

Aarhus Compliance Mechanism Training 16 to 19 March 2010, Geneva

Session 1: Introduction to the Compliance Mechanism

1.1 What is the Compliance Mechanism of the Aarhus Convention?

Legal base for the Compliance Mechanism and the Compliance Committee

- Article 15 of the Convention
- MOP shall establish arrangements for non-confrontational and consultative for reviewing compliance with the Convention
- This happened at first MOP in Lucca, by Decision I/7 setting up the Compliance Committee

The Aarhus Convention Compliance Committee (ACCC)

- Committee established for the review of compliance by the Parties with the obligations under the Convention
- Open to the public: unique in international law
- Legal base: Article 15 AC and decision 1/7 on Review of Compliance of first MOP (Lucca, 2002)

Major tasks of the ACCC

- The ACCC shall examine compliance for different purposes (Annex decision I/7, point III)

such as...

- Provide a general report on compliance of the parties on request of the MOP
- Monitor assess and facilitate implementation and compliance with regard to reporting requirements
- Submissions, referrals and communications



Structure and composition of the ACCC (based on decision I/7)

- 9 members, serve in their personal capacity (not as government representative)
 - Not more than one national of the same state
 - Nominated by the parties and NGOs
 - Selected by MOP
 - Geographic scope to be considered
 - At any MOP four new members elected
 - Members may be elected for second period
 - One period is from end of MOP to end of second MOP



Members of the ACCC

- Chairperson Mr. Veit Koester (Denmark)
- Vice-Chairperson Ms. Svitlana Kravchenko (Ukraine)
- Mr. Jerzy Jendroska (Poland)
- Mr. Jonas Ebbesson (Sweden)
- Mr. Merab Barbakadze (Georgia)
- Mr. Alexander Kodjabashev (Bulgaria)
- Ms. Ellen Hey (Netherlands)
- Mr. Vadim Nee (Kazakhstan)
- Mr. Gerhard Loibl (Austria)

Major functions of the ACCC

1. Consider
 - Submissions by the parties (own, other)
 - Referrals by the Secretariat
 - Or communications by the public (public trigger)
2. Prepare a report on compliance to MOP
3. To monitor, assess and facilitate the implementation of and compliance with the Convention
4. Examine compliance issues and make recommendations to the MOP on that

Some things to remember!

- Compliance Committee is not a court!
- The mechanism is a non judicial and consultative
- Communications from the public are only one part of the procedures under Article 15 of the Convention; however the most important ones until now

Some principles with regard to the ACCC

Confidentiality/transparency

- All meetings are open to the public (but not to other parties..)
 - some exceptions
- All documents are available on Website
- Preparation of decisions, recommendations is closed to parties and public
- Members have to work confidential

Some principles with regard to the ACCC

Exceptions from confidentiality

- When information provided in confidence
- exceptions Art 4/3 AC (national defence etc)
- Example: Belarus cases (confidential)

Language

- Internal working language English
- Communications in English, French or Russian
- Advantage if English is used in public hearing

Decision making in the ACCC

- Modus operandi page 8
- Some decisions can be taken by email
- At least five members have to be available for votes
- Majorities needed for decisions
 - 7 votes when 9 members are present
 - 6 votes when 8 members are present
 - 6 votes when 7 members are present
 - 5 votes with 6 members
 - 5 votes with 5 members

How does the ACCC issue its opinion?

The Committee may

- propose general and particular recommendations and reports to the MOP
- issue „findings and recommendations“ to the MOP on specific compliance cases

„Findings and recommendations“ of the ACCC

Findings and recommendations are the legal format and label of the ACCC concerning compliance cases

(can) contain different aspects, such as

- non/compliance of a party
- with regard to specific cases (application),
- general non compliance,
- or specific legislation

The ACCC and the Meeting of the Parties (MOP)

The ACCC can not issue legally binding documents, but the MOP can do so

The ACCC can propose certain measures to be adopted by the MOP. But only the MOP decides.

The ACCC can propose to the MOP to take the following measures:

Decision I/7 point 37; the MOP can decide to

- provide assistance and facilitation with regard to the implementation of the Convention in a certain country
- make recommendations to the party concerned
- request a party to develop a strategy
- propose specific measures to a party
- issue cautions to a party
- suspend rights for party