

**COMPILED VERSION OF THE WORK OF THE WORKING GROUP ON
COMPLIANCE AND RULES OF PROCEDURE ON THE DRAFT DECISION ON THE
COMPLIANCE MECHANISM AT ITS SECOND MEETING, GENEVA, 26-27
NOVEMBER 2001**

**DRAFT DECISION I/... CONCERNING ARRANGEMENTS FOR REVIEW OF
COMPLIANCE**

The Meeting of the Parties,

Determined to promote and improve compliance with the Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters (“the Convention”) and recalling article 15 of the Convention,

Recognizing the necessity for rigorous reporting by Parties of their compliance with the Convention,

1. Establishes the Compliance Committee for the review of compliance by the Parties with their obligations under the Convention;
2. Decides that the structure and functions of the Compliance Committee and the procedures for review of compliance shall be those set out in the appendix to this decision;
3. Decides that this decision shall become effective on the thirtieth day following the date of its adoption.

Appendix

STRUCTURE AND FUNCTIONS OF THE COMPLIANCE COMMITTEE AND PROCEDURES FOR REVIEW OF COMPLIANCE

Structure

[Alternative 1 on structure - Compliance Committee comprising Parties to the Convention]

[1. (a) The Committee shall consist of eight Parties to the Convention. [Two entities entitled to participate in meetings of the Parties to the Convention in accordance with its article 10, paragraphs 4 and 5, may attend committee meetings as observers.]

(a) The Meeting of the Parties shall, as soon as practicable, elect four Parties to the Committee to serve until the end of the next ordinary meeting and four Parties to serve a full term of office. At each ordinary meeting thereafter, the Meeting of the Parties shall elect four Parties for a full term of office. Outgoing Parties may be re-elected once for a further full term of office, unless in a given case the Meeting of the Parties decides otherwise. A full term of office commences at the end of an ordinary meeting of the Parties and runs until the second ordinary meeting of the Parties thereafter. The Committee shall elect its own Chairperson and Vice-Chairperson.

(b) The Meeting of the Parties shall elect the members of the Committee by consensus or, failing consensus, by secret ballot.

(c) In the election of the Committee, consideration should be given to geographical distribution of membership and diversity of experience.

(d) In carrying out its functions the Compliance Committee shall be guided by the objective of the Convention as expressed in article 1 of the Convention.]

[Alternative 2 on structure – a committee with independent members]

[1. (a) The Committee shall consist of eight members[, six of whom shall be nominated by the Parties and two of whom shall be nominated by non-governmental organizations [falling within the scope of article 10, paragraph 5, of the Convention]][promoting environmental protection]].

(b) The members of the Committee shall serve in their personal capacity.

(c) The Committee shall be composed of nationals of the Parties to the Convention who shall be persons of high moral character and recognized competence in the fields to which the Convention relates, including persons having legal experience.

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

(e) Committee members meeting the requirements of subparagraph (c) shall be nominated by Parties [, and by non-governmental organizations [falling within the scope of article 10, paragraph 5, of the Convention]][promoting environmental protection,]] for election

pursuant to subparagraph (g).

(f) Committee members shall be elected on the basis of nominations in accordance with subparagraph (e). The Meeting of the Parties shall give due consideration to all nominations.

(g) The Meeting of the Parties shall elect the members of the Committee by consensus or, failing consensus, by secret ballot.

(h) In the election of the Committee, consideration should be given to geographical distribution of membership and diversity of experience.

(i) The Meeting of the Parties shall, as soon as practicable, elect four members to the Committee to serve until the end of the next ordinary meeting and four members to serve a full term of office. At each ordinary meeting thereafter, the Meeting of the Parties shall elect four members for a full term of office. Outgoing members may be re-elected once for a further full term of office, unless in a given case the Meeting of the Parties decides otherwise. A full term of office commences at the end of an ordinary meeting of the Parties and runs until the second ordinary meeting of the Parties thereafter. The Committee shall elect its own Chairperson and Vice-Chairperson.

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

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

Meetings

2. The Committee shall, unless it decides otherwise, meet at least once a year. The secretariat shall arrange for and service the meetings of the Committee.

Functions of the Committee

3. (a) The Committee shall:

- (i) Consider any submission, referral or communication made in accordance with paragraphs 4, 5 and 6 below;
- (ii) Prepare, at the request of the Meeting of the Parties, a report on compliance with or implementation of the provisions in the Convention; and
- (iii) Monitor, assess and facilitate the implementation of and compliance with the reporting requirements under article 10, paragraph 2, of the Convention;

and act pursuant to paragraphs 12 and 13.

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

Submission by Parties

4. (a) A submission may be brought before the Committee by one or more Parties that have reservations about another Party's compliance with its obligations under the Convention. Such a submission shall be addressed in writing to the secretariat and supported by corroborating information. The secretariat shall, within two weeks of receiving a submission, send a copy of it to the Party whose compliance is at issue. Any reply and supporting information shall be submitted to the secretariat and to the Parties involved within three months or such longer period as the circumstances of a particular case may require but in no case later than six months. The secretariat shall transmit the submission and the reply, as well as all corroborating and supporting information, to the Committee, which shall consider the matter as soon as practicable.

(b) A submission may be brought before the Committee by a Party that concludes that, despite its best endeavours, it is or will be unable to comply fully with its obligations under the Convention. Such a submission shall be addressed in writing to the secretariat and explain, in particular, the specific circumstances that the Party considers to be the cause of its non-compliance. The secretariat shall transmit the submission to the Committee, which shall consider the matter as soon as practicable.

Referrals by the secretariat

5. Where the secretariat, in particular upon considering the reports submitted in accordance with the Convention's reporting requirements, becomes aware of possible non-compliance by a Party with its obligations under the Convention, it may request the Party concerned to furnish necessary information about the matter. If there is no response or the matter is not resolved within three months, or such longer period as the circumstances of the matter may require but in no case later than six months, the secretariat shall bring the matter to the attention of the Committee, which shall consider the matter as soon as practicable.

Communications from the public

6. (a) On the expiry of twelve months from either the date of adoption of this decision or from the date of the entry into force of the Convention with respect to a Party, whichever is the later, communications may be brought before the Committee by one or two members of the public concerning a Party's compliance with the Convention, unless that Party has notified in writing by the end of the applicable period to the Depositary that it is unable to accept [, for a period of not more than [four] years,]the consideration of such communications by the Committee. The Depositary shall without delay notify all Parties of any such notification received. [During the [four]-year period mentioned above, the] [The] Party may [at any time] revoke its notification thereby accepting that, from that date, communications may be brought before the Committee by one or more members of the public concerning that Party's compliance with the Convention.

(b) The communications referred to in subparagraph (a), shall be addressed to the Committee through the secretariat in writing and may in electronic form. The Communications

shall be supported by corroborating information.

(c) The Committee shall consider any such communication unless it determines that the communication is:

- (i) Anonymous;
- (ii) An abuse of the right of submission of such communications;
- (iii) Manifestly unreasonable;
- (iv) Incompatible with the provisions of this decision or with the Convention.

(d) The Committee should at all relevant stages take into account any available domestic remedy unless the application of the remedy is unreasonably prolonged or obviously does not provide an effective and sufficient means of redress.

(e) Subject to the provisions of subparagraph (c), the Committee shall as soon as possible bring any communications submitted to it under subparagraph (a) to the attention of the Party alleged to be in non-compliance.

(f) A Party shall, as soon as possible but not later than five months after any communication is brought to its attention by the Committee, submit to the Committee written explanations or statements clarifying the matter and describing any response that may have been made by that Party.

(g) The Committee shall, as soon as practicable, further consider communications submitted to it pursuant to this paragraph and take into account all relevant written information made available to it, and may hold hearings.

Information gathering

7. To assist the performance of its functions, the Committee may:

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

Confidentiality

8. (a) Save as otherwise provided for in this paragraph, no information held by the Committee shall be kept confidential.

(b) The Committee and any person involved in its work shall ensure the confidentiality of any information that falls within the scope of the exceptions provided for in article 4, paragraphs 3 (c) and 4, of the Convention and that has been provided in confidence.

(c) The Committee and any person involved in its work shall ensure the confidentiality of information that has been provided to it in confidence by a Party when making a submission in respect of its own compliance in accordance with paragraph 4 (b) above.

(d) Information submitted to the Committee, including all information relating to the identity of the member of the public submitting the information, shall be kept confidential if submitted by a person who asks that it be kept confidential because of a concern that he or she may be penalized, persecuted or harassed.

(e) If necessary to ensure the confidentiality of information in any of the above cases, the Committee shall hold closed meetings.

(f) Committee reports shall not contain any information that the Committee must keep confidential under subparagraphs (b) to (d) above. Information that the Committee must keep confidential under subparagraph (d) shall not be made available to any Party. All other information that the Committee receives in confidence and that is related to any recommendations by the Committee to the Meeting of the Parties shall be made available to any Party upon its request; that Party shall ensure the confidentiality of the information it has received in confidence.

Entitlement to participate

9. (a) A Party [, whether a member of the Committee or not,] in respect of which a submission, referral or communication is made or which makes a submission, as well as the member of the public making a communication, shall be entitled to participate in the discussions of the Committee with respect to that submission, referral or communication. 1/

(b) The Party [, whether or not a member of the Committee,] and the member of the public shall not take part in the preparation and adoption of any findings, any measures or any recommendations of the Committee. 2/

(c) The Committee shall send a copy of its draft findings, draft measures and any draft recommendations to the Parties concerned and the member of the public who submitted the communication if applicable, and shall take into account any comments made by them in the finalization of those findings, measures and recommendations.

Committee reports to the Meeting of the Parties

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

11. [If, as a result of the operation of paragraph 9, the size of the Committee is reduced to

five members or less, the Committee shall forthwith refer the matter in question to the Meeting of the Parties.] 3/

Consideration by the Compliance Committee

12. Pending consideration by the Meeting of the Parties, with a view to addressing compliance issues without delay, the Compliance Committee may
- in consultation with the Party concerned, take the measures listed in paragraph 13(a)
 - subject to agreement with the Party concerned, take the measures listed in paragraph 13(b), (c) and (d).

Consideration by the Meeting of the Parties

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

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

Relationship between settlement of disputes and the compliance procedure

14. The present compliance procedure shall be without prejudice to article 16 of the Convention on the settlement of disputes.

Enhancement of synergies

15. In order to enhance synergies between this compliance regime and compliance regimes under other agreements, the Meeting of the Parties may request the Compliance Committee to communicate as appropriate with the relevant bodies of those agreements and report back to it, including with recommendations as appropriate. The Compliance Committee may also submit a report to the Meeting of the Parties on relevant developments between the sessions of the Meeting of the Parties.

Notes

1/ The text in the square brackets in this subparagraph reflects alternative 1 on the structure of the Committee and should be deleted if it is decided to delete that alternative.

2/ The text in the square brackets in this subparagraph reflects alternative 1 on the structure of the Committee and should be deleted if it is decided to delete that alternative.

3/ The text in the square brackets is only needed for alternative 1 on the structure of the Committee.