



OPCW

Conference of the States Parties

Ninth Session
29 November – 2 December 2004

C-9/DEC.16
2 December 2004
Original: ENGLISH

DECISION

**AMENDMENTS TO THE OPERATING PROCEDURES OF THE
CONFIDENTIALITY COMMISSION**

The Conference of the States Parties,

Recalling its decision approving the operating procedures of the Commission for the Settlement of Disputes Related to Confidentiality (hereinafter “the Confidentiality Commission”) (C-III/DEC.10 and Corr.1, both dated 20 November 1998);

Recalling also Rule 47 of those operating procedures, which states that decisions on proposals for amendments shall be treated as decisions on matters of substance, and that proposals agreed to shall be recommended to the Conference of the States Parties (hereinafter “the Conference”) for adoption; and

Bearing in mind the recommendation in the report of the Sixth Meeting of the Confidentiality Commission that the Conference adopt the amendments proposed in that report (subparagraphs 6.1(a) to (d) of CC-6/2 dated 2 November 2004);

Hereby:

Approves the amendments to the operating procedures of the Confidentiality Commission annexed hereto.

Annex:

Amendments to the Operating Procedures of the Confidentiality Commission



Annex

AMENDMENTS TO THE OPERATING PROCEDURES OF THE CONFIDENTIALITY COMMISSION

Previous Text	Explanation	New Text
<p>Rule 1 – Application of Operating Procedures These Operating Procedures of the Confidentiality Commission are a set of rules governing the proceedings of the Commission for the Settlement of Disputes Relating to Confidentiality (hereinafter referred to as the “Confidentiality Commission”)....</p>	<p>“Relating” should be “Related”.</p>	<p>Rule 1 – Application of Operating Procedures These Operating Procedures of the Confidentiality Commission are a set of rules governing the proceedings of the Commission for the Settlement of Disputes Related to Confidentiality (hereinafter “the Confidentiality Commission”)....</p>
<p>Rule 3 – Term of Office After expiration of the terms of appointment of the members of the first Confidentiality Commission in accordance with the Confidentiality Policy Rules, the members of the Confidentiality Commission shall be appointed by the Conference every two years at its regular annual session. They shall serve on the Confidentiality Commission until the appointment of their successors by the Conference. A person who has completed three consecutive terms as a member of the Confidentiality Commission shall not be eligible for immediate re-appointment.”</p>	<p>This change will make clear exactly when a member’s term of appointment shall begin and end.</p>	<p>Rule 3 – Term of Office After expiration of the terms of appointment of the members of the first Confidentiality Commission in accordance with the Confidentiality Policy Rules, the members of the Confidentiality Commission shall be appointed by the Conference every two years at its regular annual session. Members shall take up their appointment for a period of two years starting from 1 January in the year immediately following the session of the Conference at which they were appointed. A person who has completed three consecutive terms as a member of the Confidentiality Commission shall not be eligible for immediate reappointment.</p>

<p>Rule 10 – Disclosure Each member of the Confidentiality Commission shall, as soon as he or she is informed of a dispute, disclose to the Chair any circumstances likely to give rise to justifiable doubts as to his or her impartiality or independence in regard to the case. The Chair shall inform all members of the Confidentiality Commission of any such disclosure and, if the Confidentiality Commission considers it appropriate, such a member shall either refrain from specific activities relating to the case or from any participation in the consideration of the case. If the Chair has an apparent conflict of interest, he or she shall entrust to one of the Vice-Chairs the functions which are affected by such conflict.</p>	<p>It is recommended that, in the interest of a more logical sequence, the present Rule 11 be placed immediately before the present Rule 10, and that both Rules be renumbered accordingly.</p>	<p>Rule 11 – Disclosure Each member of the Confidentiality Commission shall, as soon as he or she is informed of a dispute, disclose to the Chair any circumstances likely to give rise to justifiable doubts as to his or her impartiality or independence in regard to the case. The Chair shall inform all members of the Confidentiality Commission of any such disclosure and, if the Confidentiality Commission considers it appropriate, such a member shall either refrain from specific activities relating to the case or from any participation in the consideration of the case. If the Chair has an apparent conflict of interest, he or she shall entrust to one of the Vice-Chairs the functions which are affected by such conflict.</p>
<p>Rule 11 – Provision of information to the Chair A party to a dispute under consideration by the Confidentiality Commission which is aware of circumstances believed to give rise to justifiable doubts as to the impartiality or independence of a member of the Confidentiality Commission may give notice of such circumstances to the attention of the Chair. If the conflict of interest involves the Chair, a Vice-Chair shall be entrusted with the Chair’s functions as provided for under Rule 10.</p>	<p>Please refer to the explanation given above regarding the reordering of paragraphs. The other minor change is purely formal.</p>	<p>Rule 10 – Provision of information to the Chair A party to a dispute under consideration by the Confidentiality Commission which is aware of circumstances believed to give rise to justifiable doubts as to the impartiality or independence of a member of the Confidentiality Commission may bring such circumstances to the attention of the Chair. If the conflict of interest involves the Chair, a Vice-Chair shall be entrusted with the Chair’s functions as provided for under Rule 11.</p>

<p>Rule 46 – Interim measures to protect evidence at an inspection site A party to a dispute before the Confidentiality Commission may request it to order interim measures to protect evidence at an inspection site or elsewhere. The Confidentiality Commission shall, in consultation with the parties, order such interim measures as it considers necessary to protect evidence relevant to a dispute pending before it. The Confidentiality Commission shall request the Director-General to take such interim measures as it considers necessary.</p>	<p>The proposed change involves substituting “provisional” for “interim”, in the interest of the legal soundness of the Rule.</p>	<p>Rule 46 – Provisional measures to protect evidence at an inspection site A party to a dispute before the Confidentiality Commission may request it to order provisional measures to protect evidence at an inspection site or elsewhere. The Confidentiality Commission shall, in consultation with the parties, order such provisional measures as it considers necessary to protect evidence relevant to a dispute pending before it. The Confidentiality Commission shall request the Director-General to take such provisional measures as it considers necessary.</p>
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