
Compliance Committee to the Convention on
Access to Information, Public Participation
in Decision-making and Access to Justice
in Environmental Matters (Aarhus Convention)

**Second progress review of the implementation of decision V/9a
on compliance by Armenia with its
obligations under the Convention**

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I. Introduction

1. At its fifth session (Maastricht, 30 June–1 July 2014), the Meeting of the Parties to the Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters (Aarhus Convention) adopted decision V/9a on compliance by Armenia with its obligations under the Convention (see ECE/MP.PP/2014/2/Add.1).

II. Summary of follow-up

2. By letter of 20 October 2015, the secretariat sent the Committee's first progress review on the implementation of decision V/9a to the Party concerned together with a reminder of the request by the Meeting of the Parties to provide its second progress report to the Committee by 31 October 2015, and at the latest by 31 December 2015, on the measures taken and the results achieved thus far in implementation of the recommendations set out in decision V/9a.

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

4. At the Committee's request, on 29 January 2016 the secretariat forwarded the Party concerned's second progress report to the communicants of communications ACCC/C/2004/8, ACCC/C/2009/43 and ACCC/C/2011/62 as well as "Dalma-Sona" Human Rights and Environmental Protecting Fund, an observer to the follow-up to decision V/9a concerning compliance by Armenia, inviting them to provide their comments on that report by 19 February 2016.

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

6. At its fifty-second meeting (Geneva, 8-11 March 2016), the Committee reviewed the implementation of decision V/9a in open session taking into account the Party concerned's second progress report and the joint written comments received from NGOs "Transparency International Anticorruption Center" and "Ecological Right" as well as the additional comments made by the Party concerned and NGO "Ecological Right" by audio conference during the open session. Following the discussion in open session, the Committee commenced the preparation of its second progress review on the implementation of decision V/9a in closed session. After taking into account the further written comments provided by the Party concerned and NGOs "Transparency International Anticorruption Center" and "Ecological Right" on 30 and 31 March 2016 respectively, the Committee adopted its second progress review through its electronic decision-making procedure and requested the secretariat to forward it to the Party concerned, the communicants of communications ACCC/C/2004/8, ACCC/C/2009/43 and ACCC/C/2011/62 and registered observers.

Party concerned's second progress report and subsequent information

7. In its second progress report, the Party concerned reported the following:

(a) The Law "On Environmental Impact Assessment and Expertize" was adopted by the National Assembly of Armenia on 21 June 2014 and came into effect on 9 August 2014. The Governmental Decree N1325 "On Defining the Order of Public Notification and Discussions", which is based on article 26 of the above Law, was adopted on 19 November

2014 and came into effect on 13 December 2014. English translations of these legal instruments were prepared with the financial support of the Organization for Security and Cooperation in Europe and submitted to the Committee together with the Party concerned's second progress report. The Party concerned submits that these two legal instruments address the recommendations in decision V/9a.

(b) The draft Law "On Non-governmental Organizations" and the draft amendments to the Administrative Procedure Code initially included provisions to address the legal standing of NGOs, but those provisions have been deleted from the most recent draft. The draft laws are currently pending before the National Assembly and are likely to be included in its spring 2016 agenda. The Party concerned reported that in the light of the above, it has not yet provided an English translation of these draft laws. The Party concerned acknowledged that there are still considerable efforts to be made in order for it to reach full compliance with article 9 paragraph 2 of the Convention.

(c) In March 2015, the Academy of Justice approved the programme of the course "Actual Problems of Environmental Law" as part of the mandatory training programme for judges specialized in administrative law and procedure. The course duration is 10 hours. In October-November 2015, the training was conducted for 16 judges. Annex 3 of the Party concerned's second progress report sets out the syllabus of the training programme. Starting from 2016 the same course will be conducted for judicial candidates and may also be conducted for advocates.

8. After the fifty-second meeting, the Party concerned provided additional information. It reported on its pilot project on strategic environmental assessment (SEA) which aims to build capacities in application of SEA procedures at the national level and raise awareness among various national stakeholders of the benefits of SEA.

9. The Party concerned also noted that in accordance with article 5 of its Constitution, in the case of a contradiction between the provisions of an international treaty ratified by the Republic of Armenia and its laws, the international treaty should prevail. It acknowledged that this provision would not replace the need for proper legal regulation within the administrative procedural legislation and legislation establishing the status of NGOs, in particular establishing precise criteria in accordance with requirements of article 9 paragraph 2 of the Convention. However, it meant that the general legal framework did not nullify the opportunity for NGOs to bring public interest lawsuits before the courts. The Party concerned further stated that the courts directly refer to the Convention as the main international treaty establishing procedural environmental rights and their guarantees.

10. The Party concerned also reported on the recently launched electronic platform for public participation (www.ecolex.am) which enables members of the public as well as non-profit and for-profit organizations to submit comments on draft regulations elaborated by various public authorities.

Comments by communicant of communications ACCC/C/2004/8 and ACCC/C/2009/43 and observer

11. In their joint comments of 21 February 2016 (dated 19 February 2016), NGO "Transparency International Anticorruption Center", one of the communicants of communications ACCC/C/2004/8 and ACCC/C/2009/43 and NGO "Ecological Right", an observer, stated that:

(a) The Law "On Environmental Impact Assessment and Expertize" was not adopted in accordance with the recommendations of the Committee in its findings on communications ACCC/C/2009/43 and ACCC/C/2011/62. The working group headed by the Deputy Minister of Nature Protection and consisting of representatives of interested public organizations developed the draft law. However, the draft law presented to the

National Assembly was changed by the Government in essential respects. The draft presented to the National Assembly received a positive conclusion from the National Assembly's Standing Committee on Agriculture and Environment. On 21 June 2014 the National Assembly adopted the Law "On Environmental Impact Assessment and Expertize" in an extraordinary session in the course of a single day. The adopted text differed drastically from the one submitted by the Government to the Parliament and discussed and approved by the National Assembly's Standing Committee on Agriculture and Environment. It did not properly envisage the role of civil society regarding the implementation of the Convention and neglected many of the recommendations and agreements reached within the working group. Article 14 of the draft law, in particular, was highly distorted. The new version of the draft law was not publicized in advance and was not subjected to public discussion, as required by article 27.1 of the Law on Legal Acts. Decision #1325-N defining the "Procedure of holding public notification and discussions" likewise does not reflect the requirements of the Convention and was adopted without public hearings. NGOs have submitted a claim in the Administrative Court regarding Decision #1325-N, but to date there was no answer on the admissibility of their claim.

(b) The non-compliance with the Convention's requirements regarding access to justice continues. Neither the Administrative Procedure Code nor new draft law on NGOs contain provisions on access to justice for the public concerned in environmental matters. In February 2016, the public hearing on the new draft law on NGOs was held in the National Assembly. Representatives of NGOs presented the Committee's findings on communication ACCC/C/2011/62 and requested to draft the provision on access to justice for environmental NGOs but their request was rejected by the Government's representative. Representatives of the Ministry of Nature Protection and the Aarhus Convention national focal point did not participate or present any concerns regarding the implementation of the Convention.

(c) The training in the Academy of Justice has not improved the courts' understanding of the provisions of the Convention. Rather the situation has worsened. In accordance with the latest ruling of the Administrative Court (approved by the Court of Cassation), the findings of the EIA procedure are not considered binding on public authorities' decision-making.

12. In their subsequent joint written comments dated 31 March 2016, NGOs "Transparency International Anticorruption Center" and "Ecological Right" submitted that the Party concerned had to date failed to implement any of the recommendations made by the Committee concerning communications ACCC/C/2004/08, ACCC/C/2009/43 and ACCC/C/2011/62.

13. They noted that according to the preamble to the Convention, a failure to implement the provisions of the Convention also affected the proper implementation of other international environmental treaties. Thus, by failing to implement the Aarhus Convention, the Party concerned also essentially failed to comply with other international treaties regarding the environment in the frame of which it received significant financial support.

14. The communicant and observer requested that, unless the Party concerned has by the end of 2016 fully executed all necessary legal amendments to:

(a) Define the right of access to justice for NGOs promoting environmental protection;

(b) Clearly and sufficiently define the public participation mechanism in environmental decision-making with regard to both environmental impact assessment and "strategic impact assessment", including the assessment of impact on human health;

the Compliance Committee should recommend to the Meeting of the Parties to the Convention to apply the measure set out in paragraph 37 (g) of the annex to decision I/7,

namely to suspend the special rights and privileges accorded to the Party concerned under the Convention.

III. Considerations and evaluation by the Committee

15. In order to fulfil the requirements of the decision V/9a, the Party concerned would need to provide the Committee with evidence that it had:

(a) Taken the necessary legislative, regulatory and administrative measures and practical arrangements to ensure that:

(i) Thresholds for activities subject to an EIA procedure, including public participation, are set in a clear manner;

(ii) The public is informed as early as possible in the decision-making procedure, when all options are open, and that reasonable time frames are set for the public to consult and comment on project-related documentation;

(iii) The responsibilities of different actors (public authorities, local authorities, developers) in the organization of public participation procedures are defined as clearly as possible;

(iv) A system of prompt notification of the public concerned of the final conclusions of environmental expertise is arranged, e.g., through the website of the Ministry of Nature Protection;¹

(b) Provided the Committee, by no later than 1 September 2014, with an English translation of the text of the EIA law and other legislative measures as they stand on that date for the Committee's review;²

(c) Provided the Committee with evidence that the draft EIA law and other legislative measures that were proposed by the Party concerned to meet the requirements of decision IV/9a have been adopted;³

(d) Reviewed and clarified its legislation, including the law on NGOs and administrative procedures, so as to ensure compliance with article 9, paragraph 2, of the Convention with regard to standing;⁴ and

(e) Taken the measures necessary to raise awareness among the judiciary to promote implementation of domestic legislation in accordance with the Convention.⁵

16. In its first progress review, which reviewed the Party concerned's first progress report, the Committee invited the Party concerned to provide, together with its second progress report or otherwise by 31 December 2015:

(a) English translations of the following legislation:

(i) The new Law "On Environmental Impact Assessment and Expertise", together with any proposed amendments;

(ii) The draft Governmental decree "On public notification and participation";

(iii) The draft Law "On Non-governmental Organizations";

¹ Decision V/9a, para. 4 (c).

² Decision V/9a, para. 5 (a).

³ Decision V/9a, para. 5 (b).

⁴ Decision V/9a, para. 7 (a).

⁵ Decision V/9a, para. 7 (b).

- (iv) The draft amendments to the Administrative Procedure Code on the standing of NGOs.
- (b) A timeline for the adoption of each of the following:
 - (i) The draft Governmental decree “On public notification and participation”;
 - (ii) The draft Law “On Non-governmental Organizations”;
 - (iii) The draft amendments to the Administrative Procedure Code on the standing of NGOs.
- (c) To provide an English translation of the proposed outline for the course for judges and judicial candidates on current problems with national environmental legislation, together with further information regarding the number of hours required to attend the course, which courts’ judges and judicial candidates were required to attend the course, and whether there was an assessment at the end of the course.

17. The Committee welcomes the second progress report of the Party concerned, which was submitted on time, and the information contained therein.

18. With respect to paragraph 4(a) of decision V/9a, the Committee notes that while the dialogue between the Committee and the Party concerned has not ceased, the information provided by the Party concerned is rather concise and thus restricts the ability of the Committee to provide guidance that might assist the Party concerned to achieve compliance with the Convention. The Committee also notes that neither the communicants of communications ACCC/C/2004/8, ACCC/C/2009/43 and ACCC/C/2011/62 or observers have expressed detailed views on the extent to which the substance of the legislation adopted in 2014 meets the requirements of the Convention. The Committee wishes to emphasize that the considered views of communicants and observers are of great value to the process of assessing the implementation of decisions of the Meeting of the Parties on compliance.

19. Regarding paragraph 4(b) of decision V/9a, the Committee welcomes the progress made by the Party concerned through the adoption of the Law “On Environmental Impact Assessment and Expertize” and Decision #1325-N defining the “Procedure of holding public notification and discussions”. At the same time the Committee expresses its concern regarding the delay in adoption of the planned legislation regarding the standing of NGOs, namely the draft Law “On Non-governmental Organizations” and the draft amendments to the Administrative Procedure Code. The Committee expresses its concern as to whether the draft legislation will be adopted before the deadline for the Party concerned’s final progress report on 31 October 2016 and thus in time for the Committee to assess its compliance prior to finalizing its report to the sixth session of the Meeting of the Parties.

20. In relation to paragraph 4(c)(i) of decision V/9a, the Committee welcomes the adoption of the Law “On Environmental Impact Assessment and Expertize” and Decision #1325-N defining the “Procedure of holding public notification and discussions”. The Committee considers that these legal instruments, and in particular article 14 of the Law, show considerable progress towards ensuring that thresholds for activities subject to an EIA procedure, including public participation, are set out in a clear manner. However, the Committee points out that in accordance with article 6, paragraph 1(a) of the Convention, all of the activities set out in annex I to the Convention must be subject to a public participation procedure. Given that a number of activities listed in annex I of the Convention do not appear to be within the scope of article 14 of the Law, the Committee finds that the Party concerned has not yet demonstrated that it has fully met the requirements of paragraph 4 (c)(i) of decision V/9a.

21. With respect to paragraph 4(c)(ii) of decision V/9a, the Committee welcomes the adoption of the Law “On Environmental Impact Assessment and Expertize”. The Committee notes that while the requirement that the public be informed at an early stage of the decision-making procedure when all options are open appears to be met, the time frames set for the public to consult and comment on the project-related documentation are rather short. The Committee notes with concern that the legislation (for example, article 26, paragraphs 2 and 4 of the Law “On Environmental Impact Assessment and Expertize”), would permit authorities to set a timeframe of only seven working days for the public to consult the relevant documentation prior to the public hearing even for large projects with very significant environmental effects. Recalling its findings on, inter alia, communications ACCC/C/2006/16 and ACCC/C/2008/24, the Committee finds that a period of only seven working days for consulting the EIA-related documentation prior to the public hearing may be insufficient in some cases. Likewise, the Committee considers the various timeframes set out in paragraph 15 of the “Procedure of holding public notification and discussions” for the public to submit comments may be too short to allow the public to participate effectively in some cases. The Committee also notes that the Law “On Environmental Impact Assessment and Expertize” does not expressly mention environmental NGOs as part of the public concerned and the Committee assumes that this point will be clarified in the legislation to come. In the light of the above aspects, the Committee finds that the Party concerned has not yet fully met the requirements of paragraph 4 (c) (ii) of decision V/9a.

22. The Committee reminds the Party concerned that pursuant to article 6, paragraph 7 of the Convention, the public is entitled to submit any comments, information, analyses or opinions that it considers relevant to the proposed activity. In this regard, the Committee considers that the second sentence of paragraph 24 of the “Procedure of holding public notification and discussions”, which states “Remarks and proposals, contradicting the requirements of the current legislation, and having no relation to the environmental impact, as well as incorrect calculations or data, shall not be taken into account”, is inconsistent with that requirement. The Committee thus invites the Party concerned to remove or revise the second sentence of paragraph 24 of the “Procedure of holding public notification and discussions” prior to the deadline for the submission of its final progress report on 31 October 2016.

23. Regarding paragraph 4 (c) (iii) of decision V/9a, the Committee welcomes the adoption of the Law “On Environmental Impact Assessment and Expertize” and Decision #1325-N defining the “Procedure of holding public notification and discussions”. The Committee considers that these normative instruments clearly define the responsibilities of different actors (public authorities, local authorities, developers) in the organization of public participation procedures. So long as there are no other aspects of the Party concerned’s legal framework that are inconsistent with these definitions, the Committee finds that the Party concerned has fulfilled the requirements of paragraph 4 (c)(iii) of decision V/9a.

24. In relation to paragraph 4(c)(iv) of decision V/9a, the Committee welcomes the adoption of Decision #1325-N defining the “Procedure of holding public notification and discussions”. The Committee considers that paragraph 49 of the “Procedure of holding public notification and discussions” implements the requirement of paragraph 4(c)(iv) of decision V/9a. So long as paragraph 49 is implemented in practice, the Committee finds that the Party concerned has fulfilled the requirement of paragraph 4(c)(iv) of decision V/9a.

25. With respect to paragraph 5 of decision V/9a, the Committee welcomes the adoption of the Law “On Environmental Impact Assessment and Expertise” and Decision #1325-N defining the “Procedure of holding public notification and discussions” and the English translations of these legal instruments submitted to the Committee. With respect to paragraph 5(b) of decision V/9a, the Committee reminds the Party concerned that there are

still further legislative, regulatory and administrative measures to be taken before the Party concerned can be found to have fulfilled all requirements of decision V/9a. In addition, in accordance with paragraph 5(a) of decision V/9a, the Party concerned should provide the Committee with English translations of all relevant draft legislative measures prior to their adoption. The Committee therefore finds that the Party concerned has not yet fully met the requirements of paragraph 5 of decision V/9a.

26. Regarding paragraph 7(a) of decision V/9a, the Committee notes that the draft legislation that the Party concerned contends will ensure standing of the public concerned in compliance with article 9, paragraph 2 of the Convention is not yet adopted. The Committee accordingly finds that the Party concerned has not yet fulfilled the requirements of paragraph 7 (a) of decision V/9a. The Committee reminds the Party concerned that the legislation fully meeting the requirements of paragraph 7(a) of decision V/9a should be adopted by the deadline for the Party concerned's final progress report, i.e. 31 October 2016, in order for the Committee to assess its compliance before finalizing its report to the sixth session of the Meeting of the Parties.

27. With respect to paragraph 7(b) of decision V/9a, the Committee welcomes the measures taken to raise awareness among the judiciary to promote implementation of domestic legislation in accordance with the Convention. In this regard, the Committee notes with appreciation the content of the judges' training curriculum. However the Committee notes that paragraph 8 of decision V/9a requires the Party concerned to provide information not only on the measures taken, but also on the results achieved in implementation of the recommendation. The Committee accordingly finds that the Party concerned has not yet fully fulfilled the requirements of paragraph 7 (b) of decision V/9a.

28. In the light of the above, the Committee finds that the Party concerned has not yet fulfilled the requirements of paragraphs 4 (b), 4 (c) (i), 4 (c) (ii), 5, 7(a) and 7(b) of decision V/9a, but welcomes the steps taken by the Party concerned to date in that direction.

29. The Committee invites the Party concerned, prior to the submission of its final progress report due on 31 October 2016:

(a) With respect to the recommendations set out in paragraphs 4 (b), 5 (a) and 7 (a) of decision V/9a, to accelerate the process of adoption of the Law "On Non-governmental Organizations" and the amendments to the Administrative Procedure Code and to provide the Committee with English translations of the drafts of the abovementioned laws in advance of their adoption;

(b) Regarding the recommendation set out in paragraph 4 (c) (i) of decision V/9a, to provide the Committee with English translations of the relevant excerpts of its legislation to demonstrate that all the activities listed in annex I of the Convention would be subject to a public participation procedure in accordance with article 6, paragraph 1(a) of the Convention.

(c) With respect to the recommendations set out in paragraph 4 (c) (ii) of decision V/9a and the Committee's considerations set out in paragraphs 21 and 22 above, to remedy the omission of environmental NGOs from the scope of the "public concerned"; to increase the short timeframes for the public to consult project-related documentation and to submit comments within the EIA procedure; and to remove the unwarranted restriction in paragraph 24 of the "Procedure of holding public notification and discussions" on the public's right to submit any comments, information, analyses or opinions it considers relevant to the proposed activity.

30. The Committee invites the Party concerned, together with its final progress report due on 31 October 2016 to:

(a) Provide evidence before the Committee that the requirements of paragraphs 4 (b), 4 (c) (i), 4 (c) (ii), 5, 7(a) and 7(b) of decision V/9a have been fulfilled;

(b) Provide the Committee with English translations of all legislation adopted for the purpose of implementing decision V/9a;

(c) Provide the Committee with more information on the outcomes of the trainings carried out in accordance with paragraph 7(b) of decision V/9a – for example attendance, lecturers, feedback from participants, media reports, articles in the specialized media provoked by the trainings.

IV. Conclusions

31. The Committee finds that the Party concerned has not yet fulfilled the requirements of decision V/9a, though it welcomes the steps taken by the Party concerned to date in that direction.

32. The Committee invites the Party concerned, prior to the submission of its final progress report due on 31 October 2016:

(a) With respect to the recommendations set out in paragraphs 4 (b), 5 (a) and 7 (a) of decision V/9a, to accelerate the process of adoption of the Law “On Non-governmental Organizations” and the amendments to the Administrative Procedure Code and to provide the Committee with English translations of the drafts of the abovementioned laws in advance of their adoption;

(b) Regarding the recommendation set out in paragraph 4 (c) (i) of decision V/9a, to provide the Committee with English translations of the relevant excerpts of its legislation to demonstrate that all the activities listed in annex I of the Convention would be subject to a public participation procedure in accordance with article 6, paragraph 1(a) of the Convention;

(c) With respect to the recommendations set out in paragraph 4 (c) (ii) of decision V/9a and the Committee’s considerations set out in paragraphs 21 and 22 above, to remedy the omission of environmental NGOs from the scope of the “public concerned”; to increase the short timeframes for the public to consult project-related documentation and to submit comments within the EIA procedure; and to remove the unwarranted restriction in paragraph 24 of the “Procedure of holding public notification and discussions” on the public’s right to submit any comments, information, analyses or opinions it considers relevant to the proposed activity.

33. The Committee invites the Party concerned, together with its final progress report due on 31 October 2016 to:

(a) Provide evidence before the Committee that the requirements of paragraphs 4 (b), 4 (c) (i), 4 (c) (ii), 5, 7(a) and 7(b) of decision V/9a have been fulfilled;

(b) Provide the Committee with English translations of all legislation adopted for the purpose of implementing decision V/9a;

(c) Provide the Committee with more information on the outcomes of the trainings carried out in accordance with paragraph 7(b) of decision V/9a – for example attendance, lecturers, feedback from participants, media reports, articles in the specialized media provoked by the trainings.

34. The Committee reminds the Party concerned that all measures necessary to implement decision V/9a must be completed by, and reported upon in, the Party’s final progress report due on 31 October 2016 as that progress report will be the final opportunity for the Party concerned to demonstrate to the Committee that it has fully met the requirements of the decision.