

WORKSHOP ON INFORMATION AND PUBLIC PARTICIPATION IN WATER AND HEALTH RELATED ISSUES

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**“Communications from the
public to the Protocol’s
Compliance Committee: an
entry point for NGOs”**

by
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The Protocol's compliance mechanism provides for the possibility of members of the public to make communications to the Compliance Committee on cases of alleged non-compliance with the Protocol.

Procedures for handling communications are laid out in detail in chapter XII of the RoP of the Compliance Committee.

Objective of the compliance review

To facilitate, promote, and aim to secure compliance by Parties with their obligations under the Protocol.

The ultimate goal of the Committee is to facilitate and assist Parties in resolving problems, rather than condemning Governments.

The general assumption is that a situation of non-compliance with the Protocol by a Party is not the result of its intention to breach the Protocol's provisions.

non-adversarial, non-confrontational and non-judicial and consultative nature of the CRM itself and any measures undertaken in the course of, or as a result of the compliance review procedure

“Non-confrontational nature” means that the procedure should not be seen as a confrontation between the person filing the communication and the concerned Government.

“Non-judicial nature” means that the compliance review procedure is not a trial.

“Consultative nature” means that the procedure aims at assisting Parties on problems of compliance.

One of the goals of the CRM is to help redressing a situation of non-compliance by Parties concerned, that may also affect individuals

The Committee **is not** empowered to overrule decisions of national courts or administrative authorities, or abrogate national laws, nor can it intervene directly on a communicant's behalf with the authority the communicant is complaining about.

The Committee **is not** empowered to decide on any monetary compensation of damages resulting from a Party's non-compliance with its obligations under the Protocol.

The Committee **is able** to decide on measures or make recommendations to the Meeting of the Parties to the Protocol for it to make a decision assisting a Party in its efforts to comply with the provisions of the Protocol.

What is a communication from the public?

A documented assertion by a member of the public that a Party is not in compliance with the Protocol on Water and Health by failing to effectively transpose, implement or enforce its obligations under the Protocol.

Guidelines for communications from the public were developed to assist members of the public intending to submit a communication to present the information in a clear and logical way that would facilitate the work of the Committee.

The guidelines to large extent were based on the guidelines for communication developed under the **Aarhus Convention**.

Other compliance mechanisms, in particular those under:

- the Convention on the Conservation of European Wildlife and Natural Habitats (Berne Convention),
- the Convention on International Trade in Endangered Species (CITES),
- the Alpine Convention,
- the 1996 Protocol to the Convention on the Prevention of Marine Pollution by Dumping of Wastes and Other Matter,
- human rights treaties, and
- the North American Agreement on Environmental Cooperation.

Who may submit a communication?

Any member of the public, i.e. any natural or legal person, or group of people may submit a communication to the Committee.

A communication may also be filed by a non-governmental organization, including an environmental organization or a human rights organization.

The person filing the communication is not required to be a citizen of the State Party concerned, or, in the case of an organization, to be based in the State Party concerned.

A member of the public does not need to be affected in order for him or her to submit a communication.

Concerning which States may a communication be filed?

- The State in question must be a Party to the Protocol on Water and Health. In order for a State to become a Party to the Protocol it has to ratify, accept, approve or accede to the Protocol.
- The State in question should not have 'opted out' the compliance mechanism with respect to communications from members of the public.

Communications may not concern States that are not Parties to the Protocol, even if they have signed it.

When may a communication be made?

- A member of the Public may make a communication concerning a State which has been a Party to the Protocol for at least one year, provided it has not “opted out”.
- A communication may address only actions, omissions, events or situations which have occurred when the State in question was under a legal obligation under the Protocol, i.e. after it has become a Party. This does not prevent the Committee from considering communications concerning events or situations which, while presenting themselves after the State concerned has become a Party, originated before that State has become a Party. Any communications should not address problems that have been solved or have otherwise become obsolete.

When may a communication be made?

- When bringing communications dealing with setting targets and target dates within the meaning of Article 6 of the Protocol and/or communications dealing with the establishment of surveillance and early-warning systems, contingency plans and response capacities within the meaning of Article 8 of the Protocol, communicants should keep in mind the timelines foreseen by the mentioned provisions (respectively 2 and 3 years since the entry into force of the Protocol for the Party concerned)
- A communication for not meeting obligations referred to above within the deadline will normally have to be addressed after the relevant deadline has expired. However, since the compliance procedure is aimed at avoiding and preventing non-compliance and at facilitating compliance, a communication could be made in advance of the relevant deadline, when it is evident that a Party will not be in a position to timely meet its own obligations and assistance of the Committee is deemed to be useful.

What types of non-compliance may a communication address?

- A general failure by a Party to take the necessary legislative, regulatory, institutional, administrative, operational, budgetary/financial, technical, infrastructural, management, enforcement or other measures necessary to implement the Protocol in a manner which is in conformity with its objectives and provisions;
- Failure of such legislative, regulatory, institutional, administrative, operational, budgetary/financial, technical, infrastructural, management, enforcement or other measures to meet the requirements of the Protocol's provisions;
- Specific events, acts, omissions or situations which demonstrate a failure of the State authorities to comply with or enforce the Protocol;
- Specific instances of violation of rights of individuals under the Protocol.

What criteria should the communication meet?

In order for a communication to be admissible, it **should not be:**

- *Anonymous;*
- *An abuse of the right to make such a communication;*
- *Manifestly unreasonable;*
- *Incompatible with the Protocol and its compliance review procedure.*

What criteria should the communication meet?

- The Committee also takes into account the availability of effective domestic remedies and whether they have been resorted to by the communicant. This means that although **there is not** a strict requirement that all domestic remedies must be exhausted, the communicants **are strongly advised** to address themselves first to the domestic competent authorities and use available domestic means of redress.
- The fact that a matter is under consideration by another international review procedure will not in itself prevent the Committee from dealing with the matter.
- It is not necessary for the communicant to be represented by a lawyer or have the communication prepared with legal assistance. However, a legally accurate communication might enhance the effectiveness of its proceedings. If a communicant decided to be represented by a lawyer, the power of attorney should be documented before the Committee.

To whom should communications be sent, and how?

Communications should be addressed to the Committee **through the joint secretariat.**

Communications **should not** be sent to the individual members of the Committee or to its Chairperson.

Communicants are also advised to forward communications to the government of the Party concerned at the time of the delivery to the Committee.

Whenever possible, communications should be sent **by e-mail** with the enclosures attached. In addition, **a signed paper copy** of the communication, together with any corroborating material, **should be sent by registered post** or otherwise delivered to the joint secretariat.

What information should be included in the communication?

Annex to guidelines contains a **checklist** of items of information to be included in the communication, which communicants are strongly advised to carefully examine.

The Committee will accept communications made, as well as corroborating information submitted, in one of the four official languages of the Protocol. If a communication is made in French, German or Russian, the joint secretariat will endeavour to arrange for at least the essential documentation to be translated into English, depending on availability of resources. The Committee may also request the communicant to provide an English translation of certain materials.

The Committee will consider the substance of a communication at the earliest practicable meeting scheduled after the response from the Party concerned is received or, if no response is received, after the expiry of the relevant period, provided that such a meeting takes place **at least four weeks** after. The Committee will deal with the case on the basis of the information available to it, even in the absence of any response from the Party concerned.

Any substantial new information should be presented to the Committee **at least two weeks** in advance of the meeting at which it was to be discussed.

What information should be included in the communication?

Having in mind the objectives of the CRM, the Committee is not restricted to the consideration of the legal or factual arguments presented by communicants or Parties concerned and will consider itself free to draw conclusions that go beyond the scope of those presented to it. For the same reason, the Committee is free to decide not to address all the arguments and assertions presented in communications, but rather to focus upon those that it will consider most relevant. The fact that it might not explicitly refute any given assertion or argument made by any of the parties concerned should not be taken to imply that it endorses them and, conversely, lack of explicit endorsement of an argument by the Committee should not be taken to imply that it rejects it.

The draft findings, draft decisions on measures and draft recommendations of the Committee will be sent to the Party concerned as well as to the communicant for comments. Such comments will be taken into account by the Committee when finalizing its consideration of the matter.

Confidentiality

If the communicant is concerned that the disclosure of information submitted to the Committee could result in him 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 another person or persons being penalized, persecuted or harassed. The Committee must respect any such request. If any of the information in the communication is submitted in confidence to the Committee, this should be clearly indicated. If there is no specific request for confidentiality, the information communicated to the Committee will not be considered confidential. If the communicant has requested that part of the communication be kept confidential, the Committee would decide whether the information that has not been designated confidential was sufficient to enable a meaningful discussion with the Party concerned in the process of review. It may also decide to consult with the communicant concerning the request for confidentiality if it considered it necessary/appropriate.

Presence of the public and participation of observers

All meetings will normally be **open to the public**. The parts of the meeting when findings, decisions on measures or recommendations are prepared and adopted, should be limited to the participation of the Committee members. A meeting, or a part of a meeting, will be held in private when the Committee finds it necessary to ensure the confidentiality of information.

Parties wishing to participate in meetings of the Compliance Committee may only participate as observers. Non-Parties, intergovernmental organizations and non-governmental organizations already enjoying observer status with the Meeting of the Parties to the Protocol, will have observer status within the Committee. The Committee may grant observer status on a case-by-case basis to other subjects, including non-governmental organizations or members of the public.

Observers shall be entitled to receive copies of publicly distributed documents, submit written documents and make oral statements at meetings.

The Committee reserves the right to give the floor to the attending public, upon request, if it deems this useful.

Publication of meetings and documentation

Meetings of the Committee **will be publicized through the website**, where the provisional agenda, meeting reports and other documents, without prejudice to the rules on confidentiality.

Without prejudice to the rules on confidentiality, essential information concerning each case **will be made available to the public through the website**. This includes:

- a short summary of each case prepared by the joint secretariat;
- the text of any communication;
- the preliminary determination on the admissibility of a communication, once transmitted to the Party concerned;
- other significant documentation setting out the positions of the Committee, of the Party concerned and of the submitting Party or the communicant.

Findings and recommendations of the Committee and any relevant decisions of the Meeting of the Parties **will also be made available on the website**.

- Guidelines on communications from the public, more information concerning the Compliance Committee and all relevant documentation are available at http://www.unece.org/env/water/meetings/documents_CC.htm
- More information concerning the Protocol is available on the Protocol's web site: http://www.unece.org/env/water/text/text_protocol.htm