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By email: aarhus.compliance@un.org

Dear Sir/Madam

Information for preparation of draft report for MOP 7 – Decision VI/8k

1. We write with a very brief update for the Aarhus Convention Compliance Committee (the ‘Committee’) ahead of its preparation of draft reports to the seventh session of the Meeting of the Parties to the Convention. We write with information that we think is relevant to the Committee’s draft report on the UK’s compliance with Decision VI/8k in particular.
2. Decision VI/8k covers various aspects of the UK’s compliance with the Aarhus Convention, in particular under the Convention’s third pillar: access to justice. Decision VI/8k contains several findings in relation to the UK’s regime on costs protection in judicial review cases including those set out in paragraphs 2(a), 2(b), 2(d) and 4.
3. With this in mind, we would like to draw the Committee’s attention to the UK government’s current proposals to reform certain aspects of judicial review.
4. The Committee will recall our response to the UK’s final progress report on VI/8k in which we flagged the Independent Review of Administrative Law (‘IRAL’).¹ The IRAL Panel reported in March 2021.² At the same time, government published its response to the Report and launched a consultation on its proposals for reform to judicial review.³ This consultation closed in April 2021.
5. We have serious concerns about some of government’s proposals and their consistency with obligations under Article 9 of the Aarhus Convention. In particular, for instance, we note proposals relating to:
 - a. ‘Prospective only remedies’ which would enable or require the court to apply a remedy only in respect of future conduct rather than retrospectively. As government acknowledges (but seems to find acceptable), this “could lead to an immediate unjust outcome for many of those who have already been affected...”;⁴ and

¹ ClientEarth, [VI/8k: UK’s final progress report – ClientEarth’s response](#) (29 October 2020).

² [IRAL Report](#) (18 March 2021).

³ Ministry of Justice, [Judicial Review Reform – consultation](#) (18 March 2021).

⁴ *Ibid.*, paragraph 61.

- b. Statutory ouster clauses: ouster clauses are provisions which attempt to put certain topics or issues beyond the scope of judicial review. In general, attempts to oust the court's jurisdiction through these clauses have failed. Government is now considering methods to give such clauses effect. This is concerning for many reasons – not least because, if successful, the practical implication would be that certain issues would be 'off limits' from judicial review.
6. Government has not yet reported on the results of its consultation. However, the recent Queen's Speech referenced legislation designed to "restore the balance of power between the executive, legislature and the courts" and the explanatory notes to the Speech specifically name a 'Judicial Review Bill' indicating that primary legislation to implement at least some of government's proposals is forthcoming.⁵
7. For the Committee's information, we annex to this letter ClientEarth's response to the Judicial Review Reform consultation.

Yours faithfully,



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ClientEarth is an environmental law charity, a company limited by guarantee, registered in England and Wales, company number 02863827, registered charity number 1053988, registered office 10 Queen Street Place, London EC4R 1BE, a registered international non-profit organisation in Belgium, ClientEarth AISBL, enterprise number 0714.925.038, a registered company in Germany, ClientEarth gGmbH, HRB 202487 B, a registered non-profit organisation in Luxembourg, ClientEarth ASBL, registered number F11366, a registered foundation in Poland, Fundacja ClientEarth Poland, KRS 0000364218, NIP 701025 4208, a registered 501(c)(3) organisation in the US, ClientEarth US, EIN 81-0722756, a registered subsidiary in China, ClientEarth Beijing Representative Office, Registration No. G1110000MA0095H836. ClientEarth is registered on the EU Transparency register number: 96645517357-19. Our goal is to use the power of the law to develop legal strategies and tools to address environmental issues.

⁵ HM Government, [Queen's Speech 2021: background briefing notes](#) (11 May 2021)