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CONVENTION ON THE CONSERVATION OF EUROPEAN WILDLIFE
AND NATURAL HABITATS

Standing Committee

41st meeting
Strasbourg, 29 November - 3 December 2021

CASE-FILE SYSTEM:

**Reflections and possible restructuring in the framework of the
Bern Convention Vision and Strategic Plan for the period to 2030**

MEMORANDUM

prepared by the Secretariat in consultation with the Bureau

*Document prepared by
the Directorate of Democratic Participation*

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1. INTRODUCTION

This memorandum, which at the time of writing is coinciding with recent registration of the 200th case-file of the Bern Convention, aims to acknowledge the impact of this system over its 37 years of functioning, and explore various ways in which the efficiency and effectiveness of the system can be improved, while guaranteeing its relevance and sustainability. The aim of this text is in no way to propose a total overhaul of the system, which was pioneering at the time of its launch and has offered European citizens and civil society the opportunity to make their national governments accountable over alleged breaches of the Bern Convention. Rather, this document's objective is to identify and propose methods to improve the efficiency and effectiveness of the case-file system at both Secretariat and Bureau/ Standing Committee level, as well as increase its visibility to and compatibility for the Bern Convention contracting parties and wider public. It should be recalled that this case-file system stems from a decision taken by the Standing Committee, and thus is not based on any provisions within the Convention's text - therefore changes are feasible once approved by the Bureau and/or Standing Committee.

The initiative for this memorandum comes alongside the establishment in early 2021 of the Working Group towards a Vision and Strategic Plan for the Bern Convention for the period to 2030, mandated by the 40th Standing Committee¹. It also coincides with the process of reform of the financial mechanism of the Bern Convention, and is timely as well due to the reshuffling of working methods (towards more digitisation) due to the Covid-19 pandemic.

Such proposed developments during the lifetime of the system are not a new concept. The biggest recent reflection and developments came in 2008 (document [T-PVS\(2008\)7](#)) on the occasion of the 25th anniversary of the system, which followed up on an in-depth analysis of the history of the procedure and statistics on the case-files at the time (document [T-PVS\(2007\)6](#)). These documents emphasised the fact that it was not a strict framework of rules that could lead to case-file resolution, but rather the willingness of parties to take initiative, cooperate, and compromise. Particular successful administrative developments which were implemented thanks to the 2008 memorandum included the current system of case-file registration, and the birth of the on-line complaint form which specified the information required for submission of a new complaint. In 2012, the mediation tool was adopted by the Standing Committee following a further reflection (document [T-PVS\(2012\)3](#)).

Aside from the relevant timing to include this memorandum within the framework of discussions over the new Vision/Strategy and financing for the Bern Convention, this reflection is well over-due and has been a point of discussion of the Secretariat and Bureau for several years. This is because the case-file system, while one of the main pillars of the Bern Convention, takes up a disproportionate and unsustainable amount of the Secretariat's time as well as that of the Bureau and Standing Committee meetings. Over a typical 2-day biannual Bureau meeting, case-files take up between one and one and a half days, leaving sometimes a very mediocre half-day to discuss and make decisions on all the other many activities which the Secretariat is dealing with. In the framework of the Bern Convention's financial reform process, sufficient funds should be made available to ensure appropriate human resources to guarantee an effective and sustainable present and future functioning of the case-file system.

One of the main issues is not only the number of new complaints being registered each year (a figure which appears to be rising), but the length of time that complaints remain unresolved and on the agenda. At the time of writing, 15 out of 38 active case-files have been on the agenda for at least 5 years, i.e., originating in 2016 or before, including two cases going back to the 80's and 90's. The ratio of cases being solved and removed from the agenda to the new ones coming in is simply unsustainable.

¹ The Bureau at its meeting of 15-16 September 2020 stated, concerning the case-file system, that "It was agreed that the current system is outdated and inefficient, both for the Secretariat and Bern Convention stakeholders. Some internal improvements such as a Dashboard similar to the one dedicated to the EDPA and a revision of the working methods could be implemented, but a longer-term reflection, in line with the Vision for the Convention in 2021-2030 was needed. Furthermore, the recommendations resulting from case-files (or other issues) required a better follow-up and modernisation."

Thus, one of the main and contentious points of this memorandum is how to quicken the resolution of cases. Is this even possible? Or must cases simply be allowed to run their course, in spite of the long years and even decades that they can remain active? This point, as with all the others, will be discussed in the following sections.

This memorandum will continue under the following structure: The next section will include a short reminder of the case-file procedure. The following section will divide into the various issues facing the system, with possible solutions and proposals for each issue. It should be noted that there is sometimes inevitable overlap between these issues, and this will be noted where relevant. For each proposal, it will be stated as to the likely level of approval needed to enact the change, i.e.: technical/administrative issues= Secretariat decision; minor procedural issue= Bureau decision; medium to major procedural issue= Standing Committee decision.

In any case, even for the Secretariat-level decisions, the Bureau shall be consulted before any significant action takes place. Lastly, conclusions and next steps will wrap up the document.

Finally, it should already be noted for the record here that this memorandum is based on a Secretariat-level reflection and on past documents, recommendations and cases. The proposals which will be suggested are to be deemed solely as ideas of the Secretariat, most of which will likely require Bureau or Standing Committee level decisions to implement. It is certainly not to be excluded that, aside from collaboration with the Bureau, other paths for enriching this reflection, such as within the Working Group for the Vision², or consultation of all Bern Convention stakeholders could be arranged. This will be further discussed under next steps.

2. SUMMARY OF THE PROCEDURE TO DATE

This section will not recount a long explanation of the practical functioning of the case-file system, which can be found in document [T-PVS\(2008\)7](#) section II, and remains mostly valid to this day. Thus, only a relatively short summary of the process will be provided here:

1. A stakeholder (usually an NGO or private citizen) submits a complaint to the Bern Convention Secretariat through the electronic [complaint form](#) available on the website. This form comprises of contact information of the complainant and six text boxes to fill in concerning the details of the complaint, grounds for a breach of the Convention, and relevance to other national/international organisations and any ongoing procedures. The latter aspect regarding any procedure at national/international level will be important for a later reflection and possible modification to the criteria for registering complaints.
2. The Secretariat screens the complaint (requesting additional information if needed), verifying if it indeed appears to suggest a breach of one of the aspects of the Convention. If this is the case, the relevant national authorities will be informed and requested to submit a report responding to the complaint for an upcoming meeting of the Bureau, where it will be discussed for the first time. Generally, the national authorities are given three to four months to respond. However, if the Secretariat deems that the complaint is urgent, it has the discretion to ask the authorities if they would be in capacity to respond within a shorter deadline for a sooner meeting of the Bureau.
3. The Bureau will discuss the complaint and reports of both parties. Typically, it will conclude by seeking further information or clarification on certain issues from one or both parties. It will instruct the Secretariat to prepare a letter to the parties requesting such information on time for a future meeting of the Bureau. The decision on when next the complaint will be discussed depends on how the Bureau evaluates the urgency of the case. It may be requested for the next Bureau meeting, or in one year or even two years' time. In other instances, the Bureau may decide that the authority's response clears up the subject of the complaint, and it will dismiss it. However, if the Bureau is very concerned about the situation, it may decide to elevate the complaint to an

² The WG Vision during its meetings in 2021 already highlighted the importance of strengthening the monitoring of the Bern Convention, particularly through a reinforced case-file system.

“open” or “possible” file thus bringing it to the agenda of the next Standing Committee. The Bureau will normally elevate a complaint either if it deduces that a violation of the Convention has occurred (or may happen imminently), or due to an ongoing lack of response or cooperation of the national authorities.

4. The annual Standing Committee generally only deals with “Open” and “Possible” files, i.e., those files which require a particular attention of the entire assembly of the Contracting Parties.
5. Either the Bureau or Standing Committee may propose that an on-the-spot appraisal (OSA) would be a useful exercise to collect further evidence of the case. This may be particularly relevant if the two parties concerned are offering contradictory information and/or refusing to cooperate, or if the situation on the ground is feared to be very volatile. An independent expert(s) will be contracted to assess the on-site situation, usually with the participation of the Bern Convention secretariat, national authorities, complainant, and ideally other relevant local, national and international stakeholders.
6. Following the OSA and report of the expert, a draft recommendation will be prepared for the attention of the Standing Committee. If adopted, it provides recommendations, proposals and non-legally binding conditions for the Contracting Party as well as other concerned stakeholders in order to improve the situation. A timeframe is often appended.
7. Following adoption of a recommendation, the Standing Committee may decide to keep the case-file on the agenda or not, depending on the nature of the issue, if it feels that further Standing Committee attention is needed, or if it feels the Bern Convention institutions have done all they can for now. In the latter instance, the case may be closed, however a “follow-up to recommendation” process may then ensue, usually entailing an annual or biennial reporting of the national authorities on progress on the recommendation.

3. ISSUES FACING THE CASE-FILE SYSTEM, AND POSSIBLE SOLUTIONS

This section should start by recalling that the case-file system, as also alluded to in the relevant documents mentioned in the Introduction, is based not upon strict rules and legal sanctions, but on a spirit of flexibility, cooperation, discourse, and compromise. The case-files are not treated as “court trials” and the Bureau/ Standing Committee are not seen as “judges”. This is embodied in Article 18(1): “The Standing Committee shall use its best endeavours to facilitate a friendly settlement of any difficulty to which the execution of this Convention may give rise”. Solutions are not based solely on legal terms, but on a holistic appraisal of the environmental, social, and economic context. Best practices and knowledge sharing amongst the contracting parties, experts, NGOs and fellow international organisations is not only encouraged but a core value of the Convention.

All of that being said, it is inevitable that some rules or guidelines³ must be put in place to ensure a smooth running of such a complex system with multiple parties involved. Currently, many of these procedures are either very loosely or not at all being adhered to. This section will discuss them and reflect as to whether changes are needed, certain procedures need tightening, or others may need abolishing.

3.1. Submission and acceptance of new complaints, complaint form criteria and classification

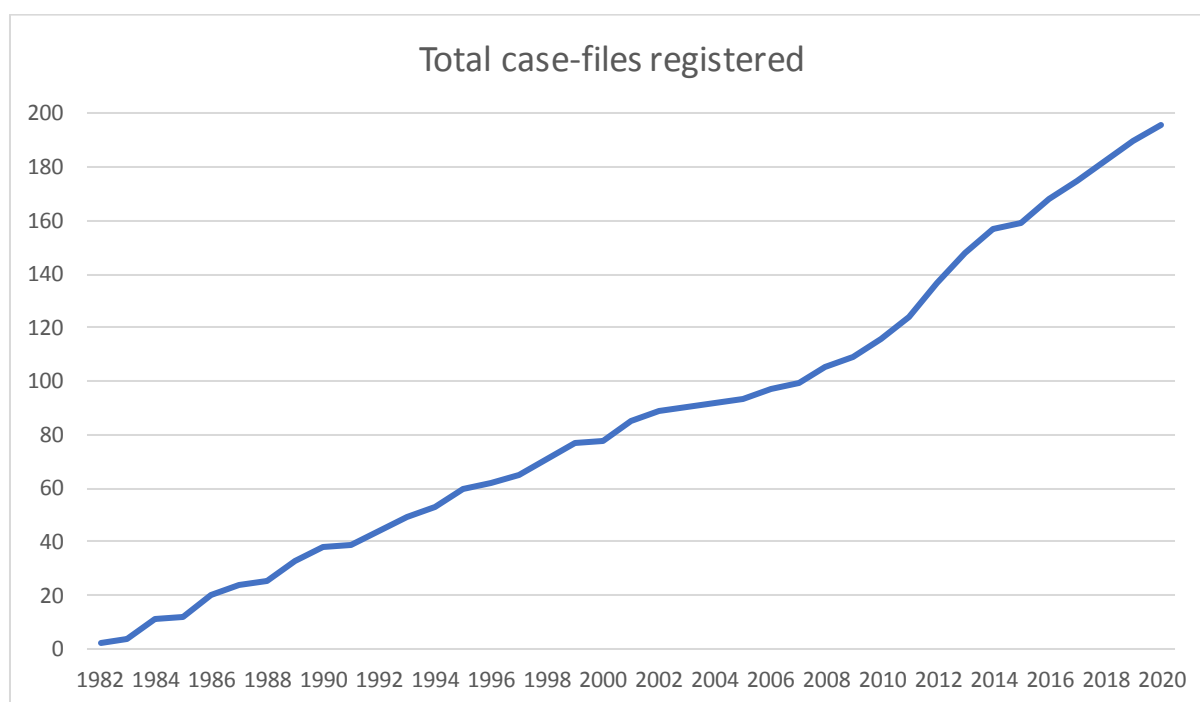
Issue

³ Considering that the majority of these current or proposed guidelines have no basis in an established framework of “rules”; the term “guideline” or “procedure” will be preferred, except for those procedures which are indeed written within the Rules of Procedure, and thus will be referred to as “rules”.

A most important issue as highlighted in the introduction concerns the acceptance of new complaints, of which the number appears to be slowly rising in recent years. As referred to in the recent [Statement](#) on the registration of the 200th case-file:

“On the one hand, more case-files submitted could point to a general lack of environmental protection and adherence to the Bern Convention across its Contracting Parties in Europe and beyond. On the other hand, the upward trend may point to the increasing visibility of the system, growing awareness of citizens and organisations of the need to protect and preserve our natural environment, and perhaps most importantly, the improving accessibility of these local stakeholders to democratic tools, especially in some countries where, some thirty years ago, such a participatory tool may not have been imaginable.”

No matter what the reason is, as mentioned earlier, the rise in new complaints coupled with slow resolution of long-standing cases means that there are unsustainable numbers on the agenda for both the Secretariat and Bureau/Standing Committee to deal with. Although it must be made clear that new complaints should never be simply discouraged, nevertheless, it may be time to tighten the guidelines regarding the criteria for new complaints which are accepted. The Bern Convention should be considered a high-level international institution for such complaints that is called upon only once attempts to address the issue at local and national level have already failed. It should not be the first port of call for any individual or organisation to raise the issue; or the number and burden of cases will simply be too great. In that regard, proposals for a revised and fortified complaint form will follow below.



Total case-files registered from 1982-2020

Furthermore, there should be a careful reflection on the value of accepting complaints which concern only Annex III species or very common species, in particular when the issue relates more to animal welfare, an aspect which is not within the mandate of the Convention.

Another related issue is that of data protection and anonymity of the complainant, particularly when the latter is a private person. The only current criterium is that a complaint cannot be anonymous, to avoid fraudulent complaints. However, the current complaint form contains a section for comprehensive contact information of the complainant. Although speculative, the risk in certain instances of pressure being asserted on complainants must be considered.

A further brief issue to be addressed relates to when a complainant changes, or another complainant individual/organisation wishes to join the case. This happens upon occasion, and perhaps slightly clearer guidelines on this would be welcome.

Finally, the important question of classification of complaints should be raised; namely, what is the tangible difference between the four level of complaints: “open”, “possible”, “stand-by” and “other”. While the distinction between the first two and last two is quite clear, i.e., treatment at Bureau only or also Standing Committee level; further distinctions are less evident, particularly between “complaints on stand-by” and “other complaints”. In practice the difference between these latter two appears to have been lost over time, and so a clarification on this would be welcome.

Possible solutions

Regarding the important question of tightening the **criteria for submission and acceptance of new complaints**, firstly on an administrative level, it is proposed to add the following elements into the acceptance criteria for the complaint form (some of these criteria are already implied or applied in practice, but it is deemed useful to specify them in the instructions). Proposed changes to the complaint form can be found in [Appendix I](#):

- the complaint form must be filled out in one of the **official languages** of the Council of Europe (English or French);
- **anonymous complaints** are not admissible, but the Secretariat will take measures to protect the **confidentiality** of the complainant. One email address will be needed as a minimum when cooperation with different stakeholders takes place;
- the **maximum length** of the complaint form, as already specified as 3 pages plus an optional 5-page annex, remains applicable;
- the reason for the **potential breach** must be specifically highlighted (see slight strengthening of section 1 of the form).

These first proposals are considered Secretariat-level decisions. The following proposals concern more significant changes to the complaint acceptance criteria, and so will require a Bureau, and possibly Standing Committee opinion/decision:

- the complainant must demonstrate that they have already tried to go through local and national procedures before approaching the Bern Convention (describe in the form the efforts made to exhaust local/national remedies, or alternatively stating why any exception should apply). The Secretariat will assess this and may ask for additional proof on a case-by-case basis (if approved, this proposal would necessitate a modification to section 5 in the form);
- related to the above, the complainant should also inform if the matter has been submitted to another international body. If this is the case, the Secretariat should assess the added-value and relevance of the Bern Convention also treating this case, in order to avoid unnecessary duplication at the international level. However this is a potentially contentious point which will also be discussed under [section 3.6](#);
- the screening process should find that the complaint is sufficiently serious to warrant examination at international level, bearing in mind the European importance of the habitat, species or population concerned. A new sentence should be added in this regard in the form.

Finally, it could be envisaged to add hyperlinks to the species annexes and Emerald Network habitat types directly in the form for ease of use, or even to add dropdown lists to be able to directly select the species or habitats; this latter would require more technical adjustments.

Concerning the question of **data protection**, the contact section of the complaint form will remain (mostly) unchanged so that the Secretariat can verify the identity of the complainant and secure internally the contact information. However, when publishing and sharing the form, including with the national authorities, parts of the contact section will be removed (see [Appendix I](#)).

Regarding potential **change of the initial complainant**, or addition of a new complainant: The Secretariat can accept such a change, provided that the original complainant confirms the new or

additional complainant in writing. Should the original complainant be unable, for whatever reason, to confirm this change, the Bureau will decide on a case-by-case basis whether to accept the new contact(s). These proposals are considered Secretariat-level decisions.

As for clarity on the four **classifications of complaint**, a new proposal on classification follows:

- A new complaint received and registered by the Secretariat will be known as a “New Complaint”;
- Once discussed for the first time at a Bureau meeting, the Bureau must decide on its follow-up. If more information is required, the complaint will stay as “new”, however, this situation should not last for more than a year. The other options are to dismiss the complaint, to follow-up at Bureau level which would make the complaint a “complaint on stand-by” or to elevate the complaint to a “Possible File”, thus bringing it to the Standing Committee agenda. Then, the Standing Committee may take a decision on whether to raise a “Possible File” to an “Open File” (possibly by vote);
- This procedure implies that there would no longer be complaints classed as “other complaints”. The four new categories would be “New complaint”, “Complaint on stand-by”, “Possible File” and “Open File”. If this procedure is agreed to, all current “other complaints” which have already been treated by the Bureau would become “complaints on stand-by” from an established date.

This change in procedure is considered an important issue in procedural terms (if not in practical terms) which should be submitted for the opinion of the Bureau, and require a possible Standing Committee decision.

3.2. Reporting deadlines and sharing

Issue

As highlighted earlier, the Secretariat tries to remain flexible when issuing deadlines to Parties for reports or other requests. Typically, about three to four months are given to the national authorities to report on a new complaint. Meanwhile, the Secretariat usually issues a deadline before an upcoming meeting of about a month ahead of the meeting date. In practice, this latter deadline is rarely respected, and, despite several reminders, the Secretariat often receives information just days before a meeting, yet tries to include it in the meeting documents whenever possible.

The question of deadlines raises two issues. On the one hand, the Secretariat is well aware of the pressures and complexities that national authorities and NGOs are under, as well as of the fact that situations are constantly developing, thus a deadline too soon in advance may lead to certain information being left out of the meeting. On the other hand, the reception of information too close to the meeting leaves less time for the Secretariat, Bureau/Standing Committee, and other stakeholders to take it on board ahead of the meeting.

Another related issue is the question of multiple reception of reports. While this can be a perfectly acceptable practice ahead of the deadline, receiving information afterwards adds additional burden to the Secretariat. Furthermore, in the past, this has frequently occurred when one Party is responding to or challenging the other Party’s report, which can lead to an undesirable back-and-forth scenario. Such a situation must be avoided: in most cases, both reports should be submitted independently of each other, unless the Bureau / Standing Committee had directly instructed the Party to respond to the latest information of the other.

This issue raises the question of should the Secretariat periodically share one Party’s report with the other Party once received. This has sometimes (although not always) been done in the past out of courtesy and spirit of cooperation. However, it can backfire and lead to the scenario mentioned above of a back-and-forth, multiple report situation.

The last issue in this section is an important one: what should the Secretariat and Bureau/Standing Committee do following repeated tardiness in reception of requested information from a Party, or total lack of communication for a prolonged period? This has been quite a constant issue in the past and

remains so today. The current “guideline” states that “*As the issue of late reply or lack of responses persisted, the Bureau agreed that, after a period of four months without reply, the Bureau would treat the unanswered complaints as “possible files”.*”⁴ This of course refers to lack of action of national authorities. Such a step has never (in recent record) been taken, and the concept does seem a bit harsh and out of touch. Nevertheless, the problem of lack of cooperation, especially when environmental protection may be at risk, requires a strong reflection.

Possible solutions

Regarding the 3 or 4 month **deadline of authorities for new reports**, it is proposed to leave this as it is, i.e., leave it to the discretion of the Secretariat as to whether an earlier deadline is proposed. However, if the deadline is less than 3 months, the agreement of the national authorities should be sought. In seemingly urgent cases, the Bureau may still assess the complaint form and take a preliminary decision, pending the response of the authorities. This is to avoid a situation going untreated for a long period between Bureau meetings.

As for a **deadline for information ahead of meetings**, it is proposed that the approximate “one month ahead of a meeting deadline” remains applicable, to be defined by the Secretariat for each meeting. The Bureau has the discretion to accept reports after this deadline on a case-by-case basis, which could be for example if the Party requests an extension to the deadline, or if the information is deemed very important for the upcoming discussion. However, the Bureau will monitor if a Party over a long period repeatedly issues late reports, and may decide to take action against said Party.

As to the question of **multiple report reception**, as mentioned in the prior section, if additional information is submitted by a Party after the reception of its initial report, but before the deadline, this new information can be indeed added to the initial report or as an annex. If, however, such information arrives after the deadline, a similar guideline to the above applies, i.e. the Bureau will take the information into account on a case-by-case basis. Just like with late reports, this must not become a habit of Parties.

Concerning **periodic sharing of reports** with the other Party, there are several propositions:

1. The Secretariat forwards the information to the other Party upon reception.
2. The Secretariat forwards the information to the other Party only after the deadline, reminding that the transmission is for information only, and any response to it will not be considered.
3. The Secretariat does not (except in particular circumstances) share reports. Instead, it is made clear to all Parties that reports will appear accessible as usual on the website of the Bern Convention, usually about 3-4 weeks before a meeting when the specific meeting webpage is created.
4. A slight alternative to the above, would be that the creation of a dedicated webpage (dashboard) for the case-files (elaborated in [section 3.7](#) below), would allow the publishing online of reports as they come in, thus not leaving them subject to the creation of a meeting webpage each time. A possible disadvantage of this as compared to the previous point is that it may give the other Party the time to challenge the information, which as mentioned earlier is not the purpose of the process.

Considering all of this, it is proposed to follow option 3 above, which will allow transparency while avoiding possible “back-and-forth” scenarios. The Secretariat will still have the discretion to transfer reports when it deems it appropriate. This option remains subject to the proposed dashboard for case-files elaborated below, and possible reorganisation online of case-file related reports.

Regarding solutions to curb **tardiness** or total silence from a Party:

- For new/other complaints and complaints on stand-by and concerning the national authorities, it is proposed that, if no information is received for two consecutive Bureau meetings, the

⁴ Referred to in the 26th Standing Committee meeting report ([T-PVS\(2006\)24](#)), although the birth of this procedure is unknown.

Bureau may decide to bring this complaint to the attention of the Standing Committee (either raise it to a “possible file”, or as an exceptional “complaint on stand-by” to the agenda. The latter was done in the instance of two complaints on stand-by to the 40th Standing Committee in 2020). It is hoped that this exposure will prompt the authorities into finally reacting to the situation.

- For new/other complaints and complaints on stand-by and concerning the complainant, it is proposed that, if no information is received for two consecutive meetings, the Bureau may decide to dismiss the complaint (firstly warning the complainant). This decision must of course not be taken lightly if a complaint is deemed potentially serious.
- For Open and Possible Files and concerning the national authorities, several potentially significant proposals regarding decisions and the follow-ups of such complaints are discussed under [section 3.4](#) below. However on a softer note, it is suggested that a letter originating from the Chair of the Standing Committee (as opposed to the usual letter of the Secretariat) is addressed to the Party strongly advising them to react to the situation ASAP. This letter could also be addressed to the Permanent Representation of the concerned country in Strasbourg, who could submit it to the Ministry of Foreign Affairs.
- For Open and Possible files and concerning the complainant, as above, it is proposed that the Chair addresses a letter encouraging a prompt reaction, and warning that the complaint may be dismissed if no updates are received.

The disclaimer to all of the above sanctions is of course that the Secretariat must make strong efforts to contact the relevant Parties. In the case of poor communication with the national Focal Point, the Secretariat should reach out to the Permanent Representation of the relevant country to the Council of Europe for clarification. This has proven useful in the past. Further, the Secretariat should attempt where possible to reach out to other relevant stakeholders who may have information on the situation (e.g. other international organisations, competent local NGOs) including reasons for silence on the part of the concerned Party(s).

Finally, in [section 3.7](#) below, a **proposal for a scoring system** on the potential new case-file dashboard is elaborated, which may add incentive/pressure on parties to improve their reporting status (similar to the flag system used on the EDPA dashboard).

3.3. Clustering similar cases, customised follow-up process

Issue

It seems logical to cluster similar cases, whether that be similarity in issue, country, or another aspect. This should lead to better efficiency and consistency in the process and decision-making. Clustering could imply several different methods, including establishing a compendium of best practices per topic (e.g. sea turtle cases), and ensuring a tailored and technically competent processing of the complaint at various levels (Secretariat, Bureau, Group of Experts, outsourcing).

As to the subject, the majority of complaints fall within three categories: energy developments (30% of active complaints); touristic developments (22% (mostly affecting turtle nesting beaches)); and infrastructure (non-energy) developments (19%). Other issues include river pollution, illegal killing of birds, illegal hunting/culling, mining, agriculture and proposed negative legislative amendments. With more than 70% of complaints covered by the first three broad subjects above (and signs that these trends are increasing, particularly regarding energy projects), it should be possible to better cluster them for enhanced and consistent solutions.

Possible solutions

On clustering similar cases and **establishing a compendium of best practices**, it is suggested that, subject to financial resources, a comprehensive study on past and current case-files is undertaken by an external expert. The basis for this study could build on the study [T-PVS\(2007\)6](#) which, while not going

into detail of each case, does give a general overview on all cases up until 2006. Such a study could also take into account other aspects of the case-file system, as will be addressed in section 3.4 below on decision-making. Assistance to the Parties could thus be improved through peer-to-peer exchange of experiences, capacity building and training. The resulting compendium should remain relatively short and concise for ease of use.

It is further suggested that a more **customised processing of each complaint** in line either with its subject matter or other aspect such as the concerned country be put in place. The first suggestion, and one which is already being informally done at secretariat level is that a dedicated staff member takes care of a package of similar cases (by topic or country). This ensures a more precise follow-up by the Secretariat member, as well as continuity of contact with the concerned parties. This suggestion will however also depend on the future human resources of the Secretariat, as an alternative solution would be that a dedicated staff member deals only with case-files.

The second suggestion, and along similar lines, is that at Bureau level, a dedicated member or pair of members is assigned a certain group of complaints again related to topic or country, to once again ensure a better and more continuous follow-up at that level. This should of course not prohibit an open discussion and follow-up of all Bureau members during their meeting: it should not be only one member taking a decision on a complaint- but it could allow for greater familiarity for each case. It would also have to be decided what to do when a Bureau member is replaced by another, and how to ensure continuity. The above two suggestions could be approved at Bureau level and should remain informal and internal.

Related to this, a possible 3rd ordinary Bureau meeting dedicated to case-files could be envisaged, to tackle the rising number of files, and ensure that at the two usual ordinary meetings, other important issues of the Convention are not side-tracked. This meeting could be held online and would thus not lead to additional meeting costs.

The third suggestion which may require a deeper shift of the current procedure and thus possible discussion at Standing Committee, would be that a relevant Group of Experts analyses the case at technical detail, and recommends a decision for the Bureau or Standing Committee's approval. This could allow for a more expert appraisal of a case, as the Bureau is not always competent to judge every specific situation. If this proposal were to be supported, it may also require a slight shift in the working of the Group of Experts meetings (such as for that on Protected Areas which would be mandated with addressing the many Emerald Network-related complaints), as well as possible creation of new Groups of Experts, e.g. on renewable energy projects and effects on biodiversity. It may be more realistic to use the above option on an exceptional case-by-case basis.

3.4. Decision-making on case-files, follow-up of long-term cases, recommendations and closed cases

Issue

This may be one of the most contentious issues of this memorandum, where many tricky questions arise: how to ensure stricter decision-making of the Bureau/Standing Committee? Create criteria/rules for decision-making or keep it flexible? How to enforce decisions? Introduce penalties for violating parties? Drop long-term cases from the agenda- the trade-off between reducing cases on the agenda and "giving up" on a case?

Concerning decisions, as alluded to previously, the Bureau/Standing Committee for the most part takes these on a case-by-case basis, drawing on its previous experience. However, there is very little or no record on the success or failure of decisions on cases in the past. Such a comprehensive study on the almost 40 years and 200 case-files would be a daunting, but potentially very useful exercise to do in the future, to allow the decision-makers to draw on quantifiable evidence of what does and does not work. Linked to this, a possible criteria of decision-making could be elaborated to assist the decision-makers, such as when should a file be opened. This could ensure greater consistency in decision-making.

Enforcement of decisions is a core challenge. The Bern Convention does not possess the mandate to penalise Parties through sanctions. The best it can do is assert international pressure.

And as regards how to deal with long-term cases including follow-up recommendations (and closed cases), it is another tricky issue, where the optimum solution between maintaining pressure on the Contracting Party over many years, and deciding that no more can be done from the side of the Convention and dismissing the case (while avoiding the “giving up” scenario”), needs to be found.

Possible solutions

On improved **criteria for decision-making**, the proposal from [section 3.3](#) is reiterated, i.e. conduct a comprehensive study detailing decisions taken on past and current case-files. Furthermore, criteria for decision-making should be elaborated. These criteria will be a “living document”, i.e. constantly updating in accordance with newest case-file developments, and they should be regarded as helpful guidelines rather than rules for the Bureau/Standing Committee when making decisions. An example of a criterium could be that after X number of years, the case will be upgraded to the next level.

Regarding **long-term cases, follow-up recommendations and closed cases**, it is deemed unhelpful to include an “expiry date” for cases, as the problems can often take time to solve. Instead, stricter admittance criteria (as detailed in Section 3.1), and a stricter follow-up, especially to adopted recommendations could be ensured, as often a lot of resources go into an OSA and drafting of the recommendation, after which there is minimal or no follow-up. A proposal would be that a follow-up appraisal or legal analysis, etc., is automatically mandated a certain number of years after (on a case-by-case basis) to assess the results of the recommendation, after which a strong decision may be taken (dismissal for good improvement, back on the agenda/ revised recommendation in case of lack of progress). Furthermore and in order to simplify the reporting procedure, those Parties should be asked only to report on the points of the recommendation which have not yet been considered fulfilled by the Standing Committee (usually done in practice).

3.5. Rules of procedure of the Standing Committee (*regarding on-the-spot appraisals*)

Issue

The Current Rules of Procedure ([T-PVS/Inf\(2013\)06E](#)) most pertinently refers to the case-file system in its Appendix 1 specifically on rules concerning on-the-spot appraisals (OSAs). It is perceived that several of these rules are out of date, thus an updating seems necessary. Of course, any changes to the Rules of Procedure would require a Standing Committee decision (and prior approval of the legal department of the Council of Europe), thus the following proposal may also be taken together with possible parallel proposed modifications to the Rules.

Rule 1: The current rule states that the decision to mandate an OSA lies with the Standing Committee, requires a two thirds majority vote, and the agreement of the national authorities concerned. The first issue here concerns the fact that the Standing Committee only meets annually: in urgent cases, the situation on the ground may not allow for awaiting a decision of a distant Standing Committee meeting. Secondly, requiring a two thirds majority may seem excessive for this type of issue. Finally, although the third point seems fair, the question is what should be done if a Contracting Party flatly refuses to authorise an OSA on their territory? This may require some reflection. This Rule also links with **Rule 2**, which will be explained in the proposed modification below.

Rule 3: It should be considered that the complainant also has the right to approve of the independent expert to be contracted.

Rule 4: This rule requiring a request of the Standing Committee for a representative of the Secretariat or of the Party concerned to participate in the OSA seems unnecessary, or requires a rewording.

Rule 5: This rule concerning the drawing up of Terms of Reference by the Standing Committee is more generally delegated to the Bureau which assists the Secretariat, also in strict consultation with both concerned Parties, to draw up the Terms of Reference.

Rule 7: This rule is fine, however, following issues with the host country in the past and to avoid any future obstacles, it may be wise to specify which expenses shall be covered by the host country (as is usually done in the Terms of Reference of the OSA).

Aside from the Rules of Procedure, one other aspect, related to the question of lack of cooperation or communication of the Contracting Party should be addressed: what shall the Standing Committee do if the concerned Contracting Party is not present at the meeting? Can it still take important decisions, i.e. change the status of the complaint or mandate an OSA?

Possible solutions⁵

Appendix title: It is suggested simply to replace the word “enquiries” with “appraisals”, as this is the terminology most frequently used these days.

Rules 1 and 2: The proposed new **Rule 1** would remain essentially the same except that it may state that a simple majority suffices to mandate an OSA. The modified Rule 2 would read as follows: “In urgent cases, the Chair may authorise the Secretariat to consult the Bureau at one of its meetings or by electronic consultation in order that a decision be made in accordance with the foregoing paragraph. A decision of the Bureau in such an exceptional circumstance would require a unanimous agreement of the Bureau members.” Regarding agreement of the concerned party to allowing an OSA on their territory, although it appears improbable to avoid this caveat in the rules, a more general idea for consideration which links with aspects of the vision and strategy process, would be that each Contracting Party is strongly encouraged to make a high-level declaration pledging support to the Convention (see also [section 3.8](#)), and thus cooperating when the Standing Committee decides to mandate extraordinary measures. While not legally-binding, such a declaration should increase the political pressure on parties to cooperate.

Rule 3: It is proposed that the last part of the rule is changed to read: “The appointment of the expert must be agreed by the Contracting Party and complainant concerned.”, in order to give equal opportunity to the complainant to approve of the expert.

Rule 4: The proposed rewording would be: “The expert shall be accompanied during the visit by a member of the Secretariat and representatives of the Contracting Party and complainant concerned”.

Rule 5: The new rule would read as follows: “In close consultation with the Standing Committee and/or the Bureau, the concerned Contracting Party and the complainant, the Secretariat shall draw up terms of reference for the on-the-spot appraisal. Both the concerned Contracting Party and complainant must submit their agreement before the terms of reference can be accepted.”. This latter addition is considered very important to avoid a scenario of the national authorities denying access to the complainant to consult and co-create the ToR.

Rule 7: It is proposed to add to this rule stating: “The host country of the on-the-spot appraisal shall arrange local interpretation, local transportation and translation of documents, and bear the expenses related hereto.” This is in order to avoid future issues in this regard.

The proposed amendments to these rules are included in [Appendix II](#).

Concerning **absence of the concerned Party at the Standing Committee**, it is recalled first that for an OSA, the national authorities must give their agreement, and that for opening a case-file, it has been the practice to consult with the Party before going to a vote. Given that; it is suggested that at the first Standing Committee meeting where a decision should be taken, it will be postponed until the next meeting, while the Committee should relay a strong message that the authorities should attend the next Committee meeting. If the Party is again missing from a second consecutive meeting, the Committee

⁵ NB: These proposed amendments to Annex 1 of the Standing Committee’s Rules of Procedure may be adjusted following the decision of the 41st Standing Committee on these possible modifications to the Rules.

will take a decision in its absence.⁶ The conundrum mentioned earlier about receiving agreement of the concerned Party to undertake an OSA on its territory again becomes an unresolved issue here, but the Committee can nevertheless mandate the OSA subject to the later agreement of the concerned Party.

3.6. Cooperation with experts (on-the-spot appraisals), international organisations and other stakeholders

Issue

This issue is a broad one, but one which is deemed to be very important going forward with the management of the case-file system. Sustainable Development Goal (SDG) 17 comes to mind: “Partnership for the Goals”, meaning that strong synergies are needed for the realisation of goals related to the SDGs. While the Bern Convention has effectively collaborated with an excellent pool of experts, fellow major environmental agreements (MEAs) and other stakeholders over its 40 years, it is believed that this cooperation should be even improved and enhanced in the present and future.

Strongly linked to the opportunity of synergy is the threat of duplication. Since the Convention was established as a pioneering Treaty back in the 80’s, other MEAs, as well as the European Commission (EC) which accounts for more than half of the Convention’s Parties, have increasingly thrived and arguably taken over some part of the environmental jurisdiction of the Convention. While this advancement of environmental advocacy at international level should be seen as a victory, the challenge for the Bern Convention will be to ensure co-creation and not competition.

Excellent international collaborations have endured with, among others, AEWA, Barcelona Convention, Birdlife, CBD, CITES, CMS, EC, EEA, IUCN, Ramsar Convention, UNESCO and WCMC.

Likewise, better visibility and connectivity within the Council of Europe and its specific bodies is an issue which deserves a reflection.

The Standing Committee tools of on-the-spot appraisals (OSAs) and mediation will also be touched upon.

Possible solutions

Firstly **concerning experts**, it is proposed to use these competent individuals even more in the future. The Secretariat (and Bureau) are often generalists or specialists in a limited number of areas; thus it is crucial to lean on the niche competencies of experts for the professional and effective follow-up of case-files. At the time of writing, the Secretariat is in the process of launching a 5-year tender call for a pool of experts. Such a process was already done in 2017, but this time more than ever, the Secretariat is aware of the importance of having a large and quality pool of experts, and will endeavour to ensure that experts who may be suited to the various case-file processes will be sought.

On top of this general point, it is suggested to **mandate experts more frequently to carry out OSAs** or even mid-meeting progress checks. The latter could involve virtual exercises such as desk research and online meetings; methods which have been enforced recently thanks to the Covid-19 pandemic. As cases often last for years on the agenda without dedicated inspection, this new strategy could be seen as enhancing the already lauded practical approach of the Convention towards its case-files, and solving the issues more quickly. Furthermore, linked to the below paragraph, the use of already existing international expert groups (such as the IUCN species specialist groups) could bring more weight and technical expertise to decisions. All of the above ideas of course depend on the future financial and human resources of the Convention.

A brief word on **mediation**, as this text does not go into detail on this relatively new tool of the system: indeed since its introduction in 2012, mediation has been used just once in the context of a case-file. It is understood that, as alluded to above under the point on OSAs, a process of mediation is an

⁶ There is precedence for this: see [T-PVS\(2007\)6](#) P.16.

implied feature of an OSA- the experts involved should have some experience in facilitating dialogue between conflicting parties, and coming up with compromises.

Concerning **collaboration with international organisations**, we can firstly refer back to [section 3.1](#) and the question of involvement of another MEA in the case-file. In order to avoid duplication it is proposed that, (as well as the suggestion of 3.1) if an OSA is being considered for a case, it should first be deduced if a similar procedure is being examined by another mechanism of international investigation or settlement, and if so to consider postponing a Bern Convention procedure at that time, until results of the other procedure have been made clear. This situation has arisen in the past, and meanwhile, the Convention could assess if a joint procedure is possible.

Furthermore, where the earlier proposal of [section 3.1](#) would not apply, it is proposed to automatically contact the relevant international organisation on reception of a new complaint, as well as to follow-up with that organisation during the lifetime of the complaint. Such a practice has usually been carried out by the Secretariat, but once again, it could be a good idea to immortalise this practice into text. Such cooperation should include request of general updates of any parallel processes of said organisation to the complaint, especially if any OSAs are planned, and to involve the organisation in the follow-up, be it general meeting decisions, or possible OSAs. It goes without saying though that any potential conflict of interest should be assessed before initiating such collaborations.

A broader idea for the enhanced cooperation of MEAs dealing with duplicative issues would be the establishment of a coordinated joint-meeting of the secretariats and/or executive bodies (e.g. bureaus) of the institutions, on a semi-regular basis. Like this, coherent decisions could be taken on cases which affect multiple institutions, as well as on more general issues.

Concerning the **European Commission** (EC) which is the Convention's closest partner as well as the one with which there is arguably the biggest risk of duplication, the prior international collaboration suggestions apply even more strongly (inform when an overlapping case is registered, avoid duplicating/simultaneous OSAs). A broader reflection, in cooperation with the Commission, on ensuring synergy and not competition is perhaps required though (not only on case-file issues). Indeed, at times the added value of the Bern Convention as regards European Union Member State cases appears in doubt; when the Commission has much greater resources and power to assert on the breaching party. However, it goes without saying that the Bern Convention comprises 51 Contracting Parties, and double-standards as regards the EU and non-EU parties should be avoided.

On the other hand, not all EU cases have been brought to the Commission's attention when received by the Bern Convention; and it's on those occasions that the Convention's added value of firstly addressing the situation, and possibly getting its "big brother" the EC involved to add political weight, is an example of good synergy. What's more, the Bern Convention case-file system often moves more quickly than the lengthy procedures of the Commission and European Court for Justice, which is another added value of the system. However, it would also be proposed that, once the EC has taken charge of the case and the Convention's involvement no longer seems valuable, the case could be dropped (as has sometimes happened in the past).

It is suggested more generally to contact the EC (as well as potentially other international organisations) in the near future to arrange a meeting between secretariats to try to see how a good collaboration can work going forward.

Finally, and an aspect which will likely be a strong component in the future vision of the Convention, is the objective of **increasing internal synergies within the Council of Europe**, both in a broad sense (linking the Convention to the key priorities such as human rights and democracy) and to other specific institutions (e.g. the Parliamentary Assembly, Congress, Court, other Directorate-Generals, etc). Indeed, more and more sectors, even those which on first look appear to have a low connection with environmental issues, are looking to get involved with these issues, such as the Social Charter which plans to install a monitoring of violations linked to environmental protection. As on the international scale, synergies and not duplication must be ensured here, especially as at times the Convention even internally is not well-known.

3.7. Website, reporting templates, registry, other technical issues

Issue

The following issues relate more to secretarial administrative matters, and many of the proposed solutions could probably be implemented in the short-medium term, with just a consultation of the Bureau. The overall issue is a big one (particularly for the Secretariat) however, as it relates to the heavy administrative burden of running the system, most tasks of which are still done in a manual, outdated and only semi-digital way.

The introduction of a complaint form in 2008 was a positive step, but the request and reception of all other reports are still done in a manual, Word format way, thus the structures received from all different parties vary greatly, and the secretariat must manually transform each into its professional format. Linked to this, the burden of drafting letters to parties after each meeting is also quite high and inefficient.

Guidelines on report lengths are also often not followed (although the Secretariat has recently included such guidelines in its reporting request letters), and a growing issue is the inclusion of many heavy media (photos, maps, etc) which constitute a very heavy report (in digital terms): in the aforementioned guidelines it has also been requested to transfer heavy files via a digital Cloud Drive and not by email.

A further issue which has already been touched upon for a few years is the lack of a dedicated webpage or online “dashboard” for the case-files, such as the one which was created very successfully for the EDPA a few years ago. The current public accessibility online for case-file information is remarkably limited, especially for a system which is supposed to be built on cooperation and transparency. Indeed, even internally for the Secretariat, the means in place to trace information, especially on past cases is very restrictive, once again obliging more of the Secretariat’s time when working with cases, as well as having to respond to avoidable individual information requests from interested stakeholders.

Linked to a possible dashboard would be further elaboration of the registry, which is currently a simple document including the case file name, number and date of registration, and status (closed, open, etc). This registry does not even include a date of case dismissal/closure; thus it is again a very limited information tool.

Possible solutions

The overall proposed strategy is to gradually move to a much greater (possibly total) **digitalisation of the case-file administrative procedures**, which should drastically reduce the time burden for the Secretariat as well as that of concerned parties, streamline the various processes, and improve accessibility of information and visibility of the system.

First of all, reporting should become more streamlined. The first and easier improvement to implement would be to **develop a reporting template** such as the complaint form and a form used by the EDPA for annual reporting. The challenge as compared to those other two is that a standardised template would not work, as different information is requested on each occasion by the Bureau/Standing Committee; however, it is still believed that some sort of template, within which the Secretariat could quickly adapt each to the specific requested information, would improve efficiency. Such a template could also limit the number of pages and/or media attached, while allowing separately transferred (via a Cloud Drive) annexes if necessary. It would also avoid the need of the Secretariat to transform each report into the standardised structure upon reception.

The second more significant change would be to use an **online reporting tool**, such as the one used for the biennial reporting (ORS). In theory, such a tool could greatly reduce Secretariat administrative tasks, i.e. the management of reports, requests, publishing online, etc., as all of this should become somewhat automated. However, the technical issues faced with the ORS should call for prudence, as disruptions to the case-file system would lead to much graver problems even than those of

the biennial reporting exercise. Further reflection on this will come below in relation to the possible dashboard.

As to the question of **drafting letters to the parties** after each meeting, it is proposed that this practice should continue (as opposed to writing only emails which takes less time), as it is believed that the reception of a more official letter results in greater reaction of the parties to the request. However, it could be envisaged to, linked to the above reporting template, improve the efficiency of this process by creating a template, possibly even including it directly in the report template which will be sent to parties, thus taking care of two problems at once. The Secretariat could look into the feasibility of this.

Another more innovative idea would be to allow parties to submit **video reports**. Such a format should perhaps be used with caution and not intended to totally replace traditional text reports within which the literally “black and white” nature of the text avoids any subjectivity. However, in an increasingly digitalised and innovative world, such forward-thinking approaches could at least be considered.

A **case-file dedicated webpage or dashboard** seems to be a universally agreed must-have in order to improve efficiency and visibility of the system. The Secretariat has already started working behind the scenes and it is proposed that elaboration of this goes ahead without delay. While the Secretariat can initiate some of the work, it is highly likely that the project will eventually need to be outsourced in order to ensure a professional product, but some financing has already been earmarked in the budget for 2021 and beyond. This dashboard should include precise and historical information on all case-files, such as key dates, status changes, parties involved. It should have useful search functions, e.g. by country, topic, date, etc. It could then go into further depth on each case and provide a summary of the lifecycle and links to all relevant reports and Bureau/Standing Committee decisions. The knowledge repository of the system could originate from the proposed Study in [Section 3.3](#). As alluded to above, the current Registry document could also be directly integrated in this new tool.

Going possibly further, a **scoring system** could be introduced to measure the respect of parties to reporting deadlines, compliance with recommendations, etc. This was introduced on the EDPA dashboard where a green, orange, and red flag structure based on the frequency of reporting is believed to have motivated the stakeholders and increased reporting numbers.

Finally, a possible digital administrative solution for the Secretariat would be the use of or investment in a **project management tool** to keep track of what comes in, what is due and by when, who is responsible etc. Such a tool could also be useful for other Bern Convention activities. This solution should be investigated, and evaluated if it would not duplicate but rather complement the dashboard, as well as possible online reporting tool mentioned earlier, as these three solutions potentially all closely overlap.

3.8. Improving the visibility of the case-file system

Issue

Improving the visibility of the system is an interesting conundrum because, on the one hand, this important democratic tool for the protection of the environment deserves to be promoted amongst the wider public in order to ensure that states comply with the Convention’s articles. On the other hand, greater visibility will inevitably lead to more complaints and a higher workload for the Secretariat and Bureau/Standing Committee. In an ideal world, the Convention and its Secretariat would have greater personnel and financial resources to be able to deal with a higher number of cases, but that is not the case today. Despite that, the mandate of the Convention and its Secretariat must be to promote its tools regardless of limitations, and possible approaches will be discussed next.

The case-file system as a stand-alone instrument has not been rewarded with a dedicated communication campaign in the past, only mentioned here and there in other campaigns (such as in the Campaign on the 40th Anniversary). However, a news item on the occasion of the 200th registered file was published in February 2021, as it was felt that this important milestone deserved a mention (even

if it could be considered that more files is not a good thing). Thus, awareness-raising on this system could be considered for the future, both externally and internally within the Council of Europe.

Furthermore, concerning specifically Contracting Parties and their governments, visibility of the system and of specific cases could be enhanced, in order to kickstart better reactions and solutions from the concerned parties, at a higher political level if possible.

Possible solutions

It could be envisaged in the near future to develop a **communication campaign on the case-file system**. Such a campaign should be carefully elaborated in such a way as to avoid a subsequent mass increase in the number of complaints received (linked to [section 3.1](#) on submission criteria). It could thus target mostly the existing Bern Convention network and internal stakeholders, i.e. the Council of Europe, in order to showcase this important democratic tool which has existed for nearly 40 years. A leaflet on the system could be published, presentations developed, and there is again a strong link with the dashboard (or other online solution) described in [section 3.7](#).

Concerning more closely the contracting parties, another proposal would be to produce, subject to resources, an **annual case-file report**. Such a report would be a useful political tool for Parties and other stakeholders, and facilitate more streamlined and sustainable case-file information, similar to the study mentioned under [section 3.3](#).

Finally, in order to increase visibility at a high national level, it is suggested that, as alluded to in [section 3.5](#), a high-level politician (Minister of Environment, Foreign Affairs, or even better, Prime Minister or Head of State) would make a **declaration** of the state's commitment to the Bern Convention. This idea was also brought up in the Working Group on the Vision meetings.

4. CONCLUSIONS, PROCESS TO DATE, AND NEXT STEPS

The previous section should have made it clear that there are numerous issues, some minor, others more significant, which are facing the case-file system. Indeed, the above issues are non-exhaustive, but it is believed that the key aspects have been addressed above, and potentially some of the proposals could be agreed to and implemented in the short or longer term.

Following the discussion of the first version of this document at the extra-ordinary Bureau meeting of 28th June 2021, the Bureau requested that the text be revised in line with its initial feedback from that meeting, and that the revised version be circulated amongst the Bureau members for further comments and suggestions. That feedback process led to a second discussion of the revised memorandum at the Bureau meeting on 15-16 September 2021.

At that meeting, the Bureau approved the draft memorandum and instructed the Secretariat to prepare a shorter document on the newly proposed rules, guidelines and procedures of the case-file system. This shorter guidelines document should be consulted electronically with the Bureau, and then presented to the 41st Standing Committee for discussion and possible adoption. If adopted, it would act as a concise framework of the case-file system and its rules and procedures, for use by the Secretariat, Bureau, Standing Committee; Contracting Parties and Bern Convention network, and the wider public. The current memorandum should accompany that concise document as a longer explanatory text, and would be submitted for the Standing Committee's endorsement. It should also be made clear that both documents should remain "living texts", i.e. updates and revisions should be envisaged in line with changing circumstances and procedures in the future years.

From the Bureau and Secretariat perspective, similar to the parallel financial discussions ongoing, there is the feeling that this is an urgent process, and that certain changes need to be implemented without delay, both for reducing the work burden in the short and long term, as well as to improve this flagship monitoring system of the Convention.

APPENDIX I

Proposed changes (in blue) to the complaint form (from [section 3.1](#))

Convention on the Conservation of European Wildlife and Natural Habitats



COMPLAINT FORM INSTRUCTIONS:

NB: Submitting a complaint to the Bern Convention is a serious accusation against the concerned Contracting Party(ies). Complaints must demonstrate a sufficient degree of seriousness or urgency related to species or habitats of European importance, and the complainant must demonstrate that the issue has already been raised at local and/or national level.

Complaint forms must be submitted in electronic word format, in English or French, and not exceed 3 pages, including the first administrative page. A maximum 5-page report can be attached. The Secretariat will request additional information on a case-by-case basis. Anonymous complaints are not admissible; however the Secretariat will take measures to keep the personal details of the complainant confidential.

Please, fill in this form and send it to the attention of:

Bern Convention Secretariat

Directorate of Democratic Participation
Council of Europe
F-67075 Strasbourg Cedex

E-mail: Bern.convention@coe.int

First name:.....

Surname(s).....

On behalf of (if applicable):
.....
.....

Address:.....
.....

Town/City:.....

County/State/Province:.....
.....

Postcode:.....

Country:.....

Tel.:.....

This section will not figure in the public version of the complaint form in line with the data protection referred to in point 3.1

Fax:.....

E-mail:.....

Website:

Date:

ElectronicSignature

1. Please state the reason of your complaint (refer also to the Contracting Party/ies involved and the Articles of the Convention which might be violated)

2. Which are the specific specie/s or habitat/s included in one of the Appendices of the Bern Convention that are potentially affected? (Please include here information about the geographical area and the population of the species concerned, if applicable) Please state the reason of your complaint (refer also to the Contracting Party/ies involved and the Articles of the Convention which might be violated)

3. What might be the negative effects for the specie/s or habitat/s concerned?

4. Do you know if potentially affected species or habitats also fall under the scope of other international Conventions, (for instance: RAMSAR, CMS, ACCOBAMS, Barcelona Convention, etc) or if the area has been identified as a NATURA 2000/Emerald Network, UNESCO site? Are there pending procedures within another international institution?

5. Have you attempted to address this issue with the relevant local and national authorities? Please describe. ~~Do you know if there a~~ Are there any pending procedures at national ~~or international~~ level regarding the object of your complaint?

6. Any other information (existence of an Environmental Impact Assessment (EIA), size of projects, maps of the area, etc) (for large files, please add a separate annex document, as mentioned in the above instructions)

APPENDIX II⁷**Proposed changes (in blue) to the Rules of Procedure annex concerning OSAs (from section 3.5)****RULES APPLICABLE TO ON-THE-SPOT ~~ENQUIRIES~~ APPRAISALS**

1. The decision to organise a visit to a natural habitat shall lie with the Standing Committee which shall reach the relevant decision ~~in accordance with Rule 8. b of its Rules of Procedure~~ **by a simple majority of the votes cast**, subject to the agreement of the delegation of the **Contracting** Party within whose territory the habitat under consideration is situated.
2. In urgent cases, the Chair may authorise the Secretariat to consult **the Bureau at one of its meetings or by electronic consultation in order that a decision be made in accordance with the foregoing paragraph. A decision of the Bureau in such an exceptional circumstance would require a unanimous agreement of the Bureau members** ~~the Standing Committee by post in order that a decision may be reached in accordance with the foregoing paragraph.~~
3. The expert detailed to carry out the visit of inspection shall be appointed by the Secretary General of the Council of Europe. The expert cannot be a person who represents or has represented a State on the Standing Committee, or a national of the Party in whose territory the natural habitat to be visited is situated. The appointment of the expert must be agreed by the **Contracting** Party **and complainant** concerned.
4. **The expert shall be accompanied during the visit by a member of the Secretariat and representatives of the Contracting Party and complainant concerned.** ~~At the request of the Standing Committee or its Chair, the expert shall be accompanied during the visit by a member of the Secretariat and by a representative of the Party concerned.~~
5. **In close consultation with the Standing Committee and/or the Bureau, the concerned Contracting Party and the complainant,** ~~The Standing Committee shall draw up precise terms of reference to be conveyed to the expert.~~ **The Secretariat shall draw up terms of reference for the on-the-spot appraisal. Both the concerned Contracting Party and complainant must submit their agreement before the terms of reference can be accepted.**
6. After completing the visit of inspection, the expert shall submit a written report to the Standing Committee in one of the official languages of the Council of Europe. The expert may be called upon to present the report in person to the Standing Committee at one of its meetings.
7. In order to ensure that the said expert may carry out the assignment in full independence, the travel and subsistence expenses pertaining to the visit and those arising out of the presentation of the report to the Standing Committee shall be borne by the Council of Europe. **The host country of the on-the-spot appraisal shall arrange local interpretation, local transportation and translation of documents, and bear the expenses related hereto.**

⁷ NB: This Annex originates from the Rules of Procedure of the Bern Convention Standing Committee and include proposed amendments to Annex 1. They may be adjusted following the decision of the 41st Standing Committee on possible modifications to these Rules.