



Aarhus Convention Compliance Committee: *Report to MOP 7*

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Aarhus Convention MOP7

Geneva, 18 - 20 October 2021



UNECE

“Annotated provisional agenda”

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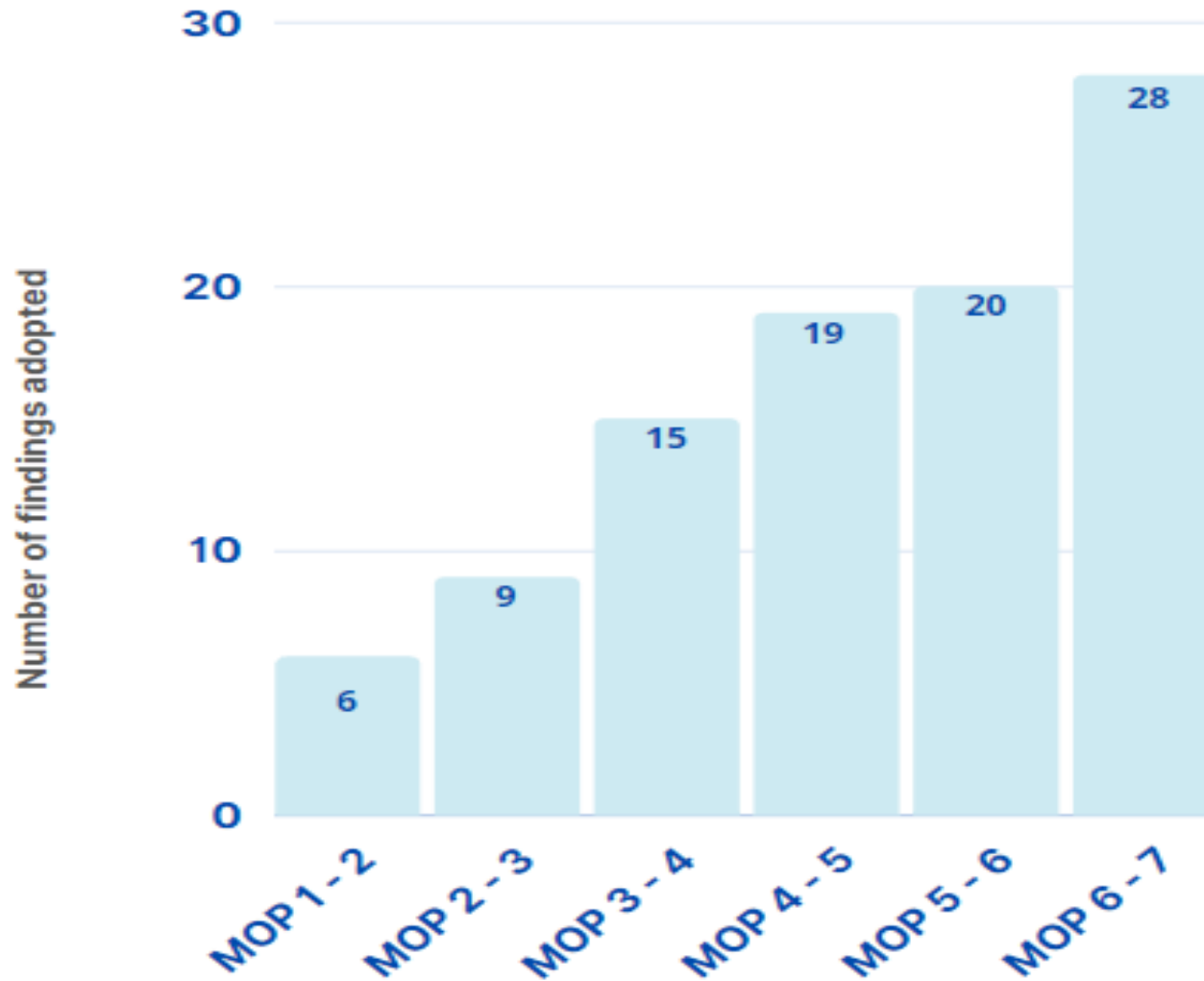
Compliance Committee members

- **Fruzsina Bögös** (Hungary)
- **Marc Clément** (France)
- **Jonas Ebbesson** (Sweden)
- **Heghine Grigoryan** (Armenia)
- **Jerzy Jendrośka** (Poland)
- **Alexander Kodjabashev** (Bulgaria)
- **Peter Oliver** (United Kingdom)
- **Áine Ryall** (Ireland)
- **Dmytro Skrylnikov** (Ukraine)

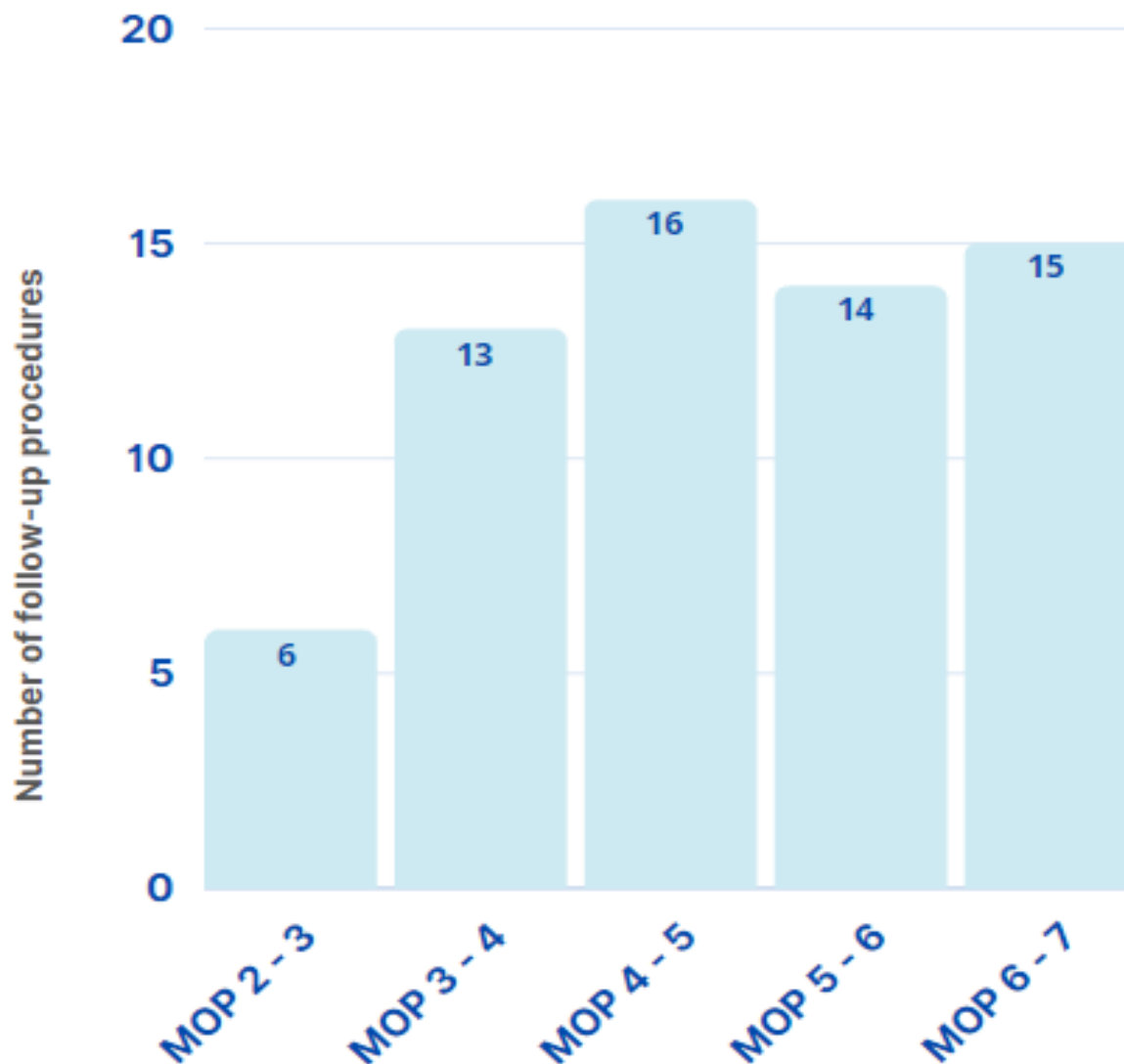
Compliance Committee figures

- **13** regular meetings since MOP6;
- **45** virtual meetings (**1** since report)
- **42** communications received during reporting period (compared to **45** in previous reporting period) + **3** (for consideration of preliminary admissibility at CC72)
- Findings/recommendations on **26** communications, **1** submission, and **1** request for assistance = **28** cases
- Of **13** Parties the Committee found to be in noncompliance and made recommendations, only **2** did not agree to the Committee making recommendations directly.
- **15** communications inadmissible, **1** partly inadmissible (\approx 38 per cent)
- **1** communication closed without findings
- **15** follow-ups since MOP6 (**10** MOP decisions, **2** MOP requests, **3** follow-up on findings of non-compliance since MOP6)

Number of findings adopted during each intersessional period



Number of Committee's follow-up procedures on non-compliance



Findings/recommendations adopted since MOP6:



- ACCC/A/2020/2 (Kazakhstan)
- ACCC/S/2015/2 (Belarus)
- ACCC/C/2013/90 (United Kingdom)
- ACCC/C/2013/96 (European Union)
- ACCC/C/2013/98 (Lithuania)
- ACCC/C/2014/100 (United Kingdom)
- ACCC/C/2014/104 (Netherlands)
- ACCC/C/2014/105 (Hungary)
- ACCC/C/2013/106 (Czechia)
- ACCC/C/2013/107 (Ireland)
- ACCC/C/2014/112 (Ireland)
- ACCC/C/2014/118 (Ukraine)
- ACCC/C/2014/120 (Slovakia)
- ACCC/C/2014/121 (European Union)
- ACCC/C/2014/122 (Spain)
- ACCC/C/2014/124 (Netherlands)
- ACCC/C/2015/128 (European Union)
- ACCC/C/2015/130 (Italy)
- ACCC/C/2015/131 (United Kingdom)
- ACCC/C/2015/134 (Belgium)
- ACCC/C/2015/135 (France)
- ACCC/C/2016/137 (Germany)
- ACCC/C/2016/138 (Armenia)
- ACCC/C/2016/141 (Ireland)
- ACCC/C/2016/142 (United Kingdom)
- ACCC/C/2016/143 (Czechia)
- ACCC/C/2016/144 (Bulgaria)
- ACCC/C/2017/147 (Republic of Moldova)

Issues of compliance – general provisions

- Definition of public authority – acting in a “legislative capacity” – article 2(2)
- Environmental information “used in environmental decision-making” – article 2(3)(b)
 - Not only information that has already been used but also information that may potentially be used in decision-making
 - Not limited to decision-making under articles 6, 7 or 8
- Requirement that Parties endeavour to ensure that officials provide guidance to public as to relevant law, decision-making procedure and opportunities to participate – article 3(2)

Access to environmental information

– article 4

- Making environmental information available to the public – article 4(1)
 - “Extracting” pieces or fragments of environmental information from requested documents is not enough
 - Request cannot be refused just because another document containing the same information has already been made available to the public
- Communication between public authority and permit holder is not “internal communications” – article 4(3)(c)

Access to environmental information

– article 4

- System of “deemed refusal” does not meet requirements of article 4(7)
 - Article 4(7) requires reasons for refusal to be stated.
- Unreasonable costs for access to information – article 4(8)
 - Charges levied for supplying information should be duly explained, reasoned and justified and must not appear unreasonable to the public
 - Charges must not include cost of initial production, collection of acquisition of information or any other indirect cost

Collection and dissemination of environmental information – article 5

- Public authorities must possess and update at least environmental information that they are required to collect and maintain under national law – article 5(1)(a)
- Environmental information made “progressively available” in “easily accessible” electronic databases – article 5(3)
- Publishing of facts and analyses of facts relevant and important in “framing” major environmental policy proposals – article 5(7)(a)

Public participation in decision-making on specific activities – article 6

- The fact that an appropriate assessment must be carried out under Habitats Directive is determination that activity is subject to provisions of article 6 of the Convention – article 6(1)(b)
- Options must not only be legally open, but this must be apparent to the public participating in decision-making – article 6(4)
- Comments must be considered by public authority itself – article 6(8)

Public participation in decision-making on specific activities – article 6

- Reconsideration or update of operating conditions – article 6(10)
 - Public participation is “appropriate” and thus required, *except* where the reconsideration or update is not capable of significantly changing basic parameters and will not address significant environmental aspects of activity
 - Change to permitted duration of activity is reconsideration or update of operating conditions, including lifetime extension of nuclear power plants (NPPs)
 - Periodic safety review is reconsideration of an NPP’s operating conditions

Public participation concerning plans, programmes and policies relating to the environment – article 7

- Plans and programmes “relating to the environment” broader than those which may have “significant effect” on environment
- To provide “necessary information” includes requirements
 - To actively disseminate information indicated in article 6(2)
 - To make available all information in possession of competent authorities relevant to decision-making and used for that purpose

Public participation concerning policies

– article 7

- Public participation in policies relating to the environment
 - article 7
 - Opportunities to participate in preparation of policies must be provided to “the public” in general
 - Facts and analyses of facts relevant and important in “framing” major environmental policy proposals to be proactively disclosed in accordance with article 5(7)(a)

Public participation during the preparation of generally applicable legally binding normative instruments – article 8

- Preparation of draft legislation by executive bodies to be adopted by national parliaments and preparation of executive regulations each covered by article 8.

Access to justice – article 9

- Any standing criteria for non-governmental organizations under article 9(2) must:
 - Be clearly defined
 - Be consistent with objectives of Convention, including wide access to justice for public concerned, and not unreasonably exclusionary
 - Not cause excessive burden on environmental NGOs
- Review of substantive legality – article 9(2)
 - Not sufficient to only check if decision-maker carried out correct procedural steps or formally applied correct legal test

Access to justice – article 9

- Fair review procedures – article 9(4)
 - Time frame to appeal to be calculated from date when decision became known to public
 - Unfair to require claimants to pay costs of third parties who choose to join proceedings of their own accord
- Concrete and visible steps to be taken to consider establishment of appropriate assistance mechanisms to remove or reduce financial barriers – article 9(5)

Making the Committee's work more effective – since MOP6

Communications / submissions / requests

- Guide to the Compliance Committee (second edition, May 2019)
- Increased number of virtual meetings between ordinary meetings
- Practical experiences in commencing deliberations without a hearing
- Increasing requests from Parties for advice and assistance
- Constructive engagement by majority of Parties, as well as communicants and observers

Further enhancing the usefulness of the compliance mechanism

- **Focused** communications (using required format)
Focused and precise replies to Committee questions
Well-prepared participation at hearings
- **Ask** secretariat early on if Parties or communicants do not understand any aspect of Committee procedure
- **Accept** Committee's recommendations directly and start implementing the recommendations as soon as possible
- **Request** advice/assistance if needed. If Parties have queries about what is needed to fulfil Committee's recommendations - Committee's stands ready.
- **Endorse** Committee findings

Selected highlights of this intersessional period

- **11 Parties accepted** recommendations directly from the Committee
- **1 Party** subject to MOP follow-up **fully met** requirements of MOP decision
- **Committee's 2020 Statement** on the application of the Convention during the COVID-19 pandemic and in the subsequent economic recovery phase
- **Guide** to the Compliance Committee (second edition, May 2019)
- **Greater use** by Parties of advisory assistance
- **Greater effectiveness** of procedures and higher staffing of secretariat has helped to move through caseload faster
- **Effective use of virtual meetings** during COVID-19 pandemic. Likely changes after pandemic due to technical limitations. Hearings on substance in cases should still be in person

Personal reflections – after 16 years in the Compliance Committee (9th-72nd meetings)

- **Increased activity** in the Compliance Committee's work:
From 4x3 days – then 4x4 days – to 3x5 days + VMs
- **Increasing impact:**
 - in national laws
 - in national jurisprudence
 - in media
 - in public awareness
 - in discourse
 - in international jurisprudence (e.g. ECHR)
 - around the world (e.g. Escazú Agreement, UNEP Guidelines & IFIs)
- **Fantastic time and experience** with Committee's open sessions (arguments and discussions); closed sessions (arguments, discussions, drafting); support from secretariat; meetings with Parties, observers and communicants; hearings; MOPs; missions; energy, outreach...
- **The Committee makes a difference**

Thanks to:

- Committee members
- Secretariat
- Observers
- Parties
- Communicants
- MOP7

