

### **Questions for the communicants**

**1. Please resubmit your communication using the revised format for communications, available at [http://www.unece.org/fileadmin/DAM/env/pp/compliance/CC-46/Draft\\_revised\\_format\\_for\\_communications\\_v18.09.2014.docx1](http://www.unece.org/fileadmin/DAM/env/pp/compliance/CC-46/Draft_revised_format_for_communications_v18.09.2014.docx1)**

**When re-submitting your communication, please remove all information which is not directly related to illustrating how specific provisions of the Convention have been breached in this case.**

**Answer:**

Please find the revised Communication re-submitted in the requested format.

**2. In your re-submitted communication, please indicate which of the communicants are State officials. Please also indicate whether those persons are submitting their communication in their public or personal capacity.**

**Answer:**

The capacity of the applicants is mentioned in the first part of the attached Communication under the heading "I. Information on correspondents submitting the Communication".

**3. In your communication you state “The only information about the location of the undertaken hydrolysis operation was provided on the official website of the US Department of Defence where it is explicitly mentioned that the operation will take place “in an unspecified location in the Mediterranean Sea”.” Since submitting your communication, have you become aware of any further information regarding the approximate location of the disposal site, including whether it was more than 200 nautical miles south of Crete?**

**Answer:**

Since the submission of our initial Communication in July 2014 and even after the completion of this destruction operation we have not become aware of the approximate location of the disposal site.

4. List as precisely as possible the provisions (articles, paragraphs, subparagraphs) of the Convention that you allege that Party concerned has failed to comply with (you do not need to provide the text of the provision, just to list the relevant paragraphs and sub-paragraph numbers is sufficient).

Answer:

Article 3 (2)

Article 4 (1 a, b, i, ii)

Article 5 (1 a, b, c and 7 a, b, c)

Article 6 (2, 4, 8)

Article 7

Article 8

5. With respect to your allegations under article 4 of the Convention, please provide a list of the information requests within the scope of article 4 made by the communicants to the Party concerned that the communicants consider were not adequately addressed. In your list, please specify the date of the original request, what information was requested and who the request was made to. Please also specify the response, if any, received from the Party concerned as well as any subsequent correspondence with the Party regarding the request. Please provide copies of all relevant letters/emails between the communicants and the Party, together with English translations thereof.

Answer:

Despite the fact that **we have constantly asked State officials** to arrange for meetings that would enable our participation in decisions that would directly or indirectly affect our lives and the environment, the latter **have not even replied or reacted to the numerous Resolutions, Declarations and Letters from the local municipalities, associations and institutions in Crete** that addressed them. Because of these acts and **omissions** from the State officials, we have been deprived of our right to have access to informed decision-making and more specifically, we, as representatives of local authorities, institutions, *etc* have been prevented from participating in any decision related to the undertaken operation and from expressing our own point of view pursuant to article 4(1) of the Aarhus Convention.

The Resolutions, Statements, Declarations, Letters and Press Releases from Municipalities, Associations, Institutions are enumerated as follows:

- 1)** Letter dated 15 January 2014 from the Mayor of the Municipality of Platanias, Chania, Crete addressed to the Minister of Tourism, the Minister of Rural Development and Food and the Minister of Foreign Affairs as regards the threats arising from the destruction of the Syrian chemical weapons arsenal in the Mediterranean Sea.
- 2)** Announcement-Protestation by the Technical Chamber of Greece – Eastern Crete Division, Association of Agronomists and Surveying Engineers of Crete, Association of Chemical Engineers of Crete, Association of Environmental Engineers of Crete, Union of Diploma Engineers – Civil Servants (University level) of Eastern Crete, Association of Mechanical - Electrical Engineers of Eastern Crete, Associations of Architects of Heraklion and Lassithi, Associations of Electrical Contractors of Heraklion and Lassithi, Association of Freelancer Engineers of Heraklion, Association of the Engineers of Heraklion, Association of Greek Contracting Companies (SATE) to the Prime Minister of Greece, Mr. Antonis Samaras entitled: “Protestation: Do not proceed to the neutralization - destruction of the chemical weapons of Syria in the Enclosed Mediterranean Sea”, 20 January 2014.
- 3)** Statement of the World Council of Cretans against the destruction of the Syrian Chemical Weapons Arsenal in the Mediterranean Sea, 20 January 2014.
- 4)** Resolution of the Municipality of Platanias, Crete, 1 February 2014.
- 5)** Press Release of the Holy Provincial Synod of the Church of Crete, Heraklion, 6 February 2014.
- 6)** Letter dated 7 February 2014 from the President of Chania Bar Association concerning the destruction of Syrian Chemical weapons in International Waters in the Mediterranean Sea addressed to the U.S. President [B. Obama], the President of Russia [V. Putin], the President of the People’s Republic of China [X. Jinping], the President of Germany, [A. Merkel], the President of France [F. Hollande], the Prime Minister of the United Kingdom [D. Cameron], the President of the European Parliament, the Secretary-General of the United Nations, the European Court of Human Rights and the International Court of Justice.
- 7)** Joint Letter to the Minister of Foreign Affairs, the Minister of Environment, Energy and Climate Change and the Minister for National Defence by Cretan Municipalities, Organizations and Associations against the destruction of the Syrian Chemical Weapons Arsenal in the Mediterranean Sea, 7 February 2014.
- 8)** Resolution of the Municipality of Festos, Crete, 8 February 2014.
- 9)** Press Release of the Technical Chamber of Greece / Eastern Crete Division & Societies of Dipl. Engineers of Eastern Crete, Heraklion, 19 February 2014.
- 10)** Resolution of the Municipality of Chania, Crete, 27 February 2014.
- 11)** Resolution of the Municipality of Sitia, Crete, 28 February 2014.
- 12)** Resolution of the Municipality of Vianno, Crete, 6 March 2014.
- 13)** Resolution of the Municipality of Anogia, Crete, 7 March 2014.

- 14)** Resolution of the Municipality of Mylopotamos, Crete, Decision No 55/2014, 12 March 2014.
- 15)** Letter dated 12 March 2014 from Expert of "Objectif Transition", A. Gertz, addressed to the French Minister of Foreign Affairs [L. Fabius].
- 16)** Open Letter from the PanCretan Commission against the destruction of Syrian Chemical Weapons in the Enclosed Mediterranean Sea, Heraklion, 13 March 2014.
- 17)** Resolution of the Town Council of the Municipality of Archanes & Asteroussia, Peza Chania, Crete, 17 March 2014.
- 18)** Joint Statement by 62 Scientists and Environmental Organizations addressed to the President of the European Commission [J. M. Barroso], 18 March 2014.
- 19)** Declaration of Arkadi, Crete against the neutralization of Syrian chemical weapons in international waters in the Mediterranean Sea, 23 March 2014.
- 20)** Press Release of the Association of Environmental Protection of Corfu, Corfu, 27 March 2014.
- 21)** Resolution - Extract from the meeting minutes of the Town Council of Kavala concerning the Resolution against the Neutralization of Syrian Chemical Weapons in International Waters in the Mediterranean Sea, Decision No 180/2014, Kavala 27 March 2014.
- 22)** Resolution of the Regional Council of South Aegean against the destruction of the Syrian chemical weapons in Syria, Decision number: 72/2014, Rhodes, 29 March 2014.
- 23)** Resolution of the Orthodox Academy of Crete & the Institute for Theology and Ecology against the destruction of the Syrian chemical weapons arsenal in the Mediterranean Sea, 29 March 2014.
- 24)** Letter dated 2 April 2014 from the PanCretan Commission against the destruction of Syrian chemical weapons in the enclosed Mediterranean Sea addressed to the Members of the Greek Parliament.
- 25)** Article by Anastasia Miliou, Scientific Director of "Archipelagos" - Institute of Marine Conversation entitled: Chemical Weapons Destruction - Threat of Toxic Pollution in the Mediterranean, 9 April 2014.
- 26)** Resolution of various Associations of Lassithi, Crete against the destruction of the Syrian chemical weapons arsenal in the Mediterranean Sea, 19 April 2014.
- 27)** Resolution of the citizens of Laconia, Peloponnese against the destruction of the Syrian chemical weapons arsenal in the Mediterranean Sea, 23 April 2014.
- 28)** Press Release of the General Confederation of Greek Workers (GSEE) against the destruction of the Syrian chemical weapons arsenal in the Mediterranean Sea, 24 April 2014.
- 29)** Announcement from the Network for the Environmental and Cultural Protection of Laconia, Greece against the neutralization of the Syrian chemical weapons in the enclosed Mediterranean Sea, 25 April 2014.
- 30)** Statement of the Environmental Association "YDNA", Kalymnos against the destruction of the Syrian chemical weapons arsenal in the Mediterranean Sea, 29 April 2014.

- 31)** Press Release of the Heraklion Commission against the destruction of Syrian Chemical Weapons in the Mediterranean Sea, Heraklion, 2 June 2014.
- 32)** Article published on the website: [www.neakriti.gr](http://www.neakriti.gr) that includes the answers of the OPCW Spokesperson [M. Luhan] to the questions of the journalists of the aforementioned website, 27 June 2014, available at: <http://www.neakriti.gr/?page=newsdetail&DocID=1151208&srv=94>.
- 33)** Resolution of citizens, associations and institutional bodies from Laconia, Messinia, and Peloponnese, Greece against the neutralization of Syrian chemical weapons in the enclosed Mediterranean Sea, 29 June 2014.
- 34)** Open Letter dated 12 July 2014, from the PanCretan Commission against the destruction of Syrian chemical weapons in the enclosed Mediterranean Sea addressed to the Ambassador of the United States of America to Athens and the Ambassador of Russia to Athens.
- 35)** Protestation by the Bishop of Kissamos and Selino, Church of Crete, Amphilochios on the destruction of Syrian chemical weapons in the enclosed Mediterranean Sea.
- 36)** Announcement from the Workers Association of the Organisation for the Development of Crete (OAKE) against the neutralization of Syrian chemical weapons in international Waters in the Mediterranean Sea.

**6. What domestic remedies exist in Greece to challenge an inadequate response to a request for information? Did the communicants use these domestic remedies regarding each of the information requests? If so, what was the outcome? If they did not use these domestic remedies for any of the above information requests, please identify for which information request they did not do so and explain why not.**

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**8. What domestic remedies exist in Greece to challenge the alleged failure of the Greek officials to collect and disseminate the above information? Did the communicants use these domestic remedies? If so, what was the outcome? If the communicants did not use these domestic remedies, please explain why not.**

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**10. What domestic remedies exist in Greece to challenge a failure to ensure effective public participation in decision-making regarding the environment? Did the communicants use these domestic remedies with respect to each of the decisions that they allege to have been taken in breach of the Convention? If so, what was the outcome? If they did not use these domestic remedies for any of the above decisions, please specify regarding which decisions they did not do so and explain why not.**

**Answer:**

According to article 3 of the Common Ministerial Decision 11764/653/2006 implementing EC Directive 2003/4 (replacing the Common Ministerial Decision 77921/1440/1995 implementing EC Directive 90/313), public authorities are required to make available information relating to the environment to any natural or legal person at his request and have to respond to this request within two months.

However, it must be noted that this request can be refused for the reasons mentioned in article 4, paragraph 2, among which relevant to our case is the confidentiality of the proceedings of public authorities, international relations and national defence.

Members of the public concerned have the right to have access to a review procedure before a court of law or an administrative body in order to challenge the substantive or procedural legality of decisions, acts or omissions subject to the public participation provisions of this decision. As far as administrative review of the decision is concerned, any concerned person can seek annulment or modification of the administrative act concerning public participation in decision-making regarding the environment either through an application for appeal addressed to the Ministry of the Environment or through a special administrative review procedure before the Minister of Environment against the decision of the Secretary General of the relevant Region.

The same person can also ask for compensation before the competent judicial body according to the general rules governing state liability. He/she can also seek annulment of the act before the Council of State (Supreme administrative tribunal) either by following the general rules governing judicial review of administrative acts/omissions, or by challenging the decision of the Minister of the Environment following the aforementioned special administrative review procedure.

Apart from the fact of the **emerge situation** of the hydrolysis operation of the Syrian chemical weapons (was already started in an unspecified location), we did not use the above existing domestic remedies due the fact that the public authorities (and the Government in particular) were **constantly and officially refusing to provide information** about the operation at stake to the public, and in some occasions they provided to the public **contradictory information**.

Additionally, **tens of official resolutions and declarations** of several Mayors and Municipality Councils of all over the country have been adopted and submitted to competent State authorities (see Annex attached to our Communication). The latter Mayors and the Municipality Councillors, in these resolutions and declarations addressed to the competent State officials, stated *inter alia* that the Government (through its official organs) should provide to public with official information as regards the operation at stake, the security guarantees and environmental impact assessment.

To give a valuable input to the Compliance Committee about the stance held by the Governmental officials in the whole period of the operation, we have mentioned and attached to our Communication the Parliamentary minutes of a number of Greek Parliamentary Sessions. In the Parliamentary Session of 11.04.2014 the Deputy Minister of Foreign Affairs, Mr D. Kourkoulas, answered to the questions submitted by several Members of the Greek Parliament. At his answers, he stated explicitly that "*I am not an expert; I cannot give you any answer*" (the questions were related to the security standards of Cape Ray) and **he proposed to the Members of the Parliament "to seek for information to the internet"**!. In the same Parliamentary Session, Mr. D. Kourkloulas, also, stated that "*I do not know the exact location the operation will take place*" and "*... some information perhaps will not be disclosed in advance*". Additionally, Mr. D. Kourkloulas,, in the Parliamentary Session of 21.2.2014, has given the answer that "*the hydrolysis operation will take place in the Mediterranean Sea*" (in general!) and that "*in the context of **security reasons**, all the information (about the hydrolysis operation) cannot be given to the public in advance*".

(The contradictory, unclear and incomplete information provided by State officials is mentioned in detail in our Communication.)

Nevertheless, in our case, the use of domestic remedies would caused would be absolutely ineffective because of the urgent conditions since the operation was already taken place.

**7. If the communicants wishes to allege that the Party concerned has failed to comply with article 5, paragraphs 1(a), (b) and (c) and 7 (a), (b) and (c), please explain for each of these sub-paragraphs more precisely what type of information within the scope of the sub-paragraphs you consider that the Government of Greece should have collected and/or disseminated to the public but failed to so do.**

**Answer:**

The Greek Government has failed to comply with article 5 paragraph 1 (a) and the respective obligation to possess and update environmental information as no environmental impact assessment has been conducted about the operation. Furthermore, regarding article 5 paragraph 1 (b) and (c) it should be highlighted that the Greek Government has not provided neither the public authorities nor the public with precise information **about the risk of the operation, the amount and type of the cargo, the location where the Cape Ray vessel operated the hydrolysis, the necessity the operation to take place in the specific (unknown!) location, the timeline of the hydrolysis process, the security guarantees, the existence of an Environmental Impact Assessment, the existence of any other environmental reports,** and, of course, **the written official agreements** signed by Greece to accept (or to facilitate) the performance of the operation of the destruction of the Syrian chemical weapons.

On the contrary, the authorities have provided incomplete, unclear and contradictory information about the undertaken operation. Consequently, the lack of clear and precise information and the failure Greece to provide in an appropriate form information on the performance of public functions or the provision of public services relating to the environment is manifestly proven by the fact that the Communication is signed from several Mayors and State officials who have not been informed by the State about their environmental responsibilities [despite the tens of official resolutions and declarations of several Municipality Councils of all over the country (see Annex)] leading to a direct violation of article 5 paragraph 7 (a), (b) and (c).

**9. You allege that there was a failure to provide effective public participation in decision-making, but you do not refer to any provisions of the Convention in this regard. If you consider that the Party concerned has failed to meet its obligations with respect to public participation under the Convention:**

**a. Did the Government of Greece adopt any decision approving the agreement reached within the Organization on Chemical Weapons. If so, please provide a copy of that decision, together with an English translation thereof.**

**b. Specify the decision(s) taken by the Government of Greece that you consider should have been subject to public participation under the Convention. If you have copies of the text of**



the decision(s), please provide these to the Committee, together with English translations thereof.

**c. For each of the above decisions:**

**i. Indicate whether you consider that it was a decision under article 6, 7 or 8 of the Convention; and**

**ii. Explain clearly how that decision comes within the scope of the wording of that article.**

**iii. For any decision which you consider was subject to article 6 or 7 of the Convention, identify which sub-paragraphs of that article were breached.**

**iv. Explain how the facts of your case demonstrate that the Government of Greece has failed to meet the requirements of that article. Base your answer on the specific wording of the article, and provide any relevant supporting information or documentation to prove your answer.**

**Answer:**

**a.** We are not aware of any decision approving the agreement reached within the Organization of Chemical Weapons. As we already mentioned, the Deputy Minister of Foreign Affairs explicitly stated several times that "*all information cannot be given*"(!).

**b.** The decisions taken by the Government of Greece that we consider should have been subject to public participation under the Convention are:

**1.** The decision approving the agreement reached within the Organization of Chemical Weapons

**2.** The decision approving the choice of the location where the hydrolysis operation took place

**3.** The decision to carry out an environmental impact assessment of the operation at stake

**c. i. & ii.** Due to fact that we are not aware of the exact cargo of the Cape Rey (insufficient and incomplete information provided by the State), and assuming that the hydrolyzed cargo of the Cape Rey contained chemical substances which have significant impact to the environment, we have to state that these substances failed under the scope of Annex I (4) of the Aarhus Convention. As a result, the above decisions should have been subject to public participation; the absence of this resulted to a violation of the Articles 6, 7 and 8.

However, the burden of proof has to be shifted to the State to provide adequate and reliable information as regards the exact kind of the hydrolyzed cargo, the existence of any environmental impact assessment and in general the scientific and operational planning followed by the State organs.

**iii.** Article 6 para. 2, 4 and 8 and Article 7 sub-para. 1.

**iv.** The public concerned was never been informed, either by public notice or individually as appropriate, early in an environmental decision-making procedure, and in an adequate, timely and effective manner about the operation of the destruction of the chemical weapons of Syria in the Mediterranean Sea. Greece never provided for early public participation, when all options were open and effective public participation can take place. Greece never ensured that in the decision due account was taken of the outcome of the public participation. Greece never ensured that, when the decision had been taken by the public authority, the public is promptly informed of the decision in accordance with the appropriate procedures. Greece never accessible to the public the text of the decision along with the reasons and considerations on which the decision is based. Greece never made appropriate practical and/or other provisions for the public to participate during the preparation of plans and programmes relating to the environment as regards the operation for the destruction of the chemical weapons of Syria, within a transparent and fair framework, having provided the necessary information to the public.

**11. What has been the outcome, if any, of the petition to the Public Prosecutor of the Supreme Court dated 7 April 2014?**

**Answer:**

The Public Prosecutor never replied to our Petition.

**Athens, 16 December 2014**

**For the Communicants,**

**The Legal Representative**

**Konstantinos Kazanas**

**Lawyer, Member of Athens Bar Association**