

May 2006



منظمة الأغذية
والزراعة
للأمم المتحدة

联合国
粮食及
农业组织

Food
and
Agriculture
Organization
of
the
United
Nations

Organisation
des
Nations
Unies
pour
l'alimentation
et
l'agriculture

Organización
de las
Naciones
Unidas
para la
Agricultura
y la
Alimentación

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Item 9 of the Draft Provisional Agenda

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

FIRST SESSION OF THE GOVERNING BODY

Madrid, Spain, 12-16 June 2006

**COMPILATION OF SUBMISSIONS AND COMMENTS ON THE DRAFT
PROCEDURES AND MECHANISMS TO PROMOTE COMPLIANCE AND TO
ADDRESS ISSUES OF NON-COMPLIANCE**

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For reasons of economy, this document is produced in a limited number of copies. Delegates and observers are kindly requested to bring it to the meetings and to refrain from asking for additional copies, unless strictly indispensable. The documents for this meeting are available on Internet at <http://www.fao.org/ag/cgrfa/gb1.htm>

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I. INTRODUCTION

1. The *Open-ended Working Group on the Rules of Procedure and the Financial Rules of the Governing Body, Compliance, and the Funding Strategy*, which met in Rome, Italy, from 14-17 December 2005, reviewed written submissions from governments on procedures and mechanisms to promote compliance and to address issues of non-compliance. During the meeting, countries and regions made comments and submissions. The Open-ended Working Group then consolidated the submissions into a draft resolution, and agreed that this should be submitted for consideration by the Governing Body. This is contained in the document *Draft procedures and operational mechanisms to promote compliance and to address issues of non-compliance*.¹
2. The Open-ended Working Group invited further submissions and comments by countries and regions, including on the draft resolution and its Annex and requested the Interim Secretariat to post these on the Commission's web-site. These submissions and comments are available on Internet at: <http://www.fao.org/ag/cgrfa/compfs.htm> and are reflected in this document.
3. On 27 January 2006, a Circular State Letter was issued, inviting countries to submit further views on the Procedures and Mechanisms on Compliance to the Secretariat (*Appendix*). At the time of preparing this document, submissions had been received from Algeria, Argentina, Burkina Faso, Egypt, Ethiopia, the European Union, Guinea, Honduras, Indonesia, Lithuania, Madagascar, Morocco, Nepal, Pakistan, Panama, Peru, Syria, Uruguay and Zambia. They were posted on the Commission's web-site, at <http://www.fao.org/ag/cgrfa/compfs.htm>. Submissions received after the preparation of this document are also posted on the Commission's website.

II. COMPILATION AND ANALYSIS OF FURTHER SUBMISSIONS

4. These further views have been compiled in the tables below.² A number of countries made more general comments. These have not been incorporated in the tables. New text or modification to the document *Draft procedures and operational mechanisms to promote compliance and to address issues of non-compliance*³ as proposed by countries, or where they have indicated preference(s) from available options, has been reflected in the tables. This is presented in *italics* with the modifications to current text reflected in ***bold italics***.
5. The Governing Body is invited to take these submissions into account, as appropriate, in considering the draft Resolution on Compliance.

¹ IT/GB-1/06/7

² The methodology followed draws from the draft *Draft Procedures and Mechanisms on Compliance under the International Treaty on Plant Genetic Resources for Food and Agriculture*. It should be noted that the presentation of submissions in this way is not intended in any way to interpret them, but merely to list them systematically.

³ IT/GB-1/06/7

A. GENERAL VIEWS EXPRESSED ON PROCEDURES AND MECHANISMS ON COMPLIANCE

Party	Views and Comments
Burkina Faso	<p>Its views refer to existing compliance mechanisms and those still under study. It supports the options and procedures that facilitate cooperative, consensual and non-conflictual implementation and that respect the differing characteristics of the Parties to the Treaty.</p> <p>Burkina Faso therefore considers that the Governing Body should have a clear perception of the following points:</p> <ol style="list-style-type: none"> 1) the actual implementation of the International Treaty which should focus, as a matter of priority, on the authorized utilization of plant genetic resources for food and agriculture with the sole aim of ensuring global food security; 2) the applicability of Treaty instruments should not lose sight of the importance of building the capacity of developing countries to enable them to participate more fully in the implementation of the Treaty; 3) the transfer and utilization of material should be upheld by genuine cooperation of mutual benefit to the Parties. They should tend inexorably towards an optimal minimization of penalties in the material transfer contract; 4) trade agreements should note the disparity between private and public contracts to achieve maximum possible equity in the rules to be applied; 5) while highly desirable for the deliberations of the Governing Body, there is reason to question the need for a consensus decision in all areas (substantive issues, procedural matters...); 6) the role of the Secretary of the Governing Body in the rules of procedure: the relationship between the Secretariat of the Governing Body and the Secretariat of FAO will need to be clearly defined, as will the status of observers.
European Union	<p>Key elements in the development of procedures and mechanisms on compliance should be</p> <ul style="list-style-type: none"> • the early and proper application of procedures and mechanisms on compliance by entitling actors to raise compliance issues before the compliance committee, including a Party with respect to itself and a Party with respect to another Party; • the application or recommendation by the compliance committee of cooperative and effective measures that promote compliance and address issues of non-compliance under the International Treaty. the primary focus should be on supportive measures, such as the facilitation of advice and assistance
Indonesia	<p>Provisions in the ITPGRFA should be used as the basic consideration for the development of procedures and mechanisms on compliance, especially</p> <ul style="list-style-type: none"> • Article 9 – Farmers’ Rights <ul style="list-style-type: none"> – Protection of traditional knowledge relevant to plant genetic resources for food and agriculture; – The right to equitably participate in sharing benefits arising from the utilization of plant genetic resources for food and agriculture; and – the right to participate in making decisions, at the national level, on matters related to the conservation and sustainable use of plant genetic resources for food and agriculture. • Part IV – The Multilateral System – provides important items to be included, including <ul style="list-style-type: none"> – sovereign rights of the State/Parties

	<ul style="list-style-type: none"> - measures to be taken in case of non-compliance to the Article 11.3 - emphasis on Article 12, particularly on: <ul style="list-style-type: none"> ◦ the purpose of utilization and conservation for research, breeding and training for food and agriculture; ◦ their importance for food security in the case of multiple-use crops (food and non-food); ◦ expeditious access; ◦ transparency in revealing PGRFA for multilateral system of access; ◦ MTA should be established in line with the International Regimes on Access to Genetic Resources and Benefit Sharing, as being prepared by the CBD; ◦ Compliance on the provisions stipulated in Article 13 on Benefit-sharing in the Multilateral System.
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B. VIEWS AND PROPOSALS ON THE DRAFT RESOLUTION FOR THE CONSIDERATION OF THE GOVERNING BODY (COMPLIANCE)

Paragraph	Party	Views and Proposals (proposed Text in <i>italics</i>)
1	Algeria	1. <i>Hereby establishes a Compliance Committee pursuant to Articles 19 and 21 of the Treaty, on the basis of the Annex hereto and the submissions made by countries and regions, for further consideration and possible finalization, which shall commence its work following the approval of cooperative and effective procedures and operational mechanisms on compliance;</i>
	Argentina	1. <i>Hereby establishes a Compliance Committee pursuant to Articles 19 and 21 of the Treaty, on the basis of the Annex hereto, which shall commence its work following the approval of cooperative and effective procedures and operational mechanisms on compliance;</i>
	Ethiopia	Add new <i>1bis. Decides that a party identifies any case of non-compliance with any of the Articles 10, 11, 12, 13, 15 or 17 of the International Treaty shall notify the fact to the Executive Secretary of the Treaty. The Secretariat of the Treaty shall also take its own initiative identify cases of non-compliance with any of these Articles. Upon being informed of, or upon identifying, any case of non-compliance, the Executive Secretary shall request the presumed non-compliant to comply. If its attempts do not bring about prompt compliance, it shall report the case to the Compliance Committee. The Executive Secretary shall also submit bi-annual reports of its activities dealing with compliance or lack thereof to the Compliance Committee.</i>
	Guinea	1. <i>Hereby resolves to progressively establish compliance procedures and mechanisms, pursuant to Articles</i>
	Indonesia	1. <i>Hereby establishes a Compliance Committee pursuant to Articles 19 and 21 of the Treaty on the basis of the annex hereto and the submissions made by countries and regions, for the consideration and possible finalization;</i>

	Morocco	1. <i>Hereby resolves to progressively establish compliance procedures and mechanisms, pursuant to Articles 19 and 21 of the Treaty, on the basis of the Annex hereto and the submissions made by countries and regions, for further consideration and possible finalization;</i>
	Nepal	1. <i>Hereby establishes a Compliance Committee, pursuant to Articles 19 and 21 of the Treaty on the basis of the annex hereto and the submissions made by countries and regions, for further consideration and possible finalization;</i>
2	Algeria	2. <i>Decides to consider such procedures and operational mechanisms, with a view to their approval at its [*] Session, on the basis of the Annex hereto and the submissions made by countries and regions, for further consideration and possible finalization;</i>
	Argentina	2. <i>Decides to adopt the procedures and operational mechanisms included in the Annex hereto;</i>
	Guinea	2. <i>Decides to adopt the procedures and operational mechanisms included in the Annex hereto;</i>
	Indonesia	2. <i>Decides to consider such procedures and operational mechanisms, with a view to their approval at its first Session on the bases of the annex hereto and the submissions made by countries and regions, for the consideration and possible finalization;</i>
	Morocco	2. <i>Decides to consider such procedures and operational mechanisms, with a view to their approval at its <u>second</u> Session, on the basis of the Annex hereto and the submissions made by countries and regions, for further consideration and possible finalization;</i>
	Nepal	2. <i>Decides to consider such procedures and operational mechanisms, with a view to their approval at its [*] Session, on the basis of the annex hereto;</i>
3	Algeria	3. Keep 3bis Delete
	Argentina	3. <i>Decides, so as to provide for provisional procedures and operational mechanisms on compliance, that a Party may, in advance of a Session of the Governing Body, raise any matter concerning its compliance with the Treaty, including potential non-compliance with the Treaty. The Governing Body shall consider the matter, and shall decide on an appropriate approach for addressing the matter raised by the Party. The Governing Body may, inter alia, designate a Party or Parties to meet intersessionally with the Party raising the matter, in order to offer advice or assistance, including legal advice or legal assistance, where needed;</i> 3.bis Delete
	Guinea	3. Keep
	Indonesia	3. Keep 3bis Keep
	Morocco	3. Keep 3bis Delete
	Nepal	3. Delete 3bis Keep

C. VIEWS AND PROPOSALS ON THE ANNEX TO THE DRAFT RESOLUTION ON COMPLIANCE

DRAFT PROCEDURES AND MECHANISMS ON COMPLIANCE UNDER THE INTERNATIONAL TREATY ON PLANT GENETIC RESOURCES FOR FOOD AND AGRICULTURE

I Objectives

Article	Party	Views and Proposals (proposed Text in <i>italics</i>)
1	Nepal	1. <i>The objective of the compliance procedures and mechanisms shall be to promote compliance with the provisions of this Treaty, to address issues of non-compliance by Parties, to monitor activities under the treaty, and provide advice or assistance, especially to developing countries, least developed countries and countries with economies in transition, where appropriate.</i>

II Principles

Article	Party	Views and Proposals (proposed text in <i>italics</i>)
2	Argentina	2. <i>The operation of the compliance procedures and mechanisms shall be guided by the principles of transparency, fairness, expedition and predictability and good faith.</i>
3	Argentina	3. <i>The operation of the compliance procedures and mechanisms shall take into account existing differences in capacity and adequate balance between developed and developing countries.</i>
4	Indonesia	Add new: 4. <i>The operation of the compliance procedures and mechanisms shall be legally binding.</i>

III Institutional Mechanisms

Article	Party	Views and Proposals (proposed text in <i>italics</i>)
2	Madagascar	2. <i>The Committee shall consist of 14 members elected by the Governing Body of the Treaty from the nominations of the contracting parties, on the basis of two from each of the seven regional groups of the United Nations.</i>
3 – 8	European Union	<ul style="list-style-type: none"> • the establishment of a small and effective compliance committee composed of technical and legal experts who serve in their personal capacity.
	Indonesia	<p>The basis for determining the representatives from the groups should not be at the average of two, but rather be on the equitable principle, based on the number of countries belonging to the regional groups, the estimate of genetic resources they have, and the size of their populations.</p> <p>3. <i>Members of Committee shall have recognized competence in the field of Genetic Resources or other relevant fields for the treaty, including legal and technical expertise, and they shall serve in their individual capacity.</i></p> <p>4. Keep with <i>addendum</i> on the nomination procedures, so that it will be based on principles of equity.</p> <p>5. Keep with <i>addendum</i> on the determination of venue(s) of meetings.</p>

		7. Keep with <i>addendum</i> on the time of completion of the development and submission of rules of procedure to the Governing Body.
	Morocco	7. <i>The Committee shall develop and submit its rules of procedure to the Governing Body for its consideration and approval at the session following the session of its establishment.</i>
	Peru	In paragraph 4 of Section III, Institutional Mechanisms (Annex to Appendix 1) of the draft, the mechanism for the election of the seven members of the Committee for the second half of the term needs to be specified.

IV. Functions of the Committee

Article	Party	Views and Proposals (proposed text in <i>italics</i>)
1	Egypt	Add new: <i>i) Connecting the participating parties through networking in order to exchange information and experiences to be used in solving problems of non-compliance.</i>
	Indonesia	f) <i>Monitor the activities of the Treaty supported by the Secretariat and information supplied by the Parties with follow up of monitoring and the evaluation on the monitoring results;</i> g) It is requested that Governing Body will take measures in following up the report and discussing the matter in the following Governing Body Session.
	Morocco	b) <i>Consider information submitted to it regarding matters relating to compliance and, especially, cases of non-compliance;</i>

V. Procedures

Article	Party	Views and Proposals (proposed text in <i>italics</i>)
2	Argentina	2. <i>Upon reception of submissions on possible non-compliance, the Secretariat will initiate a process of dialogue for a period of thirty days with the Party or Parties involved in order to overcome the situation. Such dialogue will be especially implemented in cases where developing countries are concerned.</i>
	Indonesia	It is suggested that the Procedures be developed into a Protocol that will detail the procedures. This is suggested since this is the core of the procedures and operating mechanisms of Compliance to ITPGRFA.
3	Argentina	3. <i>In the event that such dialogue process will not reach its aim within thirty days, the Secretariat shall, within fifteen days of receipt of the submission that no agreement was reached in the dialogue process, make the submission available to the Party concerned, and will publish it, encouraging the submission of any information from other sources ...</i>
	Madagascar	3. <i>In the event that such dialogue process will not reach its aim within thirty days, the Secretariat will have fifteen days to make the submissions available to the Party for these to be published, 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.</i>

VI. Information and Consultation

Article	Party	Views and Proposals (proposed text in <i>italics</i>)
4	Algeria	4. <i>The Committee, in the undertaking of its functions and activities, shall maintain the confidentiality of any information in accordance with Article XXX of the Treaty.</i>
	Argentina	We suggest specifying the scope of the confidentiality referred to in this paragraph.

VII. Measures to Promote Compliance and Address Cases of Non-Compliance

Article	Party	Views and Proposals (proposed text in <i>italics</i>)
1	Algeria	a) <i>provide advice and assistance to the Party concerned, in accordance with practices to be determined;</i>
	Argentina	c) <i>request said Party 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</i>
	Madagascar	a) <i>provide advice and assistance to the Party concerned, to the extent necessary;</i>

		c) <i>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;</i>
	Morocco	b) <i>make recommendations to the Governing Body of the Treaty regarding the provision of financial and technical assistance, technology transfer, training and other capacity-building measures in the case of developing or transition countries;</i> c) <i>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;</i>
	Nepal	(a) <i>Provide advice or assistance to the Party concerned, especially to developing countries, least developed countries and countries with economies in transition, as appropriate;</i>
2	Argentina	2. We propose the following changes in the order of the subparagraphs: a) <i>issue a caution to the concerned Party</i> b) <i>publish cases of non-compliance</i> c) <i>provide financial and technical assistance, technology transfer, training and other capacity-building measures.</i>

IX. Reporting

Article	Party	Views and Proposals (proposed text in <i>italics</i>)
	Algeria	<i>The Governing Body may, every five (5) years, seek reports from all the Parties regarding compliance with the Treaty.</i>
	Peru	In Section IX, Reporting on compliance with the Treaty, a standard format should be prepared for the information to be included in the report.

Appendix

**CIRCULAR STATE LETTER OF 27 JANUARY 2006 INVITING COUNTRIES TO
SUBMIT FURTHER VIEWS AND COMMENTS ON PROCEDURES AND
OPERATIONAL MECHANISMS TO PROMOTE COMPLIANCE**

Our Ref.: G/AGD-804

27 January 2006

International Treaty on Plant Genetic Resources for Food and Agriculture

Preparation of Draft Procedures and Mechanisms to promote
Compliance and to Address Issues of Non-Compliance

Development of the Funding Strategy

The Director-General of the Food and Agriculture Organization of the United Nations has the honour to refer to the International Treaty on Plant Genetic Resources for Food and Agriculture, which was approved by the FAO Conference at its Thirty-first Session in November 2001, through Resolution 3/2001, in accordance with Article XIV of the FAO Constitution. The Resolution also requested the Commission on Genetic Resources for Food and Agriculture to act as Interim Committee for the Treaty, and prepare the First Session of the Treaty's Governing Body, which is scheduled to be held in Madrid from 12 to 16 June 2006, at the kind invitation of the Government of the Kingdom of Spain.

At its Second Meeting the Interim Committee established an Open-ended Working Group on the Rules of Procedure and Financial Rules of the Governing Body, Compliance and the Funding Strategy. The Open-ended Working Group met in Rome from 14 to 17 December 2005 and took a number of decisions.

Article 21 of the Treaty, Compliance, requires the first meeting of the Governing Body of the Treaty *“to consider and approve cooperative and effective procedures and operational mechanisms to promote compliance with the provisions of this Treaty and to address issues of non-compliance”*. During the meeting of the Open-ended Working Group countries and regions made comments and submissions on the issue of compliance, which were consolidated in the text ... in *Appendix 1* to this letter. The Open-ended Working Group *“invited further submissions and comments by countries and regions, including on the text [in Appendix 1], and requested the Secretariat to post these on the Commission's Web-site”*.

Article 19.3c requires the Governing Body “*to adopt, at its first session [...] the funding strategy for the implementation of this Treaty, in accordance with the provisions of Article 18*”. The Open-ended Working Group considered and revised a draft Funding Strategy, including a draft Resolution, for submission to the Governing Body.

... The revised draft Funding Strategy and draft Resolution are attached as *Appendix 2* to this letter. The Open-ended Working Group also “*agreed that Members might provide the Secretariat with further views on, and text for, the Funding Strategy, by 31 March 2006. It requested the Secretariat to compile such views and suggested text for consideration as a background document by the first Session of the Governing Body*”.

The Organization accordingly therefore takes pleasure in inviting States and regions to forward their views on Compliance and on the Funding Strategy, in the form requested by the Open-ended Working Group, by 31 March 2006, to:

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Secretary, Commission on Genetic Resources for Food and Agriculture
Food and Agriculture Organization of the United Nations
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