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CONVENTION ON THE CONSERVATION OF EUROPEAN WILDLIFE
AND NATURAL HABITATS

Standing Committee

41st meeting
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**CASE-FILE SYSTEM:
Draft Guide of Procedures**

*Document prepared by
the Directorate of Democratic Participation*

1. INTRODUCTION

This document provides the rules, procedures and guidelines of the Bern Convention case-file system as updated in 2021. Many of the below points are already implemented in practice, but until now, there was no such document which concisely and completely assembled all of these processes into one place. On the other hand, several processes were considered outdated and so have been updated to fit a modern system. This document is intended to be used as a practical guide for the Bern Convention Secretariat, the Standing Committee and its Bureau, Contracting Parties, other Bern Convention stakeholders, as well as the general public.

Section 2 consists of a framework of procedures that users of the system should adhere to during the lifecycle of a complaint. Section 3 offers proposals for actions and procedures to improve the efficiency and effectiveness of the case-file system going forward.

For a comprehensive background to this document and further explanations of the below points, the reader is invited to consult the accompanying Secretariat Memorandum entitled “Case-File System: Reflections and possible restructuring in the framework of the Bern Convention Vision and Strategic Plan for the period to 2030 (T-PVS/Inf(2021)30)”, which also includes a general summary of the procedure. Finally, it is the intention that the reflection and update of the case-file system becomes a regular practice, thus this text can be considered a “living document”.

2. CASE-FILE SYSTEM: PROCEDURES FOR THE PROCESSING OF COMPLAINTS

A. Submission of complaints

1. An association or private citizen may submit to the Secretariat of the Bern Convention a complaint on an alleged breach of the Convention by one or more Contracting Parties- the digital [complaint form](#), within which submission criteria are stated, should be used.
2. 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.
3. The reason for the potential breach must be specifically highlighted, efforts to address the matter with local, national, and/or international procedures must be demonstrated; and the complaint should be sufficiently serious to warrant examination at international level, bearing in mind the European importance of the habitat, species or population concerned.
4. If a fellow Major Environmental Agreement (MEA) is already treating the issue, the added-value of the Bern Convention also treating this case should be assessed, in order to avoid unnecessary duplication at the international level.
5. Should the Secretariat in the initial screening process (requesting further information from the complainant if need be) deem that the complaint satisfies the above criteria and is thus admissible, it will forward the complaint form to the relevant national authorities requesting a response.
6. The national authorities are requested to provide a response report within about 3 months, and the complaint will be added to the agenda of the following Bureau meeting.
7. If the complaint is considered particularly urgent, the Secretariat may ask the national authorities to respond in a shorter time frame, and it will be up to said authorities to determine if they can respond on time. Furthermore, the Bureau may assess the complaint and take a provisional decision while awaiting the authority's response.
8. Should the complainant change, or an additional complainant wishes to contribute to the case, this can be accepted provided that the original complainant confirms the change. If the original complainant is unable to do so, the Bureau will decide on a case-by-case basis whether to accept the new contact.

B. Assessment of complaints and complaint classifications

9. The Bureau will discuss the complaint form and report of the national authorities and take a decision. Such a decision may entail requesting more information from one or both parties, expressing concern or recommending certain actions, upgrading the status of the complaint if it is deemed serious/urgent, or dismissing the case if it is deemed not sufficiently serious to warrant examination at international level, or outside of the mandate of the Bern Convention's case-file system.
10. There are four categories of complaints. A "New complaint" is one which has been received, processed and registered by the Secretariat. Once discussed at the Bureau, its follow-up must be decided. If further information or clarification is required from either/both parties, the complaint may remain "new" for up to one year.
11. If the complaint is deemed sufficiently serious to warrant continued monitoring by the Bureau but not urgent enough to be brought to the attention of the Standing Committee, the Bureau may elevate the complaint to a "Complaint on stand-by".
12. If the complaint is deemed sufficiently serious and urgent to necessitate Standing Committee attention, the Bureau may elevate the complaint to a "Possible File".
13. The Standing Committee, which generally deals only with "Open" and "Possible" files, may decide to elevate a complaint to the highest category, "Open File", if it agrees, by consensus or by two-thirds majority vote, that the complaint pertains to a violation of some aspect of the Convention.

C. Information requests and deadlines

14. The Bureau or Standing Committee typically requests that the concerned parties report on a specific issue or the general situation of the complaint for a future meeting, which is also defined at the time of the decision, based on its urgency.
15. The Secretariat will set a deadline of approximately one month ahead of the meeting date for the reception of reports. Parties are requested to send a consolidated report by the deadline, and to avoid sending multiple segments.
16. For Bureau meetings, the Bureau has the discretion to accept reports after this deadline on a case-by-case basis and if the delay is justified by the concerned party.
17. For Standing Committee meetings, exceptions to late submission of documents are specified under Rule 6 of the Rules of Procedure.
18. Reports are made public on the Bern Convention relevant meeting webpage several weeks before the meeting. Certain reports may be kept confidential.

D. Sanctions concerning tardiness of reporting from parties

19. For new complaints and complaints on stand-by and concerning the national authorities, if no information is received for two consecutive Bureau meetings, the Bureau may decide to bring this complaint to the attention of the Standing Committee by raising it to a "possible file", or as an exceptional "complaint on stand-by" to the agenda.
20. For new complaints and complaints on stand-by and concerning the complainant, if no information is received for two consecutive meetings, the Bureau may decide to dismiss the complaint.
21. For Open and Possible Files and concerning the national authorities, a letter originating from the Chair of the Standing Committee (as opposed to the usual letter of the Secretariat) may be addressed to the Party strongly advising them to react to the situation as a matter of urgency. This letter may

also be addressed to the Permanent Representation of the concerned country in Strasbourg, who could submit it to the Ministry of Foreign Affairs.

22. For Open and Possible files and concerning the complainant, a letter originating from the Chair of the Standing Committee (as opposed to the usual letter of the Secretariat) may be addressed to the Party encouraging a prompt reaction, and warning that the complaint may be dismissed if no updates are received.

E. On-the-spot appraisals (OSA)¹

23. The decision to organise a visit to a natural habitat shall lie with the Standing Committee, which shall reach the relevant decision by a simple majority of the votes cast, subject to the agreement of the Contracting Party within whose territory the habitat under consideration is situated.
24. 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.
25. 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.
26. The expert shall be accompanied during the visit by a member of the Secretariat and representatives of the Contracting Party and complainant concerned.
27. 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.
28. 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.
29. 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.
30. In case of absence of the concerned Contracting Party at the Standing Committee where a decision on opening a file or mandating an OSA is to take place, such a decision may be postponed until the next meeting. However at the next meeting, and in case of continued absence, the Committee may take a decision *in abstentia*².
31. The Secretariat should investigate if a parallel inspection is being organised by a fellow international organisation. If this is the case and in order to avoid duplicative efforts, it may be considered to postpone a Bern Convention parallel procedure until results of the other procedure have been made clear, or to investigate the possibility of joining the other mission.

¹ NB: These rules (23-29) originate from Annex I to the Rules of Procedure of the Bern Convention Standing Committee and include proposed amendments to Annex I. They may be adjusted following the decision of the 41st Standing Committee on possible modifications to these Rules.

² Concerning OSAs, and referring to point 23, the Committee can mandate the OSA subject to the later agreement of the concerned Party.

F. Recommendations and follow-up

32. Following the results and mission report of an OSA, the expert will present draft recommendations to the Standing Committee, which usually entail proposals of action to the Contracting Party concerned, as well as possibly to the complainant and other stakeholders of the case in question.
33. If adopted at the Standing Committee, the Contracting Party or other stakeholder concerned is expected to keep the Bureau and/or Standing Committee updated with progress on fulfilment of the Recommendation.
34. Depending on perceived progress, the Standing Committee may decide to close the case, but to request that the parties in question continue to report on a less regular basis, in which instance the case will be classified as a “Follow-up Recommendation”.
35. Such a Follow-up Recommendation may be re-opened as a case-file if requested by the complainant or deemed necessary by the Standing Committee.

3. CASE-FILE SYSTEM: LOOKING AHEAD - POSSIBLE NEXT STEPS³⁴

A. Clustering similar cases, customised assessments

1. A comprehensive study on past and current case-files could be undertaken by an external expert, with the aim of assembling all relevant case-file information in one place, and establishing a compendium of best practices for improved and coherent decision-making.
2. Case-files could be clustered by topic, country/region or another aspect to ensure a more accurate and coherent follow-up during their assessment at different levels, i.e. Bureau, Standing Committee, independent experts. Files could also be assessed at technical detail at the relevant Group of Experts meeting on a case-by-case basis.
3. A third annual Bureau meeting dedicated to case-files could be scheduled 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.
4. Independent experts could be mandated more regularly to conduct OSAs or online desk research, including after a Recommendation has been adopted, to ensure a monitoring of its implementation and follow-up.

B. Cooperation with international organisations

5. Cooperation with fellow MEAs should be enhanced; when dealing with the same case, efforts should be made to work collectively and to not duplicate activities or have contradictory positions.
6. Cooperation in particular with the European Commission should be enhanced. If the Commission is taking legal proceedings against a case, it could be considered to close that case on the Bern Convention's agenda, if no more added-value is evident.
7. It could be considered to hold on a semi-regular basis coordinated joint-meetings of the secretariats and/or executive bodies (e.g. bureaus) of the MEAs working on similar issues to ensure coherent positions and actions.

³ It is again recalled here to refer to the accompanying Secretariat Memorandum T-PVS/Inf(2021)30 to find more detailed information on the following points.

⁴ Many of the proposals depend upon an adequate financial and human resource capacity of the Convention and its Secretariat.

8. Synergy should be sought within the Council of Europe and its sectors, many of which are beginning to work on environmental issues.

C. Administrative and digital improvements

9. The administrative procedures of the case-file system should move towards a more digitalised format, in order to drastically reduce the work 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.
10. A case-file dashboard should be developed without delay to include comprehensive data on past and current case-files, and become the centralised space where the lifecycle of a case-file is traced and updated.
11. Reporting templates or an online reporting system (such as the ORS) could be elaborated to increase efficiency and allow harmonisation of reports received; a scoring system (as done for the EDPA) could also be implemented to encourage greater reporting rates.

D. Improving the visibility of the case-file system

12. A communication campaign on the case-file system could be elaborated to highlight the pioneering approach and success stories of this system. Such a campaign should be carefully elaborated in order to avoid a subsequent mass increase in the number of complaints received.
13. An annual case-file report could be produced and could act a useful political tool for Parties and other stakeholders, and facilitate more streamlined and sustainable case-file information.
14. In order to increase visibility at a high national level, a high-level politician (e.g. Minister of Environment, Foreign Affairs, Prime Minister or Head of State) could make a declaration of the State's commitment to the Bern Convention and of cooperating with the Standing Committee's decisions.