

**TEMPLATE FOR SUBMISSION OF TEXTUAL PROPOSALS DURING THE 27<sup>TH</sup> SESSION:  
COUNCIL - PART III**

Please fill out one form for each textual proposal which your delegation(s) wish(es) to amend, add or delete and send to [council@isa.org.jm](mailto:council@isa.org.jm).

**1. Name of Working Group:**

Informal Working Group – Inspection, Compliance and Enforcement

**2. Name(s) of Delegation(s) making the proposal:**

The African Group

**3. Please indicate the relevant provision to which the textual proposal refers.**

This is a comprehensive proposal on the establishment of a Compliance Committee

**4. Kindly provide the proposed amendments to the regulation or standard or guideline in the text box below, using the “track changes” function in Microsoft Word. Please only reproduce the parts of the text that are being amended or deleted.**

Draft Regulation	Current Draft wording
96(1)	1.The Council shall establish <u>a Compliance Committee, [an independent Inspectorate as the]</u> <del>or an appropriate mechanisms</del> <u>[mechanism]</u> for inspection, <u>compliance, and enforcement for directing and supervising a staff of Inspectors,</u> as provided for in articles 153 (5) and 162 (2) (z) of the Convention. <del>[Inspections performed shall be undertaken by Inspectors who meet the qualification set out by the Council pursuant to Regulation 97(1)].</del>
96(3)	3.The <u>Compliance Committee [Inspectorate]</u> shall give reasonable notice, <del>of not less than [x]</del> to the Contractor of the projected time and duration of inspections for a period as necessary, the names of the Inspector(s) and any activities that the Inspector(s) are to perform that are likely to require the availability of special equipment or special assistance from the personnel of the Contractor, save in situations where the <u>Compliance Committee [Inspectorate]</u> has reasonable grounds to consider the matter to be so urgent that notice cannot be given, in which case the <u>Compliance Committee [Inspectorate]</u> may, where practicable, exercise the right to conduct an inspection without prior notification, [pursuant to Regulation 4(5)].
97(2)	2.The Commission shall make recommendations to the Council on the appointment, supervision and direction of Inspectors, and on an inspection programme and schedule, <u>for the Compliance Committee</u>

	<del>[under the inspection mechanism]</del> <del>[for the Inspectorate]</del> established by the Council in regulation 96 (1) and in accordance with the Standards and taking into account the Guidelines.
97(3)	3.The <u>Compliance Committee</u> <del>[Secretary-General]</del> <u>[Inspectorate]</u> shall manage and administer such inspection programme, including the appointment of Inspectors at the direction of the Council
99(3)	3. Any instruction issued under paragraph 1 above shall be in force <del>[until the Contractor has executed the instruction]</del> <del>[-for a specified period, not exceeding seven Days, after which it lapses].</del> <del>[Upon receiving information from the Contractor about steps taken to implement the instruction, the</del> <u>[Compliance Committee]</u> <u>[Inspectorate]</u> shall decide, as soon as possible and within no more than three Days, whether the instruction has been complied with by the Contractor]. The <del>[Inspector]</del> <u>[Compliance Committee]</u> <u>[Inspectorate]</u> shall report immediately to the Secretary-General, <del>[the Council]</del> and to the Contractor's sponsoring State or States that an instruction has been issued under paragraph 1, and <del>[where the issue remains unresolved],</del> the <del>[Secretary-General]</del> <u>[Compliance Committee]</u> <u>[Inspectorate]</u> may thereafter exercise the powers conferred upon the <del>[Secretary-General]</del> <u>[Compliance Committee]</u> <u>[Inspectorate]</u> under regulation 103. The Secretary-General shall exercise these powers to prevent <del>[probable]</del> imminent danger to the health or safety of any person or <del>[probable, imminent, and]</del> serious harm to the environment <del>[arising out of activities in the Area]</del> .
100(1)	1. <del>[Immediately after]</del> <u>[At]</u> the end of an inspection, the Inspector shall <del>[prepare]</del> <u>[deliver]</u> a report <u>promptly to the Compliance Committee</u> <u>[promptly to the Inspectorate]</u> , [in accordance with the template to be prescribed in the standards], setting out the findings and any recommendations for improvements in [performance], procedures or practices by a Contractor. The <del>[Inspector]</del> <u>Compliance Committee</u> <u>[Inspectorate]</u> shall send the report to the Secretary-General, <del>[the Commission, and the Council as soon as it is completed]</del> and the Secretary-General shall send <u>immediately</u> a copy of the report to the Contractor and to the sponsoring State or States and, if appropriate, the relevant coastal State or States and the flag State.
100(2)	2.The <del>[Secretary-General]</del> <u>Compliance Committee</u> <u>[Inspectorate]</u> shall report annually to the Council on the findings and recommendations following the inspections conducted in the prior Calendar Year, [as compiled in a report by the Inspectors] and shall make any recommendations to the Council on any regulatory action to be taken by the Council under these regulations and an exploitation contract. [taking account of any regulatory action taken by the sponsoring State or States or corrective actions taken by a Contractor to address the findings or recommendations.]
100(3)	3.The <del>[Secretary-General]</del> <u>Compliance Committee</u> <u>[Inspectorate]</u> shall report acts of violence, intimidation or abuse against or the wilful obstruction or harassment of an Inspector <del>[in the course of their duty]</del> by any person or the failure by a Contractor to comply with regulation 96 <del>[to the Secretary-General]</del> .
100(4)	4. The <u>Compliance Committee</u> <u>[Inspectorate]</u> <del>[Inspector]</del> shall <del>[also report acts referred to in para. 3 immediately to the</del> <del>[Secretary-</del>

	<del>General] and shall]</del> take the appropriate measures under Regulation 103.
101(1)	<del>1. A person aggrieved by an action of an Inspector under this Part may complain in writing to the Compliance Committee Inspectorate, who shall consider the complaint as soon as practicable.]</del>
101(2)	2. The <del>[Secretary-General]</del> <u>Compliance Committee</u> <del>[Inspectorate]</del> may take such reasonable action as is necessary in response to the complaint.
101(3)	<del>3. The Compliance Committee Inspectorate shall issue a report to the Authority describing the complaint and the action taken in response to such a complaint.]</del>
102(3)	3. The <del>[Secretary-General]</del> <u>Compliance Committee</u> <del>[Inspectorate]</del> shall issue a compliance notice under regulation 103, where [there is reasonable evidence to suggest based on] the data transmitted to the Authority that unapproved mining activities have occurred or are occurring.
102(5)	5. All data transmitted to the Authority <del>[and the Compliance Committee Inspectorate]</del> under this regulation shall be transmitted to the <del>[Secretary-General and the]</del> sponsoring State or States.
103(1)	1. At any time, if it appears to the <u>Compliance Committee</u> <del>[Secretary-General]</del> <del>[Inspectorate]</del> based on reasonable grounds that a Contractor is in breach of the terms and conditions of its exploitation contract, Part XI and the rules, regulations and procedures of the Authority, the <del>[Secretary-General]</del> <del>[Inspectorate]</del> <u>Compliance Committee</u> shall issue a compliance notice to the Contractor requiring the Contractor to take such action as may be specified in the compliance notice <del>[and report immediately to the Council].</del>
103(2)(b)	(b) Require the Contractor to take remedial action or other such steps as the <u>Compliance Committee</u> <del>[Secretary-General]</del> <del>[Inspectorate]</del> considers appropriate to ensure compliance within a specified time period.

##### 5. Please indicate the rationale for the proposal. [150-word limit]

1. The African Group makes the following submission concerning the establishment of a Compliance Committee.
2. This submission is being made considering negotiations on the Draft Regulations on Exploitation of Mineral Resources in the Area, Part XI: Regulations 96 to 105 prepared by the Facilitator, Ambassador Maureen Tamuno, within the Informal Working Group on Inspection, Compliance and Enforcement in July 2022 and its revised version in October 2022 during parts two and three of the 27<sup>th</sup> session of the Council respectively.
3. The African Group acknowledges that, owing to time constraints, the Legal and Technical Commission have not yet had an opportunity to consider the matter of inspections in detail (document ISBA/25/C/18, considering document ISBA/25/C/5) and will do so at its

subsequent meetings. The African Group looks forward to the inputs from the Commission on this topic.

4. The African Group notes the following relevant articles in Part XI of UNCLOS:
  - a. Article 153(5): The Authority shall have the right to take at any time any measures provided for under this Part to ensure compliance with its provisions and the exercise of the functions of control and regulation assigned to it thereunder or under any contract. The Authority shall have the right to inspect all installations in the Area used in connection with activities in the Area.
  - b. Article 165(2)(m): The Commission shall ... make recommendations to the Council regarding the direction and supervision of a staff of inspectors who shall inspect activities in the Area to determine whether the provisions of this Part, the rules, regulations and procedures of the Authority, and the terms and conditions of any contract with the Authority are being complied with.
  - c. Article 162(2)(z): The Council shall ... establish appropriate mechanisms for directing and supervising a staff of inspectors who shall inspect activities in the Area to determine whether this Part, the rules, regulations and procedures of the Authority, and the terms and conditions of any contract with the Authority are being complied with.
5. Based on the above provisions, Draft Regulation 96(1) of the Exploitation Regulations in its current form provides that “The Council shall establish appropriate mechanisms for inspection, as provided for in article 162(2)(z) of the Convention.”
6. The primary purpose of inspection should be to monitor for the purpose of ensuring compliance with UNCLOS, the rules, regulations, applicable standards, and relevant guidelines of the Authority, and the terms and conditions of contracts.
7. Effective inspection and compliance will require a robust, independent, and impartial institutional arrangement.
8. The African Group considers that establishment of a Compliance Committee is necessary to allow the future Inspectorate function of the ISA to function in an independent, impartial and inclusive manner, and invites the Council to consider and discuss the following:

#### **Proposal for Consideration by the Council**

9. Currently the Draft Regulations confer the responsibility for inspection and compliance to the Authority, an Inspectorate and in some instances to the Secretary-General. It is our consideration that the Secretary-General’s role should remain within the administrative and secretariat functions.

10. The creation of a mechanism, such as a Compliance Committee, would facilitate an independent, impartial and inclusive approach to compliance. The Compliance Committee would exercise oversight over the Inspectorate, receive reports and disseminate information, address any complaints, as well as being responsible for the issuance of compliance notices. The Secretary-General would remain responsible for transmittal of communication with contractors and sponsoring States, as appropriate.

### **Principles Guiding the Establishment and Operation of the Committee**

11. The establishment and operations of the Committee would need to be guided by key principles including:
  - a. Independence, impartiality
  - b. Expertise
  - c. Discretion
  - d. Clarity of responsibilities and powers
  - e. Transparency

### **Composition of the Compliance Committee**

12. Members of the Compliance Committee should be experts in the recognized fields related to the mandate of the Committee and elected by Council from nominations by Member States of the Authority, taking into account equitable geographical distribution and gender balance. The number of members needs to be agreed, but it must be sufficient to achieve a quorum as necessary for the relevant tasks. Duration of membership will need to be agreed.
13. There should also be agreement on the required qualifications and experience needed for nomination to the Committee.
14. The Compliance Committee should be headed by a Chief Compliance Officer. Such a position could be a designated staff position of the Secretariat, or elected from within the other members of the Compliance Committee. How this position is appointed will need to be agreed.
15. Consideration as to linkages to the Legal and Technical Commission will also need to be undertaken.
16. To facilitate the independence and impartiality of the Compliance Committee, all its members, including the Chief Compliance Officer, must serve in their individual capacity and not as representatives of their respective States.

### **Functions and Powers of the Committee**

17. The Compliance Committee's role would be to advance compliance with, and the implementation of, the Convention, the rules, regulations, applicable standards, and relevant guidelines of the Authority, and the terms and conditions of contracts. In furtherance of this, the Committee may be charged with the following responsibilities:

- a. Exercise oversight over the inspection system;
- b. Consider complaints submitted to it concerning contractors' compliance with their obligations;
- c. Issue compliance notices, emergency orders, and orders to undertake remedial actions to contractors;
- d. Receive reports from Inspectors, and prepare an annual report on Contractors' compliance with the Convention, the ISA regulations, and ISA Contracts, and report on the activities undertaken by the Compliance Committee;
- e. Make recommendations to the Council and Inspectors, and through the Secretary-General to Sponsoring States and Contractors as necessary.

### **Trigger Mechanism**

18. The Compliance Committee may be called into action in the following ways:

- a. The submission of a complaint against a contractor or the Enterprise
- b. A sponsoring State may make a request to the Compliance Committee for advice on compliance by its sponsored contractor.
- c. A contractor may, either alone or jointly with its sponsoring State, make a request to the Compliance Committee for advice on its own compliance.
- d. The Enterprise may make a request to the Compliance Committee for advice on its own compliance.
- e. The Secretariat or the Council may request the Committee to examine a contractor's or the Enterprise's compliance.
- f. The Committee may examine compliance concerns on its own motion.

### **Working Methods of the Compliance Committee**

19. The Compliance Committee should be required to develop its Rules of Procedure, for approval by Council, to govern its modus operandi and the step-by-step of the complaint review process. Guidelines issued by the Compliance Committee should be required to be published for public comments before they are adopted.

### **Conclusion**

20. The African Group, for the reasons outlined above, welcomes discussion during the Informal Working Group on Inspectorate, Compliance and Enforcement on this matter. Before continuing with the line-by-line text negotiation of the Regulations, agreement on the establishment, or not, of a Compliance Committee needs to be reached.

21. The African Group therefore suggests that the Facilitator directs the Informal Working Group to discuss this matter during the third part of the 27<sup>th</sup> Session of the Council.