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**COMPLIANCE COMMITTEE**

**CC/3/2006/3  
15 August 2006**

**COMPILED COMMENTS  
ON THE  
DRAFT RULES OF PROCEDURE**

This document contains unedited comments provided by members and alternate members of the Compliance Committee as at 15 August 2006 on the Rules of Procedure Working Paper dated 23 June 2006.



## COMPLIANCE COMMITTEE

CC/3/2006/3  
15 August 2006

### COMPILED COMMENTS ON THE DRAFT RULES OF PROCEDURE

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Dear Elsa:

To this message I'm att comments to the rules of procedure (up to rule 10).

Sincerely,

MARIA ANDREA ALBAN



RULE OF PROCEDURE RULE 10.pdf

## COMPLIANCE COMMITTEE

Comments by: Maria Andrea Albán Durán

July 26, 2006

SUBJECT	SUGGESTIONS OF DRAFTING ON RULES OF PROCEDURE	CROSS REFERENCE WITH 27 CMP 1	COMMENTS
1. SCOPE	Rule 1		The rules of procedure must be a clear document. There was a debate on whether it was going to be a stand alone document or a document to be supported by decision 27/CMP.1. <b>My view is that it has to be as close as possible to being a stand alone document. Nevertheless we should avoid conflicting views with decision 27/CMP.1 or even overlaps, wherever possible.</b>
2. DEFINITIONS			PENDING ALL DEFINITIONS.
3. MEMBERS	Rule 3. NO CHANGE TO CURRENT DRAFT  5. When a member or an alternate member resigns or is otherwise unable to complete the assigned term or the functions of a member or alternate member, the Committee shall request the Conference of the Parties serving as the Meeting of the Parties to the KP to elect a new member or alternate member for the remainder of the term at its next session.	In general terms, Section II of Decision 27 CMP 1 establishes the committee, with two branches, 20 members <b>to be elected by the COP-MOP. Each member shall have an alternate member. Each shall serve in their individual capacities.</b>	There was a discussion on an automatic promotion from alternate member to full member when a member resigns or is unable to complete de assigned term of service. <b>It is the COP-MOP who shall elect the member. No change to the current draft in 5.</b>

Conflict of interest	<p>1 bis . <u>“Members of the Committee and their alternates shall serve in their individual capacities”</u></p> <p>3. Any Party who possesses or comes into possession of any evidence which may indicate a conflict of interest or which might be incompatible with the requirements of independence and impartiality expected of a member or alternate member of the Committee may at the earliest possible time and on a confidential basis, submit evidence to the <del>Executive Secretary of the UNFCCC</del> Chairperson of the Branch in question.</p> <p>4. Where the <del>Executive Secretary of the UNFCCC</del> Chairperson of the Branch in question, receives any disclosure from a member or alternate member or evidence from a Party under this rule, s/he shall forthwith notify <del>the chairperson of the relevant branch.</del></p>	<p><b>27 CMP 1 Section II 6. first paragraph:“</b></p>	<p>✍ Suggestion to insert language from 27 CMP 1 Section II 6. first paragraph:“ Members of the Committee and their alternates shall serve in their individual capacities”.</p> <p>✍ When a question of conflict of interest arises, the evidence must be submitted directly to the Compliance Committee for consideration. It can be done through the Chairperson of the branch in question. It is the branch in question who decides to excuse the member from the deliberation of such a question of implementation. The Executive Secretary can be excused from the task of determining whether there is a q. of conflict of interest or not.</p>
4. OFFICERS	<p>Rule 5.</p> <p>NO COMMENTS</p>		
	<p>Rule 6.</p>		<p>✍ This proposal takes care of the issue of the absence of the chairpersons in a much better way.</p>
5. AGENDA	<p>Rule 7</p> <p><b>2 bis. <u>The provisional</u></b></p>		<p>✍ The provisional agenda and the notice of the meetings shall be</p>

	<b><u>agenda for each meeting shall be circulated to members and alternate members at least four weeks before the opening of the meeting</u></b>		circulated at the same time, at least four weeks before the opening of the meeting.
6. MEETINGS AND DELIBERATIONS			
7. USE OF ELECTRONIC MEANS	Rule 11		This rule can be further discussed and elaborated taking into account the experience gained from the first facilitative branch meeting and electronic vote made. There were timeframes given for votes and acknowledgments of receipts etc.
8. SECRETARIAT	Rule 12 3 bis (previous Rule 15.5). <b>The Secretariat shall provide the facilitative branch with information, as part of the necessary supplementary information to the annual inventory report of each Party included in Annex I with matters relating to Article 3, paragraph 14 of the Kyoto Protocol for consideration.</b>		Number 5 of the previous draft was deleted. Would like to see it reinserted, since it is contained in decision 31/ CMP 1.
9. LANGUAGES	Rule 13		The documentation of the Party concerned has to be submitted in English???
10. GENERAL PROVISION OF THE BRANCHES	Rule 14	27 CMP 1. SECTION IV and V	The provisions for the Branches are clearly set out in 27 CMP 1. SECTION IV for the Facilitative Branch SECTION V for the Enforcement Branch.

Dear Elsa,  
Thanks alot.

It seems this is a better version and look far better and many positive comments raised during our last meeting are taken care of and incorporated in this version. Nevertheless I have two minor comments .

1- Rule 17.1 to be amended to :

!-Any submission or comment shall be signed by the diplomatic agent and/or the designated focal point to the UNFCCC of the Party and be delivered to the secretariat in hard copy and by electronic means. i.e add (and/or the designated focal point to the UNFCCC) as it is not always that all parties have diplomatic mission in Germany and the focal points are authorized persons recognized by the UNFCCC secretariat.

2- Rule 18

Add a new point and be numbered 2 and no. 2 in the text accordingly be no. 3. The new no. 2 is as follows:  
2- Decision on allocation of any question of implementation to any branch should be taken by consensus or by majority vote of the Bureau.

This is my contribution at this moment.

Thanks.

Ismail Elgizouli

--- Elsa Paclibar-Schroeder

<epaclibar-schroeder@unfccc.int> wrote:

Dear members and alternate members,

>

> Please find attached, a working paper dated 23 June  
> 2006, containing draft  
> rules of procedure, as requested by the Committee.  
> Written comments by  
> members and alternate members on these draft rules  
> of procedure that are  
> provided to the secretariat by 31 July 2006, will be  
> integrated into this  
> text. It will then be circulated to members and  
> alternate members along  
> with a compilation of the comments by 15 August 2006  
> for discussion in the  
> third meeting of the plenary on 5 - 8 September,  
> 2006.

>

> The Compliance Team

>

> (See attached file: ROP-WP.doc)

Ismail Elgizouli  
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Dear Elsa,

Please find attached my comments on the draft Rules of Procedure of the Compliance Committee of 23 June 2006.

Kind regards,

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## **Draft Rules of Procedure of the Compliance Committee of the Kyoto Protocol**

### ***Part 1: Conduct of Business***

#### **1. SCOPE**

##### **Rule 1**

These rules of procedure shall apply to the Compliance Committee, including its enforcement branch and facilitative branch, as defined in the procedures and mechanisms relating to compliance under the Kyoto Protocol, contained in the annex to decision 27/CMP.1. They shall be read together with and in furtherance of these procedures and mechanisms.

#### **2. DEFINITIONS**

##### **Rule 2**

For the purposes of these rules section numbers refer to the section so numbered in the annex to decision 27/CMP.1, unless otherwise noted, and:

- (a) “Committee” means the Compliance Committee established by section II, paragraph 1;
- (b) “plenary” means the plenary of the Committee as set out in section III;
- (c) “branch” means the enforcement branch or the facilitative branch as set out in sections IV and V;
- (d) “bureau” means the bureau of the Committee constituted in accordance with section II, paragraph 4;
- (e) “co-chairpersons” means the chairperson of the enforcement branch and the chairperson of the facilitative branch acting together in the plenary of the Committee in accordance with section III, paragraph 1;
- (f) “member” means a member of the Committee elected under section II, paragraph 3;
- (g) “alternate member” means an alternate member elected under section II, paragraph 5;
- (h) “Party” means a Party to the Kyoto Protocol to the United Nations Framework Convention on Climate Change;
- (i) “Party concerned” means a Party in respect of which a question of implementation is raised, as set out in section VI, paragraph 2;
- (j) “diplomatic agent” means the head of the mission or a member of the diplomatic staff of the mission of a Party ~~which~~**who** is accredited to the Federal Republic of Germany;-

- (k) “representative” means the officer designated by the Party concerned to represent it during the consideration of a question of implementation;
- (l) “secretariat” means the secretariat referred to in section XVII;
- (m) [“closed” means **that** only members and alternate members, secretariat officials, representatives of the Party concerned, and any individual invited by the plenary or a branch may be present, observe or hear the proceedings; *(This provision will become redundant as a result of changes in Rule 9.)*]
- (n) [“open” means **that** members and alternate members of the Committee and secretariat officials, and any Party and UNFCCC accredited observer may be present, observe or hear the proceedings.] *(This provision will become redundant as a result of changes in Rule 9. Members of the public should also be admitted to parts of meetings that are held in public.)*

### 3. MEMBERS

#### Rule 3

1. The term of service of each member and alternate member shall start on 1 January of the calendar year immediately following his or her election and shall end on 31 December, two or four years thereafter, as applicable.
2. Subject to these rules, alternate members ~~shall~~ **are entitled to** participate in the proceedings of the plenary or the respective branch to which they belong, without the right to vote. An alternate member may cast a vote only if serving as the member.
3. During the absence of a member from all or part of a meeting of the plenary or of the branch to which he or she has been elected, his or her alternate shall serve as the member.
4. When a member resigns or is otherwise unable to complete the assigned term or the functions of a member, the alternate shall serve as a member for the same branch, *ad interim*.
5. When a member or alternate member resigns or is otherwise unable to complete the assigned term or the functions of a member or alternate member, the Committee shall request the Conference of the Parties serving as the meeting of the Parties to the Kyoto Protocol to elect a new member or alternate member for the remainder of the term at its next session.

#### Rule 4

1. Each member and alternate member shall, with respect to any matter that is under consideration by the Committee, act in an independent and impartial manner and avoid conflicts of interest.
2. Each member and alternate member shall take and agree to respect a written oath of service before assuming his or her service. The oath of service shall read as follows:

"I solemnly declare that I will perform my duties and exercise my authority as member/alternate member of the **Compliance** Committee established in decision 27/CMP.1 honourably, faithfully, impartially and conscientiously."

"I further solemnly declare that, subject to my responsibilities within the **Compliance** Committee, I shall not disclose, even after the termination of my functions, any confidential or proprietary information coming to my knowledge by reason of my duties in the **Compliance** Committee."

"I shall disclose immediately to the Executive Secretary of the United Nations Framework Convention on Climate Change any interest in any matter under discussion before the **Compliance** Committee which may constitute a conflict of interest or which might be incompatible with the requirements of independence and impartiality expected of a member or alternate member of the **Compliance** Committee and I shall refrain from participating in the work of the **Compliance** Committee in relation to such matter."

3. Any Party who possesses or comes into possession of any evidence which may indicate a conflict of interest or which might be incompatible with the requirements of independence and impartiality expected of a member or alternate member of the Committee, may at the earliest possible time and on a confidential basis, submit such evidence to the Executive Secretary of the United Nations Framework Convention on Climate Change.

4. Where the Executive Secretary of the United Nations Framework Convention on Climate Change receives any disclosure from a member or alternate member ~~or evidence from a Party under this rule~~, s/he shall forthwith notify the chairperson of the relevant branch. **The chairperson concerned shall inform the plenary that the member or alternate member will refrain from participating in the work of the Committee in relation to the matter that is the subject of the disclosure. Where the Executive Secretary of the United Nations Framework Convention on Climate Change receives evidence from a Party, s/he shall forthwith notify the chairperson of the relevant branch as well as the member or alternate member concerned. The chairperson concerned shall submit the evidence to the plenary for its consideration, unless the member or alternate member informs the chairperson that he/she will refrain from participating in the work of the Committee in relation to the matter to which the evidence relates.**

5. ~~A branch~~ **The plenary** may decide to excuse a member or alternate member from consideration of one or more questions of implementation and the elaboration and adoption of a decision of ~~the~~ a branch, after having provided a reasonable opportunity for the member or alternate member to be heard.

6. All decisions taken under this rule shall be noted in the annual report of the Committee to the Conference of the Parties serving as the meeting of the Parties to the Kyoto Protocol.

#### 4. OFFICERS

##### Rule 5

1. In addition to exercising the powers conferred upon him or her elsewhere in these rules, an officer chairing a meeting shall:
  - (a) Declare the opening and closure of the meeting;
  - (b) Preside over the meeting;
  - (c) Ensure the observance of these rules;
  - (d) Accord the right to speak;
  - (e) Put questions to the vote and announce decisions;
  - (f) Rule on any points of order; and
  - (g) Subject to these rules, have complete control over the proceedings and maintain order.
2. An officer chairing a meeting may also propose:
  - (a) The closure of the list of speakers;
  - (b) A limitation on the time to be allowed to speakers and on the number of times they may speak on an issue;
  - (c) The adjournment or closure of debate on an issue; and
  - (d) The suspension or adjournment of the meeting.
3. Any officer chairing a meeting, in the exercise of his or her functions, remains under the authority of the plenary or, as the case may be, of the enforcement branch or facilitative branch.

#### **Rule 6**

1. If a chairperson is temporarily unable to fulfil the functions of his or her office, the vice-chairperson of the branch of which he or she is a member shall act as co-chairperson of the plenary and as chairperson for that branch *ad interim*.
2. If the chairperson and the vice-chairperson of the same branch are temporarily unable to fulfil the functions of their offices at the same time, then the branch shall elect a chairperson for that branch *ad interim*.
3. If a chairperson or vice-chairperson of a branch resigns or is otherwise unable to complete the assigned term or the functions of his or her office, the branch shall elect a replacement from among its members for the remainder of the term of that officer.

### **5. AGENDA**

#### **Rule 7**

1. In agreement with the bureau, the secretariat shall draft the provisional agenda for each meeting of the plenary.
2. In agreement with the chairperson and vice-chairperson of the relevant branch, the secretariat shall draft the provisional agenda of each meeting of ~~the~~**that** branch.
3. The proposed agenda of each meeting of the plenary and each meeting of the branches shall include any item proposed by a member.

4. The plenary or a branch, when adopting its agenda, may decide to add urgent and important items and to delete, defer or amend items.

## 6. MEETINGS AND DELIBERATIONS

### Rule 8

1. Notice of meetings shall be sent to the members and alternate members, as well as any other participants, at least four weeks before the opening of the meeting, to the extent possible under the applicable timeframes.
2. **The secretariat shall make all documents of the plenary and the branches available to the public, subject to section VIII, paragraph 6 as well as any guidance provided by the Committee.**

### Rule 9

1. Meetings of the plenary and the branches shall be ~~open~~**held in public**, unless the plenary or branch decides otherwise. **Such decision shall include reasons therefore.**~~The plenary or branch may decide, at any time, to open or close a meeting.~~
2. ~~The consideration of a question of implementation by a branch, and~~ **Only members and alternate members and secretariat officials may be present during the** elaboration and adoption of a decision of the branch, ~~shall be closed.~~
3. ~~Hearings shall be held in public, unless the enforcement branch decides, of its own accord or at the request of the Party concerned, that part or all of the hearing shall take place in private.~~

### Rule 10

1. A notification or other document sent by the secretariat to a Party shall be considered to have been received when the secretariat has received a written confirmation of receipt from the Party or the expedited delivery courier. Such confirmation may be provided by electronic means.
2. The date of receipt of a submission, request or other document by the secretariat shall be considered to be the date of receipt by the Committee.
3. The date of receipt by the plenary or branch of a communication sent by electronic means shall be the date of receipt by the last member constituting a quorum of the plenary or branch. **A notification or other document shall be considered to have been received within 12 hours of its dispatch, unless an out-of-office reply has been received by the Secretariat within that time frame.**

## 7. USE OF ELECTRONIC MEANS

### Rule 11

1. The Committee may use electronic means for transmission, distribution and storage of documentation.
2. The Committee may elaborate and take decisions in a written procedure using electronic means. This procedure may be elaborated in ~~future~~ working arrangements in accordance with Rule 29.
3. Any decision in accordance with paragraph 1 of this rule shall be deemed to be taken at the headquarters of the secretariat.

## 8. SECRETARIAT

### Rule 12

1. The secretariat shall arrange for the preparation, compilation, reproduction, distribution and availability of all documents produced by the Committee.
2. The secretariat shall send notifications and other documents, and receive submissions, requests and other documents, on behalf of the Committee.
3. The secretariat shall maintain the registry of the Committee, take custody of and preserve all documents of the Committee, and ensure that the date of despatch and receipt of such documents may be readily verified.
4. In addition, the secretariat shall perform all other work that the Committee or its branches may require.

## 9. LANGUAGES

### Rule 13

1. A representative of a Party taking part in the proceedings of a branch may speak in a language other than the working language of the Committee if the Party provides for interpretation.
2. **Subject to section VIII, paragraph 9, the** The working language of the Committee and its branches shall be English.
3. Decisions of the branches that are final shall be made available in all official languages of the United Nations.

### *Part 2: Consideration of questions of implementation by the Branches*

## 10. GENERAL PROVISIONS FOR THE BRANCHES

### Rule 14 (*This provision is redundant and questionable*)

[The Committee ~~will~~**shall** receive, through the secretariat, questions of implementation indicated in reports of expert review teams **under Article 8 of the Kyoto Protocol**, together with any written comments by the Party which is subject to the report ~~relating to:~~



- (a) ~~the functions of national systems for the estimation of anthropogenic greenhouse gas emissions by sources and removals by sinks established under Article 5, paragraph 1 of the Kyoto Protocol;~~
- (b) ~~information on the national registry submitted as supplementary information under Article 7, paragraph 1 of the Kyoto Protocol;~~
- (c) ~~assigned amounts pursuant to Article 3, paragraphs 7 and 8 of the Kyoto Protocol;~~
- (d) ~~adjustments to inventories under Article 5, paragraph 2 of the Kyoto Protocol;~~
- (e) ~~eligibility and complementarity relating to mechanisms pursuant to Articles 6, 7 and 12 of the Kyoto Protocol;~~
- (f) ~~information on the minimization of adverse impacts in accordance with Article 3, paragraph 14 of the Kyoto Protocol, including failure to submit such supplementary information which is considered to be a potential problem;~~
- (g) ~~any potential problems in and factors influencing the fulfilment of commitments identified during the review; and,~~
- (h) ~~(a) whether the aggregate anthropogenic carbon dioxide emissions from the commitment period exceed the quantities of emission reduction units, certified emission reductions (CERs), temporary CERs, long-term CERs, assigned amount units, and removal units in the retirement account of the Party for the commitment period pursuant to Article 3, paragraph 1 of the Kyoto Protocol.]~~

#### Rule 15

1. A submission by a Party raising a question of implementation ~~shall~~ **will only be considered to meet the requirements under section VII, paragraph 2(a) if it sets out:**

- (a) the name of the Party making the submission;
- (b) a statement identifying the question of implementation;
- (c) ~~the name of the Party concerned;~~ and
- (d) ~~the provisions of the Kyoto Protocol and decision 27/CMP.1 that form the basis for raising the question of implementation;~~

**and if the question has been submitted by a Party with respect to another Party:**

- (e) ~~the name of the Party concerned;~~ and
- (f) ~~corroborating information if the question of implementation has been submitted by a Party with respect to another Party.~~

2. ~~To expedite the consideration of the~~ **The submission, may it should** also set out:

- (a) any provisions of the decisions of the Conference of the Parties serving as the meeting of the Parties to the Kyoto Protocol and the subsidiary bodies that are applicable to the question of implementation;
- (b) [a description of information that is material to the question of implementation] *(This phrase does not seem to have added value over and above the statement identifying the question of implementation);*
- (c) the branch from which action is sought, ~~and an indication of the consideration required by the branch;~~ and
- (d) a list of all documents annexed to the submission; and
- (e) **the action requested from the branch.**

[3. A submission by any Party with respect to any other Party shall be:

(a) [supported by corroborating information;] *(This paragraph is redundant as it repeats section VI.1(a))*

(b) sent to the diplomatic agent of the Party concerned by the secretariat.] *(This paragraph is misplaced as it is directed to the secretariat and does not address the case of questions of implementation raised in reports of expert review teams)*

#### Rule 15 bis

**The secretariat shall make a question of implementation submitted under section V1, paragraph 1 available to the national focal point of the Party concerned designated in accordance with [...], unless a Party has informed the Committee in writing that such questions shall be made available to the diplomatic agent of that Party.**

#### Rule 16

~~1. Comments by the Party concerned on information relevant to the question of implementation, the decision to proceed, any other decision of the relevant branch, and further written submissions by the Party concerned on preliminary findings of the enforcement branch~~ **consideration of a question of implementation submitted in accordance with decision 27/CMP.1 shall** ~~set out~~ *(Since there is no consequence of non-compliance with this provision, it is not meaningful to formulate this in imperative terms):*

- (a) the name of the Party concerned;
- (b) a ~~precise~~ statement of its position on the information, decision or question of implementation under consideration, including the grounds therefor;
- (c) [any additional information] *(This phrase does not make any sense);*
- (d) the action requested from the branch;
- (e) an identification of any information provided by the Party that it requests not to be made available to the public; and
- (f) a list of all documents annexed to the submission.

#### Rule 17

1. Any submission or comment shall be signed by the diplomatic agent **or another authorized representative** of the Party and be delivered to the secretariat in hard copy and by electronic means.

2. Copies of any relevant documents in support of the submission or comment shall be annexed to it. ~~The Party concerned shall be as restrained as possible in selecting documents to be annexed to the submission or comment.~~

**Rule 18** *(This provision provides for a time line that has not yet been tested and should therefore be incorporated in the Working Arrangements)*

1. ~~The bureau shall, within~~ **Within** seven days from receipt of a question of implementation, **the bureau shall endeavor to** decide on its allocation to the appropriate branch.

2. The secretariat shall forthwith notify members and alternate members of the branch of the question of implementation and send them all ~~relevant~~**available** materials.

**Rule 19 (This provision provides for a time line that has not yet been tested and should therefore be incorporated in the Working Arrangements)**

1. Within five days from receipt of a question of implementation by the members and alternate members of the branch, members of the branch shall **endeavor to** communicate with the secretariat ~~using electronic means~~ to give an indication whether to proceed or not to proceed with the question of implementation. During this period, they may also request deliberations on the question of implementation.
2. A decision to proceed shall include:
  - (a) a statement identifying the question of implementation;
  - (b) reference to information on which the question of implementation is based; and
  - (c) a draft schedule for the further consideration of the question and, in the case of the enforcement branch, the date available for a hearing.
3. A decision not to proceed shall include the reasons for not proceeding with the question of implementation.

**Rule 20**

If a branch decides to seek expert advice, it shall:

- (a) identify the experts to be consulted;
- (b) define the question on which expert opinion is sought; and
- (c) lay down the procedures to be followed.

**Rule 21**

1. An intergovernmental organization or a nongovernmental organization ~~admitted as an observer by the United Nations Framework Convention on Climate Change~~ may furnish, on its own initiative, information relevant to a question of implementation before a branch and shall do so in the form of a written statement to be filed with the secretariat before the adoption of the final decision.
2. Such information shall not be considered part of the file on the question of implementation and shall not require comment from the Party concerned, unless the branch decides otherwise. The secretariat shall inform members and alternate members of the branch and the Party concerned of the information.

**Rule 22**

1. A preliminary finding or a final decision shall contain:
  - (a) the name of the Party concerned;
  - (b) ~~the~~a statement identifying the question of implementation, including provisions of the Kyoto Protocol and decision 27/CMP.1 that form the basis for raising the question of implementation;

- (c) a description of the information considered in the deliberations, including a confirmation that the Party concerned was given an opportunity to comment in writing on all information considered;
- (d) a summary of the proceedings, including an indication, in the case of a final decision of the enforcement branch, of whether its preliminary finding or any part of it as specified is confirmed;
- (e) conclusions and reasons;
- (f) the place and date of the decision; and
- (g) the **names of the** members who participated in the adoption of the decision.

**2. A decision of the enforcement branch under section X, paragraphs 2 to 5 shall contain the elements listed in paragraph 1 above, *mutatis mutandis*.**

~~2. The Party concerned may submit written comments on a decision that is final to the secretariat within forty five days from receipt of the notification of the decision. The secretariat shall circulate these comments to the members and alternate members of the relevant branch, and they shall also be included in the Committee's annual report to the Conference of the Parties serving as the meeting of the Parties to the Kyoto Protocol. ***This provision is a limitation of the right of Parties under section VIII.8. The time-limit could be integrated in the second sentence.***~~

**Comments in writing on a final decision submitted within forty-five days from the receipt of that decision by the Party concerned shall be circulated by the secretariat to the members and alternate members of the relevant branch and shall be included in the Committee's annual report to the Conference of the Parties serving as the meeting of the Parties to the Kyoto Protocol.**

## **11. PROVISIONS FOR THE FACILITATIVE BRANCH**

### **Rule 23**

~~1. A Party concerned shall be given an opportunity to make a presentation before the facilitative branch and to provide comments in writing on the preliminary conclusions of the facilitative branch. ***(Decision 27/CMP.1 does not envisage a preliminary procedure for the facilitative branch. And representation and, hence, the making of presentations is dealt with in section VIII.2)***~~

**2. [The facilitative branch shall endeavor to complete its consideration within twenty weeks. The facilitative branch may extend this timeframe as appropriate.] *(This provision is not necessary.)***

## **12. PROVISIONS FOR THE ENFORCEMENT BRANCH**

### **Rule 24**

**1. A request for a hearing by the Party concerned ~~shall~~ **should** include:**

- (a) reasons for requesting a hearing;
- (b) a description of the issues that it proposes to raise and any documents that it intends to discuss during the hearing; and
- (c) the names and qualifications of any individuals whose expert testimony or opinion it will present at the hearing.

2. The Party concerned, when choosing individuals to represent it during the hearing, should refrain from nominating individuals who were members or alternate members of the Committee in the [three][four] years preceding the date of the ~~submission~~hearing.

#### **Rule 25**

1. Any referral of a question of implementation to the facilitative branch shall be made through a decision by the enforcement branch with a statement identifying the question of implementation and the information on which the question is based.

2. **The Secretariat shall notify the Party concerned of the decision.**

- ~~2.3.~~ A question of implementation referred by the enforcement branch to the facilitative branch shall not require a preliminary examination.

### **13. EXPEDITED PROCEDURES FOR THE ENFORCEMENT BRANCH**

#### **Rule 26**

1. ~~When the enforcement branch receives a report from the expert review team indicating that there is no longer a question of implementation with respect to the eligibility of the Party concerned, the enforcement branch shall, within three weeks from receipt of the report, decide to reinstate the eligibility of the Party concerned, unless it considers that there continues to be a question of implementation. (This additional procedure is not envisaged by decision 27/CMP.1 and would seem to conflict with section X.4)~~

2. ~~In the case of a request submitted directly to the enforcement branch by a Party concerned to reinstate its eligibility, the enforcement branch shall, within twenty weeks from receipt of the request, decide to reinstate the eligibility of the Party concerned or decide that there continues to be a question of implementation. (This procedure seems to conflict with sections X.2 and X.3.)~~

#### **Rule 27**

~~In case of a disagreement relating to adjustments to inventories and corrections to the compilation and accounting database, the enforcement branch shall meet for deliberations within three weeks of being informed in writing of such disagreement and at that time, may adopt a decision to seek expert advice. (It may not be necessary to meet or at a later date or to proceed on the basis of electronic means. The deadline of section X.5 for the adoption of a decision would seem to suffice.)~~

### **Part 3: General Provisions**

## **14. AMENDMENT**

#### **Rule 28**

Any amendment of these rules approved by the plenary shall be submitted to the Conference of the Parties serving as the meeting of the Parties to the Kyoto Protocol for adoption.

## **15. WORKING ARRANGEMENTS**

### **Rule 29**

1. The plenary may elaborate and adopt further working arrangements, **including on officers, agenda, meetings and deliberations**, electronic decision-making, **secretariat and consideration of questions of implementation by the branches**, ~~expert advice, and expedited procedures for the enforcement branch~~, as necessary and appropriate.
2. Any such working arrangements shall be included in the annual report of the Committee to the Conference of the Parties serving as the meeting of the Parties to the Kyoto Protocol.

## **16. OVERRIDING AUTHORITY**

### **Rule 30**

In the event of a conflict between any provision in these rules and any provision in the Kyoto Protocol or decision 27/CMP.1, the provision of the Protocol or the decision, as the case may be, shall prevail.

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Dear Elsa

with regard to the Rules of Procedure, please find below my comments. Please excuse the delay of my reply.

The new version of the Rules is a major improvement and gives rise to very little comments from my part. These are the following:

**Rule 4 para. 5:** it seems to me that the decision to excuse a member will be taken based on a disclosure from this member or alternate member or evidence from a Party. So there is a very direct link between para. 4 and para 5. I would therefore propose to join these two paras. together. Otherwise it is not clear on what basis a branch can excuse a member or alternate, it could even seem that the branch could do that at any time, on its own initiative.

The new, joint para 4. could read as follows:

*4. Where the Executive Secretary of the United Nations Framework Convention on Climate Change receives any disclosure from a member or alternate member or evidence from a Party under this rule, s/he shall forthwith notify the chairperson of the relevant branch. The branch may decide to excuse the member or alternate member from consideration of one or more questions of implementation and the elaboration and adoption of a decision of the branch, after having provided a reasonable opportunity for the member or alternate member to be heard.*

**Rule 13, para. 2:** “and its branches” can be deleted, since “the Committee” automatically includes the branches.

**Rule 15, para. 3:** These requirements in the case of a Party-to-party trigger are additional to the requirements in paras 1 and 2 of Rule 15. To make this clear, the words “In addition” could be added at the beginning of rule 15.

**Rule 16, para. 1(f):** since there is a legal difference between “submission” and “comment”, “or comment” should be added at the end of this para. (in the same way it appears in Rule 17).

**Rule 24, para. 2:** I do not see the use of or need for this provision. Once a member of the Committee has finished its terms, there is no reason to prevent him/her from participating as a country representative in a hearing. It could also prevent parties from involving experienced specialist in the procedure. Moreover, this provision is not and can not be binding for Parties. I propose to delete it.

**Rule 27:** there is no need to impose a “physical” meeting in these cases. The way in which the branch operates should be left open (as it is the case, for example, in Rule 26). The following wording could be used:

*In case of a disagreement relating to adjustments to inventories and corrections to the compilation and accounting database, the enforcement branch shall consider the case within three weeks of being informed in writing of such disagreement and within that time, may adopt a decision to seek expert advice.*

These are my comments. I attach the document with my proposals included in track changes.

Best regards.

**Stephan Michel**  
**FDA FEDERAL DEPARTMENT OF FOREIGN AFFAIRS**  
**Directorate for international law**  
**Head of Treaty section**

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-----Original Message-----

From: Elsa Paclibar-Schroeder [mailto:epaclibar-schroeder@unfccc.int]

Sent: Friday, June 23, 2006 4:52 PM

To: nlacasta@gri.maotdr.gov.pt; rene.lefeber@minbuza.nl; dewetjgs@foreign.gov.za; joearmathe@yahoo.fr; su\_wei@mfa.gov.cn; mohd\_180@hotmail.com; amjad.abdulla; mj.mace@field.org.uk; eo; piturregui@conam.gob.pe; oshamanov@un.int; climat@minpriroda.by; Sebastian.Oberthuer@vub.ac.be; tuomas.kuokkanen@ymparisto.fi; Michel Stephan EDA MSP; kirsten.jacobsen@md.dep.no; bernardnamanya; ssesimogang@gov.bw; ilhomrajabov; ainunnishat; mpallemaerts@ieeplondon.org.uk; pierre.ducet@caissedesdepots.fr; gizouli@yahoo.com; michiekar@yahoo.com; abuleikm; jacychoi@gmail.com; conde@citma.cu; maria.alban@minrelext.gov.co; alewis@environmentdivision.info; v.sedyakin; hamanaka@sfc.keio.ac.jp; mark.berman@ec.gc.ca; anna.dixelius@naturvardsverket.se; nicola.notaro; mhonadia@yahoo.fr; inarishak@menlh.go.id; ja\_aghazadeh@yahoo.com; janelidze@caucasus.net  
Cc: Mukul Sanwal; Campion Carruthers; Maria Socorro Manguiat; Sally Horler  
Subject: Working Paper: Rules of Procedure

Dear members and alternate members,

Please find attached, a working paper dated 23 June 2006, containing draft rules of procedure, as requested by the Committee. Written comments by members and alternate members on these draft rules of procedure that are provided to the secretariat by 31 July 2006, will be integrated into this text. It will then be circulated to members and alternate members along with a compilation of the comments by 15 August 2006 for discussion in the third meeting of the plenary on 5 - 8 September, 2006.

The Compliance Team



ROP-WP.DOC (See attached file: ROP-WP.doc)



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## **Draft Rules of Procedure of the Compliance Committee of the Kyoto Protocol**

### ***Part 1: Conduct of Business***

#### **1. SCOPE**

##### **Rule 1**

These rules of procedure shall apply to the Compliance Committee, including its enforcement branch and facilitative branch, as defined in the procedures and mechanisms relating to compliance under the Kyoto Protocol, contained in the annex to decision 27/CMP.1. They shall be read together with and in furtherance of these procedures and mechanisms.

#### **2. DEFINITIONS**

##### **Rule 2**

For the purposes of these rules section numbers refer to the section so numbered in the annex to decision 27/CMP.1, unless otherwise noted, and:

- (a) “Committee” means the Compliance Committee established by section II, paragraph 1;
- (b) “plenary” means the plenary of the Committee as set out in section III;
- (c) “branch” means the enforcement branch or the facilitative branch as set out in sections IV and V;
- (d) “bureau” means the bureau of the Committee constituted in accordance with section II, paragraph 4;
- (e) “co-chairpersons” means the chairperson of the enforcement branch and the chairperson of the facilitative branch acting together in the plenary of the Committee in accordance with section III, paragraph 1;
- (f) “member” means a member of the Committee elected under section II, paragraph 3;
- (g) “alternate member” means an alternate member elected under section II, paragraph 5;
- (h) “Party” means a Party to the Kyoto Protocol to the United Nations Framework Convention on Climate Change;
- (i) “Party concerned” means a Party in respect of which a question of implementation is raised, as set out in section VI, paragraph 2;
- (j) “diplomatic agent” means the head of the mission or a member of the diplomatic staff of the mission of a Party which is accredited to the Federal Republic of Germany.

- (k) “representative” means the officer designated by the Party concerned to represent it during the consideration of a question of implementation;
- (l) “secretariat” means the secretariat referred to in section XVII;
- (m) “closed” means only members and alternate members, secretariat officials, representatives of the Party concerned, and any individual invited by the plenary or a branch may be present, observe or hear the proceedings;
- (n) “open” means members and alternate members of the Committee and secretariat officials, and any Party and UNFCCC accredited observer may be present, observe or hear the proceedings.

### **3. MEMBERS**

#### **Rule 3**

1. The term of service of each member and alternate member shall start on 1 January of the calendar year immediately following his or her election and shall end on 31 December, two or four years thereafter, as applicable.
2. Subject to these rules, alternate members shall participate in the proceedings of the plenary or the respective branch to which they belong, without the right to vote. An alternate member may cast a vote only if serving as the member.
3. During the absence of a member from all or part of a meeting of the plenary or of the branch to which he or she has been elected, his or her alternate shall serve as the member.
4. When a member resigns or is otherwise unable to complete the assigned term or the functions of a member, the alternate shall serve as a member for the same branch, *ad interim*.
5. When a member or alternate member resigns or is otherwise unable to complete the assigned term or the functions of a member or alternate member, the Committee shall request the Conference of the Parties serving as the meeting of the Parties to the Kyoto Protocol to elect a new member or alternate member for the remainder of the term at its next session.

#### **Rule 4**

1. Each member and alternate member shall, with respect to any matter that is under consideration by the Committee, act in an independent and impartial manner and avoid conflicts of interest.
2. Each member and alternate member shall take and agree to respect a written oath of service before assuming his or her service. The oath of service shall read as follows:

“I solemnly declare that I will perform my duties and exercise my authority as member/alternate member of the Committee honourably, faithfully, impartially and conscientiously.”

"I further solemnly declare that, subject to my responsibilities within the Committee, I shall not disclose, even after the termination of my functions, any confidential or proprietary information coming to my knowledge by reason of my duties in the Committee."

"I shall disclose immediately to the Executive Secretary of the United Nations Framework Convention on Climate Change any interest in any matter under discussion before the Committee which may constitute a conflict of interest or which might be incompatible with the requirements of independence and impartiality expected of a member or alternate member of the Committee and I shall refrain from participating in the work of the Committee in relation to such matter."

3. Any Party who possesses or comes into possession of any evidence which may indicate a conflict of interest or which might be incompatible with the requirements of independence and impartiality expected of a member or alternate member of the Committee, may at the earliest possible time and on a confidential basis, submit such evidence to the Executive Secretary of the United Nations Framework Convention on Climate Change.

4. Where the Executive Secretary of the United Nations Framework Convention on Climate Change receives any disclosure from a member or alternate member or evidence from a Party under this rule, s/he shall forthwith notify the chairperson of the relevant branch.

~~5.A~~ The branch may decide to excuse a the member or alternate member from consideration of one or more questions of implementation and the elaboration and adoption of a decision of the branch, after having provided a reasonable opportunity for the member or alternate member to be heard.

6.4. All decisions taken under this rule shall be noted in the annual report of the Committee to the Conference of the Parties serving as the meeting of the Parties to the Kyoto Protocol.

## **4. OFFICERS**

### **Rule 5**

1. In addition to exercising the powers conferred upon him or her elsewhere in these rules, an officer chairing a meeting shall:

- (a) Declare the opening and closure of the meeting;
- (b) Preside over the meeting;
- (c) Ensure the observance of these rules;
- (d) Accord the right to speak;
- (e) Put questions to the vote and announce decisions;
- (f) Rule on any points of order; and
- (g) Subject to these rules, have complete control over the proceedings and maintain order.

2. An officer chairing a meeting may also propose:

- (a) The closure of the list of speakers;

- (b) A limitation on the time to be allowed to speakers and on the number of times they may speak on an issue;
- (c) The adjournment or closure of debate on an issue; and
- (d) The suspension or adjournment of the meeting.

3. Any officer chairing a meeting, in the exercise of his or her functions, remains under the authority of the plenary or, as the case may be, of the enforcement branch or facilitative branch.

### **Rule 6**

1. If a chairperson is temporarily unable to fulfil the functions of his or her office, the vice-chairperson of the branch of which he or she is a member shall act as co-chairperson of the plenary and as chairperson for that branch *ad interim*.

2. If the chairperson and the vice-chairperson of the same branch are temporarily unable to fulfil the functions of their offices at the same time, then the branch shall elect a chairperson for that branch *ad interim*.

3. If a chairperson or vice-chairperson of a branch resigns or is otherwise unable to complete the assigned term or the functions of his or her office, the branch shall elect a replacement from among its members for the remainder of the term of that officer.

## **5. AGENDA**

### **Rule 7**

1. In agreement with the bureau, the secretariat shall draft the provisional agenda for each meeting of the plenary.

2. In agreement with the chairperson and vice-chairperson of the relevant branch secretariat shall draft the provisional agenda of each meeting of the branch.

3. The proposed agenda of each meeting of the plenary and each meeting of the branches shall include any item proposed by a member.

4. The plenary or a branch, when adopting its agenda, may decide to add urgent and important items and to delete, defer or amend items.

## **6. MEETINGS AND DELIBERATIONS**

### **Rule 8**

Notice of meetings shall be sent to the members and alternate members, as well as any other participants, at least four weeks before the opening of the meeting, to the extent possible under the applicable timeframes.

## **Rule 9**

1. Meetings of the plenary and the branches shall be open, unless the plenary or branch decides otherwise. The plenary or branch may decide, at any time, to open or close a meeting.
2. The consideration of a question of implementation by a branch, and elaboration and adoption of a decision of the branch, shall be closed.
3. Hearings shall be held in public, unless the enforcement branch decides, of its own accord or at the request of the Party concerned, that part or all of the hearing shall take place in private.

## **Rule 10**

1. A notification or other document sent by the secretariat to a Party shall be considered to have been received when the secretariat has received a written confirmation of receipt from the Party or the expedited delivery courier. Such confirmation may be provided by electronic means.
2. The date of receipt of a submission, request or other document by the secretariat shall be considered to be the date of receipt by the Committee.
3. The date of receipt by the plenary or branch of a communication sent by electronic means shall be the date of receipt by the last member constituting a quorum of the plenary or branch.

## **7. USE OF ELECTRONIC MEANS**

### **Rule 11**

1. The Committee may use electronic means for transmission, distribution and storage of documentation.
2. The Committee may elaborate and take decisions in a written procedure using electronic means. This procedure may be elaborated in future working arrangements in accordance with Rule 29.
3. Any decision in accordance with paragraph 1 of this rule shall be deemed to be taken at the headquarters of the secretariat.

## **8. SECRETARIAT**

### **Rule 12**

1. The secretariat shall arrange for the preparation, compilation, reproduction, distribution and availability of all documents produced by the Committee.
2. The secretariat shall send notifications and other documents, and receive submissions, requests and other documents, on behalf of the Committee.

3. The secretariat shall maintain the registry of the Committee, take custody of and preserve all documents of the Committee, and ensure that the date of despatch and receipt of such documents may be readily verified.

4. In addition, the secretariat shall perform all other work that the Committee or its branches may require.

## **9. LANGUAGES**

### **Rule 13**

1. A representative of a Party taking part in the proceedings of a branch may speak in a language other than the working language of the Committee if the Party provides for interpretation.

2. The working language of the Committee ~~and its branches~~ shall be English.

3. Decisions of the branches that are final shall be made available in all official languages of the United Nations.

### ***Part 2: Consideration by the Branches***

## **10. GENERAL PROVISIONS FOR THE BRANCHES**

### **Rule 14**

The Committee will receive, through the secretariat, questions of implementation indicated in reports of expert review teams, together with any written comments by the Party which is subject to the report relating to:

- (a) the functions of national systems for the estimation of anthropogenic greenhouse gas emissions by sources and removals by sinks established under Article 5, paragraph 1 of the Kyoto Protocol;
- (b) information on the national registry submitted as supplementary information under Article 7, paragraph 1 of the Kyoto Protocol;
- (c) assigned amounts pursuant to Article 3, paragraphs 7 and 8 of the Kyoto Protocol;
- (d) adjustments to inventories under Article 5, paragraph 2 of the Kyoto Protocol;
- (e) eligibility and supplementarity relating to mechanisms pursuant to Articles 6, 7 and 12 of the Kyoto Protocol;
- (f) information on the minimization of adverse impacts in accordance with Article 3, paragraph 14 of the Kyoto Protocol, including failure to submit such supplementary information which is considered to be a potential problem;
- (g) any potential problems in and factors influencing the fulfilment of commitments identified during the review; and,
- (h) whether the aggregate anthropogenic carbon dioxide emissions from the commitment period exceed the quantities of emission reduction units, certified emission reductions (CERs), temporary CERs, long-term CERs, assigned amount units, and removal units in the retirement account of the Party for the commitment period pursuant to Article 3, paragraph 1 of the Kyoto Protocol.

## Rule 15

1. A submission by a Party raising a question of implementation shall set out:
  - (a) the name of the Party making the submission;
  - (b) a statement identifying the question of implementation;
  - (c) the name of the Party concerned; and
  - (d) provisions of the Kyoto Protocol and decision 27/CMP.1 that form the basis for raising the question of implementation.
2. The submission may also set out:
  - (a) any provisions of the decisions of the Conference of the Parties serving as the meeting of the Parties to the Kyoto Protocol and the subsidiary bodies that are applicable to the question of implementation;
  - (b) a description of information that is material to the question of implementation;
  - (c) the branch from which action is sought, and an indication of the consideration required by the branch; and
  - (d) a list of all documents annexed to the submission.
3. **~~A~~In addition**, a submission by any Party with respect to any other Party shall be:
  - (a) supported by corroborating information;
  - (b) sent to the diplomatic agent of the Party concerned by the secretariat.

## Rule 16

1. Comments by the Party concerned on information relevant to the question of implementation, the decision to proceed, any other decision of the relevant branch, and further written submissions by the Party concerned on preliminary findings of the enforcement branch shall set out:
  - (a) the name of the Party concerned;
  - (b) a precise statement of its position on the information, decision or question of implementation under consideration, including the grounds therefor;
  - (c) any additional information;
  - (d) the action requested from the branch;
  - (e) an identification of any information provided by the Party that it requests not to be made available to the public; and
  - (f) a list of all documents annexed to the submission **or comment**.

## Rule 17

1. Any submission or comment shall be signed by the diplomatic agent of the Party and be delivered to the secretariat in hard copy and by electronic means.
2. Copies of any relevant documents in support of the submission or comment shall be annexed to it. The Party concerned shall be as restrained as possible in selecting documents to be annexed to the submission or comment.



### **Rule 18**

1. The bureau shall, within seven days from receipt of a question of implementation, decide on its allocation to the appropriate branch.
2. The secretariat shall forthwith notify members and alternate members of the branch of the question of implementation and send them all relevant materials.

### **Rule 19**

1. Within five days from receipt of a question of implementation by the members and alternate members of the branch, members of the branch shall communicate with the secretariat using electronic means to give an indication whether to proceed or not to proceed with the question of implementation. During this period, they may also request deliberations on the question of implementation.
2. A decision to proceed shall include:
  - (a) a statement identifying the question of implementation;
  - (b) reference to information on which the question of implementation is based; and
  - (c) a draft schedule for the further consideration of the question and, in the case of the enforcement branch, the date available for a hearing.
3. A decision not to proceed shall include the reasons for not proceeding with the question of implementation.

### **Rule 20**

If a branch decides to seek expert advice, it shall:

- (a) identify the experts to be consulted;
- (b) define the question on which expert opinion is sought; and
- (c) lay down the procedures to be followed.

### **Rule 21**

1. An intergovernmental organization or a nongovernmental organization admitted as an observer by the United Nations Framework Convention on Climate Change may furnish, on its own initiative, information relevant to a question of implementation before a branch and shall do so in the form of a written statement to be filed with the secretariat before the adoption of the final decision.
2. Such information shall not be considered part of the file on the question of implementation and shall not require comment from the Party concerned, unless the branch decides otherwise. The secretariat shall inform members and alternate members of the branch and the Party concerned of the information.

### **Rule 22**

1. A preliminary finding or a final decision shall contain:

- (a) the name of the Party concerned;
- (b) the statement identifying the question of implementation, including provisions of the Kyoto Protocol and decision 27/CMP.1 that form the basis for raising the question of implementation;
- (c) a description of the information considered in the deliberations, including a confirmation that the Party concerned was given an opportunity to comment in writing on all information considered;
- (d) a summary of the proceedings, including an indication, in the case of a final decision of the enforcement branch, of whether its preliminary finding or any part of it as specified is confirmed;
- (e) conclusions and reasons;
- (f) the place and date of the decision; and
- (g) the members who participated in the adoption of the decision.

2. The Party concerned may submit written comments on a decision that is final to the secretariat within forty-five days from receipt of the notification of the decision. The secretariat shall circulate these comments to the members and alternate members of the relevant branch, and they shall also be included in the Committee's annual report to the Conference of the Parties serving as the meeting of the Parties to the Kyoto Protocol.

## **11. PROVISIONS FOR THE FACILITATIVE BRANCH**

### **Rule 23**

1. A Party concerned shall be given an opportunity to make a presentation before the facilitative branch and to provide comments in writing on the preliminary conclusions of the facilitative branch.
2. The facilitative branch shall endeavor to complete its consideration within twenty weeks. The facilitative branch may extend this timeframe as appropriate.

## **12. PROVISIONS FOR THE ENFORCEMENT BRANCH**

### **Rule 24**

1. A request for a hearing by the Party concerned shall include:
  - (a) reasons for requesting a hearing;
  - (b) a description of the issues that it proposes to raise and any documents that it intends to discuss during the hearing; and
  - (c) the names and qualifications of any individuals whose expert testimony or opinion it will present at the hearing.

~~2. The Party concerned, when choosing individuals to represent it during the hearing, should refrain from nominating individuals who were members or alternate members of the Committee in the three years preceding the date of the submission.~~

### **Rule 25**

1. Any referral of a question of implementation to the facilitative branch shall be made through a decision by the enforcement branch with a statement identifying the question of implementation and the information on which the question is based.
2. A question of implementation referred by the enforcement branch to the facilitative branch shall not require a preliminary examination.

### **13. EXPEDITED PROCEDURES FOR THE ENFORCEMENT BRANCH**

#### **Rule 26**

1. When the enforcement branch receives a report from the expert review team indicating that there is no longer a question of implementation with respect to the eligibility of the Party concerned, the enforcement branch shall, within three weeks from receipt of the report, decide to reinstate the eligibility of the Party concerned, unless it considers that there continues to be a question of implementation.
2. In the case of a request submitted directly to the enforcement branch by a Party concerned to reinstate its eligibility, the enforcement branch shall, within twenty weeks from receipt of the request, decide to reinstate the eligibility of the Party concerned or decide that there continues to be a question of implementation.

#### **Rule 27**

In case of a disagreement relating to adjustments to inventories and corrections to the compilation and accounting database, the enforcement branch shall ~~meet for deliberations~~ **consider the case** within three weeks of being informed in writing of such disagreement and ~~at within~~ that time, may adopt a decision to seek expert advice.

### ***Part 3: General Provisions***

### **14. AMENDMENT**

#### **Rule 28**

Any amendment of these rules approved by the plenary shall be submitted to the Conference of the Parties serving as the meeting of the Parties to the Kyoto Protocol for adoption.

### **15. WORKING ARRANGEMENTS**

#### **Rule 29**

1. The plenary may elaborate and adopt further working arrangements on electronic decision-making, expert advice, and expedited procedures for the enforcement branch, as necessary and appropriate.
2. Any such working arrangements shall be included in the annual report of the Committee to the Conference of the Parties serving as the meeting of the Parties to the Kyoto Protocol.

## **16. OVERRIDING AUTHORITY**

### **Rule 30**

In the event of a conflict between any provision in these rules and any provision in the Kyoto Protocol or decision 27/CMP.1, the provision of the Protocol or the decision, as the case may be, shall prevail.

-----

Dear Elsa,

Please find attached my comments regarding the Draft Rules of Procedure to be discussed at the third meeting of the compliance committee.

Best regards,  
Bernard Namanya



comments on working doc. 3 meeting.doc

## COMMENTS BY BERNARD NAMANYA ON THE WORKING PAPER

### 1. Arrangement of Definitions

I suggest that the definitions be arranged alphabetically.

### 2. Definition of the word “Branch” [Rule 2 (c)]

In decision 27/CMP 1, the Facilitative Branch is set out in section IV while the Enforcement Branch is set out in section V. I suggest that the sentence should be re-arranged such that the Facilitative Branch comes before Enforcement Branch.

As currently worded, it may suggest that the Enforcement Branch is set out in section IV and the Facilitative Branch in section V which is not the case.

### 3. Agenda [Rule 7(3)]

I suggest that the word “shall” in the second line of Rule 7(3) should be replaced with “may”. Supposing a member proposes an item to the agenda which is not substantive and is not worthy of discussion, must it be included on the agenda?

### 4. Meetings and Deliberations [Rule 9(2)]

Under paragraph 2 of section VIII of decision 27/CMP 1, **a party concerned** shall not be present during the elaboration and adoption of a decision of the branch.

There is an attempt by the current wording of Rule 9(2) to capture the intent of paragraph 2 of section VIII of decision 27/CMP 1. However, this attempt is betrayed by the use of the word “closed” in the second line of Rule 9(2).

According Rule 2(m) of the draft rules of procedure, “closed” means only members and alternate members, secretariat officials, **representatives of the party concerned**, and any individual invited by the plenary or a branch may be present, observe or hear the proceedings.

I therefore, suggest that either the definition of the word “closed” should be re-worded or Rule 2(m) should be re-worded.

This is necessary to avoid contradicting paragraph 2 of section VIII of decision 27/CMP 1.

### 5. Meetings and Deliberations [Rule 10 (3)]

I suggest that the above Rule be re-worded to capture when a member is deemed to have received a communication sent to him by electronic means ( i.e. Is it upon receipt of written confirmation from the member that the communication has been delivered?).

### 6. General Provisions for the Branches [Section 10]

**Diplomatic Agent---**Do all parties to the Kyoto Protocol have missions accredited to the Federal Republic of Germany? Supposing a party to the Kyoto Protocol does not have a mission accredited to Germany?