

THE ROLE AND TASKS OF THE COMPLIANCE COMMITTEE IN RELATION TO THE REPORTING REGIME UNDER THE CONVENTION

**Note by the secretariat
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INTRODUCTION

1. This paper attempts to explore the possible role and tasks of the Compliance Committee in relation to the implementation of the reporting requirements by the Parties. It examines two main aspects of the relationship between the compliance mechanism and the reporting regime: on the one hand, the Compliance Committee is mandated by Decision I/7 of the Meeting of the Parties to oversee compliance with the reporting requirements under the Aarhus Convention; on the other, the national implementation reports and the synthesis report prepared by the secretariat are expected to provide a significant source of information on Parties' compliance with the Convention as a whole. Finally, it sets out a proposal for an integrated procedure in the run-up to meetings of the Parties, which attempts to address the needs of both the compliance mechanism and the reporting process.

I. BACKGROUND

2. Decisions I/7 and I/8 of the Meeting of the Parties establish respectively the compliance mechanism and the reporting requirements under the Convention. The following extracts are the most relevant to the linkages between the two:

- Decision I/7 on Review of Compliance, rec. 2: "Recognizing the necessity for rigorous reporting by the Parties on their compliance with the Convention,"
- Decision I/7 on Review of Compliance, Annex 1, paragraph 13 (c): "[The Committee shall] monitor, assess and facilitate the implementation of and compliance with the reporting requirements under article 10, paragraph 2, of the Convention;"
- Decision I/7 on Review of Compliance, Annex 1, paragraph 17: "Where the secretariat, in particular upon considering the reports submitted in accordance with the Convention's reporting requirements, becomes aware of possible non-compliance by a Party with its obligations under the Convention, it may request the Party concerned to furnish necessary information about the matter. If there is no response or the matter is not resolved within three months, or such longer period as the circumstances of the matter may require but in no case later than six months, the secretariat shall bring the matter to the attention of the Committee, which shall consider the matter as soon as practicable."
- Decision I/8 on Reporting Requirements, Preamble, rec. 3: "Recognizing ... that regular reporting by Parties provides important contextual information which will facilitate the assessment of compliance under the Convention and thereby contribute to the work of the Compliance Committee".

II. ROLE OF THE COMPLIANCE COMMITTEE IN OVERSEEING COMPLIANCE WITH THE REPORTING REQUIREMENTS

3. As cited above, Decision I/7 mandates the Committee to monitor, assess and facilitate the implementation of and compliance with the reporting requirements under article 10, paragraph 2, of the Convention. This in particular may require the Committee to address:

- Procedural aspects of the reporting process, including:
 - transparency and public involvement
 - timeliness in reporting,
- Completeness of the reports in accordance with requirements set out in the Decision I/8,
- Quality and accuracy of data in the reports

4. The fact that Decision I/7 gives the Committee a role in relation to the implementation of and compliance with the reporting requirements under article 10, paragraph 2, of the Convention raises the issue of the extent to which the Committee is supposed to oversee the implementation of 'soft law' - Decision I/8 being the 'soft law' elaboration of article 10, paragraph 2. It is reasonable to assume that in order to get a full picture of a situation, the Committee would in any case need to look into the implementation of decisions of the Parties, particularly those which elaborate upon binding requirements of the Convention. On the other hand, the extent to which the Committee is able to conclude that there is a case of non-compliance, and the force and nature of any recommendations made by the Committee, would certainly need to take into account the extent to which a legal obligation was breached. The Committee may wish to give some consideration to this issue in this context, while recognising that it is an issue that goes beyond the scope of this paper.

A. Procedural aspects of the reporting process

5. To fulfil its mandate of overseeing compliance with the reporting requirements, the Committee will need to look into whether reports have been prepared through a "transparent and consultative process involving the public" and submitted in a timely manner to the secretariat (Decision I/8, paras. 3 and 4).

Transparency and public involvement in the preparation of national reports

6. Active public involvement and dialogue between the public and public authorities in the course of preparing national implementation reports can be expected to both promote better implementation of the Convention on the national level and contribute to the quality and accuracy of the reports. The importance of a participatory and transparent process is recognized in paragraph 3 of Decision I/8, cited above, as well as in the reporting format itself.

7. The Committee may decide to look into whether and how the Parties have prepared their national implementation reports through a process compatible with the procedural requirements of the Decision I/8.

8. According to the reporting format (Decision I/8, Annex I,) the relevant information should be provided in the introductory part of each implementation report. Indeed, the first question in the reporting format (after the contact information) invites the Party to "provide brief information on the process by which [the] report has been prepared, including information on which types of public authorities were consulted or contributed to its preparation, on how the public was

consulted and how the outcome of the public consultation was taken into account and on the material which was used as a basis for preparing the report”. The Committee may also have other relevant sources of information available to it. Some examples of these are listed below in Part II (d).

9. Some guidance on what constitutes a “transparent and consultative process involving the public” might be found in the Convention itself, notably in articles 6 to 8. For example, it might be expected to include early public notification (e.g. through a website announcement, through direct mailing of NGOs, etc) of the fact that a reporting process will be undertaken, of the authority responsible for preparing the report and of the public consultation process involved, including practical information on the way that the public may contribute to the process as well as the information on the reporting requirements; publication of a draft of the report in the national language; a period for the public to submit comments; and the taking into account of those comments by the responsible authority in the preparation of the final report.

Timeliness

10. Timeliness of reporting by the national focal points is imperative in order to enable the secretariat to prepare the synthesis report and have both the synthesis report and the national implementation reports translated and distributed six weeks in advance of the meeting of the Parties, as required by the rules of procedure. It is also a prerequisite if the Committee is to have the opportunity to evaluate the completeness, quality and accuracy of the national reports. On the other hand, the national reports should probably not be submitted too much in advance of the 120-day deadline, as this will make it more likely that they are out of date by the time of the next Meeting of the Parties.

B. Completeness of reports

11. For the reports to provide a clear picture on compliance it is important that they include as complete information as possible and, as a minimum, address all the items on the reporting format (Decision I/8, Annex 1).

12. If in the course of its monitoring of compliance with the reporting requirements the Committee should encounter specific gaps in the information provided in a report, it may, in accordance with paragraph 25 of the Annex to the Decision I/7, make inquiries into the nature of difficulties with reporting on the items concerned. However, given the tight timeframe, it is not envisaged that, where an incomplete report is received, either the secretariat or the Compliance Committee would necessarily contact the Party concerned asking that the necessary information be submitted for inclusion in the report. In some circumstances, a Party having submitted a report considered to be incomplete might be asked to provide the missing information orally at the meeting (or if in documentary form, not as an official document). In other cases, the matter could be followed up on after the meeting.

C. Quality of data

13. While complete data is necessary to ensure meaningful information on implementation of the Convention, it is the extent, detail and quality of the data provided that will ensure a complete and balanced picture and will enable both the Meeting of the Parties and the Committee to address the issues requiring special attention.

14. In the national implementation reports, for each provision of the Convention, the different aspects of its implementation (legislative, regulatory and other measures; obstacles encountered and practical application) should be adequately described.

15. When considering the quality and accuracy of information provided in the national implementation reports, the Committee may decide to take into account:

- Information provided by the Secretariat in the synthesis report;
- Information provided by other sources, in accordance with paragraph 7 of Decision I/8, where available;
- Information received through referrals, submissions or communications in the normal way;
- Other relevant information gathered in accordance with paragraph 25 of the Annex to Decision I/7.

D. Possible Measures by the Committee

16. The Committee has already indicated its intention to suggest to the Working Group of the Parties to issue a recommendation to Parties on the importance of timely and comprehensive reporting. Such a recommendation might:

- Refer to the need for a transparent and participatory process for preparing the national reports;
- Emphasise the importance of timely reporting;
- Include a timeline for the process of preparing the reports; and
- Recommend that the Working Group review the progress in preparing to develop national implementation reports at its third meeting (1-3 November 2004).

17. More generally, the following are some of the measures the Compliance Committee might take to fulfil its mandate to facilitate implementation of and compliance with the reporting requirements:

- In its report to the Meeting of the Parties, the Committee may refer to issues relating to timeliness, completeness and quality of reports, as well as the degree of transparency and public consultation in their preparation, and make appropriate recommendations (see Report of the Second meeting of the Compliance Committee, MP.PP/C.1/2003/4, Annex V).
- Where and if any problematic areas in preparing the reports have been identified as common for a number of Parties, the Committee may propose the development of guidance materials in its report to the Meeting of the Parties.
- Where data are missing in one or more implementation reports, or the data submitted are of poor quality, the Committee report may recommend the Meeting of the Parties to call on the Party or Parties concerned to provide the missing information or more complete or accurate information to the secretariat and, through it, to the Compliance Committee.
- Following the Meeting of the Parties, the Compliance Committee could examine any additional information received and would decide whether further steps are needed.

- Where a Party fails to provide further information despite this having been recommended by the Compliance Committee or requested by the Meeting of the Parties, the Compliance Committee may in any case investigate the situation and take such further steps within its mandate as are deemed necessary. Failure to comply with the reporting requirements may be one of the issues addressed by the Compliance Committee, though if the Party turns out to be complying with all other aspects of the Convention, the Compliance Committee might need to devote its attention to more significant cases of non-compliance.
- The secretariat might also make a referral to the Compliance Committee if no additional information is received or if the information received demonstrates problems of compliance.

III. IMPLEMENTATION REPORTS AS A SOURCE OF INFORMATION ON COMPLIANCE

A. Uses of information in the implementation reports

18. In addition to overseeing the implementation of and compliance with the reporting requirements (i.e. how the national reports are prepared), the Committee may also use the reports as sources of information on compliance - and non-compliance - with the Convention.

19. The Meeting of the Parties in Recital 3 of Decision I/8 recognized the importance of implementation reports to the assessment of compliance and the work of the Compliance Committee. Indeed, information contained in the reports can be of great value for both identifying problems with compliance as well as understanding better the context in which such problems appear.

20. In examining the implementation reports for the purpose of preparing the synthesis report, the secretariat may become aware of problems of compliance. Such information on non-compliance might be brought to the attention of the Committee by means of a referral by the secretariat (Decision I/7, Annex 1, paragraph 17).

21. The Committee will also have direct access to the implementation reports and would be expected to use these as an important source of information in its work. One reason to do so would be to better understand the context of implementation in a particular country when reviewing a submission, communication or referral. Another reason is the close linkages between the report of the Compliance Committee to the Meeting of the Parties and the synthesis report prepared by the Secretariat, discussed in the following sections.

22. The way in which the information contained in the implementation reports can be used by the Committee is to some extent determined by timing considerations, which are discussed further below. The window of time following the receipt by the Committee of the implementation reports and before its own report must be finalized is likely to be too short to allow for the Committee to arrive at a considered view that, on the basis of its implementation report, a Party is in non-compliance. This suggests that any comments in the Committee's report to a given meeting of the Parties on the status of a Party's compliance made solely on the basis of its implementation report would generally need to be rather circumspect, with a more serious examination being undertaken at greater length following the meeting and eventually addressed by the Committee in its report to the subsequent meeting. Similar considerations apply to the issue of referrals by the secretariat on the basis of information contained in the implementation reports, i.e. taking into account the

timeframes referred to in paragraph 17 of Decision I/7, any such referrals would generally be made following the meeting of the Parties for which the implementation report was prepared.

B. Relation between synthesis report and Compliance Committee report

23. Decision I/8 of the Meeting of the Parties requests the secretariat to prepare a synthesis report for each meeting of the Parties summarizing the progress made and identifying significant trends, challenges and solutions (para. 5). It is implicit (through the word ‘synthesis’) that this report is to be prepared on the basis of the national implementation reports.

24. The Committee on the other hand is required to report on its activities at each ordinary meeting of the Parties and make such recommendations as it considers appropriate” (Decision I/7, Annex, para. 35).¹ The report will contain the results of Committee’s consideration of submissions, referrals and communications. However the report may also address the issues of implementation of and compliance with the reporting requirements as well as issues of non-compliance with the requirements of the Convention raised in the national implementation reports.

25. The two reports will need to be prepared within the same period, submitted for editing and translation so as to be presented as official documents at the meeting of the Parties in question. It therefore seems to be important to give some attention to the division of content between the two reports.

26. There is a clear need to avoid duplication of effort and major overlaps in the reports. The former can be done through coordinated process whereby each report would provide an input into another. The latter can be dealt with by, for example, cross-referencing.

27. Decision I/7 does not provide much guidance on the content of the Committee’s report to the Meeting of the Parties, and it was left to the Committee itself to explore this matter (MP.PP/C.1/2003/2, para. 43, and MP.PP/C.1/2003/2, paras. 37 to 41 and annex). Neither Decision I/7 nor the report format that was provisionally agreed by the Committee refer to the substance of implementation reports as playing an important role in the report of the Committee, though nothing is ruled out.

28. As regards the synthesis report, although paragraph 5 of Decision I/8 is rather short, it succeeds in delineating the scope of the report. The word ‘challenges’ is as close as it comes to touching upon the issue of compliance. Where the implementation reports raise issues of compliance, the question as to how the synthesis report should address these is an important one. For the reasons mentioned above, the language would probably need to be rather circumspect, but there are still some points that could usefully be clarified. For example:

- Should individual countries be named?
- Should or could the report refer to reports submitted under paragraph 6 of Decision I/8 (by Signatories and other States not Party to the Convention) or paragraph 7 (by international, regional and non-governmental organizations)?
- How should the secretariat address issues of compliance in the synthesis report in a way that does not usurp the position of the Committee? This last question can perhaps be answered by close co-ordination between the secretariat and the Committee, discussed in the next section.

¹ Decision I/7 also requires the Committee, as one of its functions, to “prepare, at the request of the Meeting of the Parties, a report on compliance with or implementation of the provisions of the Convention” (para. 13 (b)). The relationship between paragraph 13 (b) and paragraph 35 is not immediately clear and may merit discussion by the Committee.

C. Role of the Compliance Committee in the preparation of the synthesis report

29. In accordance with paragraph 5 of Decision I/8, the secretariat is expected to prepare on the basis of national implementation reports a synthesis report for each meeting of the Parties summarising the progress made and identifying significant trends, challenges and solutions.

30. Decision I/8 does not envisage any role for the Compliance Committee in the preparation of the synthesis report. For example, it does not require the secretariat to consult with the Committee in the preparation of the report. However, given the closely related subject matters of the two reports and the relevance of the synthesis report to the general review of compliance, it would seem to make sense that the Committee play an active consultative role in the preparation of the synthesis report.

31. Several factors should be considered in this context: first of all, the knowledge of compliance issues and expertise of the members of the Committee, the need to ensure a certain consistency between the two reports, but also the most efficient allocation of time and capacity by the Committee members.

32. If the Committee is in favour of a close involvement in the preparation of the synthesis report, several issues would thus have to be decided:

- whether and at what stage the Committee members would obtain and review the copies of the national implementation reports,
- whether and in what way the Committee would want to be involved in drafting of the synthesis report by the secretariat, through, for example, a commenting process, and
- whether it will have a meeting where the draft synthesis report will be discussed.

33. The answers to these questions will have an impact on the timeline for the work of the secretariat on the synthesis report. Similarly, the timeline for the submission of official documents will have an impact on the timing of any related Compliance Committee meeting. It is perhaps worth mentioning in relation to the last bullet point that if it were decided to hold a meeting to discuss the draft synthesis report, since the Committee's own report will need to be finalized according to the same schedule, both draft reports could be considered at the same meeting.

D. Shadow reports

34. One of the possible sources of information on compliance is so-called "shadow reports" - alternative reports on implementation prepared by non-governmental organizations. Such reports may provide information both on compliance with the Convention as well as on how transparent and participatory the preparation of the national implementation reports was.

35. The practice of shadow reports is well established in other fields, notably the field of human rights. However, despite the prominent role accorded to NGOs under the Convention, such reports are not explicitly mentioned in either decision I/7 or Decision I/8. Through Decision I/8, the Meeting of the Parties invites "international, regional and non-governmental organizations engaged in programmes or activities providing support to Parties and/or other States in the implementation of the Convention to provide the secretariat with reports on their programmes or activities and lessons learned". However, it is subject to interpretation whether shadow reports would fall under this category and which organizations would fall under the criteria set out in this paragraph 7. If shadow reports do not fall under this category, they cannot be submitted to the consideration by the Meeting of the Parties along with other reports referred to Decision I/8.

Moreover it is an open question as to whether the secretariat could incorporate information from such reports into its synthesis report, even though it might seem to be useful for it to be able to do so.

36. An alternative or additional way to consider the information from shadow reports would be to consider them as communications to the public to be reviewed by the Committee in a regular procedure. However, as these would presumably reach the Committee at around the same time as the official implementation reports, the standard timetable for dealing with communications (as agreed by the Committee at its first meeting) might make it difficult for the Committee to bring such a shadow report, or information contained in it, to the attention of the Meeting.

37. The issue of shadow reports is not merely a theoretical one. The secretariat has become aware that some NGOs are intending to produce such reports. The Compliance Committee may wish to address this issue and make a recommendation to the Meeting of the Parties on the issue of shadow reports.

IV. OTHER ISSUES

A. Reports submitted by Signatories and other States

38. A number of questions arise in relation to reports submitted pursuant to paragraph 6 of Decision I/8 vis-à-vis the processes discussed in this paper. For example:

- Should they be translated as official documents?
- Should they be referred to in the synthesis report, and if so, how should the distinction between them and the reports submitted by Parties be made?
- Will the Compliance Committee address or in any way take account of them in its report?

39. Similar questions arise with respect to reports submitted pursuant to paragraph 7 of Decision I/8. In this case, it would be difficult for the secretariat to make any commitment to translation and circulation of these as official documents, given general resource constraints and the fact that they serve a different function in the process.

V. INTEGRATED PROCEDURE

40. In order to facilitate preparation of the national implementation reports and better coordinate work on the synthesis report and Compliance Committee report, the following proposed timeline attempts to set certain milestones and deadlines of the process.

Weeks before the MOP	Date	Activity	By
26		Parties start to prepare draft reports	Parties
25			
24			
23		Draft of reports are made available for public consultation Public consultation events (if envisaged)	Parties
22		Public consultation events (continued)	Parties
21		Deadline for public to submit comments	Public
20		Implementation reports updated based on public consultation outcomes and translated to one of UNECE official languages	Parties
19			
18			
17		Finalized implementation reports are submitted to the Secretariat, Secretariat forwards Implementation Reports to the Compliance Committee	Parties / Secretariat
16			Secretariat
15		Drafting the Synthesis Report	
14		Draft Synthesis Report forwarded to the Compliance Committee	Secretariat
13		Compliance Committee meeting (end of week 14)	CC
12		Finalisation of the Synthesis Report	Secretariat
11		Internal ECE approval process	
10			
09		Synthesis Report Submitted for Translation	Secretariat
08		Translation	Translation service
07			
06			
05		Synthesis report issued and circulated	Secretariat
04			
03			
02			
01			
MoP			