

March 2013



The International Treaty

ON PLANT GENETIC RESOURCES FOR FOOD AND AGRICULTURE



Item 4 of the Draft Provisional Agenda

FIRST MEETING OF THE COMPLIANCE COMMITTEE

Rome, Italy, 20–22 April 2013

DRAFT RULES OF PROCEDURE OF THE COMPLIANCE COMMITTEE

I. INTRODUCTION

1. By Resolution 2/2011, the Governing Body approved the *Procedures and Operational Mechanisms to Promote Compliance and Address Issues of Non-Compliance* (Procedures and Operational Mechanisms). By this Resolution, the Governing Body assigned the Compliance Committee with a number of tasks including the development of:

- a) Further rules of procedures relevant to the work of the Committee; and
- b) A succinct standard reporting format, in accordance with Section V of the Procedures and Operational Mechanisms.¹

2. This document covers the first task and contains, in the *Appendix*, elements of draft *Rules of the Procedures* for consideration by the Committee.² These elements also address a number of issues identified by the Governing Body for inclusion in the Rules of Procedure by the Committee

II. DRAFT RULES OF PROCEDURES

3. The Governing Body, by Resolution 2/2011, decided that the rules of procedure of the Compliance Committee provide, *inter alia*, for rules on:

- a) Confidentiality;
- b) Decision-making;
- c) Conflict of interest of Committee members;
- d) Electronic decision-making;
- e) Replacement of Committee members;
- f) Format for submissions by the Governing Body.³

4. The elements for draft rules of procedure contained in the *Appendix* to this document cover the above subjects, respectively, in the proposed Rules:

- a) **VII** – it is provided that confidentiality applies to submissions made by a Contracting Party with respect to another Contracting Party, or with respect to itself, thus excluding from confidentiality submissions made by the Governing Body;

¹ IT/GB-4/11/Report, Resolution 2/2011.

² The Secretariat prepared these elements of draft *Rules of Procedure* in order to facilitate the work of the Committee and the draft does not constitute the expression any opinion or any specific recommendation by the Secretariat.

³ *Id.*

- b) **X** – in line with the Treaty’s provisions on decision-making by the Governing Body, consensus is the modality for decision-making; recognizing that consensus may not always be achieved, the rule establishes that in case of persistent divergence among the Committee members, the report shall reflect all the expressed views;
 - c) **III.2; III.3; III.4** – conflicts of interest, including conflict arising from nationality, is recognised as a possible occurrence in the operations of the Committee, which would entail two possible consequences: a) the duty of any Committee member to declare any conflict of interest; b) the duty for any Committee member in conflict of interest to abstain from the elaboration and adoption of a recommendation of the Committee in relation to the matter in question; an oath of service, which is the practice for members of other Compliance committees, solemnizes, among others, such duties;
 - d) **VIII** – in line with the practice of some other compliance committees, electronic communications are allowed for both informal consultations on issues under consideration by the Committee and for decision-making; in the latter case the Committee may wish to further elaborate the modalities;
 - e) **III.1** – the rule provides for replacement of Committee members by the Bureau in consultation with the appropriate FAO Region;
 - f) *Annex* to the rules – the format for submissions by the Governing Body deals with submissions made by the Governing Body, on general issues of compliance and with respect to an individual Contracting Party or group of Contracting Parties.
5. The Secretariat developed these elements of draft *Rules of Procedure*, drawing upon existing rules of procedures for the operation of other compliance mechanisms in the area of international environmental law, in particular those under the Cartagena Protocol on Biosafety and the Kyoto Protocol.⁴
6. The Committee is invited to examine and finalise the draft *Rules of Procedure*, for submission to the Governing Body for its consideration and approval at its next Session. An enabling draft Resolution is provided in a separate document.⁵

⁴ *Rules of procedure for meetings of the Compliance Committee under the Cartagena Protocol on Biosafety* (Decision BS-II/1), available at <http://bch.cbd.int/protocol/decisions/decision.shtml?decisionID=10779>; *Rules of Procedure of the Compliance Mechanism of the Kyoto Protocol*, available at http://unfccc.int/files/kyoto_protocol/compliance/background/application/pdf/rules_of_procedure_of_the_compliance_committee_of_the_kp.pdf

⁵ IT/CC 1/13/4

Appendix

INTERNATIONAL TREATY ON PLANT GENETIC RESOURCES FOR FOOD AND AGRICULTURE

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

DRAFT RULES OF PROCEDURES OF THE COMPLIANCE COMMITTEE

**Rule I
SCOPE**

1.1 These rules of procedure shall apply to any meeting of the Compliance Committee and shall be read together with and in furtherance of the *Procedures and Operational Mechanisms to Promote Compliance and Address Issues of Non-Compliance*, adopted by the Governing Body and contained in the *Annex* to Resolution 2/2011.

1.2 The Rules of Procedure of the Governing Body shall apply, *mutatis mutandis*, to all matters not specifically dealt with under the present Rules.

**Rule II
USE OF TERMS**

For the purpose of these Rules of Procedure:

“Bureau” shall mean the Bureau of the Governing Body, established under Article 19.11 of the Treaty.

“Contracting Party concerned” shall mean the Contracting Party referred to in section VI.1 of the Compliance Procedures;

“Committee” shall mean the Compliance Committee established by the Governing Body by Resolution 3/2006;

“Compliance Procedures” shall mean the Procedures and Operational Mechanisms to Promote Compliance and Address Issues of Non-Compliance, contained in the *Annex* to Resolution 2/2011 of the Governing Body, and any amendment thereto as may be adopted by the Governing Body;

“Governing Body” shall mean the Governing Body as provided for under Article 19 of the International Treaty;

“Member of the Committee” shall mean a member of the Committee elected pursuant to section III.4 of the Compliance Procedures;

“Secretary” shall mean the Secretary of the Governing Body, as provided for under Article 20 of the International Treaty.

Rule III MEMBERS

3.1 If a member of the Committee resigns or is unable to complete his or her term of office or to perform his or her functions, the Bureau, on behalf of the Governing Body and in accordance with section III.4 of the Compliance Procedures, shall, in consultation with the appropriate FAO Region, appoint a replacement to serve the remainder of the term of that member.

3.2 Each member of the Committee shall, with respect to any matter that is under consideration by the Committee, avoid direct or indirect conflicts of interest.

3.3 Where a member finds himself or herself faced with a direct or indirect conflict of interest, or is a citizen of a Contracting Party concerned, that member shall bring the issue to the attention of the Committee prior to the consideration of that particular matter. The concerned member shall not participate in the elaboration and adoption of any recommendation of the Committee in relation to that matter.

3.4 Each member of the Committee shall serve in his or her individual capacity, and shall take and agree to respect a written oath of service before assuming his or her service. The oath of service shall read as follows:

“I solemnly declare that I will perform my duties and exercise my authority as member of the Compliance Committee honorably, faithfully, impartially and conscientiously.

I further solemnly declare that, subject to my responsibilities within the Compliance Committee, I shall not disclose, even after the termination of my functions, any confidential information coming to my knowledge by reason of my duties in the Compliance Committee.

I shall disclose immediately to the Committee any interest in any matter under discussion before the Compliance Committee which may constitute a direct or indirect conflict of interest or which might be incompatible with the requirements of independence and objectivity expected of a member of the Compliance Committee and I shall refrain from participating in the work of the Compliance Committee in relation to such matter.”

3.5 The Committee shall elect its Chair and a Vice-Chair, who will rotate among the FAO regions [every ... years], provided that the Chair and the Vice-Chair shall not be from the same FAO Region.

3.6 The Secretary of the Governing Body shall act as secretary to the meetings of the Committee.

Rule IV AGENDA

4.1 The agenda of the Committee shall include items arising from its functions as specified in section IV of the Compliance Procedures and other matters related thereto.

4.2 Notice of meetings shall be sent to the members at least six weeks before the opening of the meeting.

4.3 To the extent possible, the provisional agenda, together with official supporting documents, shall be distributed by the Secretariat to all members of the Committee at least three weeks before the opening of any meeting of the Committee.

Rule V
PUBLICATION OF DOCUMENTS

Subject to Rule VII below, the provisional agenda, official documents and reports of meetings shall be made available to the public.

Rule VI
SUBMISSIONS BY THE GOVERNING BODY

Any submission by the Governing Body pursuant to section VI.1.c of the Compliance Procedures shall follow the format contained in the Annex to these rules of procedure.

Rule VII
CONFIDENTIALITY

7.1 The Committee and any person involved in its work shall ensure the confidentiality of information that has been provided to it following a submission made in accordance with section V.1 (a) and (b) of the Compliance Procedures.

7.2 Information that the Committee must keep confidential under paragraph 1 above shall not be made available to any Contracting Party, except for, upon request, the Contracting Party that made a submission under section V.1.b) of the Compliance Procedures.

7.3 Reports of the Committee shall not contain any information that the Committee must keep confidential under paragraph 2 above.

7.4 Save as otherwise provided for in this Rule, no information held by the Committee shall be kept confidential.

Rule VIII
USE OF ELECTRONIC MEANS

8.1 Electronic means of communication may be used by the members of the Committee for the purpose of:

- a) conducting informal consultations on issues under consideration; and
- b) elaborating and taking decisions in writing using electronic means of communication.

8.2 The Committee may establish further rules on electronic means of communication under paragraph 1.b of this Rule, taking into account the provisions of Rule VII above.

8.3 Any decision taken in accordance with paragraph 1.b above shall be deemed to be taken at the headquarters of the Secretariat of the International Treaty.

Rule IX
CONDUCT OF BUSINESS

9.1 The Committee shall decide on whether it will meet in open or closed meetings. Such decisions, including the reasoning thereof, shall be reflected in the reports of the Committee.

9.2 Subject to paragraph 1 below, any person invited by the Committee may attend its meetings.

9.3 The Committee may, subject to the availability of financial resources and where the circumstances so require, invite to its meetings any expert or person with valuable knowledge to provide technical opinion, advice or information that may assist the effective consideration of a matter before it.

9.4 Only members of the Committee and Secretariat officials may be present during elaboration and adoption of a decision or a recommendation by the Committee.

Rule X
DECISION MAKING

10.1 The Committee shall make every effort to adopt its decisions and recommendations by consensus, that is, the absence of any formal objection by any of its members.

10.2 Where consensus is not possible, the report shall reflect the views of all members of the Committee.

Rule XI
LANGUAGES

11.1 The working language of the Committee shall be English or any other official United Nations language agreed by the Committee.

11.2 The submissions from the Contracting Party concerned, the response and the information, as referred to in section VI.5 of the Compliance Procedures, shall be made in any one of the six official languages of the United Nations. The Secretariat shall make arrangements to translate them into English if they are submitted in one of the languages of the United Nations other than English.

11.3 A representative of the Contracting Party concerned taking part in the proceedings of the Committee in accordance with section VI.8 of the Compliance Procedures may speak in a language other than the working language of the Committee, subject to the availability of interpretation.

Rule XII
EXPENSES

Expenses incurred by members of Committee, when attending sessions of the Committee, and the costs for related activities shall be covered under the Core Administrative Budget as may be adopted by the Governing Body at its Regular Sessions.

Rule XIII
AMENDMENTS TO RULES OF PROCEDURE

13.1 Any amendment to these rules of procedure shall be adopted by consensus by the Committee and submitted to the Governing Body for consideration and approval.

13.2 Any amendment of these rules of procedures adopted by consensus by the Committee shall be provisionally applied pending their approval by the Governing Body.

Rule XIV
OVERRIDING AUTHORITY

In the event of a conflict between any provision of these rules and any provision of the International Treaty or the Compliance Procedures, the provisions of the International Treaty or the Compliance Procedures shall prevail.

Rule XV
Entry into Force

These Rules and any amendments thereto shall come into force upon their approval by the Governing Body.

Annex

Draft format for submissions by the Governing Body to the Compliance Committee

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

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

Article 21 of the International Treaty and Section 6.1 (c) of the *Compliance Procedures*.

Submission by the Governing Body relating to issues of non-compliance

Pursuant to its Resolution..., and in accordance with the Compliance Procedures, the Governing Body *submits* the following issue(s) of non-Compliance with the provisions of the International Treaty for consideration by the Compliance Committee, and *requests* the Committee to provide advice or make any recommendations, and provide a report to the Governing Body, as appropriate.

In the matter of [*Contracting Party concerned*]*

Summary of issue(s) of non- Compliance	Relevant Provisions of the Treaty	Details or relevant information of the issue(s) of concern	Additional remarks or action sought from the Compliance Committee

* In the case of a specific Contracting Party, insert the name of the Contracting Party or, in the case of specific or general issues of non-compliance pertaining to a group of Contracting Parties or Contracting Parties in general, to indicate the group or refer to the relevant Articles of the International Treaty.