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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

Fifth session

Maastricht, the Netherlands, 30 June and 1 July 2014

Item 5 (b) of the provisional agenda

**Procedures and mechanisms facilitating the implementation
of the Convention: compliance mechanism**

Compliance by Armenia with its obligations under the Convention

Report by the Compliance Committee

Summary

The present document was prepared by the Compliance Committee pursuant to the request set out in paragraph 10 of decision IV/9 of the Meeting of the Parties to the Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters (see ECE/MP.PP/2011/2/Add.1) and in accordance with the Committee's mandate set out in paragraphs 13 (b), 14 and 35 of the annex to decision I/7 on review of compliance (ECE/MP.PP/2/Add.8).

The document reviews the progress made by Armenia in the intersessional period in implementing decision IV/9a of the Meeting of the Parties on compliance by Armenia with its obligations under the Convention (see ECE/MP.PP/2011/2/Add.1).

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I. Introduction — decision IV/9a of the Meeting of the Parties

1. At its fourth session (Chisinau, 29 June–1 July 2011), the Meeting of the Parties to the Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters (Aarhus Convention) adopted decision IV/9a on compliance by Armenia with its obligations under the Convention (see ECE/MP.PP/2011/2/Add.1).

2. Armenia's compliance with the Convention has been under review by the Compliance Committee since 2004, beginning with communication ACCC/C/2004/8 concerning decision-making on the modification of land use designation and zoning as well as the leasing of certain plots in the agricultural area of Dalma Orchards. In its findings on communication ACCC/C/2004/8 (ECE/MP.PP/C.1/2006/2/Add.1), adopted on 31 March 2006, the Committee found non-compliance with article 4, paragraphs 1 and 2, article 6, paragraph 1 (a) in connection with article 6, paragraphs 2 to 5 and 7 to 9, article 7 and article 9, paragraphs 2 to 4. In its findings, the Committee recommended that the Party concerned:

(a) Undertake practical and legislative measures to overcome the existing problems with access to environmental information, including, where appropriate, statistical monitoring of processing information requests;

(b) Ensure practical application of public participation procedures at all levels of decision-making in accordance with article 7 of the Convention and relevant domestic legislation;

(c) Develop detailed procedures for public participation in decision-making on activities referred to in article 6, paragraph 1, of the Convention, inter alia, by incorporating them into the new Law on Environmental Impact Assessment, and to ensure their practical application, including by providing training to officials of all the relevant public authorities at various levels of administration;

(d) Ensure that appropriate forms of decisions are used in decision-making on matters subject to articles 6 and 7, so as to ensure that the public can effectively exercise their rights under the Convention;

(e) Undertake appropriate practical measures to ensure effective access to justice, including the availability of adequate and effective remedies to challenge the legality of decisions on matters regulated by articles 6 and 7 of the Convention;

(f) Take the consideration and evaluation of the Committee into account in the ongoing revision of legislation (specifically, the Constitution and draft laws on administration and on environmental impact assessment (EIA)), as well as in further consideration of the specific matter raised by the communicants;

(g) Take the findings and conclusions of the Committee into account in further consideration of the specific matter raised by the communicants.

3. In its report to the third session of the Meeting of the Parties (Riga, 11–13 June 2008) on the progress made by the Party concerned in implementing the above recommendations (ECE/MP.PP/2008/5/Add.2), the Committee noted with appreciation that the Party concerned recognized that legislative changes and development of detailed public participation procedures were required. It took note of information provided by the Party concerned that several specific procedures were currently being developed, while noting that such a general reference did not allow the Committee to evaluate in a concrete way the qualitative progress made with regard to implementation of specific recommendations. The

Committee considered that it was therefore not in a position to conclude that the Party concerned was at that time in compliance with the Convention. It thus recommended to the Meeting of the Parties to welcome progress made by the Party concerned and to endorse the original findings and recommendations of the Committee on communication ACCC/C/2004/8.

4. Through decision III/6b (ECE/MP.PP/2008/2/Add.10), the Meeting of the Parties at its third session endorsed the Committee's findings on communication ACCC/C/2004/8, welcomed its recommendations and requested the Party concerned:

(a) To ensure practical application of public participation procedures at all levels of decision-making in accordance with article 7 of the Convention and relevant domestic legislation;

(b) To develop detailed procedures for public participation in decision-making on the activities referred to in article 6, paragraph 1, of the Convention;

(c) To undertake appropriate practical measures to ensure effective access to justice, including the availability of adequate and effective remedies to challenge the legality of decisions on matters regulated by articles 6 and 7 of the Convention.

5. During the intersessional period 2008–2011, the Committee considered communication ACCC/C/2009/43 concerning compliance by Armenia with the provisions of the Convention on public participation and access to justice in relation to the issuance and renewal of licences to a developer for the exploitation of copper and molybdenum deposits in the Lori region. In its findings on communication ACCC/C/2009/43 (ECE/MP.PP/2011/11/Add.1), adopted on 17 December 2010, while acknowledging the continuous efforts by the Party concerned in implementing decision III/6b, the Committee found that there were still shortcomings in Armenian law and practice and, due to these shortcomings, the Party concerned failed in the case of ACCC/C/2009/43 to comply with article 3, paragraph 1, and article 6, paragraphs 2, 4 and 9, of the Convention. The Committee recommended to the Meeting of the Parties that it recommend that the Party concerned take the necessary legislative, regulatory, and administrative measures and practical arrangements to ensure that:

(a) Thresholds for activities subject to an EIA procedure, including public participation, are set in a clear manner;

(b) The public is informed as early as possible in the decision-making procedure, when all options are open, and that reasonable time frames are set for the public to consult and comment on project-related documentation;

(c) The responsibilities of different actors (public authorities, local authorities, developer) on the organization of public participation procedures are defined as clearly as possible;

(d) A system of prompt notification of the public concerned on final conclusions of environmental expertise is arranged, e.g., through the website of the Ministry of Nature Protection.

6. The Committee also recommended that the Meeting of the Parties invite the Party concerned to draw up an action plan for implementing the above recommendations with a view to submitting an initial progress report to the Committee by 1 December 2011, and the action plan by 1 April 2012, and to provide information to the Committee at the latest six months in advance of the fifth Meeting of the Parties on the measures taken and the results achieved in implementation of the above recommendations.

7. In its report to the Meeting of the Parties at its fourth session on the progress made by Armenia in the implementation of decision III/6b (ECE/MP.PP/C.1/2011/2/Add.2), the

Committee noted with appreciation that the Party had seriously and actively engaged to follow the recommendations of decision III/6b. It found that the Party had demonstrated considerable progress with regard to access to justice. However, the Committee expressed concern at the slow process for finalizing and enacting the new legislation on EIA, including procedures for public participation in it. It recommended that the Meeting of the Parties urge Armenia to take into consideration the Committee's recommendations on ACCC/C/2009/43, including in the finalization of the draft law on EIA, and to request Armenia to provide a draft of the new law to the Committee as soon as possible.

8. The Meeting of the Parties at its fourth session took note of both the Committee's report with regard to follow-up by Armenia with decision III/6b and also the Committee's findings and recommendations on communication ACCC/C/2009/43. Through its decision IV/9a, the Meeting of the Parties took note of the serious and active engagement of and progress made by the Party concerned in implementing decision III/6b, endorsed the Committee's findings that, despite the continuous efforts of the Party concerned in implementing decision III/6b, there were still shortcomings in Armenian law and practice, encouraged the Party concerned to continue its constructive dialogue with the Committee and to accelerate the process for the new legislation on EIA, including procedures on public participation in it, to be finalized and come into effect, and invited the Party concerned to take the necessary legislative, regulatory and administrative measures and practical arrangements to ensure that:

(a) Thresholds for activities subject to an EIA procedure, including public participation, are set in a clear manner;

(b) The public is informed as early as possible in the decision-making procedure, when all options are open, and that reasonable time frames are set for the public to consult and comment on project-related documentation;

(c) The responsibilities of different actors (public authorities, local authorities, developer) in the organization of public participation procedures are defined as clearly as possible;

(d) A system of prompt notification of the public concerned on final conclusions of environmental expertise is arranged, e.g., through the website of the Ministry of Nature Protection.

9. The Meeting of the Parties also invited the Party concerned to take those elements into account in finalizing its law on EIA and to provide a draft of the new law to the Committee as soon as possible; to draw up an action plan for implementing the above recommendations with a view to submitting an initial progress report to the Committee by 1 December 2011 and the action plan by 1 April 2012; and also to provide information to the Committee at the latest six months before the fifth session of the Meeting of the Parties on the measures taken and the results achieved in implementation of the recommendations.

10. In the intersessional period 2011–2014, the Committee received and considered communication ACCC/C/2011/62 concerning non-compliance by Armenia with respect to access to justice and adopted its findings on 28 June 2013 (ECE/MP.PP/C.1/2013/14). Given the relatively short time until the fifth session of the Meeting of the Parties, the Committee made its recommendations on communication ACCC/C/2011/62 directly to the Meeting of the Parties and the implementation of those recommendations is not within the scope of the present report.

II. Summary of follow-up action with decision IV/9a

11. On 29 November 2011, the secretariat received a letter (dated 31 October 2011) from Environment Public Alliance (Armenia) on behalf of a number of Armenian NGOs addressed to the President of Armenia and copying the Executive Secretary of the United Nations Economic Commission for Europe, and on 1 December 2011 another letter from Transparency International (Armenia). In their letters, the NGOs expressed their disappointment at the lack of progress by Armenia in implementing the Convention, in particular with respect to the content of the new law on EIA and the lengthy adoption process. On 6 December 2011, the Party concerned submitted its initial progress report, as requested by the Meeting of the Parties through paragraph 6 of decision IV/9a.

12. At its thirty-fifth meeting (Geneva, 13–16 December 2011), the Committee considered the two letters submitted by the NGOs and the progress report by the Party concerned. The Committee agreed to review the materials received in further detail at its thirty-sixth meeting.

13. On 29 February 2012, the Committee received a letter from the NGO Ecodar (Armenia) expressing concerns about the procedure for the adoption of the new EIA law and enquiring about the possibility of participation at the Committee's thirty-sixth meeting.

14. At its thirty-sixth meeting (Geneva, 27–30 March 2012), the Committee noted that the Party concerned had notified the secretariat that the draft amendment to the EIA law had not been signed by the President, and that a new draft would be prepared to better address the classification of activities, public participation and fees. The Party concerned had also informed the secretariat that, owing to internal procedures, it would not be able to submit the action plan within the deadline of 1 April 2012. The Committee then considered the letter submitted by Ecodar. During the meeting, representatives of the NGO community in Armenia made a statement criticizing the Party concerned for its continuous failure to take the necessary measures to implement the recommendations of the Meeting of the Parties and to organize appropriate public participation in mining activities. The Committee took note of the information and invited the NGOs to follow up on the developments in implementing the decision. It then instructed the secretariat to request the Party concerned to submit an English or Russian translation of the draft EIA law to the Committee and to remind it of the upcoming deadline of 1 April 2012 for the submission of its action plan.

15. On 12 April 2012, the Party concerned submitted the action plan requested through paragraph 6 of decision IV/9a.

16. On 20 April 2012, Ecodar sent a letter expressing concern at the continued failure by the Party concerned to take into account the findings of the Compliance Committee concerning public participation in the decision-making regarding the mining operation in the Teghut area. It also alleged that the action plan submitted by the Party concerned did not meet the recommendations of the Meeting of the Parties.

17. On 22 May and 18 June 2012, the Party concerned informed the Committee that, since the draft law "On changes and addendums to the Law of the Republic of Armenia on environmental impact expertize" had been rejected by the President of Armenia, a new draft was being prepared by the Working Group established by the Minister of Nature Protection and led by the first Deputy Minister of Nature Protection. Once finalized, the new draft would be forwarded to the Interagency Commission on Implementing the Aarhus Convention and then circulated to other stakeholders. The Party concerned indicated that, due to legislative process being at an early stage, it was not able to provide an English or Russian translation of the draft law, as previously requested by the Committee. It stated that it would keep the Committee informed about the process.

18. At its thirty-seventh meeting (Geneva, 26–29 June 2012), the Committee took note of the action plan submitted by the Party concerned on 12 April 2012 and of the subsequent information received. The Committee requested the Party concerned to report to the Committee on the progress of the legislative process as soon as possible, but not later than November 2012. It also requested the Party concerned to report on how the elements of paragraph 4 of decision IV/9a were addressed in the draft law. It agreed that it would review the materials received in greater detail at its thirty-ninth meeting.

19. On 19 December 2012, the Party concerned sent a letter updating the Committee about the ongoing legislative developments concerning the draft EIA law.

20. At its thirty-ninth meeting (Geneva, 11–14 December 2012), the Committee noted with disappointment that the Party concerned had not submitted the requested information by the deadline (November 2012), despite reminders from the secretariat. It asked the secretariat to urge the Party to submit the requested information as soon as possible and agreed to review the situation at its fortieth meeting.

21. On 5 February 2013, the Party concerned submitted its report, which had been due in November 2012.

22. At its fortieth meeting (Geneva, 25–28 March 2013), the Committee took note of the report of the Party concerned. It noted with regret that the Party concerned had submitted its report late, but in particular lamented the very slow progress with regard to the enactment of the new EIA law, which was expected to implement decision III/6a of the Meeting of the Parties (2008) and its subsequent decision IV/9a (2011). Moreover, the report was very vague. The Committee requested the secretariat to draw the attention of the Party concerned to the extremely slow legislative process during the past five years and to ask for further details about the law.

23. On 31 May 2013, the Party concerned submitted an English translation of the draft Law of the Republic of Armenia on Environmental Impact Assessment and Expert Examination (the draft EIA law or draft law).

24. At its forty-first meeting (Geneva, 25–28 June 2013), the Committee reviewed the English translation of the draft EIA law submitted by the Party concerned. The Committee observed that the draft law appeared to address the issues raised in paragraph 4 (a) to (d) of decision IV/9a, but agreed to review the situation in greater detail at its forty-second meeting. It instructed the secretariat to request the Party concerned to provide by 1 September 2013 a timeline for the adoption of the draft law and considered that, if needed, it would discuss the matter with the Party concerned and interested observers (in person or by teleconference or videoconference) at its next meeting. The Party concerned subsequently confirmed its availability for such a discussion. A letter was also sent to the communicants in ACCC/C/2004/8 and ACCC/C/2009/43, inviting them to comment on the draft law.

25. By e-mail of 12 August 2013, the Party concerned informed the Committee that the draft EIA law had been submitted to the parliament for consideration and was expected to be adopted by the end of 2013. It also underlined that the draft had been prepared with the participation of the NGO community, including the communicants who had triggered the review of Armenia's compliance.

26. At its forty-second meeting (Geneva, 24–27 September 2013), the Compliance Committee held a telephone conference with the Party concerned. An observer, Dalma-Sona Fund (Armenia), also took part. The Party concerned provided a statement as to how it had addressed each subparagraph of decision IV/9a, in particular through the development of the draft EIA law and the draft Framework Law on Environmental Policy. The Party concerned reported that the draft law was currently before parliament, but did not

provide a definite limit date for its adoption. The observer provided both written and oral comments, including on its view of the compliance of the draft EIA law with the Convention. The Committee commenced preparation of its draft report to the fifth session of the Meeting of the Parties on the implementation of decision IV/9a and agreed to continue this at its forty-third meeting.

27. No additional information was provided by the Party concerned between the forty-second and the forty-third meeting (Geneva, 17–20 December 2013). At its forty-third meeting, the Committee continued preparation of its draft report to the fifth session of the Meeting of the Parties, completing the draft report through its electronic decision-making procedure after the meeting.

28. On 4 March 2014, the draft report was sent to the Party concerned, the communicants in ACCC/C/2004/8 and ACCC/C/2009/43 and a participating observer (Dalma-Son Fund) for their comments by 24 March 2014. The Party and the communicants provided their comments on 24 March and the observer, on 25 March 2014. At its forty-fourth meeting (Geneva, 25–28 March 2014), the Committee, taking into account the comments received, finalized its report for submission to the fifth session of the Meeting of the Parties.

III. Considerations and evaluation by the Committee

29. In order to fulfil the requirements of the decision IV/9a, the Party concerned would need to provide the Committee with evidence that:

(a) The draft EIA law and other legislative measures that have been proposed by the Party concerned to meet the requirements of decision IV/9a have been adopted;

(b) The draft EIA law and any other legislative measures adopted fulfil the requirements of the Convention, in particular article 3, paragraph 1, and article 6, paragraphs 2, 4 and 9, and would ensure that:

(i) Thresholds for activities subject to an EIA procedure, including public participation, are set in a clear manner;

(ii) The public is informed as early as possible in the decision-making procedure, when all options are open, and that reasonable time frames are set for the public to consult and comment on project-related documentation;

(iii) The responsibilities of different actors (public authorities, local authorities, developers) in the organization of public participation procedures are defined as clearly as possible;

(iv) A system of prompt notification of the public concerned on final conclusions of environmental expertise is arranged, e.g., through the website of the Ministry of Nature Protection.

30. In its comments dated 24 March 2014 on the draft of this report, the Party concerned stated that the Ministry of Nature Protection would make efforts to have the EIA law adopted before the fifth session of the Meeting of the Parties. However, at that time the draft EIA law still remained pending before the parliament, and no definite date for its adoption had been set. Similarly, no indication was given as to when the draft Framework Law on Environmental Policy would be adopted. It thus remains unclear as to when the draft legislative measures will be adopted and whether the final adopted texts will fully implement decision IV/9a.

31. While welcoming the ongoing constructive engagement of the Party concerned in the compliance review process, and welcoming the new practice of posting notifications and conclusions of environmental expertise on the website of the Ministry of Nature Protection as an initial step to improve the notification of the public, the Committee reiterates the concern it expressed in its report to the fourth session of the Meeting of the Parties at the continued slow progress by the Party concerned in finalizing and adopting an EIA law that would fully implement the Convention. While considerable work may have been done on the text since the Committee's report to the fourth session, the fact is that three years later the legislation remains only a draft. The Committee regrets the fact that the Party concerned seems to ignore the significant delay in the final adoption of the necessary legislative changes.

32. Since the relevant legislative measures proposed by the Party concerned to meet the requirements of decision IV/9a have not to date been adopted, the Committee finds that Armenia has not yet met the requirements of decision IV/9a.

IV. Conclusions and recommendations

33. While welcoming the constructive engagement of the Party concerned in the compliance review process as well as the new practice of posting notifications and conclusions of environmental expertise on the website of the Ministry of Nature Protection, the Committee reiterates the concern it expressed in its report to the fourth session of the Meeting of the Parties at the continued slow progress by the Party concerned to finalize and adopt an EIA law which would fully implement the Convention. Since the relevant legislative measure proposed by the Party concerned to meet the requirements of decision IV/9a have not to date been adopted, the Committee finds that Armenia has not yet met the requirements of decision IV/9a. This means the Party concerned remains in non-compliance with article 6 of the Convention on public participation and article 3, paragraph 1, requiring a clear, transparent and consistent framework to implement the Convention.

34. The Committee recommends to the Meeting of the Parties that it reiterates its decision IV/9a in the following respects, namely that it:

(a) Encourages the Party concerned to continue its constructive dialogue with the Committee and to accelerate the process for the new legislation on EIA, including procedures on public participation in it, to be finalized and come into effect;

(b) Invites the Party concerned to take the necessary legislative, regulatory and administrative measures and practical arrangements to ensure that:

(i) Thresholds for activities subject to an EIA procedure, including public participation, are set in a clear manner;

(ii) The public is informed as early as possible in the decision-making procedure, when all options are open, and that reasonable time frames are set for the public to consult and comment on project-related documentation;

(iii) The responsibilities of different actors (public authorities, local authorities, developers) in the organization of public participation procedures are defined as clearly as possible;

(iv) A system of prompt notification of the public concerned on final conclusions of environmental expertise is arranged, e.g., through the website of the Ministry of Nature Protection.

35. The Committee also recommends to the Meeting of the Parties that it invites the Party to:

(a) Prior to their adoption and no later than 1 September 2014, provide the Committee with an English translation of the text of the draft EIA law and other legislative measures as they stand on that date for the Committee's review;

(b) Provide the Committee with evidence that the draft EIA law and other legislative measures that have been proposed by the Party concerned to meet the requirements of decision IV/9a have been adopted.

36. The Committee recommends to the Meeting of the Parties that it request the Party concerned to provide detailed progress reports to the Committee by 31 December 2014, 31 October 2015 and 31 October 2016 on the measures taken and the results achieved in implementation of the above recommendations.
