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## Economic Commission for Europe

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

#### Seventh session

Geneva, 18–20 October 2021

Item 7 (b) of the provisional agenda

#### **Procedures and mechanisms facilitating the implementation of the Convention: Compliance mechanism**

### **Supplementary report of the Compliance Committee on compliance by Belarus\***

#### *Summary*

This document is prepared by the Compliance Committee pursuant to the request set out in paragraph 21 of decision VI/8 of the Meeting of the Parties (ECE/MP.PP/2017/2/Add.1) and in accordance with the Committee's mandate set out in paragraph 14 of the annex to decision I/7 of the Meeting of the Parties on review of compliance (ECE/MP.PP/2/Add.8).

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\* The present document is being issued without formal editing.



## I. Introduction

1. At its sixth session (Budva, Montenegro, 11–13 September 2017), the Meeting of the Parties to the Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters (Aarhus Convention) adopted decision VI/8c on compliance by Belarus with its obligations under the Convention (see ECE/MP.PP/2017/2/Add.1).
2. On 26 July 2021, the Committee adopted its report to the seventh session of the Meeting of the Parties on the implementation of decision VI/8c through its electronic decision-making procedure.
3. On 2 August 2021, the communicant of communication ACCC/C/2014/102 informed the Committee that the Ministry of Justice had filed proceedings before the Supreme Court of the Party concerned seeking the liquidation of the communicant.
4. On 20 August 2021, the Executive Secretary of the United Nations Economic Commission for Europe wrote to the Party concerned, enclosing a letter from the Chair of the Committee to the Minister of Natural Resources and Environmental Protection of the Party concerned. In his letter, the Chair expressed the Committee's concern regarding the information that the Ministry of Justice had filed proceedings seeking the liquidation of the communicant of communication ACCC/C/2014/102. The Chair requested the Party concerned to explain, as a matter of urgency, why liquidation proceedings had been commenced against the communicant. He also requested the Party concerned to immediately reconsider any steps intended to silence a communicant exercising its rights in conformity with the Convention. He requested the Party concerned to provide its reply regarding the above issues as soon as possible and by 10 September 2021, and informed the Party concerned that the Committee would report these events and any subsequent developments to the Meeting of the Parties at its seventh session (Geneva, 18–20 October 2021).
5. On 10 September 2021, the Party concerned provided its reply to the Chair's letter of 20 August 2021.
6. By letter of 14 September 2021, the communicant of communication ACCC/C/2014/102 informed the Committee that on 31 August 2021, the Supreme Court of the Party concerned had, at the request of the Ministry of Justice, issued a decision liquidating the communicant with immediate effect.
7. On 15 September 2021, the Committee requested supporting documentation from representatives of the communicant of communication ACCC/C/2014/102. The requested documentation was provided by the communicant's representatives on 20 September 2021.
8. After taking into account the information received from the Party concerned and the communicant of communication ACCC/C/2014/102, the Committee decided to make a supplementary report to the seventh session of the Meeting of the Parties on the implementation of decision VI/8c (see paras. 16–18 below).
9. The Committee completed its draft supplementary report through its electronic decision-making procedure on 28 September 2021. In accordance with paragraph 34 of the annex to decision I/7, the draft report was forwarded on 29 September 2021 to the Party concerned, the communicants and observers with an invitation to comment by 8 October 2021.
10. On 7 October 2021, the Minister for Natural Resources and Environmental Protection of the Party concerned requested an extension of the timeframe for the Party concerned to prepare its comment on the Committee's draft supplementary report. The Party concerned stated that it would make all efforts to send its comments as soon as possible and not later than the time limit referred to in paragraph 199 of the Guide to the Compliance Committee.
11. On 8 October 2021, the representatives of the communicant of communication ACCC/C/2014/102 provided comments on the Committee's draft supplementary report.
12. On 10 October 2021, the Chair of the Committee wrote to the Minister of Natural Resources and Environmental Protection of the Party concerned to inform him that he agreed

to extend the timeframe for the Party concerned to comment on the draft supplementary report until 13 October 2021.

13. On 13 October 2021, the Party concerned replied to the letter of the Chair of the Committee dated 10 October 2021, requesting a further three-week extension to comment on the draft supplementary report.

14. On 14 October 2021, the Chair of the Committee informed the Party concerned that its request for a further three-week extension could not be granted.

15. After taking into account the information received, the Committee finalized and adopted its supplementary report to the seventh session of the Meeting of the Parties on the implementation of decision VI/8c through its electronic decision-making procedure on 14 October 2021 and thereafter requested the secretariat to send it to the Party concerned, the communicants and observers.

## II. Considerations and evaluation by the Committee

### Initial observations

16. In accordance with its procedure, the Committee will in normal course examine any developments that occur after it has adopted its report to the Meeting of the Parties under paragraph 35 of the annex to decision I/7<sup>1</sup> during the next intersessional period.<sup>2</sup>

17. In the present case, the actions taken by the Party concerned since the Committee adopted its report under paragraph 35 of the annex to decision I/7 on 26 July 2021 are of such a grave nature that it is imperative that they be brought to the attention of the Meeting of the Parties at its seventh session. Moreover, given the implications of the Party concerned's actions for the Committee's future follow-up on decision VI/8c, and any decision that supersedes it, the Committee considers it necessary to make a supplementary report to the seventh session on decision VI/8c specifically addressing these actions.

18. The present supplementary report on decision VI/8c is adopted in accordance with the Committee's mandate to "examine compliance issues and make recommendations if and as appropriate" as set out in paragraph 14 of the annex to decision I/7 of the Meeting of the Parties on review of compliance and pursuant to the request set out in paragraph 21 of decision VI/8 of the Meeting of the Parties on general issues of compliance.<sup>3</sup>

19. In accordance with the Committee's commitment to ensure that all Parties subject to the review of compliance are treated equally, since each of the Parties whose compliance was the subject of a report to the seventh session of the Meeting of the Parties had two weeks to comment on the Committee's draft report concerning their compliance, the Party concerned has been given two weeks to comment on the present supplementary report also.

### Paragraphs 6 (a) and 7 of decision VI/8c and Committee's report to the seventh session<sup>4</sup>

20. Through paragraph 6 (a) of decision VI/8c, the Meeting of the Parties recommended the Party concerned to take the necessary legislative, regulatory, administrative, institutional, practical or other measures to ensure that members of the public exercising their rights in conformity with the provisions of the Convention are not penalized, persecuted or harassed for their involvement.

21. In accordance with paragraph 7 of decision VI/8c, when evaluating the implementation by the Party concerned of paragraph 6 of decision VI/8c, the Committee is to take into account any information received from members of the public or other sources about future incidents of alleged penalization, persecution or harassment contrary to article

<sup>1</sup> ECE/MP.PP/2/Add.8.

<sup>2</sup> Guide to the Aarhus Convention Compliance Committee (second edition, May 2019), para. 221.

<sup>3</sup> ECE/MP.PP/2017/2/Add.1.

<sup>4</sup> ECE/MP.PP/2021/48.

3 (8) of the Convention together with any information provided by the Party concerned regarding those alleged incidents.

22. In its report to the seventh session to the Meeting of the Parties on decision VI/8c, the Committee found that the Party concerned had not yet met the requirements of paragraph 6 of decision VI/8c and expressed its grave concern that the situation for persons exercising their rights in conformity with the Convention in the Party concerned was in fact rapidly deteriorating.<sup>5</sup>

### **Chronology of recent developments**

23. Based on the documentation before it, the Committee summarizes the chronology of the recent developments in paragraphs 24–31 below.

24. On 2 July 2021, the communicant of communication ACCC/C/2014/102 received a letter from the Ministry of Justice, dated 22 June 2021, requesting the communicant to provide a list of documents by 9 July 2021.<sup>6</sup> The documents requested *inter alia* included:

- (a) “documents confirming that the public association has a legal address”;
- (b) “a list of Ecohome’s members as on 1 July 2021”.

25. On 9 July 2021, the communicant submitted 1,124 pages of documents to the Ministry of Justice.<sup>7</sup>

26. On 22 July 2021,<sup>8</sup> the communicant received a letter from the Ministry of Justice. The letter was dated 14 July 2021 and enclosed an Order issued by the Deputy Minister of Justice on 13 July 2021. The Order of the Deputy Minister of Justice stated that the communicant had failed to submit all the requested documents as follows:

While the communicant has provided a photocopy of its rental agreement for the premises used as its legal address and a transfer and acceptance act of the premises, it had not provided “documents regarding the owner of the premises and other documents confirming the right to locate PA [public association] Ecohome at the legal address”. ...

[The list of Ecohome’s members] does not correspond to Appendix No. 2 to the Resolution of the Ministry of Justice dated 30 August 2005, No. 48, since it does not contain the information about [Ecohome’s] members’ date of birth, their place of residence, home phone numbers, their place of work or study, office telephone numbers, as well as personal signatures. ...

The monitoring of ... Ecohome’s official website established that this Public Association carries out its activities in active collaboration with the organisations unregistered in the Republic of Belarus that have features of a Public Association (a union or an association), such as the Belarusian National Youth Council “RADA”, the Assembly of NGOs, the Belarusian National Platform of the Civil Society Forum, etc.<sup>9</sup>

27. The Order of the Deputy Minister of Justice concluded with the following orders:

1. [To] issue a Written Caution to PA Ecohome.
2. To oblige the Board of PA Ecohome to take a set of measures to eliminate the above-mentioned violations of the law, and inform the Ministry of Justice of the Republic of Belarus about this no later than on 20 July 2021.

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<sup>5</sup> ECE/MP.PP/2021/48, para. 125.

<sup>6</sup> Comments by communicant of communication ACCC/C/2014/102 on Committee’s draft report on decision VI/8c, 18 July 2021, annex.

<sup>7</sup> Additional information from the communicant of communication ACCC/C/2014/102, 2 August 2021, p. 1.

<sup>8</sup> *Ibid.*

<sup>9</sup> Reply by communicant of communication ACCC/C/2014/102 to Committee’s request for supporting documentation, 20 September 2021, annex 4.

3. To warn the Board of PA Ecohome that if the violations specified in this order are not addressed, other measures of responsibility can be applied in relation to PA Ecohome.<sup>10</sup>
28. On 26 July 2021, the Ministry of Justice filed proceedings in the Supreme Court seeking the liquidation of the communicant for failure to comply with the Caution.<sup>11</sup>
29. On 28 July 2021, the communicant filed separate proceedings before the Supreme Court seeking to appeal the Caution.<sup>12</sup>
30. On 23 August 2021, the Supreme Court dismissed the communicant's appeal against the Caution.<sup>13</sup>
31. On 31 August 2021, the Supreme Court issued its decision to liquidate the communicant in the proceedings brought by the Ministry of Justice. The concluding paragraphs of the Supreme Court's decision state:

Documents confirming the ownership right of I. G. Sukhiy to the specified administrative premises were not submitted to the registering authority. Accordingly, as of August 31, 2021 (the date of the court decision), the defendant failed to take appropriate measures to eliminate violations of the current civil legislation with regard to location of Ecohome at the legal address specified in Paragraph 1.8 of the Statute of this public association.

...

Information provided to the registering authority about the members of the public association did not meet the requirements of Annexes No. 2 and No. 3 to the Decree of the Ministry of Justice of August 30, 2005 No. 48 ...

Furthermore, the defendant failed to provide evidence to refute the plaintiff's arguments regarding relevance of publications on the public association's website concerning activity of the Belarusian National Youth Council "RADA", the Assembly of NGOs, the Belarusian National Platform of the Civil Society Forum, organizations not registered in the Republic of Belarus that demonstrate features of a public association (union, association), and the connection of Ecohome with them.

Arguments of the representative of the Ministry of Justice of the Republic of Belarus stating that such actions of the Ecohome do not meet the requirements of the current legislation and the Statute of this public association are recognized by the court as justified.

Thus, in the course of consideration of this case, the Ministry of Justice presented evidence that violations of its own Statute and of the current legislation regulating activity of public associations committed by Ecohome were not eliminated by the defendant after a Written Caution had been issued, and therefore, based on paragraph 3 of Part 1 of Article 29 of the said Law, the public association is subject to liquidation.

On the basis of the above and guided by Articles 302-311 of the Civil Procedure Code of the Republic of Belarus, the judge resolved:

to liquidate the Ecohome public association registered by the Ministry of Justice of the Republic of Belarus on June 21, 1996 ...

The resolution shall enter into legal force immediately after its proclamation and shall not be subject to appeal or protest.<sup>14</sup>

<sup>10</sup> Ibid.

<sup>11</sup> Reply by communicant of communication ACCC/C/2014/102 to Committee's request for supporting documentation, 20 September 2021, annex 1, p. 1.

<sup>12</sup> Additional information from communicant of communication ACCC/C/2014/102, 2 August 2021, p. 1.

<sup>13</sup> Reply by communicant of communication ACCC/C/2014/102 to Committee's request for supporting documentation, 20 September 2021, annex 1, p. 2.

<sup>14</sup> Ibid., pp. 3-4.

**Chair's correspondence with the Party concerned**

32. In his letter of 20 August 2021, which was sent to the Party concerned prior to the Supreme Court hearing of the Ministry of Justice's proceeding to liquidate the communicant on 31 August 2021, the Chair of the Committee stated inter alia that:

It appears to the Committee that, through the court proceedings commenced by the Ministry of Justice to liquidate Ecohome, Belarus is taking active steps to silence a communicant engaging with the Committee on matters related to the alleged persecution of environmental activists. That situation is deeply troubling.

If the information from Ecohome is correct, this is the first time in the history of the Committee that a Party to the Convention has sought to liquidate a communicant engaging in the Committee's procedures, and the Committee will carefully follow the event.

I thus request Belarus to explain, as a matter of urgency, why liquidation proceedings have been commenced against Ecohome.

I also ask Belarus to immediately reconsider any step intended to silence a communicant exercising its rights in conformity with the Convention.

I invite you to bring my letter to the attention of the relevant authorities, including the Minister of Justice. I further invite you to draw the attention of the Ministry of Justice to the obligations of Belarus under article 3 (8) of the Convention and to facilitate a reconsideration by the Ministry of Justice of its court proceedings against Ecohome.

Please note that, given the circumstances outlined above, it is for Belarus to clarify the situation to the Committee and to demonstrate if there is any reason why the proposed liquidation of Ecohome would not constitute penalization, persecution or harassment in violation of article 3 (8) of the Convention.<sup>15</sup>

33. In his letter of 20 August 2021, the Chair of the Committee also informed the Party concerned that "in accordance with decisions 1/7 and VI/8c, paragraph 7, the Committee will report these events and any subsequent developments, including whether the Ministry of Justice reconsiders its court proceedings against Ecohome, to the Meeting of the Parties at its seventh session".

34. In its reply of 10 September 2021 to the Chair of the Committee, the Party concerned, through its Ministry of Natural Resources, stated inter alia that:

The Ministry of Justice, as the authority responsible for registering national public associations, monitors the compliance of these public associations' activities with the law and with their own articles of association.

The results of a check carried out on Ecohome's activities established the existence of breaches giving grounds for the penalties provided by law to be applied to the public association, in connection with which, by Order No. 158 of 13 July 2021, the Ministry of Justice issued a written caution to the public association.

This written caution obliged the public association to take measures to remedy the breaches of legislation concerned and to inform the Ministry of Justice of this by a certain date. This obligation is imposed on public associations by Article 27 of the Public Associations Act. However, information remedying the breaches that had given grounds for the written caution was not submitted to the Ministry of Justice by the deadline that the Ministry had laid down.

Thus, Ecohome, having failed to fulfil the registration authority's requirements, was in breach of the above-mentioned provision of the Public Associations Act during the course of the year following issue of the written caution. Under Article 29 of the Public Associations Act, if a public association is in breach of legislation and (or) their own articles of association within a year after a written caution has been issued, this

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<sup>15</sup> Letter to the Minister of Natural Resources and Environmental Protection from the Chair of the Committee, 20 August 2021, pp. 1–2.

in turn provides grounds for liquidation of the public association by decision of a court.<sup>16</sup>

### Committee's evaluation

35. Through the letter of the Chair of the Committee on 20 August 2021, the Party concerned was put on notice that the Committee would report the Party concerned's liquidation proceedings against Ecohome to the Meeting of the Parties at its seventh session. Moreover, given that the Chair's letter of 20 August 2021 requested Belarus "to explain, as a matter of urgency, why liquidation proceedings have been commenced against Ecohome" and "to immediately reconsider any step intended to silence a communicant exercising its rights in conformity with the Convention," the Party concerned has had more than seven weeks prior to the adoption of the present supplementary report to "prepare the necessary, comprehensive information"<sup>17</sup> regarding this matter and to reconsider its liquidation proceedings against Ecohome.

36. Paragraph 7 of decision VI/8c requests the Committee, when evaluating the implementation by the Party concerned of paragraph 6 of decision VI/8c, to take into account any information received from members of the public or other sources about future incidents of alleged penalization, persecution or harassment contrary to article 3 (8) of the Convention together with any information provided by the Party concerned regarding those alleged incidents.

37. In its second progress review on decision VI/8c, the Committee made clear that "the purpose of paragraph 7 of decision VI/8c is not that the Committee should make findings on each alleged future incident of penalization, persecution or harassment reported to it under that paragraph".<sup>18</sup> This does not however preclude the Committee from doing so in particular cases as part of its follow-up of decision VI/8c, if it considers that the alleged incident of penalization, persecution or harassment is particularly grave and it has sufficient evidence before it on which to make a finding. Based on the documentation before it in the present case, the Committee considers that the liquidation on 31 August 2021 of Ecohome is precisely such a case.

38. In keeping with the Committee's commitment to ensure the equal treatment of all Parties subject to the review of compliance, since each of the fourteen Parties whose compliance was the subject of a report to the seventh session of the Meeting of the Parties had two weeks to comment on the Committee's draft report concerning their compliance, the Party concerned has been given two weeks to comment on the present supplementary report also.

39. At the outset, the Committee makes clear that the obligation in article 3 (8) of the Convention to ensure that persons exercising their rights in conformity with the provisions of the Convention are not penalized, persecuted or harassed in any way for their involvement applies equally to both natural persons and legal persons, including nongovernmental organizations such as Ecohome.

40. It is not disputed by the Party concerned that, until its liquidation, Ecohome was a legitimate non-governmental organization actively engaged in promoting environmental protection in Belarus. This has been recognized by Belarus itself on multiple occasions, not least through the inclusion of Ecohome in the inter-ministerial working group created by Order of the Minister of Natural Resources and Environmental Protection of 15 May 2020 No. 143-OD.<sup>19</sup>

41. Indeed, as recently as 21 July 2021, Belarus stated to the Committee that it was "grateful to the NGO Ecohome for the resumption of cooperation and participation in June-July 2021 in three regional seminars on 'relevant issues of public involvement in

<sup>16</sup> Letter from the Party concerned, 10 September 2021, pp. 1–2.

<sup>17</sup> Letter from the Party concerned, 7 October 2021, p. 1.

<sup>18</sup> Committee's second progress review on decision VI/8c, 9 March 2020, para. 72.

<sup>19</sup> Party's final progress report on decision VI/8c, 30 September 2020, p. 2.

environmental decision-making in the planning of economic activities' in the cities of Mogilev, Gomel and Grodno".<sup>20</sup>

42. Ecohome has furthermore been actively engaged as a communicant before the Committee since 2014, when it submitted communication ACCC/C/2014/102 concerning the persecution, penalization and harassment of environmental activists in violation of article 3 (8) of the Convention.

43. Given the foregoing, the Committee considers that, until its liquidation, as a nongovernmental organization engaged in promoting environmental protection, Ecohome was indisputably a member of the public exercising its rights in conforming with the provisions of the Convention. The Party concerned was thus required by article 3 (8) to ensure that Ecohome was not penalized, persecuted or harassed for doing so.

44. The Supreme Court's decision of 31 August 2021 to liquidate Ecohome had immediate effect and was not appealable. As a result of the Supreme Court's decision, on 31 August 2021 Ecohome ceased to exist as a legal entity.

45. In considering whether Ecohome's liquidation amounts to penalization, persecution or harassment under article 3 (8), the Committee recalls its finding on communication ACCC/C/2014/102 (Belarus), the communication brought by Ecohome in 2014, in which the Committee held:

Whether the treatment complained of amounts to penalization, persecution or harassment must be assessed on a case-by-case basis in the light of the particular circumstances, including whether the action taken by the State is objective and reasonable, and pursues a legitimate purpose. When making this assessment, the Committee considers whether the treatment complained of could be reasonable and proportional and pursue a legitimate public purpose.<sup>21</sup>

46. As the Chair of the Committee stressed in his letter to the Party concerned of 20 August 2021, given the serious nature of actions taken by the Party concerned, "it is for Belarus to clarify the situation to the Committee and to demonstrate if there is any reason why the ... liquidation of Ecohome would not constitute penalization, persecution or harassment in violation of article 3 (8) of the Convention".<sup>22</sup>

47. In the present case, the Committee has carefully examined all the information put before it, including the letter from the Party concerned of 10 September 2021, the Caution issued by the Deputy Minister of Justice on 13 July 2021 and the Supreme Court's decision of 31 August 2021. Having done so, the Committee considers that there is nothing in any of the documents provided that would show that the action taken by the Party concerned to liquidate Ecohome was objective, reasonable or proportional, or that it pursued a legitimate purpose as set out in paragraph 45 above.

48. In this regard, the Committee highlights the points in paragraphs 49–52 in particular.

49. First, the Caution was issued to Ecohome, and Ecohome was consequently liquidated, due to allegedly not providing certain documents in response to the Ministry of Justice's letter dated 22 June 2021. However, the allegedly "missing" documents (see paras. 26 and 31 above) were not in fact requested in the Ministry of Justice's letter dated 22 June 2021. Rather, that letter asks for a "list of members as on 1 July 2021" and "documents confirming that the public association has a legal address". Thus, the Caution was issued to Ecohome, and Ecohome was consequently liquidated, for not having provided documents that the Ministry of Justice, in its letter of 22 June 2021, had not in fact requested. This is an egregious lack of due process.

50. Second, the Caution issued by the Deputy Minister of Justice required Ecohome to provide the "missing" documents by 20 July 2021. However, the Ministry of Justice's letter

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<sup>20</sup> Party's comments on comments by communicant of communication ACCC/C/2014/102, 21 July 2021, p. 2.

<sup>21</sup> ECE/MP.PP/C.1/2017/19, para. 69.

<sup>22</sup> Letter to the Minister of Natural Resources and Environmental Protection from the Chair of the Compliance Committee, 20 August 2021, p. 2.



enclosing the Caution was not delivered to Ecohome until 22 July 2021. It was thus impossible for the communicant to have complied with the Caution. This is a further egregious lack of due process.

51. Third, in its findings on communication ACCC/C/2014/102, the Committee noted that when assessing whether treatment amounts to persecution, penalization and harassment under article 3 (8), “the Committee considers whether the treatment complained of could be reasonable and proportional.” In the view of the Committee, even if due process had been followed by the Party concerned in the present case (which, as is evident from paras. 49 and 50 above, it most clearly was not), neither the allegedly “missing” documents nor the references to unregistered public associations on Ecohome’s website come anywhere near to justify its liquidation. Accordingly, the liquidation of Ecohome was neither reasonable nor proportional.

52. Lastly, the Committee recalls that, in its findings on communication ACCC/C/2014/102, it emphasized the seriousness of its findings that the Party concerned is in non-compliance with article 3 (8) of the Convention and held that: “If members of the public are penalized, harassed or persecuted for exercising their rights under the Convention, it puts in grave jeopardy the implementation of the Convention as a whole by the Party concerned.” In this regard, Ecohome has been engaged in the Committee’s procedures since it submitted communication ACCC/C/2014/102 in 2014. Notably, it has been the only Belarusian environmental NGO to have participated in the Committee’s procedures on an ongoing basis since the submission of that communication. Thus, the liquidation of Ecohome has had the effect of silencing the only Belarusian environmental NGO that has been engaged with the Committee’s follow-up on an ongoing basis. This confirms the seriousness expressed by the Committee in its findings on communication ACCC/C/2014/102.

53. Given the above, and recalling its mandate in paragraph 14 of the annex to decision I/7 and paragraph 7 of decision VI/8c, the Committee finds that the liquidation of Ecohome on 31 August 2021 constitutes a further incident of persecution, penalization and harassment under article 3 (8) of the Convention by the Party concerned. In this regard, the silencing by the Party concerned of a communicant actively engaged in the Committee’s follow-up procedure is a particularly flagrant case of non-compliance with article 3 (8).

54. The Committee makes clear that the unjustified liquidation of a communicant by a Party concerned does not affect the rights of persons who have previously acted on behalf of the communicant in the Committee’s procedure to continue to engage with the Committee in the place of Ecohome in the follow-up procedure on decision VI/8c, and any decision that supersedes it. The Committee takes note in this regard of the confirmation by the Party concerned that it will not create “obstacles to participation in the Committee’s procedures for persons who previously acted on behalf of Ecohome”.<sup>23</sup>

55. The Committee emphasizes that this is the first time in its history that a Party to the Convention has liquidated a communicant that is actively engaging in the Committee’s procedures concerning that Party’s compliance.

56. Moreover, the Ministry of Justice of the Party concerned proceeded with its proceedings before the Supreme Court to liquidate the communicant, despite being very clearly put on notice by the Chair of the Committee, in his letter of 20 August 2021, that doing so may amount to non-compliance with article 3 (8) of the Convention.

57. In its report on decision VI/8c,<sup>24</sup> the Committee found that the Party concerned had not yet fulfilled paragraph 6 (a), through which the Meeting of the Parties had recommended the Party concerned to take the necessary legislative, regulatory, administrative, institutional, practical or other measures to ensure that members of the public exercising their rights in conformity with the provisions of the Convention are not penalized, persecuted or harassed for their involvement.

58. Through the above actions of the Ministry of Justice and the Supreme Court, the Party concerned has not just failed to take the necessary measures to ensure that members of the

<sup>23</sup> Letter from the Party concerned, 13 October 2021, p. 2.

<sup>24</sup> ECE/MP.PP/2021/48, para. 91.

public such as Ecohome are not penalized, persecuted or harassed for exercising its rights under the Convention. Rather, it has acted to deliberately take measures to penalize and persecute Ecohome. On the information before it, the Committee understands that Ecohome is moreover not the only environmental non-governmental organization liquidated by the Party concerned in recent months.<sup>25</sup> The actions by the Party concerned are also bound to have a deterrent effect on any remaining non-governmental organizations in the Party concerned engaged in promoting environmental protection.

59. The Committee considers that the unjustified liquidation of a communicant engaging with the Committee runs directly counter to the annex to decision I/7 on the review of compliance, including paragraph 32 thereof, which entitles members of the public to participate in discussions of the Committee concerning their communications. It is moreover inconsistent with the duty of good faith required of each Party to the Convention under article 26 of the Vienna Convention on the Law of Treaties.

60. Given the gravity of the Party concerned's actions, the Committee recommends to the Meeting of the Parties, pursuant to paragraphs 14 and 37 (g) of the annex to decision I/7, that the Meeting of the Parties decide, either at its seventh session or, given the short time between the adoption of the present report and the opening of the seventh session, at an extra-ordinary session to be held in 2022, to "suspend, in accordance with the applicable rules of international law concerning the suspension of the operation of a treaty, the special rights and privileges accorded to the Party concerned under the Convention".<sup>26</sup>

### III. Conclusions and recommendations

61. Pursuant to its mandate under paragraph 14 of annex to decision I/7 and paragraph 7 of decision VI/8c, the Committee finds that the liquidation of Ecohome on 31 August 2021 constitutes a further incident of persecution, penalization and harassment under article 3 (8) of the Convention by the Party concerned. In this regard, the silencing by the Party concerned of a communicant actively engaged in the Committee's follow-up procedure is a particularly flagrant case of non-compliance with article 3 (8).

62. The Committee invites any person who has previously acted on behalf of Ecohome in the Committee's procedure to continue to engage with the Committee in the place of Ecohome in the follow-up procedure on decision VI/8c, and any decision that supersedes it.

63. Given the gravity of the Party concerned's actions, the Committee recommends to the Meeting of the Parties, pursuant to paragraphs 14 and 37 (g) of the annex to decision I/7, that, in the light of the finding in paragraph 61 above, the Meeting of the Parties decides either:

(a) At its seventh session:

(i) To "suspend, in accordance with the applicable rules of international law concerning the suspension of the operation of a treaty, the special rights and privileges accorded to the Party concerned under the Convention";<sup>27</sup>

(ii) That the suspension will become effective on 1 February 2022, unless the Party concerned has cancelled the liquidation of Ecohome and reinstated Ecohome's registration as a public association under the Act on Public Associations and has notified the secretariat of this fact, providing evidence, by 1 December 2021.

(iii) To request the Committee to establish the fulfilment of paragraph 63 (a) (ii) above; or

(b) At its seventh session, due to the recent nature of the events at issue and the resulting submission of the present report very close to the opening of the seventh session:

<sup>25</sup> Letter from communicant of communication ACCC/C/2014/102, 14 September 2021, footnote 1.

<sup>26</sup> Decision I/7, ECE/MP.PP/2/Add.8, annex, para. 37 (g). See also the report of the Committee's thirty-second meeting, ECE/MP.PP/C.1/2011/4, paras. 33 and 34.

<sup>27</sup> Ibid.

(i) To request the Committee under paragraphs 13 (b) and 14 of the annex to decision I/7 to prepare a report to the Meeting of the Parties by 1 February 2022 on whether the Party concerned has cancelled the liquidation of Ecohome and reinstated Ecohome's registration as a public association under the Act on Public Associations, and has notified the secretariat of this fact, providing evidence, by 1 December 2021;

(ii) Should the Committee, in its report under paragraph 63 (b) (i) above, find that Ecohome has not been reinstated as a public association under the Act on Public Associations:

a. To hold an extraordinary session in 2022 in order to decide to “suspend, in accordance with the applicable rules of international law concerning the suspension of the operation of a treaty, the special rights and privileges accorded to the Party concerned under the Convention”;<sup>28</sup>

b. To request the secretariat to undertake the necessary arrangements for the extraordinary session in accordance with article 10 (1) of the Convention and rule 4 (3) and (4) of decision I/1 on the rules of procedure.

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<sup>28</sup> Ibid.