



The International Treaty

ON PLANT GENETIC RESOURCES FOR FOOD AND AGRICULTURE



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Item 8 of the Provisional Agenda

INTERNATIONAL TREATY ON PLANT GENETIC RESOURCES FOR FOOD AND AGRICULTURE

FOURTH SESSION OF THE GOVERNING BODY

Bali, Indonesia, 14 – 18 March 2011

REPORT OF THE CO-CHAIRS OF THE *AD HOC* WORKING GROUP ON THE PROCEDURES AND OPERATIONAL MECHANISMS TO PROMOTE COMPLIANCE AND ADDRESS ISSUES OF NON-COMPLIANCE

Note by the Secretary

- i) *At its Third Session, the Governing Body decided to establish and convene an Ad Hoc Working Group to negotiate and finalise procedures and operational mechanisms to promote compliance and address issues of non-compliance, with a view to their approval at its Fourth Session (Resolution 2/2009).*
- ii) *The Ad Hoc Working Group held two meetings at the FAO Headquarters, Rome, respectively on 2 – 3 February 2010, and 17 – 18 January 2011.*
- iii) *The present document contains the Report of the Co-Chairs of the Ad Hoc Working Group, Mr René J.M. Lefeber and Mr Javad Mozafari Hashjin, outlining the work of the Committee, as well the outputs of the meeting including the Committee's recommendations to the Governing Body. The full reports of the two meetings of Committee are also available for the information of the Governing Body.¹*
- iv) *The Governing Body is being invited to consider the draft procedures and operational mechanisms to promote compliance and address issues of non-compliance, as developed by the Ad Hoc Working Group, for adoption and to give any further guidance it considers appropriate for their effective operation. In this regard, possible elements of a Resolution are provided for consideration by the Governing Body*

¹ Documents IT/AHWG-C 1/10/Report, and IT/AHWG-C 2/11/Report.

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I. INTRODUCTION

1. By Resolution 2/2009, the Governing Body established an *Ad Hoc* Working Group to negotiate and finalize procedures and operational mechanisms to promote compliance and address issues of non-compliance, with a view to their approval at this 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.
2. The present document contains the Report of the Co-Chairs of the *Ad Hoc* Working Group, Mr René J.M. Lefeber and Mr Javad Mozafari Hashjin, outlining the work of the Committee, as well the outputs of its meetings, including the Committee's recommendations to the Governing Body.

II. SUMMARY AND OUTPUTS OF THE MEETINGS OF THE AD HOC WORKING GROUP

3. In accordance with the terms of reference established by the Governing Body, the *Ad Hoc* Working Group was comprised of up to two representatives designated by each FAO region in addition to the Co-Chairs.
4. The two meetings of the *Ad Hoc* Working Group took place in Rome, respectively on 2-3 February 2010 and 17-18 January 2011.
5. The *Ad Hoc* Working Group carried out its work on the basis of draft text, as contained in the *Annex* to Resolution 2/2009. Prior to the first meeting of the *Ad Hoc* Working Group, Contracting Parties and observers were invited to make, through the Secretary, submissions on the draft text.
6. At its first meeting, members of the *Ad Hoc* Working Group emphasized the importance of having in place cooperative and effective procedures and mechanisms for compliance, as one of the elements necessary for the full implementation of the International Treaty. In particular, they underscored that compliance procedures and mechanisms should apply to all of the provisions of the International Treaty, and be facilitating and supporting in nature.
7. The *Ad Hoc* Working Group reviewed the draft text and developed new draft text, and agreed that the text will form the basis of its work at the second meeting.
8. At its first meeting, the *Ad Hoc* Working Group also agreed that there will be a need to make some recommendations to this Fourth Session of the Governing Body, including in the form of a draft Resolution. The *Ad Hoc* Working Group further agreed that in the draft Resolution to be forwarded to the Governing Body for its consideration, provision would 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 and mechanisms would be 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.
9. At its second meeting, the *Ad Hoc* Working Group further developed the draft *Procedures and Operational Mechanisms to Promote Compliance and Address Issues of Non-Compliance*, as contained in *Appendix 1* to this document, with a view to their approval by the Governing Body at this Fourth Session.
10. In connection to the draft procedures and mechanisms, the *Ad Hoc* Working Group agreed on some recommendations to the Governing Body and developed a draft Resolution by

which the Governing Body could adopt the procedures and mechanisms. The draft Resolution is in *Appendix 2* to this document.

11. The Governing Body is invited to:
 - i. finalize the *Procedures and Operational Mechanisms to Promote Compliance and Address Issues of Non-Compliance*, in *Appendix 1* to this document;
 - ii. consider the draft Resolution contained in *Appendix 2* to this document.

APPENDIX 1

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

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[.] [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, being 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 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 1st of the first year of the financial period of the International Treaty following their election. At its [...] 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 Secretariat 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

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 the Contracting Party concerned, on matters relating to compliance with a view to assisting it to comply with its obligations under the International Treaty;]
- c) Address issues of non-compliance and identify the specific circumstances of the issue referred to it, in accordance with Sections [V to VII] below;
- d) [Monitor the implementation of the Treaty by Contracting Parties on the basis of reports in accordance with Section IX below;]
- e) [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];]
- [f *bis*] [Address questions related to the implementation of the International Treaty, in accordance with Sections V to VII 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.

V. PROCEDURES [REGARDING SUBMISSIONS RELATING TO ISSUES OF NON-COMPLIANCE]

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

2. Any submission [shall]/[is to] be addressed in writing to the Secretariat and set out:

- a) The matter of concern;
 - b) The relevant provisions of the International Treaty; and
 - c) Information substantiating the matter of concern.
- 2.*bis* The Secretariat shall forward any submission under paragraph 1a above to the Committee within 30 calendar days of receipt.
3. The Secretariat shall, within 30 calendar days of receipt of a submission under paragraph 1b or 1c above, forward any such submission to the Contracting Party concerned.
4. 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 Secretariat.
- 4.*bis* Once it has received a response and any information from the Contracting Party concerned, the Secretariat shall transmit the submission, the response and such information to the Committee. 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 forward the submission to the Committee forthwith.
5. 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.
- 5*bis*. 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.
- [6. Confidentiality will be a requirement of the consideration of the submission.]

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[;
 - (d) An International Agricultural Research Centre of the Consultative Group of the International Agricultural Research Centres;
 - (e) any natural or legal person that are users of Standard Material Transfer Agreements].
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 [shall]/[could] receive, through the Secretariat, any communication concerning questions related to the implementation of the International Treaty 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) the Secretariat.]

[5. 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 International Treaty; and
- (c) any relevant supporting information clarifying the question raised by the communication.]

[6. The Committee may make recommendations to the Governing Body concerning questions related to the implementation of the International Treaty.]

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 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 [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.]

VIII. REVIEW OF THE PROCEDURES AND MECHANISMS

The Governing Body [shall], within six years of adoption and periodically thereafter, [is to] review the effectiveness of these procedures and mechanisms and take appropriate action.

[IX] [IV bis].**MONITORING AND REPORTING**

1. Each Contracting Party [shall]/[is to] submit to the Committee, through the Secretariat, 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 [shall]/[is to] be submitted three years after the adoption by the Governing Body of a standard reporting format, developed by the Committee. Subsequent reports [shall]/[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.

3. The Committee shall submit a synthesis report on the basis of the reports that it has considered to 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].

[3bis. Subject to any guidance of the Governing Body, and on the basis of the reports submitted to it, the Committee shall conduct a systemic review of the state of compliance by the Contracting Parties with their obligations under the International Treaty and report thereon to the next regular session of the Governing Body. The report may include recommendations on possible solutions to identified problems.]

4. The Committee may develop and submit any further [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.

APPENDIX 2

DRAFT RESOLUTION **/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 adopt 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 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, 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 [...] of the procedures and operational mechanisms referred to in paragraph 1 above, shall develop a succinct standard reporting format for adoption by the Governing Body at its next Session;
5. *Further decides* that each of the seven regions of the FAO submit to the Bureau, no later than six 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 [...] 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.