

## **Submission to the 67<sup>th</sup> meeting of the Aarhus Convention Compliance Committee re the proposed statement on the Convention in the Context of the Covid-19 pandemic**

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As Environmental Law Officer of the IEN, the national coalition of eNGOs in Ireland, I would like to make the following observations in relation to the proposals for a concise statement as discussed at the open session of the Committee's meeting on Monday 6<sup>th</sup> July.

To be very clear as highlighted by ECOForum statements during the 24<sup>th</sup> Working Group of the Parties and also by comments from the ECOForum focal point on Monday 6<sup>th</sup> July, there are significant concerns about how the Covid-19 pandemic has impacted upon environmental democracy. In that context the proposed statement is a most welcome initiative to remind Parties and the Public of their respective obligations and rights under the Convention.

### **1. The basis for the Statement:**

Ultimately of course, it is to the text of the Convention that we are all ultimately bound. However, in order that we may be able to effectively rely on the statement appropriately – it would be helpful if it clarified the basis on which it is made, and/or for consideration to be given on how its effect and influence can be strengthened. Alternatively some other additional initiative or action should be taken to provide for the same objectives intended for this statement, to mitigate against avoidable communications on alleged non-compliances associated with the pandemic, and even more importantly to mitigate against any impingement of environmental rights.

### **Additional comments for the content for your consideration:**

2. A strong assertion that there is no basis for derogation from the fundamental objectives, obligations and rights of the convention consequent on the pandemic would be essential component. In that regard I note paragraphs 15 and 16 and very importantly also paragraph 21 of the advice ACCC/A/2020/2. While the focus of the Committee is on assisting Parties with their compliance, there are implications for the legal certainty of consents granted where legal obligations under the convention have not been complied with, and any attempt to curtail access to justice rights in these circumstances would be of the most serious concern. Emphasis on these considerations would be most welcome.
3. Scrupulous oversight and detailed justification will need to be established for any legislative changes or other modalities and practices to implement the convention. This is to ensure that the pandemic is not used as “a flag of convenience” to alter existing practices and to restrict rights, either as a consequence of efforts to limit the spread of

the pandemic, or in relation to economic justifications for more restrictive practices to facilitate and stimulate growth and the economic recovery.

4. The principle of non-regression might additionally be emphasised.
5. Parties should be reminded to consider that changes in legislation or practices have to be viewed in the context of the standards in other sectors. Therefore it is unacceptable for example to consider it is justified to limit inspection of planning files to a 15 minute window – when people can attend a pub or a restaurant for more than four times that period, and indeed where enforcement of those limits is not equally addressed.
6. Given the additional and complex challenges that the public is encountering consequent on the pandemic, parties should be encourage to be particularly flexible and generous in accommodating the public and their participation. This is bearing in mind the high threshold established in the convention for public participation namely that “effective” participation is provided for, and that periods provided for are “reasonable”, and that “wide access to justice” is provided for, in circumstances where what is needed to secure those thresholds will necessarily considerably exceed the normal efforts made by Parties to comply with their obligations, and for Parties as is required in Article 1 “guarantee” rights.
7. Of concern is the expectation that once “lockdowns” restrictions on range of movements are lifted have been lifted and economies begin to re-open – that any more generous arrangements provided for to address the public’s rights can then also be terminated. However various ongoing advices continue to impact peoples “normal” range of movements, and ability to engage in environmental democracy. For example ongoing advices remain in place in many jurisdictions to limit the risk of further outbreaks, such as advices to people to work from home where possible and to avoid public transport where possible. This means people won’t see notifications on many proposals which may concern them and in which they will have an interest, they may not have access to the same quality of internet facilities, they may still have more onerous personal circumstances working from home and minding children etc. In this context efforts around notifications need to be much more robustly addressed, and timeframes for participation and indeed access to justice need to be much more generous.
8. On the other hand – more restrictive modalities introduced and justified consequent on the pandemic must be lifted as quickly as possible and any continuance must be rigorously and transparently assessed and justified.
9. Consideration of the impact of the pandemic on the obligations and rights under the convention needs to be considered and addressed properly across all sectors of environmental decision-making. It is not sufficient to make some efforts to address it for example planning decisions – but not for a whole range of other sectoral consents such as Forestry, Aquaculture, Marine and Energy matters, Industrial Emissions, Waste Licences etc.

10. Additionally proper consideration needs to be a period of adjustment to allow the public transition from the different situations they are experiencing. Just because planning authorities for example can now operate “as normal” is not a sufficient justification to assume that the public can also just wake up and operate “as normal”. The thresholds around participation of “reasonable” and “effective” and “wide access to justice” need to be scrupulously and generously observed.

Thank-you for your consideration of these remarks and for your ongoing diligence on these matters.

Yours sincerely

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