

This is the second draft of the revised Guide to the Aarhus Convention Compliance Committee. This draft was prepared for discussion in open session at the 51st meeting of the Compliance Committee (Geneva, 15-18 December 2015).

The first draft of the revised Guide was prepared for the Compliance Committee's forty-seventh meeting (Geneva, 16-19 December 2014).

Written comments on the draft Guide are also welcome and should be sent, in track changes form, to [aarhus.compliance@unece.org](mailto:aarhus.compliance@unece.org) before **1 November 2016**. All comments received by that deadline will be taken into account in the preparation of the final draft of the revised Guide which will be discussed in open session at the 55th meeting of the Compliance Committee (Geneva, 6-9 December 2016).

# Guide to the Aarhus Convention Compliance Committee

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

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# Guide to the Aarhus Convention Compliance Committee<sup>1</sup>

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Draft

# Introduction

Since the 1990s, 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 (the Aarhus 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 (MOP) adopted decision I/7 on review of compliance at its first session (Lucca, October 2002). Decision I/7 establishes an advanced compliance mechanism for the Convention: it creates the Compliance Committee 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 five 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;
- e) the Meeting of the Parties may request the Committee to examine a Party's compliance with the Convention.<sup>2</sup>

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, which has the mandate to examine the merits of the case. The Committee adopts findings and if non-compliance is found, may make recommendations either to the MOP, or, with its agreement, directly to the Party concerned.

The Committee may also 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; provide advice or facilitate assistance to individual Parties regarding the implementation of the Convention; and monitor, assess and facilitate the implementation of and compliance with the reporting requirements under article 10, paragraph 2, of the Convention.

The Committee reviews Parties' compliance with the provisions of the Convention and report to the MOP. So far, the MOP has endorsed all the Committee findings of non-compliance, and made decisions based on the Committee's reports regarding Parties found to be in non-

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<sup>2</sup> This trigger is not expressly referred to in decision I/7, but it follows from the MOP's general decision-making capacity.

compliance.

This Guide is intended to explain the functions of the Compliance Committee and its working methods for Parties, communicants and observers that may engage with the Committee's procedures. It is divided into six sections. The first section describes the composition of the Committee, the election process and the duties of members once elected. The second section set out the Committee's functions and powers. The third section explains the Committee's working methods. The fourth section provides a step-by-step overview of the compliance review procedure. Finally, the fifth section highlights some useful information for members of the public when preparing a communication or for Parties when preparing a submission to the Committee.

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

- the Convention, notably article 15;
- decisions I/7, II/5, III/6, IV/9 and V/9 of the Meeting of the Parties;
- the reports of the Committee's meetings.

Further and updated information concerning the Compliance Committee and all relevant documentation is available at <http://www.unece.org/env/pp/cc.html>.

Further information concerning the Convention is available on the Convention's web site: [www.unece.org/env/pp/welcome.html](http://www.unece.org/env/pp/welcome.html).

# Composition and election

## Composition

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

Unless the MOP, in a particular instance, decides otherwise, the procedure for the nomination of candidates for the Committee is as follows:

- (a) Candidates meeting the requirements described in the previous paragraph may be nominated by Parties, Signatories and non-governmental organizations falling within the scope of article 10, paragraph 5, of the Convention and promoting environmental protection.
- (b) 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.
- (c) Each nomination must be accompanied by a curriculum vitae (CV) of the candidate not exceeding 600 words and may include supporting material.
- (d) 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 is 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 close of 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.

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 must, 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 this declaration in writing.

# **Functions and powers of the Committee**

## **Consider any submission, referral, communication or request in order to examine compliance and implementation**

The Committee:<sup>3</sup>

- (a) Considers any submission, referral or communication concerning compliance by Parties with their obligations under the Convention;
- (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

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<sup>3</sup> Paragraph 13 of the annex to decision I/7.

appropriate.

## Report to the Meeting of the Parties

The Committee submits a report on its activities at each ordinary session of the MOP, which to date have taken place every three years, and makes such recommendations as it considers appropriate. The report provides an overview of the submissions, referrals, communications and requests considered by the Committee during the intersessional period as well as on the implementation of earlier decisions of the Meeting of the Parties on compliance by individual Parties. It also reports on general compliance issues identified by the Committee in its work as well as commenting on the Parties' implementation of the Convention's reporting requirements. The report annexes a table of provisions of the Convention alleged or found not to have been complied with during the intersessional period.

The Committee's draft report is discussed in open session and observers are invited to provide their input. 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 .

## Monitor reporting requirements

In accordance with paragraph 13 of the annex to decision I/7, the Committee's functions include to monitor, assess and facilitate the implementation of and compliance with the reporting requirements under article 10, paragraph 2, of the Convention

Article 10, paragraph 2 of the Convention requires the Meeting of the Parties to keep under continuous review the implementation of the Convention on the basis of regular reporting by the Parties. In accordance with MOP decision I/8 and IV/4 on reporting requirements, the Parties are expected to report on the legislative, regulatory or other measures it has taken to implement the provisions of the Convention and their practical implementation. National implementation reports should be prepared through a transparent and consultative process involving the public. They should be submitted to the secretariat no later than 120 days before the session of the Meeting of the Parties for which they are submitted. In advance of each subsequent session of the Meeting of the Parties, each Party must review their report and submit an updated version of it to the secretariat. The secretariat is then tasked with preparing a synthesis report for each session of the Meeting of the Parties, summarizing the progress made and identifying significant trends, challenges and solutions. In carrying out its role to monitor the reporting requirements, the Committee, inter alia, reviews and provides comments on the draft synthesis report prepared by the secretariat.

## Measures by the Meeting of the Parties to address compliance

Upon consideration of the Committee's report and recommendations concerning a Party's

non-compliance, the MOP decides on appropriate measures to bring about full compliance with the Convention. Depending on the cause, degree and frequency of non-compliance, the 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 to address compliance**

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. In practice, most Parties who have been subject to an examination by the Committee and found to be non-compliant, have accepted to obtain recommendations directly from the Committee in this way.

# Committee's working methods

As a general rule, the Committee applies the rules of procedure of the MOP<sup>4</sup> 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.<sup>5</sup>

## Responsibilities of Committee members

The Committee takes its decisions collectively and the Committee members are thus collectively responsible for the Committee's decisions. This means that all Committee members are expected to read all relevant information for all cases. Every effort is made to take decisions by consensus and so far all Committee findings and recommendations have been thus adopted.

To facilitate the efficient functioning of the Committee, the Chair assigns each case to a Committee member who thereafter acts as the Curator for the case. All cases - including communications, submissions, referrals, MOP requests or requests from a Party for advice or assistance – are assigned in this way. A curator is also assigned with respect to the Committee's follow-up on the implementation of MOP decisions on non-compliance by individual Parties.

The responsibilities of the Curator include drafting questions to be sent by the Committee to the parties in a case, taking the lead in proposing questions to the parties during the hearing of the case, and preparing the draft findings and recommendations for the Committee's deliberations. While the Curator's work ensures the smooth progress of the case, any decision must be taken by the Committee.

## Conflict of interest

In a case where a Committee member finds himself or herself faced with a possible or apparent conflict of interest, that member is required to bring the issue to the Committee's attention and decision before the Committee's consideration of the case at issue.

Specifically, the Committee has agreed on the following guidance principles on the independence and impartiality of Committee members:<sup>6</sup>

a) The Committee members must exercise their functions independently and impartially, free from interference or influence by any source and from the appearance of interference or influence;

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<sup>4</sup> See the annex to decision I/1 of the MOP (ECE/MP.PP/2/Add.2).

<sup>5</sup> MP.PP/C.1/2003/2, para. 11, report of the first meeting of the Compliance Committee, 16 June 2003.

<sup>6</sup> ECE/MP.PP/C.1/2010/6, para. 6.

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, including cases following up on MOP decisions of non-compliance, Committee members must 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) Being a citizen of the Party whose compliance is to be discussed will not in itself be considered as a conflict of interest.<sup>7</sup>

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. Before bringing the issue to the attention of the Committee, the Committee member may consult with the Chair.

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.

Any member considered to have a possible conflict of interest will be able to attend sessions and access information in the same manner as an observer related to that particular matter. While the Committee member can thus attend the open sessions and discussions, he or she is expected not to actively participate in the discussion. A Committee member who has a conflict of interest may not take part in closed sessions where the Committee is considering compliance or preparing or adopting findings, measures or recommendations.<sup>8</sup>

The rules on conflict of interest also apply to any electronic decision-making procedure.

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 website 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. Any correspondence shall be sent to the secretariat and not to individual members of the Committee.<sup>9</sup>

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 confidentiality. However, channelling such requests via the secretariat will ensure more up-to-date and complete

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<sup>7</sup> MP.PP/C.1/2003/2, para. 22

<sup>8</sup> MP.PP/C.1/2004/6, para. 53, report of the fifth meeting of the Compliance Committee, 26 November 2004.

<sup>9</sup> MP.PP/C.1/2003/4, para 8, report of the second meeting of the Compliance Committee, 15 October 2003.

information and is therefore recommended.<sup>10</sup>

Members of the Committee may accept invitations to present the compliance mechanism at appropriate events, including conferences and workshops,<sup>11</sup> 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 Committee member concerned is expected to notify the Committee of any potential conflict of interest.<sup>12</sup>

## Access to information about cases before the Committee

In keeping with the Convention's focus on transparency, all documents received by or issued by the Compliance Committee with respect to pending cases are posted on the Committee's website, [www.unece.org/env/pp/cc.html](http://www.unece.org/env/pp/cc.html), under the relevant case reference.

**Comment [AA1]:** I suggest a provision is made for exceptions related to confidentiality. "Documents, protected by a confidentiality request approved by the Compliance Committee, are not made public."

## Procedures for examining compliance

### 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 a substitute.<sup>13</sup>

<sup>10</sup> MP.PP/C.1/2004/6, para 49.

<sup>11</sup> MP.PP/C.1/2003/4, para. 30.

<sup>12</sup> ECE/MP.PP/C.1/2007/4 para. 28, report of the sixteenth meeting of the Compliance Committee, 31 July 2007.

<sup>13</sup> MP.PP/C.1/2003/2, para.12; ECE/MP.PP/C.1/2008/6, para. 41. 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.

## Decision-making by email

In order to ensure the efficient management of its workload and in particular to expedite the processing of communications, submissions, requests and referrals, the Committee may take various decisions between its meetings by email.<sup>14</sup> Generally, the Committee's electronic decision-making procedure is used for decisions that do not require extensive further discussion by the Committee. Depending on the particular circumstances, such decision may include, inter alia, the adoption of meeting reports, determinations on the admissibility of communications, the drafting of questions to be raised with the parties to a case, the preparation and finalization of draft findings and recommendations and the adoption of the final findings.

The Committee's electronic decision-making procedure is as follows:

- a) The Chair prepares, with the assistance of the secretariat and, depending on the nature of the decision, the Curator a draft decision or decisions on the issue(s) to be decided inter-sessionally. The Chair decides on a suitable time period for the Committee members' to respond. The secretariat circulates the draft(s) to the Committee members by email, specifying the deadline for response.
- b) Committee members are asked to reply by a given date whether 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 are sent by email to the secretariat and to all other Committee members.
- c) If one or more Committee members request an amendment to the Chair's text, the Chair puts 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 is circulated by the secretariat to the Committee members with a new deadline for comment.
- d) Once all Committee members have indicated their satisfaction with the Chair's (latest) proposal, or alternatively, if no member of the Committee objects to it by a specified deadline, the proposal is deemed adopted by the Committee as a preliminary decision.
- e) Once subparagraph (d) has been met, the secretariat circulates a note to the Committee confirming that the preliminary decision has been adopted, and, if necessary, attach the text of the preliminary decision.
- ff) If the matter turn out to be too complicated or for other reasons not suitable for electronic decision-making, the Chair may decide to postpone the decision to the next meeting of the Committee.

At the instigation of the Chair, the Committee may use other forms of communication, such as conference telephone calls, possibly in combination with email, to take decisions to ensure the Committee's efficient functioning between meetings.

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<sup>14</sup> In this context, the term "decisions" encompasses "determinations". MP.PP/C.1/2004/4, para. 41, Report of the fourth meeting of the Compliance Committee, 19 July 2004.

## **Virtual meetings**

The Committee may arrange virtual meetings between the ordinary Committee meetings in order to expedite the processing of communications, submissions and referrals.

## **Open sessions with public participation**

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.<sup>15</sup>

Specifically, hearings and discussions on particular cases are in general open to the public, and so are the brief open sessions concerning preliminary admissibility of new communications. At all these sessions, observers as well as the Party concerned and the submitting Party and/or the communicant (the “parties concerned”) may participate.<sup>16</sup> Participation is broadly understood in the sense in which the concept is enshrined in the Convention, comprising in particular the right to comment, the right to be heard and the right to have comments taken into account by the Committee, within the framework of the procedures of the meeting.<sup>17</sup>

In addition to open sessions at its regular meetings, the Committee also from time-to-time holds Open Dialogue Sessions, for example, at sessions of the Meeting of the Parties, during which Parties, members of the public and other stakeholders will be invited to make proposals as to how the Committee’s working methods may be improved.

## **Closed sessions**

The Committee’s deliberations during the preparation and adoption of any findings (including determinations on preliminary admissibility and findings regarding the implementation of MOP decisions on compliance), measures or recommendations are generally closed.<sup>18</sup>

## **Use of audio conferencing and video-conferencing**

With the dual aims of making its processes more participatory and reducing costs, the Committee increasingly uses audio conferencing and videoconferencing to facilitate the participation of Parties, communicants and observers in its meetings.

## **Publication of meetings and documentation**

As described above, meetings of the Committee are publicized through the website, with the provisional meeting agenda, provisional meeting timeline, meeting reports and other official

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<sup>15</sup> MP. PP/C.1/2003/2, para. 15.

<sup>16</sup> Annex to decision I/7, para. 32.

<sup>17</sup> MP.PP/C.1/2003/2, para. 16.

<sup>18</sup> MP.PP/ C.1/2003/2, para. 17 and paragraph 33 of the annex to decision I/7.



documents (other than confidential items) also being posted there.<sup>19</sup>

All documentation submitted to or issued by the Committee and, all documentation submitted by the Parties concerned, the communicant and observers are made available on the website, other than that which is required to be kept confidential pursuant to Chapter VIII of the annex to decision I/7, is made available through the website.

Once the Chair and Vice Chair of the Committee have decided that a communication should be forwarded to the Committee for consideration as to its preliminary admissibility, the communication, together with any supporting documentation is put on the website the Party concerned is informed.

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. Nor does the posting of any document provided by the parties in any way prejudice the Committee's findings or indicate any particular view of the Committee.

Draft findings and recommendations agreed by the Committee are posted on the website once they have been transmitted to the Party concerned and the submitting Party and/or the communicant (i.e. the parties concerned). Similarly, any comments provided by the parties concerned or third parties will be made publicly available on the website.<sup>20</sup>

As far as possible, informal discussion papers prepared by the secretariat for a meeting of the Committee will be posted on the webpage for that meeting approximately one week in advance of the meeting.

### **Working language**

English is the internal working language of the Committee.<sup>21</sup>

### **Role of the secretariat**

According to decision I/7, the "secretariat shall arrange for and service the meetings of the Committee".<sup>22</sup> 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.

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<sup>19</sup> MP.PP/C.1/2003/2, para. 18.

<sup>20</sup> 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, report of the tenth meeting of the Compliance Committee, 22 December 2005.

<sup>21</sup> MP.PP/C.1/2003/2, para. 21, see also further down on the language of the communications.

<sup>22</sup> Paragraph 12.

## **NGOs and the Committee<sup>23</sup>**

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

The Committee has a particular interest in cooperating with the NGO community. Beyond the submission of communications on individual cases, NGOs can significantly contribute to the Committee's efforts to collect information. Paragraph 25 of the annex to decision I/7 does not make any distinction between information received from individuals, NGOs and Parties. NGOs may also contribute as "experts and advisers" whose services the Committee may seek. Most importantly, NGOs can make an important contribution to the follow-up of Committee findings and MOP decisions of non-compliance, in particular by providing relevant and timely information on the extent to which the recommendations set out in the findings or MOP decision have been implemented by the Party concerned.

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<sup>23</sup> 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).

# Compliance review – step-by-step

[Diagram to be inserted – timeline of compliance review]

## 1 Processing reviews of compliance

As described above, the Committee's review of a Party's compliance may be triggered in five 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;
- e) the Meeting of the Parties may request the Committee to examine a Party's compliance with the Convention<sup>24</sup>

Thus far almost all of the Committee's caseload has been triggered by communications from the public. This section first describes how such communications are processed, followed by descriptions of the process for submissions, referrals and requests by the MOP regarding a Party's compliance.

## 2 Communications from the public

Communications may be brought before the Committee by one or more members of the public concerning a Party's compliance with the Convention. The communication shall be addressed to the secretariat in writing using the required format,<sup>25</sup> and should be submitted in both hardcopy and in electronic form, supported by corroborating information.

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

- (a) Anonymous;
- (b) An abuse of the right to make such communications;
- (c) Manifestly unreasonable;
- (d) Incompatible with the provisions of decision I/7 or with the Convention.

**Comment [SK2]:** Note small inconsistency: "recommended" is used below

**Comment [AA3]:** This seems new. I would re-phrase saying "and, when requested by CC, in hard copy".

**Comment [AA4]:** These are known to be admissibility criteria. Why they are listed here and not in the relevant section. Suggestion: move this paragraph to section 2.5.

### 2.1 Upon receipt of a new communication

Following receipt of a new communication, the secretariat sends an acknowledgement of receipt. The secretariat checks it for completeness and determines whether it is sufficiently in

<sup>24</sup> This trigger is not expressly referred to in the annex to decision I/7, but it follows from the MOP's general decision-making capacity.

<sup>25</sup> See annex I to this Guide.

the form of a communication to be brought to the attention of the Chair and Vice-Chair of the Compliance Committee. If not, the secretariat informs the communicant accordingly and invites the communicant to re-submit its communication in the recommended format.<sup>26</sup>

**Comment [SK5]:** "Required" or "recommended"? See above comment

## 2.2 Decision by Chair and Vice Chair to forward communication to Committee for review

Approximately five weeks before each Committee meeting, the secretariat forwards all communications received since the last meeting that are sufficiently in the form of a communication to the Chair and Vice-Chair of the Committee for their review. Only communications submitted to the secretariat at least five weeks before the next Committee meeting will be considered for preliminary admissibility at that meeting. The Committee agrees at each meeting the cut-off date by which the Committee will receive communications to be considered for the next meeting. This date will be recorded in the meeting report and then posted on the communications webpage.

The Chair and the Vice-Chair, with the assistance of the secretariat, decide whether the forwarded communications are sufficiently well-prepared to be considered by the Committee at its next meeting for a preliminary determination on admissibility. If not, the secretariat informs the communicant accordingly and invites the communicant to re-submit the communication in the recommended format for communications.

**Comment [SK6]:** see note directly above

The decision by the Chair and Vice-chair that a new communication should be forwarded to the Committee for consideration of preliminary admissibility does not in any way prejudice the Committee's finding on whether the communication in question is preliminarily admissible. Moreover, the decision to forward a communication to the Committee does not prevent the Committee from deciding to request further clarification by the communicant before deciding on the question on preliminary admissibility.

Each communication forwarded to the Committee for consideration of preliminary admissibility will be allocated a case reference, in the format "PRE/ACCC/C/[Year]/[Number of communication]". The prefix "PRE" indicates that the Committee's determination of the preliminary admissibility of that communication has not yet been made.

## 2.3 Confidentiality

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.

**Comment [AA7]:** Need a note on further access to information on such documents.

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<sup>26</sup> The recommended format is available at [http://www.unece.org/fileadmin/DAM/env/pp/compliance/Format\\_for\\_communications\\_v13.02.2015.docx](http://www.unece.org/fileadmin/DAM/env/pp/compliance/Format_for_communications_v13.02.2015.docx)

## 2.4 Translation

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.

## 2.5 Determination of admissibility

**Comment [AA8]:** This section clearly lack reference to admissibility criteria. See our comment above.

### **New communications published on the website and Party concerned notified**

Not later than three weeks before each Compliance Committee meeting, the communications to be considered for preliminary admissibility by the Committee at that meeting will be posted, together with any attachments, on the webpage for communications, <http://www.unece.org/env/pp/cc/com.html>

Also no later than three weeks before the meeting, the secretariat informs the Party concerned that a communication concerning its compliance will be considered as to its preliminary admissibility at the next meeting and provides a link to the communication on the Compliance Committee website. The Party concerned is informed that the preliminary admissibility will be briefly discussed in open session at the upcoming meeting and, though there is no requirement that it do so, a representative of the Party concerned may participate either by audio-conference or in person in that session.

At the same time, the secretariat also informs the communicants whose communications will be considered as to their preliminary admissibility at the upcoming meeting of that fact and refers to the information to be posted on the Compliance Committee website. The communicant is informed that the preliminary admissibility will be discussed in open session at the upcoming meeting and, though there is no requirement that it do so, the communicant may participate either by audio-conference or in person in that session.

Also at this time, the secretariat also informs the Committee that the communications to be considered for preliminary admissibility at its next meeting have been posted.

### **Procedure for determining preliminary admissibility**

The Committee's procedure for determining preliminary admissibility during a meeting follows the sequence of the Committee's procedure for discussing the substance of a communication. This means that the Committee first discusses the communications in open session, and then deliberates in closed session.

During the open session, after inviting the curator of the communication to provide a brief introduction to the communication, the Chair gives the floor to any representatives of the Party concerned and communicant present either in person or via audio-conference that wish to briefly state their view regarding the admissibility of the communication. This is without prejudice to the Party concerned's right to make further submissions on the admissibility of the communication at any point prior to the Committee's final determination on admissibility

(see below). The absence of a statement by the Party at the meeting to discuss preliminary admissibility does not preclude it making submissions on admissibility later.

Observers may also be given a short opportunity to state their views on the admissibility of the communication.

All statements should be concise and strictly limited to the issue of admissibility, leaving aside the substance of the communication. Statements should be no more than 2-3 minutes in length.

Following the short statements, the Committee may put questions to representatives of the Party concerned or communicant or to observers participating in the session.

The Committee then deliberates upon each communication in closed session. During that session, it may proceed to prepare its preliminary determination of admissibility or adopt a finding that the communication is not admissible. Alternately, it may agree to defer its determination of preliminary admissibility in order to request the communicant to clarify, further substantiate or re-structure its communication prior to the next meeting or to seek clarification from the Party concerned, e.g. regarding the availability of further domestic remedies.

Once a communication is determined to be preliminarily admissible or found to be inadmissible, the prefix "PRE" is removed from its case reference.

The Committee's determination of preliminary admissibility, its finding that the communication is inadmissible or its decision to defer its determination to request further clarification or information is recorded in the meeting report and also announced in open session during the reading and adoption of the meeting report.

If the Committee finds the communication to be inadmissible under paragraphs 19, 20 or 21 of the annex to decision I/7, the reasoning on which the Committee's finding is based is recorded in the meeting report.

#### **Party concerned and communicant notified of outcome**

No later than two weeks after the meeting, the secretariat informs the Party concerned and communicant whether the communication was determined to be preliminarily admissible or found to be inadmissible, or that the Committee decided to defer its determination of preliminary admissibility to its next meeting. If the communication was found to be inadmissible, the communicant and the Party concerned will also be informed of the reason why.

If the communication was determined to be preliminarily admissible, the communication is thereafter formally forwarded by the secretariat to the Party concerned which will have five months from the date the communication is so forwarded to provide its response.

If the communication is found inadmissible, the case is considered to be closed. The communication and all related correspondence will remain available on the website.

**Comment [AA9]:** We have a concern that the wording in this paragraph is vague as to the timing of forwarding the communication and starting the clock for the party's response, and can result in a practice where this is done months after the preliminary admissibility determination – in end effect the party concerned has 5 months to respond after a communication has been determined preliminarily admissible. We find this inconsistent with Decision I/7 paras. 20, 22, and 23.

We suggest changing this paragraph so that the 5-month period starts immediately after the party receives a communication including for the purpose of reflecting its view on the issue of pre-admissibility.

### **Timeframe for final determination of admissibility**

The Committee may reconsider its determination that the communication is preliminary admissible at any stage during its examination until it sends its draft findings of the communication to the parties for their comments. The sending of the draft findings to the parties for their comments signals that the Committee's final determination of admissibility has been made.

### **Request for reconsideration of determination of inadmissibility**

If the communicant considers that the Committee's determination that the communication is inadmissible was based on a manifest error of fact, the communicant may request a reconsideration of the Committee's determination of inadmissibility. Any such request must be submitted to the secretariat, with a reasoning of no more than 1200 words (2 pages A4 size), no later than five weeks after the communicant was informed of the Committee's determination of inadmissibility. The communicant's request for reconsideration will be forwarded by the secretariat to the Party concerned which will thereafter have three weeks to comment on the request. The Committee will make its decision on the communicant's request, taking into account any comments received from the Party concerned, at its next meeting. The Committee's decision on the communicant's request will be final and not subject to review or appeal.

**Comment [AA10]:** Why only on this basis? We think this means unfair process. The party may use any basis for challenging admissibility at any stage. We suggest the reference to manifest error of fact removed.

### **Following a finding of inadmissibility**

The Committee's finding that a communication is inadmissible is final and not subject to appeal or review.

### **De minimis**

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.<sup>27</sup>

## **2.6 Exhaustion of domestic remedies**

<sup>27</sup> ECE/ MP.PP/C.1/2010/4, para. 44.

The Committee will take into account, at all relevant stages, 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. 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.

Upon learning of the existence of a pending domestic procedure, the Committee will ask the communicant to promptly provide it with clear reasons as to why, notwithstanding the pending domestic procedure, the Committee should provisionally admit or uphold its earlier determination of provisional admissibility (depending on the stage of the communication). The Committee will thereafter consider any reasons provided by the communicant and the Party concerned in the light of paragraphs 20 and 21 of the annex to decision I/7 and, if it considers the reasons provided do not meet the thresholds set out in those paragraphs, might determine the communication to be inadmissible.

**Comment [AA11]:** Why “should”? We strongly disagree. We suggest changing “may”. What means “admit or uphold”? What’s the option?

**Comment [AA12]:** We think the whole paragraph is not acceptable, as it explicitly links domestic remedies to admissibility.

## 2.7 Summary proceedings

Bearing in mind that according to the Convention the compliance review mechanism is not a redress mechanism, and on the basis of paragraph 20 of the annex to decision I/7, in cases which have been determined to be preliminarily admissible, but where the legal issues raised by the communication have already been tackled by the Committee, the Committee may decide to apply its summary proceedings procedure. In such cases:

- a) The Committee will send a letter to the communicant informing it about the process;
- b) The Committee will 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 will 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.<sup>28</sup>

A communicant whose communication is subject to summary proceedings will be included in any follow-up on the earlier case in which non-compliance on those issues were found, and given the opportunity to comment, together with the communicants of the earlier case.

## 2.8 Response by the Party concerned

When the Party receives a letter from the secretariat forwarding a communication for its response, 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.<sup>29</sup> In its response the Party concerned should explicitly comment on the allegations of the communication and also address any questions and other

<sup>28</sup> ECE/MP.PP/C.1/2010/4, para. 45.

<sup>29</sup> Annex to decision I/7, para. 23.



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 to the Party concerned by the secretariat for its response. The response from the Party concerned should reach the secretariat by the end of the five-month period by email. The posted original may arrive after the lapse of the five-month period, as long as it was posted before the expiry 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 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 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 challenge the admissibility of the communication, or the Committee does not find the Party concerned's arguments on this point to be persuasive, the Committee will consider whether any further information should be requested from either party, and then provisionally schedule the communication for discussion at an upcoming meeting of the Committee.

If the Party concerned does not respond within the five-month deadline, the Committee will likewise proceed to consider the substance of the file, on the basis of the information before it.

### **3 Submissions by Parties concerning other Parties**

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. Within two weeks of receiving a submission, the secretariat shall send a copy of it to the Party whose compliance is at issue.

#### **3.1 Upon receipt of a new submission**

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 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.

## 3.2 Response from the Party concerned

The deadline for the Party concerned's response is calculated from the date at which the documentation was sent by the secretariat; and the response from the Party concerned should reach the secretariat by the end of the relevant period by email, 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, the Party concerned 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 represented in such meetings in accordance with paragraph 32 of the annex to decision I/7. Subject to financial resources, financial support will be provided where needed to assist eligible government representatives from the Parties concerned to participate.

## 3.3 Translation

If translation of the supporting material to the submission or Party concerned's response 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 parties concerned to provide an English translation of some documents.

## 4 Submissions by Parties concerning own compliance

With regard to submissions by a Party concerning its own compliance,<sup>30</sup> 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. Subject to financial resources, financial support will be provided where needed to assist eligible government representatives from the Parties concerned to participate.

## 5 Referrals by the secretariat

With regard to referrals by the secretariat,<sup>31</sup> 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

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<sup>30</sup> Paragraph 16 of the annex to decision I/7

<sup>31</sup> Annex to decision I/7, para. 17,

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

## **6 Requests by the Meeting of the Parties**

The MOP may request the Compliance Committee to examine compliance issues. For example, the MOP may request the Committee to prepare a report on compliance with or implementation of the provisions of the Convention. It may also ask the Committee to monitor, assess and facilitate the implementation and compliance with the Convention's reporting requirements.

## **7 Common elements for all compliance review procedures**

### **7.1 A hearing with the parties concerned**

As a general rule, the Committee aims to hold the formal hearing on a communication, submission, request or referral as soon as possible, usually at one of the two meetings following either the receipt of the response 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.

The Committee does not hold the hearing on a particular communication, submission, request or referral before the Party concerned's response has been received or the applicable deadline for its response 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 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.

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, in order for the Committee and the other party to consider it.

The Party concerned and the submitting Party and/or the communicant will be invited to come and present information and opinions on the matters under consideration. The Committee puts questions to the parties on matters that, despite written information, do not appear clear to the Committee. This may involve factual as well as legal matters.

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 and, where applicable, the submitting Party to participate.

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

- a) Introduction and opening of the discussion by the Chair; <sup>32</sup>
- b) Short presentation of the case by the curator;
- c) Opening statements by the communicant, submitting Party or secretariat (if a referral), and by the Party concerned, including possible joint proposals;
- d) Questions from the Committee, responses from the Party concerned and the communicant or the submitting Party,
- e) Comments from observers at the invitation of the Chair;
- f) Final comments by the submitting Party or communicant;
- g) Final comments by the Party concerned.
- h) Closure with information from the Chair or curator of any further request for clarification information to be provided by the parties.

**Comment [SK13]:** just moved this footnote, was on curator

## 7.2 Information gathering

Paragraph 25 of the annex to decision I/7 provides that "to assist the performance of its functions, the Committee may:

- a) Request further information on matters under its consideration;

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<sup>32</sup> General content of the Chair's introduction is included in Annex III to this Guidance Document.

- 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) Type of information needed*

The missing information may be:

- 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;
- 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.

#### *b) 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;
- The public;
- The secretariat.

#### *c) Time and cost implications of information gathering*

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**

The means for information include the following three groups:

- a) Easily accessible and no-cost or low-cost means of obtaining information, including, but not limited to: requests to the Party concerned, communicant or submitting party for additional information; reports from the Parties submitted in accordance with decision I/8; Committee members; literature; Internet, including information made available through the Aarhus

Clearinghouse.

b): Obtaining information by contacting external sources, which depending on the circumstances may require a decision by the Committee to do so, such as seeking information/opinions/advice from national and international experts from governments, academia, private sector and non-governmental organizations as well as international organizations working in the Party concerned. 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.

c): 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.<sup>1</sup> For example, the secretariat has a mandate to request Parties to furnish necessary information about a matter, without instructions by the Committee.<sup>1</sup> 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, information should not be gathered at meetings of the secretariat or of the members of the Committee with any of the parties concerned. The appropriate way for the parties concerned to submit any information for consideration is to address it formally to the Committee through the secretariat.<sup>1</sup>

### **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. Through on-the-spot information gathering the Committee may collect information by experts travelling to the territory of a State to establish facts and assess the situation of alleged non-compliance.

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 necessary for the consideration of the matter and the information required cannot be obtained through other means. The Committee will consider the following criteria, namely whether:

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.

### 7.3 Preparation of draft findings

When the Committee has received the response to a submission,<sup>33</sup> 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, schedule 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). In doing so, it may request additional information from the parties concerned or other sources; and
- d) Finalize its draft findings and send this to the parties concerned for their comments;
- e) Adopt its findings and recommendations taking account of any comments received from the Parties concerned and/or the communicant and observers.

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, the submitting Party, 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) 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 (generally, two weeks before the meeting) 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.

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 Committee should start the preparation of its draft findings and recommendations at the meeting at which the discussion was held, though the Committee will

**Comment [SK14]:** This suggests that the formal discussion does not always have to take place, but gives no indication as to the circumstances where that could happen. We suggest clarifying this, i.e., by inserting here that “where the Committee considers such a formal discussion is unnecessary to its consideration in a particular case (because for example x, y, z), it may ask the parties whether they agree to forgo the hearing.”

If not here, then this insertion should be put somewhere in this section.

**Comment [AA15]:** We are concerned that this para suggests that “formal discussion” above does not mean a public hearing per D I/7 para. 32. See comment directly above.

<sup>33</sup> 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.



usually require several meetings to complete its deliberations on its draft findings.

As mentioned, the Committee prepares its draft findings and recommendations in closed session.<sup>34</sup>

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.

**Comment [SK16]:** We find this reference to capacity & socio-economic conditions not in line with D I/7 and suggest deleting.

If the Committee finds that the Party in question is not in compliance, it then considers and agrees 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).

Once prepared, the draft findings with any measures or recommendations are transmitted to the parties concerned with an invitation for them to comment within a reasonable deadline. If necessary, to assist the parties, the secretariat may arrange for the draft to be translated into another UNECE language.

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 usually, in consultation with or, as appropriate, with the agreement of the Party concerned, takes 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.

Draft findings and recommendations drawn up by the Committee and comments by the parties concerned are posted on the website once they have been transmitted to the parties concerned. 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. Comments on the draft findings and recommendations should not include information that could have been provided at an earlier stage of the process.

## 7.4 Adoption of findings and recommendations

At its next ordinary or virtual meeting after the deadline for comments, the Committee will consider any comments received, and, if possible, review and finalize the draft findings and, if applicable, its measures or recommendations.

The final version will be prepared as an official document available in the three UNECE

<sup>34</sup> 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),

languages and transmitted to the parties concerned. An advance unedited copy of the adopted 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 remains 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.

## **8 Follow-up on findings of non-compliance**

If the Committee adopts findings of non-compliance, pending the next session of the Meeting of the Parties, with a view to addressing compliance issues without delay, it will invite the Party concerned to provide progress reports on its implementation of the Committee's findings and recommendations. Communicants, submitting Parties and observers and submitting Parties will be given the opportunity to comment on the Party's progress to implement the Committee's finding and recommendations. This information will be considered by the Committee when reporting to the MOP.

### **8.1 Report to MOP on implementation of Committee's findings of non-compliance**

For each Party found to be in non-compliance, the Committee prepares a report to the next session of the Meeting of the Parties on the Party's progress to implement the Committee's findings and recommendations during the intersessional period. The Party concerned, as well as communicants and observers, are given the opportunity to comment on the Committee's draft report before it is finalized.

### **8.2 Consideration by the MOP and adoption of a MOP decision**

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 next session of the MOP.

Further to a request from, and with the consent of the Party concerned, the Committee 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.

### **8.3 Committee's review of the implementation of the MOP decision**

In order to more effectively examine the follow-up to decisions of the MOP concerning compliance by individual Parties, the Committee will devote a considerable part of one of its meetings each year to a discussion of the implementation of MOP decisions concerning the compliance of individual Parties.<sup>35</sup>

In advance of that meeting, each Party concerned will be invited to inform the Committee about its progress in implementing the MOP decision concerning its compliance up until that time. Any communicant or Party that has submitted a communication or submission giving rise to that MOP decision will also be invited to comment on the progress of the Party concerned.

At the meeting, the Party concerned, communicants or submitting Parties and observers will be invited to participate in the discussion and provide information on the progress made and the remaining challenges in implementing the MOP decision. Where possible, the Committee will use audio conferencing and/or videoconferencing to facilitate the participation of Parties, communicants and observers.

When appropriate, the Committee may seek the services of experts and advisers, as set out in paragraph 25 (d) of the annex to decision I/7.

### **8.4 Report to MOP on implementation of MOP decision**

In advance of each session of the MOP, the Committee prepares a report on the Party's progress during the intersessional period to implement the MOP decision concerning its compliance. The Party concerned, as well as communicants and observers, are given the opportunity to comment on the Committee's draft report before it is finalized.

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<sup>35</sup> Compliance Committee's report to the fifth session of the Meeting of the Parties, ECE/MP.PP/2014/9, para. 18.

# Communications – useful information for the public and the Party concerned

## Summary of 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, so long as the Party concerned was a Party to the Convention at the date those facts occurred.

• 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 had legal obligations 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. domestic review or appeals process) is available to address the issues raised in the communication, except where such a remedy would be unreasonably prolonged or inadequate. In every case, 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; specific deficiencies in the measures taken; or 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 Convention. It is not intended as a redress mechanism. 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.

**Comment [AA17]:** I think this is a bit misleading. The third paragraph below covers this point in essence. Suggest removal.

## 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 (the communicant) is not required to be a citizen of the Party concerned, or, in the case of an organization, to be based in the Party concerned.<sup>36</sup>

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 and the name and contact details of that person should be provided. 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 that the communication is 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 has authorized this person to represent it in connection with the communication in question.<sup>37</sup> The Committee may request a full power or other document to show that the person duly represents the organization or group of persons.

## What is the Party concerned by the communication

The communication should clearly identify the Party to the Convention (the “Party concerned”) whose compliance is the subject of the communication. Where a person wishes the Committee to examine alleged non-compliance by more than one Party, a separate communication should be submitted for each Party concerned.

A communication may be made concerning any Party to the Convention, provided that:

- a) The Convention is in force for that Party. The Convention enters into force for a State on the ninetieth day after the date on which it has deposited its instrument of ratification, acceptance, approval or accession.<sup>38</sup>
- b) The Party has not “opted out” of the compliance mechanism with respect to communications from members of the public.<sup>39</sup> (While this opportunity exists, to date no Party

<sup>36</sup> 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.

<sup>37</sup> ECE/MP.PP/C.1/2009/4, Report of the twenty-fourth meeting of the Committee, 30 June-3 July 2009, para.58.

<sup>38</sup> The list of States that have ratified, accepted, approved or acceded to the Convention can be found at <http://www.unepce.org/env/pp/ratification.html>.

<sup>39</sup> 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

has opted out).

### **Timing of a communication and of the related facts**

Communications may be made concerning States which were Parties on 23 October 2002. Concerning other Parties, communications may be made one year or more after the date of the entry into force of the Convention for that Party. In other words, during the first year after the entry into force of the Convention for a Party, there is a grace period during which the Committee may not consider communications from members of the public with respect to that Party.

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.

Importantly, this does not mean that the Convention is not binding for the Party during the one-year grace period; after the one-year grace period is over, communications may be submitted concerning events which occurred during the first year after the entry into force of the Convention in the Party concerned.

If the significant events giving rise to a communication 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.

Communications should be submitted no later than five weeks before the meeting at which they may be forwarded to the Committee for a determination of preliminary admissibility (the dates of all upcoming meetings are listed on the Committee's website). Communications received after the five week cut-off date may be considered for preliminary admissibility at the following meeting.

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 adequate 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.

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that State or such shorter period as may be specified in the notification to the Depositary.

e) Concerning a State which is not a Party to the Convention, or where the significant events with which the communication is concerned occurred before the Convention had entered into force for the Party.

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 must be in writing and should follow the format for communications provided in annex I to this Guide. The format for communications is also available on the Committee's website.

Communications should be as concise as possible. The communicant should avoid including any information that is not essential to establishing the existence and nature of the alleged non-compliance.

If the secretariat receives information from a member of the public which purports to be a communication to the Committee, but which is not in the format of a communication or which does not refer to and clearly does not concern compliance with the Convention, the secretariat, in consultation with the Chair and Vice 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.

### **Presentation of the facts of alleged non-compliance**

The communication should set out, in chronological order, the facts on which the communication is based.

### **The nature of alleged non-compliance**

For each of the provisions with which the communicant alleges the Party concerned has not complied, the communication should clearly explain how the Party concerned has breached that provision based on the facts of the case. The communication should contain all the information that would be needed to establish the alleged non-compliance.

Any key supporting documentation that will help to substantiate the communicant's allegations should be attached to the communication.

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 list the specific provisions (articles, paragraphs and sub-paragraphs) of the Convention, which the communicant alleges that the Party concerned has failed to comply with.

## Exhaustion of domestic remedies

In order for the Committee to make a determination that the communication is preliminarily admissible, the Committee **must** assess whether the domestic remedies have been exhausted before the case was brought to the Committee. The communication thus should clearly specify which, if any, steps have been taken to use domestic remedies. A failure to provide this information may result in the communication being found inadmissible.

**Comment [SK18]:** We object to this wording on the basis that D I/7 says "should take into account". Propose changing to "may".

If no domestic procedures have been used or if there are other domestic remedies still available, the communication must explain why they have not been used, for example because no remedies were available or because they were prohibitively expensive or unreasonably prolonged. If it is claimed that the domestic remedies are either too expensive or prolonged, the communication should provide sufficient evidence to show the typical cost or timeframe for such cases. If remedies were sought in connection with the matter which is the subject of the communication by a person other than the communicant, or by another person in a closely related case, this should also be stated in the communication.

## Use of other international procedures

The communication should include information on whether the subject matter has been submitted to other international procedures, including the steps taken, when they were taken and what were the results were.

## Confidentiality

If the communicant is concerned that the disclosure of information submitted to the Committee could result in his or her being penalized, persecuted or harassed, he or she is entitled to request that such information, including any information relating to his or her 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 of any other person.

In the absence of a clear request for confidentiality, no information submitted to the Committee will be treated as confidential.

If the communicant requests any information to be kept confidential, the communication should clearly highlight all information for which confidentiality is claimed, and also provide a second version of the communication with the confidential information redacted. The communicant is also invited to provide a short explanation of why confidentiality is claimed.

While the Committee respects requests for confidentiality, it is important that there is enough



information in the communication for the Committee to process the case, and for the Party concerned to understand the case it should answer. 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.

On some rare occasions, the [secretariat]/[Committee] upon reviewing the communication, may consider that the communication contains information that may place another person or persons at risk of being penalized, persecuted or harassed. In such circumstances, the secretariat in consultation with the communicant will prepare a redacted copy of the communication and/or supporting documentation for forwarding to the Party concerned and for public use.

### **Supporting documentation**

Copies of all documents relevant to the communication, especially applicable legislation, administrative measures, court or administrative decisions, 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 may comment on the accuracy of the translation if he or she so wishes. A similar procedure will apply to responses received from the Party concerned in the official languages other than English and the Party concerned may comment on the accuracy of the translations of official documents provided by the other party, e.g. legal acts, letters from public authorities.

Supporting documentation will also be translated [unless it is very bulky][as the Committee considers necessary and subject to available resources]. In such circumstances, a member of the Committee familiar with the specific language may summarize the information and/or identify those parts of the documentation which it would be essential to translate into English. Also, in order for the Committee to consider documents in other languages than the official UNECE languages, the communicant should provide a translation, preferably in English and submit it together with the original. Certified translations are preferable to unofficial. In some situations the Party concerned may be asked by the Committee to provide the translation, particularly of legislation.

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 submitted 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 to the secretariat at the address indicated at the end of annex I of this Guide.

It is recommended to send the communication by email, 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.

Communicants are encouraged to forward their communications to the Party concerned's Aarhus Convention national focal point<sup>40</sup> at the same time as submitting them to the Committee.

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<sup>40</sup> The contact details of all national focal points is available on the Convention's website at <http://www.unece.org/env/pp/nfp.html>

Draft

# ANNEX I – Format for communications and submissions

## I. Information on correspondent submitting the communication

Full name of organization or person(s) submitting the communication:

Permanent address:

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

Telephone:

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, provide the following information for the contact person authorized to represent the organization in connection with this communication:

Name:

Title/Position:

Telephone:

E-mail:

## II. Party concerned

Name of the Party concerned by the communication:

## III. Length of the communication

The communication should be no more than 6,000 words (**ten A4 pages**). If in an exceptionally complex case more than ten pages are required, in no circumstances should the communication be longer than 12,000 words (twenty A4 pages).

**Comment [AA19]:** We suggest changing this from a separate section in information at the beginning or footnote. Otherwise, when used to draft communication, this section will be simply empty or so.

## IV. 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 lack of compliance with the provisions the Convention.

## V. Provisions of the Convention alleged to be in non-compliance

List as precisely as possible the provisions (articles, paragraphs, subparagraphs) of the Convention that you allege the Party concerned has not complied with.

## VI. Nature of alleged non-compliance

For each of the above provisions which you allege to be in non-compliance, clearly explain how you consider that the Party concerned has failed to comply with that provision based on the facts of your case. (Provide as attachments to your communication the key supporting documentation that will help to substantiate your allegations).

Also 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 the non-compliance of the Party concerned or whether it relates to a general failure by the Party concerned to implement, or to implement correctly, the provisions of the Convention. If you consider that the non-compliance concerns a general failure by the Party concerned, provide as attachments to your communication any key supporting documentation that will help to substantiate that it is a general failure.

## VII. Use of domestic remedies

Describe which, if any, domestic procedures have been invoked to address the particular matter of non-compliance which is the subject of the communication. Specify which procedures were used, when, which claims were made, what the results were and whether there are any other domestic remedies available.

If no domestic procedures have been invoked or if there are other domestic remedies available, explain why they have not been used. This information will be important for the Compliance Committee's decision on admissibility of the case.

**Comment [SK20]:** Again, we are concerned this is making domestic remedies a strict admissibility criterium. See comments above. Suggest change to "may"

## VIII. Use of other international procedures

Indicate if any international procedures besides the Aarhus Convention Compliance Committee have been invoked to address the issue of non-compliance which is the subject of the communication. If so, specify which procedures were used, when, which claims were made and what the results were.

## IX. Confidentiality

Note that 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 information on your identity, be kept confidential. If you request any information to be kept confidential, clearly indicate which information. It is also helpful for the Committee to know why confidentiality is requested.

## X. Supporting documentation (copies, not originals)

Avoid including extraneous, superfluous or bulky documentation. Attach only documentation essential to your case, including:

- Relevant national legislation, highlighting the most relevant provisions.
- Relevant decisions/results of other procedures, highlighting the most relevant sections.

- Relevant correspondence with the Party concerned's authorities or other documentation substantiating your allegations of non-compliance, highlighting the most relevant sections.

For documents other than key legislation and decisions, there should be no more than **five** attachments (one document per attachment).

For all documentation, highlight those parts which are essential to your case.

Provide all documentation in the original language, together with a legal standard English translation thereof, or if that is not possible, a legal standard translation in either Russian or French.

## **XI. Signature**

Sign and date the communication. If the communication is submitted by an organization, a person authorized to sign on behalf of that organization must sign it.

## **XII. Sending the communication**

Send the communication by **e-mail and by registered post** to the following address:

Secretary to the Aarhus Convention Compliance Committee  
United Nations Economic Commission for Europe  
Environment Division  
Palais des Nations  
CH-1211 Geneva 10, Switzerland

E-mail: [aarhus.compliance@unece.org](mailto:aarhus.compliance@unece.org)

Clearly indicate:

“Communication to the Aarhus Convention Compliance Committee” *or*  
“Submission to the Aarhus Convention Compliance Committee”

## **ANNEX II - Chair's introduction to discussions in open session of the substance of communications, requests and submissions<sup>41</sup>**

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

The Committee was established 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/submitting Party and the Party concerned. 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

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<sup>41</sup> 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.

beyond the scope of those presented by the parties concerned and communicant.

The ultimate task of the Committee is to facilitate resolving problems, if any, and not to condemn a Government for acts committed in the past. We intend to start from the assumption that any non-compliance with international obligations is not due to a will or intention not to comply. Furthermore, the main powers to take measures to address non-compliance, where it exists, are vested in the Meeting of the Parties itself, and the primary role of the Committee, particularly at this meeting and the next one, will be to prepare recommendations to the next session of the MOP.

The Committee has 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 Party concerned.
- 4) 30 minutes discussion by the Committee – questions and answers.
- 5) 10 minutes comments from observers.
- 6) 5-10 closing comments by the communicant
- 7) 5-10 closing comments by the Party concerned.
- 8) 5 minutes close of the open session.

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

After the first part of the discussion of the communication today, the Committee will begin its deliberations in closed session. It will also discuss whether there are any further points upon which it wishes to seek clarification in open session.

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 and recommendations 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 will be aiming to adopt the findings at the meeting after the meeting in which the draft findings will be adopted.

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, requests 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.

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 and 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.

Finally, given that the next session of the Meeting of the Parties is still some time away, the Committee asks whether the Party concerned agrees that, with a view to addressing compliance issues without delay, in the event that the Committee should find non-compliance, it would agree to the Committee addressing its recommendations to the Party directly, as envisaged in paragraph 36(b) in conjunction with paragraph 37(b) of the annex to decision I/7.

I will now invite the curator to introduce the communication/submission.

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