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Item 7 (b) of the provisional agenda

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

Report of the Compliance Committee*

Compliance by Armenia with its obligations under the Convention

Summary

This document is prepared by the Compliance Committee pursuant to the request set out in paragraph 19 of decision V/9 of the Meeting of the Parties (ECE/MP.PP/2014/2/Add.1) and in accordance with the Committee's mandate set out in paragraph 35 of the annex to decision I/7 of the Meeting of the Parties on review of compliance (ECE/MP.PP/2/Add.8).

* The present document is being issued without formal editing.



I. Introduction

1. At its fifth session (Maastricht, 30 June–1 July 2014), 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 V/9a on compliance by Armenia with its obligations under the Convention (see ECE/MP.PP/2014/2/Add.1).

II. Summary of follow-up

2. The Party concerned provided its first progress report on the implementation of decision V/9a on 26 December 2014.

3. At the Committee's request, on 2 January 2015 the secretariat forwarded the first progress report of the Party concerned to the communicants of communications ACCC/C/2004/8 and ACCC/C/2009/43 and also "Dalma-Sona" Human Rights and Environmental Protecting Fund, an observer to the follow-up to decision V/9a, inviting them to provide their comments on that report by 23 January 2015. No comments were received.

4. By letter of 20 October 2015, the secretariat sent the Committee's first progress review on the implementation of decision V/9a to the Party concerned, the communicants and the observer, "Dalma-Sona" Human Rights and Environmental Protecting Fund.

5. The Party concerned provided its second progress report on the implementation of decision V/9a on 22 December 2015.

6. At the Committee's request, on 29 January 2016 the secretariat forwarded the second progress report of the Party concerned to the communicants and observer inviting them to provide their comments on the progress report by 19 February 2016.

7. One of the communicants of communications ACCC/C/2004/8 and ACCC/C/2009/43, namely the non-governmental organization (NGO) "Transparency International Anticorruption Center" provided comments jointly with an observer, NGO "Ecological Right" on 21 February 2016 (dated 19 February 2016).

8. At the Committee's fifty-second meeting (Geneva, 8–11 March 2016), the Party concerned and the observer, "Ecological Right", took part via audio conference in the open session on the implementation of decision V/9a. Though invited, no communicants took part.

9. At the Committee's request, on 8 April 2016 the secretariat forwarded the Committee's second progress review on the implementation of decision V/9a to the Party concerned, the communicants and observers.

10. On 11–12 April 2016, the Chair of the Committee met with representatives of the Party concerned in Yerevan, including the Minister of Nature Protection and the Deputy Minister of Justice, and also met with judges, civil society and academia.

11. The Party concerned provided its third progress report on the implementation of decision V/9a on 31 October 2016.

12. By letter of 21 November 2016, the observer, "Ecological Right", provided comments on the third progress report of the Party concerned.

13. At the Committee's fifty-fifth meeting (Geneva, 6–9 December 2016), the Party concerned took part by audio conference in the open session on the implementation of decision V/9a. Despite invitation, no communicants or observers took part.
14. At the Committee's request, on 3 January 2017 the secretariat forwarded the Committee's third progress review on the implementation of decision V/9a to the Party concerned, the communicants and observers. The Party concerned was informed that all measures necessary to implement decision V/9a should be completed by, and reported upon by 31 January 2017.
15. On 31 January 2017, the Party concerned provided further information on the measures it had taken to implement decision V/9a. At the Committee's request, the secretariat forwarded the information to the communicants and observers inviting them to provide any comments they may have on the enclosed document or on the implementation by the Party concerned of decision V/9a by 22 February 2017. No comments were received from the communicants or observers.
16. At the Committee's fifty-sixth meeting (Geneva, 28 February – 3 March 2017), the Party concerned and the observer, "Ecological Right", took part by audio conference in the open session on the implementation of decision V/9a. Despite invitation, no communicants took part.
17. On 16 March 2017, the secretariat, at the Committee's request, asked the Party concerned to provide additional information.
18. On 12 April 2017, the Party concerned provided the requested information.
19. On 21 May 2017, the observer, "Ecological Right", provided comments on the implementation by the Party concerned of decision V/9a.
20. On 12 and 16 June 2017, the Party concerned provided additional information.
21. The Committee adopted its report to the sixth session of the Meeting of the Parties on decision V/9a through its electronic decision-making procedure on 13 July 2017 and requested the secretariat to send the report to the Party concerned, communicants and observers registered in the follow-up on decision V/9a.

III. Considerations and evaluation by the Committee

22. In order to meet the requirements of paragraphs 4 and 7 of decision V/9a, the Party concerned would need to:
 - (a) Provide the Committee with evidence that it had taken 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 of the final conclusions of environmental expertise is arranged, e.g., through the website of the Ministry of Nature Protection;¹

(b) Provide the Committee with English translations of the text of the EIA law and any other legislative measures adopted to meet the requirements of decision V/9a;²

(c) Review and clarify its legislation, including the law on NGOs and administrative procedures, so as to ensure compliance with article 9, paragraph 2, of the Convention with regard to standing;³ and

(d) Take the measures necessary to raise awareness among the judiciary to promote implementation of domestic legislation in accordance with the Convention.⁴

23. The Committee welcomes the three progress reports from the Party concerned, which have all been received on time, as well as the further information provided on 6 and 16 November 2015, 30 March and 22 July 2016 and 31 January, 12 April, 12 and 16 June 2017.

24. The Committee also welcomes the comments and information provided by the communicants and the observer on 21 February, 30 March and 21 November 2016 and 18 January and 21 May 2017.

Paragraph 4 (a): Constructive dialogue with the Committee

25. With regard to paragraph 4 (a) of decision V/9a and constructive dialogue with the Committee, as noted in paragraph 23 above, the Party concerned provided its three progress reports on time, provided a number of further updates thereafter and also took part by audioconference in the open sessions on decision V/9a held during the Committee's fifty-second, fifty-fifth and fifty-sixth meetings. The Committee in particular welcomes the engagement of the Party concerned in the period since the second progress review and encourages the Party concerned to continue this level of engagement and dialogue in the next intersessional period also.

Paragraph 4 (b), 5 (a) and 5 (b) of decision V/9a: Adoption of legislative proposals and submission of English translations thereof

26. With regard to paragraph 4 (b), 5 (a) and 5 (b) of decision V/9a, in its second progress report, the Party concerned informed the Committee that the Law "On environmental impact assessment and expertise" and Decision #1325-N defining the "Procedure of holding public notification and discussions" (Decision N1325) had been adopted.⁵ The Party concerned submitted English translations of both laws as attachments to its second progress report.⁶ In its second progress review, the Committee welcomed the adoption of both these laws and the submission of the English translations thereof to the Committee.⁷

27. In its update of 31 January 2017, the Party concerned reported that a draft Decision amending Decision N1325 had been finalized and sent to the Government for adoption and

¹ Decision V/9a, para. 4 (c) (i-iii).

² Ibid., para. 5 (b).

³ Ibid., para. 7 (a).

⁴ Ibid., para. 7 (b).

⁵ Second progress report of the Party concerned, 22 December 2015.

⁶ Annexes 1 and 2 to the second progress report of the Party concerned, 22 December 2015.

⁷ Committee's second progress review, 8 April 2016, paras. 19 and 25.

that the adopted version would be translated and sent to the Committee as soon as possible.⁸ On 12 April 2017, the Party concerned provided an English translation of Decision N357 amending Decision N1325.

28. The Committee welcomes the adoption of the Law “On environmental impact assessment and expertise” and Decision N1325 as requested by paragraph 4 (b) and 5 (b) of decision V/9a. The Committee also welcomes the provision of English translations of both laws, as requested by paragraph 5 (a) of decision V/9a. The Committee examines below the extent to which these laws meet the requirements of paragraph 4 (c) (i) – (iv) of decision V/9a.

29. In its update of 31 January 2017, the Party concerned also informed the Committee that the preparation of an amendment to the Law “On environmental impact assessment and expertise” was at its final stage and would soon be presented to the public.⁹ While this amendment was not completed before the finalization of the present report, the Committee examines several of its proposed provisions below.

Paragraph 4 (c) (i) of decision V/9a: Clear thresholds for activities subject to EIA

30. With regard to paragraph 4 (c) (i) of decision V/9a, the Party concerned referred the Committee in its third progress report to article 4, paragraph 1, point 7 and article 14, of the Law “On environmental impact assessment and expertise”.¹⁰

31. The Committee welcomes the adoption of the Law “On environmental impact assessment and expertise” and considers that this Law, and in particular 4, paragraph 1, point 7 and article 14 thereof, show considerable progress towards ensuring that thresholds for activities subject to an EIA procedure, including public participation, are set out in a clear manner.

32. However, in accordance with article 6, paragraph 1 (a), of the Convention, all of the activities set out in annex I to the Convention must be subject to a public participation procedure. As noted by the Committee in its third progress review, the list provided in article 14 of the Law “On environmental impact assessment and expertise” appears not to include a number of activities listed in annex I, specifically:

(a) Coke ovens; installations for gasification and liquefaction; installations for processing and reprocessing of irradiated nuclear fuel and processing of high-level radioactive wastes (paragraph 1 of Annex I to the Convention);

(b) Processing of ferrous metals (hot-rolling mills, smitheries, application of protective fused metal coats) and ferrous metal foundries; (paragraph 2, indents 3 and 4, of Annex I to the Convention);

(c) Installations for the production of asbestos and the manufacture of asbestos-based products (paragraph 3 of Annex I to the Convention);

(d) Chemical installations of the production of basic plant health products and biocides; chemical installations for the production of protein feed additives, ferments and other protein substances (other than the production of manufactured feed concentrate) (paragraph 4 of Annex I to the Convention);

⁸ Further information from the Party concerned, 31 January 2017, p. 1.

⁹ Ibid.

¹⁰ Third progress report of the Party concerned, 31 October 2016, p. 1.

- (e) Incineration of hazardous and municipal waste (except if this is termed “processing” in the national system), installations for the disposal of non-hazardous waste (paragraph 5 of Annex I to the Convention);
- (f) Production of pulp (paragraph 7 (a) of Annex I to the Convention);
- (g) Motorways and express roads (other than roads of four or more lanes) (paragraph 8 (b) of Annex I to the Convention);
- (h) Inland waterways and ports, trading ports and piers (paragraph 9 of Annex I to the Convention);
- (i) Groundwater abstraction and artificial groundwater recharge schemes (paragraph 10 of Annex I to the Convention);
- (j) Works for the transfer of water resources between river basins (other than water supply systems with a diameter of 300 mm and more and with a length of 1 km or more or main canals) (paragraph 11 of the Annex 1 to the Convention);
- (k) Installations for the intensive rearing of sows with 750 places or more (paragraph 15 (c) of Annex I to the Convention);
- (l) Quarries and opencast mining (other than for the extraction of underground resources of metal ores, including radioactive underground resources) (paragraph 16 of Annex I to the Convention);
- (m) Installations for the storage of petroleum, petrochemical or chemical products, other than underground (annex 18 of Annex I to the Convention);
- (n) Plants for the pre-treatment or dyeing of fibres or textiles; installations for the surface treatment of substances, objects or products using organic solvents; installations for the production of carbon (hard-burnt coal) or electrographite (annex 19 of Annex I to the Convention).¹¹

33. In its third progress review, the Committee noted that, bearing in mind the possibility of translation disparities and technical precisions, it was not in a position to assess definitively whether the activities mentioned above are or are not covered by article 14, or any other provision, of the Law “On environmental impact assessment and expertise”.¹² The Committee accordingly requested the Party concerned to clarify which provisions of the Law “On environmental impact assessment and expertise” would cover each of the activities mentioned in the above list, or to provide the texts, together with an English translation thereof, of other legislation that provides for public participation with respect to decision-making to permit these activities.¹³

34. In its update of 31 January 2017, the Party concerned stated that it would analyse article 14 on the basis of the Committee’s remarks and make relevant amendments where needed.¹⁴ Not having received further information on this point, the Committee again raised the issue at the oral session during its fifty-sixth meeting (28 February – 3 March 2017) and through the secretariat’s email of 16 March 2017, requesting the Party concerned to provide further information on this issue.¹⁵

¹¹ Committee’s third progress review, 3 January 2017, para. 27.

¹² Ibid., para. 28.

¹³ Ibid., paras. 28 and 47 (b).

¹⁴ Further information from the Party concerned, 31 January 2017, p. 1.

¹⁵ Secretariat’s email to the Party concerned requesting additional information, 16 March 2017.

35. In its update of 12 June 2017, the Party concerned informed the Committee that it was clarifying formulations of the provisions of the Law “On environmental impact assessment and expertise” and proposed to include more detailed provisions taking into account the provisions of the Convention.¹⁶

36. The Party concerned also reported that it was planning to introduce a new provision in article 14, paragraph 8, of the Law “On environmental impact assessment and expertise” which would allow developers to propose for environmental expertise for activities not otherwise covered by the provision.¹⁷ The Committee welcomes this addition but notes that this mechanism would not substitute for ensuring public participation for all activities covered by article 6, paragraphs 1 (a) and (b), of the Convention.

37. Accordingly, as at the date of the present report, the Committee has not been provided with sufficient evidence that the list of activities in article 14 of the Law “On environmental impact assessment and expertise”, or any other provisions of the legislation of the Party concerned, encompasses all the activities in annex 1 of the Convention. In the absence of evidence that all activities in Annex I to the Convention are subject to public participation pursuant to article 14 of the Law “On environmental impact assessment and expertise” or under other provisions of the legislation of the Party concerned, the Committee finds that the Party concerned has not yet met the requirements of paragraph 4 (c) (i) of decision V/9a.

Paragraph 4 (c) (ii) of decision V/9a: Early public participation when all options are open and reasonable time frames for public participation

Early public participation when all options are open

38. With regard to paragraph 4 (c) (ii) of decision V/9a and early public participation when all options are open, the Committee notes that in accordance with paragraphs 30 and 31 of Decision N1325, the first public discussion is to be held at the preliminary stage of assessment. As noted in its second progress review, the Committee considers that providing for public participation at this stage meets the requirement in paragraph 4 (c) (ii) of decision V/9a for the public to be informed at an early stage of the decision-making procedure when all options are open.¹⁸

Reasonable time-frames to consult documents and to participate

39. Concerning paragraph 4 (c) (ii) of decision V/9a and reasonable time-frames, in paragraph 21 of its second progress review, the Committee expressed concern at the timeframes set in article 26, paragraphs 2 and 4, of the Law “On environmental impact assessment and expertise”. Article 26, paragraph 2, of the Law “On environmental impact assessment and expertise” states that notice must be given at least seven working days prior to the hearing. Article 26, paragraph 4, of the Law “On environmental impact assessment and expertise” states that relevant documents shall be posted at least seven working days prior to the public hearing.

40. With respect to notice and access to documents prior to a hearing, the Committee recalls that in its findings on communication ACCC/C/2008/43, it held that one week for the public concerned to examine documentation prior to the hearing “is not early notice in the meaning of article 6, paragraph 2, because it does not allow enough time to the public concerned to get acquainted with voluminous documentation of a technical nature and to

¹⁶ Clarification from the Party concerned, 12 June 2017, p. 2.

¹⁷ Ibid., p. 1.

¹⁸ Committee’s second progress review, 8 April 2016, para. 21.

participate in an effective manner.”¹⁹ The Committee recognizes that under article 26, paragraphs 2 and 4 of the Law “On environmental impact assessment and expertise”, the notice period of seven working days is a minimum timeframe and that the competent authorities could presumably decide to set a longer timeframe. Nevertheless, the Committee emphasises that for most, if not all, activities subject to article 6 of the Convention, seven working days to consult documents and prepare for the hearing is too short.

41. With respect to the time-frames for the public to submit comments, in its updates of 19 November 2016 and 31 January 2017, the Party concerned reported that in draft Decision N357 amending Decision N1325 the times allocated to public participation periods were proposed to be extended. The Party concerned submitted that the amended timelines for Category A activities would be extended by 52 to 66 working days, for Category B activities from 37 to 51 working days and for Category C activities from 17 to 22 working days.²⁰ On 9 March 2017, the Party concerned adopted Decision N357 implementing these amendments.²¹ In its update of 16 June 2017, the Party concerned informed the Committee that the proposed amendments to the Law “On environmental impact assessment and expertise” would inter alia require public authorities and the developer to ensure effective and timely notification of the public (proposed article 30 of the Law) and would reflect the time frames set in Decision N1325 (proposed article 31 of the Law).²²

42. As a preliminary point, it appears to the Committee that activities that fall under category C, which are listed in article 14, paragraph 6, of the Law “On environmental impact assessment and expertise” do not fall under Annex I of the Convention. In the absence of any information to the contrary, the Committee will therefore focus its analysis on the timelines applicable to activities falling under categories A and B, as defined by the Law “On environmental impact assessment and expertise”.

43. With respect to the stated timeframes for category A and B activities (see para. 0 above), the Committee notes that the above calculations by the Party concerned were apparently arrived at by adding up the total number of days that the public will have to comment across all stages of the decision-making procedure, and do not indicate the number of days the public will have to participate at any particular stage of the procedure. The Committee emphasises that article 6, paragraph 3, of the Convention refers to “reasonable time frames for the different phases” and it is thus not correct to calculate the timeframe for public participation in such a manner. Rather, it is necessary to ensure that the public concerned is given reasonable time to participate at each of the relevant stages of the public participation procedure.

44. In this regard, the Committee notes that paragraph 15 of Decision N1325 sets out the timeframes for the public to submit comments at the preliminary stage of expertise and also at the stages of preliminary assessment, basic assessment and basic expertise. Following the adoption of Decision N357 amending Decision N1325, the time period for the public to submit comments at the preliminary stage of expertise is 12 working days after notification. For each of the stages of preliminary assessment, basic assessment and basic expertise, the time period is now 18 working days for category A activities and 13 working days for category B activities, both calculated from the day of notification. As to these three

¹⁹ ECE/MP.PP/2011/11/Add.1, para. 67.

²⁰ Further information from the Party concerned, 31 January 2017, p. 2.

²¹ Decision N357 of 9 March 2017 provided by the Party concerned on 12 April 2017.

²² Further clarification from the Party concerned, 16 June 2017.

timeframes, the Committee recalls its findings on communication ACCC/C/2006/16 concerning Lithuania in which it held:

The requirement to provide “reasonable time frames” implies that the public should have sufficient time to get acquainted with the documentation and to submit comments taking into account, inter alia, the nature, complexity and size of the proposed activity. A time frame which may be reasonable for a small simple project with only local impact may well not be reasonable in case of a major complex project.²³

45. In keeping with its above finding, the Committee considers that, while it may be appropriate to provide for different time frames for different kinds of activities, the current time frames are not reasonable and should in fact be significantly longer with respect to larger or more complex projects within each category.

46. In light of the foregoing, the Committee finds that the Party concerned has not yet met the requirements of paragraph 4 (c) (ii) with respect to providing reasonable time-frames for public participation.

Environmental NGOs as “public concerned”

47. With regard to paragraph 4 (c) (ii) of decision V/9a, the Committee pointed out in paragraph 21 of its second progress review that NGOs were not expressly mentioned in the Law “On environmental impact assessment and expertise” as part of the “public concerned”. In its third progress report, the Party concerned referred the Committee to article 4, paragraph 1, point 21, of the law “On environmental impact assessment and expertise”, which defines the “interested community” as “legal entities and natural persons demonstrating interest regarding the approval of the fundamental document and (or) the implementation of the anticipated activity subject to expert assessment.”²⁴

48. In its further information of 31 January 2017, the Party concerned stated that the words “including non-governmental organizations” would be added to article 4, paragraph 1, point 21, of the law “On environmental impact assessment and expertise” as part of the pending amendment.²⁵

49. The Committee welcomes this proposed addition and considers that, if the amendment was to enter into force in this way, it would usefully clarify the status of NGOs as part of the “public concerned”.

Ensure that “any” comment can be submitted

50. Also with regard to paragraph 4 (c) (ii) of decision V/9a, the Committee noted in paragraph 22 of its second progress review that paragraph 24 of Decision N1325 as then in force contradicted the requirement that the public could submit “any” comment as required by article 6, paragraph 7, of the Convention.²⁶ Paragraph 24 of Decision N1325 then stated that:

Reasonable remarks and proposals, made by the public, shall be taken into account by the initiator and assessment centre. Remarks and proposals, contradicting the requirements of the current legislation, and having no relation to the environmental

²³ ECE/MP.PP/2008/5/Add.6, para. 69.

²⁴ Third progress report of the Party concerned, 31 October 2016, p. 2.

²⁵ Further information from the Party concerned, 31 January 2017, p. 2.

²⁶ Committee’s second progress review, 8 April 2016.

impact, as well as incorrect calculations or data, shall not be taken into account; in that connection grounded justifications shall be provided.²⁷

51. In its third progress review, the Committee pointed out that the requirement that comments must have a relation to the environmental impact was incompatible with article 6, paragraph 7, of the Convention which requires that “any” comment can be submitted and shall be taken into account. The Committee noted that comments need not only concern the proposed activity’s environmental impact but rather can concern any aspect of the proposed activity. The Committee further noted that, while in principle it was permissible to not take into account incorrect calculations or data, authorities should not impose their own calculations as the only possible correct version without giving consideration to other calculations. The Committee also noted that the phrasing of paragraph 24 of Decision N1325 referred to “reasonable remarks and proposals” and, though the Party concerned had argued that this would give no further discretion to the responsible authorities (i.e. that they will be limited to only refuse comments on the basis of factors mentioned in the second sentence), the Committee considered that this was not immediately clear from the phrasing.²⁸

52. In its further information provided on 31 January 2017, the Party concerned announced that it was proposed to amend the phrasing of paragraph 24 of Decision N1325 through the adoption of proposed draft Decision N357.²⁹ Decision N357 was subsequently adopted on 9 March 2017 and states that:

[The] public can make any remarks and proposals, that it considers relevant to the proposed activity or fundamental document. Reasonable remarks and proposals, made by public, shall be taken into account by the initiator and assessment center. Grounded justifications shall be provided, if remarks and proposals are not taken into account.³⁰

53. The Committee welcomes the above amendment as a positive step. In the absence of any information to the contrary, and while not precluding the possibility to examine allegations regarding the application of the above amendment in practice should future cases be brought before it, the Committee considers that in the context of its review of decision V/9a, the above amendment sufficiently addresses the Committee’s concerns as set out in paragraphs 50 and 51 above.

Paragraph 4 (c) (iii) of decision V/9a: Clearly define responsibility of different actors in organizing public participation

54. With regard to paragraph 4 (c) (iii) of decision V/9a, the Committee noted in its second progress review that the new Law “On Environmental Impact Assessment and Expertise” and Decision N1325 defining the “Procedure of holding public notification and discussions” clearly defined the responsibilities of different actors (public authorities, local authorities, developers) in the organization of public participation procedures.³¹ Having not been informed of any other aspects of the legal framework of the Party concerned that would be inconsistent with these definitions, the Committee finds that the Party concerned has met the requirements of paragraph 4 (c) (iii) of decision V/9a.

²⁷ Annex 2 to the second progress report of the Party concerned, 22 December 2015.

²⁸ Committee’s third progress review, 3 January 2017, para. 35.

²⁹ Further information from the Party concerned, 31 January 2017, p. 2.

³⁰ Decision N357 of 9 March 2017 provided by the Party concerned on 12 April 2017.

³¹ Committee’s second progress review, 8 April 2016, para. 23.

Paragraph 4 (c) (iv) of decision V/9a: Prompt notification of final conclusions of environmental expertise

55. With regard to paragraph 4 (c) (iv) of decision V/9a, the Committee notes that paragraph 49 of Decision N1325 requires the assessment centre to place all expert conclusions on the environmental impact on its official website within a period of seven days after providing them to the initiator.³² In its second progress review, the Committee welcomed the adoption of Decision N1325 and found that paragraph 49 of Decision N1325 implemented the requirement of paragraph 4 (c) (iv) of decision V/9a.³³ While noting the importance of also implementing this legal provision in practice, the Committee accordingly finds that the Party concerned has met the requirements of paragraph 4 (c) (iv) of decision V/9a.

Paragraph 7(a) of decision V/9a: Standing for NGOs under article 9, paragraph 2

56. With regard to paragraph 7(a) of decision V/9a, on 18 November 2016, the Party concerned provided the Committee with English translations of the draft law “On non-governmental organizations” and the draft law “Amending the administrative Code of the Republic of Armenia.”³⁴ In its update of 31 January 2017, the Party concerned further reported that:

(a) The law “On non-governmental organizations” had been adopted on 16 December 2016, signed by the President of the Republic of Armenia on 16 January 2017, and would enter into force on 2 February 2017.

(b) The law “Amending the administrative Code of the Republic of Armenia” had been adopted on 16 December 2016, signed by the President of the Republic of Armenia on 16 January 2017, and would enter into force on 2 February 2017.

57. The Committee welcomes the adoption of the law “On non-governmental organizations” and the law “Amending administrative Code of the Republic of Armenia”. The Committee notes that article 16, paragraph 2, of the law on NGOs, states that NGOs represent “the lawful interests of their beneficiaries in court in the area of environmental protection.” This phrasing is repeated in the amendment to article 216.6, paragraph 1, of the Administrative Procedure Code. In accordance with article 17, paragraph 2, of the law on NGOs, NGOs are free to determine which “persons or groups” are to be regarded as “beneficiaries” in their statute, this being a separate category from “members” and “volunteers”.³⁵

58. The Committee finds that the adoption of the law on NGOs and the amendment to the Administrative Procedure Code constitutes a substantial step towards compliance of the Party concerned with paragraph 7 (a) of decision V/9a. However, as the Committee noted in its third progress report,³⁶ article 16, paragraph 3, point 2, of the law on NGOs and Article 216.6, paragraph 2, point 2, of the Administrative Procedure Code (as amended) both require that, in order to have standing, the NGO must have previously participated in public discussions of fundamental documents or planned activities, or have been denied the opportunity to do so. In its third progress review, the Committee found that this requirement did not comply with article 9, paragraph 2, of the Convention.³⁷ In this regard,

³² Annex 2 to the second progress report of the Party concerned, 22 December 2015.

³³ Committee’s second progress review, 8 April 2016, para. 24.

³⁴ Annexes 1 and 2 to email from the Party concerned, 18 November 2016.

³⁵ Annex 1 to email from the Party concerned, 18 November 2016.

³⁶ Committee’s third progress review, 3 January 2017, para. 39 (b).

³⁷ *Ibid.*, para. 42.

the Committee recalled its findings on communication ACCC/C/2012/76 (Bulgaria), where it stated: “The Convention does not make participation in the administrative procedure a precondition for access to justice to challenge the decision taken as a result of that procedure, and introducing such a general requirement for standing would not be in line with the Convention.”³⁸

59. The Committee reiterates that a requirement that obliges NGOs to have previously participated in the discussion of any of the activities or acts falling under the Convention in order to exercise their rights to access to justice to challenge pertinent decisions at a later stage is not in line with the Convention.

60. In the light of the above, while the Party concerned has made substantial steps towards compliance, the Committee finds that the Party concerned has not yet fulfilled the requirements of paragraph 7 (a) of decision V/9a.

Paragraph 7 (b) of decision V/9a: Outcomes of trainings for judges

61. With regard to paragraph 7 (b) of decision V/9a, the Party concerned informed the Committee in its second progress report that in March 2015, the Academy of Justice approved the programme of the course “Actual problems of environmental law” as part of the mandatory training programme for judges specialized in administrative law and procedure.³⁹ The Party concerned reported that 16 judges had attended the 2015 course and that starting from 2016 the same course would be taught to judicial candidates and possibly also advocates.⁴⁰ The Party concerned also provided an outline of the subjects to be covered during the course.⁴¹ In its update of 31 January 2017, the Party concerned reported that a course entitled “Modern issues of ecological law” had been included in the 2015 and 2016 annual training programmes of the Academy of Justice for judges and judicial candidates (10 academic hours).⁴²

62. Having reviewed the information provided, it appears to the Committee that, despite the slight differences in title, the two courses above in fact refer to the same training. The Committee welcomes the establishment of this training and its apparent extension to train judicial candidates as well as judges.

63. In its second and third progress reviews, the Committee requested the Party concerned to provide further information on the outcomes of the above trainings.⁴³ To date the Party concerned has not provided the Committee with any further information on this point, for example, the number of judges and judicial candidates that have undertaken the training since it was first held in 2015.

64. In the absence of any further information regarding the outcomes of the above trainings, while welcoming the establishment of the training course in 2015, the Committee finds that the Party concern has not yet fulfilled the requirements of paragraph 7 (b) of decision V/9a.

³⁸ ECE/MP.PP/C.1/2016/3, para. 68.

³⁹ Second progress report of the Party concerned, 22 December 2015, point (c).

⁴⁰ Ibid.

⁴¹ Annex 3 to second progress report of the Party concerned, 22 December 2015.

⁴² Further information from the Party concerned, 31 January 2017, p. 3.

⁴³ Committee’s second progress review, 8 April 2016, para. 33 (c); Committee’s third progress review, 3 January 2017, para. 48 (e).

IV. Conclusions

65. The Committee welcomes the constructive engagement demonstrated by the Party concerned throughout the intersessional period.

66. The Committee finds that the Party concerned has met the requirements of paragraphs 4 (c) (iii) and (iv) of decision V/9a.

67. The Committee finds that the Party concerned has not yet fulfilled the requirements of paragraph 4 (c) (i) and (ii) and paragraph 7 (a) and (b) of decision V/9a, but welcomes the steps taken by the Party concerned to date in that direction.

68. The Committee recommends to the Meeting of the Parties that it reaffirm its decision V/9a, and in that regard, request 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;⁴⁴

(b) Reasonable time frames that are significantly longer than those currently provided for are set for the public to consult and comment on project-related documentation;⁴⁵

(c) Its legislation, including the law on NGOs and administrative procedures, complies with article 9, paragraph 2, of the Convention with regard to standing;⁴⁶

(d) It continues its efforts to raise awareness of the judiciary to promote implementation of domestic legislation in accordance with the Convention.⁴⁷

69. The Committee also recommends that the Meeting of the Parties request the Party concerned:

(a) To provide detailed progress reports to the Committee by 1 October 2018, 1 October 2019 and 1 October 2020 on the measures taken and the results achieved in the implementation of the above recommendations;

(b) To promptly provide the text of any legislative measures adopted to implement the above recommendations, together with English translations thereof;

(c) To provide such additional information as the Committee may request in between the above reporting dates in order to assist the Committee to review the progress by the Party concerned in implementing the above recommendations;

(d) To participate (either in person or by audio conference) in the meetings of the Committee at which the progress of the Party concerned in implementing the above recommendations is to be considered.

⁴⁴ Decision V/9a, para. 4 (c) (i).

⁴⁵ *Ibid.*, para. 4 (c) (ii).

⁴⁶ *Ibid.*, para. 7 (a).

⁴⁷ *Ibid.*, para. 7 (b).