



# Economic and Social Council

Distr.: General  
9 August 2021

Original: English

---

## 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**

### **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 35 of the annex to decision I/7 of the Meeting of the Parties on review of compliance (ECE/MP.PP/2/Add.8).

---

\* 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).

## II. Summary of follow-up

2. At its sixtieth meeting (Geneva, 12–15 March 2018), the Committee reviewed the implementation of decision VI/8c in open session with the participation by audio conference of representatives of the Party concerned and the communicant of communication ACCC/C/2014/102.

3. On 13 March 2018, the communicant of communication ACCC/C/2014/102 provided a written version of the statement it had made during the open session at the sixtieth meeting.

4. On 21 March 2018, the communicant of communication ACCC/C/2014/102 provided additional information. On 27 March 2018, in reply to the secretariat's request for clarification on that point, the communicant confirmed that the information should be considered under paragraph 7 of decision VI/8c.

5. On 28 March 2018, the secretariat forwarded the communicant's letter of 21 March 2018 to the Party concerned, inviting its comments thereon.

6. On 2 April 2018, the Party concerned submitted information on measures taken to implement decision VI/8c.

7. On 3 May 2018, the Party concerned submitted its comments on the communicant's letter of 21 March 2018.

8. On 2 October 2018, the Party concerned submitted its first progress report, one day after the deadline of 1 October 2018 set out in paragraph 8 (a) of decision VI/8c.

9. On 5 October 2018, the secretariat forwarded the Party concerned's first progress report to the communicant of communications ACCC/C/2009/37, ACCC/C/2009/44 and ACCC/C/2014/102, inviting their comments by 1 November 2018.

10. On 1 November 2018, the communicant of communication ACCC/C/2014/102 submitted comments on the Party concerned's first progress report.

11. On 7 January 2019, the Director of the Environmental Division of the United Nations Economic Commission for Europe (UNECE) wrote to the Party concerned enclosing questions from the Committee concerning the information provided by the communicant of communication ACCC/C/2014/102 on 21 March 2018 and 1 November 2018.

12. On 31 January 2019, the Party concerned provided its reply to the Committee's questions. On 14 February 2019, the communicant of communication ACCC/C/2014/102 submitted comments thereon.

13. After taking into account the information received, the Committee prepared its first progress review and adopted it through its electronic decision-making procedure on 24 February 2019. On 27 February 2019, the Committee's first progress review was forwarded to the Party concerned and the communicants of communications ACCC/C/2009/37, ACCC/C/2009/44 and ACCC/C/2014/102.

14. At its sixty-third meeting (Geneva, 11–15 March 2019), the Committee reviewed the implementation of decision VI/8c in open session, with the participation in person of representatives of the Party concerned and the communicant of communication ACCC/C/2014/102. On 13 March 2019, the communicant of communication ACCC/C/2014/102 provided a written version of its statements delivered during the open session on decision VI/8c held during the Committee's sixty-third meeting.

15. On 4 April 2019, the communicant of communication ACCC/C/2014/102 sought the Committee's urgent assistance with respect to an alleged further incident within the scope of paragraph 7 of decision VI/8c.
16. On 8 April 2019, the Chair of the Committee wrote to the First Deputy Minister of the Ministry of Natural Resources and Environmental Protection (MNREP) seeking further information regarding the alleged further incident within the scope of paragraph 7 of decision VI/8c.
17. On 25 June 2019, the Party concerned provided its reply to the letter of 8 April 2019 from the Chair of the Committee.
18. On 9 August 2019, the UNECE Executive Secretary wrote to the Minister of Foreign Affairs of the Party concerned to remind it of the deadline of 1 October 2019 set out in paragraph 8 (a) of decision VI/8c for the Party concerned to provide its second progress report.
19. On 1 October 2019, the Party concerned submitted its second progress report on decision VI/8c, on time.
20. On 7 October 2019, the secretariat forwarded the second progress report to the communicants of communications ACCC/C/2009/37, ACCC/C/2009/44 and ACCC/C/2014/102, inviting their comments thereon.
21. On 4 November 2019, the communicant of communication ACCC/C/2014/102 submitted its comments on the Party concerned's second progress report.
22. After taking into account the information received, the Committee prepared its second progress review and adopted it through its electronic decision-making procedure on 9 March 2020. The secretariat forwarded the second progress review on that date to the Party concerned and the communicants of communications ACCC/C/2009/37, ACCC/C/2009/44 and ACCC/C/2014/102.
23. At its sixty-sixth meeting (Geneva, 9–13 March 2020), the Committee reviewed the implementation of decision VI/8c in open session, with the participation of representatives of the Party concerned in person and by audio conference, and observers Earthjustice, in person, and Mr. Jan Haverkamp, via audio conference. Due to technical difficulties with the audio conference, the communicant of communication ACCC/C/2014/102 was unable to participate in the session. However, it provided a written version of its statement in parallel which the secretariat forwarded during the open session to the Committee, the Party concerned and observers, and the Chair of the Compliance Committee provided an oral summary of the main points of the communicant's statement for other participants present at the meeting.
24. On 14 April 2020, the communicant of communication ACCC/C/2014/102 provided additional information.
25. On 23 April and 14 and 15 May 2021, the communicant of communication ACCC/C/2014/102 provided further information regarding paragraph 7 of decision VI/8c.
26. On 15 May 2020, the Party concerned provided its comments on the additional information sent by the communicant of communication ACCC/C/2014/102.
27. On 20 May 2020, the Committee received additional information provided by the Party concerned and dated 31 March 2021 and 6 April 2021 respectively, which had not been received earlier due to a technical problem.
28. On 1 July 2020, the observer Movement against the Astravyets NPP provided additional information.
29. On 7 September 2020, observers Nuclear Transparency Watch, Greenpeace Netherlands and WISE International provided an update regarding paragraph 7 of decision VI/8bc. On the same date, the communicant of communications ACCC/C/2009/37 and ACCC/C/2009/44 also provided an update regarding paragraph 7 of decision VI/8bc.

30. On 9 September 2020, the Chair of the Committee sent a letter to the Party concerned expressing its concern regarding the information received in relation to paragraph 7 of decision VI/8c and enclosing a list of questions.
31. On 18 September 2020, the Party concerned replied to the letter of 9 September 2020 from the Chair of the Committee.
32. On 30 September 2020, the Party concerned submitted its final progress report on decision VI/8c, on time.
33. On 24 May 2021, the communicant of communication ACCC/C/2014/102 provided additional information concerning paragraph 7 of decision VI/8c.
34. On 4 July 2021, after taking into account the information received, the Committee completed its draft report to the seventh session of the Meeting of the Parties on the implementation of decision VI/8c through its electronic decision-making procedure. In accordance with paragraph 34 of the annex to decision I/7, the draft report was forwarded on 5 July 2021 to the Party concerned, the communicants and registered observers with an invitation to comment by 19 July 2021.
35. At its seventy-first meeting (Geneva online, 7–9 July 2021), the Committee reviewed the implementation of decision VI/8c in open session with the participation via virtual means of the Party concerned, the communicant of communication ACCC/C/2014/102 and observers Earthjustice, WISE International, Greenpeace Netherlands and Nuclear Transparency Watch.
36. On 16 July 2021, the Party concerned provided three updates.
37. On 19 July 2021, the Party concerned and the communicant of communication ACCC/C/2014/102 each provided comments on the Committee's draft report. On 20 July 2021, the communicant of communications ACCC/C/2009/37 and ACCC/C/2009/44 also submitted comments.
38. After taking into account the information received, the Committee finalized and 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 on 26 July 2021 and thereafter requested the secretariat to send it to the Party concerned, the communicants and observers.

### **III. Considerations and evaluation by the Committee**

39. In order to fulfil the requirements of paragraph 3 of decision VI/8c, the Party concerned would need to provide the Committee with evidence that the Party concerned has, as a matter of urgency, taken the necessary legislative, regulatory and administrative measures and practical arrangements to ensure that:
- (a) There are clear requirements to inform the public of its opportunities to participate in decision-making processes on activities subject to article 6 and in particular:
    - (i) With respect to environmental impact assessment reports, to inform the public in an effective manner;
    - (ii) With respect to other information relevant to decisions on activities subject to article 6, including project documentation, to inform the public in an adequate, timely and effective manner;
  - (b) The content of the public notice required under article 6 (2) of the Convention includes inter alia the following:
    - (i) The public authority responsible for making the decision to permit the proposed activity subject to article 6;
    - (ii) The public authority from which relevant information other than the environmental impact assessment (EIA) report can be obtained and where the

relevant information other than the environmental impact assessment report has been deposited for examination by the public;

- (iii) Whether the activity is subject to a transboundary environmental impact assessment procedure;

(c) The rights set out in article 6 of the Convention apply not only to the environmental impact assessment report but to all information relevant to decisions permitting activities subject to article 6, including project documentation, and that with respect to public participation on such information:

- (i) There are reasonable minimum time frames for submitting comments during the public participation procedure for all decisions under article 6 of the Convention, taking into account the stage of decision-making as well as the nature, size and complexity of proposed activities;
- (ii) There is a clear possibility for the public to submit comments directly to the relevant authorities (i.e., the authorities competent to take the decisions subject to article 6 of the Convention);
- (iii) There are clear provisions imposing obligations on the relevant public authorities to ensure such opportunities for public participation as are required under the Convention, including for making available the relevant information and for collecting the comments through written submission and/or at the public hearings;
- (iv) The full content of all comments made by the public (whether claimed to be accommodated by the developer or those which are not accepted) is submitted to the authorities responsible for taking the decision (including those responsible for the *expertiza* conclusion);
- (v) There are clear provisions imposing obligations on the relevant public authorities to take due account of the outcome of public participation, and to provide evidence of this in a publicly available statement of reasons and considerations on which the decisions is based;

(d) Statutory provisions regarding situations where provisions on public participation do not apply cannot be interpreted to allow for much broader exemptions than allowed under article 6 (1) (c) of the Convention;

(e) The amended legal framework clearly designates which decision is considered to be the final decision permitting the activity and that this decision is promptly made public, as required under article 6 (9) of the Convention.

40. In order to fulfil the requirements of paragraph 6 of decision VI/8c, the Party concerned would need to provide the Committee with evidence that the Party concerned has:

(a) Taken 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;

(b) Disseminated the Committee's findings and recommendations on communication ACCC/C/2014/102 to senior officials in the police, security forces, judiciary and to other relevant authorities, for their information and action, together with a request for them to disseminate the findings to all relevant officials in order to raise awareness of their obligation to ensure compliance with article 3 (8) of the Convention;

(c) Delivered appropriate training and information programmes on human rights law relevant to article 3 (8) of the Convention, for police, security forces and the judiciary to ensure that members of the police and security forces do not exercise their powers in a manner, and identity checks and arrests for alleged public order violations are not utilized in a way, that would restrict members of the public from legitimately exercising their rights to participate in decision-making as recognized in article 1 of the Convention.

41. 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 takes 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.

42. The Committee welcomes the three progress reports received from the Party concerned and the additional information received.

43. The Committee also welcomes the information provided by the communicant of communications ACCC/C/2009/37 and ACCC/C/2009/44, the communicant of communication ACCC/C/2014/102 and observers Nuclear Transparency Watch, Greenpeace Netherlands, WISE International and Movement against the Astravyets NPP.

### **Scope of review**

44. The observer Movement against the Astravyets NPP expresses concerns regarding the ongoing development of the Ostrovets nuclear power plant (NPP). It states, inter alia, that the NPP construction takes place at an unsuitable site and that the European Union stress test requirements for the plant have not been implemented. It emphasizes the necessity to ensure transparency and public involvement in the development of the nuclear power plant.<sup>1</sup>

45. The Committee has taken note of the observer's statement but does not consider the above allegations to fall within the scope of decision VI/8c. While not precluding the possibility of examining any allegations within the scope of the Convention if put before it in a future communication, the Committee will not examine them in the context of its review of decision VI/8c. On this point, the Committee reminds the observer that, in its findings on communication ACCC/C/2009/44,<sup>2</sup> the Committee already found the Party concerned to be in non-compliance with regards to several aspects of the public participation procedure on the Ostrovets NPP.

### **General observations**

46. The Party concerned states that on 20 April 2020, the MNREP adopted an "Action Plan for the implementation of decision VI/8c of the Meeting of the Parties to the Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters" (the Action Plan). It submits that the Action Plan aims at "improving the regulatory framework, developing curricula and conducting educational activities, as well as measures aimed at preventing violations of the provisions of the Aarhus Convention".<sup>3</sup>

47. The Party concerned also reports that, by order of the MNREP of 15 May 2020, an inter-ministerial working group was established which includes representatives of public authorities and organizations, the General Prosecutor's Office, the Supreme Court, the Ministry of Internal Affairs and the communicant of communication ACCC/C/2014/102.<sup>4</sup>

48. The Committee welcomes the preparation of the Action Plan. It considers that the development of action plans to be a good practice to ensure a well-structured and comprehensive approach to implementing a decision of the Meeting of the Parties on compliance. The Committee similarly welcomes the establishment of the inter-ministerial working group, its broad membership and the invitation to the communicant of communication ACCC/C/2014/102 to participate therein. While noting the diverging views of the Party concerned and the communicant regarding the activity status and effectiveness of the working group and the degree of the communicant's inclusion therein,<sup>5</sup> the Committee considers that, if used effectively in practice, such a working group can stand as a good

---

<sup>1</sup> Comments by observer Movement against the Astravyets NPP, 1 July 2020, pp. 1–2.

<sup>2</sup> ECE/MP.PP/C.1/2011/6/Add.1.

<sup>3</sup> Party's final progress report, p. 1.

<sup>4</sup> Ibid.; Party's comments on the Committee's draft findings, 19 July 2021, p. 2.

<sup>5</sup> Comments from communicant of communication ACCC/C/2014/102 on Committee's draft report, 19 July 2021, p. 1; Party's comments on comments of communicant of communication ACCC/C/2014/102, 19 July 2021, p. 1.

practice for other Parties to follow. It encourages the Party concerned to make use of the opportunity of this working group to actively consult with the communicant on possible measures to take in order to fulfil the requirements of decision VI/8c.

49. The Committee regrets however that the Action Plan was only adopted on 20 April 2020, two and a half years after decision VI/8c was adopted by the Meeting of the Parties and less than 6 months before the deadline for the Party concerned's final progress report on decision VI/8c. Similarly, it is disappointed that the inter-ministerial working group was only established in May 2020. In order to come into compliance during the intersessional period, it is important that such measures are taken at an early stage promptly after the session of the Meeting of the Parties at which the decision on compliance was adopted.

50. The Committee also expresses its disappointment that, despite the Committee's invitation to do so already in its first progress review, the Party concerned has only provided the text of the Action Plan to the Committee after the Committee's draft report to the seventh session of the Meeting of Parties had already been prepared. Since the Party concerned in its final progress report makes abundant reference to the Action Plan, its failure to provide the Committee with the text of the Action Plan at the latest along with its final progress report has unnecessarily hampered the Committee's review of the measures taken, and proposed, by the Party concerned to implement decision VI/8c.

51. Lastly, the Committee takes note of the extensive documentation provided by the Party concerned on 16 July 2021, in parallel with its comments on the Committee's draft report to the seventh Meeting of the Parties. The Committee regrets both the very late provision of this documentation and that the Party concerned has not provided any clear explanation of how any of this voluminous documentation relates to the specific subparagraphs of decision VI/8c. The Committee stresses that if the Party concerned wishes the Committee to be in a position to properly take into account the information it provides, it is upon the Party concerned to provide that information in due time and with an easy-to-follow table of each measure documented in the information and to which subparagraph of decision VI/8c it relates.

### **Paragraph 3 of decision VI/8c**

#### *Initial observations*

52. The Committee notes that the Party concerned's final progress report was the first report in which it provided more comprehensive information on the implementation of paragraph 3 of decision VI/8c. While welcoming the final progress report, and the information submitted in between the second and the final progress report,<sup>6</sup> the Committee expresses its disappointment that the Party concerned did not engage more actively with the follow-up procedure on decision VI/8c from the beginning of the intersessional period. The Committee considers that such earlier engagement could have greatly increased the Party concerned's chances of moving closer to fulfilling all the requirements of paragraph 3 of decision VI/8c.

53. The Committee also expresses its concern that the legislative amendments that have to date been provided by the Party concerned appear to focus on the possibilities for the public to participate in decision-making on the EIA report only. The Committee emphasizes that public participation in decision-making under article 6 of the Convention requires the public to be notified of, have access to, and the possibility to comment on, all information relevant to the decision-making, including the project documentation, and not just the EIA report.

### **Paragraph 3 (a) of decision VI/8c: clear requirements to inform the public of its opportunities to participate**

54. The Committee recalls that, in its report on decision V/9c to the sixth session of the Meeting of the Parties, it found that the Party concerned had not yet established clear

<sup>6</sup> Party's letter, 20 May 2020 (dated 31 March 2020); Party's further information, 20 May 2020 (dated 6 April 2020).

requirements to inform the public of its opportunities to participate in decision-making concerning EIA reports in an effective manner.<sup>7</sup> It also found that the Party concerned had not shown that its legal framework ensures that the requirements in article 6 (2) of the Convention to inform the public in an adequate, timely and effective manner of its opportunities to participate, require the public to be informed of other information relevant to decisions permitting activities subject to article 6, including project documentation.<sup>8</sup>

55. Regarding paragraph 3 (a) of decision VI/8c, the Party concerned reports on a great number of legislative and other measures, both planned and already implemented.<sup>9</sup> These include amendments to the Law “On Environmental Protection” and the adoption of Resolution No. 571 on 30 September 2020, amending Resolution No. 458 of 14 June 2016 and Resolution No. 1592 of 29 October 2010<sup>10</sup> and the preparation of “draft recommendations on the Implementation in the Law and Administrative Practice of the Republic of Belarus of Measures to Ensure the Implementation of the Decision VI/8c of the Meeting of the Parties”<sup>11</sup> (draft recommendations).

56. The Party concerned also reports that it follows the *Maastricht Recommendations on Promoting Effective Public Participation in Environmental Matters*<sup>12, 13</sup>

57. While welcoming the information provided by the Party concerned on its extensive efforts to bring its legislation into full compliance with the requirements of the Convention, the Committee notes that the Party concerned does not explain which parts of these measures implement paragraph 3 (a) of decision VI/8c, including subparagraphs (i) and (ii) thereof, specifically.

58. Concerning the amendment of Resolution 1592 on the procedure for conducting a public environmental *expertiza*, the Committee reminds the Party concerned that, while it may complement the public participation procedure required as a mandatory part of the decision-making, the public environmental *expertiza* cannot itself contribute to fulfilment of paragraph 3 of decision VI/8c, since the public *expertiza* does not constitute public participation in decision-making for the purposes of article 6 of the Convention.<sup>14</sup>

59. Having reviewed all the information provided by the Party concerned prior to the preparation of the Committee’s draft report to the seventh session of the Meeting of the Parties, the Committee notes that the Party concerned refers, among many other newly introduced provisions, to a series of amendments of paragraph 43 of Resolution No. 458, as introduced by Resolution No. 571 of 30 September 2020. These include the following text:<sup>15</sup>

43. The procedure for public discussions of an EIA report shall include:

43.1. Preliminary information for citizens and legal entities about proposed economic or other activities within the jurisdiction of a given territorial administrative entity;

43.2. Notifying citizens and legal entities that public discussions of the EIA report will be conducted;

43.3. Ensuring access for citizens and legal entities to the EIA report at the premises of the project owner of the proposed economic or other activity and (or) at the premises of the relevant local executive and administrative agency, and posting the EIA report in the Public Discussions section of the official website of the local executive and administrative agency;

<sup>7</sup> ECE/MP.PP/2017/35, para. 42.

<sup>8</sup> ECE/MP.PP/2017/35, paras. 36 and 42.

<sup>9</sup> Party’s final progress report, pp. 2–7.

<sup>10</sup> *Ibid.*, pp. 2–5.

<sup>11</sup> *Ibid.*, p. 6.

<sup>12</sup> United Nations publication, Sales No. E.15.II.E.7.

<sup>13</sup> Party’s comments on Committee’s draft report, p. 3.

<sup>14</sup> ECE/MP.PP/2011/11/Add.2, para. 76.

<sup>15</sup> Party’s final progress report, p. 3, and annex, p. 8.



60. The Committee welcomes the above amendment. It recalls however that in its report on decision V/9c, it pointed out that Resolution No. 458, in the version effective at the time, included:

no requirement that when selecting the particular means of notification, the authorities should select those means which will ensure “effective” notification of the public concerned nor are there any specific provisions that would require that the notification be effective in practice.<sup>16</sup>

61. In this regard, it noted the submission by an observer:

that the current method of notification is not effective in informing the public of the public participation procedure because the local population does not usually visit the indicated websites and the advertisements in print media are not sufficiently prominent nor in publications that are read by a sufficient number of people.<sup>17</sup>

62. In this context, the Committee referred the Party concerned to paragraph 64 of the *Maastricht Recommendations*,<sup>18</sup> which provides useful guidance as to the various locations where notice should be posted, including, inter alia, the immediate vicinity of the proposed activity.<sup>19</sup>

63. The Committee welcomes the Party concerned’s stated commitment to following the *Maastricht Recommendations* (see para. 56 above).

64. However, having reviewed the amendments introduced to Resolution No. 458 by Resolution No. 571, the Committee regrets that none of the amendments appear to address the deficiencies highlighted in paragraphs 60 and 61 above concerning the effective notification of the public regarding its opportunities to participate with respect to EIA reports. Furthermore, the Party concerned has not pointed the Committee to any other legislative amendments aimed at the implementation of paragraph 3 (a) (i) of decision VI/8c either.

65. Similarly, with regards to paragraph 3 (a) (ii) of decision VI/8c, the Committee notes that the Party concerned does not indicate any specific provision aimed at ensuring that the public is informed in an adequate, timely and effective manner of other information relevant to the decision-making on activities subject to article 6. The Committee reminds the Party concerned that public participation in decision-making under article 6 of the Convention requires the public to have access to examine all information relevant to the decision-making, and not only the EIA report. Accordingly, the public must be notified of how to access the other documentation relevant to the decision-making, such as the project documentation, and not only the EIA report.

66. The Committee considers that, given its recent amendment of Resolution No. 458, the Party concerned’s apparent lack of action regarding paragraph 3 (a) is particularly regrettable, since the amendment process could have provided a timely opportunity for the Party concerned to implement the requirements of paragraph 3 (a).

67. In light of the foregoing, the Committee finds that the Party concerned has not yet fulfilled the requirements of paragraph 3 (a) of decision VI/8c.

### **Paragraph 3 (b) of decision VI/8c: content of the public notice**

68. With regards to paragraph 3 (b) of decision VI/8c, the Party concerned refers to the draft “Rules for Conducting Environmental Impact Assessment”, or “EcoNiP”, which were to be adopted by a MNREP resolution in December 2020 to replace the Technical Code of Good Practice 17.02-08-2012 (02120) (Technical Code).<sup>20</sup> It reports on several changes introduced by annex A of the “EcoNiP” document. These include plans to add a clause into

<sup>16</sup> ECE/MP.PP/2017/35, para. 39.

<sup>17</sup> Ibid.

<sup>18</sup> United Nations publication, Sales No. E.15.II.E.7.

<sup>19</sup> Ibid, paras. 63–70.

<sup>20</sup> Party’s final progress report, pp. 7–8.

the section on “Information on public discussions” in the form in annex A, specifying the need to indicate whether the planned activity is subject to a transboundary EIA procedure.<sup>21</sup>

69. The Committee refers to its report on decision V/9c to the sixth session of the Meeting of the Parties, where it noted with regards to the relevant form included in an appendix of the Technical Code:

The Committee has not received any information as to whether this form would be routinely utilized in the context of decisions under Chapter 5 of Resolution No. 458...The Committee considers that such a form, if routinely utilized in practice for procedures subject to article 6 of the Convention, could assist to bring the Party concerned further towards compliance.<sup>22</sup>

70. The Committee has not received any information on the above point regarding the “EcoNiP” document either, which the Party concerned states will replace the Technical Code. Nor has the Party concerned pointed the Committee to the actual text of the “EcoNiP” document or confirmed that this document was in fact adopted as planned in December 2020. This lack of information is regrettable, since the Committee considers that the reported changes may well be of a character to address the requirements of paragraph 3 (b) (iii) of decision VI/8c. Lacking the information referred to earlier in this paragraph, however, the Committee is unable to verify whether these requirements are indeed met.

71. Concerning paragraphs 3 (b) (i) and (ii), the Committee notes that the information submitted by the Party concerned does not address the issue of clearly designating the public authority responsible for making the final decision. Nor does it appear, based on the information provided, that a clear requirement has been introduced to designate the public authority from which relevant information other than the EIA report can be obtained, or to indicate where such information has been deposited for examination by the public.

72. On this point, the Committee again reminds the Party concerned that public participation in decision-making under article 6 of the Convention requires the public to have access to all information relevant to the decision-making, not just the EIA report.

73. Based on the above, the Committee finds that the Party concerned has not yet fulfilled the requirements of paragraph 3 (b) of decision VI/8c.

**Paragraph 3 (c) of decision VI/8c: rights in article 6 apply to all information relevant to decisions permitting activities, including project documentation**

74. Concerning paragraph 3 (c) of decision VI/8c, the Party concerned refers to several legislative and regulatory measures.<sup>23</sup>

75. The Committee notes that it is not clear how most of the measures the Party concerned reports on in relation to paragraph 3 (c) are relevant to the requirements of subparagraphs (i)-(v) of that paragraph. Nor has the Party concerned pointed the Committee to the text of the reported measures.

76. The Party concerned reports that Resolution No. 141 of 9 March 2020 has introduced changes to the “Regulation on the Procedure for Issuing Integrated Environmental Permits” to the effect that “based on the results of consideration of proposals and/or comments, the permit-issuing authority prepares a summary of opinions, including the received proposals and/or comments and the results of their consideration, which are submitted by the natural resource user together with the documentation to obtain an integrated environmental permit” and that “when making a decision to issue an integrated permit, proposals and/or comments are taken into account”.<sup>24</sup> The Committee considers that this amendment may be relevant to the fulfilment of the requirements of subparagraphs (i), (ii) and (v) of paragraph 3 (c) of decision VI/8c. However, not having been clearly provided with the text of either Resolution

<sup>21</sup> Ibid., p. 8.

<sup>22</sup> ECE/MP.PP/2017/35, para. 47.

<sup>23</sup> Ibid., pp. 9–11.

<sup>24</sup> Ibid., pp. 9–10.

No. 141 or the Regulation on the Procedure for Issuing Integrated Environmental Permits, the Committee is unable to make a finding in this regard.

77. In light of the foregoing, the Committee finds that the Party concerned has not yet fulfilled the requirements of paragraph 3 (c) of decision VI/8c.

**Paragraph 3 (d) of decision VI/8c: no broader exemptions than permitted under article 6 (1) (c) of the Convention**

78. The Committee recalls that, in its report on decision V/9c to the sixth session of the Meeting of the Parties, it found that the third paragraph of article 15-2 of the Environmental Protection Law continued to contain a number of exceptions not permitted under article 6 (1) (c) of the Convention, nor under any other of its provisions.<sup>25</sup>

79. In its final progress report, the Party concerned reports that the implementation of article 6 (1) (c) “will be continued with the revision of Art. 15-2 of the Law ‘On Environmental Protection’ in 2021”.<sup>26</sup>

80. While taking note of the Party concerned’s plans to reform its legislation to address paragraph 3 (d) of decision VI/8c, the Committee also notes that the Party concerned has provided very little information in this regard. The Party concerned’s first and second progress reports did not address the implementation of paragraph 3 (d) at all. At the very least, the Committee would have by now expected the Party concerned to provide a detailed plan of the exact schedule for the revision of article 15-2 of the Law on Environmental Protection, together with the text of any proposed draft amendments. The Committee therefore regrets that the draft recommendations provided by the Party concerned on 31 March 2020 (see para. 55 above),<sup>27</sup> while containing proposals on planned amendments to article 15-2 of the Environmental Protection Law, do not appear to propose any changes to the third paragraph of article 15-2.

81. In light of the above, the Committee finds that the Party concerned has not yet fulfilled the requirements of paragraph 3 (d) of decision VI/8c.

**Paragraph 3 (e) of decision VI/8c: clearly designate which is the final permitting decision and make it public**

82. Concerning paragraph 3 (e) of decision VI/8c, the Party concerned refers to paragraph 54 of Resolution No. 458, as amended through Resolution No. 571 (see above para. 55),<sup>28</sup> which states:

The project owner of the proposed economic or other activity shall, within 15 working days of receiving the conclusion [full report] of the state environmental review [*expertiza*], inform the relevant local councils, local executive and administrative agencies of a decision based on the results of the state environmental review and of where the conclusion of the state environmental review can be consulted. Local councils, local executive and administrative agencies shall post the information specified in the first subparagraph of this Paragraph in the Public Discussions section of their official websites.<sup>29</sup>

83. The Committee recalls its report on decision V/9c to the sixth session of the Meeting of the Parties, in which it held that:

without a clear understanding as to what constitutes the final decision in the system of the Party concerned..., the Committee cannot conclude that the Party concerned has fully met the requirements of paragraph 7 (a) of decision V/9c.<sup>30</sup>

<sup>25</sup> ECE/MP.PP/2017/35, paras. 78–80.

<sup>26</sup> Party’s final progress report, p. 11.

<sup>27</sup> *Ibid.*, p. 12.

<sup>28</sup> *Ibid.*, p. 12.

<sup>29</sup> *Ibid.*, annex.

<sup>30</sup> ECE/MP.PP/2017/35, para. 84.

84. The Committee considers that the same holds true with regards to paragraph 3 (e) of decision VI/8c. The Committee expresses disappointment that the Party concerned has still not amended its legal framework to ensure that it clearly designates what constitutes the final decision in its legal system. Thus, while welcoming the amendment to paragraph 54 of Resolution No. 458 and considering that it may well constitute progress, the Committee cannot conclude that the Party concerned has yet fulfilled the requirements of paragraph 3 (e) of decision VI/8c.

85. Based on the above, the Committee finds the Party concerned has not yet fully met the requirements of paragraph 3 (e) of decision VI/8c.

**Paragraph 6 (a) of decision VI/8c: ensure that members of the public exercising their rights in conformity with the provisions of the Convention are not penalized, persecuted or harassed**

86. The Committee recalls its first progress review, where it invited the Party concerned to provide:

(a) The text, or draft text, of any legislative, regulatory, administrative measures intended to address paragraph 6 (a);

(b) Confirmation that it has lifted the entry ban on Mr. Ozharovskiy and cancelled the administrative offences against Ms. Novikova, Ms. Sukhiy and Mr. Matskevich.<sup>31</sup>

87. The Committee expresses its serious concern that to date, the Party concerned has not reported on any legislative, regulatory or administrative measures that it has taken, or intends to take, to fulfil the requirements of paragraph 6 (a) of decision VI/8c.

88. Regarding the entry ban on Mr. Ozharovskiy, the Committee welcomes the information that the entry ban for Mr. Ozharovskiy was shortened to end on 1 May 2020.<sup>32</sup> However, the Committee expresses its disappointment that, according to the information before it, the entry ban was not fully lifted (and will thus remain on his record). Moreover, the Committee has not been provided with evidence that Mr. Ozharovskiy himself was informed of the shortening of the entry ban. The Committee takes note of the information provided by the Party concerned stating that Mr. Ozharovskiy was informed of the shortening of the entry ban and the letter sent by the Ministry of Internal Affairs to the MNREP, provided to support this statement.<sup>33</sup> The Committee invites the Party concerned to provide it with a copy of any letters that were sent to Mr. Ozharovskiy himself to inform him of the shortening of the entry ban.

89. On this point, the Committee is deeply concerned about the statement by the Ministry of Internal Affairs in its letter of 9 February 2020 to the communicant of communication ACCC/C/2014/102 that the decision to expel Mr. Ozharovskiy was “legal, justified, and it does not violate the provisions of the Convention on access to information, public participation in decision-making and access to justice on issues related to the environment”.<sup>34</sup> This statement indicates a fundamental misunderstanding of the Committee’s findings. The Committee re-emphasizes that, as it held unequivocally in its findings on communication ACCC/C/2014/102, the entry ban imposed on Mr. Ozharovskiy was indeed a violation of the Party concerned’s obligations under article 3 (8) of the Convention.

90. Similarly, the Committee is concerned at the Party concerned’s statement that Mr. Ozharovskiy, Ms. Novikova, Ms. Sukhiy and Mr. Matskevich “were fully guaranteed the right to a fair and public hearing of the case by a competent, independent and impartial court established on the basis of the law, as well as to review the case by a higher court” and that “bringing these persons to administrative responsibility for committing unlawful acts ... cannot be considered penalization, prosecution or harassment within the meaning of Article

<sup>31</sup> Committee’s first progress review, 24 February 2019, para. 90.

<sup>32</sup> Additional information from communicant of communication ACCC/C/2014/102, 14 April 2020, annex 2; Party’s comments on observers’ statement, 19 July 2021, pp. 1–2.

<sup>33</sup> Party’s comments on observers’ statement, 19 July 2021, p. 2, and annex.

<sup>34</sup> Statement by communicant of communication ACCC/C/2014/102 at Committee’s sixty-sixth meeting, annex 2.

3 (8) of the Convention”.<sup>35</sup> The Committee stresses that it clearly found that the above-mentioned individuals have been harassed, penalized and persecuted within the meaning of article 3 (8) of the Convention. It is now for the Party concerned to urgently address the requirements of paragraph 6 (a) of decision VI/8c and, as a first step, to cancel the administrative offences against Ms. Novikova, Ms. Sukhiy and Mr. Matskevich.

91. In light of the foregoing, the Committee finds that the Party concerned has not yet fulfilled the requirements of paragraph 6 (a) of decision VI/8c.

**Paragraph 6 (b) of decision VI/8c: dissemination of the Committee’s findings and recommendations**

92. With respect to paragraph 6 (b) of decision VI/8c, the Committee recalls its first progress review, where it invited the Party concerned to:

provide copies of the Ministry of Natural Resources and Environmental Protection’s letters of 31 July and 13 October 2017 to the Ministry of Internal Affairs, the State Security Committee, the Supreme Court and the Ministry of Justice or other correspondence requesting those institutions to disseminate the Committee’s findings to all relevant officials.<sup>36</sup>

93. In its final progress report, the Party concerned states that:

the conclusions and recommendations of the Compliance Committee and other relevant information materials [continue to] be disseminated, including with respect to communication ACCC/C/2014/102, in the system of bodies of the Ministry of Internal Affairs, the State Security Committee, judicial authorities in March-July 2020, in order to inform them and take measures within the framework of national legislation.<sup>37</sup>

94. The Party concerned also points the Committee to its 2020 Action Plan, which in its paragraph 9 states that the Committee’s findings are to be disseminated to the mentioned bodies “in the course of the year”.<sup>38</sup>

95. Along with its comments on the Committee’s draft report, the Party concerned submits the first page only of a letter dated 31 July 2017 from the MNREP to the State Security Committee, the Supreme Court and the Ministry of Justice, informing the latter three bodies of the Committee’s findings on communication ACCC/C/2014/102.<sup>39</sup> It also submits another letter of 31 July 2017 from the MNREP to the Ministry of Internal Affairs, providing a more detailed account of the Committee’s findings and recommendations on communication ACCC/C/2014/102 and inviting the Ministry of Internal Affairs to a working meeting regarding the findings, which appear to also have been attached in full to the letter.<sup>40</sup>

96. The Committee welcomes the Party concerned’s apparent steps to disseminate the Committee’s findings among different Ministries as well as the State Security Committee and the Supreme Court, and to enter into a dialogue on the Committee’s findings with some of these bodies.

97. However, the Committee notes that the above letters do not appear to request that the Committee’s findings be disseminated to all relevant bodies and officials as is required by paragraph 6 (b) of decision VI/8c. The Committee re-emphasizes that, in order to fulfil the requirements of paragraph 6 (b) of decision VI/8c, the Party concerned would need to “disseminate the Committee’s findings and recommendations on communication ACCC/C/2014/102 to senior officials in the police, security forces, judiciary and to other relevant authorities, for their information and action, together with a request for them to disseminate the findings to all relevant officials in order to raise awareness of their obligation to ensure compliance with article 3 (8)”. The Committee stresses that, without the relevant

<sup>35</sup> Party’s comments on Committee’s draft report, 19 July 2021, pp. 4–5.

<sup>36</sup> Committee’s first progress review, 24 February 2019, paras. 46 and 90.

<sup>37</sup> Party’s final progress report, p. 12.

<sup>38</sup> Party’s update (no. 1), 16 July 2021, annex, p. 3.

<sup>39</sup> Party’s comments on Committee’s draft report, 19 July 2021, annex 2.

<sup>40</sup> Ibid., annex 3.

evidence to prove the dissemination of the Committee's findings to each of the above bodies and officials, the Committee is unable to find that the Party concerned has fulfilled the requirements of paragraph 6 (b) of decision VI/8c.

98. Based on the above, the Committee finds that the Party concerned has not yet fulfilled the requirements of paragraph 6 (b) of decision VI/8c.

**Paragraph 6 (c) of decision VI/8c: appropriate training and information programmes on human rights law relevant to article 3 (8) for police, security forces and the judiciary**

99. In its final progress report, as well as its comments on the Committee's draft report, the Party concerned provides information on a great number of different training and information measures relating to the Convention. These include, inter alia, the distribution of handbooks, booklets and manuals to different ministries, local executive and administrative authorities, educational institutions as well as "internal affairs bodies", a video lecture, educational programs for employees of "the internal affairs bodies", a planned training for judges of courts of general jurisdiction, round tables and lectures for prosecutors and different other "authorities and organizations" and trainings on the Convention for "at least 920 specialists from all over ... Belarus".<sup>41</sup>

100. While welcoming all measures taken by the Party concerned to promote awareness of the Convention's provisions, and specifically article 3 (8), the Committee points out that most of the activities reported do not appear to concern training or information programmes for the police, security forces or the judiciary as is explicitly required by paragraph 6 (c) of decision VI/8c.

101. In this regard, the Committee considers that the reported development of "a curriculum and information materials on issues related to paragraph 8 of Article 3 of the Aarhus Convention for representatives of the internal affairs and state security bodies" and "educational activities (lectures) on issues related to paragraph 8 of Article 3 of the Aarhus Convention for representatives of the judiciary"<sup>42</sup> indeed appears relevant to the implementation of paragraph 6 (c) of decision VI/8c. The Committee thus regrets that the Party concerned has not provided any more specific details on these activities.

102. In this context, the Committee refers to its first progress review, where it invited the Party concerned to:

provide detailed information on the training and information programmes for police, security forces and the judiciary it has ... carried out. Such information should include: (i) the specific content of the trainings, including the detailed programme with the titles of the presentations delivered; (ii) the organizers of the trainings and professions and relevant experience of trainers and speakers; (iii) the number and rank of police and security force personnel that have attended the trainings and the town or region in which each is based; and (iv) the number of judges who have attended the trainings and in which court and town or region each judge sits.<sup>43</sup>

103. The Committee accordingly expresses its concern that the Party concerned has still not provided any clear and detailed information regarding any training or information programmes on human rights law relevant to article 3 (8) that it has to date carried out for police, security forces or the judiciary.

104. In light of the above, the Committee finds that the Party concerned has not yet fulfilled the requirements of paragraph 6 (c) of decision VI/8c.

**Paragraph 7 of decision VI/8c**

105. Through paragraph 7 of decision VI/8c, the Meeting of the Parties has requested the Committee, when evaluating the implementation by the Party concerned of paragraph 6 of

<sup>41</sup> Party's final progress report, pp. 12–17; Party's comments on Committee's draft report, 19 July 2021, pp. 2–3.

<sup>42</sup> Party's final progress report, pp. 13–14.

<sup>43</sup> Committee's first progress review, 24 February 2019, paras. 51 and 90.

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.

106. As the Committee made clear in its second progress review, 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. Rather, the information provided to the Committee under paragraph 7 serves a key function to demonstrate whether the Party concerned has yet undertaken sufficient measures under paragraph 6 of decision VI/8c to no longer be in non-compliance with article 3(8) of the Convention.<sup>44</sup> This does not preclude the possibility of the Committee making a finding on further allegations of non-compliance with article 3 (8) of the Convention if such incidents are put before it in the context of a future communication.

107. Since the Committee's second progress review, the communicant of communication ACCC/C/2014/102 has provided information on a significant number of alleged further incidents of penalization, persecution and harassment under article 3 (8) of the Convention, many in relation to the organisation or participation in protests against the construction of a battery plant in Brest.<sup>45</sup>

108. The reported incidents of penalization, persecution and harassment since the Committee's second progress review include fines, a high number of administrative detentions, criminal proceedings against several environmental activists, searches of their homes and seizure of their possessions, a physical attack on one of the activists and the threatening of an activist by the Prosecutor's Office in relation to an interview given to a German news channel. The communicant of communication ACCC/C/2014/102 alleges that the persecution of environmental activists opposing the battery plant has become "systemic and massive".<sup>46</sup>

109. The communicant of communication ACCC/C/2014/102 further reports on criminal proceedings against an environmental activist opposing the construction of a pulp-bleaching plant, allegations of "violation of the organisation or conduct of a mass event" against an activist opposing the construction of a glass wool production workshop<sup>47</sup> and a 15-day administrative detention of the leader of the Belarusian Green Party for "violation of the order of organizing or holding mass gathering events".<sup>48</sup>

110. In addition, the communicant of communications ACCC/C/2009/37 and ACCC/C/2009/44 and observers Nuclear Transparency Watch, Greenpeace Netherlands and WISE International report that, on 6 September 2020, Ms. Irina Sukhiy was arrested and detained, her home was searched and possessions seized, including her laptop and internet router. The Committee notes that Ms. Sukhiy was one of the persons that the Committee found in its findings on communication ACCC/C/2014/102 to have been subject to persecution, penalization and harassment under article 3 (8) in two separate incidents in 2012 and 2013 for her opposition to the Ostrovets nuclear power plant.<sup>49</sup>

111. According to the information before the Committee, Ms. Sukhiy was arrested on 6 September 2020 for her participation on 3 September in an unauthorized mass gathering in Minsk.<sup>50</sup> However, at a hearing on 7 September 2020, the court was provided with evidence establishing that on 3 September Ms. Sukhiy had been 200 kilometres away from Minsk. Despite this, Ms. Sukhiy was kept in detention and the case was returned for further

<sup>44</sup> Committee's second progress review, 9 March 2020, para. 72.

<sup>45</sup> Statement by communicant of communication ACCC/C/2014/102 at Committee's sixty-sixth meeting, annex 1; Information from communicant of communication ACCC/C/2014/102 dated 20 April 2020, 23 April 2020, 14 May 2020 and 24 May 2021.

<sup>46</sup> Information from communicant of communication ACCC/C/2014/102, 14 May 2020, p. 1.

<sup>47</sup> *Ibid.*, p. 3.

<sup>48</sup> Information from communicant of communication ACCC/C/2014/102, 24 May 2021, p. 2.

<sup>49</sup> ECE/MP.PP/C.1/2017/19, para. 112 (d) and (e).

<sup>50</sup> Update from communicant of communications ACCC/C/2009/37 and ACCC/C/2009/44, 7 September 2020.

investigation.<sup>51</sup> On 8 September 2020, the Soviet District Court found Ms. Sukhiy guilty of violating the law on holding a mass gathering for taking an active part in an entirely different event, namely a “Women’s Protest March” held on 29 August 2020. She was sentenced to an administrative penalty of 5 days detention.<sup>52</sup>

112. The communicant of communications ACCC/C/2009/37 and ACCC/C/2009/44 reports that the relevant court order for Ms. Sukhiy’s arrest stated that during the event on 29 August 2021, she had held a banner with the slogan “No nuclear station, no daddy” and thus was exercising her rights under the Convention. It submits the court order as evidence.<sup>53</sup>

113. In its comments on the Committee’s draft report, the communicant of communication ACCC/C/2014/102 reports on several further very recent arrests of environmental activists. It also reports that on 22 June 2021 it was itself requested to present a large amount of documentation to the Ministry of Justice, a step that it claims is usually followed by repressive measures and the liquidation of the nongovernmental organization (NGO) concerned. Lastly, it reports that the home of its executive director was recently searched and that police forces tried to enter its offices.<sup>54</sup>

114. In their comments on the Committee’s draft report, observers Nuclear Transparency Watch, Greenpeace Netherlands and WISE International likewise report on further incidents of arrest of environmental activists and their family members. They also state that several NGO members fled the country for safety reasons, and that some environmental organisations closed due to the burden of “extraordinary financial controls”.<sup>55</sup>

115. In its response of 15 May 2020 regarding the events in paragraph 108 above, the Party concerned confirms the administrative detention of several of the activists in relation to their participation in protests against the battery plant in Brest. It submits that “there are ample opportunities provided to the public to express an opinion on environmental matters through various forms” but that “in some cases the actions of some activists expressing their opposition to the construction of the battery plant have been going beyond the scope of environmental activities and are becoming more political and destructive”.<sup>56</sup> The Party concerned contends that the reported incidents do not constitute persecution, punishment or harassment.<sup>57</sup>

116. Based on the information provided by the communicant of communications ACCC/C/2009/37 and ACCC/C/2009/44 and observers Nuclear Transparency Watch, Greenpeace Netherlands and WISE International concerning the arrest on 6 September 2020 of Ms. Sukhiy, the Chair of the Committee wrote to the Party concerned on 9 September 2020 with a number of questions regarding her arrest.

117. In its response to the letter from the Chair of the Committee, the Party concerned states that Ms. Sukhiy’s arrest and detention were not related to the exercise of her rights in conformity with the Convention. Rather, it states that she was arrested and detained for taking active part in the unauthorized “Women’s Protest March” on 29 August 2020 which had “demanded new presidential elections and the release of all political prisoners”. The Party concerned does not comment on why Ms. Sukhiy was arrested on 6 September for taking part in a mass gathering on 3 September, and then was charged with having taken part in the event on 29 August instead. Nor does the Party concerned explain the reason for the search and seizure of Ms. Sukhiy’s possessions, including her laptop. In its comments on the

<sup>51</sup> Ibid.

<sup>52</sup> Party’s reply to Chair’s letter of 9 September 2020, 18 September 2020, p. 2.

<sup>53</sup> Comments by communicant of communications ACCC/C/2009/37 and ACCC/C/2009/44 on Committee’s draft report, p. 1, and annex 1.

<sup>54</sup> Comments by communicant of communication ACCC/C/2014/102 on Committee’s draft report, 19 July 2021, pp. 1–2.

<sup>55</sup> Observers’ statement at Committee’s seventy-first meeting, pp. 1–2.

<sup>56</sup> Party’s comments on information from communicant of communication ACCC/C/2014/102, 15 May 2020, p. 13.

<sup>57</sup> Party’s comments on Committee’s draft report, 19 July 2021, pp. 7–8.



Committee's draft report, the Party concerned reiterates that the arrest of Ms. Sukhiy was not related to her exercising her rights under the Convention.<sup>58</sup>

118. Concerning the Ministry of Justice's request on 22 June 2021 to the communicant of communication ACCC/C/2014/102 to provide documentation, the Party concerned submits that this constitutes a control of the compliance of the organization's activities with the Belarusian Constitution and other legislative acts. It states that it is convinced that the communicant carries out its activities in accordance with the Constitution and the other relevant legislation.<sup>59</sup>

119. Regarding the Party concerned's statement in paragraph 115 above that "the actions of some activists expressing their opposition to the construction of the battery plant have been going beyond the scope of environmental activities and are becoming more political", the Committee underlines that the protection from penalization, persecution or harassment provided by article 3 (8) must be granted comprehensively to all persons exercising their rights in conformity with the provisions of the Convention. There is no basis in the Convention to differentiate between "political" and other types of activities. In fact, exercising one's rights in conformity with the provisions of the Convention may frequently involve interference with issues that are considered politically sensitive by certain actors, which is precisely why it is of paramount importance that persons exercising their rights in conformity with the Convention enjoy the protection provided by article 3 (8).

120. The Committee further notes that, while the Party concerned claims that some of the administrative detentions, search and seizures and administrative and criminal proceedings reported on by the communicant of communication ACCC/C/2014/102 were not related to the activists' opposition to the construction of the battery, pulp-bleaching and glass wool production plants, the Party concerned does not generally dispute that the incidents described in paragraphs 108 and 109 above did in fact occur. The Committee considers that these incidents, as well as the further events reported on by observers and communicants, indicate that not only has the Party made no progress in fulfilling the requirements of paragraph 6 (a) of decision VI/8c, the situation for persons exercising their rights in conformity with the Convention in the Party concerned is in fact rapidly deteriorating. The Committee expresses its grave concern regarding this development.

121. Based on the above, the Committee considers that the information provided to it under paragraph 7 of decision VI/8c by the communicants of communications ACCC/C/2014/102, ACCC/C/2009/37 and ACCC/C/2009/44 and the observers confirm its conclusions in paragraphs 91, 98 and 104 above that the Party concerned has not yet fulfilled the requirements of paragraph 6 (a)–(c) of decision VI/8c.

#### **Advisory assistance to the Party concerned**

122. In addition to the advice provided in its first and second progress review, the Committee stands ready to answer any questions that the Party concerned may have regarding the measures to be taken to fulfil the requirements of decision VI/8c, or any decision that supersedes it, at any open sessions to be held with the participation of the Party concerned during the intersessional period following on the seventh Meeting of the Parties.

123. Moreover, should the Party concerned ask it to do so, the Committee expresses its willingness to provide further detailed written advice or to undertake a mission to the Party concerned to meet with senior officials in order to assist them to better understand what will be required in order to fully meet the requirements of decision VI/8c, or any decision that supersedes it. If the Party concerned may be interested to seek such advice or assistance from the Committee, it is encouraged to do so in writing as soon as possible in the next intersessional period.

<sup>58</sup> Ibid., pp. 5–7; Party's statement at Committee's seventy-first meeting, pp. 2–3.

<sup>59</sup> Party's comments on comments of communicant of communication ACCC/C/2014/102, 19 July 2021, p. 2.

## IV. Conclusions and recommendations

124. The Committee, while welcoming the efforts made in that direction, finds that the Party concerned has not yet met the requirements of paragraph 3 of decision VI/8c.

125. The Committee finds that the Party concerned has not yet met the requirements of paragraph 6 of decision VI/8c and expresses its grave concern that the situation for persons exercising their rights in conformity with the Convention in the Party concerned is in fact rapidly deteriorating.

126. The Committee recommends to the Meeting of the Parties that it reaffirms decision VI/8c and requests the Party concerned take, as a matter of urgency, the necessary legislative, regulatory and administrative measures and practical arrangements to ensure that:

(a) There are clear requirements to inform the public of its opportunities to participate in decision-making processes on activities subject to article 6 and in particular:

(i) With respect to EIA reports, to inform the public in an effective manner;

(ii) With respect to other information relevant to decisions on activities subject to article 6, including project documentation, to inform the public in an adequate, timely and effective manner;

(b) The content of the public notice required under article 6 (2) of the Convention includes inter alia the following:

(i) The public authority responsible for making the decision to permit the proposed activity subject to article 6;

(ii) The public authority from which relevant information other than the EIA report can be obtained and where the relevant information other than the EIA report has been deposited for examination by the public;

(iii) Whether the activity is subject to a transboundary environmental impact assessment procedure;

(c) The rights set out in article 6 of the Convention apply not only to the EIA report but to all information relevant to decisions permitting activities subject to article 6, including project documentation, and that with respect to public participation on such information:

(i) There are reasonable minimum time frames for submitting comments during the public participation procedure for all decisions under article 6 of the Convention, taking into account the stage of decision-making as well as the nature, size and complexity of proposed activities;

(ii) There is a clear possibility for the public to submit comments directly to the relevant authorities (i.e. the authorities competent to take the decisions subject to article 6 of the Convention);

(iii) There are clear provisions imposing obligations on the relevant public authorities to ensure such opportunities for public participation as are required under the Convention, including for making available the relevant information and for collecting comments through written submission and/or at public hearings;

(iv) The full content of all comments made by the public (whether claimed to be accommodated by the developer or those which are not accepted) is submitted to the authorities responsible for taking the decision (including those responsible for the *expertiza* conclusion);

(v) There are clear provisions imposing obligations on the relevant public authorities to take due account of the outcome of public participation, and to provide evidence of this in a publicly available statement of reasons and considerations on which the decisions is based;

(d) Statutory provisions regarding situations where provisions on public participation do not apply cannot be interpreted to allow for much broader exemptions than allowed under article 6 (1) (c) of the Convention;

(e) The amended legal framework clearly designates which decision is considered to be the final decision permitting the activity and that this decision is promptly made public, as required under article 6 (9) of the Convention.

127. The Committee further recommends to the Meeting of the Parties that it requests the Party concerned, as a matter of urgency, to:

(a) 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;

(b) Disseminate the Committee's findings and recommendations on communication ACCC/C/2014/102 to senior officials in the police, security forces, judiciary and to other relevant authorities, for their information and action, together with a request for them to disseminate the findings to all relevant officials in order to raise awareness of their obligation to ensure compliance with article 3 (8) of the Convention;

(c) Deliver appropriate training and information programmes on human rights law relevant to article 3 (8) of the Convention, for police, security forces and the judiciary to ensure that members of the police and security forces do not exercise their powers in a manner, and identity checks and arrests for alleged public order violations are not utilized in a way, that would restrict members of the public from legitimately exercising their rights to participate in decision-making as recognized in article 1 of the Convention.

128. The Committee moreover recommends to the Meeting of the Parties that it request the Committee, when evaluating the implementation by the Party concerned of the recommendations in paragraph 127 above, 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.

129. Finally, the Committee recommends to the Meeting of the Parties that it request the Party concerned to:

(a) Submit an updated plan of action, including a time schedule, to the Committee by 1 July 2022 regarding the implementation of the recommendations in paragraphs 126 and 127 above;

(b) Provide detailed progress reports to the Committee by 1 October 2022, 1 October 2023 and 1 October 2024 on the measures taken and the results achieved in the implementation of the recommendations in paragraph 127 above;

(c) Provide detailed progress reports to the Committee by 1 October 2023 and 1 October 2024 on the measures taken and the results achieved in the implementation of the recommendations in paragraph 126 above;

(d) Provide such further information as the Committee may request in order to assist it to review the progress by the Party concerned in implementing the recommendations in paragraphs 126 and 127 above;

(e) Participate (either in person or by virtual means) in the meetings of the Committee at which the progress of the Party concerned in implementing the recommendations in paragraphs 126 and 127 is to be considered.