

Mr Chairman, Ladies and Gentlemen members of the Committee,

Before turning to my substantive remarks I would like to say that as a former professor of international law at the University of Utrecht I have an acute sense of how unique it is that I, as a private person, can stand here before an international forum to address the question whether or not a State - in this case my own country - has complied with rules of international law. In the international law that I used to teach such *locus standi* of private persons was extremely rare and in most domains non-existent. Decision I/7 and the work of your Committee contribute to the creation of a new and much richer international law. I am grateful indeed for having the opportunity to be a tiny part of that process.

Allow me also to introduce my colleagues. To begin with the lady: Karin Rietveld, Secretary of the NLVOW; then Jan Veltman, lawyer, specialist in Netherlands administrative law and co-author of the Communication; and last: Rob Rietveld, Director of the NLVOW. And in case you wonder: yes, husband of Karin Rietveld. The NLVOW is a bit of a family business!

I have four substantive comments and I will try to be brief.

First, I will say little, if anything, on the issue of the admissibility of the NLVOW Communication. That issue was extensively addressed in our Communication and in the replies to questions of the Committee to the NLVOW and the Netherlands in March and April of this year. In my view all this should suffice for a final decision of the Committee on admissibility, but I stand of course ready to answer any question the Committee may have.

Second, our Communication concerns all three pillars of the Convention: access to information, participation in decision-making and access to justice. Of these three public participation in decision-making is for us at present most important. Reason is not only that public participation, with related requirements on access to information and access to justice, is at the core of what the Convention seeks to attain for individuals and groups of individuals, but more importantly that a timely finding is of the greatest importance for the future of public participation in the Netherlands. Why?

For several years Netherlands Governments and Parliament have been engaged in a major project to revise, update and streamline the whole system of environmental legislation and regulation. New regulations are being drafted as we speak! Although there are improvements, these new laws and regulations maintain in essence the old legal system and practices on public participation. In particular, there is a consistent refusal to set minimum quality standards for public participation as required by the Convention. Accordingly, the new order continues for the years to come a legal system and practices that are not in compliance with the Convention. A finding of the Committee that current system and practices do not meet the standards of the Convention will therefore have a profound impact on the future of public participation in the Netherlands.

In other words: there now is - precisely at this moment - an unique window of opportunity in the Netherlands to bring the legal system and its practices in line with the Convention.

Third, while there are many findings of the Committee that support the submissions of the NLVOW, I would like to emphasize three:

1. That in tiered decision-making public participation has to take place in each phase and cannot be postponed to the last phase - as is systematically done in the Netherlands. Legally, the National Action Plan of 2010 is still the basis for a range of follow up decisions, also on wind farms. Like the NREAP, its UK equivalent, this Action Plan was adopted without any form of public participation.

2. That, when public participation takes place, a permitting authority must be free to turn down an application, the zero option in the Maastricht Recommendations of 2015 - which for wind farms is hardly ever, if ever, the case as over many months permitting authorities have worked so closely with project developers that *de facto* their hands are tied.
3. And finally: that consultation with private actors and/or NGO's, however intensive, is no substitute for public participation - a message clearly not understood in the Netherlands. For example, right now negotiations take place on a new national Climate Agreement, also dealing with energy from wind. Only selected private parties and NGOs participate in these negotiations.

I could mention many more relevant findings, but I have with me a brief document listing the most important ones and it would be my pleasure to provide a copy to the Committee.

Fourth and last, in some of these findings the Compliance Committee states that the requirements of the Convention are to be met not only in law, but also in practice. In my view this goes to the heart of the matter. When all is said and considered one simple, but most crucial question encapsulates it all: is compliance with the Aarhus Convention a matter of having the right laws and regulations in place or is it a matter of how these laws and regulations are applied in practice? Is compliance with the Convention a matter of paper or is it a matter of practice?

The NLVOW submits that it is both: paper and practice. And that the Netherlands failed and continues to fail in both respects: its legal system does not meet the requirements of the Convention, while its practices only make the situation worse. Much worse!

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On behalf of the NLVOW