

UNITED NATIONS ECONOMIC COMMISSION FOR EUROPE

Guidance Document

on the Aarhus Convention Compliance Mechanism



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Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters (Aarhus Convention)

Environment, Housing and Land Management Division

United Nations Economic Commission for Europe

Palais des Nations

CH-1211 Geneva 10

Switzerland

Phone: +41 22 917 24 42

Fax: +41 22 917 06 34

E-mail: public.participation@unece.org

Website: <http://www.unece.org/env/pp>

Guidance Document on the Aarhus Convention Compliance Mechanism¹

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Introduction

Introduction

In recent years, there has been a growing trend in international treaty law-making to develop mechanisms that facilitate, promote and enforce compliance with the commitments undertaken by the Parties. Article 15 of the Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters (hereinafter Aarhus Convention or Convention) requires the Parties to set up arrangements of a non-confrontational, non-judicial and consultative nature to review compliance with the Convention; such arrangements are required to allow for public involvement and may include the option of considering communications from members of the public on matters related to the Convention.

On the basis of this provision, the Meeting of the Parties (or MoP) adopted decision I/7 on review of compliance at its first session (Lucca, October 2002). Decision I/7 establishes a compliance mechanism for the Convention: it creates the Compliance Committee (or Committee for the purposes of the present document) as the main body for the review of compliance and sets out the structure and functions of this body as well as the procedures to review compliance.

A review of a specific Party's compliance may be triggered in four ways:

- a) a Party may make a submission about compliance by another Party;
- b) a Party may make a submission concerning its own compliance;
- c) the secretariat may make a referral to the Committee;

- d) members of the public may make communications concerning a Party's compliance with the Convention.

The compliance mechanism of the Aarhus Convention is unique in international environmental law, as it allows members of the public to communicate their concerns about a Party's compliance directly to a board of independent experts, the Compliance Committee, who have the mandate to examine the merits of the case. However, the Committee cannot issue binding decisions, but rather may make recommendations either to the MoP, or, in certain circumstances, directly to individual Parties.

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 MoP; and monitor, assess and facilitate the implementation of and compliance with the reporting requirements under article 10, paragraph 2, of the Convention.

The MoP at its second session adopted an amendment to the Convention, set out in the annex to decision II/1, concerning the deliberate release into the environment and placing on the market of genetically modified organisms (GMOs). Once the amendment enters into force, the Committee may examine compliance issues in relation to the new provisions of the Convention.

This guidance document is divided into four sections. The first section provides some general information on the composition of the

Committee and its competences. The second session constitutes the modus operandi, which is the body of the procedures followed by the Committee. Then, the third section includes some basic principles concerning the relationship between the Committee and civil society. Finally, the fourth session intends to highlight some critical information concerning communications from the public.

The information contained in this guidance document is primarily based on the following sources:

- the Convention, notably article 15;
- decisions I/7, II/5 and III/6 of the Meeting of the Parties;
- the reports of the Committee's meetings.

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

Composition, election and functions

Composition

The Compliance Committee consists of nine individuals serving in their personal capacity. The members are nationals of the Parties or Signatories to the Convention. They are

required to be persons of high moral character and recognized competence in the areas to which the Convention relates, including persons with legal experience.

Election process

Nomination

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

- a) Nominations are to be sent to the secretariat in at least one of the official languages of the Convention at least twelve weeks before the opening of the session of the MoP at which the election is to take place.
- b) Each nomination will be accompanied by a curriculum vitae (CV) of the candidate not exceeding 600 words and may include supporting material.
- c) The secretariat then distributes the nominations, including the CVs, together with any supporting material.

Election

The MoP 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 will be given to the geographical distribution of membership and diversity of experience.

Rotation

A full term of office starts at the end of the ordinary session of the MoP at which the member is elected (or re-elected) and runs until the second ordinary session of the MoP thereafter.

At its first session, the MoP elected four members to the Committee to serve until the end of its next ordinary session and four members to serve a full term of office. At its second session, the MoP agreed that the number of members of the Committee should be increased to nine; this change took effect at the third ordinary session of the MoP, at which five members were elected for a full term. At each ordinary session thereafter, the MoP elects 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 the MoP decides otherwise. The Committee elects its own Chair and Vice-Chair.²

If a member of the Committee for some reason can no longer perform his or her duties, the Bureau of the MoP appoints another member who fulfils the criteria described above to serve the rest of the term, subject to the approval of the Committee.

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. For the sake of clarity, the Committee requires incoming members to sign such a declaration.

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 MoP, a report on compliance with or implementation of the provisions of the Convention;

- 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 submits a report on its activities at each ordinary session of the MoP, which are planned to take place regularly every two or three years, and makes such recommendations as it considers appropriate. The Committee finalizes the report at least twelve weeks before the session of the MoP at which it is to be considered. Every effort is made to adopt the report by consensus, and if this is not possible, the report reflects the views of all

the Committee members. The reports of the Committee are available to the public.

Measures by the Meeting of the Parties

The MoP may, upon consideration of a report and any recommendations of the Committee, decide upon appropriate measures to bring about full compliance with the Convention. To this end, depending on the particular question before it and considering the cause, degree and frequency of non-compliance, the

² At its eighth meeting, the Committee agreed that in order to be able to ensure its smooth operation, the procedure of taking decisions by email, as described below in this Guidance Document, could be used for the election of the Chairperson and the Vice-Chairperson. This facilitates preparation of the first meeting of the Committee that takes place after the session of the Meeting of the Parties. In this case, the functions of the Chairperson involving the initiation and coordination of the electronic decision-making process would be performed by the secretariat (ECE/MP.PP/C.1/2005/4, para. 29).

MoP may decide to take 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 other non-confrontational, non-judicial and consultative measures as may be appropriate.

Inter-sessional measures by the Committee

Pending consideration by the MoP and with a view to addressing compliance issues without delay, the Compliance Committee may, in consultation with the Party concerned, provide advice and facilitate assistance regarding the implementation of the Convention [measure (a) above]. Also, the Committee may with the agreement of the Party concerned take the measures under (b)-(d) above.

Modus Operandi

General principles on the Committee's operation

As a general rule, the rules of procedure of the MoP³ shall be applied *mutatis mutandis*. Rules 19, 20, 24 to 27, 29 to 42, 44, 46 and 48 are considered to be the most relevant to the Committee (MP.PP/C.1/2003/2 para. 11).⁴

Decision-making

The presence of five members of the Committee is required for any decisions to be taken. The Committee makes every effort to reach its decisions by consensus. Decisions of a procedural nature can be taken by a simple majority of the members present and voting. Decisions on substantive matters can be taken only with the support of seven out of nine members present and voting; six 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 strictly in their personal capacity, an absent Committee member cannot designate substitute (MP.PP/C.1/2003/2, para. 12; ECE/MP.PP/C.1/2008/6, para. 41).⁵

Procedures for taking decisions by e-mail

In order to expedite the processing of communications from the public,⁶ some of the Committee's decisions, relating for instance to preliminary decisions⁷ on the admissibility of communications or on the points to be raised with the parties, may be taken by electronic mail (e-mail) (MP.PP/C.1/2004/4, para. 41).⁸ In this regard, depending on the nature of the decision to be made, the Committee will apply either a comprehensive or a streamlined procedure as set out in the following paragraphs.

The Committee may decide to use the electronic procedure for any inter-sessional decision-making that has significant substantive implications, such as preliminary decisions on the admissibility of communications and finalization of draft findings, conclusions and recommendations, in particular when the next meeting of the Committee will not take place for a long period of time. In this case, the following procedure applies (comprehensive):

- a) The Chair will prepare, with the assistance of the secretariat, a draft decision or decisions on the issue(s) to be decided inter-sessionally. The secretariat will circulate the draft(s) to the Committee

³ See the annex to decision I/1 of the MoP (ECE/MP.PP/2/Add.2).

⁴ The document MP.PP/C.1/2003/2 of 16 June 2003 refers to the report of the first meeting of the Compliance Committee.

⁵ The document ECE/MP.PP/C.1/2008/6 of 8 October 2008 refers to the report of the twenty-first meeting of the Compliance Committee.

⁶ The procedure applies *mutatis mutandis* to submissions and referrals.

⁷ In this context, the term "decisions" encompasses "determinations".

⁸ The document MP.PP/C.1/2004/4 of 19 July 2004 refers to the report of the fourth meeting of the Compliance Committee.

members by e-mail, specifying the deadline for response. The Chair may ask any other Committee member to assist him/her with the preparation of the draft decisions and more generally to take responsibility for engaging in the detail of the communication on behalf of the Committee. Such a person is referred to as the “curator” for the communication in question. Any interested Committee member may also contact the Chair to volunteer his or her services as curator in this regard. However, only the secretariat may circulate any draft decisions on behalf of the Chair to the other members of the Committee.

- b) Having carefully considered the communication, any supporting documentation, and the proposed decision(s) within the set deadline, each Committee member may 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 will 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 Chair’s text, the Chair 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 to the Committee members with a new deadline for comment.
- d) If a deadline for commenting (first or subsequent) expires and all those who have responded have indicated their satisfaction with the Chair’s (latest) proposal but some Committee members have failed

to respond, the secretariat will make an effort to contact those Committee members.

- e) Once all Committee members have indicated their satisfaction with the Chair’s (latest) proposal, the proposal is deemed 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 full support is achieved.
- g) When the conditions in subparagraph (e) are met, the secretariat will circulate a note to the Committee confirming that the preliminary decision has been adopted, and, if necessary, attach the text of the preliminary decision.

The Committee may use a streamlined electronic procedure on an ad-hoc basis for decisions that do not have significant substantive implications, such as the identification of points to raise with a Party concerned when forwarding a communication or when dealing with resolution of editorial changes:

- a) The Chair will prepare, with the assistance of the secretariat, a draft decision or decisions on the issue(s) to be decided inter-sessionally. The secretariat will circulate the draft(s) to the Committee members by e-mail, specifying a deadline for response by Committee members. The Chair may ask any other Committee member to assist him/her with the preparation of 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 Chair to volunteer his or her services in this regard. However, only

the secretariat may circulate any draft decisions on behalf of the Chair to the other members of the Committee.

- b) The proposal circulated by the secretariat on behalf of the Chair will be considered adopted by default if no member of the Committee objects to it within a specified period following its circulation.
- c) The time period may be two weeks, unless otherwise decided for the decision at issue.

When applying the electronic decision-making procedure, the Chair 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 decision through e-mail, in which case he or she will inform the Committee members accordingly.

The rules specified above are not binding. The Committee may determine on how to use this tool to its best convenience, including by deciding to extend the e-mail procedure to other types of decisions. The Committee may decide to do so electronically, using the procedure itself.

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

Conflict of interest

“Normal principles” of conflict of interest apply for the Committee. This implies that in a case where a Committee member finds himself or herself faced with a possible or apparent conflict of interest, that member is expected to bring the issue to the Committee’s attention and decision before the Committee’s consideration of the case at issue. Being a citizen of the Party whose compliance was to be discussed will not in itself be considered as a conflict of interest (MP.PP/C.1/2003/2, para. 22).

Specifically, the Committee has agreed on the following guidance principles on the independence and impartiality of Committee members (ECE/MP.PP/C.1/2010/6, para. 6):

- a) The Committee members shall exercise their functions independently and impartially, free from interference or influence by any source and from the appearance of interference or influence;
- b) The Committee shall decide cases impartially, on the basis of the facts of the case and the applicable law;
- c) In relation to pending cases, Committee members shall avoid situations that might give rise to a conflict of interest or which might reasonably be perceived by the Parties or by members of the public as giving rise to such a conflict;
- d) A Committee member shall disclose to the Committee, at the next meeting, or sooner if appropriate, any circumstances which could reasonably be considered as leading to a conflict of interest or which might reasonably be perceived by the Parties or by members of the public as giving rise to such a conflict. Such circumstances may include a Committee member’s relationship with the Party concerned, with the communicant, or with an observer who has made submissions in the case. It may also include a Committee member’s past dealings with the case itself;
- e) Upon the disclosure of a conflict of interest, the Committee will consider the information provided and take appropriate action. If in doubt as to whether or not a situation might give rise to an actual conflict or be perceived by a reasonable Party or member of the public as a conflict, Committee members should err on the side of caution. Being a citizen of the Party whose compliance is at issue does not in itself constitute a conflict of interest.

Any member considered to have a possible conflict of interest will 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 will not take part in formal discussions or attend meetings where the Committee is preparing or adopting findings, measures or recommendations (MP.PP/C.1/2004/6, para. 53).⁹

Where the electronic decision-making procedure is being used, any member considered to have a possible conflict of interest with respect to a particular case, should declare this at the outset of the discussions by e-mail on the case at issue. 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.

Committee members are not excluded from providing advice in response to requests from non-governmental organizations (NGOs) or others who consider submitting a communication to the Committee. However, it is recommended that the Committee member refer the person/NGO to the information available on the web site or to the secretariat. This is to avoid Committee members specifically advising such individuals and/or organizations, which could, in some cases, lead to a conflict of interest for that member of the Committee. Correspondence is preferably to be sent to the secretariat rather than to individual members of the Committee (MP.PP/C.1/2003/4, para 8).¹⁰

Committee members are at liberty to deal with 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 confidential-

ity. However channelling such requests via the secretariat will ensure more up-to-date and complete information and is therefore recommended (MP.PP/C.1/2004/6, para 49).

Members of the Committee may accept invitations to present the compliance mechanism at appropriate events, including conferences and workshops (MP.PP/C.1/2003/4, para 30), or to participate in capacity-building activities and projects related to the Convention, e.g. as expert consultants. The participation of Committee members in their individual capacity in such events and activities does not in itself create a conflict of interest, but it is possible that in some cases such involvement may lead to a conflict of interest at a later stage; such a case may for instance be created if a Committee member has provided expert assistance in the development of relevant legislation and a case relating to this legislation is later subject to review before the Committee). Should such situations arise, the standard procedures apply and the member concerned is expected to notify the Committee of any potential conflict of interest (ECE/MP.PP/C.1/2007/4 para. 28).¹¹

Presence of the public and participation of observers

In principle, meetings of the Committee are open to the public as observers but, in accordance with paragraphs 26, 27, 29, 30 and 33 of the annex to decision I/7, some sessions of meetings may be closed to the public (MP.PP/C.1/2003/2, para. 15).

Specifically, hearings and discussions on particular cases are in general open to the public, who may participate as observers, as well as to the parties concerned (paragraph 32 of the annex to decision I/7). Participation is broadly understood in the sense in which the concept is enshrined in the Convention, comprising in particular the right to comment, the

⁹ The document MP.PP/C.1/2004/6 of 26 November 2004 refers to the report of the fifth meeting of the Compliance Committee.

¹⁰ The document MP.PP/C.1/2003/4 of 15 October 2003 refers to the report of the second meeting of the Compliance Committee.

¹¹ The document ECE/MP.PP/C.1/2007/4 of 31 July 2007 refers to the report of the sixteenth meeting of the Compliance Committee.

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).

The deliberations on the preparation of any decision are generally closed (MP.PP/C.1/2003/2, para. 17 and paragraph 33 of the annex to decision I/7).

The participation of representatives of any of the parties involved in a case is 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

Meetings of the Committee are 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).

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, will be available through the web site. The secretariat makes a short summary of each case for this purpose (MP.PP/C.1/2003/4, para. 20). Communications are put on the web site and, without prejudice to the confidentiality of certain documentation, all documentation relating to the positions of the Committee, the Parties concerned and the communicant are made available on the web site. This includes preliminary determinations on admissibility, after their transmission to the Party concerned (MP.PP/C.1/2004/8, para. 33).¹²

Draft findings and recommendations drawn up by the Committee will be publicly available upon request once they had been transmitted to the Party concerned and the submitting Party and/or the communicant (of secretariat, in the case of a referral) (hereinafter also “the parties concerned” with a small “p”). Similarly, any comments provided by the parties concerned or third parties will be publicly available upon request, unless the body submitting the comments requests that they remain confidential 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, the draft findings and any recommendations and also any comments thereon will be published on the web site (MP.PP/C.1/2004/8, report of the sixth meeting, para. 35, as subsequently modified ECE/MP.PP/C.1/2005/8, para. 25).¹³ The recent practice has been however that the draft findings of the Committee and the respective comments by the parties are posted on the Committee’s web site a few days after they have been sent to the parties or received from the parties respectively.

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

Working language

English is the internal working language of the Committee (MP.PP/C.1/2003/2, para. 21).¹⁴

¹² The document MP.PP/C.1/2004/8 of 25 January 2005 refers to the report of the sixth meeting of the Compliance Committee.

¹³ The document ECE/MP.PP/C.1/2005/8 of 22 December 2005 refers to the report of the tenth meeting of the Compliance Committee.

¹⁴ See also further down on the language of the communications.

Processing submissions and referrals¹⁵

Submissions by Parties concerning other Parties

The secretariat informs the Committee of any submissions that it receives and circulates any such submissions to the Committee at the same time as they are forwarded to the Party concerned.

As a general rule, the secretariat forwards 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 will 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 will be considered as held by the Committee once it had been forwarded to it.

When forwarding the submission, the secretariat will 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 no later than six months from the date the submission was forwarded. The deadline is 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 from the secretariat invites 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 is for the Party concerned to determine whether more than three months is necessary to provide a reply.

When a substantive reply is received by the secretariat, this is forwarded without delay to the Committee.

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 sends a reminder to the Party concerned. The reminder will point out that following the expiry of the six-month period, the Committee will 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.

If no response has been received within six months, the secretariat informs the Committee accordingly, and notifies the Party concerned that it has done so.

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

The Parties involved in a matter are notified of any meeting of the Committee at which it will be discussed and of their right to be rep-

¹⁵ This section is based on discussions carried out at the second meeting of the Compliance Committee (18-19 September 2003) on the basis of draft informal documents (see MP.PP/C.1/2003/4, para. 15).

resented 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 will explicitly invite them, stressing the importance of their participation. Subject to financial resources, financial support will be provided where needed to assist eligible government representatives from the Parties concerned to participate.

Submissions by Parties concerning own compliance

With regard to submissions by a Party concerning its own compliance (paragraph 16 of the annex to decision I/7), the following procedures apply:

The secretariat informs the Committee of any such submissions that it receives and circulates them to the Committee without delay.

As a general rule, the secretariat circulates the submission to the Committee without delay even if it considers that the submission is not complete and essential information is lacking.

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

The Party which has made the submission is 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, the Committee will explicitly invite the Party, stressing the importance of its representative's participation. Subject

to financial resources, financial support will be provided where needed to assist eligible government representatives from the Parties concerned to participate.

Referrals by the secretariat

With regard to referrals by the secretariat (paragraph 17 of the annex to decision I/7), the following procedures are recommended:

When in doubt about the situation in a country, the secretariat may 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.

The secretariat may 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.

While the secretariat may 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 are based only upon information which is published or transmitted to it in written form.

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 clarifies the matter with the correspondent, and, if it transpires that the letter is intended to be a communication in that sense, it deals 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 informs 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 invites him or her to consider the possibility of using that procedure.

If such correspondents indicate that they do not wish to submit a communication in the sense of paragraph 18, the secretariat has 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 uses its discretion in choosing among these options, taking into account the nature of the particular case.

The secretariat may, instead of making a referral in accordance with paragraph 17 of the annex to decision I/7, invite a Party to consider making a submission in accordance with paragraph 16 of that annex.

The secretariat informs 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 is 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 explicitly invites it, stressing the importance of the participation of the representative. Subject to financial resources, financial support will be provided where needed to assist eligible government representatives from the Parties concerned to participate.

Processing communications from the public¹⁶

Upon receiving a communication addressed to the Committee, the secretariat will register it. The secretariat will then send an acknowledgement of the receipt.

The secretariat will verify that all necessary information is provided in the communication, and will circulate the communication and supporting documents to the members of the Committee. If the communication lacks certain mandatory or essential information, the secretariat will resolve any problems by contacting and discussing them with the communicant before forwarding the communication to the Committee. If a communication, or an essential part of the supporting documentation, is not in English, the secretariat may delay forwarding it to the Committee until an English version is available.

When forwarding the 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 web site. The communicant may provide comments to the information presented in the datasheet. The data sheet will be regularly updated and the Committee may make changes to it.

The Committee will, 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.

Upon receipt of a communication, the Chair may request that individual members of

¹⁶ This section is based on discussions carried out at the second meeting of the Compliance Committee (18-19 September 2003) on the basis of draft informal documents (see MP.PP/C.1/2003/4, para. 11).

the Committee provide assistance. Any member may also offer to assist the Chair with the communication in question.

The Committee will consequently: a) make a preliminary determination as to whether the communication fulfils the admissibility criteria; and b) decide the points, if any, that should be raised (i) with the Party concerned, when forwarding the communication, or (ii) with the communicant to clarify the facts and/or allegations of the communication.

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.

If translation of the supporting material is required, the Committee will need to decide on the extent to which more 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 some documents.

When the secretariat is relaying questions or requests from the Committee to the communicant, it may at its discretion clarify unclear responses or pose further clarifying questions with a view to gathering more complete information for the Committee. This also applies at a later stage when corresponding with the Party concerned.

Determination of admissibility

Upon receiving a new communication, the Committee will consider its admissibility. If one or more of the formal criteria for admissibility are not fulfilled (e.g. the communication is

anonymous or manifestly unreasonable, see paragraph 20 of decision I/7), the Committee will either dismiss the communication or decide that a further opportunity be given 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 will inform the communicant accordingly.

The Committee from time to time receives communications that, while they broadly appear to fulfil the admissibility requirements of paragraph 20 of the annex to decision I/7, after careful consideration have been revealed to be inadmissible by interpretation and analogy regarding the criteria for admissibility set out in subparagraphs (b) on “abuse of the right to make such communications” and (c) regarding communications that were “manifestly unreasonable”. With the purpose of focusing on communications that raise important aspects of non-compliance, the Committee discussed that matter at its twenty-eighth meeting; it decided to apply the criteria for admissibility of “abuse of the right to make such communications” and “manifestly unreasonable” in such a manner so that communications which the Committee deemed to be insignificant in light of their purpose and function would be determined inadmissible as *de minimis* (ECE/MP.PP/C.1/2010/4, paragraph 44).

If the Committee determines a communication to be inadmissible, the communication will not in principle be brought to the attention of the Party concerned. In some cases, the Committee may decide that there are good reasons to forward the inadmissible communication to the Party concerned; in such a case, it will first seek the views of the communicant.

If the Committee determines that all formal criteria for admissibility are fulfilled, it will provisionally decide that the communication is admissible and open a “file”. The communication

will then be 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 will send all the documents related to the communication, together with the cover 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 by post 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.

Once the communication and the supporting documentation have been forwarded to the Party concerned, they will be posted on the web site, without any amendments or editorial intervention. Publication on the web site is intended to facilitate access of the public to information relating to Parties' compliance with the Convention and does not imply endorsement of the content by the Committee or by the UNECE.

The secretariat will routinely notify anyone wishing to receive notifications of new communications, after these have been deemed admissible and forwarded to the Party concerned, either by sending the communication itself or by providing a web link to it (ECE/MP.PP/C.1/2008/8 para. 40).¹⁷

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

Response by the Party

When the Party receives a letter from the secretariat forwarding a communication, it should as soon as possible, but in any case no later than five months from the date of the secretariat's letter, submit written explanations or statements clarifying the matter and responding to the allegations (paragraph 23 of the annex to decision I/7). In its response the Party concerned should explicitly comment on the allegations of the communication and also address any questions and other points raised by the Committee at the time the communication was forwarded.

The Party concerned may also submit comments with respect to the admissibility of the communication. If a Party contests the admissibility of the communication, it should inform the Committee as soon as possible, but no later than five months from the date the communication was forwarded.

The five-month deadline for response is calculated from the date the communication and any relevant documentation were forwarded from the secretariat (date of the cover letter). The response from the Party concerned should reach the secretariat by the end of the five-month period by fax or e-mail. The posted original may arrive after the lapse of the five-month period, as long as it was posted before the lapse of the deadline.

Upon receipt of the response from the Party concerned, the Committee will consider any comments with respect to the admissibility of the communication. If the Committee is not convinced by the arguments of the Party, it will confirm the admissibility of the communication and consider its substance. If it is convinced by any arguments of the Party that the communication is inadmissible or that there are serious doubts concerning its admissibility, the Committee may reverse or suspend its preliminary

¹⁷ The document ECE/MP.PP/C.1/2008/8 of 6 January 2009 refers to the report of the twenty-second meeting of the Compliance.

decision. It will then inform the communicant accordingly and provide it the opportunity to comment, and, where necessary seek further information to enable it to reach a decision on the admissibility. If the Party concerned does

not respond within the five-month deadline, the Committee will confirm the admissibility of the communication and consider the substance of the file.

Discussion and preparation of findings¹⁸

Discussion of submissions, referrals and communications

When the Committee has received the response to a submission,¹⁹ 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 (paragraph 32 of the annex to decision I/7);
- c) If the discussion is completed, prepare draft findings, measures and recommendations in closed session (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.

If the Committee determines that the information submitted by the parties 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:

- a) Request additional information from the communicant/submitting Party/secretariat, the Party concerned, or other sources;
- b) With the agreement of the Party concerned, proceed to on-the-spot information gathering;
- c) Seek the services of experts and other advisers; and
- d) Where appropriate, decide to hold a hearing/discussion.

The Committee may determine at any stage in the process that further information should be gathered, including in the period before the Party concerned has responded. In order to avoid last minute provision of information, the Committee may impose a deadline by which information to be considered at a particular meeting must be supplied. Its procedures regarding information-gathering are discussed in more detail further down in this section.

As a general rule, the Committee aims 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.

¹⁸ This section is based on discussions carried out at the first and second meetings of the Compliance Committee (17-18 March 2003 and 18-19 September 2003) on the basis of draft informal documents (see MP.PP/C.1/2003/2, paras. 23-24 and 31; MP.PP/C.1/2003/4).

¹⁹ 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.

The Committee does 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 notifies 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.

In general, any substantial new information should be presented to the Committee by any party at least two weeks in advance of the meeting at which it will be discussed. The Committee is not required to take account of information submitted after that deadline. Nevertheless, it is free to do so, if it considers its work would otherwise be hampered.

The discussion will involve a formal hearing, meaning that the Party concerned and, as appropriate, the submitting Party and/or the communicant will be invited to come and present information and opinions on the matters under consideration. Subject to financial resources, financial support will be provided where needed to assist a representative of the communicant and eligible government representatives from the Party concerned to participate.

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

- a) Introduction by the Chair and opening of the discussion (by the Chair or the rapporteur for the case if one has been appointed);²⁰
- 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.

Preparation and adoption of findings

When the Committee considers that it has a sufficiently complete picture of the situation, it will move to the preparation of draft findings, measures or recommendations without delay. To the extent possible, the conclusion of the discussion and the preparation of draft findings, measures or recommendations should happen at the same meeting. In practice, due to the increased number of communications the Committee receives, the preparation of draft findings may be concluded one or two meetings after the discussion of the case.

In accordance with 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 prepares its draft findings, measures or recommendations in closed session. It normally starts by considering and drawing appropriate conclusions as to whether or not

²⁰ General content of the Chair's introduction is included in Annex III to this Guidance Document.

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 may 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 that the Committee is entitled to take in accordance with paragraph 36 of the annex to decision I/7, pending consideration by the MoP (which may include recommendations to the Party concerned). 'Recommendations' are understood to refer to recommendations to the MoP (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. 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.

If the Committee wishes to take inter-sessional measures pending consideration by the MoP, it consults with or, as appropriate, seeks the agreement of the Party concerned. If a significant amount of time remains before the next session of the MoP (e.g. one or two years), the Committee may be expected, in consultation with or, as appropriate, with the agreement of the Party concerned, to take inter-sessional 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 session of the MoP, the Committee may decide to prepare recommendations for the MoP than to take such measures.

Once prepared, the draft findings, draft measures and/or draft recommendations are

transmitted to the Party concerned and the submitting Party and/or the communicant (or secretariat, in the case of a referral) with an invitation for them to comment within a reasonable deadline. If necessary, to assist either 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 and comments by the parties concerned will be publicly available upon request once they had been transmitted to the parties concerned (on this matter see the section on publication of meetings and documentation above). All comments should be submitted through the secretariat. When submitting comments to the secretariat for the attention of the Committee, parties are strongly encouraged to copy the other party. Any comments to the draft findings and recommendations should not include information that could have been provided at an earlier stage of the process.

At its next meeting after the deadline for comments, the Committee will consider any comments received, and, if possible, review and finalize the draft findings, draft measures and/or draft recommendations. The final version will be prepared as an official document available in the three UNECE languages and transmitted to the parties concerned. The advance copy of the final version of the findings is uploaded on the Committee's web site shortly after the findings have been communicated to the parties. Until the production of the document as an official United Nations document, editorial or minor substantive changes (that is changes which are not part of the editorial process and aim at correcting errors in the argumentation, but have no impact on the findings and conclusions) may take place.

If, at the time of preparing its report to the MoP, an issue which prompted the Committee to adopt findings and take measures under paragraph 36 of the annex to decision I/7 re-

mains unresolved, the Committee will reformulate its earlier findings and measures as findings and recommendations to the MoP, which will be included as an addendum to its report to the MoP.

Consideration by the MoP

The MoP will make the final decision on specific measures aimed at bringing about full compliance with the Convention. The MoP may broadly address issues of non-compliance as long as the proposed measures are non-confrontational, non-judicial and consultative, and in accordance with international law. The MoP decisions are communicated directly to the

parties and made public. In its decision, the MoP may mandate the Committee to monitor the implementation. The Committee will report on the monitoring of the follow-up measures to the MoP.

In several instances, the Committee further to a request from, and with the consent of the Party concerned, may undertake a mission to the territory of the Party concerned with the objective of providing advice and assisting the Party concerned on matters of compliance. The Committee considers that paragraph 25 of the annex to decision I/7 provides the mandate for such a mission.

Summary proceedings

At its twenty-eighth meeting, the Committee noted that it had been confronted with allegations of non-compliance concerning a Party reflecting the same legal issues upon which it had already deliberated in a previous communication relating to the same Party (but not to the same facts). In that regard, the Committee noted that, the Party concerned had already worked with the Committee to fully meet compliance. Bearing in mind that according to the Convention the compliance review mechanism was not a redress mechanism, and on the basis of the freedom awarded to the Committee by the Meeting of the Parties to “consider any [...] communications” according to paragraph 20 of the annex to decision I/7, without specifying the process, the Committee reflected upon its experience and the practical dimension of its role and decided that, in cases which were determined to be preliminarily admissible, but where the legal issues raised by the communi-

cation had already been tackled by the Committee, summary proceedings could apply as follows:

- a) The Committee would send a letter to the communicant informing them about the process;
- b) The Committee would notify the Party concerned, reminding it of the previous findings and recommendations and requesting it to provide information on the progress achieved on the previous recommendations;
- c) The Committee would record the outcome of the process and its consideration in the report, focusing on the progress, if any, in the law and implementation of the Convention by the Party concerned.

(ECE/MP.PP/C.1/2010/4, paragraph 45)

Information gathering²¹

Paragraph 25 of the annex to decision I/7 provides that “[t]o 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”.

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. In practice, the Committee may apply the provisions on gathering information in different ways depending on the general or specific character of the compliance issue and on its trigger (communication, submission or referral).

Considerations in information gathering

In considering information gathering, the Committee may evaluate the following elements:

- a) *How essential is this information for the consideration of the specific issue*
Before planning how to obtain the necessary information, the Committee will endeavour to define as precisely as possible the elements required to reach a decision on the alleged non-compliance issue.
- b) *What is the presumed gravity of the alleged non-compliance*
The Committee may consider the presumed gravity of a case before launch-

ing any information gathering efforts. However, such a consideration may be difficult, if there is not sufficient information available. This consideration may have particular weight where obtaining information may be logistically difficult or very costly.

c) *Type of information needed*

The missing information may be:

- Objective information, such as background and contextual information, including texts of legislation/regulations in general of the Party concerned and legislation transposing the Convention, facts related to the particular case, such as dates, exact text of a decision, etc.
- Views and opinions, e.g. on how national legislation works in practice, the underlying reasons for specific problems, etc; and
- Advice, for instance, on how to solve a continuous problem with the application of existing legislation, and on how to influence the practices of members of the public or public administration, etc.

d) *Possible sources of the required information*

Depending on the type of the missing information, the sources may vary and may include:

- Requests to the government of the Party concerned, usually through the national focal point and the relevant public authorities, or to the communicant;
- Requests to the NGO and scientific communities, and academia;
- Literature and other research and analytical material.

²¹ This section is based on discussions carried out at the first and second meetings of the Compliance Committee (17-18 March 2003 and 18-19 September 2003) on the basis of draft informal documents (see MP.PP/C.1/2003/2, paras. 32-33 and MP.PP/C.1/2003/4, paras. 23-26).

The secretariat and the public in the Party concerned (if not represented by the NGO) may contribute as well.

e) *What are the interest and the motivation of the information provider*

The Committee is mindful of the fact that the interest and the motivation of the person/body supplying the information may affect the accuracy and/or completeness of the information.

f) *Time and cost implications of information gathering*

The Committee will consider which means would be the fastest and most cost-effective to serve the objective of information gathering. Obtaining some types of information may imply increased cost and/or logistical difficulties, without any guarantee that the effort to obtain the information will be successful. In such cases, the Committee may rely on assumptions. For instance, while the view of the public in general with regard to compliance by a Party of the general provisions of the Convention may be a significant source of information, this would require the launch of a large survey, with major cost and organizational implications. In principle, the Committee's approach to information gathering is pragmatic and cost-effective, and aims to facilitate the smooth carrying out of its tasks. A pragmatic approach to information gathering also means that the Committee may avoid being overloaded with too much information, and may only seek additional information when it deems necessary for the consideration of a specific matter. If the required information can be made easily available by the Committee members or the secretariat, there may be no need to request such information from the Party concerned or the communicant.

Means of information gathering

On the basis of the elements above (source, costs, etc) the means for information may be organized in, but not limited to, the following three groups:

First group: Easily accessible and no-cost or low-cost means of obtaining information, including, but not limited to: Committee members; literature; Internet, including information made available through the Aarhus Clearinghouse; international organizations active on the field 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.

Second group: Obtaining information by contacting external sources, which depending on the circumstances may require a decision by the Committee to do so, such as requests to the Party concerned (under paragraph 17 of the annex to decision I/7 or otherwise); requests to the communicant(s); information/opinions/advice from national and international experts from governments, academia, private sector and non-governmental organizations. A list of experts who have agreed to provide information to the Committee might be established on the basis of experience of the Committee and input from the Committee members.

Third group: Costly and more complicated means, which require a specific decision by the Committee to do so, for instance invitations to experts to meetings of the Committee and visits by Committee members and/or the secretariat to carry out on-the-spot information gathering and appraisals.

These means of information apply in particular in relation to communications from the public. They may apply differently in the context of submissions by Parties and referrals by the secretariat (paragraphs 15-17 to the annex to decision I/7). For example, the secretariat has a mandate (paragraph 17 of the annex to decision I/7) to request Parties to furnish necessary information about a matter, without instructions by the Committee. In other words, when requesting information the Committee from the Party concerned through paragraph 17, the Committee already has a mandate to use the second group of sources in that context.

Unless specifically mandated by the Committee to collect information, meetings of the secretariat or of the members of the Committee with any of the parties concerned do not constitute information gathering for the purpose of paragraph 25 of the annex to decision I/7 (e.g. meetings in the context of other unrelated events). The appropriate way for the parties concerned to submit any information for consideration is to address it formally to the Committee through the secretariat (MP.PP/C.1/2004/6, para. 50).

On-the-spot information gathering

According to paragraph 25 of the annex to decision I/7, the Committee may “undertake, with the consent of any Party concerned, information gathering in the territory of that Party” to assist in the performance of its functions. On-the-spot information gathering (also called on-the-spot appraisal, inspection, fact-finding mission, etc.) is a method of collecting information whereby experts travel to the territory of a State to establish facts and assess the situation of alleged non-compliance. This process may sometimes be politically sensitive.

On-the-spot information gathering may be undertaken by the Committee or the secretariat and may be facilitated by international/sub-regional organizations (such as OSCE and UNDP) that are present in the territory of the Party concerned and familiar with the Convention. The Committee will ensure that persons mandated to undertake on-the-spot information gathering understand that they act on behalf and under the instruction of the Committee and that the mission is governed by the principles laid down in article 15 of the Convention (“non-confrontational, non-judicial and consultative nature”).

A mission for on-the-spot information gathering is undertaken only if the Committee has consulted with and received the consent of the Party concerned. The Committee may decide to undertake such a mission if it deems it nec-

essary for the consideration of the matter and the information required cannot be obtained through other means. In this regard, the following elements should be present:

- 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) The Committee lacks essential information or the case presents serious uncertainties or difficulties as to the appropriate measures that should be recommended; and
- c) It is not possible to obtain the missing elements by other less costly means.

For each information gathering mission, the Committee will prepare terms of reference which may contain a description of the case under consideration. To prepare these terms of reference, the Committee will consider:

- a) The objective and expected outcome of the mission.
- b) The timing of the mission, i.e. what is the most suitable timing for the Party concerned or of relevant entities in the Party concerned.
- c) The duration of the mission.
- d) The appropriate representation by the Committee and/or by the secretariat. Other individuals, such as experts or representatives of international organizations with field presence in the Party concerned, may be mandated to gather the information. Availability and language skills will be considered when selecting the appropriate persons to undertake the mission.
- e) The budget for the mission. In principle, the costs of an information-gathering mission are covered by the Convention’s trust fund and/or a contribution from the

Party concerned. The Committee and/or secretariat may wish to liaise with the Party concerned on this issue.

Once drafted, the draft terms of reference will be circulated to the communicant and the Party concerned for comments.

Role of the secretariat

According to decision I/7, the “secretariat shall arrange for and service the meetings of the Committee” (para. 12). Hence, the secretariat has the task of ensuring that meetings are well prepared and documented, including that the Committee has access to the information related to the issues on its agenda. During the

preparation of Committee meetings, the secretariat may identify missing information and may make efforts to obtain such information in order to facilitate the Committee’s work. In carrying out this task, the secretariat will take account of the elements identified above.

After the receipt of a communication, submission or referral, the secretariat will endeavour to gather information to facilitate the Committee’s work as required. The secretariat does not need a mandate by the Committee to seek information by using the first group of means (see above), but would need a decision or other instruction by the Committee to seek information using the second and third group of means.

The NGOs and the Compliance Committee²²

²² This section is based on discussions carried out at the second meetings of the Compliance Committee (18-19 September 2003) on the basis of draft informal documents (see MP.PP/C.1/2003/4, paras. 27 and 33).

The fundamental role played by NGOs in the drafting of the Convention, as well as the role they play now in implementing it, is acknowledged, *inter alia*, in article 2, paragraphs 4 and 5, of the Convention. NGOs can trigger the Aarhus compliance mechanism under paragraph 18 of the annex to decision I/7 like any other member of the public.

The Committee has a particular interest to cooperating with the NGO community. Beyond the submission of communications on individual cases, civil society can significantly contribute to the Committee's efforts to collect information. Under paragraph 25 of the annex to decision I/7, the Committee does not make any distinction between information received by individuals and States. NGOs may also contribute as "experts and advisers" whose services the Committee may seek. A number of other ways in which NGOs may cooperate with the Committee are discussed below.

The practice of other bodies in the field of international human rights law²³ in cooperating with the NGO community may be observed, but there is a distinction to make: the primary mandate of most bodies established by human rights treaties is to review the periodic reports of the Parties, pursue constructive dialogue and make recommendations; the examination of individual communications, like in the case of the Aarhus Committee, may be a secondary mandate.

The Committee is cognisant of that the NGO community does not have fixed governance and that NGOs represent diverse views

and that this may impede their smooth cooperation with the Committee. The European ECO Forum²⁴ is a good starting point for NGO cooperation, in terms of representativeness and expertise on the Convention, but there may be others with whom cooperation should be explored.

Further to the request of the Committee at its first meeting, some aspects of NGO cooperation are examined in a non-exhaustive manner in this section.

a) *Public Sessions*

In principle the Committee's sessions are open to the public. This is a fundamental feature to promote transparency, access to information and participation, as called for by the Convention. NGOs can benefit by understanding better the function of the Committee and its jurisprudence.

b) *Special Sessions for NGOs*

The Committee may decide to invite representatives of NGOs that are present at a meeting to raise, at the beginning of a session, compliance issues to be considered by the Committee. The Committee may consider to dedicate time at its meetings to open discussions with NGOs on issues of non-compliance not specifically linked to communication under process.

Notably, the Human Rights Committee reserves part of its session to listen to, and discuss with, NGOs, since the latter cannot intervene during the sessions of this body. Also, the Committee on Eco-

²³ For instance, the Human Rights Committee, the Committee on the Elimination of Racial Discrimination, or the Committee on the Elimination of Discrimination against Women.

²⁴ See the web site at <http://www.eco-forum.org/> (26 November 2009).

nomic, Social and Cultural Rights devotes the first afternoon of its sessions to NGO contributions.

NGO participation to the Committee meetings is encouraged and financial support may be provided to facilitate NGO presence.

c) *Consultations on drafts*

The Committee's draft findings, measures and recommendations are published on the Internet. NGOs and members of the public in general can consult the documents and comment (annex to decision I/7 paragraph 34).

d) *Implementation of measures*

The Committee may invite intergovernmental organizations, regional environmental centres, NGOs and other organizations with knowledge and experience to assist a country to implement measures recommended by the Committee.

e) *Official registration of contributions*

Apart from communications, the Committee may receive a variety of information, including positions and requests. It is observed that human rights bodies do not provide for registration of similar information they receive and deal with it on an informal basis; for instance, questions to the Party of the treaty may be based on information privately received by one of the members of the treaty monitoring

body. In conformity with the principles of the Convention and for the sake of transparency, such information received by the Aarhus Committee should be published and, if possible, registered.

f) *Review of a country situation*

The number of communications received concerning non-compliance by a Party and the nature of non-compliance may indicate that the Committee review the general compliance in the country. Such a review may be requested by the MoP as well. Such an exercise should be publicised broadly and early enough to allow the Committee to benefit from various sources, such as human rights treaties monitoring bodies that review the Parties' periodic reports and NGOs, and may include formal or informal "hearings" with different stakeholders.

g) *Interpretation of the Convention*

The jurisprudence of the human rights treaty bodies has increasingly evolved over the last years and provides useful insights for the definition of the rights and obligations deriving from the treaties. As the practice of the Committee accumulates, its jurisprudence also develops. The jurisprudence relating to the interpretation of the Convention provisions are the outcome of a rich discussion, where the participation of the public can be crucial.

Communications

useful information for
the public and the Party
concerned

Key points

- The compliance mechanism entered into force with regard to communications from the public on 23 October 2003. 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 domestic remedies.
- Communications to the Committee may concern either a 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 to facilitate 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.

Who can submit a communication

Any member of the public, i.e. any natural or legal person, may submit a communication to the Committee. The person filing a communication (hereinafter 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 Party concerned.²⁵

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.

It is not necessary that the communicant be represented by a lawyer or have the communication prepared with legal assistance. However if some legal knowledge is available to the communicant, this may improve the quality of the communication and thus facilitate the work of the Committee. In cases where a communicant is represented by someone else (lawyer or other representative), the communicant is required to confirm in writing to the Committee that it had authorized this person to represent it in connection with the communication in question (report of the twenty-fourth meeting of the Committee, 30 June–3 July 2009, para. 58).²⁶

What is the State concerned by the communication

The communication should clearly identify the State Party to the Convention (the “Party concerned”) 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 constitute non-compliance by more than one State, a separate communication should be submitted for each State involved.

A communication may be made concerning a State, provided that:

- a) The Convention is in force for that State, meaning that it must be a Party to the Convention. The Convention enters into 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.²⁷
- b) The Party has not “opted out” of the compliance mechanism with respect to communications from members of the public.²⁸ To date, no States Parties have opted out.

Timing of a communication and of the related facts

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

²⁵ Unless the context indicates otherwise, the term “State” is 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.

²⁶ The text of the report had not been produced as an official UN document at the time of the preparation of this guidance document.

²⁷ 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> (26 November 2009).

²⁸ 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.

entry into force of the Convention for a Party, the Committee may not consider communications from members of the public with respect to that Party (“one year grace period”).

Example: State X deposits its instrument of ratification on 1 July 2009. The Convention enters into force for that State 90 days later, i.e. on 28 September 2009. Communications may be made with respect to that Party from 28 September 2010.

This does not imply that the Convention is not binding for the Party during the one-year grace period; the Committee may decide to consider communication that were submitted after the one-year grace period, but the significant events occurred during the first year after the entry into force of the Convention in the Party concerned.

If a communication concerns a specific case of alleged non-compliance (for example a specific decision rejecting 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.

It should be noted that if a communication is submitted less than two weeks before a scheduled meeting of the Committee, its preliminary admissibility may not be considered by the Committee at that meeting. The Committee encourages the public to submit communications at least two weeks in advance of a scheduled meeting (the dates of all upcoming meetings are listed on the Committee’s web site), so as to enable the Committee, as it sees fit, to study the communication and the accompanying documentation.

The Committee considers all admissible communications, but it may decide to consider

communications in a different order than the order they have been received, on the basis of the need for balanced review of compliance by the Parties and the Committee’s workload.

Formal criteria of the communication

In accordance with paragraph 20 of the annex to decision I/7, 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.

There are no formal criteria for the assessment of the conditions under b) – d) above. The Committee evaluates their fulfilment on a case-by-case basis.

Form of the communication

A communication should be in writing. There is no particular form, but it is strongly recommended that the communicant follow the example provided in annex I to this guidance document, indicating the checklist of items of information to be included.

Communications should be as concise as possible. The communicant should avoid including information that is not necessary to establish the existence and nature of the alleged non-compliance. If the communication is inevitably lengthy due to the complexity of the matter and the volume of the related information, it is recommended that the communicant include a three-page (maximum) summary with the main facts of the case.

If the secretariat receives information 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 Chair, will inform the member of the public that the information cannot be treated as a communication and explain the requirements for communications to the Committee. The secretariat will inform the Committee of any such cases, at the latest by the forthcoming scheduled meeting of the Committee, and make available to it copies of any such correspondence received (ECE/MP.PP/C.1/2006/8, para. 27).²⁹

Presentation of the facts of alleged non-compliance

The communication should 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.

The nature of alleged non-compliance

A communication may concern:

- a) 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;
- b) A failure of specific legislation, regulations or other measures implementing the Convention to meet specific requirements of its provisions;

- c) Specific events, acts, omissions or situations that demonstrate a failure of the public authorities to comply with or enforce the Convention.

Provisions of the Convention relating to the alleged non-compliance

The communication should contain all information which is considered essential to establish the alleged non-compliance, and should clearly state how the facts presented constitute a case of non-compliance with the Convention. The communication should mention the specific provisions of the Convention, which it alleges that the Party concerned failed to comply with, and make the necessary link between the facts presented and the provisions of the Convention.

Exhaustion of domestic 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. Similarly, the communication should include information on whether the matter has been submitted to other international procedures (the steps taken, when they were taken and what were the results were).

The exhaustion of domestic remedies does not constitute a strict requirement: the

²⁹ The document ECE/MP.PP/C.1/2006/8 of 1 February 2007 refers to the report of the fourteenth meeting of the Compliance Committee.

Committee will consider whether the available domestic remedies have been exhausted, unless the application of the remedy is unreasonably prolonged or obviously does not provide an effective or sufficient means of redress. It is at the discretion of the Committee to decide not to examine the substance of a communication if in its view the communicant has not sufficiently explored the domestic administrative or judicial procedures, especially at times of particularly increased workload. Also, if a domestic remedy has not been used, the Committee is not precluded from considering the communication. The Committee may decide to give priority to communications, where there is an obvious 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.

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 identity, be kept confidential. The same applies if the communicant is concerned that the disclosure of information submitted to the Committee could result in the penalization, persecution or harassment. The Committee respects any request for confidentiality.

The communicant should clearly indicate what information is submitted in confidence to the Committee. In lack of a clear request for confidentiality, no information communicated to the Committee will be deemed confidential.

When the secretariat receives a communication and/or supporting documentation, parts of which are confidential, it highlights

the confidentiality issue when forwarding the material to the Committee. The secretariat in consultation with the communicant prepares a redacted copy of the communication and/or supporting documentation for public use.

A communicant that includes a request for confidentiality may elaborate on the reasons of his or her request, but there is no obligation to do so. Also, it is important that there is enough information in the communication for the Committee to process the case. In some cases, if the request for confidentiality relates to a lot of information, this may impede the processing of the case. Finally, if the communicant requests that his or her identity be kept confidential, it is strongly recommended that he or she indicates a representative, such as a lawyer or NGO. Therefore, while there is no restriction in requesting confidentiality, this right should be exercised only when it is considered absolutely necessary.

Supporting documentation

Copies of all relevant documents to the communication, especially legislative and administrative measures and judgments relating to the application and enforcement of the Convention in the Party concerned, and which are necessary as background information, should be submitted as corroborating material to facilitate the Committee's work. Any judgments in support of the arguments of the communicant or of the Party concerned should be dated after the Convention entered into force for the Party concerned.

Language of the communication and related documentation

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. The communicant will be offered the opportunity to comment on the accuracy of the translation if he or she so wishes. A similar pro-

cedure will apply to responses received from the Party concerned in the official languages other than English and the Party concerned will be invited to comment on the accuracy of the translations of official documents originating from a different source, e.g. legal acts, letters from public authorities.

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. Also, if an important document to the communication is not available in one of the official languages, the communicant should submit a translation preferably in English and submit it together with the original. Certified translations are preferable to unofficial.

The need for translation of any supportive documentation submitted in languages other than the official ones will be considered on an ad hoc basis. When informing the public of its right to make a communication, it should be made clear that if a communication is not sub-

mitted in English, this may considerably slow down the process of its consideration.

To whom should communications be addressed 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.

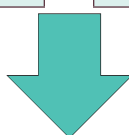
Communications should not be sent to the individual members of the Committee or to its Chair; the secretariat will forward communications to the members.

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

Annexes

ANNEX I - Compliance Committee Operation Procedures

Processing Submissions and Referrals	Processing Communications from the Public
The secretariat informs the Committee of submissions it receives and circulates them to Committee and the Party concerned within 2 weeks. The secretariat also may refer cases of to the Committee based on published information	The secretariat registers the communication, sends an acknowledgement of the receipt, and verifies that the communication contains required information prior to sending to the Committee
The secretariat requests that the Party concerned acknowledge receipt and reply within 3 months, or up to 6 months in special circumstances	The secretariat provides a summary of the communication (about 150 words), which is posted on the web site when forwarding to the Committee
If no reply is received after 3 months, the secretariat sends a reminder, and then a final reminder near the end of the 6 month period	The Committee makes a preliminary determination regarding the communication's admissibility
If no response is received within 6 months, the secretariat informs the Committee and notifies the Party concerned that it has done so	The Committee opens a "file" , posts the communication and supporting documentation on the web site , and informs the Party concerned
The Committee may base its deliberations solely upon information in the submission and reply, or may decide to gather further information at its discretion	The Party concerned should explicitly comment on the allegations within 5 months of the secretariat's letter, and may also comment on admissibility of the communication
The Secretariat notifies the Parties of any meeting discussing their case and explicitly invites representatives of the Parties if it is important that they participate	The Committee considers any comment on admissibility by the Party concerned, and either confirms admissibility or suspends its earlier admissibility decision



Discussion and Preparation of Findings
When the Committee has received a response to a submission or communication, or if no timely response is received, it may begin formal discussions of the case's substance
The secretariat notifies the parties if a submission or communication will be discussed at the Committee's meeting, and substantial new information may be presented at least 2 weeks before the meeting
Discussion of the case includes a formal hearing to which the Parties are invited, and financial support may be available to help them attend
The Committee prepares draft findings or recommendations in closed session within one or two meetings after discussion of the case, and invites the parties to comment within a reasonable deadline (generally 4 weeks)
The Committee considers comments and then finalizes its findings , which are published on the web site in addendum to the Committee's report adopted after its meeting. Recommendations may be made subject to agreement of the Party concerned.
The MoP makes the final decision on specific measures to bring about full compliance with the Convention as long as such measures are non-judicial and comply with international law

ANNEX II - 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. Party concerned

Name of the State Party 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 Party concerned 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.

IX. Summary

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

X. Signature

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

XI. Address

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

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

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

ANNEX III - Chair's introduction to formal discussions on the substance of communications and submissions³⁰

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 judgment. 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 to assisting the Committee in its upcoming deliberations on whether there are problems of compliance and if so, how those 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 the secretariat, 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

³⁰ The present text constitutes the approximate standard introduction made by the Chair of the Committee at the beginning of formal discussions of a communication/submission with the parties. The Chair may change the content of this introduction as appropriate.

vested in the Meeting of the Parties itself, and the primary role of the Committee, particularly at 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 Parties there is not much 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 Close 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 as to 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 the Committee consider it 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 Committee 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 in time 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.

