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The International Treaty

ON PLANT GENETIC RESOURCES FOR FOOD AND AGRICULTURE



SECOND MEETING OF THE *AD HOC* WORKING GROUP ON PROCEDURES AND OPERATIONAL MECHANISMS TO PROMOTE COMPLIANCE AND ADDRESS ISSUES OF NON-COMPLIANCE

Rome, Italy, 17-18 January 2011

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

I. INTRODUCTION

1. By Resolution 2/2009, the Governing Body established this *Ad Hoc* Working Group to negotiate and finalize the procedures and operational mechanisms to promote compliance and address issues of non-compliance, with a view to their approval at the Fourth Session of the Governing Body. The *Annex* to Resolution 2/2009 contained draft text of the procedures and operational mechanisms to promote compliance and address issues of non-compliance, on the basis of which the *Ad Hoc* Working Group was to commence its task.

II. DOCUMENTATION AND THE WORK OF THE *AD HOC* COMMITTEE

2. The *Ad Hoc* Working Group held its first meeting in Rome, at the FAO Headquarters, on 2 – 3 February 2010, and reviewed the draft text of the procedures and operational mechanisms to promote compliance and address issues of non-compliance, and developed new draft text, as contained in the *Appendix I* to this document. The *Ad Hoc* Working Group agreed that the text will form the basis of its work at the second meeting.

3. At its first meeting the *Ad Hoc* Working Group “agreed that there will be a need to make some recommendations to the Fourth Session of the Governing Body, including in the form of a draft Resolution for consideration by the same”. A possible draft Resolution, by which the Governing Body could adopt the Procedures and Operational Mechanisms to Promote Compliance and Address Issues of Non-compliance, is contained in *Appendix II* to this document.

4. The *Ad Hoc* Working Group had also agreed that in the draft Resolution to be forwarded to the Governing Body for its consideration, provision will be made for transitional arrangements for the commencement of the work of the Compliance Committee in the period between the session of the Governing Body at which the procedures are adopted and the commencement of the regular terms of the members of the Compliance Committee, should the Governing Body agree to the terms envisaged in the draft text.

5. The *Ad Hoc* Working Group also agreed that it will draw the attention of the Governing Body to the need for nominations and the election of members of the Compliance Committee, in order for the procedures and mechanisms to become operational.

6. The *Ad Hoc* Working Group is invited to negotiate and finalise the draft procedures and operational mechanisms to promote compliance and address issues of non-compliance with the draft Resolution.

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Meeting documents are available on Internet at <http://www.planttreaty.org>

APPENDIX I

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

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. {To be moved to the Resolution and redrafted accordingly }

I. OBJECTIVES

The objective of the compliance procedures and mechanisms shall be to promote compliance with all the provisions of this 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[.] [and shall take into account capacities of Contracting Parties.][It shall pay particular attention to the special needs of developing country Contracting Parties, in particular the least developed and small island developing States among them, and Contracting Parties with economies in transition, and take into full consideration the difficulties they face in the implementation of the International Treaty.]

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 nominated by Contracting Parties and elected by the Governing Body on the basis of two from each of the seven regional groups of the FAO [and a maximum of one nomination by a Contracting Party].
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 1st of the first year of the financial period of the International Treaty following their election.¹ At its [...] session, the Governing Body shall elect up to seven members, one from each region, for half a term, and up to seven members for a full term. Each time thereafter, the Governing Body 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.

¹ There is an agreement to make provision, in the draft Resolution, for transitional arrangements for the period between the session of the Governing Body and the commencement of the regular term.

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 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 regular session of the Governing Body for consideration and appropriate action in accordance with the International Treaty.
7. 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.
8. The Committee shall elect its Chair and a Vice-Chair, who will rotate among the FAO regions.

IV. FUNCTIONS OF THE COMMITTEE

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) Address issues of non-compliance and identify the specific circumstances of the issue referred to it, in accordance with Sections [V to VII] below;
- c) [Offer advice and/or facilitate assistance, as appropriate, to the concerned Contracting Party, on matters relating to compliance with a view to assisting it to comply with its obligations under the International Treaty;]
- d) [Review the state of compliance by Contracting Parties with their obligations under the International Treaty, taking into account the information submitted [by the Contracting Parties] to it and following the guidance of the Governing Body [, in accordance with Section VI below];]
- e) [Take measures, as defined [in Section VII] below[, or make recommendations, as appropriate, to the Governing Body];]
- f) [Monitor the implementation of the Treaty by Contracting Parties on the basis of reports in accordance with Section IX below;]
- [f *bis*] [Address questions related to the Standard Material Transfer Agreement, in accordance with Sections V to VII below;]
- g) Carry out any other functions as may be assigned to it by the Governing Body pursuant to Article 21;
- h) 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.

V. PROCEDURES

1. The Committee shall receive, through the Secretariat, any submissions relating to 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 the concern is raised is hereinafter referred to as “the Contracting Party concerned”.

[1bis. The Committee shall receive, through the Secretariat, any communication concerning questions relating to the Standard Material Transfer Agreement from:

- (a) the Governing Body;
- (b) a Contracting Party;
- (c) an International Agricultural Research Centre or the Consultative Group of the International Agricultural Research Centres,
- (d) a Party to a Standard Material Transfer Agreement; or
- (e) any natural or legal person that can demonstrate an interest in concluding a Standard Material Transfer Agreement.]

2. Any submission shall be addressed in writing to the Secretariat and shall 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 Secretariat shall, within 30 calendar days of receipt of a submission under paragraph 1b above, make any such submission available to the Contracting Party concerned. Once it has received a response and information from the Contracting Party concerned, the Secretariat shall transmit the submission, the response and the information to the Committee. In the case that a Contracting Party submits documentation with regard to itself the Secretariat shall, within 30 calendar days, forward that submission to the Committee.

4. When the Contracting Party concerned has received a submission it 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 Contracting Party concerned within the six months as referred to above, it shall transmit the submission to the Committee.

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

5bis. The Contracting Party concerned is entitled to participate in the proceedings and present responses or comments to the Committee, but it shall not participate in the elaboration and adoption of a recommendation of the Committee. [The Committee may facilitate the participation of least-developed countries in the proceedings.]

[6. Confidentiality will be an essential requirement of the process.]

[7. Any communication shall be addressed in writing to the Secretariat and shall set out:

- (a) the question raised by the communication;
- (b) the relevant provision of the [Standard Material Transfer Agreement]/[Treaty]; and

- (c) any relevant supporting information clarifying the question raised by the communication.]

VI. 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 and consider relevant information from the Secretariat and other sources.
3. The Committee may seek expert advice.
- [4. The Committee, any Party or others involved in its proceedings shall protect the confidentiality of information received in confidence.]

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 V 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 a compliance action plan regarding the achievement of compliance with the International Treaty within a timeframe to be agreed upon between the Committee and the Contracting Party concerned, [taking into account its existing capacity to comply]; and
 - (c) Invite the Contracting Party concerned to submit progress reports to the Committee on the efforts it is making to comply with its provisions 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 [subject to budgetary considerations];
 - (b) Issue a [caution]/[notification] to the Contracting Party concerned;
 - (c) [Request the Secretariat to place on the website [closed issues]/[findings] of non-compliance.]

- (d) [d] Take any other actions it deems appropriate [for capacity-building] in accordance with the International Treaty and for the fulfilment of the Treaty's objectives.]

[3. With a view to promoting consistent interpretation of the Standard Material Transfer Agreement, the Governing Body may upon the recommendation of the Committee and, as appropriate:

- (a) provide an interpretation of the Standard Material Transfer Agreement, or
(b) amend the Standard Material Transfer Agreement.]

VIII. REVIEW OF THE PROCEDURES AND MECHANISMS

The Governing Body shall, in line with Article 21, review the effectiveness within six years of adoption of the procedures and mechanisms and/or periodically of these procedures and mechanisms and take appropriate action.

[IX] [IV bis].

Option 1

REPORTING

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

Option 2

MONITORING

1. Each Contracting Party shall submit to the Committee, through the Secretariat, a report on the measures it has taken to implement the International Treaty in one of the six languages of the United Nations [five years after the entry into force of the International Treaty, and every five years thereafter, in accordance with any further decisions of the Governing Body on the submission of such reports] [periodically in conformity with decisions taken by the Governing Body].
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.
3. The Committee shall submit a synthesis report on the basis of the reports that it has considered to each session of the Governing Body, which may include recommendations to the Governing Body on possible decisions to solve identified problems, including on the invitation to Contracting Parties to make a submission in accordance with Section V.1a.
4. The Committee may develop and submit any further rules on monitoring and reporting, including a reporting format, to the Governing Body for its consideration and approval, taking into account the need to avoid duplication and to enhance synergies.]]

APPENDIX II

DRAFT RESOLUTION FOR THE CONSIDERATION OF THE GOVERNING BODY

**[RESOLUTION */2010 OF THE GOVERNING BODY
COMPLIANCE**

The Governing Body,

[1. *Hereby decides* to adopt the procedures and operational mechanisms included in the *Annex* hereto;]