



# The International Treaty

ON PLANT GENETIC RESOURCES FOR FOOD AND AGRICULTURE



## FOURTH SESSION OF THE GOVERNING BODY

**Bali, Indonesia, 14 – 18 March 2011**

### RESOLUTION 2/2011

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

#### The Governing Body,

*Recalling* Article 21 of the International Treaty,

1. *Hereby decides* to approve the procedures and operational mechanisms included in the Annex hereto;
2. *Affirms* that these procedures and mechanisms are separate from and without prejudice to any other procedures and mechanisms, including the possibility to seek recourse under Article 12.5 and the settlement of disputes under Article 22 of the International Treaty;
3. *Decides* that the Compliance Committee shall develop further rules of procedure relevant to its work, including rules on confidentiality, decision making, conflict of interest of Committee members, electronic decision making, replacement of Committee members and the format for submissions by the Governing Body, and submit them to the next Session of the Governing Body for its consideration and approval;
4. *Further decides* that the Committee, in accordance with Section V of the procedures and operational mechanisms referred to in paragraph 1 above, shall develop a succinct standard reporting format for approval by the Governing Body at its next Session, taking into account harmony with other relevant reporting processes, such as those under the Commission on Genetic Resources for Food and Agriculture;
5. *Further decides* that each of the seven regions of the FAO submit to the Bureau, no later than twelve months after this Session of the Governing Body, nominations of two members for the Committee; and that the Bureau appoint such members for an interim period until the next Session of the Governing Body, at which Session members of the Committee will be elected in accordance with Section III.4 of the procedures and operational mechanisms referred to in paragraph 1 above;
6. *Recommends* that funds be made available through the *Special Fund to Support the Participation of Developing Countries* to facilitate participation in relevant meetings of the Committee by representatives of developing country Contracting Parties and Contracting Parties with economies in transition regarding whom a submission has been made.

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*ANNEX*

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

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**I. OBJECTIVES**

The objective of the compliance procedures and mechanisms shall be to promote compliance with all the provisions of the International Treaty and to address issues of non-compliance. These procedures and mechanisms include monitoring, offering advice or assistance, including legal advice or legal assistance, when needed and requested, in particular to developing countries and countries with economies in transition.

**II. PRINCIPLES**

1. The compliance procedures and mechanisms shall be simple, cost-effective, facilitative, non-adversarial, non-judicial, legally non-binding and cooperative in nature.
2. The operation of the compliance procedures and mechanisms shall be guided by the principles of transparency, accountability, fairness, expeditiousness, predictability, good faith, and reasonableness. It shall pay particular attention to the special needs of Contracting Parties that are developing countries and Contracting Parties with economies in transition.
3. Any interpretation of the International Treaty is ultimately for the Contracting Parties to make.

**III. INSTITUTIONAL MECHANISMS**

1. The Compliance Committee established by the Governing Body on 16 June 2006 by Resolution 3/2006, hereinafter referred to as “the Committee”, shall carry out the functions specified herein.
2. The Committee shall consist of a maximum of 14 members, being up to two from each of the FAO regions and not more than one from a Contracting Party. The members shall be elected by the Governing Body on the basis of up to two nominations from each of the seven FAO regions.
3. Members of the Committee shall have recognized competence in the field of genetic resources or other fields relevant for the International Treaty, including legal or technical expertise, and they shall serve objectively and in their individual capacity.
4. Members shall be elected by the Governing Body for a period of four years, this being a full term, commencing on January 1<sup>st</sup> of the first year of the financial period of the International Treaty following their election. At its Fifth Session, the Governing Body shall elect up to seven members, one from each FAO region, for half a term, and up to seven members for a full term. Thereafter, the Governing Body shall elect, as appropriate, new members for a full term to replace those whose term has expired or for the remainder of a term to fill any vacancy. Members shall not serve for more than two consecutive terms.
5. The Committee shall hold meetings as necessary, preferably in conjunction with meetings of other International Treaty bodies, subject to the availability of financial resources. The Secretary shall service the meetings of the Committee. The presence of members representing a

two-thirds majority of the membership of the Committee shall be necessary to constitute a quorum at any meeting of the Committee.

6. Bearing in mind Rule I of the Rules of Procedure of the Governing Body, the Committee shall develop and submit any further rules of procedure, as appropriate, including rules on confidentiality, to the Governing Body for its consideration and approval.

7. 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 issues of non-compliance, and under the overall guidance of the Governing Body, have the following functions:

- a) Consider information submitted to it regarding matters relating to compliance and issues of non-compliance;
- b) Offer advice and/or facilitate assistance, as appropriate, to any Contracting Party, on matters relating to compliance with a view to assisting it to comply with its obligations under the International Treaty;
- c) Assist the Governing Body in its monitoring of the implementation by Contracting Parties of their obligations under the International Treaty on the basis of reports of the Contracting Parties in accordance with Section V below;
- d) Address issues of non-compliance and identify the specific circumstances of the issue referred to it, in accordance with Sections VI to VIII below;
- e) Promote compliance by addressing statements and questions concerning the implementation of obligations under the International Treaty, in accordance with Section IX below;
- f) Carry out any other functions as may be assigned to it by the Governing Body pursuant to Article 21 of the International Treaty;
- g) Submit a report to each regular session of the Governing Body reflecting:
  - i) the work that the Committee has undertaken;
  - ii) the conclusions and recommendations of the Committee; and
  - iii) the future programme of work of the Committee.

2. The Committee shall not consider any questions concerning the interpretation of, implementation of, or compliance with the Standard Material Transfer Agreement by parties or potential parties to it.

#### **V. MONITORING AND REPORTING**

1. Each Contracting Party is to submit to the Committee, through the Secretary, a report on the measures it has taken to implement its obligations under the International Treaty in one of the six languages of the United Nations. The first report is to be submitted three years after the approval by the Governing Body of a standard reporting format, developed by the Committee. Subsequent reports are to be submitted every five years thereafter or periodically in accordance with any further decisions of the Governing Body on the submission of such reports.

2. The Committee shall consider the reports that it has received up to 12 months before the next session of the Governing Body taking into account any guidance of the Governing Body. In

particular, the Governing Body shall consider and set, if it deems necessary, priorities for the Committee's work related to monitoring and reporting.

3. The Committee shall submit to the Governing Body for its consideration a synthesis on the basis of the reports that it has considered, along with an analysis that addresses any priorities set by the Governing Body under paragraph 2, and may submit recommendations on the issues addressed in the analysis.

4. At the request of the Governing Body, the Committee shall develop and submit recommendations on these procedures and operational mechanisms on monitoring and reporting, including a review of the standard reporting format, to the Governing Body for its consideration and approval.

## **VI. PROCEDURES REGARDING SUBMISSIONS RELATING TO ISSUES OF NON-COMPLIANCE**

1. The Committee shall receive, through the Secretary, any submissions relating to issues of non-compliance from:

- a) Any Contracting Party with respect to itself;
- b) Any Contracting Party with respect to another Contracting Party; or
- c) The Governing Body.

The Contracting Party in respect of which an issue has been raised is hereinafter referred to as "the Contracting Party concerned".

2. Any submission is to be addressed in writing to the Secretary and set out:

- a) The matter of concern;
- b) The relevant provisions of the International Treaty; and
- c) Information substantiating the matter of concern.

3. The Secretary shall forward any submission under paragraph 1a above to the Committee within 30 calendar days of receipt.

4. The Secretary shall forward any submission under paragraph 1b or 1c above to the Contracting Party concerned within 30 calendar days of receipt.

5. When the Contracting Party concerned has received a submission it should respond and, with recourse to the Committee for assistance if required, provide relevant information preferably within three months and in any event not later than six months. This period of time commences on the date of the receipt of the submission by the Contracting Party concerned as confirmed by the Secretary.

6. Once the Secretary has received a response and any information from the Contracting Party concerned, the Secretary shall transmit the submission, the response and such information to the Committee. In the case where the Secretary has not received any response or information from the Contracting Party concerned within the six months as referred to above, the Secretary shall forward the submission to the Committee forthwith.

7. The Committee may reject to consider any submission made pursuant to paragraph 1b above that is *de minimis* or ill-founded, bearing in mind the objectives of the International Treaty.

8. The Contracting Party concerned may participate in the consideration of the submission and present responses or comments to the Committee, but it may not participate in the elaboration and adoption of a recommendation of the Committee.
9. Confidentiality will be an essential element of the consideration of the submission. Further rules on confidentiality are to be approved by the Governing Body under Section III, paragraph 6.

## **VII. MEASURES TO PROMOTE COMPLIANCE AND ADDRESS ISSUES OF NON-COMPLIANCE**

1. The Committee, with a view to promoting compliance and addressing issues of non-compliance, which are raised in accordance with Section VI and taking into account such factors as the cause, type, degree, and frequency of non-compliance, may:
  - (a) Provide advice or facilitate assistance, including legal advice or legal assistance, to the Contracting Party concerned, as appropriate;
  - (b) Request or assist, as appropriate, the Contracting Party concerned to develop an action plan, which addresses the issue of non-compliance within a timeframe to be agreed upon between the Committee and the Contracting Party concerned, taking into account its existing capacity to address the issue; and
  - (c) Invite the Contracting Party concerned to submit progress reports to the Committee on the efforts it is making to comply with its obligations under the International Treaty.
2. The Governing Body may, upon the recommendations of the Committee, decide to:
  - (a) Provide assistance, including, as appropriate, legal, financial and technical assistance, to the Contracting Party concerned;
  - (b) Take any other actions it deems appropriate, including for capacity-building, in accordance with the International Treaty and for the fulfilment of its objectives.

## **VIII. INFORMATION**

1. The Committee shall consider relevant information from:
  - (a) The Contracting Party concerned;
  - (b) The Contracting Party that has made a submission with respect to another Contracting Party;
  - (c) The Governing Body.
2. The Committee may seek or receive, when necessary for its work, freely available information and such relevant additional information as may be provided to it by the Secretary and other relevant sources. Any Contracting Party concerned shall have access to this information.
3. The Committee may seek expert advice.

## **IX. OTHER PROCEDURES REGARDING THE PROMOTION OF COMPLIANCE**

1. The scope and nature of the Committee's authority in exercising its functions under this Section shall be subject to further rules, to be developed by the Committee and to be submitted to the Governing Body for approval at its Fifth Session, and such other guidance as the Governing Body may provide from time to time.
2. A Contracting Party may, through the Secretary, address to the Committee statements and questions concerning the implementation of its own obligations under the International Treaty.
3. The Committee shall also consider any questions concerning the implementation of obligations under the International Treaty referred to it by decision of the Governing Body. The Secretary shall list any such questions he has or receives and present them to the Governing Body for consideration of referral to the Committee.
4. The statement or question shall be addressed in writing to the Secretary together with:
  - (a) the relevant provision of the International Treaty; and
  - (b) any relevant supporting information clarifying the statement or question.
5. The Committee may reject to consider any statement or question, bearing in mind the objectives of the International Treaty. Reasons should be given for any such rejection.
6. The Committee may only make recommendations to the Governing Body concerning statements or questions concerning the implementation of obligations under the International Treaty referred to in paragraphs 2 and 3 above, unless the Governing Body specifically provides otherwise.
7. The Committee's authority under this Section shall become operative after the Fifth Session of the Governing Body, unless the Governing Body decides otherwise.

## **X. REVIEW OF THE PROCEDURES AND MECHANISMS**

Within six years of approval of these procedures and mechanisms and periodically thereafter, the Governing Body shall review their effectiveness and take appropriate action.