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**INTERGOVERNMENTAL COMMITTEE FOR PROMOTING THE
RETURN OF CULTURAL PROPERTY TO ITS COUNTRIES OF ORIGIN
OR ITS RESTITUTION IN CASE OF ILLICIT APPROPRIATION**

**Fourteenth session
Paris, UNESCO Headquarters
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**DRAFT RULES OF PROCEDURE ON MEDIATION AND CONCILIATION
IN ACCORDANCE WITH ARTICLE 4, PARAGRAPH 1, OF THE STATUTES
OF THE INTERGOVERNMENTAL COMMITTEE FOR PROMOTING THE
RETURN OF CULTURAL PROPERTY TO ITS COUNTRIES OF ORIGIN
OR ITS RESTITUTION IN CASE OF ILLICIT APPROPRIATION**

**Article 1. Scope and Nature of the Rules of Procedure for Mediation and
Conciliation Procedures**

1. In accordance with Article 4.1 of the Statutes of the Intergovernmental Committee for Promoting the Return of Cultural Property to its Countries of Origin

or its Restitution in case of Illicit Appropriation (hereinafter the "Statutes" and "the Committee"), requests for the return or restitution of cultural property, as defined under Article 3 of the Statutes, which are submitted to the Committee, may also be dealt with under a mediation or a conciliation procedure.

2. The rules contained herein apply both to mediation and to conciliation procedures before the Committee. They apply to a procedure unless the Parties agree to amend or exclude them. The Parties may do so at any time.

**Article 2. Nature of the Procedures and Roles of the Mediator or
Conciliator**

1. A mediation procedure shall require the involvement of a Mediator, whose role is to bring the Parties of a dispute to a discussion and to assist them in reaching a solution.

2. The role of mediator may be conferred on one or more individuals, who shall be chosen by the Parties concerned and may include, but not be limited to, any of the following:

- (a) a representative of one or more State(s) Member(s) of the Committee;
- (b) an outside person(s), or representative of an institution or other body pre-selected by the Committee, qualified in restitution issues; or
- (c) a qualified representative of the UNESCO Secretariat..

3. In a conciliation procedure the Parties submit their dispute to a constituted organ, which shall serve as conciliator and whose role is to clarify the dispute, investigate the relevant aspects and details of the case and submit to the Parties suitable terms of settlement.
4. The role of conciliator may be conferred on any of the following:
 - (a) an already constituted organ chosen by the Parties;
 - (b) a subcommittee of the Committee, composed of a set number of Member States, both members and non-members of the Committee;
 - (c) a separately constituted group of 3 to 5 conciliators, each party to the dispute choosing one or two persons who are not of its nationality, the third or fifth person being chosen jointly by the two Parties.

Article 3. Main Principles

1. Mediation and conciliation procedures require the consent in writing of the Parties before that may be initiated.
2. Mediation and conciliation procedures shall be conducted in conditions of confidentiality, transparency and in accordance with the general principles of fairness, impartiality and good faith.
3. The Parties shall participate in a motivated and responsible manner and cooperate in order to proceed as expeditiously as possible.
4. The Parties, the Mediator or the Conciliator shall participate with a view to facilitating a settlement of the dispute in the spirit of the general principles of international law and of cultural heritage law.
5. The outcome of the procedure shall be binding on the Parties only when they reach an agreement that they deem binding.

Article 4. Parties

1. Parties to a conciliation or a mediation procedure may be Member States or Associate Members of UNESCO. Such States acting as Parties may, if they wish, represent the interests of State and private institutions located in their territory or the interests of their nationals.
2. A Party may withdraw at any time from the procedure.
3. A representative of each Party shall be present at all mediation or conciliation meetings. Each Party's representative shall have the requisite authority to agree to the settlement terms and conditions at which the Parties may arrive.
4. While complying fully with the principles of confidentiality, transparency, fairness, impartiality and good faith, the Mediator or the Conciliator may separately meet and communicate with each Party. The information given in this way shall not be disclosed without the express authorization of the Party providing the information.

Article 5. Rules common to Mediators and Conciliators

1. Mediators or Conciliators shall:
 - (a) act ensuring confidentiality and transparency;
 - (b) act according to the general principles of fairness, impartiality and good faith;
 - (c) not act as a representative or counsel of either Party in any subsequent proceedings concerning the dispute at issue.

2. Mediators or Conciliators shall be selected and appointed as individuals or entities qualified in restitution issues and knowledgeable with regard to the nature of the dispute and the specificity of the cultural property at stake.

3. The Parties may agree, at any stage of the procedure, to request the Chairman of the Committee to replace the Mediator or Conciliator.

4. Each Party may, at any stage of the procedure and in case of breach of any of the obligations set forth under Article 5 (1), request the Chairman of the Committee to replace the Mediator or Conciliator.

Article 6. Initiating a Mediation or Conciliation Procedure

1. Any Member States or Associate Members of UNESCO may submit in writing a request to initiate a mediation or conciliation procedure to the Director-General who shall acknowledge receipt, transmit it to the Chairman of the Committee and inform the Parties about the Statutes of the Committee and its Rules of Procedure.

2. The request shall contain the names and contact information of the representatives of the Parties, an indication of the nature of the dispute and the relevant supporting documents.

3. The Committee may recommend that any Member State or Associate Member of UNESCO, which has a case pending before it, submit a request for a mediation or a conciliation procedure.

4. The Chairman of the Committee shall examine the request and decide on its admissibility on the basis of the Statutes of the Committee. The Chairman shall do so, in cooperation with the UNESCO Secretariat, as soon as possible and also between sessions of the Committee, and promptly inform the Parties and the Members of the Committee about the admissibility of the request. If the request is not admissible, the Chairman of the Committee shall dismiss it, while the issue remains pending before the Committee.

5. A mediation or a conciliation procedure, in which a request has been declared admissible, shall not be deemed to have been initiated as long as it has not been accepted in writing by all of the Parties to the dispute. If a mediation or a conciliation procedure is initiated, it shall not prejudice the application and the effects of any other procedure or other means of dispute settlement that the Parties have undertaken or wish to undertake concurrently or at a later stage.

Article 7. Appointment of the Mediator or Conciliator

1. The Parties shall appoint a Mediator or Conciliator within 60 days of their written agreement to initiate a procedure and shall inform the Chairman of the Committee accordingly.

2. Failing such appointment, the Chairman of the Committee shall, after consultation of the Parties concerned, appoint a Mediator or Conciliator. Such an appointment shall be made as soon as possible, also between sessions of the Committee.

Article 8. Consultations

1. The Mediator or Conciliator may adopt his own rules of procedure.

2. The Parties shall submit to the Mediator or Conciliator the issues in question, their position thereon and all relevant documentation.

3. In consultation with the Parties, the Mediator or Conciliator shall then set the times, places and dates of their meetings and specify in which language(s) documentation and evidence shall be submitted.

4. The Mediator or Conciliator may conduct his own enquiries and research to determine the facts of a particular dispute.
5. Following the request of a Party, the Mediator or Conciliator may allow witnesses, experts or third parties to provide documentation or evidence.
6. Each Party shall have the right to submit new arguments and documents in writing before the procedure is concluded.
7. Consultations are confidential, no recording shall be made, and information or documents obtained during the procedure shall not be disclosed, unless the Parties agree otherwise.
8. The Mediator or Conciliator shall endeavour to bring the Parties to reach a settlement of the dispute within one year from the date of his/her appointment.
9. The Parties may set a time limit for the conclusion of the procedure, beyond which, if no settlement has been reached, the procedure shall be deemed to have been concluded.

Article 9. Reporting

Parties shall report on the state of the procedure to the Committee at the following session.

Article 10. Conclusion of the Procedure

1. A mediation or conciliation procedure shall be deemed to have been concluded in one of the following cases:
 - (a) when a settlement that all Parties deem binding has been reached;
 - (b) when all of the Parties concerned consent in writing to deem the procedure concluded;
 - (c) when all Parties have set a time limit, within which no settlement has been reached.
2. The Parties shall promptly inform the Chairman of the Committee, who shall inform the Director-General of UNESCO and the Members of the Committee at the next session, of any settlement reached or procedure concluded without a settlement.
3. The Chairman of the Committee shall dismiss any procedure that has been concluded without a settlement, while the issue remains before the Committee.

Article 11. Costs

1. The Parties shall determine and pay compensation to the Mediator or Conciliator, unless the Mediator or Conciliator states in writing that his/her services are provided on a voluntary basis or another arrangement has been agreed.
2. The Parties shall bear equally all the costs of the mediation or conciliation procedure, with the exception of costs for witnesses, experts, third Parties or legal assistance when requested by only one Party, in which case the requesting Party shall cover the expenses incurred. Funding for a mediation or conciliation procedure shall not come from the budget of the institution or individual called upon to act as Mediator or Conciliator.