



PARTICIPANTS ONLY
REFERENCE DOCUMENT

LC/COP-EZ.1/DDR/2
22 March 2022

ENGLISH
ORIGINAL: SPANISH

22-00197

First meeting of the Conference of the Parties
to the Regional Agreement on Access to Information,
Public Participation and Justice in Environmental Matters
in Latin America and the Caribbean

Santiago, 20-22 April 2022

**REVISED PROPOSAL ON THE RULES RELATING TO THE STRUCTURE
AND FUNCTIONS OF THE COMMITTEE TO SUPPORT
IMPLEMENTATION AND COMPLIANCE**

Note: This document is a translation of a Spanish original which did not undergo formal editing.

I. PURPOSE AND NATURE

1. The Committee to Support Implementation and Compliance (hereinafter “the Committee”) is a subsidiary body of the Conference of the Parties to promote the implementation of the Agreement and to support the Parties in that regard. It has a consultative and transparent nature and is non-adversarial, non-judicial and non-punitive.
2. The Committee shall define its working modalities in accordance with the Rules relating to the Structure and Functions of the Committee (hereinafter, “the Rules”), which shall ensure the significant participation of the public, as appropriate.

II. STRUCTURE AND COMPOSITION

3. The Committee is composed of seven members, serving in their personal capacity.
4. The members of the Committee shall be persons of high moral standing, with recognized competence in access rights or other matters of the Agreement. They shall be nationals of or residents in the countries set out in Annex I to the Agreement and be independent from the executive, legislative or judicial powers of such countries.
5. In the election of the members of the Committee, the following shall be considered: equitable geographical distribution of membership, gender parity and legal knowledge and experience.
6. No more than one Committee member may be of the same nationality.
7. The procedure to nominate candidates to the Committee shall be as follows:
 - (a) Any person meeting the criteria established in paragraph 4 of the present Rules may nominate him or herself;
 - (b) The Presiding Officers¹ shall prepare a roster of up to 10 candidates, for consideration by the COP. The Presiding Officers shall invite the elected representatives of the public to participate in a meeting and consult them regarding the roster, prior to preparing the roster for consideration by the Conference of the Parties;
 - (c) From the roster of candidates, the COP shall elect the members of the Committee by consensus. If consensus cannot be reached, the COP shall elect such members by simple majority of the Parties present and voting, by secret ballot.
8. The term of office of Committee members shall be four years, renewable for another four years. A Committee member’s term of office shall begin at the conclusion of the meeting of the Conference of the Parties at which he or she is elected. Of the members elected at the first election, three shall be chosen by lot to serve a term of six years and may be renewed for another four years. Immediately after the first election, the Chair of the COP shall draw by lot these three members.

¹ For the purposes of this draft, the Rules of Procedure of the Conference of the Parties consider that the Presiding Officers shall invite a representative of the public to participate in meetings with a voice but not a vote.

9. Every member of the Committee shall, before taking up his or her duties, make a solemn declaration in an open session of the Committee, as follows “I solemnly declare that I will perform my functions as member of the Committee to Support Implementation and Compliance honestly, independently, impartially and conscientiously”.

10. The Committee shall elect one Chair and two Vice-Chairs to serve as officers of the Committee. The officers of the Committee shall organize the work of the Committee, in accordance with the present Rules and the working modalities adopted by the Committee.

11. The procedure to fill a vacancy in the Committee shall be as follows:

- (a) If a member resigns or if, in the unanimous opinion of the other members, a member of the Committee has ceased to carry out his or her functions fully for any reason, the Chair of the Committee or, in his or her absence, one of the officers of the Committee, shall declare the seat of that member vacant and so notify the Presiding Officers;
- (b) Upon receipt of the notification by the Chair of the Committee, the Presiding Officers shall proceed to fill the vacancy without delay, by consensus, from the roster foreseen in Rule 7. If consensus cannot be reached, the member shall be elected by the majority of the Presiding Officers by secret ballot;
- (c) Any member of the Committee elected to fill a vacancy shall hold office for the remainder of the term of the member who vacated the seat on the Committee. Any member’s mandate can be renewed.

12. Committee members shall enjoy the privileges and immunities accorded to experts on mission for the United Nations under the Convention on the Privileges and Immunities of the United Nations.

13. Committee members shall serve ad honorem, without salary. Travel expenses for Committee members’ participation in Committee meetings or official missions shall be covered by the Secretariat, in accordance with United Nations rules.

III. MEETINGS AND WORKING METHODS OF THE COMMITTEE

14. The Committee shall meet at ECLAC headquarters in Santiago, Chile, or wherever the Committee decides, in consultation with the Secretariat and subject to available resources.

15. The Committee may meet with a quorum of the majority of its members.

16. The Committee shall hold in-person meetings at least once a year and virtual meetings with the frequency defined in its working modalities.

17. The meetings of the Committee shall be open to the public. However, the Committee shall hold closed sessions when:

- (a) The Committee deliberates on cases of non-compliance;
- (b) The Committee adopts concluding observations on such cases;

- (c) The Committee decides to hold closed sessions to prevent risks and damage to the integrity and safety of persons or to the environment.

In these cases, the Committee shall provide the conclusions of the session as soon as possible.

18. The working languages of the Committee shall be Spanish and English. When applicable, and in coordination with the Secretariat, arrangements may be made for translation or interpretation to facilitate the participation of vulnerable persons who have submitted communications.

19. Decisions of the Committee shall be made by consensus. In the absence of consensus, decisions shall be reached by a majority of two thirds of its members. The Committee may take decisions virtually or electronically, using appropriate technologies, with the support of the Secretariat.

20. At its open meetings, the Committee may hold an open dialogue with Parties and members of the public.

IV. FUNCTIONS OF THE COMMITTEE

21. The Committee shall have the following functions:

- (a) The Committee shall provide a report to the Conference of the Parties on its activities, including its observations in cases of non-compliance.
- (b) The Committee shall provide support to the Conference of the Parties on implementation of and compliance with the Agreement. This shall include:
 - (i) A systemic report periodically submitted by the Committee to the Conference of the Parties on implementation of and compliance with the Agreement. The Committee shall decide on the periodicity of its systemic report in its working modalities.
 - (ii) Reports requested by the Conference of the Parties may be on any aspect of implementation of and compliance with the Agreement.
- (c) The Committee shall provide advice and support to the Parties on implementation of and compliance with the Agreement. This shall include:
 - (i) The formulation by the Committee of general comments on interpretation of the Agreement;
 - (ii) The response to queries on interpretation of the Agreement made by a Party or elected representative of the public;
 - (iii) The engagement in periodic consultations and dialogues with each of the Parties. These consultations and dialogues may take place during Committee meetings or during visits by the Committee to the territory of a Party. To visit the territory of a Party, such Party shall have provided its consent. The periodicity of the consultations and dialogues with each Party shall be established by the Committee in its working modalities.

- (iv) The Committee may hold open dialogues with Parties and members of the public.
- (d) The Committee shall examine cases of allegations of non-compliance, in accordance with the present Rules.

**V. COMMUNICATIONS FROM THE PARTY CONCERNED,
ANOTHER PARTY, OR A MEMBER OF THE PUBLIC**

22. A Party with respect to itself, a Party with respect to another Party or a member of the public may file communications alleging non-compliance of one or more provisions of the Agreement.

23. The Committee shall adopt protection measures in favour of the members of the public that file a communication when, from the information available, it considers that a situation of possible risk, attack, threat or intimidation exists. It shall seek consultation of the member of the public concerned prior to adopting such measures.

24. The Committee, with the support of the Secretariat, shall enter the case into the register, unless the communication does not contain the requirements stipulated by the Committee in its working modalities.

25. The Committee shall consider the merits of each registered case, unless it declares it inadmissible. The Committee shall decide whether to address the question of admissibility with or without a hearing. Both the Party concerned, and the author of the communication shall have the right to request a hearing before the Committee on the admissibility of a communication. The Committee shall decide whether it accedes to such request or not.

26. The Committee shall determine if a communication is admissible on the basis of the following criteria:

- (a) The communication does not include information on the steps taken by the Party concerned to resolve the case;
- (b) The case is being heard or has been ruled on through another international procedure of a binding nature;
- (c) The case falls outside the scope of the Agreement;
- (d) The communication is anonymous, trivial, vexatious, or does not include sufficient corroborative information, or is incompatible with the Agreement or the present Rules.

27. The Committee may revise its decision on the admissibility of the case, if the background so warrants, up to the time of deliberating on the merits.

28. If the Committee declares admissible a communication:
- (a) The Committee shall give two months for:
 - (i) Other Parties to present written observations on the interpretation of the Agreement;
 - (ii) Members of the public to present written observations on the case.
 - (b) The Committee shall give the opportunity for the Party concerned to provide in writing within four months information and observations on the allegations of non-compliance, including the measures taken to that effect;
29. The Committee shall decide whether to address the merits of the case with or without a hearing. Both the Party concerned, and the author of the communication shall have the right to request a hearing before the Committee on the merits of the case. The Committee shall decide whether it accedes to such request or not.
30. The Committee shall deliberate on the allegations of non-compliance and adopt preliminary observations on the case. If the Committee concludes that the Party concerned is in breach of the Agreement, the preliminary observations of the Committee may include specific recommendations for the Party concerned. The Committee shall transmit its preliminary observations to the Party concerned and to the author of the communication. The Committee shall invite the Party concerned and the author of the communication to submit written comments on its preliminary observations within a specific and timely deadline.
31. After such deadline, the Committee shall adopt its final observations on the case, adopt the measures and make recommendations it considers appropriate in accordance with the present Rules. It shall present its conclusions and recommendations to the Party concerned and to the author of the communication and, when applicable, monitor the implementation of its recommendations by the Party concerned.
32. If the Committee concludes that the Party concerned has failed to implement the Committee's conclusions and recommendations, it will report the case to the Conference of the Parties.

VI. SIGNIFICANT PARTICIPATION OF THE PUBLIC IN THE FUNCTIONS OF THE COMMITTEE

33. The public may participate in the functions of the Committee, in accordance with the working modalities of the Committee, exercising the following rights:
- (a) Right to provide information to the Committee. The public may provide information and observations for:
 - (i) The preparation of the systemic report;
 - (ii) The preparation of a report on any aspect of implementation of and compliance with the Agreement requested by the COP to the Committee;

- (iii) The preparation of general observations on the interpretation of the Agreement;
 - (iv) The application of the Agreement by a Party, in the context of the dialogues and consultations with each Party;
 - (v) Factual or legal aspects of a case(s) of non-compliance, including on the implementation of the conclusions of the Committee by the Party concerned.
- (b) Right to participate in the meetings of the Committee. The Public may participate in:
- (i) The periodic dialogues and consultations between the Committee and each Party;
 - (ii) Any public hearings on a case of non-compliance, if applicable, during the examination of admissibility and the examination on the merits and the follow-up to the implementation of the Committee conclusions by the Party concerned.

VII. INFORMATION AND CONFIDENTIALITY

34. The Committee may use any source of information it deems relevant.
35. The Committee may call upon technical or legal experts, including academic centres or non-governmental bodies, at its discretion.
36. The Committee may request from the Party concerned, information on issues under its consideration.
37. The Committee may, with the consent of the Party concerned, collect information through a mission to the territory of a Party.
38. The Committee may draw on information compiled by the clearing house provided for in article 12 of the Agreement.
39. Information held by the Committee shall not be confidential, unless the Committee so decides, in accordance with the objectives of the Agreement and the rights of individuals, including, in particular:
- (a) The identity of persons who may suffer reprisals or persecution;
 - (b) Individual privacy;
 - (c) Protection of the environment and its components.

VIII. MEASURES BY THE COMMITTEE AND THE CONFERENCE OF THE PARTIES

40. The Committee may take such measures as it deems necessary to facilitate a Party's implementation of and compliance with the Agreement. In adopting measures, the Committee shall consider the national capacities and circumstances of the Parties. In cases of non-compliance, the Committee shall consider the cause, type, severity, and frequency of non-compliance. In particular, the Committee may adopt the following measures:

- (a) Formulate observations on cases submitted to it, including declarations of non-compliance;
- (b) Provide the Party concerned with specific recommendations to strengthen its laws, measures and practices;
- (c) Request that the Party concerned prepare an action plan to ensure full implementation of the Agreement;
- (d) Request that the Party concerned report on progress with implementation of the Committee's conclusions, recommendations and other measures it has adopted;
- (e) Provide advice and support to a Party in the implementation of and compliance with the Agreement;
- (f) When applicable, recommend to the Party concerned to adopt necessary measures to safeguard human rights defenders in environmental matters involved in a specific case.

41. The Conference of the Parties may take such measures as it deems necessary to facilitate a Party's implementation of and compliance with the Agreement, including:

- (a) Formulating declarations of non-compliance by a Party;
- (b) Facilitating support for compliance;
- (c) Issuing cautions;
- (d) Suspending the rights and privileges of a Party, including its voting rights.

IX. SYNERGIES WITH OTHER MULTILATERAL AGREEMENTS AND PROCESSES

42. The Committee may enter into dialogue and consultations with other multilateral agreements, institutions and processes, at the global or regional level, to seek synergies for the full implementation of access rights and other matters covered by the Agreement.

X. REGISTER OF CASES

43. There shall be a register of cases, with documents and substantive correspondence on cases submitted to the Committee, including:

- (a) Documents submitted to the Committee relating to cases, including those declared admissible and inadmissible;
- (b) Substantive correspondence between the Secretariat, the Party concerned and the author of a communication;
- (c) Substantive correspondence between the Secretariat and those concerned by a case;
- (d) Preliminary and concluding observations and recommendations by the Committee on a case;
- (e) Documents on the follow-up of the implementation of recommendations by the Committee by the Party concerned.

44. The register shall not include information that the Committee considers reserved, in accordance with the present Rules and the principle of maximum disclosure.

XI. INSTITUTIONAL ARRANGEMENTS

45. The Secretariat shall provide the services required for the work of the Committee, subject to availability of resources.

46. The Secretariat may provide guidance to the public and Parties on procedures on and requirements for the admissibility of communications made to the Committee.

47. The Secretariat shall maintain a register of cases, in accordance with the present Rules.

XII. TRANSITIONAL PROVISIONS

48. The Committee may not receive communications on the compliance of a Party before the second meeting of the Conference of the Parties.

49. The Committee may not receive communications on a Party's compliance until one year after the entry into force of the Agreement for that Party.