

## Contact Group 2 - Co-facilitators proposal to streamline compilation of revised zero draft text<sup>1</sup>

This document captures the co-facilitators' suggestions to streamline the compilation of the contact group's revised zero draft text, following discussions of contact group 2 during INC3.<sup>2</sup>

### Part IV

#### 2. Implementation and compliance

**OP1** A [review] mechanism [including a Committee as a subsidiary body of the *governing body*] to [facilitate][promote] implementation of, and [promote][review] compliance with, [the][all] provisions of this *instrument*\*, including a committee, is hereby established [, to promote implementation of, and review compliance with, all provisions of this Convention].

**OP1 Alt 2** A review mechanism to facilitate and promote implementation of the future *instrument* by the parties would be established. In carrying out its tasks, the committee shall strive to avoid duplication of efforts, shall neither function as an enforcement or dispute settlement mechanism, nor impose penalties or sanctions and shall respect national sovereignty. This committee shall protect the confidentiality of the information received in confidence.

**OP2** The mechanism referred to in paragraph 1 [shall consist of a committee that] shall be [facilitative][non-punitive] [non-adversarial][expert-based] in nature [and [shall] pay particular attention to the respective national capabilities and circumstances of Parties.<sup>3</sup>][function in a manner that is [transparent][non-intrusive], non-adversarial and non-punitive and shall pay particular attention to the respective national capacities and [capabilities][circumstances] of Parties [at all stages of the review process][in particular those that are developing countries]. The committee shall also consider and provide flexibilities for the developing country parties in the light of their capacities and capabilities.]

**OP2 Bis** In carrying out its works, the committee shall strive to avoid duplication of efforts, shall neither function as an enforcement or dispute settlement mechanism, nor impose nor advise to impose penalties or sanctions, and shall respect national sovereignty.

**OP2 Ter** The Committee shall consider and provide flexibility for the developing country parties in the light of their capacities.

**OP3** The mechanism shall operate under the modalities and procedures adopted by the *governing body*\* [which shall consider the needs of developing state parties,] at its [first][second] session and shall report to the *governing body*\*.

**OP3 Alt** The supreme body of the future *instrument* also will consider the reports of this committee and advise if necessary its guidelines and/or recommendations in a manner that is facilitative, non-intrusive, non-adversarial and non-punitive and shall pay particular attention to the respective national sovereignty and capacities and capabilities of parties.

**OP3 Alt 2** [No text]

**Commented [A1]:** *Co-fac note* – this has been moved from its original location as a second paragraph in OP1Alt2 above, as its function more closely aligns with the Alts in OP2

<sup>1</sup> **Note:** Due to the significant number of submissions received, there may be some missing submissions in this version.

<sup>2</sup> **Note:** The proposals are not listed in any order of priority.

<sup>3</sup> **Note:** Adapted from the Minamata Convention, Article 15.

**OP4** The committee referred to in paragraph 1 shall [promote implementation of and review compliance with, all provisions of this *instrument*. It shall] examine [both individual and systemic] implementation [and compliance] issues [including challenged faced by developing state parties regarding implementation] and make recommendations to the *governing body*\*, as appropriate [including for the provision of effective means of implementation from developed countries to address areas of non-compliance in SIDS].<sup>4</sup>

**OP4 Alt** [No text]

**OP4 Bis** [The committee shall consist of [parties, as per guidance adopted by *Governing Body*][[15][17] members [nominated by Parties and][with recognized competence in fields relevant to this *instrument*\* [including legal or technical expertise]] to be elected [at the first meeting of][by] the *governing body*\* [striving to reflect a balance of expertise [and on the basis of]][with due consideration to] equitable geographical representation [, with [3] members [each] from the 5 regional groups of the United Nations [and 2 members from the SIDS][, taking into account the goal of gender balance]].[and thereafter in accordance with the rules of procedure approved by the *governing body*\* pursuant to paragraph 5. The members of the Committee shall have competence in a field relevant to this *instrument*\* and reflect an appropriate balance of expertise.][The committee and its members shall be independent, transparent, and free from conflicts of interest.]

**Commented [A2]: CoFac comment** – though initially proposed as part of OP4, we have determined that selection and election of members of the committee is more appropriately considered in a separate provision

**OP5** Members shall be elected to the committee to serve for a period of [X] years and for a maximum of two consecutive terms. The *governing body*\*, at its first session, shall elect nine members to the committee for an initial term of [X] years and eight members for a term of [half of X] years. Thereafter, the *governing body*\* shall elect at its relevant regular sessions nine members for a term of [X] years. The members and alternate members shall remain in office until their successors are elected.

**OP5 Alt** [No text]

**OP6** [The committee may consider issues on the basis of:]

- a. Written submissions from any Party with respect to its own compliance;
- b. [Written submission from any Party regarding another Party's compliance;]
- c. Requests from the *governing body*\*;
- d. [Information provided by the secretariat with respect to the status of submission of information [under part IV.3 on reporting on progress]]
- e. [Requests from the secretariat, based on information available to it, inter alia from national reports]
- f. [Information available to the committee, inter alia from national reports.]

**OP6 Alt** The Committee may consider issues as per guidance adopted by the *Governing Body*.

**OP6 Alt 2** [No text]

**OP7** The committee referred to in this Article shall elaborate its rules of procedure, which shall be subject to [approval][endorsement] by the *governing body*\* at its second session.<sup>5</sup> The *governing body*\* may adopt further terms of reference for the committee.

**OP 7 Bis** The Committee shall make every effort to adopt its recommendations by consensus. If all efforts at consensus have been exhausted and no consensus is reached, such recommendations shall as a last resort be

<sup>4</sup> Note: Adapted from the Minamata Convention, Article 15.

<sup>5</sup> Note: The rules of procedure may include provisions for non-compliance.

adopted by a [two thirds][three fourths] majority vote of the members present and voting, [rounded up,] based on a quorum of [half][two thirds] of the members.

**PART IV. ALT** [Bracket entire provision]

**PART IV ALT 2**

1. A mechanism to facilitate implementation of, and promote compliance with, the provisions of this *instrument\**, including a committee, is hereby established.
2. The mechanism referred to in paragraph 1 shall be facilitative in nature and shall pay particular attention to the respective national capabilities and circumstances of Parties.
3. The mechanism referred to in paragraph 1 shall consist of a committee that shall be expert-based and facilitative in nature and function in a manner that is transparent, non-adversarial and non-punitive. The committee shall pay particular representing a progression compared to the Party's previous national plan.
4. Each Party shall include information on the implementation of its national plan towards achieving the objective of this *instrument\** in its national reports pursuant to [part IV.3 on reporting on progress]."

## Appendix 1

### Contact Group 2 - Co-facilitators proposal to streamline compilation of revised zero draft text<sup>6</sup> - with changes tracked

To aid transparency, this appendix shows the co-facilitators' suggestions to streamline the compilation of the contact group's revised zero draft text. Suggestions are shown as tracked changes, against the most recent compilation text published on the INC3 webpage on 18 November 2023.

#### Part IV

##### 2. Implementation and compliance

1. A [review] mechanism [including a Committee as a subsidiary body of the governing body] to [facilitate][promote] implementation of, and [promote][review] compliance with, [the][all] provisions of this *instrument*\*, including a committee, is hereby established[, to promote implementation of, and review compliance with, all provisions of this Convention].

~~*OP1-Alt A* A mechanism including a Committee as a subsidiary body of the governing body\* to promote facilitate implementation of, and promote review compliance with, the all provisions of this instrument\*; including a committee, is hereby established.~~

*OP12-Alt 2* A review mechanism to facilitate and promote implementation of the future instrument by the parties would be established. In carrying out its tasks, the committee shall strive to avoid duplication of efforts, shall neither function as an enforcement or dispute settlement mechanism, nor impose penalties or sanctions and shall respect national sovereignty. This committee shall protect the confidentiality of the information received in confidence.

~~*OP-Alt 3* A mechanism, including a Committee as a subsidiary body of the governing body\*, is hereby established to promote implementation of, and review compliance with, all provisions of this Convention.~~

~~*OP-Alt 4* A mechanism to facilitate and promote implementation of, and promote compliance with, the provisions of this instrument\*, including a committee, is hereby established.~~

2. The mechanism referred to in paragraph 1 [shall consist of a committee that] shall be [facilitative][non-punitive] [non-adversarial][expert-based] in nature [and [shall] pay particular attention to the respective national capabilities and circumstances of Parties.<sup>7</sup>][function in a manner that is [transparent][non-intrusive], non-adversarial and non-punitive and shall pay particular attention to the respective national capacities and [capabilities][circumstances] of Pparties [at all stages of the review process][in particular those that are developing countries]. The committee shall also consider and provide flexibilities for the developing country parties in the light of their capacities and capabilities.]

~~The committee shall be facilitative, expert-based in nature and function in a manner that is non-intrusive, non-adversarial and non-punitive and shall pay particular attention to the respective national capacities and capabilities of parties at all stages of the review process. The committee shall also consider and provide flexibilities for the developing country parties in the light of their capacities and capabilities.~~

~~*OP2-Alt* The mechanism referred to in paragraph 1 shall be facilitative, non-punitive and non-adversarial in nature and shall pay particular attention to the respective national capabilities and circumstances of Parties.~~

**Commented [A3]:** *Co-fac note* – this has been moved from its original location as a second paragraph in OP1Alt2 above, as its function more closely aligns with the Alts in OP2

<sup>6</sup> Note: Due to the significant number of submissions received, there may be some missing submissions in this version.

<sup>7</sup> Note: Adapted from the Minamata Convention, Article 15.

~~*OP2 Alt 2* The mechanism referred to in paragraph 1 shall be facilitative non-punitive and facilitative in nature and shall pay particular attention to the respective national circumstances and capabilities of parties.~~

~~*OP2 Alt 3* The mechanism, including the Committee, shall be facilitative in nature.~~

~~*OP2 Alt 4* The mechanism referred to in paragraph 1 shall be facilitative in nature, function in a manner that is transparent, non-adversarial and non-punitive, and shall pay particular attention to the respective national capabilities and circumstances of Parties, in particular those that are developing countries.~~

~~*OP2 Alt 5* Regarding para 2 we support it by adding some words as follows: The mechanism referred to in paragraph 1 shall be expert based and facilitative in nature and function in a manner that is non-intrusive, non-adversarial and non-punitive and shall pay particular attention to the respective national capabilities and circumstances of Parties at all stages of the review process.<sup>8</sup>~~

~~*OP3 Alt 2* The mechanism referred to in paragraph 1 shall consist of a committee that shall be expert based and facilitative in nature and function in a manner that is transparent, non-adversarial and non-punitive. The committee shall pay particular attention to the respective national capabilities and circumstances of Parties.~~

*OP2 Bis* In carrying out its works, the committee shall strive to avoid duplication of efforts, shall neither function as an enforcement or dispute settlement mechanism, nor impose nor advise to impose penalties or sanctions, and shall respect national sovereignty.

The Committee shall consider and provide flexibility for the developing country parties in the light of their capacities.

- The mechanism shall operate under the modalities and procedures adopted by the governing body\* [which shall consider the needs of developing state parties.] at its [first][second] session and shall report to the governing body\*.

~~*OP3 Alt* The mechanism shall operate under the modalities and procedures, which shall consider the needs of developing state parties, adopted by the governing body\* at its first session and shall report to the governing body\*.~~

*OP3 Alt 3* The supreme body of the future instrument also will consider the reports of this committee and advise if necessary its guidelines and/or recommendations in a manner that is facilitative, non-intrusive, non-adversarial and non-punitive and shall pay particular attention to the respective national sovereignty and capacities and capabilities of parties.

~~*OP3 Alt 4* The mechanism shall operate under the modalities and procedures adopted by the governing body\* at its first second session and shall report to the governing body\*.~~

*OP3 Alt 4.5* No text

- ~~The committee referred to in paragraph 1 shall [promote implementation of and review compliance with, all provisions of this instrument. It shall] examine [both individual and systemic] implementation [and compliance] issues [including challenged faced by developing state parties regarding implementation] and make recommendations to the governing body\*, as appropriate [including for the provision of effective means~~

<sup>8</sup>Note: Adapted from the Minamata Convention, Article 15.

**Commented [A4]:** Co-fac comment – though this was submitted as a proposal in relation to OP3, in our view this is more closely aligned with the proposals submitted in relation to OP2

~~of implementation from developed countries to address areas of non-compliance in SIDS].<sup>9</sup> *OP4-Alt* The committee referred to in paragraph 1 shall examine both individual and systemic implementation compliance issues and make recommendations to the Governing body as appropriate. The Committee shall consist of parties, as per guidance adopted by Governing Body.~~

~~*OP4-Alt 2* The committee referred to in paragraph 1 shall examine both individual and systemic implementation and compliance issues and make recommendations to the governing body\*, as appropriate. The committee shall consist of 17 members with recognized competence in fields relevant to this instrument\*, including legal or technical expertise, to be elected by the governing body\* striving to reflect a balance of expertise and on the basis of equitable geographical representation, with three members each from the five regional groups of the United Nations and two members from the SIDS, taking into account the goal of gender balance.~~

~~*OP4-Alt 3* The committee referred to in paragraph 1 shall examine both individual and systemic implementation and compliance issues and make recommendations to the governing body\*, as appropriate, including for the provision of effective means of implementation from developed countries to address areas of non-compliance in SIDS.~~

~~*OP4-Alt 4* taking into account the goal of gender balance. The committee and its members shall be independent, transparent, and free from conflicts of interest.~~

~~*OP4-Alt 5* The Committee shall promote implementation of, and review compliance with, all provisions of this instrument\*. The Committee shall examine both individual and systemic issues of implementation and compliance and make recommendations, as appropriate, to the governing body\*.~~

~~*OP4-Alt 5* The committee referred to in paragraph 1 shall examine both individual and systemic implementation and compliance issues and make recommendations to the governing body\*, as appropriate.<sup>10</sup> The committee shall consist of 17 members with recognized competence in fields relevant to this instrument\* to be elected by the governing body\* striving to reflect a balance of expertise and on the basis of equitable geographical representation, with three members each from the five regional groups of the United Nations and two members from the SIDS, taking into account the goal of gender balance.~~

*OP4-Alt 6* No text

~~*OP4Bis* The committee shall consist of [parties, as per guidance adopted by Governing Body][17][15] members [nominated by Parties] with recognized competence in fields relevant to this instrument\* [including legal or technical expertise] to be elected [at the first meeting of][by] the governing body\* striving to reflect a balance of expertise and [on the basis of][with due consideration to] equitable geographical representation, with [three] members [each] from the five regional groups of the United Nations [and two members from the SIDS] and thereafter in accordance with the rules of procedure approved by the governing body\* pursuant to paragraph 5. The members of the Committee shall have competence in a field relevant to this instrument\* and reflect an appropriate balance of expertise.], taking into account the goal of gender balance. [The committee and its members shall be independent, transparent, and free from conflicts of interest.]~~

~~*OP4Bis-Alt 1* The Committee shall consist of 15 members, nominated by Parties and elected by the governing body\*, with due consideration to equitable geographical representation based on the five regions of the United Nations; the first members shall be elected at the first meeting of the governing body\* and thereafter in accordance with the rules of procedure approved by the governing body\* pursuant to paragraph 5; the members of the Committee shall have competence in a field relevant to this instrument\* and reflect an appropriate balance of expertise.~~

~~*OP4-TerAlt 4* taking into account the goal of gender balance. The committee and its members shall be independent, transparent, and free from conflicts of interest.~~

**Commented [A5]:** CoFac comment – though initially part of OP4, we have determined that this more appropriately sits in a separate provision

<sup>9</sup> Note: Adapted from the Minamata Convention, Article 15.

<sup>10</sup> Note: Adapted from the Minamata Convention, Article 15.

~~5.4.~~ Members shall be elected to the committee to serve for a period of [X] years and for a maximum of two consecutive terms. The *governing body*\*, at its first session, shall elect nine members to the committee for an initial term of [X] years and eight members for a term of [half of X] years. Thereafter, the *governing body*\* shall elect at its relevant regular sessions nine members for a term of [X] years. The members and alternate members shall remain in office until their successors are elected.

*OP5 Alt* No text

~~6.5.~~ [The committee may consider issues on the basis of:

- g. Written submissions from any Party with respect to its own compliance;

**Additional options**

- h. [Written submission from any Party regarding another Party's compliance;]

~~*OP6b Alt* No text~~

- i. Requests from the *governing body*\*;

- ~~j.~~ [Information provided by the secretariat with respect to the status of submission of information [under [part IV.3 on reporting on progress]]

~~j.~~—[

- ~~k.~~ ~~*OP6d Alt* Information provided by~~ Requests from the secretariat, based on information available to it, inter alia from national reports ~~with respect to the status of submission of information under [part IV.3 on reporting on progress].]~~

~~*OP6d Alt 2* No text~~ \_\_\_\_\_

~~k.~~ ~~*OP6 Bis e*~~

- l. [Information available to the committee, inter alia from national reports.]

~~*OP6 Alt* The committee referred to in paragraph 1 shall examine both individual and systemic implementation and compliance issues, including challenged faced by developing state parties regarding implementation, and make recommendations to the governing body\*, as appropriate. The committee shall consist of [X] members relevant to this instrument\* to be elected by the governing body\* striving to reflect a balance of expertise and on the basis of equitable geographical representation, with [X] members each from the five regional groups of the United Nations and [X] members from the SIDS, taking into account the goal of gender balance.~~

*OP6 Alt 2* The Committee may consider issues as per guidance adopted by the Governing Body.

~~*OP6 Alt 3* The committee may consider issues on the basis of:~~

~~a.~~ Written submissions from any Party with respect to its own compliance;

~~b.~~ Written submission from any Party regarding another Party's compliance;

~~c.~~ Requests from the *governing body*\*;

~~d.~~ Information provided by the secretariat with respect to the status of submission of information under [part IV.3 on reporting on progress].

~~*OP6 Alt 4* The Committee may consider issues on the basis of:~~

- a. ~~Written submissions from any Party with respect to its own compliance~~
- b. ~~Information provided by the secretariat with respect to the status of submission of information under [part IV.3 on reporting on progress]; and~~
- c. ~~Requests from the governing body\*.~~

**OP6 Alt 5** No text

~~7.6. The committee referred to in this Article shall elaborate its rules of procedure, which shall be subject to [approval][endorsement] by the governing body\* at its second session.<sup>11</sup> The governing body\* may adopt further terms of reference for the committee.~~

~~**OP7 Alt** The Committee shall elaborate its rules of procedure, which shall be subject to approval by the second meeting of the governing body\*; the governing body\* may adopt further terms of reference for the Committee.~~

**OP 7 Bis**

8. The Committee shall make every effort to adopt its recommendations by consensus. If all efforts at consensus have been exhausted and no consensus is reached, such recommendations shall as a last resort be adopted by a [two thirds][three fourths] majority vote of the members present and voting, [rounded up,] based on a quorum of [half][two thirds] of the members.

~~**OP 7 Ter**~~

~~8. The Committee shall make every effort to adopt its recommendations by consensus. If all efforts at consensus have been exhausted and no consensus is reached, such recommendations shall as a last resort be adopted by a two thirds majority vote of the members present and voting, based on a quorum of half of the members.~~

**ALT PART IV.** Bracket entire provision

**ALT 2 PART IV. 2**

1. A mechanism to facilitate implementation of, and promote compliance with, the provisions of this instrument\*, including a committee, is hereby established.
2. The mechanism referred to in paragraph 1 shall be facilitative in nature and shall pay particular attention to the respective national capabilities and circumstances of Parties.
3. The mechanism referred to in paragraph 1 shall consist of a committee that shall be expert-based and facilitative in nature and function in a manner that is transparent, non-adversarial and non-punitive. The committee shall pay particular representing a progression compared to the Party's previous national plan
5. Each Party shall include information on the implementation of its national plan towards achieving the objective of this instrument\* in its national reports pursuant to [part IV.3 on reporting on progress]."

<sup>11</sup> Note: The rules of procedure may include provisions for non-compliance.