitled to attend the deliberations of the Committee. However, this Party shall not participate in the elaboration and adoption of a recommendation of the Committee.
6. The confidentiality will be an essential requirement of the process.

VI. INFORMATION AND CONSULTATION

1. The Committee shall consider relevant information from:
 - a) The Party concerned;
 - b) The Party that has made a submission with respect to another Party.
2. The Committee may seek or receive and consider relevant information, including from:
 - a) Non-governmental organizations, the private sector and other civil-society organizations and relevant intergovernmental organizations;
 - b) The Secretariat.
3. The Committee may seek expert advice.
4. The Committee, in undertaking all of its functions and activities, shall maintain the confidentiality of any information that is confidential under Article XXX of the Treaty.

VII. MEASURES TO PROMOTE COMPLIANCE AND ADDRESS CASES OF NON-COMPLIANCE

1. The Committee may take one or more of the following measures with a view to promoting compliance and addressing cases of non-compliance:

- a) Provide advice or assistance to the Party concerned, as appropriate;
- b) Make recommendations to the Governing Body to the Treaty regarding the provision of financial and technical assistance, technology transfer, training and other capacity-building measures;
- c) Request or assist, as appropriate, the Party concerned to develop a compliance action plan regarding the achievement of compliance with the Treaty within a timeframe to be agreed upon between the Committee and the Party concerned, [taking into account its existing capacity to comply]; and
- d) Invite the Party concerned to submit progress reports to the Committee on the efforts it is making to comply with its obligations under the Protocol.

2. The Governing Body to the Treaty may, upon the recommendations of the Committee, and taking into account such factors as the cause, type, degree and frequency of non-compliance, and the capacity of the Party concerned, in particular of developing country Parties in complying with the Treaty, also decide upon one or more of the following measures:

- a) Provide financial and technical assistance, technology transfer, training and other capacity-building measures;
- b) Issue a caution to the concerned Party; or
- c) Publish cases of non-compliance.

VIII. REVIEW OF THE PROCEDURES AND MECHANISMS

The Governing Body to the Treaty shall, in line with Article 21, review the effectiveness of these procedures and mechanisms and take appropriate action.

IX. REPORTING

The Governing Body may, from time to time, seek reports from the Parties regarding compliance with the Treaty.]