Aarhus Convention Compliance Committee: Report to MOP 6

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Aarhus Convention MOP6
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“Annotated provisional agenda”

- Compliance Committee members
- Compliance Committee figures
- Findings/recommendations adopted since MOP5
- Issues of compliance:
  - General provisions
  - Access to information
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- Making the Committee’s work more effective since MOP5
  - Communications / submissions / requests
  - MOP follow-up
- Selected highlights of this intersessional period
- Further enhancing the usefulness of the compliance mechanism
- Thanks!
Compliance Committee members

- Pavel Černý (Czechia)
- Ion Diaconu (Romania)
- Jonas Ebbesson (Sweden)
- Elena Fasoli (Italy)
- Heghine Hakhverdyan (Armenia)
- Jerzy Jendrośka (Poland)
- Alexander Kodjabashev (Bulgaria)
- Alistair McGlone (United Kingdom)
- Áine Ryall (Ireland) (from July 2015)
- Dana Zhandaeva (Kazakhstan) (until July 2015)
Compliance Committee figures

• 12 regular meetings since MOP5; each meeting 4 days
• 14 virtual meetings
• 45 communications received during current reporting period (compared to 40 received in the previous reporting period)
• 144 communications in total
• Findings/recommendations on 18 communications, 1 MOP request and 1 request for assistance = 20 cases
• 14 cases with findings of non-compliance (ie 13 findings)
• 11 communications inadmissible (≈ 25 percent)
• 4 communications closed without findings
• 14 follow-up on MOP decisions since MOP5
Findings/recommendations adopted since MOP5:

- ACCC/A/2014/1 (Belarus)
- ACCC/M/2014/1 (The former Yugoslav Republic of Macedonia)
- ACCC/C/2008/32, Part II (European Union)
- ACCC/C/2012/69 (Romania)
- ACCC/C/2012/71 (Czechia)
- ACCC/C/2012/76 (Bulgaria)
- ACCC/C/2013/77 (United Kingdom)
- ACCC/C/2013/81 (Sweden)
- ACCC/C/2013/85 and ACCC/C/2013/86 (United Kingdom)
- ACCC/C/2013/88 (Kazakhstan)
- ACCC/C/2013/89 (Slovakia)
- ACCC/C/2013/91 (United Kingdom)
- ACCC/C/2013/92 (Germany)
- ACCC/C/2013/93 (Norway)
- ACCC/C/2014/99 (Spain)
- ACCC/C/2014/101 (European Union)
- ACCC/C/2014/102 (Belarus)
- ACCC/C/2014/111 (Belgium)
- ACCC/C/2014/123 (European Union)
Issues of compliance – general provisions

- Who is the “public” and “public concerned” in the transboundary context – articles 2(4), 2(5)

- Assist the public by facilitating participation in the transboundary context – article 3(2)

- Penalization, persecution and harassment when exercising rights under Aarhus – article 3(8)

- Discrimination of foreign public – article 3(9)
Access to environmental information

• Provide copies of information requested, not just access – article 4(3)(b)

• “Manifestly unreasonable” information requests – article 4(3)(c)

• Internal communications – article 4(3)(c)

• Exempting whole categories of information from disclosure with no possibility for partial disclosure – articles 4(6) and 6(6)
Public participation in decision-making – transboundary contexts

Public participation in decision-making on specific activities – article 6

Public participation in transboundary context

• Ultimate responsibility to ensure effective public participation always rests on authority competent for decision-making

• Proper identification of “public concerned” precondition for effective notice – article 6(2)

• Selecting means of notice in transboundary context – article 6(2)

• Engaging other treaty regimes

• Notification regarding ultrahazardous activities – article 6(2)
Public participation in decision-making

Public participation in decision-making on specific activities – article 6

• Early public participation, when all options, including “zero option” are open – article 6(4)

• “Envelope” or “black box” method – article 6(4)

• Organizational matters for public hearings – article 6(7)

• “Mutatis mutandis and where appropriate” does not mean complete discretion – article 6(10)
Access to justice

• Access to procedures to challenge contraventions of national law relating to the environment – article 9(3)
  - Meaning of “national law relating to the environment”
  - Sufficient that one procedure meets all requirements of article 9(3) and (4)
  - Criteria for standing under article 9(3)

• Fair procedures and adequate and effective remedies – article 9(4)
  - “Fair” review procedures require reasoned decisions
  - “Effective” remedies, including injunctive relief, means preventing irreversible damage to environment

• Timeliness of review procedures concerning access to information – article 9(1) and 9(4)
Making the Committee’s work more effective since MOP5 – 1

Communications / submissions / requests

• Required format for communications
• Size limits on communications and Parties’ responses thereto
• Domestic remedies
• Procedure for new communications; pre-meeting Chair/Vice-chair
• Redaction of personal data and, upon request, other confidential information from website
• Commencing deliberations without a hearing
• Notice in advance of sending draft findings
Making the Committee’s work more effective since MOP5 – 2

MOP follow-up

• New procedure for MOP follow-up; more structured, interactive and effective
• Regular audio conferences with Parties, communicants and observers – very useful
• Excellent and constructive engagement by majority of Parties, as well as communicants and observers
• Not new – yet, the Committee makes its findings re MOP follow-ups on the basis of the evidence before it. If the evidence shows that requirements are met, and no evidence to the contrary, Committee should find the Party concerned no longer in non-compliance
Selected highlights of this intersessional period

• Most Parties accepted recommendations directly from the Committee
• Most Parties subject to MOP follow-up made significant progress – very close to fulfilling decision
• 3 Parties subject to MOP follow-up fully met requirements of MOP decision
Further enhancing the usefulness of the compliance mechanism

- If Parties or communicants do not understand any aspect of Committee procedure: ask secretariat at early stage

- To avoid unnecessary delays and speed up deliberations:
  - Focused submissions and communications (using required format)
  - Focused and precise replies to Committee questions
  - Well-prepared participation at hearings

- Parties are encouraged to accept Committee’s recommendations directly and to start implementing the recommendations as soon as possible

- If Parties have queries about what is needed to fulfil Committee’s recommendations - please ask. Committee stands ready to provide advice/assistance

- MOP endorsing findings crucial for effectiveness of compliance mechanism of the Convention
Thanks to:

- **Committee members** – for commitment, competence and a great social skills
- **Secretariat** – for incredible effectiveness, competence, loyalty and support
- **Observers** – for keeping an eye on the Committee
- **Parties** – for constructively engaging with the Committee
- **Communicants** – for raising important issues of compliance and keeping Convention alive
- **Montenegro** – for hosting also the ACCC meeting
- **MOP6** – for welcoming and endorsing Committee’s work