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Ms Fiona Marshall, Secretary to the Compliance Committee of the Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters
UN Economic Commission for Europe

Environment and Human Settlement Division
Room 332, Palais des Nations
CH-1211 Geneva 10, Switzerland

Belarusian Civil Society Organisation Ecohome
Commission for a Public Environmental Review of the Belarusian Nuclear Power Plant Project

14 Zelenaiia Street, Komarovo Village, Svirskii Settlement Council, Miadelskii District,
Minsk Oblast, 222394, Belarus

Address for correspondence: PO Box 30, 220086, Minsk

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Compliance of Belarus with the recommendations of the Aarhus Convention Compliance Committee dated 29 June 2011

This communication regards actions by the Republic of Belarus to comply with the recommendations issued at the Fourth Meeting of the Parties and at the Thirty-third Meeting of the Aarhus Convention Compliance Committee as well as several amendments to Belarusian legislation and its implementation in the field of public access to information, participation in decision-making and access to justice in environmental matters that have been made since the recommendations were issued.

1. The letter from the Belarusian Ministry of the Environment dated 30 March 2012 contains an **'Action Plan for the implementation of the decision on the Republic of Belarus taken by the Fourth Session of the Meeting of the Parties to the Aarhus Convention'** and **'Draft Amendments and Additions to National Legislation'**. This letter states that 'These documents were presented for discussion by civil society at the meeting of the public coordination council for environmental matters attached to the Ministry of the Environment'.

We would like to draw your attention to the fact that our representatives, as well as representatives of other civil society organisations, associations and groups, took part in this meeting.

1.1. However, the Ministry of the Environment did not present these **'Draft Amendments and Additions to National Legislation'** to us or other meeting participants representing civil society either at this meeting or subsequently, and nor did it discuss them with us. We first saw this document on the Compliance Committee's web page.

1.2. The public coordination council discussed the **'Action Plan for the implementation of the decision on the Republic of Belarus taken by the Fourth Session of the Meeting of the Parties to the Aarhus Convention'** and **implementation by Belarus of the Aarhus Convention**.

1.2.1. After the meeting, we presented our remarks on the Plan and they were partly taken into account in the final version.

1.2.2. At the meeting, we nominated representatives to the working party preparing the '**Draft Amendments and Additions to National Legislation**'. T.A. Novikova was nominated from Ecohome. However, our representatives were not invited to take part in the subsequent work and the Ministry did not discuss the text of the 'Draft Amendments and Additions to National Legislation' with us. As yet, no meeting has been held of this working party involving representatives of civil society who expressed an interest at the meeting of the public coordination council.

1.3. As was correctly stated in the letter of the Ministry of the Environment dated 30 March 2012, the issue of Belarus's compliance with the Aarhus Convention was discussed at this meeting. Representatives of civil society organisations (Ecohome, the Belarusian Green Party, the environmental partnership Green Network and others) expressed their concern at issues relating to Belarus's compliance with the Convention that had arisen since the recommendations were issued.

1.3.1. Over the last year, since the Compliance Committee issued its recommendations, no improvement has been made in the implementation of the Convention. On the contrary, state bodies and institutions have on numerous occasions taken environmentally significant decisions and ignored the Convention. This has given rise to protests, sometimes mass. There have been repeated breaches of the Convention during the construction of the Belarusian NPP, which have become systematic. Recommendations issued to Belarus on 29 June 2011 in this connection have been ignored by the parties taking decisions on the NPP.

1.3.1.1. Specific examples of breaches of the Convention in relation to the nuclear power station, to which civil society has drawn the government's attention on more than one occasion:

1.3.1.1.1. On 15 September 2011, after the Fourth Meeting of the Parties, the Belarusian President Aleksandr Lukashenko confirmed the Ostrovets site for the NPP in Edict No. 418 of 15 September 2011 **on the Location and Design of a Nuclear Power Station in the Republic of Belarus**. This Edict represents a final decision on the site for the NPP.

This decision was taken without proper public consultation, despite public demands, in particular for a full public discussion of the choice of the Ostrovets site or for a referendum (demanded by the local action group The Ostrovets Nuclear Power Station - It's a Crime!).

1.3.1.1.2. On 11 October 2011, the Directorate for Nuclear Power Plant Construction (a Belarusian state institution) and Atomstroiekспорт CJSC (a company based in St Petersburg, Russia) signed a contract to supply units No. 1 and 2, where Belarus selected the design (AES-2006) and reactor type (V-491). This agreement hence specifies the technology to be used.

1.3.1.1.3. On 20 October, the Chamber of Representatives of the Belarusian National Assembly in a closed sitting passed a law to ratify an agreement between the Republic of Belarus and the Russian Federation to cooperate in the building of a nuclear power station in Belarus, signed in Minsk on 15 March. This agreement sets out the legal framework for the subsequent activities of legal entities as regards the Belarusian NPP. In particular, it specifies that spent nuclear fuel from the NPP must be returned to Russia in exchange for payment and obliges Belarus to purchase fuel in the Russian Federation for the entire operational life of the power station.

Neither the media nor civil society representatives were allowed access to this sitting.

1.3.1.1.4. On 25 November 2011, an agreement was signed at a session of the Supreme Council of the Union State of Belarus and Russia on an inter-state loan for the construction of

the Belarusian NPP. Under this agreement, Russia undertakes to provide Belarus with a USD 10 billion loan to build the power plant. This agreement also sets out the repayment terms.

1.3.1.1.5. On 31 May 2012, Belarus and Russia initialled a general contract for the construction of the Ostrovets power station, the Russian contractor received a contract to execute design work and on the same day, with no public consultation on the project documentation, excavation of the foundations began.

The Belarusian authorities took the decisions outlined in paragraphs 1.3.1.1.1 – 1.3.1.1.5 **after the Fourth Meeting of the Parties, but without public notification or involvement.**

Drafts of these documents were not published or presented to the public upon request (from Ecohome) although they are of great environmental significance as they set out where the plant is to be built, how waste is to be handled, what technology is to be used and who is to supply it. **Not all of these documents were made publicly available after their signature.** The inter-state agreement on cooperation to build a nuclear power station in the Republic of Belarus was made publicly available six months after its signature. This contravenes article 4, paragraph 1 and article 6, paragraph 9 of the Convention.

The public was denied the opportunity to participate in these decisions. The public was not invited to discuss these decisions and there was no response to proposals from civil society (from Ecohome). Moreover, these decisions took no account of public opinion, expressed and expounded in a series of open appeals to the Belarusian and Russian Presidents and Governments between 15 September and 26 November 2011 and presented by the Belarusian anti-nuclear campaign headed by Ecohome, Scientists for a Nuclear-free Belarus, the Belarusian Green Party and the local action group Ostrovets Nuclear Power Station - It's a Crime and a host of non-governmental organisations from Russia. This contravenes article 6, paragraph 7 of the Convention.

1.3.1.2. Belarus is systematically breaching the articles of the Convention based on which the Compliance Committee and Meeting of the Parties made their recommendations in relation to other environmentally significant activities. We provide a brief description of these breaches below and advise that civil society will inform the Compliance Committee separately about these cases.

1.3.1.2.1. Construction work is taking place or is planned in many districts of Minsk, accompanied by the clearing of trees and parks and the destruction of green spaces without provision to the public of environmental information relating to the state of landscapes and natural sites (in breach of article 4 of the Convention on access to environmental information). In a number of cases, the city's master plan was amended when construction was approved, without taking into consideration the opinion of residents and without public consultation, or else public consultation was carried out with serious breaches of procedure and falsifications (contravening article 7 'Public participation concerning plans, programmes and policies relating to the environment').

For example, when the Beijing hotel complex was constructed as a Belarusian-Chinese investment project, the 40th Anniversary of the October Revolution Park was cleared to protests from Minsk residents. This clearance contravened the Aarhus Convention in several respects.

In particular, article 4 was infringed by the failure to provide environmental information to residents of the area and representatives of environmental NGOs on their request, namely, information on the exact quantity of vegetation cleared and its location (article 2.3a of the Convention, 'information on the state of the landscape and natural sites').

Moreover, the detailed urban development plan for the area that includes the park and which authorises the clearance and development, was approved in breach of article 7 of the Convention. Experts from Ecohome and the environmental partnership Green Network as well

as local residents have reported that the procedure for the public discussion of the development plan was falsified by the authorities. The following facts bear this out:

- the minutes of the public hearing were drawn up on 10.09.2012 while the hearing took place on 13.09.2012;
- an hour before the hearing began, the organisers brought in workers from state organisations who acted as the public at the hearing; there were about 10 spaces in the hall for local residents;
- the subject under discussion was not clearly and comprehensibly specified by the organisers; local residents did not understand precisely what and which document were being discussed;
- the hearing organisers exerted pressure on participants and emphasised that they were just informing them and that their opinion could not affect the final decision;
- minutes were not taken of the hearing on 13.09.2011;
- despite the fact that the official period for public consultation was from 10.09.2011 to 10.10.2011, an edict was signed on the construction of the Beijing Hotel in the 40th Anniversary of the October Revolution Park on 16.09.2011, ahead of the approval of the detailed urban development plan that would pave the way for this project.

Local residents and Ecohome submitted a claim to Frunzenskii District Court for the cessation of an economic activity causing a significant adverse environmental impact connected to the construction of the Beijing Hotel in the 40th Anniversary of the October Revolution Park. During the hearing, the court refused to supply the claimants with documents relating to the clearance of trees, including tree inventory plans, the respective decisions by the administration of Leninskii District and the findings of environmental reviews (*expertizas*) if any had been conducted. The hearing was terminated by the court on the grounds of a petition from one of the defendants alleging the court's lack of jurisdiction over the case.

1.3.1.2.1. In the Smolevichi District of Minsk Oblast, the authorities approved the implementation of a major joint Belarusian-Chinese investment project to construct an industrial park. This 80km² district includes trees, allotments, health resorts, children's holiday camps, a specially conserved natural territory and the Petrovichi reservoir.

An intergovernmental agreement on the Chinese-Belarusian industrial park was signed on 18 September 2011 and ratified by the Belarusian parliament in December 2011. On 5 June 2012, the President signed Edict No. 253 on the Chinese-Belarusian Industrial Park.

The boundaries of the compulsorily acquired site have not been officially announced. However, the chairs of allotment associations have been shown a map 'for the purposes of familiarisation'. The authorities held a meeting with local residents to discuss this project in February 2012.

The public were not duly informed about the decisions taken and their content, i.e. the boundaries of the site, the conceptual design of the development, the purpose of the facility and the park's environmental impact.

The decisions, including the presidential edict that permits the activity, were passed without the production or discussion of an environmental impact assessment (OVOS) and without public involvement and consideration of public opinion. This has provoked mass protests from local residents.

1.3.2. Reform of Belarusian legislation to ensure compliance with the Convention has been weak. The most serious issues remain.

1.3.1.1. Final decisions permitting environmentally significant activity may take the form of presidential edicts (*ukaz*), resolutions (*postanovlenie*) of the Cabinet of Ministers and orders (*rasporiazhenie*) of local executive authorities (administrations). However, unlike resolutions of the Cabinet of Ministers, the public is not consulted on orders of local executive authorities and presidential edicts. Moreover, presidential edicts may not be repealed by other legislation. However, draft edicts are not published or discussed, and edicts themselves may not be

challenged by the public. Edicts often have environmental significance and permit environmentally significant activities before procedures such as public consultations, OVOS, *expertizas* etc. are carried out.

1.3.1.2. On 25 October 2011, the Cabinet of Ministers passed Resolution No. 1426 on Several Issues relating to the Treatment of Flora.

Paragraph 9 of this resolution states: 'The local executive and administrative body shall ensure the publication of a notice of the meeting in the media and shall also post a notice of the meeting on the internet on the site of the local executive and administrative body (where such a site exists) and (or) by other available means. A notice of the meeting must be published (posted) no later than the day before the meeting.' The time frame for notification of the meeting is not reasonable; this notice period does not allow the public to participate in discussions of environmentally significant decisions.

Paragraph 2 of the resolution specifies: 'Permission is not required for removal or transplantation in the following cases: construction, if duly approved project documentation envisages the removal or transplantation of flora, with the exception of instances established by the President of the Republic of Belarus.' This paragraph means that it is possible to destroy natural sites (for example, trees) without public consultation or participation in decision-making when a construction project is not subject to an OVOS or is not listed by Annex 1 of the Aarhus Convention. This opens the way to possible infringements of articles 4 and 6 of the Convention.

Representatives of civil society, including of our organisation, have repeatedly informed the Ministry of the Environment of these and other instances of non-compliance, at the meeting of the public coordination council on 21 December 2011 and on other occasions.