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Cc:

Ben MacPherson MSP, Deputy Convenor, Net Zero, Energy & Transport Committee

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Dear Convener,

Review of environmental governance and compliance with MoP Decision VII/8s

I am writing in response to the Aarhus Convention Compliance Committee (ACCC)'s first [progress review](#) of the UK's implementation of recommendations outlined in the 2021 Meeting of the Parties (MoP) Decision VII/8s, to highlight how it supports arguments made by the Environmental Rights Centre for Scotland (ERCS) during our evidence submission to the Net Zero, Energy & Transport (NZET) Committee on environmental governance in January 2024.

I also attach a copy of ERCS's new [briefing](#) analysing Scotland's progress towards compliance with Article 9 of the Aarhus Convention, which I hope may be of benefit to NZET Committee members in their ongoing work to scrutinise actions taken by the Scottish Government on this matter.

The ACCC analyses Scotland's progress in paragraphs 49 to 69 of its review. They make clear that actions taken by the Scottish Government to date have been insufficient:

- Para 54 states that *'the Party concerned has not itself explained how the report on environmental governance required by section 41 has progressed its implementation of paragraph 2 (a), (b) and (d) of decision VII/8s. Based on the foregoing, the Committee concludes that it has not done so.'* This supports ERCS's contention that the Scottish Government's consultation and report on environmental governance have not progressed implementation of the MoP Decision or advanced access to justice in Scotland.



- Para 56 states that *‘the Committee welcomes, as a general matter, the proposed Scottish Human Rights Bill and its stated recognition of the right to a healthy environment. Based on the information provided, the Bill will, however, not in itself address the recommendations in paragraphs 2 (a), (b) and (d) of decision VII/8s.’* This supports ERCS’s position that incorporation of the right to a healthy environment is not a substitute for urgent access to justice reforms, including legal aid reform, the replacement of Protective Expenses Orders (PEOs) with Qualified One-Way Cost Shifting (QOCS), and the establishment of a dedicated Scottish Environment Court, that are necessary to achieve full compliance with Article 9.
- Para 59 states that the Scottish Government’s court fee exemption in the Court of Session is ‘positive progress’, but the ACCC echoes ERCS’s position in recommending the introduction of a similar exemption for cases heard in other courts.
- In Para 63, the ACCC welcome the Scottish Civil Justice Council (SCJC)’s review of PEOs, but ‘expresses concern’ that the review is still not completed so close to the 1 October deadline. ERCS remains concerned that new court rules will be inadequate, and believe that in failing to consult on their review, the SCJC may have breached public participation requirements under Article 8 of the Convention.

Overall, the ACCC notes that the requirements of Decision VII/8s have not been met vis-à-vis Scotland (para 68), and with respect to implementation by the UK as a whole, ‘the Committee expresses its serious concern at the lack of progress’ (para 119).

In light of these comments, I would be grateful if you could inform ERCS what actions the NZET Committee will take to ensure the Scottish Government addresses ongoing failures to implement the recommendations of Decision VII/8s. I would be grateful if you could also confirm that you will take the ACCC’s review into account during your ongoing scrutiny of evidence relating to environmental governance in Scotland.

Yours sincerely,

Benjamin Brown
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Environmental Rights Centre for Scotland