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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

REPORT ON THE SIXTH MEETING

1. The sixth meeting of the Compliance Committee took place in Geneva on 15-17 December 2004. Seven of its members were present. Representatives of the Governments of Hungary, Kazakhstan, Romania and the Russian Federation, as well as the non-governmental organizations (NGOs) Amnesty International, Center for International Environmental Law, Clean Air Action Group (Hungary), Earthjustice, Ecopravo-Lviv (Ukraine), Global Legislator Organization for a Balanced Environment (GLOBE) Europe, Green Salvation (Kazakhstan) and Union for Defence of the Aral Sea and Amudarya (Uzbekistan) and a representative of the University of Milan participated as observers.

2. The meeting was opened by the Chairman, Mr. Veit Koester.

3. Mr. Kaj Bärlund, Director of the UNECE Environment and Human Settlements Division, made some opening remarks in which he stressed that the meeting was a particularly important, as the Committee would for the first time enter into substantive discussions on the merits of particular communications and a submission. The fact that the discussions would take place in

the presence not only of the Parties concerned but also of the NGOs that had raised the concerns about compliance was, in his view, unprecedented under international environmental law. He stressed that close adherence to fair, neutral and objective procedures should be a guiding principle for all those involved.

I. ADOPTION OF THE AGENDA

4. The Committee adopted its agenda as set out in document MP.PP/C.1/2004/7 with the addition of new agenda items on the review of compliance with reporting requirements and the preparation of the Committee's report to the Meeting of the Parties.

II. RELEVANT DEVELOPMENTS SINCE THE PREVIOUS MEETING OF THE COMMITTEE

5. The secretariat informed the Committee of the discussions on compliance at the third meeting of the Working Group of the Parties (MP.PP/WG.1/2004/9, paras. 50 to 57). The Committee took note of the information and endorsed the way that the secretariat had responded to the points raised by the Working Group.

6. The secretariat also informed the Committee about the work undertaken by the Working Group on Water and Health at its meeting on 9-10 December 2004, in particular with regard to developing a draft decision on the review of compliance with the Protocol on Water and Health to the 1992 Convention on the Protection and Use of Transboundary Watercourses and International Lakes, for possible adoption by the Meeting of the Parties.

7. Mr. Koester informed the Committee about a meeting on the development of a compliance mechanism under the Barcelona Convention that had taken place in Athens in October 2004.

8. Ms. Kravchenko informed the Committee that the Congress of the World Conservation Union that had taken place in November 2004 had adopted two documents that might be of

general interest to it: a resolution on linking human rights and environment and a recommendation on threats to the Danube Biosphere Reserve in Ukraine, which had an indirect link to communication ACCC/C/2004/03.

III. OTHER MATTERS ARISING FROM THE PREVIOUS MEETING

9. The secretariat informed the Committee that the compilation of materials related to the Committee's modus operandi had been updated to reflect the outcome of its previous meeting and had been placed on the web site.

IV. SUBMISSIONS BY PARTIES CONCERNING OTHER PARTIES

10. The Committee discussed a submission from the Government of Romania concerning compliance by the Government of Ukraine with its obligations under article 6, paragraph 2 (e), of the Convention (ACCC/S/2004/01). The submission had been made on 7 June 2004 and supplementary information had been submitted on 26 November 2004. The submission had been forwarded to the Government of Ukraine on 17 June 2004 and the supplementary information on 26 November 2004. A preliminary response requesting more time, dated 23 September 2004, had been received from the Government of Ukraine, but no further response had been received, although the deadline for responding was 17 December 2004, i.e. the final day of the meeting. The discussion was held in open session (decision I/7, annex , para. 32), with the participation of the representatives of the Government of Romania.

11. The Committee noted that this submission was closely related in substance to communication ACCC/C/2004/03, made by the Ukrainian NGO Ecopravo-Lviv on 5 May 2004, and considered the issues side by side. However, in accordance with the decision made at its fifth meeting (MP.PP/C.1/2004/6, para. 11), the Committee considered only the question of compliance with the part of article 6, paragraph 2 (e), relating to national environmental impact assessment procedures.

12. Following the discussion of the submission, the Committee proceeded to prepare draft findings and draft recommendations in closed session (decision I/7, annex, para. 33). It was agreed that the draft findings and draft recommendations would be sent to the submitting Party and the Party concerned inviting them to provide comments (decision I/7, annex, para. 34), which the Committee would take into account when finalizing the draft findings and draft recommendations at its next meeting. The timing of the commenting period would be determined by the Chairman in consultation with the secretariat. The modalities for the commenting procedure were discussed under the agenda item on the Committee's modus operandi.

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. As agreed at its fifth meeting, the Committee entered into discussions on the substance of the first five communications that had been received.

16. The Chairman explained how the discussions would be conducted as well as the process of finalizing the findings, as established by decision I/7 and foreseen in the Committee's modus operandi. He reminded all those present of the non-confrontational, non-judicial and consultative nature of the mechanism. The Committee would start from the assumption that any non-compliance with international obligations was not due to a will or intention not to comply. Stressing the non-adversarial nature of the proceedings, he pointed out that the Committee's role

was to establish whether there appeared to be non-compliance and, if so, what could be done to facilitate compliance, and not to seek to provide redress in individual cases. One implication was that the Committee should not consider itself restricted to consideration of the arguments presented by the parties concerned and was free to draw conclusions that went beyond the scope of those presented by the parties concerned.

17. At the same time, he observed that a great number of points and arguments had been raised in the correspondence, some of great relevance to the question of compliance and others less so and this would doubtless continue to be the case. The Committee, for practical reasons, should be free to decide not to address all the arguments and assertions presented but rather to focus upon those that it considered most relevant. Furthermore, the fact that it did not explicitly refute any given assertion or argument made by any of the parties concerned should not be taken to imply that it endorsed them and, conversely, lack of explicit endorsement of an argument by the Committee should not be taken to imply that it rejected it.

18. The Committee endorsed the Chairman's introductory remarks and requested the secretariat to make a summary of them available on the web site.

19. The Committee noted with regret that not one of the Parties concerned had responded to the communications within the deadline specified in decision I/7, and that some had even failed to respond at all. It regarded this as a serious matter and decided to take it up in its general recommendations to the Meeting of the Parties.

20. The Chairman reminded the Meeting, including the observers, that any member of the Committee having declared a conflict of interest with a particular submission or communication would take on the status of observer, and would therefore be excluded from the preparation of draft findings, measures or recommendations.

21. The Committee confirmed that all five communications were admissible and expressed its appreciation to the Governments of Hungary and Kazakhstan for their willingness to assist it in the discussions on the substance of the cases notwithstanding their earlier reservations on their admissibility.

22. In general, discussions on the five communications and the submission proceeded in accordance with the form decided on by the Committee at its fifth meeting (MP.PP/C.1/2004/6, para. 40) and included interventions by the parties concerned and observers.
23. The discussion on communications ACCC/C/2004/01 and ACCC/C/2004/02 took place with the participation of representatives of the Government of Kazakhstan and the communicant, the Kazakh NGO Green Salvation. The representative of Kazakhstan confirmed his Government's willingness to receive recommendations from the Committee, whether or not the Committee considered there to be non-compliance.
24. The discussion on communication ACCC/C/2004/03 took place in conjunction with the discussion on submission ACCC/S/2004/01, with a representative of the communicant, the Ukrainian NGO Ecopravo-Lviv, also participating.
25. The discussion on communication ACCC/C/2004/04 took place with the participation of representatives of the Government of Hungary and the communicant, the Hungarian NGO Clean Air Action Group.
26. The discussion on communication ACCC/C/2004/05 took place without any representatives of the communicant or the Party concerned being present.
27. Following the discussion of the communications, the Committee proceeded to prepare draft findings and draft recommendations in closed session (decision I/7, annex, para. 33). It was agreed that the draft findings and draft recommendations would be sent to the Party concerned and the communicant inviting them to comment (decision I/7, annex, para. 34). The Committee would take into account any comments when finalizing the draft findings and draft recommendations at its next meeting. The timing of the commenting period would be determined by the Chairman in consultation with the secretariat. The modalities for the commenting procedure were discussed under the agenda item on the Committee's modus operandi.
28. As regards communications ACCC/C/2004/06 and ACCC/C/2004/08, which had also on a preliminary basis been determined to be admissible at the Committee's previous meeting, no responses had yet been received from the Parties concerned. The deadline for responses in both

cases was 22 March 2005. The Committee agreed to enter into discussions on the substance of these communications at its eighth meeting, which would take place in May 2005 in Almaty, Kazakhstan. It requested the secretariat to notify the Parties concerned and the communicants of this and of their right to participate (decision I/7, annex, para. 32).

29. With regard to communication ACCC/C/2004/07, the Committee noted that while some new correspondence had been received from the communicant indicating that some of the communication was related of access to information, this information was rather general. It agreed that it would allow the communicant, should he wish to do so, to present clear and precise information with regard to any alleged violations of specific provisions of the Convention, in advance of the seventh meeting of the Committee.

30. One new communication had been received since the previous meeting. It concerned compliance by Kazakhstan with articles 3 and 9 of the Convention. The Committee had not begun to process it because both the communication and the supplementary information had been submitted in Russian and were being translated.

31. The secretariat informed the Committee that a communication had been received from a Belgian NGO but had been rejected because it was entirely in Flemish. The NGO had been reminded that communications should be in one of the official languages of the Convention.

VIII. OTHER INFORMATION RECEIVED BY THE COMMITTEE RELEVANT TO POSSIBLE CASES OF NON-COMPLIANCE

32. The Committee had received no additional information relevant to possible cases of non-compliance.

IX. MODUS OPERANDI

33. The Committee agreed that, in line with its earlier decision that communications should be put on the web site and without prejudice to the confidentiality of certain documentation, all of

the most significant documentation setting out the positions of the Committee, the Parties concerned and the communicant should also be made available on the web site. This would include preliminary determinations on admissibility (once transmitted to the Party concerned).

34. The secretariat sought guidance from the Committee as to the precise deadlines for a Party concerned to respond (see decision I/7, annex, para. 15, 17 and 23). The Committee decided that, since the secretariat's practice was to send all such documentation by e-mail and fax as well as registered post, the deadline should be calculated from the date at which the documentation was sent from the secretariat. This was the only way to establish it with certainty. Similarly, the response from the Party concerned should actually reach the secretariat by the end of the relevant period at least by fax or e-mail, though it would be acceptable for the posted original to arrive after the deadline provided that it had been posted before the deadline.

35. The Committee discussed the procedures for Parties concerned, submitting Parties and communicants to comment on draft findings, measures or recommendations (decision I/7, annex, para. 34). The drafts themselves should be circulated by the secretariat to the parties concerned but should not be public during the commenting period. It was agreed that all comments should be submitted through the secretariat. The Committee considered that the commenting process should be transparent. However, some Parties or communicants might feel that having their comments circulated to the other party concerned before the latter had submitted its comments might place them at a tactical disadvantage, which could lead them submit their comments as late as possible. It was therefore agreed that the secretariat would forward any comments received to the other parties concerned without delay, unless the party providing the comments requested otherwise, in which case those comments would be forwarded only to the Committee and would not, during the commenting period, be in the public domain. Subject to chapter VIII of the annex to decision I/7, all comments received would be in the public domain following the expiry of the commenting period.

36. The Committee revisited the question of the late submission of substantial new information. It considered that it should not feel constrained to take account of any such information submitted less than two weeks before the meeting at which it was due to be

discussed. Nevertheless, it should remain free to take account of information submitted after that deadline if to do otherwise would hamper its work.

37. The Committee discussed the concept of admissibility of communications and its relationship to the Committee's procedures for processing communications. It confirmed its earlier decision that failure to exhaust or sufficiently avail of national remedies should not render a communication inadmissible, since there was no strict requirement under the mechanism on a communicant to exhaust national remedies. However, if the Committee were faced with a mounting workload, this might constitute a reason for it to decide not to proceed beyond initial consideration of a communication.

38. This raised the broader question of the extent to which the Committee's examination of compliance issues should be determined by the communications received. It was noted that four of the ten communications received related to one Party, and three of those four communications had come from the same NGO. The Committee noted that while it was under an obligation to consider all admissible communications, it had some flexibility to consider communications in an order other than that in which they had been received, based on the need for balanced review of compliance by various Parties and its own workload.

39. The Committee requested the secretariat to update the information paper on communications to encourage any future communicants to clearly indicate the specific provisions of the Convention that had allegedly not been complied with and to make explicit links between these provisions and concrete facts presented in their communications.

X. REVIEW OF COMPLIANCE WITH REPORTING REQUIREMENTS

40. The secretariat presented the current situation with respect to the preparation of the national implementation reports. The issue had also been discussed at the third meeting of the Working Group of the Parties (MP.PP/WG.1/2004/9, chap. XI).

41. The Committee agreed upon a process for distributing responsibility for detailed examination of the reports among its members. It agreed that it would be useful if the consultant hired to draft the synthesis report were invited to participate in part of the Committee's seventh meeting, at which it would also monitor and assess the implementation of and compliance with the reporting requirements in accordance with its mandate (decision I/7, annex, para. 13 (c)), on the assumption that the synthesis report would also address this issue.

XI. PREPARATION OF THE COMMITTEE'S REPORT TO THE MEETING OF THE PARTIES

42. The Committee discussed the procedure for preparing its report to the Meeting of the Parties and the format of the report. It mandated the secretariat to find the most elegant solution for structuring the report, taking into account the need to keep an overview of the full sequence of compliance-related documentation and having regard to its discussions at its second meeting (MP.PP/C.1/2003/4, annex), and requested it to prepare draft elements for the report in time for discussion at its seventh meeting.

XII. PROGRAMME OF WORK AND CALENDAR OF MEETINGS

43. The Committee confirmed that it would hold its seventh meeting in Geneva on 16-18 February 2005, when it would deal primarily with the preparation of its report to the Meeting of the Parties. Its eighth meeting would take place in Almaty around the time of the second meeting of the Parties. The precise date would be fixed through e-mail discussion, following consultation with the Bureau.

XIII. ADOPTION OF THE REPORT AND CLOSURE OF THE MEETING

44. The Committee adopted the draft report prepared by the Chairman and the secretariat and requested the secretariat in cooperation with the Chairman to finalize it. The Chairman then closed the meeting.