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The International Treaty
ON PLANT GENETIC RESOURCES FOR FOOD AND AGRICULTURE

Item 8 of the Provisional Agenda

INTERNATIONAL TREATY ON PLANT GENETIC RESOURCES FOR FOOD AND AGRICULTURE

FOOD AND AGRICULTURE ORGANIZATION OF THE UNITED NATIONS

THIRD SESSION OF THE GOVERNING BODY

Tunis, Tunisia, 1 – 5 June 2009

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

1. At its First Session, the Governing Body reviewed the document, *Draft procedures and operational mechanisms to promote compliance and to address issues of non-compliance.*[1] A number of issues remained unresolved, and the Governing Body accordingly decided to address the outstanding issues during its Second Session (see *Annex* to the draft Resolution which is an *Appendix* to this document).

2. In its Resolution 3/2006, the Governing Body decided, *inter alia*,

> *1.* [to establish] *a Compliance Committee pursuant to Articles 19.3e and 21 of the International Treaty on Plant Genetic Resources for Food and Agriculture, which shall commence its work following the approval of cooperative and effective procedures and operational mechanisms on compliance;*
>
> *2. pursuant to Article 21 of the Treaty, to consider and approve procedures and operational mechanisms on compliance at its second session, on the basis of the draft procedures and operational mechanisms to promote compliance and address issues of non-compliance, which are contained in* Appendix I *to* [the] *Report,*[2] *and the submissions made by Parties and observers, no later than three months before the commencement of the second session of the Governing Body, if possible;*
>
> *3. that compliance shall be included in the agenda of the Governing Body.*

3. Contracting Parties and observers were invited to make such submissions by a Circular State Letter of 3 November 2006. Submissions were made by Parties and observers pursuant to

[1] IT/GB-1/06/7
[2] IT/GB-1/06/Report

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the request of the Governing Body, and compiled in the document *Compilation and analysis of submissions made by Contracting Parties and observers on compliance*[3].

4. At its Second Session the Governing Body adopted the *Resolution 1/2007* on *Compliance* and,

(i) ***Decide[d]***, pursuant to Article 21 of the Treaty, to consider and approve procedures and operational mechanisms on compliance at its Third Session, on the basis of the draft procedures and operational mechanisms to promote compliance and address issues of non-compliance, which are contained in *Appendix I* to the Report of the First Session of the Governing Body, and the submissions made by Parties and observers;

(ii) ***Requeste[d]*** the Secretary to compile submissions by Contracting Parties and observers;

(iii) ***Decide[d]*** to put the issue of compliance high on the agenda of the next Session of the Governing Body; and

(iv) ***Decide[d]*** to establish, as appropriate, a contact group at its next Session, which shall commence consideration of the procedures and operational mechanisms to promote compliance and address issues of non-compliance.

5. Contracting Parties and observers were invited again to make such submissions by Letter of 11 June 2008. Submissions were made by Parties and observers pursuant to the request of the Governing Body and they are contained in the document *Compilation and analysis of submissions made by Contracting Parties and observers on procedures and mechanisms to promote compliance and address issues of non-compliance*[4].

6. The Governing Body is invited to consider and approve the draft resolution with the draft procedures and operational mechanisms to promote compliance and address issues of non-compliance, taking into account, as appropriate, the documents referred to in paragraphs 1 to 5 above.

[3] IT/GB-2/07/Inf.5

[4] IT/GB-3/09/Inf.3

APPENDIX

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:

I. OBJECTIVES

1. The objective of the compliance procedures and mechanisms shall be to promote compliance with 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, 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, fairness, expeditiousness, predictability.

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

III. INSTITUTIONAL MECHANISMS

1. The Compliance Committee established by the Governing Body on [...] hereinafter referred to as “the Committee” shall carry out the functions specified herein.

2. The Committee shall consist of [l4]/[10]/[7] members nominated by Parties and elected by the Governing Body to the Treaty on the basis of [two]/[one] from each of the [seven]/[five] regional groups of the [United Nations]/[FAO].

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][and they shall act objectively and in the best interests of the Treaty].

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 session, the 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]/[once] a year, unless it decides otherwise.]/[The Committee shall hold meetings as necessary and, wherever possible, in conjunction with meetings of the Governing Body or other Treaty bodies.]/[The Committee shall hold meetings as necessary, taking [also] into account meetings of the Governing Body]. 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 in accordance with the Treaty.

7. Bearing in mind Rule 1.1 of the Rules of Procedure of the Governing Body, the Committee shall develop and submit any further rules of procedure[, including rules on confidentiality, conflict of interest and electronic decision-making,] 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

l. The Committee shall, with a view to promoting compliance and addressing issues 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]/[issues] referred to it;]

b) Consider information submitted to it regarding matters relating to compliance and issues of non-compliance;

c) Offer advice and/or facilitate 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 Contracting Parties with their obligations under the Treaty, taking into account the information submitted [by the Contracting Parties][to it] and following the guidance of the [Committee][Governing Body]];

e) Take [measures][actions], as defined [in Section 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;][Monitor the implementation of the Treaty by Contracting Parties on the basis of reports in accordance with Section IX;]*]*

g) Carry out any other functions as may be assigned to it by the Governing Body of the Treaty pursuant to Article 21;

h) [[Report to the Governing Body]/[Provide confidential reports to the Bureau] on its activities [, including a summary of each closed issue of non-compliance,]]/[To present a bi-annual report to the Governing Body].

V. PROCEDURES

l. 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”.]

Option 1

[[2. Upon reception of submissions on possible non-compliance, the Secretariat will initiate a process of dialogue with the Contracting Party or Contracting Parties involved in order to overcome the situation.]

[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.***]***

OR

Option 2

[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 Treaty; and
c) Information substantiating the matter of concern.

[3. The Secretariat shall, within fifteen days of receipt of submissions under paragraph 1b above, make the submissions available to the Contracting Party concerned, and once it has received a response and information from the Contracting Party concerned, it shall transmit the submission, the response and information to the Committee. In the case that a Contracting Party submits documentation with regard to itself the Secretariat shall, within 15 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 Treaty.

5 bis. The Contracting Party concerned [may present responses or comments at every step of the proceedings]/[is entitled to participate in the deliberations of the Committee]. This Contracting Party shall not participate in the elaboration and adoption of a recommendation of the Committee.***]***

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

VI. INFORMATION

l. 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 inter-governmental organizations, [including the International Agricultural Research Centres]];

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 [provided to the Committee].]

VII. [MEASURES]/[MECHANISMS]/[ACTIONS] TO PROMOTE COMPLIANCE AND ADDRESS CASES OF NON-COMPLIANCE

l. [The Committee may take one or more of the following measures] with a view to promoting compliance and addressing [cases][a case] of non-compliance [which is raised in accordance with Article V.1 and taking into account such factors as the cause, type, degree, and frequency of non-compliance, the Committee may [only]]:

a) [Provide]/[Offer] advice or [and or facilitate] assistance [,including legal advice or legal assistance] [or non-binding recommendations] 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 provisions under the Treaty.

2. [With a view to promoting compliance and addressing an issue of non-compliance raised in accordance with section V.1 the][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 [to] [upon one or more of the following measures]:

a) Provide [financial and technical] assistance[, including legal assistance to the Party concerned,][technology transfer, training and other capacity-building measures][subject to bugetary considerations];

b) [Issue a caution to the concerned Party; or]

c) [Publish cases of non-compliance.]/[Request the Secretariat to place on the website closed issues of non-compliance.]

[d) Take any other actions it deems appropriate in accordance with the Treaty and for the fulfillment of the Treaty's objectives.]

VIII. REVIEW OF THE PROCEDURES AND MECHANISMS

[The Governing Body to the Treaty shall, in line with Article 21, review the effectiveness within X years of adoption of the procedures and/or periodically 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.

[IX. MONITORING

1. Each Party shall submit to the Committee, through the Secretariat, a report on the measures it has taken to implement the Treaty in one of the six languages of the United Nations five years after the entry into force of the Treaty, and every 5 years thereafter, 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 twelve 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 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.]**]**

DRAFT RESOLUTION FOR THE CONSIDERATION OF THE GOVERNING BODY

[RESOLUTION */2009 OF THE GOVERNING BODY
COMPLIANCE

The Governing Body,

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