



Submission

re.

Draft Advice

ACCC/A/2020/2 (Kazakhstan).

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Introduction.

The following brief comments are made in response to the Committee's call for input on the draft advice prepared by the Committee in response to the query from Kazakhstan on whether carrying out public hearings through video conferencing during the coronavirus pandemic would meet the requirements of the Convention, your reference : ACCC/A/2020/2 (Kazakhstan).

The Comments have been prepared by the Environmental Law Officer of the IEN, the national coalition of eNGOs in Ireland.

Firstly, I wish to express our thanks for forwarding the draft advice for further comment. Please pass on our complements to all involved for the very considered guidance presented in such a short space of time, amidst so many other demands on the Committee and secretariat, and indeed all of your own challenges in adjusting to the world in the context of the Covid-19 pandemic.

Below are some brief comments, and one major over-arching reservation about the guidance on which I have to express some profound disappointment. These are set out briefly below.

1. I suggest that some further consideration would be welcome in the guidance to ensure that, the declaration or application of a pandemic emergency response by a Party, is not subject to abuse, to deprive or compromise, the exercise of rights under the Convention. That is notwithstanding the very meticulous specification by the Committee that alternative arrangements during a pandemic must still satisfy the Convention.

2. In considering the challenges of communication channels necessary for the public to be able to participate effectively in the context of virtual hearings, I welcome the consideration of cost and elimination of that, and other technological issues as barriers to participation.

However, the requirement for physical separation and distancing which we all know arise in the context of this particular virus - seem to attract less focus in the draft advice.

In short, it may also be necessary to provide actual physical locations where the public can attend comfortably, and avail of tollfree numbers and internet facilities in order to participate effectively. This is given the practical reality of the restrictions and limitations which might pertain in their own accommodation.

I made some reference to such considerations in the context of my earlier submission, in response to the invitation to submit consideration in advance of the production of the draft advice. I reflected on the often small confined shared spaces which people may find themselves in, and which are not conducive to someone being able to participate in a hearing over many hours and days.

Therefore, might I suggest that some further focus would be welcome in the advice in respect of facilities, albeit I do note and welcome the comments in respect of a "needs assessment" in paragraph 25 etc. However, might I suggest that something more explicit is needed to balance the possible impression that tollfree numbers and other technical interfaces are sufficient to solve many of the issues and requirements associated with the conduct of virtual hearings. However the preference of the participants must be respected so they feel comfortable in their participation, given the entirety of their circumstances which only they can assess.

3. The draft advice does emphasise the need to treat written submissions equally to those made during virtual hearings. However I respectfully suggest that it does not in my view adequately address the issue of hybrid hearings, where some members of the public or other interested parties such as developers, or consultants may be able to attend, and others may not, such as members of the public and their consultants. This may in practice give rise to disadvantage to those who are participating remotely, or submitting only written remarks, compared to those who are able to attend the hearing physically. I would welcome some elaboration on that in the advice, and whether hearings should be wholly virtual, or can be hybrid in nature. I am conscious of the merits and demerits of both options.

4. I welcome the focus on the potential additional time needed for the public to be able to prepare adequately in paragraph 37, and the recognition of the practical issues which may be encountered by in-situ examination of documents etc in paragraph 39 etc. However, respectfully, the draft does not adequately in my view at least, address the issue of requests for environmental information whose processing may have been further delayed and impacted consequent on resourcing and/or other issues which have arisen during or consequent on the pandemic. It is not always possible to simply view such information in-situ, without it first being recovered and presented by the Public Authority, as it may require access to emails, electronic filing systems and databases, where regrettably the Public Authority hasn't been managing information with a view to it being proactively disseminated and available.

5. Feedback and an effective response mechanism on the experience of public participation might also be appropriate to consider.

6. My most significant concern however, is that, in circumstances where the pandemic is very severe, it is simply not reasonable to expect the public to be able to

participate and/or indeed exercise their rights under the Convention. While I accept that there is some reflection on this in paragraph 37 in the draft advice, I did not find the emphasis sufficient.

I would reflect once again on the Committee's own findings in respect of how unacceptable and inappropriate it is to expect the public to participate in consultations during traditional holiday periods, for example in ACCC/C/2008/24 (Spain). We find it equally inappropriate that in the context of severe episodes of the pandemic, where authorities deem it necessary to confine and limit the public and their movements and gathering either by advice, or through public ordinances or laws, that the public can then during this same period then be expected to have the appetite, emotional and practical capacity to engage in environmental decision-making. In short they may be and are most likely to be under particular stresses and/or have to work from home and care for children at home and/or or be suffering increased financial hardship because of the restrictions etc. . Thus they may well not be in a position to participate, and most likely not "effectively" as is required to be facilitated under the Convention. Indeed, some may not be in a position to take leave to participate. This is particularly so if their are frontline health care staff, or working in other essential services. Thus they will be effectively discriminated against. So the extent to which it is reasonable at all to participate warrants further focus I suggest, and consideration of whether it is more appropriate to defer the decision making to an appropriate period where the rights under the Convention can in no way be impinged upon.

I must be frank on this last point - and respectfully would welcome substantially further emphasis on such consideration in the draft, and feel such is warranted.

In conclusion, my thanks for your consideration of my hurried comments. I would be most grateful for any consideration they can be afforded.
