



# Economic and Social Council

Distr.: General  
8 February 2011

Original: English

## Economic Commission for Europe

Meeting of the Parties to the Convention on  
Access to Information, Public Participation  
in Decision-making and Access to Justice  
in Environmental Matters

### Compliance Committee

#### Twenty-fifth meeting

Geneva, 22–25 September 2009

## Report of the Compliance Committee on its Twenty-fifth meeting

### Contents

	<i>Paragraphs</i>	<i>Page</i>
I. Introduction .....	1	3
A. Attendance .....	2	3
B. Organizational matters .....	3–4	3
II. Relevant developments since the previous meeting of the Committee .....	5	3
III. Other matters arising from the previous meeting .....	6–11	3
IV. Submissions by Parties concerning other Parties .....	12	5
V. Submissions by Parties concerning their own compliance .....	13	5
VI. Referrals by the secretariat .....	14	5
VII. Communications from members of the public .....	15–47	5
VIII. Reporting requirements .....	48	10
IX. Follow-up on specific cases of non-compliance .....	49–51	10
X. Programme of work and calendar of meetings .....	52	11
XI. Any other business .....	53–54	11
XII. Adoption of the report and closure of the meeting .....	55	11

Annexes

I	Statement by the Committee concerning the allegation of a conflict of interest in connection with communications ACCC/C/2008/23 and ACCC/C/2008/27 by the United Kingdom .....	12
II	Statement by the United Kingdom concerning the issue of conflict of interest with respect to communications ACCC/C/2008/23, ACCC/C/2008/27 and ACCC/C/2008/33 the Committee's draft statement on the matter.....	13
III	Statement by the communicant of ACCC/C/2008/23 .....	14
IV	Statement by the communicant of ACCC/C/2008/27 .....	15
V	Statement by the communicant of ACCC/C/2008/33 .....	16

## **I. Introduction**

1. The twenty-fifth meeting of the Compliance Committee was held from 22 to 25 September 2009 in Geneva.

### **A. Attendance**

2. All members were present. In addition, representatives of the Governments of Germany, Norway, Romania and the United Kingdom of Great Britain and Northern Ireland, as well as the European Community, represented by the European Commission, attended. The following non-governmental organizations (NGOs) participated as observers: ClientEarth, Earthjustice, European ECO-Forum, Marine Conservation Society, Oak Philanthropy Ltd., Oekobuero (Austria) and WWF-UK. Representatives from the Resource and Analysis Center "Society and Environment" participated. A member of the Compliance Committee of the Protocol on Water and Health also participated.

### **B. Organizational matters**

3. The Chairperson of the Compliance Committee, Mr. Veit Koester, opened the meeting.

4. The Committee adopted its agenda as set out in document ECE/MP.PP/C.1/2009/5.

## **II. Relevant developments since the previous meeting of the Committee**

5. The secretariat informed the Committee of the information provided for the Committee's consideration on 13 August 2009 by the Government of Ukraine regarding various industrial activities by Romania in the Danube Delta area. The Ukrainian Mission had subsequently clarified, at the request of the secretariat, that the correspondence was not to be construed as a submission by a Party concerning another Party pursuant to paragraph 15 of the annex to decision I/7 (ECE/MP.PP/2/Add.8). The Committee took note of the information provided.

## **III. Other matters arising from the previous meeting**

6. By letter dated 22 July 2009, the United Kingdom had alleged that a member of the Committee, Ms. Svitlana Kravchenko, had a conflict of interest with respect to ACCC/C/2008/23 (United Kingdom) and ACCC/C/2008/27 (United Kingdom) on account of the fact that Ms. Kravchenko's husband, Mr. John Bonine, had made an intervention as an observer at the twenty-fourth meeting of the Committee without the personal relationship having been disclosed to those present at the meeting. Upon becoming aware of the allegation, the Committee had invited and received the reaction of Ms. Kravchenko. In the view of Ms. Kravchenko, a public intervention by an observer not party to the case did not create a conflict of interest, but she offered to withdraw from the deliberations on the two communications at issue because the United Kingdom had questioned the Committee's procedures and reputation. The secretariat had notified the United Kingdom and the respective communicants that the matter would be discussed at the twenty-fifth meeting of the Committee.

7. At the meeting, during a closed session at which Ms. Kravchenko was not present, the Committee considered the United Kingdom's allegation and Ms. Kravchenko's reaction and prepared a draft statement in response to the United Kingdom's questions and concerns. The draft statement set out that the Committee had decided that Ms. Kravchenko should not participate in the Committee's preparation of findings with respect to communications ACCC/C/2008/23, ACCC/C/2008/27 and, as a further precaution, ACCC/C/2008/33<sup>1</sup>, and made it clear that she had effectively withdrawn from the decision-making process prior to the preparation of a first draft by the curator for the cases concerning communications ACCC/C/2008/23 and ACCC/C/2008/27.<sup>2</sup> The Chairperson then presented the draft statement in open session immediately prior to the discussion of communication ACCC/C/2008/33 (see paras. 32–34 below) and invited the comments of the United Kingdom, of the communicants with respect to communication ACCC/C/2008/33 and of other observers present.

8. During the discussion following the reading of the draft statement by the Chairperson, the United Kingdom asked for certain points of clarification concerning Ms. Kravchenko's involvement in discussions on the findings prior to her withdrawal from the case. The Committee indicated that, although Ms. Kravchenko had participated in a brief initial discussion on the substance of communications ACCC/C/2008/23 and ACCC/C/2008/27 held in closed session at the Committee's twenty-fourth meeting, any discussions prior to the point of her withdrawal had been of a very preliminary nature, to the extent that they could not reasonably be considered to "taint" the findings that would later be adopted. The United Kingdom requested further time to consider its position. It indicated that it had no objection to the discussion proceeding in open session of communication ACCC/C/2008/33.

9. The communicants with respect to communication ACCC/C/2008/33 and some other observers indicated that they had no objection to the draft statement or to proceeding with the discussion on communication ACCC/C/2008/33. The communicants with respect to communication ACCC/C/2008/33 further requested that if the United Kingdom were to suggest that future findings with respect to that communication would be "tainted", the communicant would object and would wish to have the opportunity to respond in writing. The Committee agreed to this request, and also that the statements of the United Kingdom and the Committee would be forwarded to the communicants with respect to communications ACCC/C/2008/23 and ACCC/C/2009/27 for their comments.

10. Following the discussion on communication ACCC/C/2008/33, the United Kingdom, having reflected on the draft statement and the clarifications provided by the Committee, provided a written statement on 25 September 2009 in which it reiterated its concerns about the alleged conflict of interest and indicated that it considered that the

---

<sup>1</sup> The Committee's decision that Ms. Kravchenko would not participate in the deliberations on communication ACCC/C/2008/33, despite the fact that the first discussions on the merits of that communication did not take place until the twenty-fifth meeting of the Committee, was due to the fact that at its twenty-fourth meeting, the Committee had decided to take account of any relevant issues arising in connection with its consideration of communication ACCC/C/2008/33 when finalizing its findings with respect to communication ACCC/C/2008/23 (see ECE/MP.PP/C.1/2009/4, para. 18).

<sup>2</sup> Ms. Kravchenko was not involved in, or copied on, any discussions within the Committee, in electronic form or otherwise, of the merits of communications ACCC/C/2008/23 and ACCC/C/2008/27 between the twenty-fourth and twenty-fifth meetings of the Committee. The first internal draft of the findings in both communications ACCC/C/2008/23 and ACCC/C/2008/27 prepared by the curator was circulated by e-mail to the members of the Committee (excluding Ms. Kravchenko) on 21 September 2009.

incident had tainted not only any future findings with respect to communications ACCC/C/2008/23 and ACCC/C/2008/27, but also those with respect to ACCC/C/2008/33.

11. The Committee took note of the written statement provided by the United Kingdom. It then finalized its statement in a closed session at which Ms. Kravchenko was not present, having considered that all the issues raised by communicants and observers and in the statement by the United Kingdom had been addressed in the statement. The Committee agreed to annex its statement to the meeting report (see annex I) as well as the statement of the United Kingdom 25 September 2009 and any statements provided by the communicants (see annexes II to V).

#### **IV. Submissions by Parties concerning other Parties**

12. The secretariat informed the Committee that no new submissions had been made by Parties concerning compliance by other Parties.

#### **V. Submissions by Parties concerning their own compliance**

13. The secretariat informed the Committee that no submissions had been made by Parties concerning problems with their own compliance.

#### **VI. Referrals by the secretariat**

14. No referrals had been made by the secretariat.

#### **VII. Communications from members of the public**

15. The Committee began to prepare draft findings with respect to communication ACCC/C/2008/23 (United Kingdom) in closed session, taking into account, inter alia, the supplementary information provided by the communicant and Party concerned since the previous meeting at the Committee's request (para. 18 of the report of the twenty-fourth meeting) and information on the issue of the costs of access to justice arising in connection with communication ACCC/C/2008/33. Ms. Kravchenko did not participate in the preparation of the draft findings (see paras. 6–10). The Committee did not complete the task of preparing draft findings and agreed to continue its deliberations on the matter at its twenty-sixth meeting, after which the draft findings and, as appropriate, recommendations would be sent for comment to the Party concerned and the communicant.

16. As agreed at its twenty-fourth meeting (ECE/MP.PP/C.1/2009/4, para. 20), the Committee continued its deliberations on the draft findings on communication ACCC/C/2008/24 (Spain), after taking into consideration further information provided by the communicant concerning a resolution of the Constitutional Court of Spain dated 9 September 2009. A few points remained outstanding and the Committee agreed to use its electronic decision-making procedure to complete the draft. It requested the secretariat to send the draft, when completed, to the Party concerned and the communicant for comment in accordance with the procedure set out in paragraph 34 of the annex to decision I/7. The Committee would take into account any comments when finalizing the findings at its twenty-sixth meeting.

17. During its twenty-fourth meeting, the Committee had completed its work on the draft findings on communication ACCC/C/2008/26 (Austria) in closed session. The draft had been sent to the Party concerned and the communicant for comments in accordance

with the procedure set out in paragraph 34 of the annex to decision I/7. The Party concerned and the communicant had provided comments on 18 September 2009 and 14 September 2009 respectively. In addition, on 15 September 2009, the Committee had received comments on the draft findings from the NGO Oekobuero.

18. The Committee proceeded to finalize its findings in closed session, taking into account the comments received from the Party concerned, the communicant and the observer, and agreed that they should be published as an addendum to the meeting report. It requested the secretariat to send the finalized findings to the Party concerned, the communicant and Oekobuero.

19. With regard to communication ACCC/C/2008/27 (United Kingdom), the Committee began to prepare draft findings in closed session, taking into account, *inter alia*, the supplementary information provided by the communicant and Party concerned since the previous meeting at the Committee's request (para. 24 of the report of the twenty-fourth meeting). Ms. Kravchenko did not participate in the preparation of the draft findings (see paras. 6–10). The Committee did not complete the task of preparing draft findings and agreed to continue its deliberations on the matter at its twenty-sixth meeting, after which the draft findings and, as appropriate, recommendations would be sent for comment to the Party concerned and the communicant.

20. With regard to communication ACCC/C/2008/28 (Denmark), the Committee considered information provided by the communicant, at the request of the Committee (ECE/MP.PP/C.1/2009/4, para. 25), concerning his intentions regarding the further use of domestic remedies in connection with the matter which was the subject of the communication. The communicant had indicated his intention to appeal the matter to the Danish Ombudsman, but had stated that he considered the option of an appeal to the courts to be beyond his capabilities in terms of the time involved and the costs.

21. The Party concerned had commented on the communicant's remarks and also responded to some specific questions posed by the Committee concerning, *inter alia*, the costs and the duration of the relevant appeals processes. Its response included a letter from the Danish Ombudsman indicating that he would suspend consideration of the complaint due to the fact that the matter was under consideration by the Committee.

22. The Committee considered that while the communication fulfilled the requirements for admissibility, it was apparent that the communicant had not exhausted the domestic remedies available in Denmark. Without deciding on whether the Danish Ombudsman met the requirement of article 9, paragraph 1, the Committee noted that the issue raised by the communicant was currently subject to a review by the Ombudsman, and that the Ombudsman had decided to suspend its investigation while the case was pending before the Committee. Furthermore, the Committee noted that the communicant had not at any stage brought the case to the Danish judiciary for a legal review, despite the possibility for doing so. Finally, the Committee noted that, according to the information received, various initiatives had been taken by the Danish authorities in order to accommodate, at least to some extent, the application made by the communicant.

23. For these reasons, the Committee decided to postpone any further deliberation of the case until the Danish Ombudsman had carried out its review of the matter. The Committee requested the secretariat to write to the Party concerned, asking it to inform the Danish Ombudsman about the Committee's decision, in order for the Ombudsman to continue its investigation.

24. At its twenty-fourth meeting, the Committee had completed its work on the draft findings on communication ACCC/C/2008/29 (Poland) in closed session. The draft had been sent to the Party concerned and the communicant for comments in accordance with the procedure set out in paragraph 34 of the annex to decision I/7. On 30 August 2009, the

communicant had provided a response in which it addressed, *inter alia*, the questions posed by the Committee in its letter of 15 January 2009.

25. The Committee proceeded to finalize its findings in closed session. The Committee decided not to consider the communicant's response of 30 August 2009 to the Committee's letter of 15 January 2009, because the comments had been submitted after a significant delay and with no explanation of the delay, even after the date of the discussion of the communication at the Committee's twenty-fourth meeting (30 June–3 July 2009). Revision of the draft findings to take account of information that should have been submitted at a much earlier stage would set a bad precedent and encourage disrespect of the Committee's procedures. The Committee agreed that the findings should be published as an addendum to the report. It requested the secretariat to send the finalized findings to the Party concerned and the communicant.

26. At its twenty-fourth meeting, the Committee had completed its work on the draft findings on communication ACCC/C/2008/30 (Republic of Moldova) in closed session. The draft had been sent to the Party concerned and the communicant for comments in accordance with the procedure set out in paragraph 34 of the annex to decision I/7. The Party concerned and the communicant provided comments on 16 September 2009 and 7 September 2009, respectively.

27. The Committee proceeded to finalize its findings in closed session, taking into account the comments received from the Party concerned and the communicant, and agreed that they should be published as an addendum to the report. It requested the secretariat to send the finalized findings to the Party concerned and the communicant.

28. With regard to communication ACCC/C/2008/32 (European Community), as agreed at its twenty-fourth meeting (ECE/MP.PP/C.1/2009/4, paras. 34–35), the Committee had invited the views of the communicant and the authors of the amicus brief upon the request by the Party concerned to postpone the examination of the case. Using its electronic decision-making procedure after considering the responses received, the Committee decided to discuss the substance of at least part of the communication at its twenty-fifth meeting.

29. The Committee then entered into discussion in open session on communication ACCC/C/2008/32 (European Community), submitted by ClientEarth and concerning compliance by the European Community with article 9, paragraphs 2, 3, 4, and 5, of the Convention. Specifically, the communication alleged that the existing "individual concern" standing criteria for individuals and NGOs to challenge decisions of European Community institutions established in the jurisprudence of the Courts of Justice of the European Communities did not fulfill the requirements of article 9, paragraphs 2 to 5, of the Convention. It also alleged that the Aarhus Regulation<sup>3</sup> of the European Community by failing to grant a right of judicial review to individuals or entities such as regions and municipalities and by limiting its scope to appeals against administrative acts of individual nature, did not fulfill the Convention's requirements. Finally, the communication alleged that the uncertainty and the possibly prohibitive nature of the costs the applicant had to pay in the event of losing the case was not in compliance with article 9, paragraph 3, of the Convention.

---

<sup>3</sup> Regulation (EC) No 1367/2006 of the European Parliament and of the Council of 6 September 2006 on the application of the provisions of the Aarhus Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters to Community institutions and bodies.

30. In general, discussions on the communication proceeded in accordance with the form decided on by the Committee at its fifth meeting (MP.PP/C.1/2004/6, para. 40). They included interventions by representatives of the European Commission acting on behalf of the Party concerned, the communicant and the amicus (WWF UK). The Committee stressed that the discussion would focus on those elements of the communication related to the recent judgment of the European Court of Justice in the WWF-UK case (C-355/08). It would defer consideration of those elements for which it made sense to await the outcome of the case that was the basis for the Commission's request for a deferral (T-338/08 – Stichting Natuur en Milieu and Pesticides Action Network Europe vs. Commission).

31. The Committee confirmed that the communication was admissible. The Committee then deliberated upon the communication in closed session. The Committee agreed to continue its deliberations on the matter at its twenty-sixth meeting. It agreed to defer a decision on whether draft findings would be prepared immediately thereafter or at a later stage following the judgment on the Stichting Natuur en Milieu and Pesticides Action Network Europe vs. Commission case (T-338/08).

32. The Committee then entered into discussion in open session on communication ACCC/C/2008/33 (United Kingdom), submitted by ClientEarth, the Marine Conservation Society and Mr. Robert Latimer concerning compliance by the United Kingdom with article 9, paragraphs 2, 3, 4 and 5 of the Convention. The communication alleged that the Party concerned had failed to comply with article 9 of the Convention both generally and in relation to a specific case. The general allegations of non-compliance related to the alleged failure of the Party concerned to provide access to justice with regard to reviewing the substantive legality of decisions by public authorities, the prohibitive expense of judicial proceedings, the non-availability of rights of action against private individuals for breaches of environmental laws and the restrictive time limits for judicial review. The specific allegation of non-compliance related to the alleged failure of the Party concerned to provide access to justice to challenge a government license issued to the Port of Tyne in northern England that allowed for the disposal and protective capping of highly contaminated port dredgings at an existing marine disposal site called "Souter Point", approximately four miles off the coast.

33. In general, discussions on the communication proceeded in accordance with the form decided on by the Committee at its fifth meeting (MP.PP/C.1/2004/6, para. 40). They included interventions by representatives of the Government of United Kingdom, the communicants and observers.

34. The Committee confirmed that the communication was admissible. Following the open session, the Committee commenced deliberations on the communication in a closed session, in which Ms. Kravchenko did not participate (see paras. 6–10). The Committee agreed to continue its deliberations on the matter at its next meeting with a view to finalizing the draft findings and, if appropriate, recommendations at that meeting. The draft findings would then be sent for comment to the Party concerned and to the communicant, in accordance with paragraph 34 of the annex to decision I/7.

35. With regard to communication ACCC/C/2008/35 (Georgia), the Committee took note of the fact that the communicant had provided further information in response to the request of the Committee but that no response had been received from the Party concerned. It noted that the five-month deadline by which the Party concerned was required to provide its comments on the communication, 13 October 2009, had not elapsed. The Committee confirmed that it would discuss the substance of the communication at its twenty-sixth meeting.

36. With regard to communication ACCC/C/2009/36 (Spain), the Committee noted that similarly the deadline of five months after the forwarding of the communication, 7 October



2009, had not elapsed, and that neither the Party concerned nor the communicant had submitted further information or responses. The Committee also confirmed that it would discuss the substance of the communication at its twenty-sixth meeting.

37. With regard to communication ACCC/C/2009/37 (Belarus), the Committee noted that similarly the deadline of five months after the forwarding of the communication, 1 October 2009, had not elapsed, and that the Party concerned had not responded. The communicant had drawn the attention of the Committee to some information in the public domain concerning a nuclear power plant which also related to transboundary impact assessment procedures. Mr. Jerzy Jendroska, who as well as being a member the Compliance Committee is a member of the Implementation Committee of the Convention on Environmental Impact Assessment in a Transboundary Context, provided some information on the latter Committee's discussions of a pilot project focusing on the decision-making process for a hydropower plant in Belarus, but stressed that the relationship between that case and the case under consideration by the Compliance Committee was not clear. The Committee confirmed that it would discuss the substance of the communication at its twenty-sixth meeting.

38. With regard to communication ACCC/C/2009/38 (United Kingdom), the Committee noted that similarly the deadline of five months after the forwarding of the communication, 27 December 2009, had not elapsed, and that neither the Party concerned nor the communicant had submitted further information or responses to the questions posed by the Committee. The Committee provisionally scheduled its discussion of the substance of the communication to take place at its twenty-seventh meeting.

39. With regard to communication ACCC/C/2009/39 (Austria), the Committee considered some additional information submitted by the communicant concerning the status of the municipality and the extent to which it could be considered as a member of the public within the meaning of the Convention and decision I/7, provided in response to a request by the Committee at its twenty-fourth meeting (ECE/MP.PP/C.1/2009/4, para. 44). The Committee had a lengthy discussion on the admissibility of the case and determined on a preliminary basis that the communication was admissible, without however drawing any conclusions regarding the compliance issues raised. It requested the secretariat to forward the communication to the Party concerned in accordance with paragraph 22 of the annex to decision I/7. It also agreed upon a set of issues to be raised with the communicant.

40. With regard to communication ACCC/C/2009/40 (United Kingdom), the Committee noted that the deadline of five months after the forwarding of the communication, 27 December 2009, had not elapsed, and that neither the Party concerned nor the communicant had submitted further information or responses. The Committee provisionally scheduled to discuss the substance of the communication at its twenty-seventh meeting.

41. With regard to communication ACCC/C/2009/41 (Slovakia), the Committee noted that the deadline of five months after the forwarding of the communication, 23 December 2009, had not elapsed, and that neither the Party concerned nor the communicant had submitted further information or responses. The Committee also provisionally agreed to discuss the substance of the communication at its twenty-seventh meeting.

42. Two new communications had been received since the previous meeting.

43. Communication ACCC/C/2009/42 (Hungary) had been submitted with regard to compliance by Hungary with provisions of article 3, paragraph 8, of the Convention. The communicant had requested that its identity be kept confidential. Following receipt of the communication, Mr. Alexander Kodjabashev had been designated as curator for the case.

44. The Committee decided that it needed to clarify certain issues concerning the confidentiality of the communication and agreed to defer making any preliminary

determination on admissibility pending such clarification. Specifically, it was concerned that once all information which could reveal the identity of the communicant was removed from the communication, this might not leave sufficient information for a meaningful examination of the compliance issues that were the subject of the communication. It requested the secretariat to write to the communicant flagging this concern and providing the opportunity for the communicant to comment.

45. Communication ACCC/C/2009/43 (Republic of Armenia) was submitted with regard to compliance by the Republic of Armenia with provisions of articles 6 and 9 of the Convention. Following receipt of the communication, Mr. Vadim Nee had been designated as curator for the case.

46. The communication concerned the issuance and renewal of licenses for the exploitation of a deposit of copper and molybdenum in the Lori region of Armenia, region covered by forests and rich in flora and fauna, including species registered in the Red Book. The communicant alleged, inter alia, that in issuing the licenses the public concerned had had no opportunities to participate at an early stage, that there was no effective public participation, that none of the above-mentioned decisions reflected and considered results of public participation, and that the public had been notified only after the adoption of the decision. Furthermore, the communicant alleged that in renewing the licenses the public was not notified at all. Furthermore, the communicant alleged failure to provide for appropriate access to justice.

47. The Committee determined on a preliminary basis that the communication was admissible, without however drawing any conclusions regarding the compliance issues raised. It requested the secretariat to forward the communication to the Party concerned in accordance with paragraph 22 of the annex to decision I/7. It also agreed to use its electronic decision-making procedure to develop questions to be raised with the communicant and the party concerned.

## **VIII. Reporting requirements**

48. The secretariat reported on the discussions that had taken place at the eleventh meeting of the Working Group of the Parties on the extension of the reporting format to cover the amendment on genetically modified organisms and possible modifications to the system of reporting (ECE/MP.PP/WG.2009/2, paras. 50–58).

## **IX. Follow-up on specific cases of non-compliance**

49. With respect to decision III/6d of the Meeting of the Parties (Lithuania), the Committee noted that on 21 September 2009 Lithuania had provided an English translation of Resolution No. 979 of 26 August 2009 approving the action plan for the implementation of the recommendations in decision III/6d. The Committee requested the secretariat to send a further letter to the Party concerned seeking clarification on several issues and the intended timeline and reminding it of its obligation to report on the action plan six months before the fourth session of the Meeting of the Parties.

50. With respect to III/6e (Turkmenistan), the secretariat reported that, in accordance with the request made by the Committee at its previous meeting, it had written to the Government of Turkmenistan following up on the offer made in paragraph 7 of that decision to consider accommodating an expert mission, with the involvement of Committee members. The letter had included a reminder of the November 2009 timeframe for the Government of Turkmenistan to provide an update on progress it had made vis-à-vis implementing decision III/6e.

51. The Committee requested the secretariat to send reminders to the other concerned Parties of the November 2009 deadline for the submission of the progress reports related to decisions III/6a (Albania), III/6b (Armenia) and III/6f (Ukraine) of the Meeting of the Parties. It agreed to discuss the reports at its twenty-sixth meeting.

## **X. Programme of work and calendar of meetings**

52. The Committee confirmed that it would hold its twenty-sixth meeting from 15 to 18 December 2009. It also confirmed that it would hold its twenty-seventh meeting from 16 to 19 March 2010, the twenty-eighth from 15 to 18 June 2010, the twenty-ninth from 21 to 24 September 2010 and the thirtieth meeting from 14 to 17 December 2010.

## **XI. Any other business**

53. The secretariat reported that it had relayed the outcome of the Committee's discussion at its twenty-fourth meeting of the delay in the translation and reproduction of its post-session documentation by the United Nations Conference Services Division, but had been unable to obtain any substantive response.

54. The Committee expressed its regret that the documentation from its twenty-third and twenty-fourth meetings, including the meeting reports and the findings adopted at those meetings, had still not been translated or released by the United Nations Conference Services Division. It mandated the Chairperson to discuss directly with the Chairperson of the Meeting of the Parties what action might be taken, and to take such measures as were necessary to resolve the matter as soon as possible.

## **XII. Adoption of the report and closure of the meeting**

55. The Committee adopted the report of the meeting on the basis of a draft prepared by the Chairperson and the secretariat. The Chairperson then closed the meeting.

## **Annex I**

### **Statement by the Committee concerning the allegation of a conflict of interest in connection with communications ACCC/C/2008/23 and ACCC/C/2008/27 by the United Kingdom**

#### **As adopted by the Committee**

1. By letter dated 22 July 2009, the United Kingdom has alleged a conflict of interest of Ms. Svitlana Kravchenko due to her marital relationship with Mr. John Bonine who made an intervention as an observer at the twenty-fourth meeting of the Committee in the context of the discussions on ACCC/C/2008/23 and ACCC/C/2008/27.
2. The Committee has considered the allegation, and wishes to avoid a situation where there are doubts about its process. Therefore, the fact that an accusation has been made on grounds that are at least debatable has led the Committee to decide that Ms. Kravchenko should not participate in the preparation or adoption of the findings of the Committee in connection with communications ACCC/C/2008/23 and ACCC/C/2008/27 and, as a further precaution taking into account some linkages between the cases, ACCC/C/2008/33.
3. Because the process of preparing the draft findings in ACCC/C/2008/23 and ACCC/C/2008/27 commenced after the United Kingdom's allegation and the subsequent withdrawal of Ms. Kravchenko from the process, and because any deliberations in closed session on the communications up to that point were of a very preliminary nature and in any event did not amount to the consideration or preparation of findings or conclusions, there can be no grounds for concern that the findings or conclusions in those cases will be 'tainted' as a result of her participation.
4. The Committee wishes to emphasize that all Committee members were aware of the marital relationship between Ms. Kravchenko and Mr. Bonine. It concedes that for the sake of transparency it would have been appropriate to make a statement in open session concerning that relationship prior to any intervention by Mr. Bonine.
5. The Committee appreciates that the United Kingdom has made the Committee aware of its concerns and will take into account the implications of the allegation made by the United Kingdom in the future work of the Committee.

## Annex II

### **Statement by the United Kingdom concerning the issue of conflict of interest with respect to communications ACCC/C/2008/23, ACCC/C/2008/27 and ACCC/C/2008/33 the Committee's draft statement on the matter**

The United Kingdom Government is grateful to the Committee for providing a draft of the statement which it proposes to make in relation to the conflict of interest identified by the United Kingdom in a letter dated 22 July 2009, following the hearing of cases 23 and 27 on 1 July 2009.

The Government would like to record its profound concern that (a) a member of the Committee should have received submissions from her husband and close professional colleague without drawing the attention of those appearing before the Committee to that relationship; (b) she then actively participated in the Committee's closed discussions of the cases concerned; and (c) other members of the Committee were apparently aware of that relationship yet also took no steps to raise it with the parties.

The Government does not accept, as the draft statement implied, that there is any proper distinction to be drawn between the active participation of the member concerned in the closed discussion of the merits of the case, and her participation in the preparation of the findings. Neither would be acceptable in circumstances in which one of the representatives appearing before the Committee, and actively advocating a particular position on the merits, is married to and closely professionally associated with a member of the Committee.

The Committee specifically asked the Government to confirm its position in relation to Case 33. The Government note that in its draft statement the Committee has acknowledged, plainly correctly, the links and overlap in the issues between Case 33, and Cases 23 and 27. If, as is also acknowledged by the Committee, the conflict of interest taints Cases 23 and 27, then the Government considers that it must follow that Case 33 is also tainted.

The practical options as to how to deal with what has occurred are a matter for the Committee. The Committee has accepted that the member concerned cannot properly take any further part in Cases 23, 27 or 33. However, before a Court or other body acting in a judicial or quasi-judicial capacity, the only possible outcome would be for there to be fresh consideration of the issues by a new body, untainted by the conflict. That is particularly clear given the linked issues between the cases and the active participation of the conflicted member in discussions of the merits of the earlier cases in which her husband and close professional colleague acted as an advocate. It may be that such an option is simply impossible given that the entirety of the Committee is understood to be sitting on these cases.

In the circumstances, the most that it may be possible to do, and the minimum that should be done, is to record in the Committee's statement the terms of this letter setting out the Government's serious concerns as to the efficacy of the Committee's processes to which the situation has given rise. We understand that the Committee are amenable to this course of action.

## **Annex III**

### **Statement by the communicant of ACCC/C/2008/23**

Thank you for your recent correspondence regarding an alleged conflict. We have read the UK's letters of 22 July 2009 and 25 September 2009 and the draft statement of the Committee of 24 September 2009.

We are surprised by the UK's stance about a comment by an observer at the 24th meeting; Professor Bonine. He was not a representative of our client, was not instructed as an advocate by our client, nor was he invited to attend the meeting by our client. As far as we were aware, he had no similar association with the communicant for matter no. 0027.

We are of the view that the Compliance Committee's statement satisfactorily meets any concerns raised by the UK. In our view, the UK is seeking to divert attention from its own serious failings in implementing the Convention. It should recognise that its citizens do not file a complaint lightly and they would much rather be getting on with their own lives than to have to complain about its government's inadequate compliance with international law. But for the failure by the UK to protect its citizens and afford adequate environmental rights the UK would not be before the Committee. In our view, the UK should recognise its shortcomings and focus its efforts on trying to comply with its Convention obligations rather than cloud the issue.

## **Annex IV**

### **Statement by the communicant of ACCC/C/2008/27**

Thank you for your letter of 29th September and the other documents and correspondence.

We are surprised by the vehemence of the UK protest and find it distasteful that the integrity of the Compliance Committee should be impugned.

The following matters seem to us to be relevant:-

1 Mr Bonine has no personal interest in the outcome of the hearing and therefore no genuine "conflict of interest" exists.

2 His position is comparable to that of an advocate rather than a party. We do not believe that it is unheard of for an advocate to appear in a Court a member of which is a family relative.

3 The group on whose behalf Mr Bonine made submissions had no direct interest in the proceedings and nothing to gain or lose from the result.

4 There were no issues of fact involved in the hearing but simply issues of interpretation and policy. It is absurd to suppose that members of the Committee would be swayed on those issues by the family relationship between one of its members and a spokesman for a body only indirectly concerned in the proceedings.

It is our view therefore that the Committee is in a position to determine case No. ACCC/C/2008/27 and that the steps taken by the Committee should satisfy any reasonable person that the matter has been dealt with fairly and equitably and in accordance with the principles of law.

## Annex V

### Statement by the communicant of ACCC/C/2008/33

Thank you very much for your email of 29 September inviting us to respond to the UK's letter regarding an alleged conflict of interest in relation to cases ACCC/C/2008/23, 27 and 33. ClientEarth is writing to you on behalf of all the Communicants in Case ACCC/C/2008/33. In the Communicants' view no conflict of interest has in fact arisen:

- The members of the Compliance Committee are all highly eminent and very experienced jurists who serve on the Committee in a personal capacity. In addition, the compliance mechanism itself is extremely open and transparent. Both of these characteristics secure the independence and impartiality of the Committee in the application of the Convention's compliance mechanism.
- The circumstances referred to by Defra in which a case in the UK would be re-heard due to issues of bias apply in entirely different circumstances, and, even in the UK, would not apply in a situation where one only of a panel of eminent lawyers/judges was implicated in a conflict of interest. In such a case, the same action would be taken as has been taken by the Committee: the relevant member of the panel would be removed from the decision-making process.
- A careful distinction should be drawn between panels of highly qualified legal experts who can be relied upon to be fair, unbiased and impartial, and bodies which include unqualified lay persons, which have to be protected in this respect.
- We understand that the marital status of the long-standing and highly experienced Committee member Mrs Kravchenko was known to all the Compliance Committee members (see para 4 of the Committee's draft statement of 24 September 2009). Under the Committee's Modus Operandi we are sure that Mrs Kravchenko would have declared a conflict of interest, had she or any of the Committee members felt this to be an issue. Indeed, because of the independent and impartial nature of the Committee members themselves, there is not even a presumption of conflict where a Committee member's own country is being complained against.
- In contrast to the specific nature of cases 23 and 27, case 33 alleges a general failure of the UK to comply with Article 9(4) as regards 'prohibitive' costs. Professor Bonine's comments were not in fact addressed to arguments set out in case 33 (as evidenced by Defra not including case 33 in its initial complaint), and have in any case been entirely superseded by the general evidence presented since then in relation to case 33. Therefore, any views expressed by Mrs Kravchenko in the discussions in closed session on 1 July are, in our view, completely irrelevant to case 33. Mrs Kravchenko has of course by her own choice not even been party to any discussions in relation to case 33 at all.
- Contrary to the allegations made in Defra's statement of 25 September 2009, the Compliance Committee has not acknowledged that 'the conflict of interest taints Cases 23 and 27', as well as Case 33. The Compliance Committee merely accepted that Mrs Kravchenko should not participate in the preparation or adoption of findings in relation to cases 23, 27 and 33 as a precaution and wishing 'to avoid a situation where there are doubts about its process'. In fact, it pointed out that the grounds for the UK's conflict of interest claims were 'at least debatable' (draft statement of 24 September 2009).



We attach a much more detailed examination of these issues as an annex to this letter, which can be found at [http://www.unece.org/env/pp/compliance/C2008-33/correspondence/FrCommC33OnConflict\\_Annex.pdf](http://www.unece.org/env/pp/compliance/C2008-33/correspondence/FrCommC33OnConflict_Annex.pdf).

We hope that these comments are of use to help clarify this situation.

---