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**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****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 Kazakhstan 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 Kazakhstan in the intersessional period in implementing decision IV/9c of the Meeting of the Parties on compliance by Kazakhstan with its obligations under the Convention (see ECE/MP.PP/2011/2/Add.1), as well as its progress in implementing the recommendations set out in the Committee's findings on communication ACCC/C/2011/59 (ECE/MP.PP/C.1/2013/9 and Corr.1), adopted on 28 March 2013, in particular with regard to the implementation of the Convention's provisions on public participation.

\* The present document has been submitted late due to the short interval between the forty-fourth meeting of the Compliance Committee and the deadline for the submission of documents to the fifth session of the Meeting of the Parties, and the need for further consultation on the document before its submission.



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## I. Introduction

### A. Decision IV/9c 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/9c on compliance by Kazakhstan with its obligations under the Convention (see ECE/MP.PP/2011/2/Add.1).

2. Kazakhstan's compliance with the Convention has been under review by the Compliance Committee since 2004, beginning with communications ACCC/C/2004/1 and ACCC/C/2004/2, which were the first communications submitted for the Committee's consideration after its establishment.<sup>1</sup> Communication ACCC/C/2004/1 concerned access to information and access to justice regarding a proposal to import and dispose of foreign radioactive waste. Communication ACCC/C/2004/2 concerned the participation of local residents in the permitting procedure for the construction of high-voltage overhead electric power lines in a district of Almaty. In its findings on communication ACCC/C/2004/1 (ECE/MP.PP/C.1/2005/2/Add.1), adopted on 18 February 2005, the Committee found non-compliance with article 4, paragraphs 1 and 2, and article 9, paragraph 1, of the Convention. In its findings on communication ACCC/C/2004/2 (ECE/MP.PP/C.1/2005/2/Add.2), adopted on the same date, the Committee found non-compliance with several provisions of article 6 of the Convention. In both cases it made recommendations directly to the Meeting of the Parties.

3. Through decision II/5a (ECE/MP.PP/2005/2/Add.7), the Meeting of the Parties at its second session (Almaty, Kazakhstan, 25–27 May 2005) endorsed the Committee's findings on the two communications and requested the Party concerned to proceed with certain actions regarding the areas of non-compliance identified.

4. On 16 June 2006, the Committee adopted findings on communication ACCC/C/2004/6 (ECE/MP.PP/C.1/2006/4/Add.1) concerning a failure to enforce domestic environmental law regarding the operation of an industrial facility for storage of cement and coal and production of cement-based materials. In its findings, the Committee found non-compliance by Kazakhstan with article 9, paragraphs 3 and 4, of the Convention and, with its agreement, the Committee made recommendations directly to the Party concerned.

5. At its sixteenth meeting (Geneva, 13–15 June 2007), the Committee considered communication ACCC/C/2007/20 concerning the alleged failure by Kazakhstan to develop, in accordance with the requirements of the national legislation, a regulation setting out public participation procedures, as well as the alleged refusal by its courts to admit appeals against the Government's failure to act. While the Committee considered that the communication might be admissible, it believed that the matters raised in it could be addressed within the context of the strategy to implement the recommendations contained in decision II/5a. The Committee thus invited Kazakhstan to address the substantive issues raised in communication ACCC/C/2007/20 in its report on the implementation of decision II/5a because the issues were closely related (ECE/MP.PP/C.1/2007/4, paras. 20–22 and ECE/MP.PP/C.1/2007/8, para. 22).

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<sup>1</sup> Communications and other documents related to them, including the findings and recommendations of the Committee, where applicable, are accessible on the Convention website from <http://www.unece.org/env/pp/pubcom.html>.

6. During the intersessional period 2005–2008, the Committee reviewed the progress made by Kazakhstan in the implementation of decision II/5a<sup>2</sup> and the Committee's recommendations in its findings on communication ACCC/C/2004/6. The Committee submitted its report for consideration by the Meeting of the Parties at its third session (Riga, 11–13 June 2008) (ECE/MP.PP/2008/5/Add.5). On the basis of the information before it, the Committee found that, in connection with the issues on access to information and public participation (ACCC/C/2004/1 and ACCC/C/2004/2, and subsequently decision II/5a), the Party concerned had overall undertaken a number of measures to implement most of the provisions in decision II/5a; and that, in connection with the issues on access to justice (ACCC/C/2004/6), the Party concerned had not yet achieved compliance with the Convention, in particular with respect to the practical possibilities of appeal against a failure of the public authorities to act. The Committee's recommendations to the Meeting of the Parties focused therefore on access to justice.

7. Through decision III/6c (ECE/MP.PP/2008/2/Add.11), the Meeting of the Parties at its third session endorsed the Committee's findings that the Party concerned had overall undertaken effective and comprehensive measures to implement most of the provisions of decision II/5a, but had not yet achieved compliance with article 9, paragraph 4, in conjunction with paragraph 3, of the Convention, in particular with respect to practical possibilities to appeal against a failure to act by public authorities. The Meeting of the Parties invited Kazakhstan to thoroughly examine, with appropriate involvement of the public, the relevant environmental and procedural legislation as well as the relevant case law to identify whether it sufficiently provided judicial and other review authorities with the possibility to provide adequate and effective remedies in the course of judicial review. It further invited Kazakhstan to report to the Meeting of the Parties, through the Compliance Committee, six months before its fourth session, on the measures taken in connection with bringing about full compliance with article 9 of the Convention and ensuring effective implementation of article 6.

8. During the intersessional period 2008–2011, the Committee reviewed the progress made by Kazakhstan in the implementation of decision III/6c and submitted its report for consideration by the Meeting of the Parties at its fourth session (ECE/MP.PP/C.1/2011/2/Add.4). On the basis of the information before it, the Committee found that the initial willingness demonstrated by the Party concerned before decision III/6c did not appear to have been coupled with any measures to implement the recommendations contained in decision III/6c, and that Kazakhstan had not implemented the measures referred to in paragraph 7 of decision III/6c. The Committee recommended that the Meeting of the Parties confirm its earlier finding and consider whether to issue a declaration on non-compliance or a caution as set out in paragraph 36 of the annex to decision I/7.

9. The Meeting of the Parties at its fourth session took note of the Committee's report and through its decision IV/9c confirmed its earlier endorsement of the Committee's findings as set out in paragraph 5 of decision III/6c. It also issued a caution to the Party concerned to become effective on 1 May 2012, unless the Party concerned had fully satisfied the following condition and notified the secretariat of that fact by 1 January 2012: that it had thoroughly examined, with appropriate involvement of the public, the relevant environmental and procedural legislation, as well as the relevant case law, to identify whether it sufficiently provided judicial and other review authorities with the possibility to provide adequate and effective remedies in the course of judicial review. The Meeting of

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<sup>2</sup> Decisions of the Meeting of the Parties concerning compliance by Parties and documents related to their follow-up can be found on the Convention website at <http://www.unece.org/env/pp/ccimplementation.html>.

the Parties requested the Committee to establish the successful fulfilment of the above condition. It also invited the Party concerned to submit to the Committee periodically, by November 2012 and November 2013, detailed information on its further progress in implementing these measures.

## **B. Communication ACCC/C/2011/59**

10. During the intersessional period 2011-2014, the Committee also considered communication ACCC/C/2011/59 concerning compliance by Kazakhstan in relation to public participation in the decision-making for the construction of the Western Europe-Western China transit corridor. The Committee in that case examined Kazakhstan's general legal framework and, in its findings adopted on 28 March 2013, found non-compliance with article 6, paras. 2, 6, 7 and 9 (ECE/MP.PP/C.1/2013/9 and Corr.1). With the agreement of the Party concerned, the Committee recommended that the Party concerned take the necessary legislative, regulatory and administrative measures and practical arrangements to ensure that:

(a) Mandatory requirements for the public notice are detailed by law, such as the obligation to inform the public in a timely manner and the means of public notice, including the obligation that any information relevant for the decision-making is also available on the website of the public authority competent for decision-making;

(b) There is a clear possibility for any member of the public concerned to submit any comments on the project-related documentation at different stages of the public participation process, without the requirement that these comments be reasoned;

(c) There is a clear responsibility of the relevant public authorities to:

(i) Inform the public promptly of the decisions they have taken and of how the text of the decisions can be accessed;

(ii) Maintain and make accessible to the public, through publicly available lists or registers, copies of the decisions taken and other information relevant to the decision-making, including evidence of having fulfilled the obligation to inform the public and provide it with opportunities to submit comments.

11. The Committee also recommended that the Party concerned draw up an action plan for implementing the above recommendations with a view to submitting it to the Committee by 30 November 2013.

## **II. Summary of follow-up action**

12. On 30 December 2011, the Party concerned submitted a report on the measures it had taken to satisfy the condition set out in paragraph 4 of decision IV/9c to the secretariat (pursuant to paragraph 4 of that decision, the report had to be submitted to the secretariat before 1 January 2012). The report included the preliminary outcomes of the analysis of environmental and civil procedural legislation and relevant jurisprudence for compliance with the requirements of the Convention (both annexed to the main report in Russian and English), as well as information about other practical measures undertaken to reach compliance with the Convention.

13. On 9 March 2012, Green Salvation (the communicant of communications ACCC/C/2004/1 and ACCC/C/2004/2) submitted a statement commenting on the failure of the Party concerned to comply with decision IV/9c and raising concerns over the quality of the studies submitted on 30 December 2011.

14. At its thirty-sixth meeting (Geneva, 27–30 March 2012), the Committee noted that it was not clear from the information provided by the Party on 30 December 2011 whether the condition in paragraph 4 of decision IV/9c had been met. It also took note of the information submitted by Green Salvation on 9 March 2012. The Committee instructed the secretariat to send a letter to the Party asking it to clarify how members of the public had been involved in the process. The Committee then agreed that it would welcome comments by the communicant on the action plan as well, and that it would review the materials received in further detail at its thirty-seventh meeting, in order to establish whether the condition had been met.

15. On 15 June 2012, further to the Committee's request to the Party to clarify how members of the public had been involved in the process, the Party concerned submitted additional information.

16. On 25 June 2012, additional information was submitted by the Zhaik Caspian Aarhus Centre in support of the submissions by the Party concerned on 15 June 2012.

17. At its thirty-seventh meeting (Geneva, 26–29 June 2012), the Committee took note of the information submitted by the Party concerned and the Zhaik Caspian Aarhus Centre. The Committee then entered into discussion with a representative of the Government of Kazakhstan and a representative of the non-governmental organization (NGO) Green Salvation, both of whom participated in the session by videoconference. During the discussion, the Party concerned pointed to the continuous efforts undertaken by it to achieve compliance with the Convention, including the finalization of the study requested by decision IV/9c and the ongoing amendments to the draft rules on public participation. The NGO representative commented on the very slow progress demonstrated by the Party concerned in reaching compliance with decisions II/5a, III/6c and IV/9c. The Committee took note of the submissions from the Party concerned and from the observer. It requested them to provide their statements in writing and put additional questions to the Party concerned to be addressed by August 2012. The Committee then determined that it would decide at its thirty-eighth meeting whether the conditions set out in the decision had been fulfilled.

18. On 20 August 2012, the Party concerned addressed the Committee's questions providing further information on how members of the public had been involved in the process for the preparation of the analytical studies of the law and jurisprudence and outlining the steps undertaken to improve access to information, the procedure for public participation and access to justice in environmental matters in the legislation of Kazakhstan since the adoption of decision IV/9c.

19. On 11 September 2012, Green Salvation provided a statement with proposals as to how the Compliance Committee and the Meeting of the Parties might more effectively address the real issues of compliance in Kazakhstan. It also provided information on lawsuits it had filed concerning issues within the scope of the Convention and some examples of public notices for environmental impact assessment procedures.

20. At its thirty-eighth meeting (Geneva, 25–28 September 2012), the Committee took note of the additional information submitted by the Party concerned and Green Salvation. The Committee deliberated on the matter in closed session. After considering the efforts undertaken by the Party concerned to fulfil the condition set out in decision IV/9c and the comments provided by members of the public, the Committee concluded that Kazakhstan had fulfilled the condition set out in paragraph 4 of decision IV/9c to the extent that the caution imposed by the Meeting of the Parties should not become effective. The Committee stressed that the fact that the caution was not to become effective did not imply that the Party concerned had complied with the remaining part of decision IV/9c. In particular, while noting with appreciation the measures taken, the Committee was nevertheless

concerned by the slow progress demonstrated by the Party concerned in taking the legislative and other measures needed to comply with article 9, paragraph 4, in conjunction with paragraph 3 of the Convention. It also decided to ask the Party to provide a list of relevant case law. It agreed that at its forty-first meeting the Committee would consider whether the Party concerned had adopted all the necessary legislation to comply with decision III/6c and whether it would recommend the Meeting of the Parties to issue a caution at its fifth session. The Committee then announced its decision to the representatives of the Government of Kazakhstan and Green Salvation, both of which had participated in the session by videoconference and made statements. The Committee agreed to ask the United Nations Economic Commission for Europe Executive Secretary to convey the Committee's findings to the Party concerned. It then instructed the secretariat to remind the Party to submit detailed information on further progress by November 2012, taking into account, to the extent possible, the above suggestions, and agreed to review the situation at its next meeting.

21. On 19 November 2012, the Party concerned submitted its progress report on the further implementation of decision IV/9c, as required through paragraph 6 of that decision. It also provided the Committee with a copy of its new draft Rules on the conduct of public hearings.

22. At its thirty-ninth meeting (Geneva, 11–14 December 2012), the Committee noted that the Party concerned had submitted its report within the deadline set by decision IV/9c, including the outline of the main changes to the rules on public hearings. It asked the secretariat to remind the Party that it still had to submit a list of relevant case law, as well as regular updates on the progress achieved.

23. By letter of 2 May 2013, the Party concerned was invited to update the Committee on the efforts taken to comply with the measures referred to in decision III/6c, as requested by the Meeting of the Parties in decision IV/9c, and to submit a list of relevant case law by 10 June 2013.

24. On 10 June 2013, Green Salvation and the communicants of communication ACCC/C/2005/6 each submitted information on the implementation by the Party concerned of decision IV/9c, expressing the view that no significant progress had been made, and legislation was in fact being weakened under the pretext of bringing it into compliance with the Convention. They also made allegations of further failures by the Party concerned to comply with the Convention, including harassment of persons seeking to exercise their rights under the Convention (article 3, para. 8).

25. At its forty-first meeting (Geneva, 25–28 June 2013), the Committee observed that the Party concerned had failed to submit the requested information relating to the measures taken to comply with decision IV/9c and the list of relevant case law by 10 June 2013, and took note of the information provided by observers on that date. The Committee considered that, based on the information received from the observers, the Party concerned appeared to be in non-compliance with article 9, paragraphs 3 and 4, of the Convention and that, despite the engagement demonstrated at the beginning of the intersessional period, the Party concerned had not shown any progress. The Committee noted that it was considering recommending to the Meeting of the Parties to issue a caution at its fifth session. It requested the secretariat to inform the Party concerned about the outcome of the meeting and to invite the Party concerned to provide the requested information as soon as possible. It agreed to review the situation at its forty-second meeting. It also requested the secretariat to explore suitable opportunities for members of the Committee to go on mission to the country.

26. On 4 July 2013, the Party concerned submitted information to the Committee in relation to the activities undertaken by the Supreme Court of Kazakhstan to comply with

the access to justice provisions of the Convention. The Party's report also annexed the final version of its study of case law relevant to the implementation of the Aarhus Convention. The first part of the study identified the main legislation governing environmental issues. The second part included statistics regarding the environmental caseload and the percentage of environmental judgements overturned on appeal during 2010–2012 (the period examined in the study), and reviewed time frames for proceedings to be resolved and standing before the courts. The third part of the study examined Supreme Court case law across various types of proceedings related to the environment, including: access to environmental information; public participation in environmental decision-making; acts and omissions by private persons and public authorities that contravene environmental legislation; impairment of environmental rights regarding public health protection zones; and challenges to construction, renovation and operating permits. The study concluded that, on the whole, the courts applied the provisions of environmental legislation correctly; however, the courts did not always correctly define and clarify the full range of circumstances which were significant for the case, and that might lead to an incorrect interpretation and application of the law. In the light of its findings, the study proposed that the regulatory statute on issues of practical application of environmental legislation, which dated from 2000, should be revised by the Supreme Court and that a list of international environmental instruments to which Kazakhstan was a party should be sent to all oblast (i.e., provincial) courts for guidance in their work. In order to ensure the correct and uniform application of the legislation, it was also proposed:

- (a) To discuss the results of the study at a meeting of the judges of the Court's Supervisory Civil and Administrative Division;
- (b) After this discussion, to send the summary to the oblast courts for discussion, study and subsequent practical use;
- (c) To publish an overview in the Bulletin of the Supreme Court of Kazakhstan;
- (d) To collect suggestions for improving environmental legislation, based on the outcome of discussions of the study by the Supervisory Civil and Administrative Division of the Supreme Court and by the oblast courts, and to send these to the Ministry of Environmental Protection (the responsible authority) for consideration and use in its work;
- (e) To continue the practice of conducting seminars, training sessions and conferences at the oblast courts, jointly with environmental NGOs, on issues relating to implementation of the Aarhus Convention;
- (f) To continue the practice of studying issues relating to implementation of the Aarhus Convention: at the Institute of Justice; in courses to improve the skills of court staff; and in the educational programme run by the higher courts for training probationary judges;
- (g) To make a proposal to the authority responsible for maintaining legal statistics that a separate record of legal cases concerning implementation of the Aarhus Convention be provided.

27. By letter of 11 July 2013, the Party concerned was informed that at its forty-second meeting the Committee would also review progress with respect to its recommendations on communication ACCC/C/2011/59, which had been made with the agreement of the Party concerned. The Party was invited to update the Committee on the measures, if any, taken as a follow-up to those recommendations by no later than 9 September 2013.

28. On 9 September 2013, the Party concerned provided a further progress report on the measures it had taken to implement decision IV/9c and the Committee's recommendations on communication ACCC/C/2011/59. With respect to the implementation of decision IV/9c, the Party concerned reported, inter alia, that, in accordance with the outcomes of its recent study, in August 2013 the Supreme Court of Kazakhstan had drafted a regulatory

statute entitled “On several issues in application of legislation by the courts when reviewing civil cases on environmental disputes”. The draft regulatory statute and a comparative table were made available on the Aarhus Centre website for public comments. The Party also reported that in June 2013 a specialized training had been held with the support of the Organization for Security and Cooperation in Europe (OSCE) in Astana for judges, directors of Aarhus Centres and environmental NGO activists. The Party concerned also reported on its actions to further implement the provisions of the Convention on access to information and public participation. With respect to the implementation of the Compliance Committee’s recommendations on communication ACCC/C/2011/59, the Party concerned reported that a new edition of the Rules for the Conduct of Public Hearings had been issued by Order of the Minister for the Environment of Kazakhstan of 26 March 2013 No. 50, and had entered into effect on 3 August 2013.

29. At its forty-second meeting (Geneva, 24–27 September 2013), the Committee commenced preparation of its draft report to the Meeting of the Parties at its fifth session on the implementation of decision IV/9c and the recommendations on communication ACCC/C/2011/59. It agreed to continue that work at its forty-third meeting and to then send the draft report to the parties for their comments and take any comments received into account before finalizing the report.

30. On 1 November 2013, the Party concerned provided additional information on the measures it had taken to implement decision IV/9c and the Committee’s recommendations on communication ACCC/C/2011/59, and in particular the development of a draft law “On amendments and additions to some legislative acts of the Republic of Kazakhstan on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters”. The concept of the draft law had been approved by the Interdepartmental Commission on Legislative Activities under the Government of Kazakhstan on 6 September 2013. The concept proposed amendments and additions to the Environmental and Tax Codes. With respect to the Environmental Code, the concept proposed, *inter alia*, to adopt a separate legal act establishing a list of publicly available environmental information and to centralize all environmental information with the State Fund for Environmental Information. With respect to the Tax Code, the concept proposed to exempt natural and legal persons from paying the State duty for legal claims regarding the provision of incorrect environmental information, seeking the reversal of siting, construction, renovation and operating permits on facilities and the cancellation of activities that had a negative impact on environment and human health. A working group for the draft law had been set up which included experts from government agencies, NGOs and Aarhus Centres.

31. At its forty-third meeting (Geneva, 17-20 December 2013), the Committee noted that the progress report by the Party concerned regarding its implementation of decision IV/9c had been due in November 2013 and that the Party had submitted some additional information to the Committee on 1 November 2013. The Committee agreed to ask the secretariat to confirm whether the information received should be understood to be its November 2013 progress report. With respect to the Party’s implementation of the recommendations on communication ACCC/C/2011/59, the Committee noted that the Party was to have submitted an action plan for implementing those recommendations to the Committee by 30 November 2013, but had not yet done so. The Committee continued preparation of its draft report to the Meeting of the Parties at its fifth session on the implementation of decision IV/9c and communication ACCC/C/2011/59 agreed to finalize its draft report using its electronic decision-making procedure.

32. On 13 January 2014, the Party concerned provided some further additional information on the measures it had taken to implement decision IV/9c, namely concerning a public meeting organized by the Ministry of Environment and Water Resources to discuss

draft legislative amendments concerning the implementation of the Aarhus Convention. The meeting was attended by representatives of central and local government, NGOs, OSCE and the mass media.

33. The Committee completed the first draft of the present report using its electronic decision-making procedure and sent it to the Party concerned and the communicants of communications ACCC/C/2004/1, ACCC/C/2004/2, ACCC/C/2004/6 and ACCC/C/2011/59 on 27 February 2014 for their comments by 20 March 2014. The Party concerned provided its comments on 20 March 2014. No comments were received from the communicants. 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**

34. In order to meet the requirements of decision IV/9c, the Party concerned would need to provide the Committee with evidence that it has fulfilled the condition in paragraph 4 of decision IV/9c, namely that it has thoroughly examined, with the appropriate involvement of the public, the relevant environmental and procedural legislation, as well as the relevant case law, to identify whether it sufficiently provides judicial and other review authorities with the possibility to provide adequate and effective remedies in the course of judicial review. In this regard, the Committee welcomes the study carried out in 2011–2012 and the final study carried out by the Party concerned and submitted to the Committee on 4 July 2013 (see para. 26 above), which concluded with a list of recommended action points.<sup>3</sup> The Committee also welcomes the Party's efforts to implement those actions points, including the Supreme Court's drafting of the regulatory statute "On several issues in application of legislation by the courts when reviewing civil cases on environmental disputes", which was made available for public comments, and the training for judges in June 2013. In the light of the information provided in the Party's progress reports, and in particular those of 4 July and 9 September 2013, the Committee finds that the Party concerned has fulfilled the condition set out in paragraph 4 of decision IV/9c. The Committee encourages the Party to continue to implement the action points set out in its study on access to justice and to report on these through its national implementation reports.

35. In order to meet the requirements of the Committee's recommendations on communication ACCC/C/2011/59, the Party concerned would need to provide evidence that it has carried out the actions set out in paragraph 70 of those findings (repeated in paras. 10 and 11 of the current report). The Committee considers two initiatives of the Party concerned to be of particular importance in this respect. First, the draft law "On amendments and additions to some legislative acts of the Republic of Kazakhstan on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters relating to the environment". Second, the new edition of the "Rules for the Conduct of Public Hearings" issued by Order of the Minister for the Environment of Kazakhstan of 26 March 2013 No. 50, which entered into effect on 3 August 2013.

36. The Party has not provided the Committee with a copy of the above-mentioned draft law, but in its progress reports of 9 September and 1 November 2013 it provided a summary of its provisions (see para. 30 above). While welcoming these draft provisions as furthering the implementation of the Convention's provisions generally, on the basis of the information provided to the Committee, they do not address any of the recommendations set out in paragraph 70 of the Committee's findings on communication ACCC/C/2011/59.

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<sup>3</sup> Annex to the letter from the Party concerned dated 4 July 2013.

37. The Party has likewise not submitted the final adopted version of the “Rules for the Conduct of Public Hearings” to the Committee. However, in its progress report of 9 September 2013, it informed the Committee that the rules as adopted included, inter alia, the following points:

(a) The definitions of “public” and “public concerned” used in the Rules accorded with those in the Aarhus Convention, and in particular the term “interested persons” is not used in defining the public.

(b) With respect to notifying the public concerned, the Rules provide that:

“The developer is to agree in advance with the local executive agencies (for the area where the planned works would be carried out) the time and place for public hearings and is to publish an announcement of the hearings in the mass media. Publication of the announcement is to be in the official language and in Russian and take place no less than twenty calendar days before the date of the public hearings.

The announcement is also to be placed on the website of the local executive agencies.”

(c) Local executive agencies (mayors’ offices) are to create a section headed “public hearings” on their websites and, the texts of minutes of public hearings are to be made available in PDF format within five working days after the hearing takes place. The “public hearings” section of the website must also provide a function for public comments and the authorities’ responses to them.

38. The Committee welcomes the adoption of the above new rules, but regrets that they do not fully address the recommendations on communication ACCC/C/2011/59. Recalling the points of non-compliance set out in paragraphs 66–69 of the findings on that communication, the Committee makes the following comments:

(a) The Committee welcomes the requirement in the Rules for notice to be given no less than 20 calendar days before the hearing and for the announcement to be placed on the website of the local executive agencies as well as in the mass media. However, notification of the public concerned under article 6, paragraph 2, should inform the public, in an adequate, timely and effective manner, of all the matters set out in subparagraphs (a) to (e) of that provision, and not only about the hearing itself;

(b) According to the information provided to the Committee, the Rules do not establish a clear legal requirement for all information relevant to the decision-making to be made accessible, as required by article 6, paragraph 6, of the Convention;

(c) According to the information provided to the Committee, the Rules also do not make clear that the public’s comments are not limited to those containing reasoned documentation, but rather the public may submit any comments, information, analyses or opinions that it considers relevant to the activity, in accordance with article 6, paragraph 7, of the Convention;

(d) The Committee welcomes the requirements to establish a “public hearings” section on local executive agencies’ websites, and to post the comments received from the public and the minutes of the hearings thereon. However, on the basis of the information provided to the Committee, it appears there is still no requirement for the public to be promptly notified of, and to have access to, the environmental *expertiza* conclusions, as required by article 6, paragraph 9, of the Convention.

39. In the light of the above, while welcoming the serious efforts made, the Committee finds that the Party concerned has not yet taken the necessary legislative, regulatory and administrative measures to fulfil the recommendations in paragraph 70 of the Committee’s findings on ACCC/C/2011/59.

40. In its progress reports of 9 September and 1 November 2013, the Party concerned reported that the draft law proposed amendments and additions to the Environmental and Tax Codes of Kazakhstan. With respect to the Environmental Code, it was proposed to, inter alia, adopt a separate legal act establishing a list of publicly available environmental information and to centralize all environmental information with the State Fund for Environmental Information. With respect to the Tax Code, it was proposed to exempt natural and legal persons from paying the state duty for legal claims regarding the provision of incorrect environmental information, seeking the reversal of siting, construction, renovation and operating permits on facilities and the cancellation of activities that had a negative impact on the environment and human health. Though the Committee has not been provided with a copy of the draft law, it welcomes the proposed amendments but expresses its concern that none of the above-mentioned amendments would seem to at all address the Committee's recommendations on ACCC/C/2011/59 (see paras. 10–11 above). The Committee recommends that the Party concerned take advantage of the current revision process to incorporate clear provisions on the points identified in the Committee's recommendations.

## **IV. Conclusions and recommendations**

### **A. Main findings**

41. The Committee welcomes the serious and active engagement of the Party concerned in the compliance review process. In this regard, the Committee appreciates the study carried out in 2011–2012 and the final study submitted to the Committee on 4 July 2013, which concluded with a list of recommended action points. The Committee also welcomes the efforts of the Party concerned to implement those action points, including the Supreme Court's drafting of the regulatory statute "On several issues in application of legislation by the courts when reviewing civil cases on environmental disputes". The Committee encourages the Party concerned to continue to implement the action points set out in its study on access to justice and to report on these through its national implementation reports.

42. Having reviewed the information provided during the intersessional period, the Committee concludes that the Party has fulfilled the requirements of decision IV/9c, and specifically the condition set out in paragraph 4 of that decision.

43. With respect to the Compliance Committee's recommendations on communication ACCC/C/2011/59, the Committee welcomes the legislative measures taken by the Party concerned to implement those recommendations so far. However, those measures alone are not sufficient to fulfil the recommendations set out in the Committee's findings on communication ACCC/C/2011/59. The Party thus remains in non-compliance with article 6, paragraphs 2, 6, 7, and 9, of the Convention on public participation in decision-making.

## B. Recommendations

44. The Committee recommends to the Meeting of the Parties, pursuant to paragraph 35 of the annex to decision I/7, to:

(a) Endorse the present report of the Committee with regard to compliance by Kazakhstan;

(b) Welcome the solid efforts made by the Party concerned to implement decision IV/9c;

(c) Also welcome the efforts made so far by the Party concerned to address the recommendations of the Committee on communication ACCC/C/2011/59;

(d) Invite the Party concerned to continue its efforts to address the recommendations of the Committee on communication ACCC/C/2011/59, i.e., to take the necessary legislative, regulatory and administrative measures and practical arrangements to ensure that:

(i) Mandatory requirements for the public notice are detailed by law, such as the obligation to inform the public in a timely manner and the means of public notice, including the obligation that any information relevant for the decision-making is also available on the website of the public authority competent for decision-making;

(ii) There is a clear possibility for any member of the public concerned to submit any comments on the project-related documentation at different stages of the public participation process, without the requirement that these comments be reasoned;

(iii) There is a clear responsibility of the relevant public authorities to:

a. Inform the public promptly of the decisions they have taken and of how the text of the decisions can be accessed;

b. Maintain and make accessible to the public, through publicly available lists or registers, copies of the decisions taken and other information relevant to the decision-making, including evidence of having fulfilled the obligation to inform the public and provide it with opportunities to submit comments;

(e) Invite the Party concerned to submit to the Committee by 31 December 2014, 31 October 2015 and 31 October 2016, detailed information on its further progress in implementing the recommendations set out in subparagraph (d) above, including drafts of any legislation being prepared for that purpose.

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