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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

Fifth session

Maastricht, the Netherlands, 30 June and 1 July 2014

Item 5 (b) of the provisional agenda

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

Draft decision V/9i concerning compliance by Kazakhstan with its obligations under the Convention*

Prepared by the Bureau

The Meeting of the Parties,

Acting under paragraph 37 of the annex to its decision I/7 on the review of compliance,

Taking note of the report of the Compliance Committee under the Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters (ECE/MP.PP/2014/9) and the findings of the Committee on communication ACCC/C/2010/59 (ECE/MP.PP/C.1/2013/9) concerning public participation for a road corridor project, as well as the report of the Committee on compliance by Kazakhstan with its obligations under the Convention (ECE/MP.PP/2014/17) examining the implementation by Kazakhstan of decision IV/9c and the Committee's recommendations in its findings on communication ACCC/C/2010/59,

Encouraged by Kazakhstan's willingness to discuss in a constructive manner the compliance issues in question with the Committee,

* The present document has been submitted late due to the short interval between the forty-fourth meeting of the Compliance Committee and the deadline for the submission of documents to the fifth session of the Meeting of the Parties, and the need for further consultation on the document before its submission.



1. *Welcomes* the solid efforts made by the Party concerned to implement decision IV/9c, including the studies on access to justice carried out by the Party concerned in 2011–2012 and 2013, and the efforts of the Party concerned to implement the action points set out in the latter study, such as the Supreme Court’s drafting of the regulatory statute “On several issues in application of legislation by the courts when reviewing civil cases on environmental disputes”;

2. *Encourages* the Party concerned to continue to implement the action points set out in its 2013 study on access to justice, and to report on these through its national implementation reports;

3. *Endorses* the finding of the Compliance Committee that the Party has fulfilled the requirements of decision IV/9c, and specifically the condition in paragraph 4 of that decision;

4. *Also endorses* the following findings of the Committee with regard to communication ACCC/C/2010/59:

(a) By not providing the requirement for informing the public in a timely manner, and by not specifying the means of informing the public other than publication in the mass media, the Party concerned fails to ensure that the public is informed in an adequate, timely and effective manner and thus fails to comply with article 6, paragraph 2, of the Convention;

(b) By not establishing consistent and clear legal requirements for making the information relevant to decision-making accessible for the public, the Party concerned fails to comply with article 6, paragraph 6, of the Convention;

(c) By allowing the submission of public comments only on the OVOS report at the stage of State environmental *expertiza*, and by limiting the range of the public comments only to those containing reasoned argumentation, the legislation of the Party concerned fails to guarantee the full scope of the rights envisaged by the Convention and thus fails to comply with article 6, paragraph 7, of the Convention;

(d) By not establishing appropriate procedures to promptly notify the public about the environmental *expertiza* conclusions and by not establishing appropriate arrangements to facilitate public access to these decisions, the Party concerned fails to comply with article 6, paragraph 9, of the Convention;

4. *Welcomes* the recommendations made by the Committee during the intersessional period in its findings on communication ACCC/C/2010/59 (ECE/MP.PP/C.1/2013/9, para. 70), made in accordance with paragraph 36 (b) of the annex to decision I/7, and the willingness of the Party concerned to accept them and the efforts it has made so far to address them;

5. *Endorses* the finding of the Compliance Committee that the legislative measures taken so far by the Party concerned to implement the recommendations set out in the Committee’s findings on communication ACCC/C/2010/59 alone are not sufficient to fulfil those recommendations;

6. *Regrets* that the Party thus remains in non-compliance with article 6, paragraphs 2, 6, 7, and 9, of the Convention on public participation in decision-making;

7. *Invites* the Party concerned to continue its efforts to address the recommendations of the Committee on communication ACCC/C/2010/59, namely, to take the necessary legislative, regulatory and administrative measures and practical arrangements to ensure that:

(a) Mandatory requirements for the public notice are detailed by law, such as the obligation to inform the public in a timely manner and the means of public notice, including

the obligation that any information relevant for the decision-making is also available on the website of the public authority competent for decision-making;

(b) There is a clear possibility for any member of the public concerned to submit any comments on the project-related documentation at different stages of the public participation process, without the requirement that these comments be reasoned;

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

(i) Inform the public promptly of the decisions they have taken and of how the text of the decisions can be accessed;

(ii) Maintain and make accessible to the public, through publicly available lists or registers, copies of the decisions taken and other information relevant to the decision-making, including evidence of having fulfilled the obligation to inform the public and provide it with opportunities to submit comments;

8. *Requests* the Party concerned to submit to the Committee by 31 December 2014, 31 October 2015 and 31 October 2016 detailed information on its further progress in implementing the above recommendations, including drafts of any legislation being prepared for that purpose;

9. *Undertakes* to review the situation at its sixth session.
