

**Response to Draft Recommendations on the issue of holding public hearings through
video conferencing in times of the Covid-19 crisis**

Geneva, 26 June 2020

To whom it may concern:

With regard to your Draft Recommendations to request advice by Kazakhstan on whether holding public hearings through video conferencing during the pandemic would meet the requirements of the Convention (ACCC/A/2020/2), the Center for International Environmental Law (CIEL) is honored to provide a response to the Draft Recommendations outlined below. This response is following our original input submission on 03 June 2020.

We hope this response is of benefit to the Compliance Committee in the final stage of the decision and remain at your disposal should further support or clarification be needed.

Your sincerely,

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**Response to the Aarhus Compliance Committee
Draft Recommendations of the ACCC/A/2020/2 request
by the Center for International Environmental Law**

26 June 2020

Given the recommendations of the Committee, we are writing in responses to the Draft Recommendations on how to strengthen the Recommendations to ensure compliance reflects the spirit of the Aarhus Convention. We compliment the Aarhus Convention Compliance Committee and all those involved for rapid response to the advice requested by Kazakhstan and hope that this will motivate other Parties to seek advice from the Committee more frequently in the future.

Strengthening the Minimum Standard for Virtual Participation

We would like to highlight several key areas where the ACCC Draft Recommendation can be further improved, specifically in regards to **strengthening the minimum standard for compliance in public participation** through video conferencing or other virtual means.

We would first like to highlight the need for more clarity on the definition of “adequate and timely information” under Paragraph 23 of the *General Obligations for Effective Participation*. The Recommendations should elaborate and build upon what is meant by “adequate and timely information” in the Covid-19 pandemic era, considering the numerous logistical obstacles participants may face in both preparation for the consultation and access to the necessary technological equipment, or time to adjust to the technological literacy needed to fully participate either through video conferencing or toll-free phone number. This elaboration should specify the definition of “adequate” in the timeframe, to further uphold and reinforce Article 3(2), 6(3-6), and 8(a) of the Convention. Additionally, it should be explicitly acknowledged that to uphold Article 3(2) the phases of the traditional timeline of notification may need to be increased to account for pandemic-related disturbances which could account for needing a longer timeframe to appropriately disseminate information during times of crisis reflecting the ongoing circumstances prevailing the country.

Secondly, in Paragraph 25 of the Recommendations, under *General Obligations to Facilitate the Public’s Participation in Decision Making*, the Committee should reinsert **more precise language** regarding the necessity for parties to “identify what modalities in practice will ensure full participation of affects members of the public”. This recommendation necessitates greater precision explicitly stating more exact language on necessary steps the Parties should take on evaluating to what extent the public concerned has access to participation, through using the best possible data to have a specific and updated understanding of the percent of the population with access to that technology, and the percent of members of the public most impacted with adequate access, and any gradation in this access.

Finally, we would like to underscore the need for ensuring greater transparency to create stronger provisions on preventing undue influence from private corporate actors in Paragraphs 38 and 66 of the Draft Recommendations, to ensure full compliance with Articles 6, 7 and 8. Greater elaboration on appropriate compliance examples of “appropriate controls” in Paragraph 66 to preclude any entity or persons with an interest in promoting the proposed activity from providing incentives to members of the public to express support for the proposed activity during the hearing. This echos the decisions of ACCC/C/2010/45 and ACCC/C/2011/60 regarding risks associated with private sector involvement in the process.

Fundamentally, these areas of the Recommendation must be strengthened to ensure that the binding rights set out in the Aarhus Convention cannot be curtailed despite the Covid-19 pandemic crisis and its impacts on public participation.