



April 30, 2004

IPEN Steering Committee comments on the Draft Terms of Reference for the Persistent Organic Pollutants Review Committee

The Steering Committee of the International Persistent Organic Pollutants Elimination Network (IPEN) welcomes the opportunity to submit our comments on the Revised and Annotated Draft Terms of Reference for the Persistent Organic Pollutants Review Committee (UNEP/POPS/INC.7/28, annex V).

IPEN is a network of 350 NGOs and community-based groups around the world working together to eliminate persistent organic pollutants (POPs) and other persistent toxic substances. The IPEN Steering Committee promotes the development and implementation of activities, policies and goals based on our common platform—the IPEN Stockholm Declaration—and based on decisions of the IPEN General Assembly. For further information, please contact the IPEN International Coordinator, Björn Beeler (BjornBeeler@ipen.org).

Our comments below follow the structure of the Draft Terms of Reference, beginning with section B, “Membership.” We identify the section and paragraph in question, provide our thoughts, and then our recommendations. Our suggested text changes appear in **bold type**.

B. Membership

Paragraph 2 (appointment of Committee members). We strongly support the sentiments expressed in the bracketed text regarding equitable gender distribution and balance between different types of expertise. We recommend that “balance between different types of expertise” be construed to include expertise possessed by individuals from non-profit, public interest organizations and indigenous peoples organizations.

Paragraph 3 (number and geographic distribution of Committee members). The second bracketed alternative—seven members from each of the five U.N. regions—is probably the simplest approach, and would conform to the practice of most multilateral environmental agreements. By contrast, the advantage of basing membership on the seven FAO regions is that those regions could allow for slightly more commonality of geographical, cultural, and economic interests among the regional members. Yet using the FAO approach would require devising and agreeing on a formula to determine how many Committee members would come from each region. (Given that the FAO North

America region only contains two nations, while the Africa region contains 48, it would obviously be unacceptable to have equal numbers of Committee members from each region.) Currently, 49 FAO Council seats are distributed among the seven FAO regions. That number of seats is too many for the POPRC; hence, a different distributional arrangement would be needed if the FAO approach were applied to the Committee. Because devising and agreeing upon such an arrangement could be politically difficult and could delay the convening of the Committee, we believe the approach of seven members from each of the five U.N. regions is the best choice.

Paragraph 4 (government designation of Committee members). Because the POPRC is a subsidiary body to the Convention (see Convention article 19.6), and because only countries that have ratified the Convention may be members of subsidiary bodies, we believe it is apparent that only Parties to the Convention may enjoy the right to designate experts for membership on the Committee. Nevertheless, we believe it may be helpful to remove any potential ambiguity on this point by inserting language that specifically allows only Parties to the Convention to designate Committee members.

Suggested amended text:

4. Members of the Committee shall be government-designated experts in chemical assessment or management. **Only countries that have consented to be bound by the Convention and for which the Convention is in force may designate experts for membership on the Committee.**

Paragraph 5 (nominating experts – balance of expertise). Footnote 2 correctly notes that it will be problematic to expect a Party that is nominating one expert to have “due regard” for a balance of the various listed concerns. Instead of placing the burden on individual Parties to achieve the desired balance, it should be placed on either the members of the geographic region or the COP.

Suggested amended text:

5. **[When nominating experts, the Parties of each geographic region] OR [When appointing experts, the Conference of the Parties]** shall have due regard to a balance between different types of expertise, and ensure that expertise in health and environment is represented. Parties shall provide curricula vitae, to be submitted to the Conference of the Parties, for the designated experts.

Paragraph 6 (terms of appointed Committee members). We support the bracketed text that would allow Committee members to be reappointed to serve additional terms.

C. Invited experts

Paragraph 7 (invitation and roster of experts). Because any Party may designate experts to the roster, the bracketed language regarding experts from major producers is superfluous and should be deleted.

D. Other participants

Paragraph 9 (Committee open to Parties and observers). The present language is unclear as to what rights are being accorded to Parties and observers that wish to attend Committee meetings. We recommend the following language to lessen that ambiguity.

Suggested amended text:

9. The **proceedings of Committee meetings** shall be open to:
 - (a) Parties to the Convention, **who may participate without the right to vote; and**
 - (b) Observers in accordance with the rules of procedure.

Paragraph 10 (Committee shall invite other Parties). In light of the fact that Paragraph 9 already would allow any Party to participate in Committee meetings, it is redundant to also provide for special invitations from the Committee to particular classes of Parties. Moreover, we believe it would be inappropriate to single out “Parties that are major producers of the chemical” for special treatment (as the bracketed text would do). If the bracketed text were retained, then the paragraph should also specify other interested groups who deserve special notice; for example, Parties or observers that suffer major impacts from the chemical.

Instead, we recommend that all of Paragraph 10 should be deleted.

E. Conflict of interest

(1) A fundamental requirement needed to avoid problems related to conflicts of interest is the duty to disclose actual and potential conflicts. The duty should apply equally to all Committee members and invited experts. To accomplish this, we recommend insertion of the following text.

Additional suggested text:

10bis. Each designated member of the Committee shall promptly disclose to the Committee any actual or anticipated conflicts of interest the member’s work on the Committee may create, including the existence of any actual or anticipated financial interests that may be affected by the Committee’s work. This duty to disclose (including the duty to update disclosures) shall begin no later than when the Committee member is designated by her or his government, and shall continue until the Committee member’s term ends.

11bis. Each designated expert invited to support the Committee in its work shall promptly disclose to the Committee any actual or anticipated conflicts of interest the expert’s work with the Committee may create, including any actual or anticipated financial interests that may be affected by the Committee’s work. The duty to disclose (including the duty to update

disclosures) shall continue as long as the expert continues to take part in the work of the Committee.

(2) Committee members and experts should be expected to disqualify (recuse) themselves when they are directly involved with Committee work in which they may have a conflict of interest.

Additional suggested text:

10ter. Committee members or invited experts shall promptly disqualify themselves from direct involvement in any Committee work in which they have an actual or anticipated conflict of interest.

(3) Because Committee members may be reluctant to identify or deal with alleged conflicts of interest on their own, the rules should allow other interested parties to raise questions that are supported by credible evidence.

Additional suggested text:

10quater. Any Party to the Convention or any accredited observer may raise a question as to whether an individual Committee member or invited expert has a conflict of interest related to the Committee's work. Any such questions must be submitted in writing to the secretariat. They should be supported by credible evidence, clearly explain why there is a conflict of interest, and not be trivial or inconsequential. After verifying that a submitted question meets all of the requirements of this paragraph, the secretariat shall forward it for further consideration to either the Conference of the Parties or the Committee, as provided under these rules.

Paragraph 11 (COP decisions on conflict of interest cases). If a serious question arises regarding conflict of interest for a Committee member, the COP should deal with the question as quickly as possible. With that objective in mind, we recommend that, for the purpose of decision making, such a question be considered a matter of procedure, which is subject to a majority vote, per Rule 46.2 of the Draft Rules of Procedure of the Conference of the Parties.

Suggested amended text:

11. The Conference of the Parties shall decide on individual cases of conflict of interest concerning members of the Committee. **For the purposes of this paragraph, any such cases shall be considered matters of procedure subject to Rule 46.2 of the Draft Rules of Procedure of the Conference of the Parties and Its Subsidiary Bodies.**

F. Confidentiality of data

Paragraph 14. We support a strict interpretation and application of the second sentence of paragraph 14, which acknowledges the supremacy of Article 9, paragraph 5 of the

Convention (“information on health and safety of humans and the environment shall not be regarded as confidential”).

H. Administrative and procedural matters

Paragraph 16ter (Committee may establish rules of procedure regarding observers). Because paragraph 9 (b) of these draft Terms of Reference already provides that observers to Committee sessions may participate “in accordance with the rules of procedure,” we believe it will be redundant and confusing for the POPRC to also establish participation rules. Accordingly, we recommend that paragraph 16ter should be deleted.

J. Meetings

Paragraph 19 (schedule for meetings). We believe the Committee should be authorized to meet more often than once a year, if the Committee’s workload demands it.

Suggested amended text:

19. The Committee should meet **at least** once a year, subject to availability of funds and work requirements. The meetings shall take place between meetings of the Conference of the Parties and be scheduled so that proposals for listing chemicals can go forward to the next meeting of the Conference of the Parties for consideration.

Paragraph 21 (preparation of Article 8 documents). We believe the second sentence is problematic, because the phrase, “drawing in the first instance upon existing peer-reviewed material,” could be construed to suggest that Committee members should avoid considering relevant informational materials that have not been peer reviewed. An even more troublesome, but plausible, interpretation of that phrase is that the Committee would not be permitted to utilize important documents such as those prepared by government agencies or case studies unless they have first been peer reviewed. Additionally, the word “existing” seems redundant and unnecessary, because Committee members will obviously not be able to use peer-reviewed material that does not exist.

Because the qualifications of all Committee members should include the ability to evaluate the relative merit of materials used in the preparation of risk profiles and risk management evaluations, and because the COP will always retain the power to override decisions and recommendations of the Committee in the event there is a question regarding the quality of the materials the Committee relied upon, we believe this sentence should be deleted or amended.

Suggested amended language:

21. The Committee shall prepare for its meetings the risk profiles and risk management evaluations required by Article 8 of the Convention. Members of the Committee may lead the preparation of such documents, drawing **upon** peer-reviewed **and other relevant** material. The nominating Party or Parties may

facilitate the process by submitting a proposal for listing of a chemical together with a draft risk profile and a draft risk management evaluation.

K. Language of meetings

Paragraph 23. Designating English as the working language of the Committee could have the undesirable consequence of discouraging participation of some members or potential members who do not speak English and who could otherwise contribute to the Committee's work. However, we fear that a requirement that the Committee must conduct its business in all six official languages of the United Nations would greatly increase the Committee's operating expenses and greatly diminish the ability of the Committee to consider the addition of other POPs to the Convention in an expedited manner. We believe that an appropriate compromise between these two concerns is reflected in draft paragraph 26, which provides that decisions, recommendations and meeting reports of the Committee shall be made publicly available in the six U.N. languages.