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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 Belarus 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 Belarus in the intersessional period in implementing decision IV/9b of the Meeting of the Parties on compliance by Belarus 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/2009/44 (ECE/MP.PP/C.1/2011/6/Add.1), adopted on 28 June 2011, in particular with regard to the implementation of the Convention's provisions on access to information and public participation in decision-making.

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\* 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/9b 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/9b on compliance by Belarus with its obligations under the Convention (see ECE/MP.PP/2011/2/Add.1).

2. Review of compliance by Belarus with the Convention had been triggered by communication ACCC/C/2009/37 concerning access to information and public participation in the decision-making for the hydropower plant project on the Neman River. In its findings on communication ACCC/C/2009/37 (ECE/MP.PP/2011/11/Add.2), adopted on 24 September 2010, the Committee found that the Party concerned had failed to comply with article 4, paragraph 1, and article 6, paragraphs 2, 2 (d) (iv)-(v), 3, 6, 7, 8 and 9, of the Convention. The Committee made recommendations directly to the Meeting of the Parties.

3. At its thirty-first meeting (Geneva, 22–25 February 2011), further to information received concerning a number of changes in legislation and practice that had taken place in Belarus during 2010, the Committee decided to recommend to the Meeting of the Parties that its recommendations with regard to communication ACCC/C/2009/37 “should be taken up in the light of the new legislation” (ECE/MP.PP/C.1/2011/2, para. 32).

4. Through decision IV/9b, the Meeting of the Parties endorsed the Committee’s findings that related both to the specific case of the hydropower plant and to the general legal framework. Having taken note of the ongoing legislative and regulatory reforms in Belarus in relation to the implementation of the Convention, the Meeting of the Parties recommended to the Party concerned in the process of its reform to reach compliance with the Convention to take the necessary legislative regulatory and practical arrangements to ensure that:

(a) The general law on access to information refers to the 1992 Law on Environmental Protection that specifically regulates access to environmental information, in which case the general requirement of stating an interest does not apply;

(b) There is a clear requirement for the public to be informed of decision-making processes that are subject to article 6 in an adequate, timely and effective manner;

(c) There are clear requirements regarding the form and content of the public notice, as required under article 6, paragraph 2, of the Convention;

(d) There are reasonable minimum time frames for submitting the comments during the public participation procedure, taking into account the stage of decision-making as well as the nature, size and complexity of proposed activities;

(e) There is a clear possibility for the public to submit comments directly to the relevant authorities (i.e., the authorities competent to take the decisions subject to article 6 of the Convention);

(f) There is a clear responsibility of the relevant public authorities to ensure such opportunities for public participation as are required under the Convention, including for making available the relevant information and for collecting the comments through written submission and/or at the public hearings;

(g) There is a clear responsibility of the relevant public authorities to take due account of the outcome of public participation, and to provide evidence of this in the publicly available statement of reasons and considerations on which the decisions is based;

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

(i) Inform promptly the public of the decisions taken by them and their accessibility;

(ii) Maintain and make accessible to the public copies of such decisions, along with the other information relevant to the decision-making, including the evidence of fulfilling the obligations regarding informing the public and providing it with possibilities to submit comments;

(iii) Establish relevant publicly accessible lists or registers of the decisions held by them;

(i) Statutory provisions regarding situations where provisions on public participation do not apply cannot be interpreted to allow for much broader exemptions than allowed under article 6, paragraph 1 (c), of the Convention.

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

## **B. Communication ACCC/C/2009/44**

6. During the intersessional period 2008–2011, the Committee also considered communication ACCC/C/2009/44 concerning compliance by Belarus in relation to the decision-making for the construction of a nuclear power plant in Ostrovets. Since the Committee adopted its findings and recommendations on that communication at its thirty-third meeting (Chisinau, 27–28 June 2011), which was held back to back with the fourth session of the Meeting of the Parties, those findings were not considered by the Meeting of the Parties at that time and will be considered at the fifth session.

7. In its findings on communication ACCC/C/2009/44 (ECE/MP.PP/C.1/2011/6/Add.1),<sup>1</sup> adopted on 28 June 2011, the Committee found non-compliance by Belarus with article 4, paragraph 1 (b), and article 6, paragraphs 2 (d) (vi), 4, 6, 7 and 9, of the Convention. The Committee found non-compliance both with respect to the specific circumstances of the Ostrovets nuclear power plant and, recalling its findings on communication ACCC/C/2009/37, the general legal framework. With the agreement of the Party concerned, the Committee recommended to the Party concerned that it:

(a) In amending its legislative, regulatory and other measures, take note of the Committee recommendations on communication ACCC/C/2009/37 with respect to the general legal framework, and ensure the compatibility of and coherence between the general framework for public participation in decisions on specific activities (the general

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

environmental impact assessment (EIA) legislation) and the framework for public participation in nuclear activities;

(b) Ensure that the amended legal framework clearly designates which decision is considered to be the final decision permitting the activity, and that this decision is made public, as required under article 6, paragraph 9, of the Convention;

(c) Ensure that the full content of all the comments made by the public (whether claimed to be accommodated by the developer or those which are not accepted) is submitted to the responsible authorities for taking the decision (including those responsible for the *expertiza*<sup>2</sup> conclusion);

(d) Make appropriate practical and other provisions for the public to participate during the preparation of plans and programmes relating to the environment;

(e) Organize training of public officials to raise awareness with regard to the Convention and ensure that public officials are adequately informed so as to prevent the dissemination of inaccurate information.

## II. Summary of follow-up action on decision IV/9b and communication ACCC/C/2009/44

8. Due to the relevance of the recommendations on communication ACCC/C/2009/44 to those in decision IV/9b,<sup>3</sup> in following up on the implementation of decision IV/9b by the Party concerned the Committee considered the overall efforts of the Party to bring its legal framework into compliance with the Convention, including with respect to the recommendations made by the Committee in its findings on communication ACCC/C/2009/44. The communicant and observers involved in communication ACCC/C/2009/44 were also invited to provide their comments in the context of the follow-up on decision IV/9b.

9. On 30 November 2011, the Party concerned submitted its progress report due on 1 December 2011. However, due to a technical issue, the report did not reach the Committee in time for its thirty-fifth meeting (see below). In its report, the Party informed the Committee of the major steps it had made towards compliance with the Convention, in particular through the adoption of: (a) Decision 689, adopted by the Cabinet of Ministers on 1 June 2011 which amended Resolution 755 adopted by the Cabinet of Ministers of 19 May 2010; (b) Resolution 1370 of 13 October 2011; and Resolution 687 adopted by the Cabinet of Ministers of 1 June 2011 concerning public participation in urban planning and construction activities. The Party concerned also informed the Committee of further legislative changes concerning access to information and public participation made in the context of a project commissioned by the European Union and the United Nations Development Programme. The text of Decision No. 689, amending Resolution No. 755, and of Resolution No. 687 was provided in the Russian and English languages.

10. The report of the Party concerned highlighted in particular the following changes introduced through Decision No. 689:

<sup>2</sup> *Editor's note:* The OVOS/*expertiza* system is a development control mechanism followed in many countries of Eastern Europe, the Caucasus and Central Asia. The Committee has held that the OVOS and the *expertiza* should be considered jointly as the decision-making process constituting a form of environmental impact assessment procedure (see ECE/MP.PP/C.1/2013/9, para. 44).

<sup>3</sup> Decisions on 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>.

- (a) The addition of the principles of the timeliness and effectiveness of the information for the public on the environmental impact of a proposed activity to the basic principles of the OVOS<sup>4</sup> legislation;
- (b) The establishment of a minimum 30-day period for public discussion after public notice is given;
- (c) The requirement to include in the public notice information about the public authority competent to take the decision to permit the activity;
- (d) The clarification of the procedure for the review of the OVOS report;
- (e) The obligation for the competent authorities to publish decisions on proposed activities on the Internet.

11. On 15 and 16 December 2011, the European ECO Forum (the communicant of communication ACCC/C/2009/44, also acting as the representative of the communicant in ACCC/C/2009/37 which had requested confidentiality) and the national non-governmental organization (NGO) Ecohome (Belarus), respectively, provided information to the Committee.

12. In its letter of 15 December 2011, the European ECO Forum provided an analysis of the changes introduced through Decision No. 689. In its view, the Decision included some legislative improvements, for example by extending the relevant EIA legislation, including with respect to public participation, in nuclear matters and by introducing several changes in the OVOS procedure. However, there were still several shortcomings with respect to access to information and public participation, as identified by the Committee in its findings on communications ACCC/C/2009/37 and ACCC/C/2009/44, and it had concerns over what was considered to be a final decision under article 6 as well as the public accessibility of the *expertiza* conclusions.

13. In its letter of 16 December 2011, Ecohome informed the Committee of the ongoing activities in relation to the Ostrovets nuclear power project, notwithstanding the Committee's findings and recommendations on communication ACCC/C/2009/44. In particular, on 15 September 2011 the President of Belarus confirmed the Ostrovets site for the nuclear power plant in Edict No. 418; on 11 October 2011, the Directorate for Nuclear Power Plant Construction selected the design (AES-2006) and reactor type (V-491) for the nuclear power plant and signed the contract for its construction. According to the observer, these decisions were not discussed with the public and no regard was taken of public opinion and suggestions.

14. At its thirty-fifth meeting (Geneva, 13–16 December 2011), the Committee considered the information provided by the European ECO Forum and Ecohome and agreed to review the matter further at its thirty-sixth meeting.

15. At its thirty-sixth meeting (Geneva, 27–30 March 2012), the Committee noted that the Party concerned had submitted its progress report electronically before the set deadline of 1 December 2011, but that, due to a technical issue, the report had not reached the Committee in time for its thirty-fifth meeting. The Committee expressed its overall satisfaction with the general direction of action taken by the Party concerned. It requested the secretariat to remind the Party of the upcoming deadline of 1 April 2012 for the submission of its action plan, and agreed that it would welcome comments by the communicants on the action plan as well, and that it would review the materials received in further detail at its thirty-seventh meeting.

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<sup>4</sup> See footnote 2.

16. On 30 March 2012, the Party concerned submitted its action plan, as requested by decision IV/9b. The action plan identified specific actions to be taken to reach compliance and set a timeline for doing so.

17. On 9 May 2012, the communicants were invited to comment prior to the Committee's thirty-seventh meeting on the progress report and the action plan submitted by the Party concerned.

18. On 15 June 2012, the Party concerned informed the Committee of a newly established working group for preparing proposals for the better implementation of the Convention and enclosed a draft concept paper on possible legislative amendments.

19. At its thirty-seventh-meeting (Geneva, 26–29 June 2012), the Committee welcomed the action plan submitted by the Party concerned on 30 March 2012 within the deadline set by decision IV/9b. No comments had been received from the communicants. The Committee also took note of the draft concept paper on legislative amendments submitted by the Party concerned on 15 June 2012. Observers present at the meeting drew the attention of the Committee to the following issues: (a) the translation of "responsibility" in the Russian text of the decision, which could be interpreted as "liability" by the Party concerned and could lead to measures which would not be suitable to address the recommendations of the Meeting of the Parties; (b) concerns expressed by civil society that it had not been properly consulted in the preparation of the action plan; and (c) that further steps had been taken for the construction of the nuclear power station in Ostrovets. The Committee took note of the information provided. It instructed the secretariat to write a letter to the Party concerned clarifying the meaning of "responsibility" in decision IV/9b and inviting the Party to comment on the statements made by the observers and to provide information on how members of the public were involved in the preparation of the action plan and whether all documents were publicly available. The Party concerned was to provide the requested information by 15 September 2012 and the Committee would then consider the matter at its thirty-eighth meeting. The Committee also requested the secretariat to request the Party to inform the Committee by 1 February 2013 about the progress on the legislative amendments and how those addressed the specific elements of paragraph 4 of decision IV/9b. It agreed that it would review the materials received in greater detail at its fortieth meeting.

20. On 14 September 2012 the Party concerned responded to the points made by observers on 29 June 2012, at the Committee's thirty-seventh meeting.

21. At its thirty-eighth meeting (Geneva, 25–28 September 2012), the Committee noted that the Party concerned had provided its response within the deadline of 15 September 2012 and took note of the information. It further noted that the Party concerned still had to inform the Committee about the progress on the legislative amendments and how those addressed the specific elements of paragraph 4 of decision IV/9b by 1 February 2013.

22. On 28 September 2012, the last day of the Committee's thirty-eighth meeting, the European ECO Forum submitted a letter informing the Committee about the arrest and detention of members of the public for their activities in environmental matters. Observers present at the meeting told the Committee that members of the public, including those involved in communication ACCC/C/2009/44 and expressing their concern over the construction and operation of the Ostrovets nuclear power plant, had been arrested and detained in July 2012. In that regard, the Committee recalled that in its findings on communication ACCC/C/2009/44 it had already considered allegations of non-compliance by Belarus with its obligations under article 3, paragraph 8, of the Convention in relation to the Ostrovets nuclear power plant because of alleged pressure on members of the public trying to promote their views on that project. In that case, the Committee had found that the allegations concerning harassment were serious and that the alleged facts, if sufficiently

substantiated, would amount to harassment in the sense of article 3, paragraph 8, of the Convention, and would therefore constitute non-compliance with that provision. However, on the basis of the information received at that time, the Committee had not been able to assess with sufficient certainty exactly what had happened and therefore it had refrained from making findings on that issue (ECE/MP.PP/C.1/2011/6/Add.1, para. 65).

23. The Committee decided to remind the Party of its obligation to report by 1 February 2013 and, further to the information received from the observers, to invite it to also comment on the recent arrest and detention referred to in the previous paragraph. It agreed that it would review those materials received in greater detail at its fortieth meeting.

24. On 5 October 2012, the Chair of the Committee sent a letter to the Party concerned inviting it to comment on the events reported with respect to the alleged arrest and detention of members of the public on the grounds that they had expressed concern over the construction and operation of the Ostrovets nuclear power plant, which events, if substantiated, would amount to non-compliance with article 3, paragraph 8, of the Convention.

25. On 1 February 2013, the Party concerned submitted its report informing the Committee of further activities with a view to bringing its legislation in full compliance with the Convention, including the preparation of a draft law on further amendments to some laws with regard to public access to environmental information and public participation in environmental decision-making. The Party stated that the draft had been discussed with the public. In addition, a draft resolution had been prepared for the conduct of public discussions on environmental decision-making and trainings had been conducted.

26. On 13 February 2013, the Party concerned responded to the letter of the Chair of the Committee of 5 October 2012 stating that the Ministry of Environment had sent a query to the Ministry of Internal Affairs, but that, on the basis of the information received from the Ministry of Internal Affairs, it had not proved possible to draw any conclusion about the detention of members of the public in connection with their public activities against the construction of the nuclear power plant.

27. On 28 February 2013 a letter was sent on behalf of the communicant of communication ACCC/C/2009/37 welcoming the efforts made by the Party concerned in the process of implementation of decision IV/9b. The letter also recalled the concerns expressed by the European ECO Forum on 15 December 2011 and the situation with regard to the arrests and detentions in summer 2012.

28. On 21 March 2013, the communicant of communication ACCC/C/2009/44 sent a letter expressing its disappointment at the fact that the Party had not reported on how it followed up specifically with the Committee's recommendations in that communication and had not responded to the points made by the European ECO Forum by letter of 15 December 2011. It also highlighted the continuing harassment of environmental activists in the country.

29. At its fortieth meeting (Geneva, 25–28 March 2013), the Committee took note of the report provided by the Party concerned, which had been submitted within the deadline, as well as the Party concerned's response of 13 February 2013 to the Chair's letter of 5 October 2012. The Committee also took note of the comments on the Party's report submitted by the communicant of communication ACCC/C/2009/37 on 28 February 2013. An observer expressed deep disappointment with respect to the legislative developments.

30. The Committee noted that the nature of the information provided by the Party concerned did not allow for an accurate evaluation of the progress achieved. It decided to send a letter to the Party concerned requesting concrete information about the exact dates of the different stages of the legislative process to reach the objectives set in the action plan,



originally submitted on 30 March 2012, including information on how the relevant recommendations in communication ACCC/C/2009/44 (ECE/MP.PP/C.1/2011/6/Add.1, para. 90, in particular subparagraphs (a), (b) and (c)), which referred to the recommendations in communication ACCC/C/2009/37, and which had been made with the agreement of the Party concerned, had been addressed.

31. The Committee also noted with regret that the response of the Party concerned to the Chair's letter of 5 October 2012, concerning the alleged arrest and detentions of environmental activists, was unsatisfactory, and therefore decided to invite the Party concerned to provide more specific information. The Committee agreed to review the situation in detail at its forty-second meeting and requested the secretariat to explore the possibility of a videoconference with the Party concerned and interested observers and to remind them of the recommendations on communication ACCC/C/2009/44 as well as the recommendations on communication ACCC/C/2009/37, which the Party had accepted.

32. In subsequent letters from the secretariat the Party concerned was reminded of its deadline for submission of information with regard to both follow-up action with decision IV/9b and the Committee's recommendations on communication ACCC/C/2009/44.

33. On 31 July 2013, the Party concerned, through its Ministry of Environment, submitted the requested report on follow-up action with decision IV/9b and the Committee's recommendations on communication ACCC/C/2009/44, as well as information on the alleged arrests and detentions of environmental activists. In its report the Party concerned informed the Committee of:

(a) The new law introducing amendments to various environmental laws to align the public participation procedures in Belarus with the Aarhus Convention. A copy of the draft had been submitted to the Committee and the Committee was invited to provide its comments. The draft would be open for public consultations and a new draft would be prepared to include the outcomes of the consultations;

(b) Developments regarding the alleged arrest and detention of members of the public in summer 2012: the Ministry of Environment had conveyed the Committee's request for information to the Ministry of Internal Affairs and the Chief Directorate for Internal Affairs. The Ministry of Internal Affairs had replied that it had not been possible to draw any conclusion about the connection between the detention of the persons mentioned and their public activities against the construction of the nuclear power plant. The Ministry of Environment had then prepared a briefing note concerning the obligations arising from the Convention for Belarus, in particular with respect to article 3, paragraph 8, and sent it to the Ministry of Internal Affairs;

(c) Ongoing staff training activities on matters relating to the Convention;

(d) A new project to be carried out in collaboration with international partners aiming at improving the capacity of NGOs to engage in activities to preserve the natural environment, including training on matters governed by the Convention.

34. At its forty-second meeting (Geneva, 24–27 September 2013), the Committee held a telephone conference with the Party concerned in which the Party concerned provided a statement as to how it had addressed each subparagraph of decision IV/9b, as well as the Committee's findings and recommendations on communication ACCC/C/2009/44. The communicant for communication ACCC/C/2009/44 also provided its comments on the Party concerned's progress with respect to each subparagraph of the recommendations contained in decision IV/9b, as well as the Committee's recommendations on communication ACCC/C/2009/44. An observer, Ecohome (Belarus) also expressed concern about continuing violations of the Convention in the Party concerned with regard to the nuclear power plant construction. The Committee agreed on questions to be sent to the

Party concerned for its written response after the meeting and commenced preparation of its draft report to the Meeting of the Parties at its fifth session on the implementation of decision IV/9b.

35. On 16 December 2013, the Party concerned provided its responses to the questions sent to it by the Committee after the Committee's forty-second meeting.

36. At its forty-third meeting (Geneva, 17–20 December 2013), the Committee continued preparation of its draft report to the Meeting of the Parties on the implementation of the recommendations in decision IV/9b and the Committee's findings on communication ACCC/C/2009/44. An observer, Ecohome (Belarus), made a statement during the meeting on the implementation of those recommendations, noting that the existing and proposed Belarusian legislation presented barriers to the implementation of the Convention.

37. By e-mail of 13 February 2014, the Committee requested the Party concerned to clarify which provisions of its legislation it considered to address each of the recommendations made through paragraph 4 of decision IV/9b and paragraph 90 of the Committee's findings on communication ACCC/C/2009/44.

38. The communicant of communication ACCC/C/2009/44 provided its views on the Committee's request of 13 February 2014 on the same day, and the Party concerned provided its response on 19 February 2014. Taking into consideration the information provided, the Committee completed its draft report through its electronic decision-making procedure.

39. On 28 February 2014, the draft report was sent to the Party concerned and the communicant of communication ACCC/C/2009/44 (acting also as the representative of the communicant of communication ACCC/C/2009/37), for their comments by 21 March 2014. The Party and the communicant of communication ACCC/C/2009/44 provided their comments on 21 and 24 March 2014 respectively. Together with its comments, the Party concerned provided the Committee with the latest version of its draft legislation.

40. By letter of 19 March 2014, the Government of Lithuania informed the Committee that it considered that Belarus had failed to comply with its obligations under the Convention with respect to the provisions on access to information and public participation for the Lithuanian public regarding the Ostrovets nuclear power plant. Lithuania requested the Committee to take into account its letter when considering the progress made by Belarus in implementing the Committee's recommendations on communication ACCC/C/2009/44.

41. At its forty-fourth meeting (Geneva, 25–28 March 2014), the Committee continued preparation of its draft report to the Meeting of the Parties on the implementation of the recommendations in decision IV/9b and the Committee's findings on communication ACCC/C/2009/44. An observer, Ecohome, made an oral and a written statement to the Committee on 25 and 26 March, respectively. Taking into account the comments received from the Party concerned, the communicant of communication ACCC/C/2009/44, the Government of Lithuania and observers, the Committee finalized its report for submission to the Meeting of the Parties at its fifth session.

### **III. Considerations and evaluation by the Committee of decision IV/9b**

42. In order to meet the requirements of decision IV/9b, the Party concerned would need to demonstrate to the Committee that it had taken the necessary legislative regulatory and practical arrangements to fulfil the recommendations set out in paragraph 4 (a)-(i) of that decision (see para. 4 above).

43. With respect to the recommendations in paragraphs 4 (a), (f), (g), (h) (i) and (h) (ii) of decision IV/9b, the Party concerned reported that those recommendations would be taken into account through its proposed draft legislation. As that legislation is still only in draft form, the Committee finds that the Party has not yet taken the necessary measures to ensure that these recommendations are met.

44. With respect to the recommendation in paragraph 4 (b) of decision IV/9b, in its response of 19 February 2014, the Party informed the Committee that the recommendation was met through section 4.5 of the Regulations on the Conduct of Environmental Impact Assessment, which states:

4. The main principles of impact assessment are:

4.5. Timely and effective provision of information to the public, transparency, and consideration of public opinion on the environmental impact of a proposed activity.

45. With respect to decision-making related to the environment that is not subject to the above Regulations, in its response of 19 February 2014, the Party stated that the recommendation in paragraph 4 (b) would be taken into account through its proposed draft legislation.

46. While welcoming the inclusion in the Regulations on the Conduct of Environmental Impact Assessment of the principle of timely and effective provision of information to the public, the Committee does not consider that such a principle amounts to a clear requirement for the public to be informed of all decision-making processes that are subject to article 6 in an adequate, timely and effective manner, as set out in the recommendation in paragraph 4 (b) of decision IV/9b. The Committee thus finds that the Party has not yet taken the necessary measures to ensure this recommendation is met either for decision-making subject to EIA or decision-making related to the environment which is not subject to EIA.

47. With respect to the recommendation in paragraph 4 (c) of decision IV/9b, in its response of 19 February 2014, the Party informed the Committee that the requirements as to the form and content of public notice under article 6, paragraph 2, of the Convention are met through Technical Code of Practice 17.02-08-2012.

48. The requirements for notice are also set out in sections 34 and 35 of the Regulations on the Conduct of Environmental Impact Assessment, namely:

34. The relevant local councils of deputies and local executive and administrative authorities jointly with the developer shall:

within three working days of a communication from the public to the relevant local executive and administrative authorities stating the need for a meeting to discuss the EIA report, inform the public of its time and place by means of publication of an announcement in the media and also on the Internet sites of the developer and the relevant local executive and administrative authorities (where such sites exist).

35. The notice of public discussions must include:

35.1. Information on the developer of the proposed activity (name; legal, postal and electronic addresses; telephone and fax numbers);

35.2. Name, rationale and description of the proposed activity;

35.3. Information on the location of the proposed activity;

35.4. Information on the time frame for the proposed activity;

35.5. Information on the timetable for public discussions and the submission of comments on the EIA report;

35.6. Information on where the EIA report may be inspected and where to send observations and proposals on the EIA report (name of organization, postal address, Internet site, family name, given name, patronymic and job title of the contact person, their telephone and fax numbers and e-mail address);

35.7. Information on the location of the executive and administrative authority responsible for taking a decision on whether to permit construction of the installation (its name, postal address, website, telephone and fax numbers and e-mail address) and the deadline for submitting a communication stating the need for a meeting to discuss the EIA report and a communication stating the intention to conduct a public environmental review.

49. The Committee welcomes that section 35 of the Regulations on the Conduct of Environmental Impact Assessment and the Technical Code of Practice appear to address the majority of the requirements for notice set out in article 6, paragraph 2. It is not convinced, however, that either sections 34 or 35 of the Regulation or the Technical Code of Practice address the requirements of article 6, paragraph 2 (b) or 2 (d) (vi). The Committee thus finds that the Party has not yet fully met the requirements of recommendation in paragraph 4 (c) of decision IV/9b in these particular respects.

50. With respect to the recommendation in paragraph 4 (d) of decision IV/9b, in its response of 19 February 2014, the Party informed the Committee that this recommendation was addressed through section 35-1 of the Regulations on the Conduct of Environmental Impact Assessment, which states:

35-1 The period of public discussions must be no fewer than 30 calendar days from the date of publication of the notice of public discussions.

51. With respect to decision-making related to the environment that is not subject to the above Regulations, in its response of 19 February 2014, the Party stated that the recommendation in paragraph 4 (d) would be taken into account through its proposed draft legislation.

52. On the basis of the information provided, the Committee finds the recommendation in paragraph 4 (d) of decision IV/9b to be fulfilled with respect to decision-making subject to an EIA procedure, but not yet fulfilled with respect to decision-making subject to article 6 of the Convention which is not subject to an EIA procedure.

53. With respect to the recommendation in paragraph 4 (e) of decision IV/9b, in its response of 19 February 2014, the Party informed the Committee that this recommendation was addressed through section 41 of the Regulation on the Conduct of Environmental Impact Assessment, which states:

A summary of feedback prepared by the design organization pursuant to the contract with the developer shall be appended to the record of the public discussions. This summary shall include all observations and proposals on the EIA report received during the public discussion process by the relevant local executive and administrative authorities, the developer and the design organization indicated in the notice of public discussions.

54. The Committee finds, however, that the above provision only requires a summary of the comments received by the developer to be provided to the public authorities, whereas the recommendation in paragraph 4 (e) of decision IV/9b requires that there be a clear possibility for the public to submit comments directly to the relevant authorities (i.e., the authorities competent to take the decisions subject to article 6 of the Convention). The

Committee thus finds that the Party concerned has not taken sufficient measures to comply with the recommendation in paragraph 4 (e) of decision IV/9b.

55. With respect to the recommendation in paragraph 4 (h) (iii) of decision IV/9b, in its response of 19 February 2014, the Party informed the Committee that this recommendation was addressed through section 23 of the Regulations on the Conduct of Environmental Impact Assessment, which states:

Lists of planning permission decisions for installations shall be created and maintained up to date by local executive and administrative authorities on their websites (where such sites exist).

56. While welcoming the introduction of such a provision into the Regulations on the Conduct of Environmental Impact Assessment, the Committee is not convinced that section 23 fulfils the recommendation in paragraph 4 (h) (iii) of decision IV/9b for public authorities to establish relevant publicly accessible lists or registers of the decisions held by them. In particular, the Committee considers that the lists should include all relevant decisions subject to the Convention, and not only the “planning permission decisions for installations” currently provided for.

57. With respect to the recommendations in paragraph 4 (i) of decision IV/9b, no information was provided by the Party concerned. Thus, the Committee must find that the Party has not yet taken the necessary measures to ensure this recommendation is met.

58. In the light of the above considerations, the Committee welcomes the efforts made by the Party concerned to implement decision IV/9b so far, but is not convinced that the Party concerned has yet taken the necessary measures to fully meet the recommendations set out in paragraphs 4 (a) – (i) of that decision.

#### **Findings on ACCC/C/2009/44**

59. In order to meet the requirements of the recommendations made by the Committee in its findings on communication ACCC/C/2009/44, the Party concerned would need to demonstrate to the Committee that it has taken the necessary legislative regulatory and practical arrangements to ensure that it fulfils the recommendations set out in paragraph 90 (a) – (e) of those findings (see para. 7 above).

60. With respect to the recommendation in paragraph 90 (a) of the Committee’s findings, in its response of 16 December 2013, the Party concerned informed the Committee that that recommendation was addressed through section 1 of the Regulations on the Conduct of Environmental Impact Assessment, which states:

1. These Regulations set out the procedure for the conduct of environmental impact assessment [OVOS] (hereinafter ‘impact assessment’), including consideration of any possible transboundary impact, of a proposed economic or other activity, including activities in the field of use of nuclear energy (hereinafter ‘proposed activity’).

61. On the basis of the information provided, the Committee finds that the recommendation in paragraph 90 (a) of its findings on communication ACCC/C/2009/44 has been met.

62. With respect to the recommendations set out in paragraphs 90 (b) and (c) of the Committee’s findings on communication ACCC/C/2009/44, in its response of 19 February 2014, the Party concerned reported that those recommendations would be taken into account through its proposed draft legislation. As the legislation is still only in draft form, the Committee finds that the Party has not yet taken the necessary measures to ensure these recommendations are met.

63. With respect to the recommendation in paragraph 90 (d) of the Committee's findings, the Party concerned provided the Committee with various excerpts of its legislation, including:

(a) Article 15 of the Law "On Environmental Protection", which provides, *inter alia*, that NGOs operating in the field of environmental protection have the right to participate in the development of State projects, programmes and measures (at the national, sectoral and local levels) regarding the rational use of natural resources and the protection of the environment;

(b) Article 16 of the Law "On specially protected nature areas", which provides that citizens and public associations have the right to make suggestions and assist State agencies in the implementation of activities for the organization, operation, protection and use of specially protected nature areas. In addition, Ministerial Decree No. 94 of 29 October 2008 "On some issues of specially protected nature areas" further provides that draft management plans shall be subject to public consultation through a public hearing;

(c) Article 40 of the Law "On the use of nuclear energy", which provides that citizens, public associations and other organizations are eligible to participate in the discussion of draft regulations and public programmes in the field of the use of nuclear energy;

(d) Article 4 of the Law "On the architectural, urban planning and construction activity", which establishes a right for individuals to participate in the development of urban planning areas, including settlements.

64. The Committee finds that the legislation of the Party concerned provides for the public to participate to some extent during the preparation of a range of different plans and programmes relating to the environment. However, on the basis of the short legislative excerpts provided, the Committee cannot find that the Party concerned makes appropriate practical and other provisions for the public to participate during the preparation of plans and programmes relating to the environment in accordance with article 7 of the Convention. In particular, it is not possible for the Committee to determine whether the requirements of article 7 (including the requirements of article 6, paras. 3, 4 and 8), are provided for in the legislation of the Party concerned. For these reasons, the Committee cannot find that the recommendation in paragraph 90 (d) of the findings on ACCC/C/2009/44 has been met.

65. With respect to the recommendation set out in paragraph 90 (e) of the Committee's findings, in its response of 19 February 2014, the Party concerned informed the Committee that, with the assistance of the Regional Environmental Centre (Hungary), in December 2013 it had held three training seminars on "The Aarhus Convention in the Republic of Belarus". The training was attended by representatives of Government agencies and other public officials, as well as representatives of NGOs from Minsk, Gomel and Brest. In addition, a working meeting of representatives of the Ministry of Environment and the Ministry of Energy was held to discuss issues relating to the implementation by Belarus of its obligations under the Aarhus Convention, in particular article 3, paragraph 8, and article 8 of the Convention. Furthermore, in the light of the concern expressed by the Compliance Committee with regard to Belarus' implementation of article 3, paragraph 8, of the Convention, the Ministry of the Environment sent more extensive explanatory information about the Convention to the Ministry of Internal Affairs. Lastly, in January 2014, a national seminar was held in Minsk on the theme: "Promoting the implementation of the Aarhus Convention in Belarus". The seminar was organized by the Organization for Security and Cooperation in Europe in cooperation with the United Nations Economic Commission for Europe, with the support of the Ministry for Environment and the Belarusian Research Centre "Ecology". The seminar was attended by representatives of Government agencies, NGOs and academia.

66. On the basis of the information provided, the Committee finds that the Party has sufficiently fulfilled the requirements of paragraph 90 (e) of the Committee findings on communication ACCC/C/2009/44. It encourages the Party to carry out further such initiatives around the country to ensure the awareness of all public officials involved in the implementation of the Convention of its requirements, and to report on these activities through its national implementation reports.

67. In the light of the above considerations, the Committee finds that the Party concerned has taken the necessary measures to fulfil the recommendations set out in paragraphs 90 (a) and (e) of the findings on communication ACCC/C/2009/44. However, it further finds that the Party concerned has not yet taken the necessary measures to fulfil the recommendations set out in paragraph 90 (b), (c) and (d) of those findings.

#### IV. Conclusions and recommendations

68. The Committee welcomes the active and constructive engagement of the Party concerned in the compliance review process, including its efforts to provide additional information upon request and to meet deadlines.

69. Having reviewed the information provided in the intersessional period, the Committee finds that the Party concerned has seriously and actively engaged in efforts to follow the recommendations set out in paragraph 4 of decision IV/9b and paragraph 90 of the Committee's findings on communication ACCC/C/2009/44. Based on the information provided, the Committee considers that the Party concerned has fulfilled paragraphs 90 (a) and 90 (e) of the Committee's findings on communication ACCC/C/2009/44. However, while welcoming the progress made by the Party concerned, the Committee regrets that the Party has not yet taken the necessary measures to fulfil the recommendations set out in paragraphs 4 (a)-(i) of decision IV/9b or paragraphs 90 (b), (c), and (d) of the Committee's findings on communication ACCC/C/2009/44.

70. The Committee recommends that, pursuant to paragraphs 35 of the annex to decision I/7, the Meeting of the Parties:

- (a) Endorse the above report of the Committee with regard to compliance by Belarus;
- (b) Welcome the efforts made by the Party concerned to meet the recommendations of the Committee and the progress it has achieved in that respect;
- (c) Recommend to the Party concerned that it take the necessary legislative, regulatory, and administrative measures and practical arrangements to ensure that:
  - (i) The general law on access to information refers to the 1992 Law on Environmental Protection that specifically regulates access to environmental information, in which case the general requirement of stating an interest does not apply;<sup>5</sup>
  - (ii) There is a clear requirement for the public to be informed of decision-making processes that are subject to article 6 of the Convention in an adequate, timely and effective manner;<sup>6</sup>
  - (iii) There are clear requirements regarding the form and content of the public notice, as required under article 6, paragraph 2, of the Convention;<sup>7</sup>

<sup>5</sup> Decision IV/9b, para. 4 (a).

<sup>6</sup> Ibid., para. 4 (b).

- (iv) There are reasonable minimum time frames for submitting comments during the public participation procedure for all decisions under article 6 of the Convention, including those that may not be subject to an EIA decision procedure, taking into account the stage of decision-making as well as the nature, size and complexity of proposed activities;<sup>8</sup>
- (v) There is a clear possibility for the public to submit comments directly to the relevant authorities (i.e., the authorities competent to take the decisions subject to article 6 of the Convention);<sup>9</sup>
- (vi) There are clear provisions imposing obligations on the relevant public authorities to ensure such opportunities for public participation as are required under the Convention, including for making available the relevant information and for collecting the comments through written submission and/or at the public hearings;<sup>10</sup>
- (vii) There are clear provisions imposing obligations on the relevant public authorities to take due account of the outcome of public participation, and to provide evidence of this in the publicly available statement of reasons and considerations on which the decisions is based;<sup>11</sup>
- (viii) There are clear provisions imposing obligations on the relevant public authorities to:
- a. Promptly inform the public of the decisions taken by them and their accessibility;<sup>12</sup>
  - b. Maintain and make accessible to the public copies of such decisions along with the other information relevant to the decision-making, including the evidence of fulfilling the obligations regarding informing the public and providing it with possibilities to submit comments;<sup>13</sup>
  - c. Establish relevant publicly accessible lists or registers of all decisions subject to article 6 held by them;<sup>14</sup>
- (ix) Statutory provisions regarding situations where provisions on public participation do not apply cannot be interpreted to allow for much broader exemptions than allowed under article 6, paragraph 1 (c), of the Convention;<sup>15</sup>
- (x) The amended legal framework clearly designates which decision is considered to be the final decision permitting the activity and that this decision is made public, as required under article 6, paragraph 9, of the Convention;<sup>16</sup>
- (xi) The full content of all the comments made by the public (whether claimed to be accommodated by the developer or those which are not accepted) is submitted to

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<sup>7</sup> Ibid., para. 4 (c).

<sup>8</sup> Ibid., para. 4 (d).

<sup>9</sup> Ibid., para. 4 (e).

<sup>10</sup> Ibid., para. 4 (f).

<sup>11</sup> Ibid., para. 4 (g).

<sup>12</sup> Ibid., para. 4 (h) (i).

<sup>13</sup> Ibid., para. 4 (h) (ii).

<sup>14</sup> Ibid., para. 4 (h) (iii).

<sup>15</sup> Ibid., para. 4 (i).

<sup>16</sup> Findings on communication ACCC/C/2009/44, para. 90 (b).



the authorities responsible for taking the decision (including those responsible for the *expertiza* conclusion);<sup>17</sup>

(xii) Appropriate practical and other provisions are made for the public to participate during the preparation of plans and programmes relating to the environment;<sup>18</sup>

(d) Request the Party concerned to provide detailed progress reports to the Committee by 31 December 2014, 31 October 2015 and 31 October 2016 on the measures taken and the results achieved in the implementation of the above recommendations.

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<sup>17</sup> Ibid., para. 90 (c).

<sup>18</sup> Ibid., para. 90 (d).