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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

Compliance Committee

Sixteenth meeting
Geneva, 13–15 June 2007

REPORT OF THE COMPLIANCE COMMITTEE ON ITS SIXTEENTH MEETING

Addendum

**FINDINGS AND RECOMMENDATIONS
WITH REGARD TO COMPLIANCE BY ALBANIA**

Findings and recommendations adopted by the Compliance Committee

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INTRODUCTION

1. The Compliance Committee adopted the findings and recommendations contained in this document at its sixteenth meeting (13–15 June 2007) and in accordance with its mandate set out in the annex to decision I/7 of the Meeting of the Parties to the Convention.
2. The review of compliance by Albania with its obligations under the Convention was initiated by the Committee in response to a communication (ACCC/C/2005/12) from the Alliance for the Protection of the Vlora Gulf (Albania) concerning public access to information and participation in decision-making on the construction of an industrial park and a thermal electric power station in Vlora, Albania.

I. BACKGROUND

A. General issues

3. On 27 April 2005, the Albanian non-governmental organization (NGO) Alliance for the Protection of the Vlora Gulf (also translated as Civil Alliance for the Protection of the Vlora Bay) submitted a communication to the Committee alleging violation by Albania of its obligations under article 3, paragraph 2; article 6, paragraph 2; and article 7 of the Convention.
4. The communication alleged that the Party concerned had failed to notify the public properly and in a timely manner and to consult the public concerned in the decision-making on planning of an industrial park comprising, inter alia, oil and gas pipelines, installations for the storage of petroleum, three thermal power plants and a refinery near the lagoon of Narta, on a site of 560 ha inside the protected National Park. The communicant also alleged that the Party failed to make appropriate provision for public participation in accordance with article 7 of the Convention. The full text of the communication is available at:
<http://www.unece.org/env/pp/pubcom.htm>.
5. The communication was forwarded to the Party concerned on 29 June 2005, following a preliminary determination by the Committee that it was admissible. At the same time, the Committee requested the communicant to present some clarifications and additional information, in particular on any use made of domestic remedies.
6. The Party concerned responded on 25 November 2005, disputing the claim of non-compliance. It stated, inter alia, that:
 - (a) The Government had not made a decision on the development of the proposed industrial park as a whole;
 - (b) A decision-making process for the establishment of a thermal electric power station (TES) was under way, but no decision on an environmental permit had been taken;
 - (c) The public had been provided with timely and adequate access to information about construction of the thermal electric power station;

(d) The Government had never received any request for information on the projects from the communicant;

(e) The public had had the possibility to participate in the decision-making process for the TES, as three public meetings had been organized at different stages of the process (i.e. feasibility study, scoping and environmental impact assessment), with participation of local citizens and NGOs;

(f) Since the Government had not made any final decisions yet on the projects, there was nothing to be challenged through the courts or other appeal bodies in Albania by the communicant.

7. The Committee discussed the communication at its tenth meeting (5–7 December 2005), with the participation of a representative of the communicant (Mr. Ardian Klosi) who provided additional information. The Party concerned had also been invited to send a representative, but had declined to do so. The communicant was asked to provide additional information and to answer several questions in written form within four weeks. The Committee also asked the secretariat to seek certain additional information from the Government, which was done by letter of 16 December 2005.

8. The communicant answered the questions by letter of 7 January 2006, providing additional information and several documents in Albanian with summaries in English. In its letter, the communicant alleged that there had been no public participation in decisions concerning the proposed industrial energy park. It maintained that there had been only pro forma public participation in the TES project, because most of those who had participated were governmental employees and functionaries from one political party. The communicant also alleged that the State-owned Albanian Electrical Energy Corporation (Korporata Elektroenergjetike Shqiptare, or KESH) had only announced the public discussion on the construction of the TES and the documents had only been made available in February 2004, after the environmental impact assessment (EIA) process had already been finished. The communicant further alleged that there had been no public information or public participation with respect to the decision-making processes concerning the proposed Albanian-Macedonia-Bulgaria Oil (AMBO) pipeline (see para. 44 below).

9. The communicant sent a further letter to the Committee on 1 February 2006 containing additional information about alleged plans of the Albanian Government to issue a final license to the Italian-Romanian company La Petrofilera, which would allow it to start operating a large coastal terminal for the storage of oil and oil by-products in the Bay of Vlora without any public participation having taken place.

10. Having received no response from the Party concerned to its request of 16 December 2005 for additional information by the time of its eleventh meeting (29–31 March 2006), the Committee sent a second request on 12 April 2006, asking for additional information and some clarifications.

11. On 12 June 2006, the Party concerned provided the Committee with the text of three decisions of the Council of Territorial Adjustment of the Republic of Albania, all dated 19 February 2003. Decision No. 8 approved the use of the territory for the development of an

industrial and energy park; Decision No. 9 approved the construction site for a coastal terminal for the storage of oil and oil by-products and associated port infrastructure in Vlora; and Decision No. 20 approved the construction site of the TES in Vlora. The Party concerned also sent the Committee a chronology of the participation of the public in the decision-making process for the TES, stating that the procedures had been in accordance with national and international law.

12. As the Party concerned had not fully answered the Committee's questions, on 5 September 2006, the secretariat wrote on behalf of the Chairperson requesting it to provide additional information before the thirteenth meeting of the Committee (4–6 October 2006). In its response, sent to the secretariat on 21 October 2006, the Party concerned answered some of the outstanding questions. However, it failed to answer a number of other questions, including on public notification and participation procedures in the decision-making process for the industrial energy park; also, it failed to discuss the time frame for the appeal to the court and to provide a copy of the decision of the Albanian Parliament on funding of the TES.

13. On 20 November 2006, the secretariat sent a further letter to the Party concerned on behalf of the Chairperson reiterating the request for the missing information and posing a few additional questions. It was also agreed to return to the discussion phase at the fourteenth meeting of the Committee, and consequently both the Party concerned and the communicant were notified accordingly and invited to participate.

14. On 1 December 2006, the Party concerned answered in some detail a question about the possibilities for access to administrative and judicial review, providing new information about Albania's Ombudsman and the role of the courts in the Constitution and laws of Albania. However, it did not answer a question on whether there was a possibility of appeal before a final decision had been taken. It also failed to answer a crucial question about the notification of the public and public participation in decision-making on the industrial park. Finally, it did not send four documents requested by the Committee.

15. At its fourteenth meeting (13–15 December 2006), the Committee discussed the case with representatives of both the Party concerned and the communicant, both of whom answered questions, clarified issues, and presented new information. The Party concerned provided information about current status of the TES, namely that no applications for environmental, construction or operating permits had been lodged. Concerning the industrial energy park, the only decision made was about its location. Although some questions remained unanswered, the Committee decided to move to the preparation of draft findings and recommendations.

B. Involvement of international financial institutions

16. At its eleventh meeting, the Committee had decided to seek information from the World Bank and the European Bank for Reconstruction and Development (EBRD), as they were two of the main financing institutions for the TES. It noted that the project was subject to their procedures, including procedures related to information and participation issues. The secretariat sent letters to both institutions on 27 July 2006 inviting them to provide any relevant information, including on whether the World Bank's Inspection Panel was or had been addressing the issue.

17. The World Bank office in Tirana responded in a letter dated 2 August 2006 stating that it was not and had never been involved in the development of the industrial park project, but that it had consistently advised the Government of Albania that the development of any facility planned for such a park should be subject to an appropriate environmental assessment. Regarding the TES in Vlora, the World Bank, EBRD and the European Investment Bank (EIB) had agreed to finance the project and consultants funded by the United States Trade and Development Agency (USTDA) had selected the location based on a detailed siting study, taking into consideration environmental issues. According to the above letter, the siting study had been followed by preparation of a full environmental assessment, during which several scoping sessions and public consultations had been organized, and public input had been taken into account. The World Bank stated that the meetings had been well attended by representatives of governmental agencies, universities, NGOs and the general public, and had been publicized by Albanian television. According to the World Bank, "The entire process was carried out in accordance with Albanian laws and in compliance with applicable European Union and World Bank guidelines".

18. The communicant sent a letter to the Committee on 30 September 2006 commenting on the response by the World Bank. The letter stated that even if the World Bank was not directly involved in the industrial park, it was aware of the other components that were envisaged for the industrial park as well as the intention to expand the TES itself from a capacity of 100 megawatts (MW) up to a capacity of 300 MW. Despite this, public presentations of the project had only addressed the impact and emissions from a 100 MW power station, thus failing to take into account the future cumulative environmental impact of these projects.

19. In commenting on the draft of these findings and recommendations, the World Bank pointed out that potential requirements for future expansion of the TES to 300 MW had been mentioned, studied and reflected in the EIA for Vlora Combined Cycle Generation Facility.

20. The communicant furthermore stated that there was no evidence that the intellectuals and NGOs of Vlora had participated in the meeting on 31 October 2002. Besides, this meeting had taken place after the approval of the siting study and feasibility study. The communicant argued that at that stage there had been a lack of publication of information. It cited the director of the National Agency for Energy, Mr. Besim Islami, who, in answer to a question from a member of the public at the public meeting on 3 September 2003, admitted that "There were not any views taken on this phase from the local government, as this was not requested from the company for the reason of confidence and prudence. In these days and in the last month we have been passing into these explanatory and indispensable procedural meetings".

21. In the course of commenting on the draft of these findings and recommendations in May 2007, the World Bank informed the Committee that its Inspection Panel had received a Request for Inspection on the subject of the project.

22. EBRD, in its response of 25 October 2006 to the letter from the secretariat, confirmed that it was providing financing for the construction of the TES and stated that it was not involved in the industrial park. The EBRD Board of Directors had approved the financing for the TES following its review of the project documentation, including reports on compliance with EBRD policies and procedures on public consultation. The project was subject to EIA and public consultations that had been carried out in accordance with Albanian EIA legislation and the

World Bank's environmental guidelines, which were comparable to the EBRD EIA requirements.

23. In the course of commenting on the draft of these findings and recommendations in May 2007, the EBRD informed the Committee that on 19 April 2007 a formal complaint by the communicant with regard to this project was registered with the EBRD Independent Inspection mechanism and was being reviewed for eligibility.

C. Admissibility

24. The Committee at its eighth meeting (May 2005) had determined on a preliminary basis that the communication was admissible, subject to review following any comments received from both parties. At its fourteenth meeting (December 2006), the Committee confirmed that the communication was admissible.

D. Use of domestic remedies

25. At its eighth meeting, the Committee also discussed the extent to which use had been made of domestic remedies and requested further information from the communicant on this point. After receiving additional information and answers from the communicant, the Committee, at its tenth meeting in December 2005, again discussed the question of domestic remedies in the presence of the communicant. The communicant asserted that its attempt to conduct a referendum on the industrial park was the use of a domestic remedy. The communicant had collected 14,000 signatures (10% of the electorate in Vlora), which was the amount necessary for a referendum according to the Albanian Constitution. However, on 25 November 2005, the Election Committee had refused the request for a referendum. The communicant had then appealed this decision to the Constitutional Court despite having doubts about the prospects of a successful outcome. The Court determined the appeal inadmissible in December 2006.

26. In explaining why it had not pursued more traditional channels of administrative or judicial review, the communicant stated in its letter of 7 January 2006 that the "judiciary system in Albania is very slow and sluggish, in many aspects corrupt" and that "there was not a single case up to this day that would have been decided in favour of an environmental complaint or charge".

27. The Party concerned, in its initial response of 25 November 2005, took the position that there were no domestic remedies currently available in the present case: "Since there is no decision taken on the projects, there is nothing to be challenged by courts or other appeal bodies". However, in its letter of 21 October 2006, the Party concerned stated that "the Albanian legislation does provide for possibilities to appeal for cases when there is noticed failure to provide information or inadequate notification. According to Albanian law, the case can be sent to court for violation of procedures...". The Party did not indicate at what stage this possibility existed – before or after the decision is made.

28. In its response of 1 December 2006, the Party concerned, in addition to providing a detailed explanation of the possibilities for access to administrative review and to the courts in accordance with the Constitution and legislation of Albania, presented information about access to the Ombudsman. At the fourteenth meeting of the Committee, the representative of the Party concerned stated that access to justice was possible both before and after a decision is made. In

response, the communicant explained that it had not tried to use the Ombudsman or seek administrative review because it considered that to challenge the decision of the Cabinet of Ministers signed by the Chairman of the Council, who also happened to be the Prime Minister, was “out of the question”.

E. Preparation and adoption of the findings and recommendations

29. In accordance with paragraph 34 and with reference to paragraph 36 (b) of the annex to decision I/7, the Committee prepared draft findings and recommendations at its fifteenth meeting. These were forwarded for comment to the Party concerned and the communicant as well as to the relevant international financial institutions (IFIs) on 29 March 2007 with an invitation to provide comments, if any, by 15 May 2007. Comments were received from the communicant on 3 May 2007 and additionally on 15 May 2007 and 12 June 2007. The Party concerned provided its comments on 18 May 2007, together with a copy of an environmental consent for the TES. Additionally, comments were received from the EBRD on 11 May 2007 and from the World Bank on 15 May 2007. The Committee, having reviewed the comments, took them into account in finalizing these findings and recommendations.

II. SUMMARY OF THE FACTS, EVIDENCE AND ISSUES¹

30. The communication concerns a proposal to establish an industrial and energy park north of the port of Vlora on the Adriatic coast. The facts relating to the proposed energy park and some of its envisaged components, notably the TES, the oil storage facility and the proposed oil and gas pipeline, are summarized in the following paragraphs, taking into account that different components relate to different provisions of the Convention.

1. Industrial and energy park

31. On 19 February 2003, the Council of Territorial Adjustment of the Republic of Albania approved, through Decision No. 8, the site of an industrial and energy park immediately to the north of the city of Vlora. Through this Decision, signed and stamped by Mr. Fatos Nano, Chairman of the Council, who was the Prime Minister at the time, the Council “Decided: The approval of the territory for the development of ‘The Industrial and Energy Park – Vlore’”. Decision No. 8 furthermore deemed that the Ministry of Industry and Energy “should coordinate work” with various Ministries and other bodies “to include within this perimeter [of the industrial and energy park] the projects of the above mentioned institutions, according to the designation ‘Industrial and Energy Park’”. It stated also that various Ministries “must carry out this decision” and that “This decision comes to force immediately.”

32. The Party concerned informed the Committee that the decision had been subject to an EIA procedure; however, the EIA was not detailed, because it was considered that the separate components of the proposed park would each carry their own more demanding EIA requirements.

¹ This section summarizes only the main facts, evidence and issues considered to be relevant to the question of compliance, as presented to and considered by the Committee.

33. The Committee has not been provided with any evidence of public participation, including notification or public announcement, in the process leading up to Decision No. 8.

34. In October 2005, following a change of government, the Prime Minister established an ad hoc commission to consider the economic and environmental aspects of Vlora industrial and energy park project. Three meetings were held with stakeholders, two in Tirana (22 and 29 October 2005) and one in Vlora (11 November 2005). The communicant has not contested that these meetings took place and that they enabled the concerned stakeholders to participate, and it has confirmed that its representatives did indeed participate in them. Its objections relate rather to the perception that there was a lack of willingness to from the proponents of the project, including the Government, to “listen and to take into consideration the opinion and the will of the people”, thereby reducing the decision-making process to “a mere rubber stamp”.

35. The communicant states that it submitted several requests for information regarding the plans for the industrial park to the Ministry of Energy and to the Ministry of the Environment, but that it has never received any answer from them. However, the communicant did not present any evidence to substantiate that statement (e.g. copies of letters, proof of receipt). The Party concerned maintains that no such requests from the communicant have been “registered” by the Ministry of the Environment. The communicant did present a copy of a letter from Ekolevizja (the most well known network of environmental organizations in Albania) to the Ministry of Environment dated 3 March 2005 asking for information about the proposed TES and oil storage facility in Vlora, to which it had received no response. The communicant did not present proof of receipt of the request.

36. In June 2007, shortly before the adoption of these findings and recommendations, the Party concerned informed the Committee that on 22 May 2007, the Council of Territorial Adjustment of Albania had adopted a decision that modified destination of the park to exclusively industrial, effectively precluding construction on its territory, inter alia, of the oil terminal.

2. Thermal electric power station

37. On 19 February 2003, the Council of Territorial Adjustment approved Decision No. 20 on the construction site of the TES in Vlora. Through this Decision, signed and stamped by Mr. Fatos Nano, Chairman of the Council, who was the Prime Minister at the time, the Council “Decided: to approve the construction site with a surface of 14 hectares for the facility of the new Port of Vlora, within the industrial Energy Park... according to the attached layout”. It stated also that the Council of the District of Vlora and the Ministry of Energy and industry should carry out this decision” and “This decision comes to force immediately.”

38. The Party concerned informed the Committee that in order to address the problem with electricity supply in Albania, the Ministry for Industry and Energy and KESH began to study the technical and financial viability of installing new base load thermal generation facilities in Albania. KESH asked for funding from EBRD, the World Bank and EIB.

39. The USTDA awarded a grant to the Government of Albania to assist in the development of the new thermal generation facility. The Albanian Ministry of Industry and Energy hired international consultants Montgomery Watson Harza (MWH) to select the best site and

technology, to conduct a feasibility study, and to conduct an environmental impact assessment (EIA) of the proposed facility.

40. Site selection was undertaken during the period April–September 2002. A draft siting report was completed on 6 June 2002, recommending Vlora as the best site and distillate oil-fired, base load, combined cycle generation allowing for conversion to natural gas as the best generation technology. On 21 June 2002, the Ministry of Energy and KESH approved the recommendation. MWH then conducted a detailed feasibility study to evaluate the technical requirements and the financial, environmental, and social viability of the proposed generation facility with an installed capacity range of 90 to 130 MW at the selected site. On 21 October 2002, the feasibility study was completed and “introduced in Vlora”.

41. On 31 October 2002, the Ministry of Energy and Industry convened a public meeting in Vlora to introduce the project and begin the public consultation process (see para. 43 (a)).² On 21 December 2002, the Council of Territorial Adjustment (Vlora District) approved the choice of the site for the TES. On 19 February 2003, the Council of Territorial Adjustment of the Republic of Albania confirmed the site of the TES through Decision No. 20.

42. On 2 April 2003, a public meeting was held in Vlora to discuss the terms of reference for the EIA study (scoping). On 23 July 2003, copies of the draft EIA study were delivered in Vlora for public consultation purposes. On 3 September 2003, a further public meeting was held to discuss the draft EIA study.

43. As regards the participation of the public in the three public meetings referred to in the previous paragraphs, varying degrees of information are available to the Committee:

(a) The introductory meeting on 31 October 2002 which addressed the proposed construction of the TES in Vlora was attended by various representatives of national and local authorities as well as, according to the Party concerned, intellectuals and NGOs of Vlora. The communicant disputes the claim that intellectuals and NGOs of Vlora participated. The Committee repeatedly requested³ the Party concerned to provide specific information concerning the process of notification for the meeting (for residents, NGOs and other stakeholders) and a list of participants. In the course of the nearly two-year period following the forwarding of the communication to the Party concerned, and despite specific requests by the Committee, right up to the process of commenting on these findings and recommendation in draft form, the Party concerned failed to provide any such information. On 18 May 2007, the Party concerned belatedly provided a report and list of participants of the meeting which took place in October 2002. The Party concerned maintains that the list of participants of the meeting demonstrates that 17 out of 39 participants represented civil society organizations or individual members of the public. No information with regard to the notification procedure has been provided.

² According to its official minutes and report, the meeting took place on 28 October 2002. However, newspaper articles published on 1 November 2002 as well as Party’s own comments on the draft of the Committee’s findings and recommendations refer to 31 October 2002 as the date on which the meeting took place.

³ Notably by letters of 16 December 2005 and 12 April 2006 and during the fourteenth meeting of the Committee.

(b) The meeting on 2 April 2003 to review the scope of the EIA was attended by more than 100 people, 40 of whom signed an attendance sheet a copy of which was made available to the Committee. The communicant commented that “there was not a single NGO represented or any important environmental activist in this meeting” and that public opinion was not taken into account in the decision. It stated that those considered to represent the public presence at this meeting and at the third meeting were mostly members of the local government and the Socialist Party who were promoting the construction of the industrial and energy park. The Party concerned maintained that local university, business community, a leader of the opposition party, and two NGOs attended the meeting. However, it did not provide the Committee with any details of who was invited to participate, or more generally of the steps taken to notify the public concerned.

(c) The meeting on 3 September 2003 to review the draft EIA was attended by some 35 people, a list of whom was included in the EIA study (Appendix E). Of these, five appear to have been technical experts, 15 represented various public authorities, five represented various local enterprises, the affiliation of six was not indicated, and four appear to have been associations, including three environmental organizations. Again, information requested from the Party concerned regarding the process of notification of the public concerned has not been forthcoming.

(d) The Party concerned states that notifications of these meetings “were made available one month prior (according to the information given by the consulting company)”.⁴ No further information on the manner or content of the notifications has been forthcoming. When commenting on the draft findings, the Party indicated that changes of staff in the relevant local authority led to loss of any such information.

(e) The final EIA document, published on 6 October 2003, five weeks after the third public meeting, states that all three meetings “were covered by Albanian television stations and broadcast through a segment on the nightly news”.

(f) A document entitled “Summary of Environmental Impacts Associated with the Vlore Thermal Power Station”, prepared for the purposes of meeting the requirements of the EBRD public disclosure and consultation procedure, states that “The public was well engaged in a dialogue concerning the project early on in the EIA process. Public announcements were thorough, transparent and well distributed”. It maintains that “direct invitations to attend public meetings were sent to institutions and individuals” and that the process was coordinated closely with (among others) “citizens of Vlore, Vlore University students and faculty, local and national television stations, more than 20 NGOs and others associated with social and environmental issues.” However, the document does not go into detail as to who was notified or invited to which meeting, and while it does provide some more information concerning the meetings (to some extent reflected in subparas. (a) to (c) above) information concerning the first meeting is particularly sparse.

⁴ Letter of 25 November 2005.

44. The EIA study was finalized on 6 October 2003. On 18 October 2003, KESH issued a press release launching a public discussion on the evaluation of the EIA. It invited all interested parties to participate in an open consultation process and provided information on where the relevant documents could be obtained.

45. On 10 February 2004, KESH issued a further press release along similar lines though providing more specific details on where and by what date comments should be submitted and indicating that the suggestions from the public would be included in an annex to the EIA. Specifically, the EIA materials would be available for a 120-day period from 9 February 2004 to 7 June 2004 for public review and comment, in a number of public locations, including in Vlora, in accordance with the EBRD public consultation and disclosure procedure. Announcements containing this information were also placed in various newspapers.

46. In its comments on the draft of these findings and recommendations, the EBRD pointed out that within the 120-day consultation process in 2004, it had received no comments from the communicant, neither was it aware of the public concern of the level indicated by the communicant.

47. The public meetings held in late 2005 (see para. 34), while intended to consider the economic and environmental aspects of the industrial and energy park project, appear to have focused on the TES and should therefore be taken into consideration in reviewing the overall decision-making process for the TES.

48. At its fourteenth meeting (December 2006), the Committee had been informed by the representative of the Party concerned that no application for an environmental permit, construction permit or operating permit for the TES had yet been lodged and that the only decision that had been taken concerned the location of the TES. In May 2007, in the context of commenting on the draft findings, the Party concerned informed the Committee that environmental consent for the TEC has been issued in February 2007. A copy of this environmental consent, as well as a copy of the environmental license issued by the Ministry of Environment, Forestry and Water Administration of Albania on 3 March 2007, have been provided to the Committee by the EBRD, together with its comments.

3. Oil storage terminal and port infrastructure

49. On 19 February 2003, the Council of Territorial Adjustment of the Republic of Albania approved the construction site for a coastal terminal for storage of oil and by-products and associated port infrastructure through Decision No. 9. On 8 May 2003, the Council of Ministers adopted a decision approving a concession procedure to the benefit of the Italian-Romanian company La Petrolifera. On 13 May 2004, the concession was approved by Parliament. On 11 February 2005, the Council of Ministers adopted a decision registering the land in the name of Petrolifera. Any such facility having a capacity of 200,000 tons or more would fall within the scope of annex I of the Convention. The communicant provided information orally at the fourteenth session, which at the time was not contested by the Party concerned, to the effect that the envisaged capacity was of the order of 500,000 tons. In May 2007, following a further attempt by the Committee to clearly establish the capacity of the storage terminal, the Party concerned in the course of commenting on the draft findings and recommendations established the maximum capacity of the terminal at 170,000 tons, i.e. below the threshold set in annex I of

the Convention, and informed the Committee that an environmental permit for the terminal and port infrastructure was issued in April 2007. It is the understanding of the Committee that the mentioning of 500,000 tons in the EIA study for the oil storage terminal referred to the potential market demands for annual consumption of oil.

4. Oil and gas pipelines

50. On 5 December 2003, the Council of Territorial Adjustment of the Republic of Albania approved the route of the proposed AMBO pipeline. On 26 April 2004, the Council of Territorial Adjustment (Vlora District) approved the route of the pipeline. No evidence of public participation prior to either of these decisions has been presented.

5. Access to information

51. When commenting on the draft findings and recommendations in May 2007, the communicant informed the Committee that following the conclusion of a TES construction contract between KESH and Maire Engineering (Italy), it requested KESH to provide it with a copy of the contract. It also requested the Ministries of Environment and Energy to provide a copy of the loan agreement between the Government of Albania and the IFIs. It had received no responses.

6. National legislative framework

52. The EIA legislation of Albania has provisions on public debate over projects and the associated EIA reports, with participation of various agencies and stakeholders including “interested people [and] environmental not-for-profit organizations”. The debate should be organized and directed by the responsible local authority, which should within five days of receipt of a consultation request from the Minister of Environment: (a) notify the public and environmental not-for-profit organizations and put at their disposal the EIA report for a period of one month; and (b) within one month, organize an open debate with all those interested, notifying participants 10 days in advance (art. 20).

53. A separate article, article 26, is dedicated to public participation. Whereas article 20 appears to apply to the stage when the EIA report has been prepared, article 26 provides that the interested public and environmental not-for-profit organizations may participate in all phases of the environmental impact assessment decision-making process. The Minister of Environment is required to determine with a separate normative act the duties of environmental organs in order to guarantee the participation of the public and of environmental not-for-profit organizations in this process.

54. The legislation does not have a provision on appeal to a court or another independent judicial body. Instead, in case of irregularities in the EIA process, the public may request that the Minister of the Environment carry out a partial or full review of the process of environmental impact assessment and the Minister is required to reply within 20 days from receipt of request. This is distinct from the appeal possibilities referred to by the Party concerned in its letter of 1 December 2006 (see para. 28), according to which the Code of Administrative Procedures gives the right to initiate or participate in administrative processes and procedures for administrative

review as well as for appeals whereby any person may make a motion to nullify, cancel or change of administrative decisions.

55. According to the EIA legislation, strategic environmental assessment is required, inter alia, for strategies and action plans on energy, industry, transport, territory adjustment, national and regional plans, industrial areas, coastal areas, tourism areas and protected areas (art. 5). Procedures, deadlines and parties' obligations in all phases of strategic environmental assessment process shall be the same as for projects requiring the more in-depth process of EIA.

III. CONSIDERATION AND EVALUATION BY THE COMMITTEE

56. Albania deposited its instrument of ratification of the Convention on 27 June 2001. The Convention entered into force for Albania on 25 September 2001.

57. The Convention, as a treaty ratified by Albania, is part of the Albanian legal system and is directly applicable, including by the courts. The Party concerned has stated that some aspects of the Convention have been transposed into national law.

A. Admissibility and use of domestic remedies

58. As mentioned under paragraph 20 above, the Committee found the communication to be admissible. Nonetheless, the Committee does have some concerns about the limited extent to which the communicant made use of domestic remedies. The communicant did not try to apply to a court or another independent or impartial body established by law, either about the alleged refusal of the information requests (as entitled under art. 9, para. 1), or about the alleged failure of the public authorities to notify the public concerned about the proposed activities in an adequate, timely and effective manner and to take into account its concerns (under the article 9, para. 2).

59. The communicant attempted to justify this at one point by asserting that Albanian legislation did not provide domestic judicial or similar remedies of the kind envisaged under article 9; at another stage, by reference to its lack of confidence in the ability of the Albanian courts to safeguard its interests in an effective way. Furthermore, it considered its efforts to raise signatures and thereby precipitate a referendum to be a form of domestic remedy, albeit not in a conventional sense.⁵

60. Decision I/7 of the First Meeting of the Parties of the Aarhus Convention says that the Committee should "*take into account any available domestic remedy*" (emphasis added). As previously noted by the Committee (MP.PP/C.1/2003/2, para. 37), this is not a strict requirement to exhaust domestic remedies. The Party concerned said in November 2005 that there was no domestic judicial remedy that could be used before the decision was taken, as there was nothing that a court could consider. One year later, the Party concerned presented general information to the effect that according to the Constitution and laws of Albania, there was access to

⁵ The reasons why the Election Committee, and subsequently the Constitutional Court, rejected this initiative, despite the requisite number of signatures having supposedly been obtained, remain unclear to the Committee.

administrative review, the Ombudsman and the courts. The first statement of the Party concerned could be seen to imply that the three decisions the text of which it submitted to the Committee in June 2006 (see para. 9 above) were not subject to appeal, which was also the position of the communicant (see para. 23); by contrast, its second statement indicated that they could have been appealed. In any event, there appears to be a certain lack of clarity with regard to possibilities to appeal certain decisions.

61. The Committee regrets the failure of both the Party concerned and the communicant to provide, in a timely manner, more detailed and comprehensive information on the possibilities for seeking domestic remedies. Furthermore, it does not accept the communicant's assertion that it has tried all possible domestic remedies. Nonetheless, in the face of somewhat incomplete and contradictory information concerning the availability of remedies, also from the side of the Party concerned, the Committee cannot reject the allegations of the communicant that domestic remedies do not provide an effective and sufficient means of redress.

B. Legal basis

62. As is clear from section I, the case concerns a number of different issues and proposed activities: the energy and industrial park, the TES, the oil storage facility, and the oil and gas pipelines, among others. Each of these issues and proposed activities has its own decision-making processes, and to a certain extent they relate to different provisions of the Convention.

63. During the discussion on the case which took place at the Committee's fourteenth meeting, the communicant indicated that the various decisions of the Albanian authorities referred to in the communication were parts of an overall construction and development plan, about the existence of which the public had not been informed. No evidence or further information to substantiate this allegation has been made available to the Committee. Consequently, the Committee has not addressed this issue in its findings and conclusions. However, it notes that where such overall plans exist, they might be subject to provisions of the Convention and that, in any event, meaningful public participation, generally speaking, implies that the public should be informed that the decisions subject to public participation form parts of an underlying overall plan where this is the case.

64. The Committee decided to concentrate primarily on the issue of public participation with regard to the two decisions made by the Council of Territorial Adjustment of the Republic of Albania on 19 February 2003, namely Decision No. 8 (approving the site of the proposed industrial and energy park) and Decision No. 20 (approving the construction site of the proposed TES). This approach is in line with the Committee's understanding, set out in its first report to the Meeting of the Parties (ECE/MP.PP/2005/13, para. 13), that Decision I/7 does not require the Committee to address all facts and/or allegations raised in a communication. This procedural decision by the Committee to focus on these issues does not prevent it from addressing other aspects of the case.

65. The decisions have in common that they are crucial for the entire decision-making in relation to these sites, constructions and activities. The Committee will first have to consider whether the relevant decisions amount to decisions on specific activities under article 6 of the Convention, or decisions on plans under article 7. In one of its earlier decisions, the Committee, pointed out that "When determining how to categorize a decision under the Convention, its label

in the domestic law of a Party is not decisive. Rather, [...it] is determined by the legal functions and effects of a decision..." (ECE/MP.PP/C.1/2006/4/Add.2, para. 29). Also, as previously observed by the Committee (ECE/MP.PP/C.1/2006/2/Add.1, para. 28), the Convention does not establish a precise boundary between article 6-type decisions and article 7-type decisions.

66. Decision No 20 concerns activities of types that are explicitly listed in annex I of the Convention. Paragraph 1 of annex I refers to "Thermal power stations and other combustion installations with a heat input of 50 MW or more". As regards Decision No. 8, industrial and energy parks are not listed in annex I as such, even though many of the activities that might typically take place within such parks are listed. If an EIA involving public participation for such a park were required under national legislation, it would be covered by paragraph 20 of annex I.

67. Decision No. 20 simply designates the site where the specific activity will take place and a number of further decisions to issue permits of various kinds (e.g. construction, environmental and operating permits) would be needed before the activities could proceed. Nevertheless, on balance, it is more characteristic of decisions under article 6 than article 7, in that they concern the carrying out of a specific annex I activity in a particular place by or on behalf of a specific applicant.

68. Decision No. 8 on the industrial and energy park, on the other hand, has more the character of a zoning activity, i.e. a decision which determines that within a certain designated territory, certain broad types of activity may be carried out (and other types may not).⁶ This would link it more closely with article 7.

69. The proposed industrial and energy park includes several separate construction projects, each of which would require various kinds of permits. From the information received from the Party concerned and the communicant, it is not clear to what extent the industrial park itself, as distinct from its components, would require further permitting processes, which would in turn allow opportunities for public participation. This too might be a factor distinguishing Decision No. 8 from Decision Nos. 9 and 20, because it is clear that the latter decisions will be followed by further permitting decisions for the respective projects.

70. Taking into account the fact that different interpretations are possible with respect to these issues, the Committee chooses to focus on those aspects of the case where the obligations of the Party concerned are most clear-cut. In this respect, it notes that the public participation requirements for decision-making on an activity covered by article 7 are a subset of the public participation requirements for decision-making on an activity covered by article 6. Regardless of whether the decisions are considered to fall under article 6 or article 7, the requirements of paragraphs 3, 4 and 8 of article 6 apply. Since each of the decisions is required to meet the public

⁶ In reaching this conclusion, the Committee notes the definition of "plans" in the European Commission Guide for Implementation of Directive 2001/42 on the Assessment of the Effects of Certain Plans and Programmes on the Environment: "Plan is one which sets out how it is proposed to carry out or implement a scheme or a policy. This could include, for example, land use plans setting out how land is to be developed, or laying down rules or guidance as to the kind of development which might be appropriate or permissible in particular areas." Definition of "program" is "the plan covering a set of projects in a given area... comprising a number of separate construction projects..." See http://www.unece.org/env/sea_ec_guide/sect3.htm#Ref/7

participation requirements that are common to article 6 and article 7, the Committee has decided to examine the way in which those requirements have or have not been met.

71. The Committee is aware that at least one of the two decisions that it has chosen to focus on would need to be followed by further decisions on whether to grant environmental, construction and operating permits (and possibly other types of permits) before the activities in question could legitimately commence. However, public participation must take place at an early stage of the environmental decision-making process under the Convention. Therefore, it is important to consider whether public participation has been provided for at a sufficiently early stage of the environmental decision-making processes in these cases.

C. Substantive issues

1. Industrial and energy park

72. The Party concerned has informed the Committee that there was “no complex decision taken on the development of industrial park as a whole”. It has emphasized that Decision No. 8 of the Council of Territorial Adjustment of the Republic of Albania “On the Approval of the Industrial and Energy Park – Vlore”, which approved the development of “The Industrial and Energy Park – Vlore”, was just a location (siting) decision. However, this does not detract from its importance, both in paving the way for more specific decisions on future projects and in preventing other potentially conflicting uses of the land. Several ministries were instructed to carry out this decision. The decision came into force immediately. It is clear to the Committee that this was a decision by a public authority that a particular piece of land should be used for particular purpose, even if further decisions would be needed before any of the planned activities could go ahead.

73. No evidence of any notification of the public concerned, or indeed of any opportunities for public participation being provided during the process leading up to this decision, has been presented to the Committee by the Party concerned, despite repeated requests. The documents provided by the Party concerned do not demonstrate that the competent authorities have identified the public that may participate, as requested under article 7 of the Convention, and that they have undertaken the necessary measures to involve the members of the public in the decision-making. To the contrary, the evidence provided suggests that the opponents were not properly notified about the possibilities to participate. The Committee is therefore convinced that the decision was made without effective notification of the public concerned, which ruled out any possibility for the public to prepare and participate effectively during the decision-making process.

74. Given the nature of the decision as outlined in the previous paragraph, even if public participation opportunities were to be provided subsequently with respect to decisions on specific activities within the industrial and energy park, the requirement that the public be given the opportunity to participate at an early stage when all options are open was not met in this case. Because of the lack of adequate opportunities for public participation, there was no real possibility for the outcome of public participation to be taken into account in the decision. Thus the Party concerned failed to implement the requirements set out in paragraphs 3, 4 and 8 of article 6, and consequently was in breach of article 7.

75. The recent modifications in the scope of this decision (see para. 36) may indeed influence its potential impact on the environment, but they do not as such alleviate failures to use proper public consultation provisions on the stage when the site of the park was being determined.

2. Thermal electric power station

76. Contrary to the decision-making process leading up to the designation of the site of the industrial and energy park, the decision-making process relating to the proposed TES involved some elements of public participation, e.g. public notifications, public meetings, availability of EIA documentation and so on. However, as regards Decision No. 20, dated 19 February 2003, which establishes the site of the TES, the only element of public participation in this phase of the process appears to have been the public meeting that took place in Vlora on 28 or 31 October 2002. The issues of who was notified of the meeting and invited to participate in it, the content of the notification, and who actually participated, are therefore important. As mentioned above (para. 37 (a)), the Party concerned asserted that among those who participated in the meeting were “intellectuals and NGOs of Vlora”. This assertion has been strongly disputed by the communicant. Unfortunately, despite repeated requests by the Committee, the Party concerned had failed to provide specific information on these points up until May 2007 (see para. 43 (a)). Indeed, even the actual date on which the meeting took place could not be clearly established (see para. 41).

77. Having received the report, minutes and the list of participants of the October 2002 meeting, the Committee, prompted by a correspondence received from the communicant, examined them in comparison with the minutes and the list of participants of the meeting 30 September 2003 (see para. 43 (c)). In this regard the Committee notes that out of 16 questions put forward by the participants of the first meeting and 18 questions raised at the second meeting, 12 are exactly the same. Of these, nine questions received practically verbatim identical replies. Introductions to the meetings and some of the general interventions made by the public officials are also identical. Furthermore, the Committee notes that the lists of participants of the two meetings differ only in the four additional public officials who attended the first meeting. The results of this comparative analysis raise serious concerns regarding the extent to which the report of the meeting can be relied upon as an accurate record of the proceedings as well as regarding the genuine nature of the questions and concerns raised, recorded and subsequently taken into account in the decision-making process.

78. The unclear circumstances surrounding the meeting in October 2002, and the failure of the Party concerned to provide anything to substantiate the claim that the meeting was duly announced and open for public participation, as well as concerns about the quality of the meeting records, lead the Committee to conclude that the Party concerned failed to comply with the requirements for public participation set out in paragraphs 3, 4 and 8 of article 6 of the Convention.

79. A question with regard to the stage of a decision-making process at which public consultations should take place was raised in the commenting on the draft of these findings and recommendations. In this regard, the Committee wishes to make clear that once a decision to permit a proposed activity in a certain location has already been taken without public involvement, providing for such involvement in the other decision-making stages that will follow can under no circumstances be considered as meeting the requirement under article 6, paragraph

4, to provide “early public participation when all options are open”. This is the case even if a full environmental impact assessment is going to be carried out. Providing for public participation only at that stage would effectively reduce the public’s input to only commenting on how the environmental impact of the installation could be mitigated, but precluding the public from having any input on the decision on whether the installation should be there in the first place, as that decision would have already been taken. The Committee has already expressed this view in some of its earlier findings and recommendations (see ECE/MP.PP/C.1/2005/2/Add.4, para.11 and ECE/MP.PP/C.1/2006/2/Add.1, para.29).

80. The two meetings that took place on 2 April 2003 and 3 September 2003 obviously occurred after the adoption of Decision No. 20, and therefore cannot be considered as events contributing to the involvement of the public in that decision. Thus, they do not mitigate the failure of the Party concerned to comply with the Convention in the process leading to Decision No. 20 of 19 February 2003.

81. Even so, the Committee wishes to make a short comment on these meetings as well, since they also give rise to concern. No information has been provided by the Party concerned to demonstrate that the meetings in April and September 2003 were publicly announced, so as to allow members of the public opposing the project to actively take part in the decision-making. Nor has the Party concerned been able to give any reasonable explanation as to why the rather strong local opposition to the project, indicated by the 14,000 people calling for a referendum, was not heard or represented properly at any of these meetings. This gives rise to concerns that the invitation process also at this stage was selective and insufficient. The only public notification, in the form of newspaper advertisements, that was presented to the Committee related to meetings that took place later in 2004. Thus the Committee notes that, despite some subsequent efforts to improve the means for public participation, there were several shortcomings also in the decision-making process after February 2003.

82. Furthermore, the Committee notes the information provided by the Party concerned in the context of commenting on the draft findings and recommendations that an environmental consent has been issued for the TES in February 2007. Considered together with the fact that as late as 15 December 2006 no application for a permit had been lodged (see para. 48), the issuing of the consent raises a number of serious concerns. These concerns relate to the way in which the provisions of article 6 of the Convention were applied to this decision, in particular in light of the fact that neither the environmental consent issued on 16 February 2007 nor environmental license issued on 3 March 2007 address the issue of public comments or reasons and considerations on which it is based. The Committee notes that the reasons for these concerns appear to resemble those related to decisions Nos. 8 and 20.

3. Oil storage terminal and port infrastructure

83. With regard to Decision No. 9, approving the construction site for a proposed coastal terminal for storage of oil and by-products and associated port infrastructure, the Committee did not receive information sufficient for it to evaluate the quality of the public participation process in the relevant decision-making. However, the Committee was informed that the capacity of the proposed storage terminal is below the threshold of 200,000 tons stipulated in paragraph 18 of annex I, to the Convention. Thus the requirements for public participation in article 6 do not apply to this decision unless provided for in the national law of the Party concerned, in

accordance with either article 6, paragraph 1(b), of the Convention or paragraph 20 of annex I, to the Convention. The Committee is aware that an EIA procedure was in place in Albania at the time of the decision, which could potentially trigger paragraph 20 of annex I, although it has not been able to obtain sufficient information about the situation. However, given this and the fact that the issues raised with regard to Decision No. 9 appear to considerably resemble those in Decisions Nos. 8 and 20, as well as the interest in not further delaying the presentation of its findings with respect to those two decisions, the Committee decides not to further consider this Decision No. 9 at this stage.

4. Oil and gas pipelines

84. The Committee notes that pipelines for the transport of gas, oil or chemicals with a diameter of more than 800 mm and a length of more than 40 km are listed in paragraph 14 of annex I of the Convention, and are therefore subject to the full set of public participation requirements under article 6. The AMBO pipeline and other pipeline proposals have not been a particular focus of the Committee's attention, and the Committee has not received sufficient information from the Party concerned or the communicant to be in a position to conclude whether or not there was a failure of compliance with the Convention.

5. Requests for information, article 4

85. With regard to the allegations of the communicant that several requests for information were refused or ignored (para. 35), the Committee is concerned that at least some information requests to the Government may not be registered or dealt with properly. In the absence of more concrete evidence, however, including proof that the requests were received by the public authorities in question, the Committee is not in a position to find that there was a failure to comply with article 4 of the Convention.

86. The Committee takes note of the communicant's allegations concerning the failure of the authorities to respond to its requests for information made in 2007 (see para. 51). The Committee, using its discretionary power to focus on what it believes is most important in any given case, does not find it necessary to investigate this matter in any great detail. It does however note that if confirmed, such refusal to provide response to a request for information would be in breach of provisions of article 4, paragraph 1, of the Convention.

6. Clarity of the framework, article 3, paragraph 1

87. The Committee is concerned about the lack of a clear, transparent and consistent framework to implement the provisions of this Convention in Albanian legislation. In particular, there is no clear procedure of early notification of the public (by public announcement or individual invitations, before a decision is made), identification of the public concerned, quality of participation, or taking the outcome of public meetings into account. Besides the fact that the Committee had difficulties obtaining information from both parties, who did not answer all its questions in a timely and comprehensive manner, and that it still has some questions unanswered, the Committee considers that the Party concerned should take the necessary legislative, regulatory and other measures to achieve compatibility between the provisions implementing the information, public participation and access-to-justice provisions of the Convention.

D. Process of developing findings and recommendations

88. As a general remark on the processing of the communication, the Committee is concerned by the fact that it has taken more than two years to prepare findings and recommendations in this case. This is at least partly attributable to the initial lack of engagement in the process of the Party concerned (as evidenced not least by the fact that it did not accept the invitation to participate the discussion at the eleventh meeting of the Committee), and to the difficulties in obtaining timely, accurate and comprehensive answers from both the Party concerned and the communicant. Indeed, right up to the time of commenting on these findings and recommendations in draft form, i.e. May–June 2007, and despite specific and sometimes repeated requests by the Committee, the Party concerned failed to provide information crucial for correct interpretation of relevant events. The Committee therefore does not exclude a possibility that there is other information relevant to the case that has as yet not been made available to it at this stage.

89. The Committee notes however that the process of compliance review is forward-looking and that its aim is to begin facilitating implementation and compliance at the national level once a need for such is established. It therefore prefers to put forward those conclusions and recommendations which it can make at this stage.

Involvement of international financial institutions

90. Noting that the ultimate responsibility for implementation of and compliance with the provisions of the Convention lies in the hands of individual Parties, the Committee:

(a) Notes with appreciation the constructive contribution of the relevant IFIs, and in particular the World Bank and EBRD, to its process of review of compliance in connection with this communication, which was very useful in establishing many of the facts related to the process under review;

(b) Is mindful of the fact that the involvement of these institutions in the TES project has probably stimulated a gradual increase in the application of the public participation and consultation procedures to the decision-making process by the national authorities;

(c) Also notes with appreciation the interest expressed by both the World Bank and EBRD to support a structured approach to the implementation of the Convention in Albania.

IV. CONCLUSIONS

91. Having considered the above, the Committee adopts the findings and recommendations set out in the following paragraphs.

A. Main findings with regard to non-compliance

92. With respect to the proposed industrial and energy park (paras. 72–75), the Committee finds that the decision by the Council of Territorial Adjustment of the Republic of Albania to allocate territory for the Industrial and Energy Park of Vlora (Decision No. 8 of 19 February 2003) falls within the scope of article 7 and is therefore subject to the requirements of article 6, paragraphs 3, 4 and 8. The Party concerned has failed to implement those requirements in the relevant decision-making process and thus was not in compliance with article 7.

93. With respect to the proposed thermal electric power station (paras. 76–82), the Committee finds that the decision by the Council of Territorial Adjustment on the siting of the TES near Vlora (Decision No. 20 of 19 February 2003) is subject to the requirements of article 6, paragraphs 3, 4 and 8. Although some efforts were made to provide for public participation, these largely took place after the crucial decision on siting and were subject to some qualitative deficiencies, leading the Committee to find that the Party concerned failed to comply fully with the requirements in question.

94. By failing to establish a clear, transparent and consistent framework to implement the provisions of the Convention in Albanian legislation, the Party concerned was not in compliance with article 3, paragraph 1, of the Convention (para. 87).

B. Recommendations

95. Noting that the Party concerned has agreed that the Committee take the measure referred to in paragraph 37 (b) of the annex to decision I/7, the Committee, pursuant to paragraph 36 (b) of the annex to decision I/7, has adopted the recommendations set out in the following paragraphs.

96. The Committee recommends that the Party concerned take the necessary legislative, regulatory, administrative and other measures to ensure that:

(a) A clear, transparent and consistent framework to implement the provisions of the Convention in Albanian legislation is established, including a clearer and more effective scheme of responsibility within the governmental administration;

(b) Practical and/or other provisions for the public to participate during the preparation of plans and programmes relating to the environment are in place not only during preparation of individual projects, including through development of detailed procedures and practical measures to implement article 25 of the EIA Law of Albania;

(c) The public which may participate is identified;

(d) Notification of the public is made at an early stage for projects and plans, when options are open, not when decisions are already made;

(e) Notification of the entire public which may participate, including NGOs opposed to the project, is provided, and notifications are announced by appropriate means and in an effective manner so as to ensure that the various categories of the public which may participate are reached, and records kept of such notifications;

(f) The locations where the draft EIA can be inspected by the public before public meetings are publicized at a sufficiently early stage, giving members of the public time and opportunities to present their comments;

(g) Public opinions are heard and taken into account by the public authority making the relevant decisions in order to ensure meaningful public participation;

97. Having regard to paragraph 37 (d), in conjunction with paragraph 36 (b), of the annex to decision I/7, the Committee recommends the Party concerned to take particular care to ensure early and adequate opportunities for public participation in any subsequent phases in the permitting process for the industrial and energy park and the associated projects.

98. The Committee also recommends that the measures proposed in paragraphs 95–97 be taken or elaborated, as appropriate, in consultation with relevant NGOs.

99. The Committee invites the Party concerned to draw up an action plan for implementing the above recommendations and to submit this to the Committee by 15 September 2007.

100. The Committee invites the Party concerned to provide information to the Committee by 15 January 2008 on the measures taken and the results achieved in implementation of the above recommendations.

101. The Committee requests the secretariat, and invites relevant international and regional organizations and financial institutions, to provide advice and assistance to the Party concerned as necessary in the implementation of the measures referred to in paragraphs 95–99.

102. The Committee resolves to review the matter no later than three months before the third meeting of the Parties and to decide what recommendations, if any, to make to the Meeting of the Parties, taking into account all relevant information received in the meantime.
