

RECOMMENDATIONS OF THE PUBLIC ON

PROPOSALS ON ELEMENTS TO BE CONSIDERED IN THE RULES GOVERNING THE STRUCTURE AND FUNCTIONS OF THE COMMITTEE TO SUPPORT IMPLEMENTATION AND COMPLIANCE

Introduction

1. This document presents proposals on the Structure and functions of the Committee to Support Implementation and Compliance. The following proposals have been organized following the outline prepared by ECLAC.
2. The process for reaching agreement on the rules that will govern the structure and functions of the Committee to Support Implementation and Compliance ("the Rules") must include meaningful public participation.
3. Public participation and transparency in the definition of the Rules and Functions of the Committee to Support Implementation and Compliance will play a fundamental role in contributing to the development of the provisions of the Agreement.

The Rules for the structure and functions of the Committee to Support Implementation and Compliance must conform to the essence of the Agreement that guarantees the rights of procedural access, in particular access to justice that allows the review of any decision, action or omission.

Finally, we request that both ECLAC, the signatory countries and the Elected Representatives of the Public should adopt measures to the maximum extent possible to include individuals and groups in situations of vulnerability in this process.

V. Structure of the Committee to Support Implementation and Compliance

Membership

4. The Members of the Implementation and Compliance Committee should be independent and not representatives of the Parties, but should be nationals of the countries of the region listed in Annex I of the Escazu Agreement. They should serve in their personal and independent capacity and have integrity and proven competence, knowledge, and expertise in access rights, human rights and the environment, including legal experience.

5. Independent capacity means that members of the Committee do not represent their governments and are not accountable to them. Officials from the executive branch would not be independent and thus cannot be nominated to serve as members of Committee. Members of the Committee may not hold public office in public administrations or in other constitutional bodies. Examples of eligible candidates include retired judges, attorneys or professors or experts in the subject of access rights.
6. To preserve their independence, members' costs, including travel and per diem, should be borne by the Secretariat.
7. Considering the population and number of Latin American and Caribbean countries, the Committee could comprise at least 7 members with balanced representation from the sub-regions: i.e. South America, Meso-America (including Mexico) and the Caribbean. The membership should also reflect gender balance. The Committee may not include more than one national of the same State.

Election of Members

8. There should be a special process, with the significant participation of the public, for the election of committee members, including: (i) a pool of candidates, (ii) a short-list of candidates, and (iii) COP election of Committee members. (i) On the pool of candidates, any national or person under the national jurisdiction of a country listed in Annex I of the Agreement may nominate candidates meeting the criteria for membership to the Committee. (ii) On the short-list of candidates, a special committee that includes a seat for the public's representative, should draw a short-list for the COP's consideration. This step should include the screening of candidates to ensure that they meet the requirements and qualifications for membership. Whichever method is ultimately applied to draw this short list, the public should exercise significant participation in the process. (iii) On COP election of Committee members, the short list of candidates may be elected by the COP by consensus or, failing consensus, by majority vote by secret ballot. In case of a vote, the Elected Representatives of the Public should have the right to vote.
9. In order to ensure the effectiveness of the Committee to Support Implementation and Compliance and consistency in its work, there can be partial renewal of members at the end of their prescribed terms. Members should serve no more than two terms of appointment with partial renewal only in order to ensure sufficient time for the Committee members to finish cases

they have been assigned or are deliberating on carry out their duties, if the COP so decides .

10. 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 Presiding Officers of the COP appoints another member who fulfils the criteria described above to serve the rest of the term, subject to the approval of the Committee.

VI. Functions of the Committee to Support Implementation and Compliance

11. The functions of the Committee should include:
 - a. Engage in consultation with Parties to facilitate implementation
 - b. Address issues concerning human rights defenders in environmental matters
 - c. Examine submissions on implementation and compliance
 - d. Review and advise on implementation of action plans
 - e. Advise the COP on systemic issues relating to compliance
 - f. Facilitate the preparation of guidance documents
 - g. To give its opinion on matters of interpretation of the Agreement
12. The mechanisms for initiating the functions for the Committee are:
 - a. Communications/submissions from Parties regarding their own compliance.
 - b. Communications/ submissions from Parties regarding compliance by another Party.
 - c. Communications from the members of the Public regarding a Party's compliance. The Public should be able to trigger this Committee regarding alleged non-compliance with the Agreement. Giving the Public the right to submit communications to the Committee, under a known and clear procedure, can help people gain trust in governments and prevent violent conflicts. Admissibility requirements should not be overly complex so as to be a barrier that effectively prevents the Public from submitting communications.
 - d. Self-initiate its own process to review the compliance of a Party on a specific issue and to issue recommendations.
 - e. Referrals from the Secretariat regarding systematic issues of compliance and implementation
 - f. Request from the COP to examine a Party's compliance or provide advice on the interpretation of the Agreement.

- g. Parties can request advice or assistance from the Committee.
13. In any of the above mechanisms, the Committee can receive and take into account information, including legal or interdisciplinary arguments, from the Public (e.g. amicus brief) which will promote contributions of experts and local leaders.
 14. The Committee can also invite contributions from specific experts.
 15. The Committee should be empowered to receive requests from the public to take urgent action to protect human rights defenders in environmental matters (environmental defenders) who are at risk. . These actions should include the power to recommend protective or prevention measures to protect human rights defenders in environmental matters and the collective rights of a group of such defenders.
 16. The output of the work of Committee can include:
 - a. Recommendations to the Party concerned
 - b. Precautionary Measures in order to protect human rights defenders in environmental matters or to protect the environment from a significant adverse impact.
 - c. Action plans for implementation and compliance
 - d. Recommendations for mechanisms and plans for the protection of human rights defenders in environmental matters
 - e. Recommendations and reporting to the COP
 - f. Assistance mechanisms for interested parties on compliance e.g. workshops and site visits.
 17. The Committee should be able to directly give recommendations to Parties. In the event of non-compliance with the recommendations within the timeframe prescribed by the Committee, then Committee can refer the recommendations to the COP in a timely manner for the COP to take a decision.
 18. The decision and recommendations of the Committee should be published online in a timely manner
 19. Any conflict of interests should be avoided at all costs. If a member of the Committee was involved in a case personally or in an organizational capacity (e.g. as a member of an NGO that submitted a communication to the Committee) then he/she should recuse themselves from handling the case.
 20. The language of all documentation submitted to the Committee, including submissions/communications, and of documents produced by the Committee, should be in any of the following languages: Spanish, English, Portuguese or French. The Secretariat should provide translation of documents, where needed

to enable access to the Committee's work, especially for persons and groups in vulnerable situations.

Sessions

21. The sessions of the Committee should be open to the public, unless in exceptional circumstances the Committee considers that the matter being discussed is sensitive information which could cause harm to any members of the public or the environment if disclosed and should therefore be confidential. This decision to hold a closed session must be explicit, substantiated, disclosed to the public, and reported to the COP.
22. At all these sessions, Parties, communicants and observers have the right to participate. Participation comprises the right to comment and the right to have comments taken into account by the Committee, within the framework of the procedures of the meeting.
23. There should be the possibility for full-fledged online meetings to ensure participation is affordable for the public and communicants, especially as it concerns the participation of persons and groups in vulnerable situations. The Committee should also be able to employ electronic decision-making.
24. The language of meetings should be in both Spanish and English, at minimum, with interpretation.

Secretariat

25. The Secretariat should have a supportive role in providing guidance to the public and Parties on procedures and requirements for meeting the admissibility requirements.
26. The costs for persons and groups in vulnerable situations who submit admissible Communications, which include the cost to gather and send documentary evidence and expenses related to the appearance of the communicant, witnesses and experts in hearings held by the Committee and any other expenses considered pertinent by the Commission for the processing of the case, should be paid by the Secretariat or Voluntary Fund established under the Agreement.

Information gathering

27. The Committee should be able to access all relevant and material information as needed.
28. The Committee members should be able to conduct site visits for on-the-spot information gathering and appraisals in the territory of State Parties.

Other

29. The Committee may prepare more detailed modalities for its effective operation, in conformity with the Rules relating to its structure and functions, addressing its operational issues
30. The Committee should explore synergies and engage in dialogue with other multilateral arrangements with a view to securing the full implementation of access rights.
31. The Rules of the Committee should contemplate ways to address the needs of persons or groups in vulnerable situations. In addition to the proposals described above, this should include providing information to persons and groups in vulnerable situations to be able to understand the admissibility requirements and procedure for bringing a communication before the Committee and where possible the sources for legal assistance in bringing a communication.