Compliance Committee Findings and issues of **standing**[1]

Communication	Issue relating to standing	Non-compliance and recommendation
ACCC/C/2004/1 Kazakhstan Green Salvation Case of information related to the import and disposal of radioactive waste requested by the communicant from the national nuclear authority Kazatomprom	An environmental NGO does not have standing in its own right to review a case on access to information (9.1), unless it represents in court the interests of its individual members and to this effect it would need to present power of attorney from the individuals whose interest it represents	The Committee **finds** that denial of standing to the NGO in a lawsuit on access to environmental information was not in compliance with article 9, paragraph 1 **(non-compliance)** The Committee **recommends** that a strategy be developed for transposing the Convention's provisions into national law and developing practical mechanisms and implementing legislation that would set out clear procedures for their implementation. The strategy might also include **capacity-building activities, in particular for the judiciary and public officials**, including persons having public responsibilities or functions, involved in environmental decision-making.
MOP 2 **Decision II/5a Kazakhstan**		
ACCC/C/2004/8 Armenia Center for Regional Development/Transparency International Armenia, the Sakharov Armenian Human Rights Protection Center and the Armenian Botanical Society, Case concerning the modification of land-use designation and zoning and on the leasing of certain plots in an agricultural area of Dalma Orchards as well as availability of appropriate appeal procedures.	The Constitution provides for a review of the constitutionality of government decisions by the Constitutional Court only. However, only three institutions have standing in the Constitutional Court: two of these represent the executive that issues government decrees, and the third constitutes a large proportion of the national legislative body The Party concerned informed that Constitutional amendments were ongoing to provide members of the public with standing in the Constitutional Court; and a draft law on Administration, which aimed to make decisions that are called "decrees" but in fact they have the legal effects of a planning	In the Committee's opinion, such an approach does not ensure that members of the public have access to review procedures. However, in the Committee's opinion, **the problem is not so much with the issue of jurisdiction or standing**. Rather, it is connected to the fact that planning decisions whose subject matter is regulated by environmental legislation, and decisions on specific activities which, in accordance with the Convention, should be subject to an administrative or judicial review, were taken through a procedure that provides no possibility for the public to participate and no remedies. The Committee finds that by failing to ensure that members of the public concerned had access to a review procedure and to provide adequate and effective remedies, the Government of Armenia was not in compliance with article 9, paragraphs 2–4, of the Convention (**non-compliance**) It notes that if implemented, the amendments introduced by the Party they would

[1] This table has been prepared by the secretariat and includes the main considerations made by the Committee with respect to the issue of standing. There have been communications including allegations with respect to standing, which were not considered by the Committee, and these communications are not referred to in this table.

	decision (art. 7) or a decision for a specific activity (art. 6) subject to review by the administrative courts	imply *no non-compliance* with the Convention.
ACCC/C/2005/11 Belgium Bond Beter Leefmilieu Vlaanderen VZW The case concerned the general issue of standing for environmental organizations, as reflected in the cases referred by the communicant	The concept of "interest" as a criterion for standing before the Belgian judicature is too narrowly interpreted – for example, by the Council of State in cases concerning construction permits and planning decisions. This constitutes a barrier to wide access to justice for environmental organizations. Hence, the communicant argues, Belgian law is not in compliance with article 9 of the Aarhus Convention	Since all the court decisions submitted by the Communicant refer to cases initiated before the entry into force of the Convention for Belgium, they cannot be used to show that the practice has not been altered by the very entry into force of the Convention. Therefore, the Committee is not convinced that Belgium fails to comply with the Convention. However, as evidenced by the consideration and evaluation of the Committee, if the jurisprudence of the Council of State is not altered, Belgium will fail to comply with article 9, paragraphs 2 to 4, of the Convention by effectively blocking most, if not all, environmental organizations from access to justice with respect to town planning permits and area plans, as provided for in the Walloon region. (**no non-compliance but…)** The Committee considers that a new direction of the jurisprudence of the Council of State should be established; and notes that no legislative measures have yet been taken to alter the jurisprudence of the Council of State. It also notes that the Party concerned agrees to (a) Undertake practical and legislative measures to overcome the previous shortcomings reflected in the jurisprudence of the Council of State in providing environmental organizations with access to justice in cases concerning town planning permits as well as in cases concerning area plans; and (b) Promote awareness of the Convention, and in particular the provisions concerning access to justice, among the Belgian judiciary.
ACCC/C/2006/18 Denmark Submitted by an individual Case relating to alleged failure b of Denmark to correctly implement the European Community Directive 79/409/EEC on the Conservation of Wild Birds	Lack of access for the communicant to administrative or judicial procedures to challenge the culling of rooks (*corvus frugilegus*) by the municipality of Hillerød, allegedly in violation of the Birds Directive) Danish courts maintain the general criteria that, to have standing, the person concerned, whether a physical or legal person, must have a concrete, significant and individual interest in the case. Danish court practice on access to	The Committee is not convinced that the lack of opportunity for the communicant to initiate a criminal procedure in itself amounts to non-compliance by Denmark. On the basis of the information provided in the case, the Committee is not able to conclude that Danish law effectively bars all or almost all members of the public, in particular all or almost all non-governmental organizations devoted to wildlife and nature conservation, from challenging the culling of wild birds, as covered by article 9, paragraph 3. (**non-compliance, but…**)

	courts for non-governmental organizations in matters relating to nature protection is scarce and not that well established, and generally rather restrictive towards non-governmental organizations. Yet, some relevant jurisprudence has developed since the entry into force of the Convention for Denmark. In particular, the jurisprudence of the Western High Court […] indicates that at least some nation-wide as well as local non-governmental organizations concerned with the protection of wildlife can bring cases to court for an injunction. In this case, the organizations challenged decisions to allow the introduction of beavers into certain areas. While the case differs from that of challenging the culling of birds, it shows that such organizations can be considered to have a sufficiently concrete, significant and individual interest to go to court.	While the Committee is not convinced that the Party concerned fails to comply with the Convention, it notes the limited case law with regard to standing for non-governmental organisations in these situations. As far as standing for such organisations is concerned, it therefore stresses the importance of applying the approach reflected in the decision by the Western High Court in 2001 mutatis mutandis, as a minimum standard of access to justice in cases relating to the protection of wildlife

MOP 3
CC report to the MOP (on 9.3 and access to justice)

One issue dealt with by the Committee was the scope of discretion given to the Parties in defining criteria for standing for member of the public. While article 9, paragraph 3, refers to "the criteria, if any, laid down in national law", the Convention neither defines these criteria nor sets out the criteria to be avoided. Rather, the Convention is intended to allow a great deal of flexibility in defining which members of the public have access to justice. On the one hand, the Parties are not obliged to establish a system of popular action (*actio popularis*) in their national laws with the effect that anyone can challenge any decision, act or omission relating to the environment. On the other hand, Parties should not take the clause "where they meet the criteria, if any, laid down in its national law" as an excuse for introducing or maintaining criteria that are so strict that they effectively bar all or almost all environmental organizations or other members of the public from challenging acts or omissions that contravene national law relating to the environment. The Convention does not prevent a Party from applying general criteria of a legal interest or requiring demonstration of an individual interest, provided the application of these criteria does not lead to effectively barring all or almost all members of the public from challenging acts and omissions and from availing of effective remedies. Accordingly, the phrase "the criteria, if any, laid down in national law" implies the exercise of self-restraint by the Parties.

When evaluating whether a Party complies with article 9, paragraph 3, the Committee pays attention to the general picture, i.e. to whether national law effectively has such blocking consequences for members of the public in general, including environmental organizations, or if there are remedies available for them to challenge the act or omission in question. In this evaluation, article 9, paragraph 3, should be read in conjunction with articles 1 to 3, and in the light of the purpose reflected in the preamble that "effective judicial mechanisms should be accessible to the public, including organizations, so that its legitimate interests are protected and the law is

enforced". The Committee found support for this interpretation in paragraph 16 of decision II/2 of the Meeting of the Parties on promoting effective access to justice, which invites those Parties which choose to apply criteria in the exercise of their discretion under article 9, paragraph 3, "to take fully into account the objective of the Convention to guarantee access to justice" In some countries, a special category of NGOs operating in the public interest has been created and only those NGOs falling in this category have standing in administrative cases, including in matters related to the environment. However, even where such a special category of legal status has been in place for a long time, very few NGOs actually achieve it. The Committee has also given consideration to what is to be understood by "national law" in article 9, paragraph 3, with regard to the European Union (EU) Member States. The Committee notes that, in different ways, European Community legislation constitutes a part of national law of the EU Member States. It also notes that article 9, paragraph 3, applies to the European Community as a Party, and that the reference to "national law" should therefore be understood as the domestic law of the Party concerned. While the impact of European Community law in the national laws of the EU Member States depends on the form and scope of the legislation in question, in some cases national courts and authorities are obliged to consider EC directives relating to the environment even when they have not been fully transposed by a Member State. For these reasons, in the context of article 9, paragraph 3, applicable European Community law relating to the environment should be considered to be part of the domestic, national law of a Member State. **Decision III/6b Armenia** (*in course of legislative changes on A2J, encouraged)* **Decision III/6c Kazakhstan** (*follow up with II/5a)*: provisions of the new Environmental Code further facilitate access to justice as well as many relevant capacity-building initiatives for the judiciary and other legal professionals initiated by the Supreme Court of Kazakhstan; but more efforts are needed to be undertaken		
ACCC/C/2009/41 Slovakia Global 2000/Friends of the Earth Austria (hereinafter, "the communicant"), in collaboration with Friends of the Earth Europe (FoEE), Greenpeace Slovakia and International, Za Matky Zem and VIA IURIS, and with the legal support of Oekobuero Case concerning Mochovche Nuclear Power Plant	The communicant also alleges that, since it was not possible to appeal against the different decisions due to restricting standing requirements in Slovak law and by generally not providing for access to justice in environmental matters in its legislation, the Party concerned fails to comply with article 9, paragraphs 2, 3 and 4, of the Convention	The Committee decided not to consider this allegation because the communicant expanded the scope of its communication at a later stage.
MOP 4 **Decision IV/6c Kazakhstan** (*follow up with II/5a and III/6c)*: caution		

ACCC/C/2010/48 Austria Oekobuero General legal framework with respect to standing of NGOs and individuals in environmental cases	The communication makes a number of allegations with respect to locus standi for individuals (9 (2) and (3)) and also for NGOs (9(3))	Standing for NGOs: The Committee finds that the Party concerned, in failing to ensure standing of environmental NGOs to challenge acts or omissions of a public authority or private person which contravene provisions of national law relating to the environment, is not in compliance with article 9, paragraph 3, of the Convention Standing for individuals: In the view of the Committee the standing criteria for individuals set by Austrian legislation do not seem to run counter to the objectives of the Convention regarding wide access to justice. However, the definition of "neighbours" may be limiting the rights of "persons that temporarily stay in the vicinity of the project and do not have any in rem rights" (EIA Act, art. 19(1)1), such as tenants or individuals that work in the vicinity, unless they could claim that they "may be threatened or disturbed through the construction, the operation or the existence of a project" (EIA Act, art. 19(1)1). The information provided does not sufficiently substantiate the allegations, e.g., by reference to relevant case-law, to the extent that the Committee finds the Party not to comply with article 9, paragraphs 2 and 3, in these respects. Despite this, the Committee finds that the information before it raises some concern as to how this provision of the EIA Act may be interpreted and applied. Therefore, the Committee encourages courts of the Party concerned to interpret and apply the provisions relating to locus standi for individuals in the light of the Convention's objectives