

WGP 28

Agenda item 5 (b): Compliance mechanism

Presentation by the Chair

Good afternoon, Parties and observers.

I am delighted to address the twenty-eighth meeting of the Working Group of the Parties in my role as Chair of the Compliance Committee.

Listening to the various contributions made by Parties and observers at this meeting, I was struck by the strong emphasis so many of you placed on the rule of law. Clearly, the Aarhus Convention and its Compliance Committee play a fundamental role in supporting the rule of law and implementation of the right to a clean, healthy and sustainable environment.

With the increase in litigation in the field of climate, human rights and environmental protection more broadly, it is encouraging to observe the examples of good practice that emerged during the thematic session on access to justice yesterday. Contributors also acknowledged, of course, the many challenges that remain to be addressed to eliminate persistent barriers to access to justice.

We also heard multiple references to the perilous position of environmental defenders, including children and young people. It is very concerning to hear about the increased use of strategic lawsuits against public participation (SLAPPs) and repressive measures to deter peaceful environmental protest.

I have stated previously, indeed on multiple occasions, that the most effective way to protect environmental defenders is to work to ensure effective implementation of the Convention at national and local level.

It is against this important background that I provide the following report on the Compliance Committee's work.

Facts and figures

The report on the implementation of the work programme¹ sets out the Committee's activity from 16 April 2023 – 30 April 2024. I will not repeat that information here. Instead, I will focus on some significant recent developments:

- Since 30 April 2024, the Committee has held one regular meeting, its 83rd meeting, which took place in person, in Geneva from 11–14 June 2024. It will hold its 84th meeting in Geneva from 17-20 September 2024.
- The Committee currently has 43 pending communications and no pending submissions. (By way of comparison, at this time last year, the Committee had 40 pending communications.)
- The Committee is also actively engaged in reviewing the implementation by the Parties concerned of 18 decisions and 1 request² made by the Meeting of the Parties at MOP7 concerning the compliance of individual Parties; as well as 2 findings of non-compliance regarding which the Parties concerned each agreed that the Committee take the measures requested in paragraph 36 (b) of the annex to decision I/7.³
- Finally, the Committee continues to provide advice to Parties, at their request, concerning the implementation of the Convention.
 - The Committee is currently preparing advice to Armenia at its request regarding its new Law on Environmental Impact Assessment. This is in fact two separate advices – one regarding the aspects within the scope of the MOP follow-up and the second, regarding other aspects.
 - The Committee has also recently completed draft advice to Czechia at its request.⁴ The Committee's draft advice has been sent today to the Party concerned, communicants and observers for their comments.
 - Given the wider relevance of the issues addressed in the Committee's draft advice to Czechia, at the Party concerned's suggestion, the Committee will also invite other Parties and stakeholders to comment on its draft advice.
 - The Committee welcomes Parties requesting advice from the Committee proactively in this way, while recognizing that it adds significantly to the Committee's already enormous caseload.

¹ ECE/MP.PP/WG.1/2023/5, paras. 25–31.

² ACCC/M/2021/4 (European Union).

³ Committee's findings on communication ACCC/C/2014/119 (Poland), ECE/MP.PP/C.1/2022/10; Committee's findings on request ACCC/M/2021/5 (Republic of Moldova), ECE/MP.PP/C.1/2022/10.

⁴ Decision VII/8e (Czechia).

Follow-up on MOP decisions and requests

- I will now turn to the Committee's work to follow-up on the decisions and requests adopted at MOP7 concerning the compliance of individual Parties. Each MOP decision on compliance required the Party concerned to submit to the Committee a first progress report, by 1 October 2023, regarding the implementation of the recommendations contained in that decision.
- I am pleased to report that 16 of the 18 Parties subject to MOP decisions have to date submitted their first progress reports (with one Party being subject to both a MOP decision and a MOP request and therefore submitting two progress reports).
- The Committee expresses its concern, however, that 2 of the 18 Parties subject to MOP decisions have not yet submitted their first progress reports (i.e. Hungary and Ukraine). I underline that the deadline of 1 October 2023 was set by the Meeting of the Parties itself. The Committee calls upon Hungary to submit its first progress report as a matter of urgency and, recognizing the exceptional circumstances of the ongoing war, for Ukraine to do so as soon as possible.
- Following their receipt, Parties' progress reports were sent to communicants and registered observers for their comments. The Committee thereafter prepared its first progress reviews taking into account the information received.
 - The Committee has now sent 14 of 18 progress reviews to the Parties concerned, communicants and observers.
 - The preparation of these 18 progress reviews has been an enormous amount of work for the Committee, and the legal officers in the secretariat.
 - I remind Parties that the number of MOP follow-ups before the Committee is almost double that of the previous intersessional period.
 - The size and complexity of a number of Parties' MOP decisions has also substantially increased, in the light of new findings of non-compliance being added alongside older findings and recommendations not yet addressed by the Party concerned.
- I remind all Parties subject to a MOP decision or request that their final progress report is due **by 1 October 2024**. All measures to implement the recommendations in the MOP decision or request must be completed, and reported to the Committee, by that date. 1 October is now approaching very quickly.
- Upon receipt, each Party's final progress report will be sent to communicants and observers for their comments.
- In the first half of 2025, the Committee will then prepare its draft report to the Meeting of the Parties on each MOP decision or request. Following their completion, the Committee's draft reports will be sent to the Party concerned, communicants and observers for a brief opportunity to comment, before being adopted by the Committee and submitted to the eighth session of the Meeting of the Parties.
- If, in its report to the eighth session, the Committee finds that the Party concerned has fully met the recommendations contained in its MOP decision or request, then the Meeting of the Parties will be invited to endorse the Committee's findings and to welcome the Party concerned's actions to come into compliance. That should then be the end of the matter.
- In contrast, if the Committee, in its report to the eighth session finds that the Party concerned has not yet fulfilled the Committee's recommendations, then the Bureau to the Convention, in advance of the eighth session, will prepare a draft decision concerning the compliance of the Party concerned based on the Committee's findings and recommendations and will thereafter submit the draft decision to the Meeting of the Parties for its consideration and possible adoption.

Practical advice on engaging with the Committee

As I aim to do on each occasion I address the Working Group of the Parties, I will make some brief practical suggestions to Parties, communicants and observers on how to engage more effectively with the Committee. I will focus here on three points:

- As the Guide to the Compliance Committee makes clear, if the Committee schedules a hearing to discuss the substance of a communication, it is expected that both the Party concerned and the communicant will attend the hearing in person. Moreover, it is expected that the representatives of both the Party concerned and the communicant will have the necessary knowledge and expertise to answer the Committee's questions regarding the substance of the case, and the applicable legal framework. At its recent 83rd meeting on 11-14 June 2024, the Committee had scheduled to hold a hearing on communication ACCC/C/2019/168 (Iceland). The Party concerned confirmed its participation. However, despite financial assistance being available to support the communicants' attendance, the communicants informed the Committee, at a very late stage, that they would not after all attend the hearing. This was despite the availability of financial support and the fact that it was the communicants themselves who had specifically requested that a hearing be held in the case. The Committee has expressed its serious disappointment at the communicants' conduct in this case. I reiterate that, if the Committee schedules a hearing to discuss the substance of a case, it is expected that both the Party concerned and the communicant will attend the hearing in person.
- On a number of occasions recently, it has appeared that the Party concerned or the communicant, or both, may have misunderstood the criteria upon which the Committee makes a determination of preliminary admissibility and the legal status of a determination that a communication is admissible on a preliminary basis. In making a determination of preliminary admissibility, the Committee takes no view on the substance or merits of the case. Rather, as explained in the Guide to the Compliance Committee, a determination on preliminary admissibility is solely based on the criteria set by the Meeting of the Parties in paragraphs 19-21 of the annex to decision I/7. Should the Committee determine a communication to be admissible on a preliminary basis, the communication will thereafter be forwarded to the Party concerned for its response to the substance of the communication. The Party concerned has five months from the date the communication is forwarded to provide its response. In its response, it may make further submissions on the admissibility of the communication. However, its response must also provide detailed submissions on the substance of the allegations made in the communication. Following the expiry of the five month deadline, the Committee will consider how to proceed with the communication, including any further challenge to the admissibility of the communication made by the Party concerned.
- As stated in paragraph 24 of the Guide to the Compliance Committee, in order to protect personal data, Parties, communicants and observers are each requested to redact home addresses, telephone numbers and emails of private persons from all documents submitted to the Committee as annexes prior to submitting them to the Committee.

Committee resourcing

- As I have already mentioned, the Committee has a very significant number of communications pending before it. In addition to its work on these communications, the Committee is also engaged in twenty-one follow-ups on decisions and requests of the Meeting of the Parties and findings of non-compliance. The Committee is also working to finalise several requests from Parties for advice and assistance. All of this work is, by its very nature, highly complex and time-consuming.
- On multiple occasions, including at the twenty-seventh meeting of the Working Group of the Parties last year, I have emphasised the precarious position of the Compliance Committee due to a persistent lack of resources.
- It remains the case that the Committee does not have sufficient resources to deal with its ever-increasing workload effectively.
- A tiny team in the secretariat, Fiona Marshall, Secretary to the Committee, Anastasia Giadrossi, Associate Legal Officer, and Teresa Mayr, Legal Officer, provide invaluable legal support to the Committee in dealing with its more than 65 pending cases.
- As I said last year, it is essential that sufficient financial resources are provided to the secretariat in order that it can secure additional legal staff to support the compliance mechanism.
- I emphasize again the seriousness of the current situation and the significant challenges posed by the lack of resources at a time when the Committee is in such high demand.

- I acknowledge the long timeframes at present for the Committee to complete its findings on pending communications and to complete progress reviews and advice requested by Parties. I appreciate how frustrating this situation is for everyone involved.
- But without significant additional resources the current delays will continue to increase.
- It is difficult to put into words how frustrating the current position is for me as Chair and for my Compliance Committee colleagues. More significantly, the lack of resources puts enormous strain on the secretariat.
- I have the impression that not everyone appreciates fully that supporting the Compliance Committee is only one aspect of the legal work undertaken by the secretariat. In particular, the introduction of the rapid response mechanism has resulted in a completely new, important and very resource intensive strand of work for the secretariat, thus furthering stretching the already limited resources available to support the Compliance Committee. Inevitably, this leads to increased delay in processing Compliance Committee cases.
- I call again on all Parties to reflect on the Committee's precarious situation and to provide further resources, on a long-term basis, as a matter of urgency to support its vital work. The current position is completely unsustainable.

I would like to thank Parties, communicants and observers for their constructive engagement with the Compliance Committee and to particularly thank Committee members and the secretariat for their dedication, hard work and professionalism in supporting the Convention's compliance mechanism.

A special word of thanks is due to Fiona Marshall, Secretary to the Compliance Committee, Anastasia Giadrossi, Associate Legal Officer, Teresa Mayr, Legal Officer, and Katri Veldre, Programme Assistant.

Closing remarks

As the eighth session of the Meeting of the Parties draws near, we find ourselves at a crossroad.

Parties have the opportunity to demonstrate leadership in supporting the rule of law and the right to a clean, healthy and sustainable environment by committing to resourcing the compliance mechanism on a long-term, sustainable basis.

Real and present threats to the rule of law, including increasingly repressive action against environmental defenders, confirm the fundamental importance of the Aarhus Convention to support environmental democracy. Over twenty-five years after the adoption of the Convention, we must stand firm in the face of unprecedented challenges and focus our efforts on delivering the right to a clean, healthy and sustainable environment.

I assure you that the Compliance Committee remains absolutely committed to supporting Parties in their implementation of the Convention.

By working together, I am confident that we can move forward to protect the right of present and future generations to live in an environment adequate to their health and well-being. But the Committee must have the necessary resources to fulfil our mandate effectively.

Thank you.

Áine Ryall, Chair

3 July 2024