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Meeting of the Parties to the Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters

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Item 5 (b) of the provisional agenda

Procedures and mechanisms facilitating the implementation of the Convention: compliance mechanism

Compliance by Turkmenistan 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 Turkmenistan in the intersessional period in implementing decision IV/9g of the Meeting of the Parties on compliance by Turkmenistan with its obligations under the Convention (see ECE/MP.PP/2011/2/Add.1).

* The present document has been submitted late due to the need for further consultation on the document before its submission.



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I. Introduction — decision IV/9g

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/9g on compliance by Turkmenistan with its obligations under the Convention (see ECE/MP.PP/2011/2/Add.1).

2. Turkmenistan's compliance has been under review by the Compliance Committee since 2004, beginning with communication ACCC/C/2004/5 relating to the Act on Public Associations. In its findings on that communication the Committee found Turkmenistan to be in non-compliance with article 3, paragraphs 4 and 9, of the Convention and consequently, to be in non-compliance in general with article 3, paragraph 1, of the Convention (see ECE/MP.PP/C.1/2005/2/Add.5). The Committee made recommendations directly to the Meeting of the Parties.

3. Through decision II/5c (ECE/MP.PP/2005/2/Add.9), the Meeting of the Parties at its second session (Almaty, Kazakhstan, 25–27 May 2005) endorsed the Committee's findings on communication ACCC/C/2004/5 and, among other things, requested the Party concerned to amend the Act on Public Associations with a view to bringing all of its provisions into compliance with the Convention.

4. During the intersessional period 2005–2008, the Committee followed up with Turkmenistan on the implementation of decision II/5c¹ and submitted its report for the consideration of the Meeting of the Parties at its third session (Riga, 11–13 June 2008) (ECE/MP.PP/2008/5/Add.8). On the basis of the information before it at that time, the Committee concluded that Turkmenistan had failed to implement the measures referred to in paragraphs 2 to 5 of decision II/5c, "apparently because it contested the finding of non-compliance by the Meeting [of the Parties]" (ibid., para. 17). The Committee did not consider that the information and argumentation provided by the Party concerned during the intersessional period provided grounds for the Meeting of the Parties to revise its earlier finding of non-compliance. It recommended to the Meeting of the Parties to confirm its earlier finding of non-compliance and also to consider whether to apply the measures set out in paragraph 37 of the annex to decision I/7 on review of compliance.

5. Through decision III/6e (ECE/MP.PP/2008/2/Add.13), the Meeting of the Parties at its third session confirmed its earlier endorsement of the Committee's findings and decided to issue a caution to Turkmenistan, to become effective on 1 May 2009, unless Turkmenistan had fully satisfied the conditions reproduced in subparagraphs (a) to (c) below, and had notified the secretariat of this fact by 1 January 2009. The successful fulfilment of the following conditions was to be established by the Committee:

(a) The Act on Public Associations was amended in such a way as to make clear that foreign citizens and persons without nationality could enjoy the same rights as citizens in the formation of and participation in public associations;

(b) The Act on Public Associations was amended in such a way as to make clear that members of the public could conduct activities on behalf of non-registered public associations in harmony with the requirements of the Convention, in particular, article 3, paragraph 4;

(c) Other legislation did not run counter to the above amendments.

¹ Documents related to the follow-up on decision II/5c are available from <http://www.unece.org/env/pp/compliance/compliancecommittee/ccimpldocsturkmenistan.html>.

6. The Meeting of the Parties also requested Turkmenistan to regularly report to the Committee.

7. During the intersessional period 2008–2011, the Committee followed up with Turkmenistan on the implementation of decision III/6e.² At its twenty-third meeting (Geneva, 31 March–3 April 2009), the Committee found that the Government had failed to communicate, by 1 January 2009 or since, that it had taken measures to implement the conditions set out in paragraph 5 of decision III/6e, and in particular to amend the Act on Public Associations in such a way as to bring it into compliance with the Convention. In the light of the Committee's findings, the caution entered into effect on 1 May 2009. Further to the invitation of the Government, a mission of members of the Committee was organized from 18 to 20 April 2011 to meet with representatives of the Government and civil society. On the basis of the information received during the intersessional period and the outcomes of the discussions during the mission in April 2011, the Committee submitted its report for consideration by the Meeting of the Parties at its fourth session (ECE/MP.PP/C.1/2011/4/Add.2).³

8. Further to the Committee's recommendations, through decision IV/9g, the Meeting of the Parties at its fourth session took note of the Committee's report, noted with appreciation the recent engagement of the Party concerned, and decided to suspend the caution issued to the Party concerned through decision III/6e, which had entered into effect on 1 May 2009. The Meeting of the Parties also decided that the caution should re-enter into effect on 1 January 2013 unless the Party concerned:

(a) Had amended the Act on Public Associations with a view to bringing all of its provisions into compliance with the Convention, as requested by the Meeting of the Parties through paragraph 2 of decision II/5c;

(b) Had notified the secretariat of this fact by 1 October 2012.

9. The successful fulfilment of those conditions was to be established by the Committee. In addition, the Meeting of the Parties requested, *inter alia*, to avoid a situation where the Act on Public Associations might need to be revised again in the near future, that the Party concerned should ensure that the revisions to the Act on Public Associations were made in accordance with:

(a) The suggestions made by members of the Compliance Committee at the working session held during its mission to Turkmenistan on 18 April 2011 (informal document C.1/2011/4/Add.2/Inf.1);⁴

(b) The outcome of the round tables organized by the National Institute of Democracy and Human Rights under the President of Turkmenistan and the International Center for Not-for-Profit Law in 2009 (informal document C.1/2011/4/Add.2/Inf.2);⁵

(c) The comments of the Organization for Security and Cooperation in Europe's Office for Democratic Institutions and Human Rights dated 22 June 2010 (informal document C.1/2011/4/Add.2/Inf.3).⁶

10. The Meeting of the Parties also requested that the Party concerned examine other relevant legislation, including its Code of Administrative Offences and the Presidential

² Documents related to the follow-up on decision III/6e are available from <http://www.unece.org/env/pp/compliance/compliancecommittee/ccimpldocsturkmenistanmop3.html>.

³ This document is available on the web page for the Committee's thirty-second meeting (<http://www.unece.org/index.php?id=21768>).

⁴ Ibid.

⁵ Ibid.

⁶ Ibid.

Decree on the Registration of Public Associations, with a view to ensuring that all relevant legislation was consistent with the provisions of the revised Act on Public Associations and, together, provided a clear and transparent framework to implement the provisions of the Convention, as required by article 3, paragraph 1, of the Convention. The Meeting of the Parties further requested, in accordance with paragraph 4 of decision II/5c, that the Party concerned carry out the measures referred to above with the involvement of the public, including relevant non-governmental and international organizations. It also requested, in order to ensure their effective implementation, that the measures be carried out through constructive cooperation between the Ministry of Nature Protection and the Ministry of Justice, whose engagement as the competent authority for the Act on Public Associations was crucial.

II. Summary of follow-up action on decision IV/9g

11. At its thirty-seventh meeting (Geneva, 26–29 June 2012), the Committee requested the secretariat to remind the Party concerned of its obligation to notify the secretariat by 1 October 2012 of the successful fulfilment of the conditions set out in paragraph 3 of decision IV/9g. The Committee agreed that at its thirty-ninth meeting (Geneva, 11–14 December 2012) it would consider the material expected by the Party and would establish whether the caution should re-enter into effect on 1 January 2013.

12. A letter was sent to the Party concerned on 15 August 2012.

13. On 2 October 2012, the Party concerned submitted its report. In its report, the Party informed the Committee of its efforts to implement the Convention generally and requested that a representative of the Party concerned be granted an opportunity to present its position at the Committee's thirty-ninth meeting.

14. On 29 November 2012, using its electronic decision-making procedure, the Committee requested the secretariat to send additional questions to the Party concerned in order to clarify some issues on the progress of the Party concerned in following up with the recommendations of the Meeting of the Parties.

15. On 11 December 2012, the Party concerned provided its reply.

16. At its thirty-ninth meeting, the Committee took note of the additional information submitted by the Party concerned. At that meeting, the Committee discussed the matter in open session with a representative of the Party concerned. The Party concerned primarily stressed that, because the Act on Public Associations was not merely an environmental law, but also involved a range of social and political issues, the Ministry of Environment had to coordinate with a number of other ministries and authorities and it had thus not been possible to proceed with the amendments as quickly as required by decision IV/9g. A huge amount of work had already taken place to reform national legislation following the recommendations of the Committee and the Meeting of the Parties: an advance draft of the proposed amendments was under discussion among all the relevant authorities, there appeared to be no disagreement on the substance of the amendments, and the draft would soon be sent to the Cabinet and then submitted to the parliament. However, there were a number of procedural steps and that might still take some time. The Party concerned also provided an outline of other laws that were under reform. It agreed to submit a copy of the proposed amendments, and asked the Committee to consider the difficulties it had encountered when it took its decision on whether the caution should re-enter into force.

17. During the discussion, an observer expressed its disappointment at the very slow progress demonstrated by the Party concerned with regard to complying with the Convention since 2005.

18. The Committee then deliberated on the matter in closed session. The Committee observed that the Meeting of the Parties in its decision had been clear as to the condition to be fulfilled and the deadlines to be met. After considering the efforts undertaken and the progress achieved by the Party concerned, the Committee found that the Act on Public Associations had not yet been amended and thus the formal condition of decision IV/9g had not been met. Therefore, the caution would re-enter into effect on 1 January 2013.

19. The Committee, nevertheless, appreciated the efforts described by the Party concerned towards compliance with the decision IV/9g. It decided to urge the Party concerned to make efforts to fulfil the conditions set by the decision as soon as possible and to report to the Committee on the progress achieved on 1 June 2013 and on 1 November 2013. The Committee would then decide on what further steps to be taken and, depending on whether the Act was adopted, it would reflect that in its report to the Meeting of the Parties and consider recommending that the caution be lifted.

20. The Committee then announced its decision in public session. It requested the Party concerned to submit a copy of the draft law and offered to review the draft, if the Party concerned agreed. It then agreed to review the situation at its forty-first meeting.

21. The decision of the Committee that the caution re-entered into effect on 1 January 2013 was officially communicated to the President of Turkmenistan by letter of the Executive Secretary of the United Nations Economic Commission for Europe (ECE) on 25 January 2013.

22. At its forty-first meeting (Geneva, 25–28 June 2013), the Committee noted that despite the reminder sent by the secretariat, no information had been received from the Party concerned by the deadline of 1 June 2013. It instructed the secretariat to urge the Party concerned to provide the information as soon as possible. It agreed that it would review the information again at its forty-second meeting. It would then also consider its recommendations to the Meeting of the Parties at its fifth session, which did not exclude the possibility for a recommendation that the issued caution should remain in effect.

23. On 11 July 2013, the ECE Executive Secretary wrote to the Party concerned strongly encouraging it to provide the requested information as soon as possible, but by no later than 15 August 2013, to enable the Committee to consider it at its forty-second meeting (Geneva, 24–27 September 2013). He indicated that at that meeting the Committee would also consider its recommendations to the fifth session of the Meeting of the Parties, which did not exclude a recommendation that the issued caution would remain in effect.

24. At its forty-second meeting, the Committee noted that no response had been received to the letter of 11 July 2013 from the Party concerned. The Committee requested the secretariat to send a letter to the President of Turkmenistan bringing to his attention the issue of the Party's continued non-compliance with the Aarhus Convention. The Committee also commenced preparation of its draft report to the Meeting of the Parties at its fifth session on the implementation of decision IV/9g and agreed to continue work on the draft report at its forty-third meeting.

25. On 12 November 2013, the ECE Executive Secretary again wrote to the Party concerned to inform it that, the final date of 1 November 2013 for it to report on its progress having passed without a report having been submitted, at its upcoming forty-third meeting, the Committee would prepare its recommendations to the fifth session of the Meeting of the Parties and propose any appropriate measures to bring about full compliance. The Executive Secretary strongly encouraged the Party concerned to provide the requested information as soon as possible and by no later than 30 November 2013, in order that it might be taken into account in the preparation of the Committee's recommendations to the Meeting of the Parties at its fifth session.

26. On 9 December 2013, the Party concerned provided a progress report on its ongoing work to bring its national legislation into accord with the provisions of the Aarhus Convention. The report began with an overview of how the Party had implemented each pillar of the Convention in national law and practice. It then provided a summary of its cooperation with ECE since the Compliance Committee adopted its findings on Turkmenistan in 2005, as well as the actions it has taken to comply with decisions II/5e, III/6e and IV/9g of the Meeting of the Parties. With respect to actions which had taken place since the fourth session of the Meeting of the Parties, the Party referred to the meeting that had taken place on 26 September 2012 between the Minister for Nature Protection and the Deputy Executive Secretary of ECE at the premises of the Ministry for Nature Protection. At that meeting, the Ministry had drawn the Deputy Executive Secretary's attention to the fact that many provisions on the Act on Public Associations already complied with the Convention's requirements. Moreover, the process of amending such important laws, which formed the basis for building civil society, could take several years, and thus would require more time than was recommended in decision IV/9g. In the light of the Party's work to implement the Convention, the Ministry for Nature Protection requested the Deputy Executive Secretary's assistance to revoke or reformulate the Compliance Committee's conditions. The Party's report recalled that following this meeting, on 28 September 2012, the Ministry had sent the ECE Executive Secretary a detailed explanation of issues related to the implementation of the Convention in Turkmenistan. According to the Party, neither its in-depth explanation provided in the letter of 28 September 2012 nor the detailed oral clarifications by the Ministry have been met with understanding or reflected in the Compliance Committee's course of action towards Turkmenistan.

27. With respect to the amendments to the Act on Public Association recommended by the Compliance Committee, the Party reported that in August 2013 the Ministry of Nature Protection had sent these recommendations for review by the Mejlis (parliament), the Ministry of Justice and the National Institute of Democracy and Human Rights under the President of Turkmenistan. In their comments, the Ministry of Justice and the National Institute of Democracy and Human Rights under the President of Turkmenistan had indicated that, while it might be appropriate to implement some of the recommendations proposed, they did not consider it appropriate to make the fundamental amendments proposed by the Aarhus Convention Compliance Committee regarding, inter alia, the right of non-citizens to found and to participate in public associations and the prohibition of the activities of non-registered associations.

28. With respect to the right of non-citizens to found and to participate in public associations, the Party concerned contended that this was addressed through section 15 of the 2011 Law on the Legal Status of Foreign Nationals, which provides that foreign nationals in Turkmenistan have the right to join public associations, if this is provided for by the associations' charters.

29. In relation to the prohibition of the activities of non-registered associations, the Party concerned submitted that this does not hinder the exercise by citizens of their right to freedom of association.

30. The Party concerned submitted that there was a divergence between the Compliance Committee and Turkmenistan in interpreting Turkmenistan's compliance with the Convention. It stated that it intended to continue active consultations and cooperation with ECE and in the light of its positive experience of cooperation with ECE to date it suggested that a delegation from the Convention visit Turkmenistan to further discuss the issue and to meet with ministries and departments, public organizations, the private sector and so forth. As an additional possible activity at national level, an interdepartmental working group could be set up to prepare appropriate amendments to the applicable legislation of

Turkmenistan, in accordance with the request of the Aarhus Convention Compliance Committee.

31. On 17 February 2014, at the request of the Committee, the Party concerned provided a copy of its 2011 Law on the Legal Status of Foreign Nationals referred to in its progress report of 9 December 2013.

32. On 26 March 2014 the Party concerned sent a note verbale to the secretariat, announcing that it had adopted on 1 March 2014 a new Law on Nature Protection, which “provides for rights of citizens in conformity with provisions of the Aarhus Convention”. The text of the new law, in Russian, was attached to the note verbale. According to article 9 of the new Law, which pertains to “rights and obligations of citizens in the sphere of nature protection”:

1. Citizens of Turkmenistan, foreign citizens and persons without citizenship have a right to a favourable environment, to defend it from the negative impact of economic and other activities.

2. Citizens have the right;

...

2) To create public associations undertaking activities in the area of nature protection;

3) To address complaints, communications and proposals on environmental matters to public authorities, and also apply to judicial bodies to ensure the defence of impaired environmental rights;

4) To receive full, reliable information about the state of the environment in the places where they live;

5) To take part in assemblies, meeting and demonstrations, [and] referenda on nature protection issues.

33. On 26 March 2014, the communicant of ACCC/C/2004/5 stated that, in his view, the new legislation did not change the situation with respect to the rights of non-citizens, though the communicant did not substantiate his view further.

34. At its forty-fourth meeting (Geneva, 25–28 March 2014), the Committee, taking into account the information received, completed its draft report on the implementation of decision IV/9g and requested the secretariat to forward the draft report to the Party and the communicant of ACCC/C/2004/5 for their comments. The Committee agreed to finalize its report through its electronic decision-making procedure, taking into account any comments received by the specified deadline, and then to submit the report to the Meeting of the Parties at its fifth session.

35. By letter of 28 April 2014, the ECE Executive Secretary wrote to the Minister for Foreign Affairs of Turkmenistan enclosing the Committee’s draft report for the Government’s comments by 16 May 2014. The draft report was also forwarded to the communicant of ACCC/C/2004/5 on the same date.

36. On 13 May 2014, the Party concerned sent a note verbale to the secretariat, stating that on 3 May 2014 it had adopted a new Act on Public Associations which had entered into force on 10 May 2014. The text of the new law, in Russian, was enclosed.

37. On 16 May 2014, the Party concerned sent a further note verbale enclosing its comments on the Committee’s draft report on the implementation of decision IV/9g. Its comments included an explanation of the ways in which the new Act on Public Associations had implemented the recommendations of the Committee, including those

made during the mission to Turkmenistan by representatives of the Committee in April 2011.

38. In its comments of 16 May 2014, the Party concerned stated that in adopting its new Law on the Legal Status of Foreign Nationals (dated 26 March 2011), its new Law on Nature Protection (dated 1 March 2014) and its new Act on Public Associations (dated 3 May 2014), it had taken into account the recommendations of the Compliance Committee relating to the 2003 Act on Public Associations, inter alia, in the following respects:

(a) A clear rule has been formulated concerning the participation of foreign citizens and persons without citizenship in establishing and participating in the operation of public associations. In particular, article 4, paragraphs 1 and 2, of the 2014 Act on Public Associations provide that:

“1. The right of citizens to establish public associations is to be realized both directly, through the association of natural persons, and via legal entities that are public associations.

2. In cases provided for by this Act, foreign citizens and persons without citizenship who are residing in Turkmenistan may, alongside citizens of Turkmenistan, become founders of public associations.”

In addition, article 11, paragraph 5 of the Act on Public Associations provides that natural persons and legal entities that are public associations may be members of public associations;

(b) Under article 9, paragraphs 1 and 2, of the 2014 Law on Nature Protection, “citizens of Turkmenistan (including foreign citizens and persons without citizenship) have the right to ... create public associations undertaking activities in the area of nature protection”. Through the rights set out in those two provisions (see para. 32 above), public associations have the right of access to environmental information, the opportunity to participate in decision-making and the right to have access to justice in environmental matters. Moreover, article 26 of the 2014 Act on Public Associations gives public associations, for the purposes stated in their charters, the right to participate in decision-making by government bodies and local authorities according to the procedure provided for by that Act and by other legislation of Turkmenistan, to represent and protect its rights, the rights and lawful interests of its members and participants and of other citizens and to take initiatives on social issues and to submit suggestions to government bodies;

(c) Article 17, paragraph 3, of the 2003 Act on Public Associations, which provided for a prohibition on the operation of an unregistered public association has been omitted from the new Act on Public Associations. Any person conducting activities on behalf of an unregistered public association is to bear responsibility in accordance with the legislation of Turkmenistan. The new Act does not set out a direct ban on the operation of unregistered public associations or their responsibility for this;

(d) The 2014 Act on Public Associations more clearly describes the restriction on persons with criminal convictions registering a public association set out in the 2003 Act as applying only to those that have been declared legally incapable by a court or that have an unspent or incorrectly expunged conviction for committing a serious or especially serious crime (article 22, para. 1(6));

(e) The 2014 Act on Public Associations takes a more specific approach to issues of responsibility for violation of the legislation of Turkmenistan on public associations. Moreover, it restricts the powers of the Ministry of Justice to cancel the registration of a public association and to suspend their operation. Under the 2014 Act, public associations may be liquidated only by judgment of a court (article 36). Moreover, if a court reverses a judgment suspending or liquidating a public association, compensation must be paid to the public association by the State (article 37, para. 2).

39. No comments were received from the communicant of ACCC/C/2004/5 on the Committee's draft report on the implementation of decision IV/9g.

40. Taking into account the information and comments received from the Party concerned on 13 and 16 May 2014, the Committee finalized its report on the implementation of decision IV/9g using its electronic decision-making procedure and submitted it to the Meeting of the Parties at its fifth session.

III. Consideration and evaluation by the Committee

41. The Committee welcomes the efforts made by the Party concerned during the final months of the intersessional period 2011–2014 to fulfil the requirements of decision IV/9g, including the adoption in March 2014 of the new Law on Nature Protection and in May 2014, of the new Act on Public Associations. It also appreciates the Party concerned's reports to the Committee on its progress.

42. In order to fulfil the requirements of decision IV/9g, the Party concerned would need to provide the Committee with evidence that:

(a) It has amended the Act on Public Associations with a view to bringing all of its provisions into compliance with the Convention as requested by the Meeting of the Parties through paragraph 2 of decision II/5c, and in particular that:

(i) It has amended the Act on Public Associations in such a way as to make clear that foreign citizens and persons without nationality can enjoy the same rights as citizens in the formation of and participation in public associations, as required by article 3, paragraph 9, of the Convention;

(ii) It has amended the Act on Public Associations in such a way as to make clear that members of the public may conduct activities on behalf of non-registered public associations in harmony with the requirements of the Convention, in particular, article 3, paragraph 4;

(b) The Act on Public Associations as amended does indeed fulfil the above requirements of the Convention, and in particular, article 3, paragraphs 1, 4 and 9.

43. The Committee has had limited time to examine the various recent legislative developments undertaken by the Party concerned, including the 2011 Law on the Legal Status of Foreign Nationals, the text of which was provided to the Committee for the first time on 17 February 2014, the new Law on Nature Protection provided on 26 March 2014 and the 2014 Act on Public Associations provided on 13 May 2014.

44. With respect to the condition in paragraph 42 (a) (i) above, regarding the right of foreign citizens and persons without citizenship to participate in public associations, article 11, paragraph 5, of the 2014 Act on Public Associations provides that natural persons and legal entities that are public associations may be members of public associations. In the light of the letter by the Party concerned of 16 May 2014, the Committee understands that in this paragraph the term "natural persons" has been deliberately chosen by the legislature instead of the term "citizens", used in the 2003 Act on Public Associations, in order to include foreign citizens and persons without citizenship as well as Turkmen citizens. The Committee notes that the Party concerned thus uses the terminology of article 2, paragraph 4, of the Convention. The Committee has not been provided with any information to suggest that the term "natural persons" in the 2014 Act should be read in any other way or to suggest that the 2014 Act on Public Associations does not ensure foreign citizens or persons without citizenship a right to join public associations. The Committee therefore concludes that the Party concerned is no longer in non-compliance with article 3, paragraph 9, in this respect.

45. Regarding the right of foreign citizens and persons without citizenship to found public associations, article 11, paragraph 1, of the 2014 Act on Public Associations provides that the founders of a public association may be natural persons who have attained the age of 18 and legal entities that are public associations. In this respect too, the Committee understands that the term “natural persons” has been deliberately chosen instead of the term “citizens”, which was used in the 2003 Act, in order to clarify that foreign citizens and persons without citizenship are included. The Committee has not been provided with any information to suggest that the term “natural persons” in article 11, paragraph 1, should be read in any other way. Besides article 11, the founding of a public association is regulated in article 18, paragraph 1, which states that “Public associations are to be established on the initiative of their founders, of whom there must be no fewer than five”. The Committee notes that article 18, paragraph 1, omits the express requirement contained in the 2003 Act for the five founders to be citizens.

46. In addition to the above provisions, article 4, paragraph 2, of the 2014 Act on Public Associations states that “in cases provided for by this Act, foreign citizens and persons without citizenship who are residing in Turkmenistan may, alongside citizens of Turkmenistan, become founders of public associations”. Thus, article 4, paragraph 2, clearly envisages that non-citizens may become founders. The term “alongside” (*һаряду с*) in that provision may be understood in different ways. Based on a contextual interpretation of the quoted provision, in the light of article 11, paragraph 2, and article 18, paragraph 1, discussed above, and also in light of the explanation by the Party concerned in its letter of 16 May 2014 that under article 9 of the 2014 Law on Nature Protection “citizens of Turkmenistan (including foreign citizens and persons without citizenship)” have the right to create public associations in the area of nature protection, the Committee understands the intended interpretation by the legislature of article 4, paragraph 2, of the 2014 Act on Public Association to be that foreign citizens and persons without citizenship may, in the same way as citizens of Turkmenistan, become founders of public associations. The Committee has not been provided with any information to indicate that this is not the interpretation intended. Obviously, since the Act was so recently adopted no jurisprudence has yet been developed on its interpretation. The Committee therefore emphasizes that so long as article 4, paragraph 2, will indeed be applied by the Party concerned in this way in practice, the Party concerned is no longer in non-compliance with article 3, paragraph 9, with respect to the right of non-citizens to found public associations.

47. On the basis of its considerations set out in the above paragraphs, the Committee finds that through article 4, paragraph 2, and article 11, paragraphs 1 and 5, and article 18, paragraph 1, of the 2014 Act on Public Associations, the Party concerned is no longer in non-compliance with article 3, paragraph 9, of the Convention with respect to the rights of non-citizens to found and participate in public associations.

48. With respect to the condition in paragraph 42 (a) (ii) above, in its comments dated 16 May 2014 on the draft of the present report, the Party concerned stated that article 17, paragraph 3, of the 2003 Act on Public Associations, which prohibited the operation of an unregistered public association, has been omitted from the 2014 Act on Public Associations. The Party concerned stated that any person conducting activities on behalf of an unregistered public association is to bear responsibility in accordance with the legislation of Turkmenistan. It stated that the new Act does not set out a direct ban on the operation of unregistered public associations and their responsibility for this.

49. The Committee considers that, notwithstanding the submission above by the Party concerned, article 7, paragraph 2, of the 2014 Act is very similar to article 17, paragraph 3, of the 2003 Act which the Committee, in its findings on communication ACCC/C/2004/5, found not to comply with article 3, paragraph 4, of the Convention. Article 17, paragraph 3, of the 2003 Act stated: “Activities of non-registered public association is prohibited. The person, conducting the activity on behalf of non-registered public association, bears

responsibility in accordance with the legislation of Turkmenistan.” Article 7, paragraph 2, of the 2014 Act states: “Activities of unregistered public associations in the territory of Turkmenistan is prohibited.”

50. The Committee recalls that, in its progress report of 9 December 2013, the Party concerned asserted that the prohibition on activities of non-registered associations set out in article 17, paragraph 3, of the 2003 Act on Public Associations did not hinder the exercise by citizens of their right to freedom of association and that article 9, paragraph 2, of the 2014 Law on Nature Protection provides that citizens have the right, inter alia, to:

- (a) Participate in nature protection and environmental rehabilitation activities;
- (b) Address complaints, communications and proposals on environmental matters to public authorities, and also apply to judicial bodies to ensure the defence of impaired environmental rights;
- (c) Take part in assemblies, meetings, demonstrations and referendums on nature protection issues, etc.

51. It is the Committee’s understanding that the activities listed in article 9, paragraph 2, of the Act on Public Associations may be conducted by individuals or groups of individuals. It is not clear, however, whether a group of individuals who decide to come together, for example, to undertake environmental rehabilitation activities or to take part in demonstrations on nature protection issues and, in doing so, choose to identify themselves by a common name would then be considered as acting as an “unregistered public association” and thus find their activities to be prohibited under article 7, paragraph 2, of the 2014 Act on Public Associations.

52. Moreover, in its comments on the draft of the present report, the Party concerned stated that any person conducting activities on behalf of an unregistered public association is to bear responsibility in accordance with the legislation of Turkmenistan. The Committee has no information on whether that responsibility may include fines or other sanctions. If it did, that would appear contrary to the requirement in article 3, paragraph 8, of the Convention that persons exercising their rights in conformity with the Convention should not be penalized in any way for their involvement.

53. While the explicit guarantee of the rights of citizens in environmental matters set out in article 9, paragraph 2, of the 2014 Law on Nature Protection appears a significant step in the right direction, in the light of its concerns outlined in paragraphs 53 and 54 above, the Committee is not yet in a position to conclude that article 9, paragraph 2, of the Law on Nature Protection, including its implementation in practice, is sufficient to bring the Party concerned into full compliance with decision IV/9g and the Convention itself, so as to ensure that all members of the public may conduct activities in accordance with article 3, paragraph 4, of the Convention. The Party concerned thus remains in non-compliance with that provision.

54. The Committee considers that in order to meet the requirements of article 3, paragraph 4, of the Convention, the Party concerned would need to show that article 9 of the Law on Nature Protection prevails over the prohibition on activities of non-registered associations set out in article 7, paragraph 2, of the 2014 Act on Public Associations as well as over other relevant legislation (e.g. as *lex specialis*, in the form of a special law which prevails over a more general law). Moreover, in order to comply with decision IV/9g and the Convention the concept of “citizen” in article 9, paragraph 2, of the 2014 Law on Nature Protection must include any natural person, i.e., also foreign citizens and persons without citizenship.

55. Thus, in order for the Committee to conclude that the Party concerned complies with the Convention, it would need further information on both these issues. This could be provided by an official confirmation by the Party concerned that indeed “citizen”, in

article 9, paragraph 2, of the Law on Nature Protection, includes also foreign citizens and persons without citizenship. Moreover, the official confirmation should make clear that article 9, paragraph 2, of the 2014 Law on Nature Protection prevails over the prohibition on activities of unregistered associations set out in article 7, paragraph 2, of the 2014 Act on Public Associations and any other relevant legislation.

56. In the light of the recent legislative developments described in paragraph 38 above, the Committee concludes that the Party concerned is no longer in non-compliance with the obligation in article 3, paragraph 1, of the Convention to provide a clear, transparent and consistent framework to implement the Convention.

IV. Conclusions and recommendations

A. Main findings with regard to non-compliance

57. The Committee welcomes the engagement of the Party concerned in the compliance review process during the intersessional period, including its efforts to implement decision IV/9g.

58. Based on its considerations and evaluation, the Committee finds that:

(a) Through article 4, paragraph 2, article 11, paragraphs 1 and 5, and article 18, paragraph 1, of the 2014 Act on Public Associations, the Party concerned has fulfilled decision IV/9g to the extent that it is no longer in non-compliance with article 3, paragraph 9, of the Convention with respect to the rights of non-citizens to found and participate in public associations;

(b) In the light of the recent legislative developments, the Committee finds that the Party concerned has fulfilled decision IV/9g to the extent that it is no longer in non-compliance with the obligation in article 3, paragraph 1, of the Convention to provide a clear, transparent and consistent framework to implement the Convention with respect to the points of non-compliance set out in decision IV/9g;

(c) While welcoming the recent legislative developments, in the light of the lack of clarity as to how the prohibition on activities of unregistered associations set out in article 7, paragraph 2, of the 2014 Act on Public Associations is to be applied in practice, the Committee is not in a position to conclude that the Party concerned is no longer in non-compliance with article 3, paragraph 4, of the Convention. The Party concerned thus remains in non-compliance with that provision.

B. Recommendations

59. The Committee recommends to the Meeting of the Parties that it:

(a) Endorse the above report of the Committee with regard to compliance by Turkmenistan;

(b) Lift the caution that entered into force on 1 January 2013;

(c) Recommend that by 30 November 2014 the Party concerned provide information through an official statement to confirm, to the satisfaction of the Committee, that:

(i) The concept of “citizen” in article 9, paragraph 2, of the 2014 Law on Nature Protection includes any natural person, i.e., also foreign citizens and persons without citizenship and the concept of “natural persons” in article 11, paragraph 1, of the

2014 Act on Public Associations includes foreign citizens and persons without citizenship;

(ii) The intended interpretation of article 4, paragraph 2, of the 2014 Act on Public Associations is that foreign citizens and persons without citizenship may, in the same way as citizens of Turkmenistan, become founders of public associations;

(iii) With respect to activities of non-registered associations within the scope of the Convention, article 9 of the 2014 Law on Nature Protection prevails over the prohibition on activities of non-registered associations in article 7, paragraph 2, of the 2014 Act on Public Associations and other relevant legislation (e.g., as *lex specialis*, in the form of a special law which prevails over a more general law);

(d) Invite the Party to organize meetings (e.g., round tables, workshops or conferences) with broad public participation, open to all members of the public and dedicated to:

(i) Sharing experiences in activities carried out by associations, organizations and groups promoting environmental protection in the Party concerned;

(ii) Ensuring the consistency of the national legal system of the Party concerned with the obligation set out in article 3, paragraph 4, of the Convention;

and to report on these meetings by 30 November 2015, as well as in the Party's national implementation report to the sixth session of the Meeting of the Parties;

(e) Mandate the Committee to confirm whether the Party concerned has sufficiently fulfilled the requirements of paragraph 59 (c) above to the extent that it is no longer in non-compliance with article 3, paragraph 4, of the Convention.
