

Communications from the public

KEY POINTS

- **The Compliance Committee will only consider communications from members of the public that are submitted to it after 23 October 2003, which is the date on which the compliance mechanism enters into force with regard to communications from the public. Such communications may concern facts that occurred before this date, although they should not address problems that have been solved or have otherwise become obsolete.**
- **Only Parties to the Convention have legal obligations under it, and therefore issues of compliance arise only with respect to Parties. Signatories and other States which are not Parties to the Convention do not have legal obligations under it and any communication addressing the extent to which they apply the Convention or their failure to do so falls outside the competence of the Compliance Committee.**
- **Except by way of background information, communications should address only actions, omissions, events or situations which occurred when the State in question was under a legal obligation under the Convention, i.e. after it became a Party.**
- **In considering any communication from the public, the Compliance Committee will take into account the extent to which any domestic remedy (i.e. review or appeals process) was available to the person making the communication, except where such a remedy would have been unreasonably prolonged or inadequate. Before making a communication to the Committee, the member of the public should consider whether the problem could be resolved by using such appeals mechanisms.**
- **Communications to the Committee may concern either general failure by a Party to introduce the necessary legislative, regulatory and other measures to implement the Convention in conformity with its objectives and provisions; specific deficiencies in the measures taken; or (bearing in mind the point about domestic remedies) specific instances of a person's rights under the Convention being violated; or a combination of these. For communications concerning a person's rights under the Convention, it must be stressed that the compliance procedure is designed to improve compliance with the Convention and is not a redress procedure for violations of individual rights.**
- **The compliance mechanism aims at facilitating compliance by Parties with their obligations under the treaty. The mechanism itself and any measures undertaken in the course of or as a result of Compliance Committee's operation are by their nature non-confrontational, non-judicial and consultative.**

Introduction

One important feature of the Aarhus Convention's compliance mechanism is that it provides for members of the public to make communications to the Committee on cases of alleged non-compliance with the Convention, which the Committee is then required to deal with. In international environmental agreements, it is unusual for the public to have the right to make communications claiming that a State Party to the agreement is not fulfilling its obligations. However, this could be seen as a logical consequence of the fact that the Aarhus Convention, unlike other environmental agreements, seeks to guarantee the rights of the public, not only the rights of Parties vis-à-vis one another. In other fields of international law, in particular human rights law, this is a well-established and much-used mechanism to ensure that States respect the basic human rights set out in various treaties. The Compliance Committee will therefore draw on the experience of other international environmental agreements and of various human rights bodies, in particular the Human Rights Committee.

The Aarhus Convention entered into force on 30 October 2001. From that date, its obligations are legally binding on its Parties. The compliance mechanism, enriched by input from the public, is expected to provide an important stimulus to Parties to comply with these obligations.

More information concerning the Compliance Committee and all relevant documentation is available at <http://www.unece.org/env/pp/compliance.htm>. More information concerning the Convention is available on the Convention's web site: <http://www.unece.org/env/pp>.

Who can submit a communication?

Any member of the public, i.e. any natural or legal person, may submit a communication to the Committee. A communication may also be filed by a non-governmental organization, including an environmental organization or a human rights organization. The person filing the communication – hereafter referred to as the communicant – is not required to be a citizen of the State Party concerned, or, in the case of an organization, to be based in the State Party concerned.¹

It is not necessary for the communicant to be represented by a lawyer or have the communication prepared with legal assistance. However, it might improve the quality of the communication and thus facilitate the work of the Committee if some legal knowledge is available to the communicant.

Concerning which States can a communication be filed?

A communication may be made concerning a State that fulfils two conditions:

- First, the Convention must be in force for the State in question, meaning that it must be a Party to the Aarhus Convention. The list of States that have ratified, accepted, approved or acceded to the Convention can be found at <http://www.unece.org/env/pp/ctreaty.htm>. The Convention enters into

¹ Unless the context indicates otherwise, the term 'State' should be understood to also cover any regional economic integration organization that is entitled to become a Party to the Convention under its article 19, such as the European Community.

force for a State only on the ninetieth day after the date on which it has deposited its instrument of ratification, acceptance, approval or accession.

- Second, the State Party should not have ‘opted out’ of the compliance mechanism with respect to communications from members of the public.² Information on States that have opted out of having communications from the public concerning their compliance considered by the Committee will be made available on the Convention’s web site at <http://www.unece.org/env/pp/compliance.htm>. For the time being, no States have opted out.

When can a communication be made?

Communications may be made concerning States which were Parties on 23 October 2002 (provided that they have not opted out). Concerning other States, communications may only be made one year or more after the date of the entry into force of the Convention for that Party (the one-year grace period).

Example: State X deposits its instrument of ratification on 1 July 2003. The Convention enters into force for that State 90 days later, i.e. on 28 September 2003. Communications may be made with respect to that Party from 28 September 2004.

Please note that where communications are submitted less than two weeks before a given meeting of the Committee, it is doubtful whether the Committee would be able to consider their admissibility at that meeting. The dates of the upcoming meetings are listed on the Committee’s web site.

What types of non-compliance may a communication address?

A communication may address any of the following:

- A general failure by a Party to take the necessary legislative, regulatory or other (e.g. institutional, budgetary) measures necessary to implement the Convention as required under its article 3, paragraph 1, in a manner which is in conformity with its objectives and provisions;
- Legislation, regulations or other measures implementing the Convention which fail to meet the specific requirements of certain of its provisions;
- Specific events, acts, omissions or situations which demonstrate a failure of the State authorities to comply with or enforce the Convention.

² When a Party has ‘opted out’, it means that it has notified the Secretary-General of the United Nations that it does not accept the consideration of communications from the public for a period of up to four years, as allowed for in decision I/7 (annex, para. 18). Such a notification should be made before 23 October 2003 for States that were Parties at the time when the decision was adopted; for other States, the notification should be made no later than one year after the entry into force of the Convention for that State. If a Party has made such a notification, it is not possible to make a communication concerning that Party for a period of five years after the entry into force of the Convention for that State or such shorter period as may be specified in the notification to the Depositary.

What formal criteria should the communication fulfil?

In accordance with the decision of the Meeting of the Parties, the Committee will not consider any communication that it determines to be:

- (a) Anonymous.
- (b) An abuse of the right to make such a communication.
- (c) Manifestly unreasonable.
- (d) Incompatible with the decision on review of compliance (decision I/7) or with the Convention.
- (e) Concerning a State which is not a Party to the Convention.
- (f) Concerning a Party which has opted out.

Criteria for the fulfilment of conditions (b)-(d) have not yet been formally defined. The Committee intends to provide additional information on its interpretation of these conditions as practical experience accumulates.

The Committee is also required to take into account any available domestic remedies, unless the application of the remedy is unreasonably prolonged or obviously does not provide an effective or sufficient means of redress. This means that although there is not a strict requirement that all domestic remedies must be exhausted, the Committee may decide not to pursue the substance of a communication if it considers that the communicant has not sufficiently explored the possibilities for resolving the issue through national administrative or judicial review procedures. The fact that a domestic remedy, even one which is not unreasonably prolonged etc., was available and was not used in the case does not in itself preclude the Committee from considering the communication. However, the Committee may decide to give priority, other things being equal, to communications where there seems to be a lack of effective domestic remedies. Were the Committee faced with a mounting workload, this might also constitute a reason for it to decide not to proceed beyond initial consideration of a communication

The one-year grace period mentioned above means that during the first year after the entry into force of the Convention for a State Party, the Committee may not consider communications from members of the public with respect to that Party. This does not mean, however, that the Convention does not bind the Party during this period. The provisional view of the Committee is that it is not precluded from considering communications submitted after the “grace period” but where the significant events occurred during the first year after the entry into force of the Convention in that State Party.

If a communication concerns a specific and concrete case of alleged non-compliance, e.g. a concrete decision to reject a request for access to environmental information, and the significant events related to the case occurred before the entry into force of the Convention for that Party, the Committee is likely to determine that it will not consider the communication as the State had no legal obligations under the Convention at the time of the events.

While the Committee is under an obligation to consider all admissible communications, it has some flexibility to consider communications in an order other than that in which they had been received, based on the need for balanced review of compliance by various Parties and its own workload.

To whom should communications be sent, and how?

Communications should be addressed to the Committee but sent via the secretariat at the address indicated at the end of the annex to this paper.

It is recommended to send the communication by e-mail, preferably with the enclosures attached. In addition, a signed copy of the communication, together with any corroborating material, should be sent by post or otherwise delivered to the secretariat.

Communications should not be sent to the individual members of the Committee or to its Chairperson; the secretariat will forward communications to the members.

The communicants are also encouraged to forward the communications to the government of the Party concerned at the same time as submitting them to the Committee.

What information should be included in the communication?

Form of the communication

A communication to the Committee should be in writing but otherwise need not take any particular form. There is a checklist of items of information to be included in the annex to this document for guidance.

Communications should be kept as concise as possible by avoiding the inclusion of information which is not necessary to establishing the existence and nature of the alleged case of non-compliance. Where a lengthy communication is considered unavoidable, owing to the complexity and volume of information required to make the case, it is strongly recommended to include a two to three-page summary of the main facts of the case.

Information on the author of the communication – the communicant

The communication should provide basic information – name and contact details – on the identity of the communicant, whether this is an individual or an organization. If the communicant is a registered organization, the communication should be signed by a person legally authorized to sign for the organization. If the communication is made by a group of persons, a contact person should be designated to correspond on behalf of the group and the personal information provided for that person. The Committee will not consider anonymous communications.

State concerned by the communication

The communication should clearly identify the Party whose compliance is the subject of the communication. Where a person wishes to draw the attention of the Committee to what he or she considers to be non-compliance by more than one Party, a separate communication should be submitted for each Party involved.

Facts of the alleged non-compliance

The communication should also set out, in chronological order, the facts on which the communication

is based. It should indicate whether it refers to a general situation of non-compliance in the Party concerned (e.g. a problem related to the legislation in place to transpose the Convention into the national legal system, or lack of any such national legislation); or to a specific situation of alleged non-compliance (e.g. a denial of access to environmental information in a particular case, which is considered to contravene the Convention); or both.

Provisions of the Convention alleged to be contravened

The communication should contain all information which is considered essential to establishing the alleged non-compliance, and it should be clearly stated in which ways the facts presented demonstrate a situation of non-compliance with the Convention. The specific provisions of the Convention which are allegedly violated, or are otherwise relevant, should be identified as precisely as possible. **The communication should clearly indicate the specific provisions of the Convention that had allegedly not been complied with and to make explicit links between these provisions and concrete facts presented in the communication.**

Domestic and other remedies

The communication should specify whether steps have been taken to use the remedies available in the country in question to obtain redress in the case which is the subject of the communication (e.g. administrative or judicial review or appeals procedures operated by public authorities, courts, tribunals, ombudsperson, etc.) and if so, which steps were taken, when they were taken and what the results were. If no steps have been taken, it should be explained why not (e.g. because no remedies were available or because they were too expensive). If remedies were sought in connection with the matter which is the subject of the communication, or in a closely related case, by a person other than the communicant, this should also be mentioned in the communication.³

It should also be indicated whether the matter has been submitted to another means of international investigation or settlement and, if so, which steps were taken, when they were taken and what the results were.

Confidentiality

If the communicant is concerned that the disclosure of information submitted to the Committee could result in his or her being penalized, persecuted or harassed he or she is entitled to request that such information, including any information relating to his or her identify, be kept confidential. The same applies if the communicant is concerned that the disclosure of information submitted to the Committee could result in another person or persons being penalized, persecuted or harassed. The Committee must respect any such request. If any of the information in the communication is submitted in confidence to the Committee, this should be clearly indicated. If there is no specific request for confidentiality, none of the information communicated to the Committee will be kept confidential.

If the secretariat receives a communication and/or supporting documentation parts of which are confidential, it will highlight this when forwarding the material to the Committee. The secretariat will prepare a redacted copy of the communication and/or supporting documentation for public use.

A communicant requesting that any of the information submitted be treated as confidential may, if he or she so chooses, elaborate on why such a request is being made, but there is no obligation to do so. It should be borne in mind that, if too much information is required to be kept confidential, this may

³ See furthermore section V on formal criteria.

impede the processing of the case. So while no one should be discouraged from exercising this right, it should only be used when considered necessary.

Copies of relevant documents

Copies of all documents of relevance to the communication, especially any legislative and administrative acts transposing the Convention into national legislation in the State concerned, and which are necessary as background information, should be submitted as corroborating material to facilitate the Committee's work.

Languages

Communications may be submitted in any of the official languages of the Convention (English, French or Russian). In practice, if the communication is submitted in English, this will considerably speed up its consideration as this is the internal working language of the Committee and therefore this is recommended. If a document of importance to the matter of the communication is not available in English, French or Russian, it should preferably be translated into English and submitted in both languages. This does not have to be a certified translation, though in some cases that might be preferable.

If the communication and/or supporting documentation is submitted in a language other than English, the secretariat will arrange for at least the essential documentation to be translated into English. This will slow down the process, possibly by one month or more. The communicant will be offered the opportunity to comment on the accuracy of the translation if s/he so wishes. A similar procedure will apply to responses received from the Party concerned in languages other than English. The Party concerned will also be invited to comment on the accuracy of translations of official documents originating from a different source, e.g. legal acts, letters from public authorities.

The need for translation of any supportive documentation submitted in languages other than English, French or Russian will be addressed on an ad hoc basis, implying possible delays.

Procedure for bringing a communication to the attention of the Committee

Step 1 – Receipt of the communication

Each communication received by the secretariat addressed to the Compliance Committee is registered. An acknowledgement of the receipt and a reference number is sent to the communicant. If a communication, or an essential part of the supporting documentation, is not received in English, the secretariat will delay forwarding it to the Committee until an English version is available.

Step 2 – Circulation of the communication

On the basis of section VII above, the secretariat verifies that all necessary information is provided in the communication, and circulates the communication and supportive documents to the members of the Committee. If the communication lacks certain mandatory or essential information, the secretariat is mandated to resolve such problems through dialogue with the communicant before forwarding the communication to the Committee. When forwarding any communication to the Committee, the

secretariat will add a data sheet providing basic information about the communication. The data sheet including a 150-word summary of the communication will be posted on the website at the same time. The communicant may provide comments to the information presented in the datasheet. The Committee may subsequently make changes to the data sheet, which will then be updated accordingly.

Step 3 – Determination of admissibility

The Committee first considers the admissibility of the communication. If one or more of the formal criteria for admissibility are not fulfilled (see section V), the Committee will either dismiss the communication (e.g. if the communication is anonymous or manifestly unreasonable) or decide that a further opportunity should be provided to the communicant to fulfil these criteria (e.g. if it is not clear whether the communication concerns matters falling within the scope of the Convention). If the Committee decides that the communication does not fulfil the formal criteria and that it does not want to pursue the matter further, it informs the communicant accordingly. A communication which has been determined to be inadmissible is usually not brought to the attention of the Party concerned by it. However, if in specific circumstances the Committee decides that there are good reasons to forward the inadmissible communication to the Party concerned, it will generally seek the views of the communicant on this before doing so.

If the Committee is satisfied that all criteria for admissibility are fulfilled, it provisionally decides that the communication is admissible and opens a ‘file’. The communication is then brought to the attention of the Party alleged to be in non-compliance. The Committee may at this stage, on the basis of a preliminary consideration of the matters covered by the communication, make such points or raise such questions as it sees fit in the covering letter to the Party.

The secretariat sends all the documents related to the communication, together with the covering letter, to the Aarhus Convention’s national focal point of the Party concerned with a copy to that Party’s Permanent Mission to the United Nations in Geneva and to the communicant.

The secretariat should not wait for the signed copy of the communication to arrive before forwarding it to the Committee in electronic form. The Committee will, however, normally wait for the signed copy of the communication to arrive before forwarding it to the Party concerned.

The communication and the supporting documentation will not be placed on the web site, or made available to the public upon request, until they have been sent to the Party concerned. Following this, communications which had, on a preliminary basis, been determined to be admissible will be posted on the web site as received with no editorial changes or amendments. Communications are made available in such a mode in order to further facilitate public access to information related to compliance issues. **Their presence on the web site does not imply endorsement of the content by the Committee or by UNECE.**

Communications determined to be inadmissible would not be put on the web site but are available from the secretariat upon request.

Step 4 – Response by the Party

When the Party receives the letter from the secretariat, it should as soon as possible - but in any case within five months - submit written explanations or statements clarifying the matter and describing any response it may have made concerning the matter. The Party may also submit comments with respect to the admissibility of the communication. If a Party contests the admissibility of the communication, it should so inform the Committee as soon as possible, but again within five months.

The deadline for response should be calculated from the date at which the documentation was sent from the secretariat and the response from the Party concerned should reach the secretariat by the end of the relevant period at least by fax or e-mail, though it would be acceptable for the posted original to arrive after the deadline provided that it had been posted before the deadline.

Consideration by the Committee

Upon receipt of the response from the Party concerned, the Committee first considers any comments that the Party might have made with respect to the admissibility of the communication. In doing so it may make use of the electronic decision-making to expedite the process. If not persuaded to alter its provisional opinion regarding admissibility, the Committee confirms the admissibility of the communication and moves on to consider the substance of the file. If it is persuaded that the communication was, after all, inadmissible or that there is some doubt over the matter, it reverses or suspends its provisional decision and informs the communicant accordingly, providing a further opportunity for comment, and, where necessary seeking further information to enable it to reach a decision on the admissibility.

If no response has been received from the Party within five months of the communication being forwarded to it, the Committee will confirm the admissibility of the communication and consider the substance of the file.

If the Committee determines that the combination of the communication and the response of the Party does not provide sufficient information for the Committee to consider all aspects of the matter, the Committee may take one or more of the following steps:

- (g) It may request further information from the communicant, from the Party concerned or from other sources;
- (h) With the agreement of the Party concerned, it may gather information gathering in the territory of that Party;
- (i) It may seek the services of experts and advisers; and
- (j) In some instances, it may decide to hold a hearing.

When the Committee discusses and establishes the facts of the matter, the meeting is open to the public. The Party concerned as well as the communicant will be notified of the time and place where their case will be discussed and are entitled to participate and contribute to the discussion. In some cases, subject to the availability of resources and fulfilment of the applicable eligibility criteria, financial support to cover travel and accommodation of representatives of the Party concerned and the communicant may be provided.

On the basis of the information made available to the Committee by the parties concerned or otherwise gathered by it, and taking into account other sources of interpretation of the Convention as it sees fit and the knowledge of its members themselves, the Committee will determine whether or not the Party concerned by the communication is or has been failing to comply with the Convention. These deliberations are generally closed to the public, including the Party and the communicant. However, in particular circumstances the Committee may decide to hold such deliberations in public and, in such cases, the parties concerned will be duly informed.

If the Committee determines that the Party is or has been failing to comply with the Convention, it will then consider what measures would be appropriate in the specific circumstances of non-compliance. The Committee will take into account all elements of the case, including the cause and frequency of the non-compliance as well as the capacity of the Party concerned to implement the Convention and its socio-economic conditions.

The draft conclusions, draft measures and possibly draft recommendations of the Committee are sent to the Party concerned and to the communicant. The Party concerned and the communicant will then be allowed to submit their comments on the draft conclusions through the secretariat, measures and recommendations within a certain deadline and the Committee will take the comments into account when finalizing its consideration of the matter.

The measures that the Committee can suggest to remedy a situation of non-compliance include:

- (a) Provide advice and facilitate assistance to the Party concerned regarding its implementation of the Convention,
- (b) Make recommendations to the Party concerned;
- (c) Request the Party concerned to submit a strategy, including a time schedule, to the Committee regarding the achievement of compliance with the Convention and to report on the implementation of this strategy;
- (d) In matters concerning a specific situation of non-compliance, make recommendations on specific measures to address the matter raised in the communication;
- (e) Issue declarations of non-compliance;
- (f) Issue cautions.

Once the Committee has reached its final conclusions on the communication, these are communicated to the Party and the communicant. In any case, all measures proposed by the Committee are subject to decision by the Meeting of the Parties (see below). However, in cases where the Committee considers that there is a need to address a compliance issue more urgently, it may take the measures (a)-(d) above without awaiting the adoption of the Meeting of the Parties. This requires that the Party concerned has been consulted on the necessity of addressing the matter without delay and on the suggested measures. The Committee may only take the measures included in (b)-(d) above only with the agreement of the Party concerned.

For every ordinary meeting of the Parties, the Committee is required to submit a report. This report will inter alia contain information concerning individual communications, including any interim measures suggested pending the consideration by the Meeting of the Parties as well as measures suggested for adoption by the Meeting of the Parties. The Committee is required to make every effort to adopt this report by consensus. Where the views differ, the different views of the Committee's members should be reflected.

The report of the Committee is public and will be made available in English, French and Russian, and put on the Convention's web site. Ordinary meetings of the Parties are at present envisaged to take place every two or three years.

Consideration by the Meeting of the Parties

The Meeting of the Parties makes the final decision on specific measures aimed at bringing about full compliance with the Convention.

The Meeting of the Parties has broad possibilities for addressing issues of non-compliance as long as these measures are non-confrontational, non-judicial and consultative, and in accordance with international law.

The decisions of the Meeting of the Parties are communicated directly to the parties concerned and made public.

Follow-up to measures decided by the Meeting of the Parties

The Meeting of the Parties may decide to give a mandate to the Committee to monitor the implementation, e.g. of a strategy to achieve compliance that it has requested the Party to submit to the Committee. If given such a mandate, the Committee will in turn report on this to the Meeting of the Parties.

ANNEX

Checklist for communications

I. Information on correspondent submitting the communication

Full name of submitting organization or person(s):

Permanent address:

Address for correspondence on this matter, if different from permanent address:

Telephone:

Fax:

E-mail:

If the communication is made by a group of persons, provide the above information for each person and indicate one contact person.

If the communication is submitted by an organization, give the following information for the contact person authorized to represent the organization in connection with this communication:

Name:

Title/Position:

II. State concerned

Name of the State concerned by the communication:

III. Facts of the communication

Detail the facts and circumstances of the alleged non-compliance. Include all matters of relevance to the assessment and consideration of your communication. Explain how you consider that the facts and circumstances described represent a breach of the provisions the Convention:

IV. Nature of alleged non-compliance

Indicate whether the communication concerns a specific case of a person's rights of access to information, public participation or access to justice being violated as a result of non-compliance or relates to a general failure to implement, or to implement correctly, (certain of) the provisions of the Convention by the Party concerned:

V. Provisions of the Convention relevant for the communication

List as precisely as possible the provisions (articles, paragraphs, subparagraphs) of the Convention that the State is alleged to not comply with:

VI. Use of domestic remedies or other international procedures

Indicate if any domestic procedures have been invoked to address the particular matter of non-compliance which is the subject of the communication and specify which procedures were used, when which claims were made and what the results were:

If no domestic procedures have been invoked, indicate why not:

Indicate if any other international procedures have been invoked to address the issue of non-compliance which is the subject of the communication and if so, provide details (as for domestic procedures):

VII. Confidentiality

Unless you expressly request it, none of the information contained in your communication will be kept confidential. If you are concerned that you may be penalized, harassed or persecuted, you may request that information contained in your communication, including the information on your identity, be kept confidential. If you request any information to be kept confidential, you are invited to clearly indicate which. You may also elaborate on why you wish it to be kept confidential, though this is entirely optional.

VIII. Supporting documentation (copies, not originals)

- Relevant national legislation, highlighting the most relevant provisions.
- Decisions/results of other procedures.
- Any other documentation substantiating the information provided under VII.
- Relevant pieces of correspondence with the authorities.

Avoid including extraneous or superfluous documentation and, if it is necessary to include bulky documentation, endeavour to highlight the parts which are essential to the case.

XI. Summary

Attach a two to three-page summary of all the relevant facts of your communication.

X. Signature

The communication should be signed and dated. If the communication is submitted by an organization, a person authorized to sign on behalf of that organization must sign it.

XI. Address

Please send the communication by email AND by registered post to the following address:

Mr. Jeremy Wates
Secretary to the Aarhus Convention
United Nations Economic Commission for Europe
Environment and Human Settlement Division
Room 332, Palais des Nations
CH-1211 Geneva 10, Switzerland
Phone: +41 22 917 2384
Fax: +41 22 917 0634
E-mail: public.participation@unece.org

Clearly indicate: "Communication to the Aarhus Convention's Compliance Committee"