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

Compliance Committee

Sixty-seventh meeting

Geneva (online), 6–10 July 2020

Item 12 of the provisional agenda

Report of the Compliance Committee on its sixty-seventh meeting

Addendum

Statement on the application of the Aarhus Convention during the COVID-19 pandemic and the economic recovery phase

Adopted 2 September 2020

The Compliance Committee of the Convention on Access to information, Public Participation in Decision-making and Access to Justice in Environmental matters (Aarhus Convention),

Concerned about the application of the Convention by the Parties during the COVID-19 pandemic and in the subsequent phase of economic recovery;

Noting the objective of the Convention “to contribute to the protection of the right of every person of present and future generations to live in an environment adequate to his or her health and well-being” (article 1 of the Convention);

Also noting the purpose of the Committee “to promote and improve compliance” with the Convention (recital to Decision I/7 of the Meeting of the Parties);

Adopts the following statement on the application of the Convention during the COVID-19 pandemic:

A. General matters

1. The Committee is concerned that Parties may introduce and attempt to justify restrictions on the rights guaranteed under the Convention by reference to the COVID-19 pandemic or the need for a rapid economic recovery due to the consequences of the pandemic.
2. The Committee welcomes the constructive approach taken by some Parties in exploring ways to ensure that the Convention's requirements are met during the COVID-19 pandemic, and in requesting the advice of the Committee to that end. The Committee encourages the Parties to learn from good practices in meeting the Convention's standards during the COVID-19 pandemic and in the subsequent economic recovery phase, and invites them to seek advice from the Committee if needed. The Committee stands ready to assist Parties in this regard.
3. The rights set out in the Convention are fundamental in a democratic society and promote the rule of law and human rights in environmental matters.
4. The Committee emphasises that even in the case of a crisis such as the COVID-19 pandemic and the subsequent economic recovery phase, the binding rights set out in the Convention cannot be reduced or curtailed. Rather, if the established practices for ensuring access to information, public participation in decision-making or access to justice in environmental matters cannot be used, any alternative means must fulfil the requirements of the Convention.
5. The Committee reminds the Parties that any shortcoming in ensuring effective access to information, public participation in decision-making or access to justice under the Convention during the COVID-19 pandemic or in the subsequent economic recovery phase may be subject to challenge by members of the public in accordance with the provisions of article 9 of the Convention.
6. The Committee also reminds the Parties that any shortcoming in ensuring effective access to information, public participation in decision-making or access to justice under the Convention during the COVID-19 pandemic or in the subsequent economic recovery phase may be subject to communications, submissions and referrals to the Committee in accordance with decision I/7 of the Meeting of the Parties.

B. General obligations

Clear, transparent and consistent framework – article 3(1)

7. The opportunities for the public to seek access to information, participate in decision-making and obtain access to justice in environmental matters during the COVID-19 pandemic and in the subsequent economic recovery phase shall be provided in a clear, transparent and consistent framework. The obligation to ensure a consistent framework means that these opportunities must be in line with and not reduced when compared to the opportunities available to the public in normal times. To that end, public authorities and courts may need to make additional efforts to ensure that the public are not disadvantaged in practice in the exercise of their rights under the Convention.

Assistance and guidance to the public – article 3(2)

8. During the COVID-19 pandemic and in the subsequent economic recovery phase, the officials and authorities of the Parties will need to make additional efforts and allow more time to assist and provide guidance to explain to the public how they can seek access to information, participate in decision-making and obtain access to justice in environmental matters. This is particularly the case if any regulation or practice is temporarily adapted, while ensuring the rights under the Convention.

No penalization, persecution or harassment – article 3(8)

9. The Committee emphasises that the requirement that each Party shall ensure that persons exercising their rights under the Convention are not penalized, persecuted or harassed for their involvement applies with equal force to all aspects of the Convention during the COVID-19 pandemic and in the subsequent economic recovery phase.

No discrimination – article 3(9)

10. During the COVID-19 pandemic and in the subsequent economic recovery phase, special arrangements may need to be put in place in order to ensure that the foreign public have access to information, have the possibility to participate in decision-making and have access to justice in environmental matters without discrimination as to citizenship, nationality or domicile. This is particularly so when they seek information, participate in decision-making and seek access to justice in cases that may have potential transboundary impacts.

C. Specific obligations

Access to information – articles 4 and 5

11. The Committee emphasises that the requirements to ensure access to information apply with equal force during the COVID-19 pandemic and in the subsequent economic recovery phase. This includes keeping to the prescribed time-frames and limiting refusals only to the specific situations provided for by article 4, while interpreting the grounds for refusal in a restrictive way, and taking into account the public interests served by disclosure and whether the information requested relates to emissions into the environment.

12. While the obligation to collect and disseminate environmental information, as set out in article 5, applies with equal force during the COVID-19 pandemic and in the subsequent economic recovery phase, the Committee reminds the Parties that such information includes information concerning the pandemic itself when amounting to environmental information within the meaning of article 2(3) of the Convention.

Participation in decision-making – articles 6-8

13. The Committee emphasises that the requirements to ensure public participation in all forms of decision-making under the Convention apply with equal force during the COVID-19 pandemic and in the subsequent economic recovery phase.

14. The Committee reminds the Parties of the general obligation to provide for effective public participation in decision-making under articles 6-8 of the Convention. The obligation to ensure opportunities for the public to participate effectively is the fundamental standard against which all the elements of a public participation procedure under the Convention should be measured, and it applies with equal force to public participation procedures carried out during the COVID-19 pandemic and in the subsequent economic recovery phase.

Access to justice – article 9

15. The Committee emphasises that the requirements in article 9 to ensure access to justice with respect to requests for information under article 4, decisions, acts or omissions subject to the provisions of article 6, and any act or omission by private persons or public authorities which contravene provisions of national law relating to the environment apply with equal force during the COVID-19 pandemic and in the subsequent economic recovery phase.

16. The Committee reminds the Parties that the requirements that review procedures provide adequate and effective remedies, including interim relief as appropriate, and are fair,

equitable, timely and not prohibitively expensive apply with equal force to review procedures during the COVID-19 pandemic and in the subsequent economic recovery phase.

D. Conclusion

17. The Committee emphasises that the Convention applies in full and with equal force during the COVID-19 pandemic and in the subsequent economic recovery phase, and that the binding rights set out in the Convention cannot be reduced or curtailed. Accordingly, the Parties cannot justify any restriction on the Convention rights by reference to the COVID-19 pandemic or to the need for a rapid economic recovery due to the consequences of the pandemic. Any alternative means introduced to provide for the exercise of the rights under the Convention during the COVID-19 pandemic or in the economic recovery phase must fully meet the requirements set out in the Convention.
