

Guidance Document on Aarhus Convention Compliance Mechanism

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Introduction

There has been a growing trend in recent years for international treaty bodies to develop mechanisms to identify and address problems with treaty compliance at an early stage, as a means of ensuring that the objectives of the treaty are met as fully as possible. Compliance problems may be caused by a number of factors, e.g. institutional, structural, economic, cultural or historical.

At its first meeting, the primary policy-making body of the Aarhus Convention, the Meeting of the Parties, adopted a decision on review of compliance, decision I/7, which established a compliance mechanism for the Convention (Lucca, October 2002). The basis for the decision was provided by Article 15 of the Convention, which requires the Parties to set up arrangements of a non-confrontational, non-judicial and consultative nature to review compliance with the Convention. The arrangements should allow for some public involvement, which includes the option of considering communications from members of the public on matters related to the Convention.

Decision I/7 establishes a Compliance Committee as the main body for the review of compliance and sets out the structure and functions of the Committee as well as the procedures for reviewing compliance with the Convention. The primary role of the Committee is to report and make recommendations to the Meeting of the Parties for it to decide upon and take appropriate action. In certain circumstances, the Committee itself may take certain actions on an interim basis, in consultation or in agreement with the Party concerned.

Composition of the Committee

Decision I/7, as amended by decision II/5, establishes a Compliance Committee consisting of nine members serving in a personal capacity. These individuals are to be nationals of Parties or Signatories to the Convention who are persons of high moral character and recognized competence in the fields to which the Convention relates, including persons having legal experience.

The Committee may not include more than one national of the same State.

Nomination for election

Parties, Signatories and non-governmental organizations falling within the scope of article 10, paragraph 5, of the Convention and promoting environmental protection may nominate candidates for election as follows:

- (a) Nominations shall be sent to the secretariat in at least one of the official languages of the Convention not later than 12 weeks before the opening of the meeting of the Parties during which the election is to take place;
- (b) Each nomination shall be accompanied by a curriculum vitae (CV) of the candidate not

exceeding 600 words and may include supporting material;

- (c) The secretariat shall distribute the nominations and the CVs, together with any supporting material, in accordance with rule 10 of the Rules of Procedure.

Election:

The Meeting of the Parties elects the members of the Committee by consensus or, failing consensus, by secret ballot.

Geographic representation:

The Committee may not include more than one national of the same State. In the election of the Committee, consideration should be given to the geographical distribution of membership and diversity of experience.

Rotation:

The Parties at their first meeting elected four members to the Committee to serve until the end of the next ordinary meeting and four members to serve a full term of office.

At their second meeting, the Parties agreed that the number of members of the Committee shall be increased to nine, with effect from the third ordinary meeting of the Parties, where five members shall be elected for a full term.

At each ordinary meeting thereafter, the Meeting of the Parties shall elect four or five members, as appropriate, for a full term of office.

Outgoing members may be re-elected once for a further full term of office, unless in a given case the Meeting of the Parties decides otherwise. A full term of office commences at the end of an ordinary meeting of the Parties and runs until the second ordinary meeting of the Parties thereafter. The Committee elects its own Chairperson and Vice-Chairperson¹.

If a member of the Committee can no longer perform his or her duties as member of the Committee for any reason, the Bureau of the Meeting of the Parties shall appoint another member fulfilling the criteria in this chapter to serve the remainder of the term, subject to the approval of the Committee.

¹ At its 8th meeting, the Committee agreed (ECE/MP.PP/C.1/2005/4, para. 29) that in order to be able to ensure a smooth operation of the Committee, the procedure of taking decisions by e-mail, described below in this Guidance Document, could be used for electing the Chairperson and Vice-Chairperson of the Committee. In such a case, the functions of the Chairperson of initiating and coordinating electronic decision-making would be performed by the secretariat.

Impartiality and conscientiousness:

Every member serving on the Committee shall, before taking up his or her duties, make a solemn declaration in a meeting of the Committee that he or she will perform his or her functions impartially and conscientiously.

Functions of the Committee

The Committee:

- (a) Considers any submission, referral or communication made in accordance with paragraphs 15 to 24 of decision I/7;
- (b) Prepares, at the request of the Meeting of the Parties, a report on compliance with or implementation of the provisions of the Convention; and
- (c) Monitors, assesses and facilitates the implementation of and compliance with the reporting requirements under article 10, paragraph 2, of the Convention;

The Committee may examine compliance issues and make recommendations if and as appropriate.

Powers of the Committee:

Report to the Meeting of the Parties:

The Committee reports on its activities at each ordinary meeting of the Parties and make such recommendations, as it considers appropriate. Each report is finalized by the Committee not later than twelve weeks in advance of the meeting of the Parties at which it is to be considered. Every effort shall be made to adopt the report by consensus. Where this is not possible, the report shall reflect the views of all the Committee members. Committee reports are available to the public.

Consideration by the Meeting of the Parties:

The Meeting of the Parties may, upon consideration of a report and any recommendations of the Committee, decide upon appropriate measures to bring about full compliance with the Convention. The Meeting of the Parties may, depending on the particular question before it and taking into account the cause, degree and frequency of the non-compliance, decide upon one or more of the following measures:

- a) Provide advice and facilitate assistance to individual Parties regarding the 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 Compliance Committee regarding the achievement of compliance with the Convention and to report on the implementation of this strategy;
- d) In cases of communications from the public, make recommendations to the Party concerned on specific measures to address the matter raised by the member of the public;
- e) Issue declarations of non-compliance;
- f) Issue cautions;
- g) Suspend, in accordance with the applicable rules of international law concerning the suspension of the operation of a treaty, the special rights and privileges accorded to the Party concerned under the Convention;
- h) Take such other non-confrontational, non-judicial and consultative measures as may be appropriate.

Consideration by the Committee

Pending consideration by the Meeting of the Parties, with a view to addressing compliance issues without delay, the Compliance Committee may, in consultation with the Parties concerned, provide advice and facilitate assistance to individual Parties regarding the implementation of the Convention.

Subject to agreement with the Party concerned, may:

- a) Make recommendations to the Party concerned;
- b) Request the Party concerned to submit a strategy, including a time schedule, to the Compliance Committee regarding the achievement of compliance with the Convention and to report on the implementation of this strategy;
- c) In cases of communications from the public, make recommendations to the Party concerned on specific measures to address the matter raised by the member of the public;

Four triggers of compliance review

The compliance mechanism may be triggered in four ways:

- (1) a Party may make a **submission about compliance by another Party**;
- (2) a Party may make a **submission concerning its own compliance**;
- (3) the secretariat may make a **referral** to the Committee;
- (4) members of the public may make **communications** concerning a Party's compliance with the convention.

In addition, the Committee may examine compliance issues on its own initiative and make recommendations; prepare reports on compliance with or implementation of the provisions of the Convention at the request of the Meeting of the Parties; and monitor, assess and facilitate the implementation of and compliance with the reporting requirements under article 10, paragraph 2, of the Convention.

Modus Operandi

General principles of Committee's operation

1. As a general rule the rules of procedure of the Meeting of the Parties could be applied *mutatis mutandis*. Rules 19, 20, 24 to 27, 29 to 42, 44, 46 and 48 are the most relevant (MP.PP/C.1/2003/2, para. 11).

Decision-making

2. The application of the rules of procedure with respect to decision-making implies that the presence of five members of the Committee is required for any decisions to be taken. It also implies that decisions of a procedural nature can be taken by a simple majority of the members present and voting, and that decisions on substantive matters can only be taken with the support of seven out of nine members present and voting, six members out of eight members present and voting six out of seven members present and voting five out of six members present and voting and four out of five members present and voting. Notwithstanding this, the Committee is generally sympathetic to the view that at least five members should be in support of any substantive decision being taken. Since Committee members are elected in a strictly personal capacity, an absent Committee member is not entitled to designate a substitute (MP.PP/C.1/2003/2, para. 12).

3. In order to expedite the processing of communications from the public, the preliminary decisions² on the admissibility of communications and on which points should be raised with the Party concerned when forwarding the communication may be taken by electronic mail according to the following procedure (MP.PP/C.1/2004/4, para. 41).

Presence of the public and participation of observers

4. All meetings should in principle be open to the public as observers but, having regard to paragraphs 26, 27, 29, 30 and 33 of the annex to Decision I/7, parts of meetings may be closed (MP.PP/C.1/2003/2, para. 15).

5. Hearings and discussions on particular cases should generally be open to the public as observers, as well as, pursuant to paragraph 32 of the annex to Decision I/7, to participation by the concerned parties. Participation should be broadly understood in the sense in which the concept is enshrined in the Convention, comprising in particular the right to comment, the right to be heard and the right to have comments taken into account by the Committee, within the framework of the procedures of the meeting (MP.PP/C.1/2003/2, para. 16).

² In this context, the term 'decisions' should be taken to encompass 'determinations'.

6. Pursuant to paragraph 33 of the annex to Decision I/7, the deliberations on the preparation of any decision should generally be closed (MP.PP/C.1/2003/2, para. 17).

7. The participation of representatives of any of the parties involved in a case should be governed by the modus operandi of the Committee, irrespective of whether the case arose through a submission, referral or communication (MP.PP/C.1/2003/4, para.19).

Publication of meetings and documentation

8. Meetings of the Committee should be publicized through the web site, with the provisional agenda, meeting reports and other official documents (other than confidential items) also being posted there (MP.PP/C.1/2003/2, para. 18).

9. Discussion papers prepared by the secretariat for a meeting of the Committee should not be posted on the web site in advance of the meeting but should be available upon request and in the meeting room for observers (MP.PP/C.1/2003/4, para. 10).

10. The essential information for each case, other than that which is required to be kept confidential pursuant Chapter VIII of the annex to Decision I/7, should be made available through the web site. The secretariat should make a short summary of each case for this purpose (MP.PP/C.1/2003/4, para. 20). Communications will be put on the web site and, without prejudice to the confidentiality of certain documentation, all of the most significant documentation setting out the positions of the Committee, the Parties concerned and the communicant should also be made available on the web site. This would include preliminary determinations on admissibility (once transmitted to the Party concerned). Draft findings and recommendations drawn up by the Committee would be publicly available upon request once they had been transmitted to the Party or Parties concerned and, where applicable, to the communicant. Similarly, any comments provided by the Party or Parties concerned or the communicant would be publicly available upon request, unless the body submitting the comments requested that they remain embargoed up to the end of the commenting period, in which case they would only be forwarded to the Committee members and would not be made available to the other parties or put in the public domain during that period. At the end of the commenting period, subject to chapter VIII of the annex to decision I/7, both the draft findings and recommendations and any comments thereon would be in the public domain.

Languages

9. English is the internal working language of the Committee. Communications should be submitted in one of the official languages of the Convention, i.e. English, French or Russian. If a communication is made in Russian or French, the secretariat will arrange for its translation into English. Supporting documentation is also translated unless it is very bulky. In such circumstances, a member of the Committee familiar with the specific language could summarize the information and/or identify those parts of the documentation which it would be essential to translate into English. When informing the public of its right to make a communication, it should be made clear that if a communication is not submitted in English, this will slow down the process of its consideration (MP.PP/C.1/2003/2, para. 21).

Conflict of interest

10. 'Normal principles' of conflict of interest apply for the Committee. This implies that in a case where a Committee member found himself or herself faced with a possible or apparent conflict of interest, that member would be expected to bring the issue to the Committee's attention and decision before consideration of that particular matter. Being a citizen of the State whose compliance was to be discussed would not in itself be considered as a conflict of interest (MP.PP/C.1/2003/2, para. 22).

11. Any member considered to have a possible conflict of interest would be treated from the outset and throughout the procedure related to that particular matter in the same manner as an observer. Consequently, any such member should not take part in formal discussions or attend meetings where the Committee was preparing or adopting findings, measures or recommendations.

12. Committee members should not be excluded from providing advice in response to requests from NGOs or others considering submitting a communication to the Committee but the normal procedure would be for the Committee member to refer the person to the information available on the web site or to the secretariat. This would allow individual members to avoid offering specific advice which could, in some cases, lead to a conflict of interest for that member of the Committee. Correspondence should preferably be sent to the secretariat rather than to individual members of the Committee (MP.PP/C.1/2003/4, para 8).

13. Committee members are at liberty to deal requests for information about submissions, referrals and communications under consideration where such information is already in the public domain and subject to provisions of decision I/7 related to confidentiality. However channelling such requests via the secretariat would ensure more up-to-date and complete information and is therefore advisable.

14. The members of the Committee may accept invitations to present the compliance mechanism at appropriate events, such as conferences and workshops (MP.PP/C.1/2003/4, para 30).

15. Unless it was specifically mandated by the Committee to collect information, meetings of the secretariat or members of the Committee with the parties concerned, such as, for example, in the context of other unrelated events, do not constitute information gathering for the purpose of paragraph 25 of the annex to decision I/7. The appropriate way for the parties concerned to submit any information for consideration would be to address it formally to the Committee, through the secretariat.

Procedures for handling submissions and referrals

This chapter is based on extracts from the reports of the second and fifth meetings of the Compliance Committee (MP.PP/C.1/2003/4, MP.PP/C.1/2003/6).

1. With respect to submissions by Parties concerning other Parties provided for under paragraph 15 of the annex to decision I/7, the following procedures apply:

(a) The secretariat should inform the Committee of any submissions that it receives and circulate any such submissions to the Committee at the same time as they are forwarded to the Party concerned;

(b) As a general rule, the secretariat should forward a copy of the submission to the Party concerned within the two-week time limit even if it considers that the submission is not complete and essential information is lacking; when forwarding such submission, the secretariat would send the copies of the submission and the covering letter to the members of the Committee. For the purposes of paragraph 26 of the annex to decision I/7, such information should be considered as held by the Committee once it had been forwarded to it.

(c) When forwarding the submission, the secretariat should in a cover letter request the Party concerned to acknowledge receipt of the submission and remind it of its obligation under decision I/7 to reply within three months or such longer period as the circumstances of the particular case may require but in no case later than six months from the date of forwarding the submission. The deadline 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. The cover letter should invite the Party concerned to indicate whether, due to the circumstances of the particular case, it envisages any difficulty in providing the reply within three months, and if so, to indicate when a reply would be sent. In the first instance, it would be for the Party concerned to determine whether more than three months is necessary to provide a reply;

(d) When a substantive reply is received by the secretariat, this should be forwarded without delay to the Committee;

(e) If no substantive reply is received from the Party concerned after three months or such longer period as may have been specified by the Party concerned, the secretariat should send a reminder to the Party concerned. The reminder should point out that following the expiry of the six-month period, the Committee will in any case be required to deal with the case on the basis of the information available to it, even in the absence of any response from the Party concerned. If necessary, a further and final reminder may also be sent to the Party concerned towards the end of the six-month period;

(f) If no response has been received within six months, the secretariat should inform the Committee accordingly, and notify the Party concerned that it has done so;

(g) In some cases, the Committee might be content to base its deliberations solely upon the information included in the submission and the reply; in others, it might decide to use its discretion to gather information from other sources in accordance with paragraph 25 of the annex to decision I/7;

(h) The Parties involved in a matter should be notified of any meeting of the Committee at which it will be discussed and of their right to be represented in such meetings in accordance with paragraph 32 of the annex to decision I/7. Where the Committee considers it important that representatives of the Parties involved in a matter participate in one of its meetings, it should explicitly invite them, stressing the importance of their participation. In such cases, the costs of such participation should, where necessary, be covered through the trust fund, in accordance with the general rules of eligibility for financial support and subject to the availability of funds (MP.PP/C.1/2003/4, para 16).

2. With regard to submissions by a Party concerning its own compliance, provided for under paragraph 16 of the annex to decision I/7, the following procedures apply:

(a) The secretariat should inform the Committee of any such submissions that it receives and circulate them to the Committee without delay;

(b) As a general rule, the secretariat should circulate the submission to the Committee without delay even if it considers that the submission is not complete and essential information is lacking;

(c) In some cases, the Committee might be content to base its deliberations solely upon the information included in the submission; in others, it might decide to use its discretion to gather information from other sources in accordance with paragraph 25 of the annex to decision I/7;

(d) The Party which has made the submission should be notified of any meeting of the Committee at which the matter will be discussed and of its right to be represented at such meetings in accordance with paragraph 32 of the annex to decision I/7. Where the Committee considers it important that a representative of the Party which has made the submission participate in one of its meetings, it should explicitly invite it, stressing the importance of its representative's participation. In such cases, the costs of such participation should, where necessary, be covered through the trust fund, in accordance with the general rules of eligibility for financial support and subject to the availability of funds (MP.PP/C.1/2003/4, para. 17).

3. With regard to referrals by the secretariat provided for under paragraph 17 of the annex to decision I/7, the following procedures are recommended:

(a) When in doubt about the situation in a country, the secretariat should be able to request information from the Party concerned as part of its general work or in preparing the synthesis report according to decision I/8 on reporting;

(b) The secretariat should always be able to consult the Committee before requesting information from a Party in the context of the compliance mechanism, if it considers this to be useful. In some cases, this may result in the Committee requesting the secretariat to seek the information from the Party;

(c) Whereas the secretariat might become aware of possible non-compliance in various ways other than through consideration of the reports (e.g. correspondence, conversations, newspapers, etc.), formal referrals by the secretariat should be based only upon information which is published or transmitted in written form;

(d) If letters from the public concerning possible non-compliance are addressed to the secretariat rather than to the Committee and it is unclear whether or not the letter is intended as a communication in the sense of paragraph 18 of the annex to decision I/7, the secretariat should clarify the matter with the correspondent, and, if it transpires that the letter is intended to be a communication in that sense, should deal with it in the normal manner for such communications. If it is immediately clear, or is subsequently made clear, that such a letter is not intended as a communication in that sense, the secretariat should inform the correspondent of the availability of the procedure for consideration of communications from the public, where he or she does not appear to be aware of it, and invite him or her to consider the possibility of using that procedure;

(e) If such correspondents indicate that they do not wish to submit a communication in the sense of paragraph 18, the secretariat would have various options available to it, including consulting the Committee, seeking corroborating information from other sources or taking no action (e.g. on the grounds that its resources should be allocated to other matters having higher priority, that the information is insufficiently solid, that the alleged non-compliance is not of sufficient gravity, etc.). The secretariat should use its discretion in choosing among these options, taking into account the nature of the particular case;

(f) The secretariat should be able, instead of making a referral in accordance with para.17, to invite a Party to consider making a submission in accordance with para. 16;

(g) The secretariat should inform the Committee when it has requested information about possible non-compliance from a Party in the context of a referral under the compliance mechanism;

Any Party which is the subject of a referral by the secretariat should be notified of any meeting of the Committee at which the matter will be discussed and of its right to be represented at such meetings in accordance with paragraph 32 of the annex to decision I/7. Where the Committee considers it important that a representative of the Party which is the subject of the referral participate in one of its meetings, it should explicitly invite it, stressing the importance of the participation of the representative. In such cases, the costs of such participation should, where necessary, be covered through the trust fund, in accordance with the general rules of eligibility for financial support and subject to the availability of funds (MP.PP/C.1/2003/4, para.18).

Processing Communications

Initial steps required of the Committee

1. The Committee should, in accordance with paragraph 22 of the annex to decision I/7, ensure that communications are brought to the attention of the Party concerned 'as soon as possible'. A communication received before any given meeting of the Committee should at the latest be forwarded before the following meeting of the Committee. Electronic decision-making will be used to expedite the processing of communications.
2. When the Committee receives a communication from the secretariat, it will need to:
 - Make a preliminary determination as to whether it fulfils the admissibility criteria;
 - Decide upon which points, if any, should be raised with the Party concerned when forwarding the communication.
3. As would be the case during a meeting of the Committee, any Committee member who may have a conflict of interest with respect to a particular communication should declare this at the outset of any electronic discussions on the communication. Declaration of a conflict of interest by a member should not prevent that member from participating in the discussion and contributing information to it. However, the member in question should take the possible conflict of interest into account when participating in the discussion.
4. Upon receipt of a communication, the Chairperson may request individual members of the Committee to provide assistance. Any member may also offer the Chairperson to assist with the communication in question.
5. If the communicant has requested that part of the communication be kept confidential, the Committee will need to decide whether the information that has not been designated confidential is sufficient for it to be able to process the communication. It may decide to enter into a dialogue with the communicant concerning the request for confidentiality if it considers that this will facilitate the processing of the communication.
6. If translation of material is required, the Committee will need to decide on the extent to which further material, other than that which is already available in English, should be translated, taking into account both the costs of translation and the delay involved. The Committee may also request the communicant to provide an English translation of certain materials.
7. When the secretariat is relaying questions or requests from the Committee to the communicant, it should have the discretion to clarify unclear responses or pose further clarifying questions with a view to gathering more complete information for the Committee. This should also apply at a later stage when corresponding with the Party concerned.

Procedures for taking decisions by e-mail

8. In order to expedite the processing of communications from the public, some of the Committee's decisions may be taken by electronic mail. In this regard, depending on the nature of a decision to be made, the Committee will apply either a comprehensive or a streamlined procedure as set out in the following paragraphs.

9. Should the Committee decide to use electronic procedure for any intersessional decision-making having significant substantive implications (such as, for example, preliminary decisions³ on the admissibility of communications and finalization of draft findings, conclusions and recommendations, following the discussion on a submission, communication or referral at a meeting, in particular where the next meeting was not taking place for a long period of time), the communication may be taken by electronic mail according to the following procedure:

(a) With the assistance of the secretariat, the Chairperson will prepare a draft decision or decisions on either or both of the above issues. The secretariat will circulate these to the Committee by e-mail, specifying a deadline for response by Committee members. The Chairperson may ask any other Committee member to assist him/her with the task of preparing such draft decisions and more generally to take responsibility for engaging in the detail of the communication on behalf of the Committee. Any interested Committee member may also contact the Chairperson to volunteer his or her services in this regard. However, only the secretariat would circulate any draft decisions on behalf of the Chairperson to the other members of the Committee;

(b) Within the deadline specified, each Committee member, having carefully considered the communication, any supporting documentation and the proposed draft decision(s), should either indicate that he or she is satisfied with the text of the decision(s) proposed, or propose amendments (which may be in the form of an alternative text). Committee members may also comment on the earlier comments of other Committee members. All comments should be sent by e-mail to all other Committee members and copied to the secretariat;

(c) If one or more Committee members request an amendment to the Chairperson's text, the Chairperson will put forward an amended proposal with a view to reaching consensus. This may be in the form of an indication of support for an amendment, or a combination of amendments, put forward by other Committee members. The amended proposal will be circulated by the secretariat with a further deadline for commenting;

(d) If a deadline for commenting (first or subsequent) expires and all those who have responded have indicated their satisfaction with the Chairperson's (latest) proposal but some Committee members have failed to respond, the secretariat will make further efforts to contact those Committee members;

³ In this context, the term 'decisions' should be taken to encompass 'determinations'.

(e) Once all Committee members have indicated their satisfaction with the Chairperson's (latest) proposal, the proposal will be deemed to have been adopted by the Committee as a preliminary decision.;

(f) No preliminary decision may be adopted by e-mail without all Committee members having affirmed their support for it. The procedure outlined in subparagraph (c) may be repeated until this is the case;

(g) When the conditions in subparagraph (e) have been met, the secretariat will circulate a note to the Committee confirming that the preliminary decision has been adopted, and, if necessary, attaching the text of the preliminary decision;

10. The Committee may use a streamlined electronic procedure on an ad-hoc basis for decisions that do not have important substantive implications (e.g. identification of points to raise with a Party concerned when forwarding a communication or when dealing with resolution of editorial changes) as follows:

(a) With the assistance of the secretariat, the Chairperson will prepare a draft decision or decisions on either or both of the above issues. The secretariat will circulate these to the Committee by e-mail, specifying a deadline for response by Committee members. The Chairperson may ask any other Committee member to assist him/her with the task of preparing such draft decisions and more generally to take responsibility for engaging in the detail of the communication on behalf of the Committee. Any interested Committee member may also contact the Chairperson to volunteer his or her services in this regard. However, only the secretariat would circulate any draft decisions on behalf of the Chairperson to the other members of the Committee

(b) The proposal circulated on behalf of the Chairperson would be considered adopted by default if no member of the Committee had objected to it within a specified period following its circulation;

(c) The time period would generally be two weeks unless otherwise decided for a particular decision;

11. When applying electronic decision-making procedure, the Chairperson may at any stage decide that differences of opinion can be resolved only through discussion at a meeting of the Committee, and abandon the attempt to make a preliminary decision through e-mail communication, in which case he or she should inform the Committee accordingly.

12. Given the difficulty in foreseeing all eventualities that may arise, the Committee may on the basis of experience decide to extend the procedure to other types of decisions, and it may decide to do so electronically, using the procedure itself.

13. At the instigation of the Chairperson, the Committee may use other forms of communication, such as regular post or conference telephone calls, possibly in combination with e-mail

Procedures for discussing submissions, referrals and communications and preparing and adopting findings, measures and recommendations

When the Committee has received the response to a submission,⁴ communication or referral from the Party concerned, or, if no response is received, when the final deadline for receiving such a response has passed, it will:

- (a) Consider whether sufficient information is available for it to be able to consider the substance of the case, and if not, identify what further information is needed;
- (b) If sufficient information is available, start the formal discussion on the substance of the case in open session, as referred to in paragraph 32 of the annex to decision I/7;
- (c) If the discussion is completed, prepare draft findings, measures and recommendations in closed session, as referred to in paragraph 33 of the annex to decision I/7; and
- (d) Finalize and adopt the findings, measures and recommendations taking account of any comments received from the Parties concerned and/or the communicant.

As a general rule, the Committee will aim to start the formal discussion on a particular submission, referral or communication at the first meeting that takes place more than two weeks following either the receipt of a response to the submission, referral or communication from the Party concerned or the applicable deadline (the six-month deadline in the case of submissions and referrals) if no response has been received by then.

As a rule, the Committee will not begin the formal discussion on a particular submission, referral or communication at any meeting that takes place before a response has been received from the Party concerned or the applicable deadline for responding has passed.

When it is known that the Committee will discuss the substance of any submission, referral or communication at a particular meeting, the secretariat will notify the Party concerned, and, as appropriate, the submitting Party and/or the communicant, that the matter will be discussed and of their right to participate in the discussion in accordance with paragraph 32 of the annex to decision I/7. The secretariat, having consulted with the Committee, may also indicate to the Party concerned and, as appropriate, the submitting Party and/or the communicant the likelihood that the Committee will enter into an in-depth discussion on the case in question.

As a rule, any substantial new information should be presented to the Committee by either party at least two weeks in advance of the meeting at which it will be discussed. The Committee would not feel constrained to take account of any such information submitted after that deadline. Nevertheless, it is free to take account of it if to do otherwise would hamper its work

The discussion could be preceded by a formal hearing, meaning that the Party concerned and, as appropriate, the submitting Party and/or the communicant would not just be notified but would be invited to come and present information and opinions on the matters under consideration, with a greater likelihood of financial support being provided to enable communicants and eligible government representatives to participate.

The discussion of any submission, referral or communication should generally take the following form:

⁴ References to submissions in this section should generally be understood to refer to submissions made by a Party about another Party's compliance, in accordance with paragraph 15 of the annex to decision I/7, rather than submissions by a Party about its own compliance.

- (a) Introduction by the Chair and opening of the discussion (by the Chair or the special rapporteur for the case if one has been appointed);⁵
- (b) Presentations by the submitting Party, secretariat (if a referral) or communicant, and by the Party concerned, including possible joint proposals;
- (c) Questions from the Committee, responses from the Party concerned and, as appropriate, the submitting Party, the secretariat and/or the communicant;
- (d) Comments from observers at the invitation of the Chair;
- (e) Final comments by the submitting Party, secretariat (if a referral) or communicant;
- (f) Final comments by the Party concerned.

The discussion phase may be concluded in a single meeting, or may continue over two or more meetings, e.g. if further information needs to be gathered. When the Committee considers that it has a sufficiently complete picture of the situation, it should move to the preparation of draft findings, measures or recommendations without delay. The conclusion of the discussion and the preparation of draft findings, measures or recommendations should generally happen at the same meeting.

Having regard to paragraph 33 of the annex to decision I/7 and earlier decisions of the Committee (MP.PP.C.1/2003/2, para. 17), the Committee should prepare draft findings, measures or recommendations in closed session. It should start by considering and drawing appropriate conclusions as to whether or not the Party concerned is in compliance. It may distinguish at this point between failure to establish the necessary implementing measures and failure to apply such measures.

If the Committee provisionally finds that the Party in question is not in compliance, it should then consider and agree upon possible measures or recommendations. ‘Measures’ in the sense of paragraphs 33 and 34 of the annex to decision I/7 are understood to refer to measures which the Committee is entitled to take in accordance with paragraph 36 of the annex to decision I/7, pending consideration by the Meeting of the Parties (which may include recommendations to the Party concerned). ‘Recommendations’ are understood to refer to recommendations to the Meeting of the Parties (which may include recommendations to take one or more of the measures listed in paragraph 37 of the annex to decision I/7). In this regard, paragraphs 36 and 37 should not be interpreted as requiring a specific sequence in which these measures could be recommended or undertaken.

If the Committee wishes to take interim measures pending consideration by the Meeting of the Parties, it should consult with or, as appropriate, seek the agreement of the Party concerned. If a significant amount of time remains before the next meeting of the Parties (e.g. one or two years), the Committee might be expected to propose such interim measures with a view to providing an opportunity for the Party concerned to address the problems identified. If only a few months remain before the next meeting of the Parties, the Committee is more likely to prepare recommendations for the Meeting of the Parties than to propose interim measures.

Once prepared, the draft findings, draft measures and/or draft recommendations should be transmitted to the Party concerned and, as appropriate, the submitting Party and/or the communicant with an invitation to them to comment within a reasonable deadline. If necessary to help the Party concerned, the submitting Party or the communicant, the secretariat may arrange for the draft to be translated into another UNECE language.

Draft findings and recommendations drawn up by the Committee would be publicly available upon request once they had been transmitted to the Party or Parties concerned and, where applicable, to the communicant. Similarly, any comments provided by the Party or Parties concerned or the communicant

⁵ General content of the Chair’s introduction is included in Annex II of this Guidance Document

would be publicly available upon request, unless the body submitting the comments requested that they remain embargoed up to the end of the commenting period, in which case they would only be forwarded to the Committee members and would not be made available to the other parties or put in the public domain during that period. At the end of the commenting period, subject to chapter VIII of the annex to decision I/7, both the draft findings and recommendations and any comments thereon would be in the public domain.

All comments should be submitted through the secretariat. The secretariat would forward any comments received to the other parties concerned without delay, unless the party providing the comments requested otherwise, in which case those comments would be forwarded only to the Committee and would not, during the commenting period, be in the public domain. Subject to chapter VIII of the annex to decision I/7, all comments received would be in the public domain following the expiry of the commenting period.

At its next meeting following the deadline for comments, the Committee should review and finalize the draft findings, draft measures and/or draft recommendations. The final version should be prepared as an addendum to the report of the meeting (i.e. as an official document available in the three UNECE languages), and transmitted to the Party concerned, the submitting Party or the communicant.

If, at the time of preparing its report to the Meeting of the Parties, the issue which was the subject of the submission, referral or communication that prompted the Committee to adopt findings and take measures under paragraph 36 of the annex to decision I/7 remains unresolved, the Committee will reformulate the earlier findings and measures as a recommendation to the Meeting of the Parties, which will be included as an addendum to its report to the Meeting of the Parties.

Further information may need to be gathered at any stage in the process, including in the period before the Party concerned has responded. Such information may include specific facts, contextual information, arguments of members of the public or the Parties concerned and advice to the Committee. In order to avoid last-minute provision of information by the Party concerned and, as appropriate, the submitting Party and/or the communicant in the discussion phase, the Committee may impose a deadline by which information that is to be considered at a particular meeting must be supplied.

Information gathering and on-the-spot appraisals

1. At its first meeting, the Committee felt that it was not ready to discuss the issue of information gathering in any depth, and, with regard to on-the-spot appraisals, it requested the secretariat to look into the practice established under other regimes in order to develop some guiding principles. Furthermore, the Committee considered the issue of information gathering to be linked with that of cooperation with the NGO community and agreed to discuss the issue further at its next meeting on the basis of any proposals by the secretariat (MP.PP/C.1/2003/2, paras. 32-33).
2. This document was prepared by the secretariat in response to these requests to inform the Committee's discussion of information gathering at its second meeting and was updated after the meeting in light of the Committee's deliberations (MP.PP/C.1/2003/4, paras. 23-26). It should be seen in the context of those deliberations. The document addresses some general considerations with respect to information gathering and issues related to the role of the secretariat in this respect. It suggests some guiding principles for on-the-spot information gathering, based on experience from inter alia the Bern Convention (see annex).

Introduction

3. Paragraph 25 of the annex to decision I/7 sets out the mechanisms for the Committee's information gathering:

“To assist the performance of its functions, the Committee may:

- (a) Request further information on matters under its consideration;
- (b) Undertake, with the consent of any Party concerned, information gathering in the territory of that Party;
- (c) Consider any relevant information submitted to it; and
- (d) Seek the services of experts and advisers as appropriate.”

4. The most appropriate guiding principles for the application of these provisions will probably be only developed on the basis of practical experience of the Committee. However, this fairly broad range of means to gather information may necessitate some discussion and agreement at an early stage of the work of the Committee.

5. The provisions apply to all functions of the Committee, as stated in paragraph 13 of the annex to decision I/7, including the consideration of submissions, referrals and communications made in accordance with the provisions of the decision. However, the way in which the Committee will apply the provisions in practice may vary according to the situation and the issue about which the Committee seeks information, i.e. whether it is a general or a specific compliance issue, and also according to the 'trigger', i.e. whether it is a communication from the public or a referral by the secretariat.

6. It might be useful for the Committee to distinguish between:

- *Objective information*, e.g. background or contextual information, such as texts of legislation or regulations, or specific information related to a particular case, such as dates, exact text of a specific decision, etc.
- *Views and opinions*, e.g. how does the legislation work in practice, what are the underlying

reasons for specific problems etc; and

- *Advice*, e.g. how best to solve a continuous problem with application of existing legislation, how to influence the practices of members of the public or civil servants etc.

Information gathering

7. In considering information gathering for a specific matter under consideration, the Committee may want to take some of the following elements into account:

(a) *What type(s) of information is needed?*

As suggested above, the missing elements could be ‘objective information,’ for instance related to the facts of a specific situation of alleged non-compliance, to the legislation (in broad terms) in the Party concerned or to the application of the Convention and the transposing national legislation in the Party concerned. It could also be ‘views and opinions’ about the situation in the State Party and some possible reasons explaining this situation. Paragraph 25 of the annex to decision I/7 seems to indicate that a very broad range of information types may be necessary for the Committee to assist the performance of its functions.

(b) *What are the possible sources of this type of information?*

Depending on the type of missing elements, there can be various sources from which the information can be obtained: requests to the Government of the Party concerned (including, preferably through the national focal point, its various public authorities) as well as to the communicant, if applicable; the NGO community; scientists and academia. The secretariat, members of the Committee, literature, members of the public in the Party(s) concerned, Internet etc. might also be useful sources of information.

(c) *What are the interests and motivations of the information provider?*

Obviously, an overriding concern of the Committee will be with the accuracy and completeness of the information. In this regard, the Committee will need to be mindful of the interests and motivations of those supplying the information (whether governmental, NGO etc.)

(d) *What are the related time and cost implications of these means?*

The Committee may wish to consider which means will be the fastest and most cost-effective and to opt for those. In addition, the cost or logistical implications of obtaining some types of information may be such that despite the usefulness of the missing information, it may simply not be possible to obtain it and the Committee would have to make its decision while relying upon certain assumptions. This could for instance be the case with respect to the application of some of the more general provisions of the Convention or where the views of the general public on the performance of the State Party would be useful for the consideration of a specific matter but the only way to obtain these would be to carry out a large survey.

(e) *How essential is this information for the consideration of the specific non-compliance issues?*

Before undertaking any efforts to obtain the missing elements, it might be worth attempting to narrow down, in fairly precise terms, what the missing elements are and why no decision can be made until these elements are made available to the Committee. With respect to a communication, there may be situations where the communication may not contain the full story of the Convention in the country but it might not prevent the Committee from considering and deciding upon the specific issue in front of it and therefore the Committee may decide that it is not necessary to gather certain information.

(f) What is the presumed gravity of the alleged non-compliance?

The Committee may wish to consider the presumed gravity of the case in front of it before putting a lot of effort into information gathering. This is likely to be somewhat difficult in particular before the Committee has gathered some experience, and this element should probably only be brought up in the context of the more costly means for gathering information (see section D below).

8. In more general terms, the Committee may wish to adopt an approach to information gathering that is pragmatic and cost-effective, in order to ensure a smooth operation of its activities. A pragmatic approach to information gathering also means that the Committee should try to avoid being overloaded by too much information, and only seek additional information when necessary for the consideration of a specific matter. Another implication is that if, for instance, information can be made easily available to the Committee by one of its members or the secretariat, there is no need to request the information from the State concerned by the matter or a communicant. On the other hand, the type of information may be such that it can only be obtained from one or both of the latter sources and then the Committee should not hesitate to request the information.

Role of the secretariat

9. The Committee may also wish to pay attention to the role of the secretariat and the resources at its disposal for gathering the information. According to decision I/7, the ‘secretariat shall arrange for and service the meetings of the Committee’ (para. 12). One of these tasks is to ensure that the meetings are well prepared and documented, i.e. that the Committee has access to information related to the issues on its agenda. It is very likely that during the preparation of a meeting, the secretariat will have identified missing elements and will have made some efforts to obtain this information to speed up and facilitate the work of the Committee.

10. The secretariat could be invited to take into account the elements listed above and adopt the same general approach as the Committee in gathering information. In addition, the Committee may wish to cluster the means for gathering information in three groups (see below). These three groups could be established on the basis of the sources of information and the cost and other implications of using the various sources and could be used step-by-step, i.e. the sources of information in the first group should be exhausted before sources in the second group are explored, etc. The secretariat would not need a mandate to use the first group of sources but the two other groups would require some sort of a decision by or signal from the Committee. Whatever system evolves, it would seem to be important that following the initiation of a ‘case’ (through whatever ‘trigger’), it should be the secretariat’s task to take steps to gather the necessary information without waiting for a meeting of the Committee. The three groups could be organized as follows:

- **First group:** Easily accessible and no-cost or low-cost means to obtain information, including, but not limited to: Committee members; literature; Internet, including information made available through the Convention’s clearing-house mechanism; international organizations with field presence in the Party concerned; reports from the Parties submitted in accordance with decision I/8; a request to a communicant at the stage of submission of the communication (see information sheet, section VIII).
- **Second group:** Other simple means of obtaining information by contacting external sources, which might be on the basis of a specific decision by the Committee, including: requests to the Party concerned (other than under paragraph 17 of decision I/7); requests to the communicant(s), information/opinions/advice from national and international experts from governments, academia, consultancies and non-governmental organizations. A list of experts who have already agreed to

provide information to the Committee could be established on the basis of experience of the Committee and input from the Committee members.

- **Third group:** Costly and more complicated means to obtain information, which would require a specific decision of the Committee, in some cases in the form of terms of reference for the information gathering: e.g. experts invited to a meeting of the Committee and visits by Committee members and/or the secretariat to carry out on-the-spot information gathering and appraisals.

11. Other ways of organizing the means to obtain information, understood in its broadest sense, may be possible and the above is only meant to serve as a starting point for discussion.

12. Paragraphs 10-11 would apply in particular in relation to communications from the public, but may not necessarily apply in same way in the context of submissions by Parties and referrals by the secretariat (decision I/7, annex, paras. 15-17). More specifically, the secretariat has a mandate in paragraph 17 to contact Parties to furnish necessary information without awaiting a signal from the Committee. In other words, it already has a mandate to use the second group of sources in that context.

On-the-spot information gathering

13. Various expressions exist to characterize the event whereby some experts travel to the State Party concerned by the alleged non-compliance to establish the facts and assess the situation in a particular case. These include on-the-spot appraisals, inspections, fact-finding missions etc. For the sake of consistency, the term ‘on-the-spot information gathering’, which is closest to the terms in paragraph 25 and at the same time the more inclusive, is used in this paper.

14. On-the-spot information gathering could be undertaken by one or more members of the Committee or possibly by the secretariat. It could be considered how international or regional organizations present in a particular country could assist in the information gathering. Organizations like OSCE and UNDP have missions in many of the Eastern Parties to the Convention. In some countries, they have implemented projects concerning the Convention and are therefore familiar with it. On the other hand, information gathering in connection with an alleged case of non-compliance might be a somewhat sensitive issue.

15. The costs of an information-gathering mission would generally be borne by the Convention’s trust fund, possibly with some contribution from the State Party concerned. In addition to the general approach to information gathering (see paras. 7 and 8), the Committee may be guided by the following principles when determining whether a fact-finding mission in the territory of the Party concerned should be undertaken, provided that the Party has been consulted and has agreed to the mission:

- (a) The Committee has enough information already to open a file and the situation of alleged non-compliance is and continues to be serious;
- (b) Essential information is lacking or the case presents serious doubts or difficulties with respect to the appropriate measures to be suggested; and
- (c) It is not possible to obtain the missing elements by other less costly means.

16. In other words, a fact-finding mission shall only be undertaken when necessary for the consideration of the matter and when the information needed is not obtainable by other means and when

the Party concerned has agreed. In the detailed preparation of a mission, the Committee may need to take the following elements into consideration:

- (a) What are the objective and the expected outcome of the mission?
- (b) Timing of the mission; what is the most suitable time to go to the Party? What is the availability of the relevant counterparts in the Party?
- (c) How many days are needed?
- (d) Who should represent the Committee on the mission? Committee member(s) and/or members of the secretariat? It could be considered whether other persons can be mandated to gather the information, e.g. experts or representatives of international organizations with field presence in the Party concerned. Are such experts available? Who speaks the language(s) of the Party concerned?
- (e) What is the budget for the mission? Are the funds available in the Convention's trust fund? Is the State Party willing to cover some of the costs (e.g. the costs of accommodation and local travel)?

17. These considerations should result in a set of terms of reference that should be prepared for each mission, which should also contain a description of the case under consideration. As a general rule, the draft terms of reference should be presented to the communicant and the Party concerned for comments. Where the Committee decides to mandate someone to undertake on-the-spot information gathering, it should be made clear to this or these persons that they are acting on behalf and under the instruction of the Committee and that the mission is governed by the principles laid down in the Convention's article 15 ("non-confrontational, non-judicial and consultative nature").

The NGOs and the Compliance Committee

Cooperation with the NGO community

1. Further to the request of the Committee at its first meeting, some issues related to cooperation with the NGO community, both in the context of information gathering and more generally, are considered below.
2. In general terms, the Committee is not required to make any distinction between information submitted to it by individuals and States and information submitted by NGOs. Paragraph 25 of decision I/7 clearly states that the Committee may ‘consider any relevant information submitted to it’ without making any attempt to distinguish with respect to the sources of that information. Furthermore, the ‘experts and advisers’ whose services the Committee may seek could well be persons who have obtained their expertise through work within the NGO community.
3. Although information gathering thus includes sources of NGOs in general terms, there might still be room for considering more specific, not to say formalised, cooperation with the community of NGOs. This would also recognize the fact that the task of the Committee will be very difficult without the input and the knowledge of the NGO community. Some simple suggestions come to mind.

a. Special sessions with NGOs

The Human Rights Committee reserves part of its session to listen to NGOs and to discuss issues on the agenda for that session. This is considered necessary, as NGOs do not have the right to ask for the floor during the sessions of the Committee. At this stage, it might not be necessary for the Compliance Committee to take such a step because it has agreed that its sessions should generally be open to the public, but it could be useful for the Committee to invite representative(s) of those international NGOs being present at the meeting to raise, at the beginning of each session, compliance issues for general consideration by the Committee. The possibility of having to provide financial support in order to facilitate the presence of NGOs might need to be considered at some point.

b. Consultations on drafts

The Committee could consider sending draft findings, measures and recommendations to appropriate national NGOs, if such exist, as well as to the Party concerned and the member of the public as required by decision I/7, annex, paragraph 34.

c. Implementation of measures

It would probably be useful if the Committee would be able to invite organizations such as the intergovernmental organizations, regional environmental centres and NGOs to assist a specific country in the implementation of any recommended measures. A number of these organizations have a lot of experience with implementation of the Convention and would be able to provide expert assistance in this field.

There are probably many other ways and means to cooperate with the community of NGOs, so this list is only meant as inspiration for the Committee. The Committee may be able to learn more from some of the other human rights committees during its meeting.

4. Some consideration should be given to the fact that the community of NGOs is not always highly

formalised and fixed and that NGOs might have different opinions amongst themselves. The European ECO Forum is a good starting point for NGO cooperation but there may be others with whom cooperation should be explored, e.g. in relation to issues concerning the Parties from the most eastern part of the region. For the time being, there seem to be no other NGO networks with a similar representativity and expertise related to the Convention. Some of the members of the Committee might have good links to NGOs that could provide useful input to the work of the Committee.

The Aarhus Committee and the NGOs

5. The fundamental role played by NGOs in the drafting of the Convention, as well as the one they play now in implementing its three pillars, is acknowledged in § 4 and 5 of article 2 of the Convention, as well as in the following articles referring to it.

6. There are no such references in Decision I/7 on reviewing the implementation. This is due to the particular mechanism of the Aarhus Committee, which reviews the implementation mainly on the basis of communications. Under the conditions of § 18 of the Decision, NGOs can trigger the Committee like any member of the public.

7. But it would be incorrect to limit the relation between the Committee and the NGOs to these conditions. Due to the multiple roles played by civil society organisations, they can bring much more to the Committee than just communications on individual situations. Under § 25 of the Decision, NGOs can respond with a wide diversity of contributions to the needs of the Committee.

8. The Committee has a particular interest to develop different ways in which NGOs can contribute to its work.

Committees to other Conventions

9. The practice of other Committees in the field of international human rights law can give useful lessons. But it must be underlined that these other Committees are mandated first to review the periodic reports of the State-Parties and, in a constructive dialogue, to make recommendations. Receiving individual communications is only a second mandate, and only when States have recognised such an authority to the Committee. Such a difference has practical consequences.

10. The proposals listed below are not intended as a complete list of the possible NGO contributions to the work of the Committee. The first ones will be the contributions to the examinations of communications. The proposals are just possible measures the Committee may wish to take as it develops its procedures and functioning.

Public Sessions

11. Of course, having open public sessions, as was decided at the first meeting, is fundamental. It promotes transparency and thus access to information and participation, as requested by the Convention. It will help NGOs to follow the work of the Committee and acquire a better understanding of its role and jurisprudence.

Official registration of contributions

12. Beside the communications on compliance, the Committee will certainly receive different information, positions and requests. It is important for transparency that these contributions, from NGO and members of the public, be openly and officially registered. This helps to spread the information and gives a chance to everyone to participate in the discussion with the same level of knowledge.

13. This point must not be underestimated. The Human Rights Committees, which cannot provide such registration, have to deal only informally with this information. Therefore questions are asked to some countries on the basis of documents received privately by some Committee Members, without any possibility of transparency.

Time for open discussions

14. In order to be able to follow the debates relevant to the themes falling under the Committee's jurisdiction, it will be useful to have, on an official and regular basis, time devoted to receiving contributions without any link to the on-going communication procedures.

15. The Committee on Economic, Social and Cultural Rights opens the first afternoon of its sessions to such contributions. It gives the possibility for issues to be brought to the attention of the Committee, on which work may subsequently be carried out.

Possible review of country situations

16. Considering the nature, the number or the repetition of some communications, or following a request of the Meeting of the Parties, the Committee might need to review the general situation in a country. In such a case, it is important that the Committee benefits from a wide range of sources. Therefore such sessions must be announced widely and on a timely basis.

17. Receiving information on country situations is a priority need for the Committees operating under the Conventions in the field of human rights law, as they review the Parties' periodic reports. Depending on the provisions of the convention, they formally or informally integrate such "hearings" for NGOs and other sources.

Interpretation of the Convention

18. Due to its mandate, the Committee will have to develop some interpretation for some provisions of the Convention as well as a jurisprudence (this was discussed at the first meeting under agenda item 8), in order to make recommendation following communications or to answer to requests of the Meeting of the Parties. It is important that such developments do not emerge all of a sudden, but are prepared by a rich discussion. The Committee has the task to anticipate such discussions so that its decisions are strengthened by the wide scope of participation in the debate that will have led to it.

18. The jurisprudence of the Committees under the human rights conventions has been strongly developed over the last years, under the form of "general observations". It has proven to be very useful for States who then have a sharper definition of some rights and obligations, based on a wide experience and expertise.

19. All these proposals are indicative. Practice will enrich the possibilities and ways for NGOs to contribute to the work of the Aarhus Committee and answer to its needs.

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.⁶

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

⁶ 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.⁷ 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.

⁷ 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. Should the Committee be faced with a mounting workload, non-exhaustion of a domestic remedy might also constitute a reason for the Committee 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.⁸

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

⁸ See furthermore section V on formal criteria.

should be borne in mind that, if too much information is required to be kept confidential, this may 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.

If the secretariat receives correspondence from a member of the public which purports to be a communication to the Committee but which does not refer to and clearly does not concern compliance with the Convention, the secretariat, in consultation with the Chairperson, will inform the correspondent that the correspondence would not be treated as a communication and what the requirements for communications to the Committee are. The secretariat will also inform the Committee of any such cases, at the latest at the next meeting of the Committee, and will make available to the Committee copies of any such correspondence received.

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 I

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 to:

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 22 907 0107
E-mail: jeremy.wates@unece.org

Clearly indicate: “Communication to the Aarhus Convention’s Compliance Committee”

ANNEX II

Chair's introduction to formal discussions on the substance of communications and submissions under the Aarhus Convention Compliance Mechanism

The Committee is going to discuss the substance of communication /submission number (ref. number).

The Committee was elected at the first Meeting of the Parties in Lucca, Italy, in October 2002.

The work of the Committee, its functions and procedures are governed by Decision I/7 of the Meeting of the Parties on Review of Compliance.

This decision was taken pursuant to Article 15 of the Convention providing for non-confrontational, non-judicial, and consultative arrangements for reviewing compliance with the provisions of the Convention.

So, what we are entering is not a trial or a lawsuit. There is no plaintiff, no defendant, and the findings of the Committee will not be a judgement. Nobody will gain, and nobody will lose. The Convention is the heart of the matter.

Furthermore, the arrangements are of a non-confrontational nature. This means that the meeting should not be seen as a confrontation between the communicant and the concerned Government. The Committee is aiming at a constructive and amicable meeting.

The arrangements are of a consultative nature. Therefore, the meeting is a consultation with a view of assisting the Committee in its upcoming deliberations on whether there are problems of compliance and if so, how such problems might be remedied in the future.

The fact that our proceedings will not follow the adversarial model also means that the Committee will not feel constrained to only examine those arguments presented by a communicant, by a submitting Party or by a Party concerned. Since the Committee's initial purpose in each case is to establish whether there appears to be non-compliance, it may formulate its own arguments and draw conclusions which go beyond the scope of those presented by the parties concerned and communicant.

The ultimate task of the Committee is to facilitate resolving problems, if any, and not to condemn a Government for acts committed in the past. We intend to start from the assumption that any non-compliance with international obligations is not due to a will or intention not to comply. Furthermore, the main powers to take measures to address non-compliance, where it

exists, are vested in the Meeting of the Parties itself, and the primary role of the Committee, particularly at the this meeting and the next one, will be to prepare recommendations to the MOP.

The Convention is not an easy instrument to implement. There are many provisions and several of them are extremely detailed. In a number of Party countries there is not much experience. And we have not yet gained a lot of common experience. We have to take that into consideration. This is exactly why it is emphasized in Decision I/7 that the Meeting of the Parties when considering possible non-compliance response measures shall take into account the cause and degree of non-compliance.

We have indicated in the letter inviting you to this meeting how we are going to proceed. Our time is limited:

- 1) 10-15 minutes Presentation of the subject matter by the curator.
- 2) 10-15 minutes Intervention by the Communicant.
- 3) 10-15 minutes Intervention by the Government.
- 4) 30 minutes Discussion by the Committee – questions and answers.
- 5) 10 minutes Comments from observers.
- 6) 20 minutes Final comments (everybody).
- 7) 5 minutes Closing of the open session.

I appeal to everybody to comply with the time-schedule.

After our discussion, but still during this meeting in Geneva the Committee will deliberate in a closed session whether we are prepared to draw any conclusions, and if we are in a position to do so, what conclusions we should draw and, in the event that we identify compliance problems, what recommendations and/or measures we should propose to the Party concerned and / or the Meeting of the Parties. So, what we hope to achieve in the course of this meeting is to conclude the file, at least on a preliminary basis.

Following this deliberation, the Committee will re-convene the open session to inform the parties concerned of the next steps in the procedure and, should it consider necessary, to clarify any points of substance with the parties concerned.

The main body of the discussion today will be included or reflected in summarized form in the draft findings of the Committee, which following the meeting will be sent to the parties concerned (with a small 'p') for comment. The Report on the Meeting is only going to state the fact that a discussion took place and who attended or participated in the discussion. So, the Report will be the Report of the CC and will not be submitted for your approval.

As mentioned, our draft findings, recommendations and/or measures will be presented to those directly involved for comments before being finalized. Please, be prepared that you will not get a lot of time to comment, because we are aiming at finalizing our conclusions timely enough for their inclusion in our report to the MoP, which is the decision-making body.

Before we start to address the different cases one by one, I would like to make a couple of general points.

Many points and arguments are usually raised in the correspondence pertaining to communications and submissions. Some of these are of central importance to the question of compliance; others, less so. Some put forward specific interpretations of the meaning of the Convention. If the Committee was required to address each of these arguments put forward, our task would be even more challenging than it is, and our documents would be very lengthy. Therefore, the Committee may decide not to address all of the arguments or assertions made, and the fact that it does not explicitly refute any given assertion or argument in the correspondence, whether made by a communicant, a submitting Party or by a Party concerned, should not be taken to imply that it endorses such arguments or assertions. If this view is shared by the Committee, I would propose to reflect this point in the report of our meeting.

I should also inform you that Committee Members are under a general obligation to declare any conflict of interest, and any such member will take on the status of observer with respect to the case in question (and therefore be excluded from the preparation of draft findings, measures or recommendations). Where this is the case for a particular communication or submission, it will be announced at the beginning of the discussion on that communication or submission.