



Procedures and practices relating to conflict of interest in bodies constituted under other multilateral environmental agreements and other relevant United Nations bodies

Note by the secretariat

I. Introduction

A. Mandate

1. At its seventh meeting, the plenary of the Compliance Committee requested the secretariat to prepare a note on the procedures and practices relating to conflict of interest in bodies constituted under other multilateral environmental agreements (MEAs) and other relevant United Nations bodies, including those in the field of human rights.¹

B. Scope of the note

2. This note describes the procedures relating to conflict of interest in a selected number of bodies constituted under MEAs, including technical and scientific committees as well as those having an implementation or compliance related function. The note also describes conflict of interest procedures in other relevant United Nations bodies, in particular committees established under various human rights agreements that have a monitoring or oversight function. In some cases examples of the application of the procedures are provided, where this information is available.

C. Possible action by the plenary of the Compliance Committee

3. The plenary may wish to consider the information in this note and take any action it deems appropriate.

II. Procedures and practices relating to conflict of interest in bodies constituted under other multilateral agreements

**A. Stockholm Convention on Persistent Organic Pollutants
(Stockholm Convention)
Persistent Organic Pollutants Review Committee**

4. By decision SC-1/7, the first Conference of the Parties (COP) to the Stockholm Convention established the Persistent Organic Pollutants Review Committee (POPRC) and set out its terms of reference in the annex to the decision. Article 6 of the Stockholm Convention sets out the general functions of the POPRC, namely, the review of chemicals that have been proposed for listing in Annex A, B or C to the Convention. Chemicals that are listed in the Annexes to the Stockholm Convention are subject to strict measures.²

¹ CC/7/2010/5, paragraph 9.

² These measures include reducing or eliminating releases from intentional and unintentional production and use and reducing or eliminating releases from stockpiles and wastes. See Articles 3, 5 and 6 of the Stockholm Convention.



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5. Members of the POPRC are government designated experts.³ In accordance with decision SC-1/7, each member and invited expert to the POPRC is required to sign a declaration of interest as set out in decision SC-1/8 prior to participating in the work of the POPRC.⁴ The COP decides on individual conflict of interests concerning a member, while the POPRC decides on individual conflict of interest concerning invited experts.⁵

6. Decision SC-1/8 sets out detailed rules of procedure for preventing and dealing with conflict of interest relating to activities of the POPRC. Such rules are to safeguard confidence in the integrity of the process of work, while encouraging experienced and competent persons to accept membership of the POPRC. In accordance with decision SC-1/8, possible experts are required to submit a declaration of interest form, which is subject to discussion between the secretariat and Government should any clarifications as to the suitability of the expert be required.⁶ The secretariat may refer the matter to the Bureau of the COP who shall review and make a recommendation to the Government. If a disagreement persists, the Government may take the matter to COP.

7. The rules of procedure set out a number of requirements on the members of the POPRC, e.g. to perform their official duties and arrange their personal affairs in such a manner that public trust in the integrity, objectivity and impartiality of the POPRC are preserved and enhanced and to exercise due care, diligence and skill that a reasonably prudent person would exercise in comparable circumstances.⁷

8. In addition, the rules of procedure recognise the importance of avoiding even the appearance of a conflict by deciding that, to avoid the possibility or appearance that members might receive preferential treatment, members shall not seek preferential treatment for themselves or third parties or act as paid intermediaries for third parties in dealings with the POPRC.⁸ Furthermore, each member must disclose, on an annual basis, activities, including business or financial interests, which might call into question their ability to discharge their duties and responsibilities objectively.⁹

9. In terms of dealing with an individual case of possible conflict of interest, should the secretariat be of the opinion that a situation of a conflict of interest could arise or has arisen, the secretariat will discuss the issue with the expert and where appropriate with the designating Government. The Bureau of the COP may recommend to the COP the temporary suspension of the participation of the expert in all activities of the POPRC.¹⁰

³ Decision SC-1/7, paragraph 4.

⁴ Decision SC-1/7, paragraph 15.

⁵ Decision SC-1/7, paragraphs 16 and 17.

⁶ Decision SC-1/8, paragraph 7. In this regard, the COP decided that Governments have the primary responsibility in ensuring compliance with this decision and when designating experts for appointment, Governments shall exercise due diligence in order to prevent potential or actual situations of conflict of interest (see para. 2 of decision SC-1/8).

⁷ Decision SC-1/8, paragraph 3.

⁸ Decision SC-1/8, paragraph 4.

⁹ Decision SC-1/8, paragraph 5.

¹⁰ Decision SC-1/8, paragraph 7(f). In this context, the reference to 'expert' means an expert designated by a Government to the POPRC.



10. Furthermore, the annex to decision SC-1/8, defines conflict of interest, as follows:
- “‘conflict of interest’ means that the expert or his or her partner, or the administrative unit with which the expert has an employment relationship, has a financial or other interest that could unduly influence the expert’s position with respect to the subject matter being considered”.
11. In addition, it provides that:
- “an apparent conflict of interest exists when an interest would not necessarily influence the expert but could result in the expert’s objectivity being questioned by others. A potential conflict of interest exists with respect to any interest which any reasonable person could be uncertain as to whether or not it should be reported”.
12. The annex also provides an indicative list of conflict of interest situations, for example an employment, consultancy, directorship or other position held during the last four years, whether or not paid, in any commercial entity which has an interest in the subject matter of the meeting or work.¹¹

**B. Montreal Protocol on Substances that Deplete the Ozone Layer (Montreal Protocol)
The Technological and Economic Assessment Panel**

13. By decision VIII/9, the eighth Meeting of the Parties (MOP) to the Montreal Protocol approved the terms of reference and code of conduct for the Technological and Economic Assessment Panel (TEAP), which are set out in Annex V to the report of the eighth MOP. The TEAP undertakes the tasks specified in Article 6 of the Montreal Protocol, namely, the review of control measures set out in Article 2. The TEAP analyses and presents technical information, as well as technical and economic information relevant to policy. It does not evaluate policy issues; recommend policy or judge the merit or success of national plans, strategies, or regulations.¹²
14. The terms of reference require members of the TEAP to function on a personal basis as experts, irrespective of the source of their nomination and to accept no instructions from, nor function as representatives of Governments, industries, NGOs or others.¹³
15. The code of conduct provides that a high standard of conduct is expected of members in discharging their functions and establishes a series of guidelines.¹⁴ The purpose of the code of conduct is to protect members from conflicts of interest and enhance public confidence in the integrity of the process while encouraging experienced and competent persons to accept TEAP membership. The guidelines contain many of the points set out in decision SC-1/8 of the Stockholm Convention.
16. Paragraphs 5 and 6 of the code of conduct have been amended by Decision XVIII/19, concerning guidelines for disclosure of interest for groups such as TEAP and its technical options committee. The amendments clarify disclosure requirements for members. In particular, the annex to Decision XVIII/19 sets out an illustrative list of the types of interest that should be disclosed, for example, the provision of advice on significant issues to a government with respect to its

¹¹ Decision SC-1/8, section on ‘conflict of interest’ in the annex.

¹² Paragraph 1 to Annex V of the report of the eighth meeting of the MOP, UNEP/OzL. Pro. 8/12.

¹³ Paragraph 3.5 to Annex V of the report of the eighth meeting of the MOP, UNEP/OzL. Pro. 8/12.

¹⁴ Paragraph 5 to Annex V of the report of the eighth meeting of the MOP, UNEP/OzL. Pro. 8/12.



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implementation of the Montreal Protocol or engaging in the development of significant policy positions of a government for a Montreal Protocol meeting. A list of the disclosure made by members of the TEAP is posted on the ozone secretariat's website.¹⁵ Furthermore, Decision XVIII/19 provides that:

“a conflict of interest would only arise when an interest of a Technology and Economic Assessment Panel, a technical options committee, or a temporary subsidiary body member, his or her personal partner or dependant would influence the expert's work as a member with respect to the subject matter being considered.

Should there be a likelihood of a conflict of interest, a member shall take appropriate action. Such action could include seeking the advice of the co-chair or not fully participating in the determination of an issue or not participating at all in the determination of an issue.

The co-chair(s) shall seek to avoid conflicts of interest. This could include requesting a member to take appropriate action, such as requesting a member to take no role or a restricted role in the determination of an item. In the case of a serious conflict of interest, where a member has been nominated by a Party, that Party shall be advised by the co-chair(s) of the conflict at the earliest opportunity. Cases of conflicts or likely conflicts of interest relating to the co-chairs should be raised with the President of the Meeting of the Parties”.¹⁶

C. Aarhus Convention on access to information, public participation in decision-making and access to justice in environmental matters (Aarhus Convention) Compliance Committee

17. By decision 1/7, the first MOP of the Aarhus Convention established a Compliance Committee for the review of compliance by the Parties with their obligations under the Convention.

18. The Committee is composed of members who serve in their personal capacity and shall be of a high moral character.¹⁷ Before taking up his or her duties on the Committee, each member shall make a solemn declaration in a meeting of the Committee that he or she will perform his or her functions impartially and conscientiously.¹⁸

19. At its first meeting, the Committee agreed

“that ‘normal principles’ of conflict of interest would apply to the Committee. This would imply that, in a case where a Committee member found himself or herself faced with a possible or apparent conflict of interest, that member would be expected to bring the issue to the Committee's attention and decision before consideration of that particular matter. The Committee agreed that being a citizen of the State whose compliance was to be discussed would not in itself be considered as a conflict of interest”.¹⁹

20. At its second meeting, the Committee agreed that members should refer individuals seeking advice to the website or secretariat to avoid offering specific advice, which could in some cases lead

¹⁵ See <http://ozone.unep.org/Assessment_Panels/TEAP/teap-disclosure.shtml>.

¹⁶ Decision XVIII/19, paragraph 1.

¹⁷ Annex to decision 1/7, paragraphs 1 and 2.

¹⁸ Annex to decision 1/7, paragraph 11.

¹⁹ MP.PP/C.1/2003/2, paragraph 22.



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to a conflict of interest.²⁰ The Committee, at its fifth meeting, agreed that any member considered to have a possible conflict of interest would be treated from the outset and throughout the procedure in the same manner as an observer.²¹ The Committee has also considered the issue of conflict of interest in the context of members carrying out capacity building activities, such as expert consultants. At its sixteenth meeting, the Committee

“agreed that participation of members in their individual capacities in such activities did not in itself create a conflict of interest, but that it was possible that in specific individual cases involvement in some activities might lead to a conflict of interest at a later stage (e.g. expert assistance in the development of relevant legislation where the specific act subsequently becomes a subject of review by the Committee). It agreed, however, that should such situations arise, the standard procedures would apply and the individual member concerned would be expected to notify the Committee of any potential conflict of interest”.²²

21. The Committee has also had practical experience of handling a number of possible conflict of interest situations. The United Kingdom alleged that a member of the Committee had a conflict of interest with respect to two communications relating to it.²³ The alleged conflict arose in that the husband of a member made an intervention as an observer at the twenty-fourth meeting of the Committee in relation to the communications without the personal relationship having been disclosed to those present at the meeting.

22. On becoming aware of the allegation, the Committee invited and received reaction from the member concerned, who was of the view that a public intervention by an observer did not create a conflict. She nonetheless offered to withdraw from the deliberations of the communications in question because the United Kingdom’s intervention questioned the Committee’s procedures and reputation. Both the member concerned and the United Kingdom were informed that the matter would be considered at the twenty-fifth meeting of the Committee.

23. A draft statement prepared by the Committee in closed session, without the member concerned being present, stated that the Committee considered that the member concerned should not participate in the Committee’s preparation of findings with respect to the two communications in question, as well as to a third communication as a further precaution. The statement was read out prior to the consideration of the communications and comments sought from the United Kingdom, the communicants and observers.

24. In the following discussion, the Committee, at the United Kingdom’s request, clarified that the member concerned had participated in a brief initial discussion on the substance of the two communications concerned held in closed session. The Committee indicated that any discussions prior to the point of her withdrawal had been of a very preliminary nature, to the extent that they could not reasonably be considered to ‘taint’ the findings that would be later adopted.

25. The United Kingdom reiterated its concerns about the alleged conflict of interest and indicated that it considered that the incident had tainted not only any future findings with respect to the two communications in question, but also with respect to the third communication referred to in the draft statement. The Committee noted the statement made by the United Kingdom and finalized

²⁰ MP.PP/C.1/2003/4, paragraph 8.

²¹ MP.PP/C.1/2004/6, paragraph 53.

²² ECE/MP.PP/C.1/2007/4.

²³ ECE/MP.PP/C.1/2009/6, paragraphs 6 to 11.



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its statement, which maintained that there can be no grounds for concern that the findings or conclusions in the cases will be 'tainted' because of the participation of the member concerned. This statement, plus the statement by the United Kingdom, were attached to the report of the twenty-fifth meeting of the Committee.

26. At its twenty-sixth meeting, the same member concerned brought to the attention of the Committee that she was personally acquainted with the representative of the communicant and that she had had a professional relationship with the representative several years ago. The Committee took note of the information and considered that there was no conflict of interest.²⁴ At the same meeting another member indicated that he was personally acquainted with the Party concerned and communicant of another communication. The Committee took note of the information and the Party concerned and communicant indicated that they had no objection to the member's full participation in the matter.²⁵

27. At its twenty-seventh meeting, a member announced to the Committee that the Government of Georgia had proposed him as a candidate for nomination to the proposed Compliance Committee of the Pollutant Release and Transfer Registers (PRTR) Protocol and that he would withdraw from the Committee's decision-making in relation to a communication involving Georgia in order to avoid any possible conflict of interest. The Committee accepted the notification by the member and confirmed that it had not engaged in any deliberations on the findings of the communication at issue since the Georgian Government had proposed him as a candidate for the PRTR Compliance Committee.²⁶

D. The Cartagena Protocol on Biosafety to the Convention on Biodiversity (Biosafety Protocol) Compliance Committee

28. By decision BS-1/7, the first Conference of the Parties meeting as Parties to the Biosafety Protocol (COPMOP) established a Compliance Committee with the objectives, inter alia, of promoting compliance with the provisions of the Biosafety Protocol and to address cases of non-compliance.

29. Members of the Committee serve objectively and in their personal capacity.²⁷ The rules of procedure of the Committee²⁸ make specific provision for conflict of interest. Rule 11 states that

"Each member of the Committee shall, with respect to any matter that is under consideration by the Committee, avoid direct or indirect conflicts of interest. Where a member finds himself or herself faced with a direct or indirect conflict of interest, that member shall bring the issue to the attention of the Committee before consideration of that particular matter. The concerned member shall not participate in the elaboration and adoption of a recommendation of the Committee in relation to that matter".

30. The second meeting of the COP-MOP invited the Committee to give further consideration to the issue of conflicts of interest as set out in rule 11 of the rules of procedure at its next meeting.²⁹

²⁴ ECE/MP.PP/C.1/2009/18, paragraph 27.

²⁵ ECE/MP.PP/C.1/2009/18, paragraph 21.

²⁶ ECE/MP.PP/C.1/2010.2, paragraph 18.

²⁷ Decision BS-I/7, paragraph 3 of Section II.

²⁸ See decision BS-II/1.

²⁹ UNEP/CBD/BS/COP-MOP/2/15, paragraph 59.



31. At its third meeting, the Committee considered rule 11 of the rules of procedure. In its consideration, the Committee referred to the requirement of members to serve objectively and in a personal capacity. In addition

“the Committee believed that this requirement taken together with rule 11 of the rules of procedure provide general guidance to members of the Committee with respect to conflict of interest. Therefore, it was decided that there was no need, at the moment, for the Committee to do anything as regards the rule. However, the Committee agreed to keep the issue under review in its future work”.³⁰

E. Basel Convention on the Control of Transboundary Movement of Hazardous Wastes and their Disposal (Basel Convention) Compliance Committee

32. The sixth COP to Basel Convention established a Compliance Committee to administer the compliance mechanism.³¹ The objective of the compliance mechanism is to assist Parties to comply with their obligations under the Convention and to facilitate, promote, monitor and aim to secure the implementation of and compliance with obligations under the Convention.³²

33. Members of the Committee serve objectively and in the best interests of the Convention.³³ However, there is no specific rule on conflict of interest in the terms of reference.

34. At the seventh session of the Committee, some members raised the possible difficulty of being government representatives while having the obligation to serve objectively and in the best interest of the Convention. The Committee decided that a member would have the possibility to remove himself from consideration of a certain matter by reason of a ‘potential’ conflict of interest.³⁴

³⁰ UNEP/CBD/BS/CC/3/3, paragraph 24.

³¹ Decision VI/12.

³² Paragraph 1 of the annex to Decision VI/12.

³³ Paragraph 5 of the annex to Decision VI/12.

³⁴ UNEP/CHW/CC/7/10, paragraph 17.



**F. Protocol to the London Convention on the Prevention of Marine Pollution
by Dumping Wastes and Other Matter (London Protocol)
Compliance Group**

35. The second MOP to the London Protocol adopted ‘Compliance Procedures and Mechanisms pursuant to Article 11 of the 1996 Protocol to the London Convention 1972’. The members of the Compliance Group are required to serve objectively and in the interest of promoting compliance with the London Protocol.

36. The Group reviewed the issue of conflict of interest at its first meeting and recommended that:

“a flexible statement on how these issues will be handled by the Group would be appropriate for the time being, as suggested in the paragraph below:

Each member of the Compliance Group shall, with respect to any matter that is under consideration by the Group, avoid perceived or actual conflict of interest. Where a member finds himself or herself faced with a perceived or actual conflict of interest, that member shall bring the issue to the attention of the Group before consideration of that particular matter. Where the Group decides that there is a perceived or actual conflict of interest, the concerned member shall not participate in the elaboration and adoption of the recommendation of the Group in relation to that matter”.³⁵

37. The Group was of the view that it would be a conflict of interest for a member to participate in the consideration of a matter involving the country that nominated the member.

38. The third MOP to the London Protocol accepted the report in general and the recommendation referred to above.

III. Procedures and practices relating to conflict of interest in bodies constituted under other relevant United Nations bodies

**A. International Covenant on Civil and Political Rights (the Covenant)
Human Rights Committee**

39. Article 28 of the Covenant establishes the Human Rights Committee. This Committee monitors implementation of the Covenant through examination of State Party reports and addresses its concerns and recommendations to the State Party in the form of ‘concluding observations’. The Committee also considers inter-state complaints and individual complaints under the First Optional Protocol.

40. The Committee is composed of members who serve in their personal capacity.³⁶ Article 16 of the rules of procedure of the Committee require members to give the following solemn undertaking in open Committee before assuming duties as a member:

“I solemnly undertake to discharge my duties as a member of the Human Rights Committee impartially and conscientiously”.

³⁵ Report of the third MOP of the Protocol (LC 30/16), paragraph 5.2. of Annex 7.

³⁶ Article 28, paragraph 3, of the Covenant.



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41. Similar provisions are found in the rules of procedure of other human rights bodies, such as the Committee on Economic, Social, and Cultural Rights;³⁷ the Committee on Racial Discrimination;³⁸ the Committee on the Elimination of Discrimination against Women;³⁹ the Committee Against Torture;⁴⁰ the Committee on the Rights of the Child;⁴¹ the Committee on Migrant Workers;⁴² and the Committee on the Rights of Persons with Disabilities.⁴³

42. In addition, the Committee adopted ‘Guidelines for the exercise of their functions by members of the Human Rights Committee’, which were contained in annex III of the Report of the Human Rights Committee to the fifty-third session of the General Assembly.⁴⁴ These Guidelines provide:

“1. The independence of members of the Committee is essential. The principle of independence requires that the members are not removable during their term of office and are not subject to direction or influence of any kind, or to pressure from the State or its agencies in regard to the performance of their duties. The independence of the members is underlined by articles 28 and 38 of the Covenant and, consequently, they are not accountable to their State, but are accountable only to the Committee and their own conscience.

2. In their work under the Covenant and the Optional Protocol, members of the Committee are expected to maintain the highest standards of impartiality and integrity, and apply the standards of the Covenant equally to all States and all individuals, without fear or favour and without discrimination of any kind. They should not only be impartial, but should also appear to be so.

3. Members should avoid any action in relation to the work of the Committee which might lead to or might be seen to lead to unequal treatment between States. In particular, members should avoid any action which might give the impression that their own State was receiving treatment which was more favourable than that accorded to other States. Considering that members of the Committee can only be from a small number of states, it is important that the election of one of its nationals to the Committee should not result in, or thought to result in, either more favourable treatment for the nominating State”.

43. These Guidelines also provide guidance as to the application of these principles, for example, with respect to the consideration of a State report. In this respect, it is the practice of the Committee that a member does not participate in the examination of reports presented by his or her country. Nor

³⁷ Rule 13 of the Rules of Procedure of the Committee on Economic, Social and Cultural Rights, E/C.12/1990/4/Rev.1, 1.

³⁸ Rule 14 of the Rules of Procedures of the Committee on the Elimination of Racial Discrimination, CERD/C/35/Rev.3.

³⁹ Rule 15 of the Rules of Procedure of the Committee on the Elimination of Discrimination against Women as amended, Report of the Committee on the work of its twenty-fourth session, A/56/38.

⁴⁰ Rule 14 of the Rules of Procedure of the Committee against Torture, CAT/C/3/Rev.4, 9 August 2002.

⁴¹ Rule 15 of the Rules of Procedure of Committee on the Rights of the Child, CRC/C/4/Rev.1, 25 April 2005.

⁴² Rule 11 of the Rules of Procedure of the Committee on Migrant Workers, HRI/GEN/3/Rev.1/Add.1, 7 May 2004.

⁴³ Rule 14 of the Rules of Procedure of the Committee on the Rights of Persons with Disabilities, CRPD/C/3, third session of the Committee.

⁴⁴ A/53/40, 15 September 1998 (Vol. I).



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should a member participate in the drafting the concluding observations for his or her own country.⁴⁵ With respect to participation in communications, the guidelines provide that the member take no part formally or informally in the discussion of communications from his or her own country.⁴⁶

44. In terms of a member's relationship with Governments, the Guidelines state that:

“The appearance of impartiality of members of the Committee should not be affected by their connection with Governments. They should abstain from engaging in any functions or activities which may appear to be not readily reconcilable with the obligations of an independent expert under the Covenant. Members should abstain from participation in any political body of the United Nations or of other intergovernmental organisation concerned with human rights. They should abstain from acting as experts, consultants or counsels for any Government in a matter that might come up for consideration before the Committee”.⁴⁷

45. The Committee has also compared its functions with those of a judicial body. In its General Comment No. 33,⁴⁸ the Committee was of the view that the two bodies had important characteristics in common, namely:

“11. While the function of the Human Rights Committee in considering individual communications is not, as such, that of a judicial body, the views issued by the Committee under the Optional Protocol exhibit some important characteristics of a judicial decision. They are arrived at in a judicial spirit, including the impartiality and independence of Committee members, the considered interpretation of the language of the Covenant, and the determinative character of the decisions”.

B. Convention on the Elimination of All Forms of Discrimination against Women, Committee on the Elimination of Discrimination against Women

46. Article 17 of the Convention on the Elimination of All Forms of Discrimination against Women establishes the Committee on the Elimination of Discrimination against Women for the purpose of considering the progress made in the implementation of the Convention. At each of its sessions, the Committee reviews national reports submitted by the States Parties and comments on the report in a dialogue with the State Party concerned. The Committee also makes recommendations on any issue affecting women to which it believes the States Parties should devote more attention.

47. The Committee is composed of members who serve in their personal capacity.⁴⁹ As noted above, the rules of procedure for the Committee contain a requirement for members to give a solemn undertaking in open Committee before assuming duties as a member.

⁴⁵ A/53/40, 15 September 1998 (Vol. I), paragraphs 4 and 5 of Annex III.

⁴⁶ A/53/40, 15 September 1998 (Vol. I), paragraph 6 of Annex III.

⁴⁷ A/53/40, 15 September 1998 (Vol. I), paragraph 9 of Annex III.

⁴⁸ General Comment No 33 was adopted during the ninety-fourth session of the Human Rights Committee, CCPR/C/GC/33, Geneva, 13-31 October 2008. General Comments are the interpretation of the content of Human Rights provisions, on general issues or its methods of work.

⁴⁹ Article 17, paragraph 1 of the Convention on the Elimination of All Forms of Discrimination against Women.



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48. The Committee has developed practice to avoid the violation of the principle of independence of members of the Committee. In the Report of the Chairperson on activities undertaken between the seventeenth and eighteenth sessions of the Committee,⁵⁰ the Committee affirmed that:

“the chairpersons had recommended that members of treaty bodies should refrain from participating in any aspect of the consideration of their country’s report in order to maintain impartiality, both in substance and appearance, and that Governments should refrain from nominating persons for election to treaty bodies whose political or other functions may not be reconcilable with the obligations of independent experts”.

49. More recently, in Annex X to its report on the work of its thirtieth and thirty-first sessions,⁵¹ the Committee gave an “Overview of the current working methods of the Committee on the Elimination of Discrimination against Women” where it underlines that:

“Individual members of the Committee refrain from participating in any aspect of the consideration of the reports of the States of which they are nationals in order to maintain the highest standards of impartiality, both in substance and appearance”.⁵²

C. Convention on the Rights of the Child Committee on the Rights of the Child

50. Article 43 of the Convention on the Rights of the Child establishes a Committee on the Rights of the Child for the purpose of examining the progress made by States Parties in achieving the realization of the obligations undertaken in the Convention. The Committee examines each report and addresses its concerns and recommendations to the State Party in the form of ‘concluding observations’.

51. The members of the Committee serve in their personal capacity.⁵³ As noted above, the rules of procedure for the Committee contain a requirement for members to give a solemn undertaking in open Committee before assuming duties as a member.

52. In its report on their seventh session, the Committee noted that:

“In the light of the Convention on the Rights of the Child, namely its article 43, as well as of its provisional rules of procedure (CRC/C/4), in particular rules 11, 14 and 15, the members of the Committee emphasized, at the second session, the importance they attach to the question of the independence of experts. They recalled the provision of the Convention which states that members shall serve in their personal capacity; they reaffirmed that their mandate derives from the provisions and principles of the Convention on the Rights of the Child and that the Committee members are solely accountable to the children of the world. It was pointed out that, although elected by States parties’ representatives, members do not represent their country, Government or any other organization to which they may belong. In view of the relevance of this consideration, and in order to ensure the principle of impartiality,

⁵⁰ Contained in the Report of the Committee on the Elimination of Racial Discrimination against Women on the work of its eighteenth and nineteenth sessions, 21 August 1998, A/53/38/Rev.1.

⁵¹ Report of the Committee on the Elimination of Racial Discrimination Against Women on the work of its thirtieth session (12-30 January 2004) and thirty-first session (6-23 July 2004), A/59/38.

⁵² See above report, paragraph 20.

⁵³ Article 43, paragraph 2, of the Convention on the Rights of the Child.



the members of the Committee reiterated the desirability of not participating in the Committee's discussions during the examination of the reports submitted by their own Governments. They also recognized that, when acting in the framework of the rights of the child, there is a need to clearly distinguish between their personal or professional role and their role as members of the Committee".⁵⁴

53. An issue of impartiality and independence with respect to the work of the Committee has been raised by China. In its forty-first session, China made a comment in relation to the Committee consideration of the report of China as follows:

"The Government of China wishes to reiterate that it has all along made earnest efforts to fulfill its obligations under the Convention and respects the mandate of the Committee provided by the Convention. The Chinese Government stands for constructive cooperation with the Committee with a view to better implementing the Convention, and expects the Committee to strictly observe its objective and impartial position and to adopt a prudent approach towards the information it has received. In particular, the Committee should not cite unverified 'reports' against the State party in its concluding observations, as it may be taken advantage of by the groups and individuals with malicious agendas seeking to undermine the purposes and objectives of the Convention".⁵⁵

**D. Convention on the Elimination of all Forms of Racial Discrimination
Committee on the Elimination of Racial Discrimination**

54. Article 8 of the Convention on the Elimination of all Forms of Racial Discrimination establishes a Committee on the Elimination of Racial Discrimination that monitors implementation of the Convention. The Committee examines each State Party's report and addresses its concerns and recommendations to the State party in the form of 'concluding observations'. In addition to the reporting procedure, the Convention establishes three other mechanisms through which the Committee performs its monitoring functions: the early warning procedure, the examination of inter-state complaints and the examination of individual complaints.

55. The members of the Committee serve in their personal capacity.⁵⁶ As noted above, the rules of procedure for the Committee contain a requirement for members to give a solemn undertaking in open Committee before assuming duties as a member.

56. In its fifty-ninth session, the Committee replied to the accusations of lack of independence contained in a Report entitled 'The UN Human Rights Treaty System: Universality at the Crossroad'.⁵⁷ The Committee affirms that it "has been concerned in the past with protecting the impartiality and independence of its members and recalls in this respect its general recommendation IX, adopted in 1990, which includes the observation that 'respect for the independence of the experts is essential to secure full observance of human rights and fundamental freedoms'". It reiterates that the "Committee consists of 18 independent experts, elected by States parties, who perform their duties

⁵⁴ Report of the Committee on the Rights of the Child to the sixty-first session of the UN General Assembly, A/61/41, 15 September 2006.

⁵⁵ Report of the Committee on the Rights of the Child on its forty-first session, CRC/C/41/3, 9-27 January 2006, Annex IV.

⁵⁶ Article 8, paragraph 1, of the Convention on the Elimination of all Forms of Racial Discrimination.

⁵⁷ Anne F. Bayefsky, "The UN Human Rights treaty System: Universality at the Crossroad", Kluwer Law International, The Hague, The Netherlands.



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in accordance with a solemn declaration that they will carry out their duties ‘honorably, faithfully, impartially and conscientiously’ (article 8, paragraph 5 (b), of the Convention and rule 13, paragraph 1, of the Committee’s rules of procedure)’.⁵⁸

57. An issue of impartiality and independence was raised by Israel with respect to the work of the Committee at its sixty-second and sixty-third sessions.⁵⁹ The issue related to Decision 2(63) of the Committee on the Elimination of Racial Discrimination, where the Committee expressed its concern about Israel’s Temporary Suspension Order of May 2002 regarding family re-unification. Israel wrote to the Chair of the Committee and expressed its concern over the decision. Israel alleged that the decision was “highly politicized, demonstrating a biased approach which singles out Israel”, and affirmed that “the Committee’s decision to pre-empt and undermine the normal process of reporting, cannot be seen other than being extremely politicized and counterproductive, casting serious doubts on the Committee’s bona fides in its entire treatment of Israel. The Committee strongly rejected any allegation that it did not act with full independence and impartiality in accordance with its mandate”.

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⁵⁸ Report of the Committee on the Elimination of Racial Discrimination on the work of its fifty-eighth session (6-23 March 2001) and fifty-ninth session (30 July-17 August 2001), A/56/18, Annex VI.

⁵⁹ Report of the of the Committee on the Elimination of Racial Discrimination on the work of its sixty-second session (3-21 March 2003) and sixty-third session (4-22 August 2003), A/58/18, Annex VII.