

Annex II

**DECISION III/2
REVIEW OF COMPLIANCE**

The Meeting,

Recalling Article 11, paragraph 2, of the Convention, and decision II/4 on the review of compliance,

Determined to promote and improve compliance with the Convention,

Having reviewed the structure and functions of the Implementation Committee, bearing in mind the possible involvement of the public,

Recognizing the importance of rigorous reporting by Parties of their compliance with the Convention, and noting the first review of the implementation of the Convention as referred to in its decision III/1,

Recalling that Parties may make submissions to the Committee regarding their own compliance, in accordance with paragraph 4 (b) of the appendix to decision II/4,

1. Encourages Parties to bring issues concerning their own compliance before the Committee;
2. Decides that the structure and functions of the Committee and the procedures for review of compliance shall be those set out in the appendix to this decision, amending and replacing the appendix to decision II/4;
3. Resolves that the procedure for the review of compliance shall apply to the Convention and any amendments to it;
4. Encourages the application of the procedure for the review of compliance to the Protocol on Strategic Environmental Assessment and to any future protocols to the Convention, in accordance with their relevant provisions;
5. Decides to keep under review and develop if necessary the structure and functions of the Committee at the fourth meeting of the Parties in the light of experience gained by the Committee in the interim, including with public involvement, and in this context requests the Committee to prepare any necessary proposals for the fourth meeting of the Parties;
6. Recommends that further measures should be taken to strengthen reporting, and in this respect welcomes decision III/9 on the work plan; and
7. Welcomes the reports of the first five meetings of the Implementation Committee and requests the Committee to consider developing criteria for dealing with information other than submissions from Parties and proposals on membership of the Committee when considering matters under the Protocol on Strategic Environmental Assessment.

Appendix

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

Structure

1. (a) The Committee shall consist of eight Parties to the Convention. Each of the eight Parties shall appoint a member of the Committee. At their second meeting, the Parties elected four Parties to the Committee for two terms and four Parties for one term. At each session thereafter, the Meeting of the Parties shall elect four new Parties for two terms. Outgoing Parties may be re-elected once, unless in a given case the Meeting of the Parties decides otherwise. The Committee shall elect its own Chair and Vice-Chair;

(b) For the purposes of this paragraph "term(s)" means the period that begins at the end of one meeting of the Parties and ends at the end of the next meeting of the Parties.

Meetings

2. The Committee shall, unless it decides otherwise, meet at least once a year. The secretariat shall arrange for and service its meetings. The agenda for each meeting shall be made publicly available before the meeting.

3. Its meetings shall be open to other Parties and the public, unless the Committee decides otherwise. Parts of meetings dealing with specific submissions relating to compliance shall not be open to other Parties or to the public, unless the Committee and the Party whose compliance is in question agree otherwise.

Objective and functions of the Committee

4. The objective of the Committee shall be to assist Parties to comply fully with their obligations under the Convention, and to this end it shall:

(a) Consider any submission made in accordance with paragraph 5 below or any other possible non-compliance by a Party with its obligations that the Committee decides to consider in accordance with paragraph 6, with a view to securing a constructive solution;

(b) Review periodically, in accordance with guidelines or criteria formulated by the Meeting of the Parties, compliance by the Parties with their obligations under the Convention on the basis of the information provided in their reports;

(c) Prepare the reports referred to in paragraph 11 with a view to providing any appropriate assistance to the Party or Parties concerned, for example by clarifying and assisting in the resolution of questions; providing advice and recommendations relating to procedural, technical or administrative matters; and providing advice on the compilation and communication of information; and

(d) Prepare, at the request of the Meeting of the Parties, and based on relevant experience acquired in the performance of its functions under subparagraphs (a), (b) and (c) above, a report on compliance with or implementation of specified obligations in the provisions of the Convention.

Submission by Parties

5. A submission may be brought before the Committee by:

(a) One or more Parties to the Convention that have concerns about another Party's compliance with its obligations under that instrument. Such a submission shall relate specifically to those concerns and shall be addressed in writing by the focal point of the Party in question 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 focal point of the Party whose compliance is at issue. Any reply and information in support thereof shall be submitted to the secretariat and to the focal points of the Parties involved within three months or such longer period as the Parties involved agree. 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 possible; or

(b) 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 it as soon as possible.

Committee initiative

6. Where the Committee becomes aware of possible non-compliance by a Party with its obligations, it may request the Party concerned to furnish necessary information about the matter. Any reply and information in support shall be provided to the Committee within three months or such longer period as the circumstances of a particular case may require. The Committee shall consider the matter as soon as possible in the light of any reply that the Party may provide.

Information gathering

7. To assist the performance of its functions under paragraph 4 above, the Committee may:

(a) Request further information on matters under its consideration, through the secretariat;

(b) Undertake, at the invitation of the Party of origin and/or the affected Party, information gathering in the territory of that Party;

(c) Consider any information forwarded by the secretariat concerning compliance with the Convention; and

(d) As appropriate, seek the services of scientific experts and other technical advice or consult other relevant sources.

8. The Committee shall ensure the confidentiality of information that has been provided to it in confidence, inter alia, with regard to the reports of its meetings.

Entitlement to participate

9. A Party in respect of which a submission is made or which makes a submission shall be entitled to participate in, or be present during, the consideration by the Committee of that submission, but shall not take part in the preparation and adoption of any report or recommendations of the Committee. The Committee shall decide on the content of any report or recommendations by consensus, send a copy of the draft report or recommendations to the Parties concerned, and shall take into account any representations from such Parties in the finalization of the report.

10. A member of the Committee that represents a Party in respect of which a submission is made or which makes a submission shall be entitled to participate in the consideration by the Committee of that submission but shall not participate in, or be present during, the preparation and adoption of any part of a report or recommendation of the Committee that relates to that submission.

Committee reports to the Meeting of the Parties

11. The Committee shall report on its activities at each meeting of the Parties through the secretariat and make such recommendations as it considers appropriate, taking into account the circumstances of the matter, regarding compliance with the Convention. Each report shall be finalized by the Committee not later than ten weeks in advance of the session 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.

Competence of Committee members

12. If as a result of the operation of paragraph 10 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.

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 general measures to bring about compliance with the Convention and measures to assist an individual Party's compliance. The Parties shall make every effort to reach a decision by consensus. If all efforts at consensus have been exhausted, and no agreement reached, the decision shall, as a last resort, be adopted by a three-fourths majority vote of the Parties present and voting at the meeting.

Relationship to settlement of disputes and the inquiry procedure

14. The present compliance procedure, as a non-adversarial and assistance-oriented procedure, shall be without prejudice to the settlement of disputes provisions in Article 15 of the Convention.

15. Where a matter is being considered under an inquiry procedure under Article 3, paragraph 7, of the Convention, that matter may not be the subject of a submission under this decision.