

## Overview of possible general issues on compliance for Committee's report to MOP6

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### 1. Substantive issues – general provisions

- a. **Article 2, paragraph 3(a-c)** – definition of environmental information (size of land parcel, archaeological study and discharge certificate, mining licences and mining –related information, preliminary safety report for nuclear power plant)
- b. **Article 3, paragraph 1** – nature of Party's legal system or lack of incorporation in national law no excuse for improper implementation
- c. **Article 3, paragraph 2** – “assist and provide guidance to public” in transboundary context
- d. **Article 3, paragraph 9** – what may constitute discrimination of foreign public for purposes of public participation

### 2. Substantive issues - Access to information

- a. **Article 4, paragraph 1** – electronic signature for making information request
- b. **Article 4, paragraph 1(b)** – access to examine information not enough – copies must be provided
- c. **Article 4, paragraph 7** – reason for refusal to be provided at the time in order to assist reviewing bodies
- d. **Article 4, paragraph 3(b)** – what constitutes “manifestly unreasonable”

### 3. Substantive issues - Public participation

- a. **Article 6 in the transboundary context** – obligation to ensure Convention's requirements are met rests always with competent authorities of Party of origin
- b. **Article 6, paragraph 2** – notification in transboundary context – ensuring public informed in an “effective manner”
- c. **Article 6, paragraph 2** – notification of format of hearing and opportunities for public to participate
- d. **Article 6, paragraph 2** – notification regarding ultra-hazardous activities
- e. **Article 6, paragraph 3** – reasonable time-frame - getting acquainted with documentation and participating effectively
- f. **Article 6, paragraph 3** – reasonable time-frame - duration of hearing must enable public to participate effectively
- g. **Article 6, paragraph 4** – multi-stage decision-making - early public participation, when all options are open
- h. **Article 6, paragraph 4** – use of “envelope” or “black box” approach
- i. **Article 6, paragraph 6, in conjunction with article 4, paragraph 4** – categories of environmental information deemed unconditionally confidential
- j. **Article 6, paragraph 6(a)** – meaning of residues
- k. **Article 6, paragraph 7** – how public hearings should be conducted, including practical matters and opportunities for public to participate
- l. **Article 6, paragraph 9** – informing public about decision once taken
- m. **Article 6, paragraph 11** – whether planting at testing site is deliberate release
- n. **Article 7** - definition of “plan or programme” which is “relating to the environment”
- o. **Article 7 in conjunction with article 6, paragraph 4** – early public participation on plans when all options are open

**4. Substantive issues - Access to justice**

- a. **Article 9, paragraph 2** – participation in administrative procedure cannot be pre-condition for standing; nor should NGOs opt out of participation procedures and just challenging decisions once taken
  - b. **Article 9, paragraph 3** – distance from activity cannot be only criteria enabling standing
  - c. **Article 9, paragraph 3** – private nuisance is “national law relating to the environment”
  - c. **Article 9, paragraphs 3 and 4** – sufficient that one procedure meets all the requirements under article 9, paragraphs 3 and 4
  - d. **Article 9, paragraph 4** – requirement for “fair” review procedures requires claimants are able to know reasons for review body’s decision, and in a timely manner
  - e. **Article 9, paragraph 4** – suspensive effect of appeal is a good practice; possibility of order lifting automatic suspensive effect not per se non-compliant
  - f. **Article 9, paragraph 4** – “effective” remedies includes implicit requirement of preventing irreversible damage to environment
  - g. **Article 9, paragraph 4** – grounds for challenge in substantive proceeding irrelevant to whether injunctive relief should be granted – protection of environment is the major factor
  - h. **Article 9, paragraph 4** – if EIA/SEA decision challenged, review body must make its own assessment as to risk of environmental damage if injunctive relief not granted
  - i. **Article 9, paragraph 4** – financial guarantees to lift suspensive effect not per se precluded however must be set at level that would be adequate disincentive or remedy for any resulting environmental harm
  - j. **Article 9, paragraph 4** – timeliness of court proceedings regarding access to information requests
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