

Ref. ACCC/C/2012/71

To the communicant:

1. In your communication and also in your oral submissions during the discussion with the Committee on 26 March 2013, you mentioned that technology-related information, including the type of reactor to be used for the project, was not available to the public during the EIA procedure. Do you allege that this would constitute non-compliance of the Party concerned with the Convention and on the basis of which provision of the Convention?

Answer:

Although four known technologies were at the time of the public participation procedure under consideration, the choice of technology has not been made and the technology was presented as a so-called "black box", which means that many of the relevant details were not given and that it was taken for granted that all currently considered technological designs would remain within the criteria set by the law. Neither technological details were given for each of the considered designs, nor were differences between designs highlighted and assessed in the EIA documentation.

This means that during the public participation

- a. The public cannot assess whether the claim is indeed true that the potential environmental effects of each individual technical design fall within the legally set criteria, including those related to safety, severe accidents and potential emissions. Nor can the public assess what the potential environmental impacts, including potential emissions, are of each considered design in the case of a - not by the law regulated! - beyond design accident, nor what the differences in impact are between the effects of a beyond design accident of the different considered designs.
- b. Because of that, the public cannot express its viewpoint on the weight of difference between designs, nor can the public give alternative viewpoints on the assessments by the promoter on such differences between different designs.
- c. The public also does not get a new chance to do this after the choice of technology, because not all of the public has access to the following zoning and construction procedures.
- d. This means that the public cannot give viewpoints, concerns or information that might enhance the quality of the decision to choose one or another technical design.

It has to be noted that there are very substantive differences between the different designs under consideration. It is furthermore not given that all of the legally prescribed criteria will be met, but in a black-box assessment, the public has no opportunity to point this out when it has information to that respect, because the technical information is not accessible.

We appreciate that public participation takes place in an early stage when all options - including choice of technology - are open. But that does not mean that the project promoter can get away with not giving any specific information at all. It means that - to enable comparison - all relevant information from all considered technological designs should be included in the EIA report and that this information should enable comparison.

Because the public cannot give input on each of the different technological designs, the design choice cannot benefit from public participation.

This is breach with the pre-amble of the Convention that states that public participation in decision making is important to enhance the quality and the implementation of decisions, contribute to public awareness of environmental issues, give the public the opportunity to express its concerns and enable public authorities to take due account of such concerns.

It furthermore is in breach with art. 6.4, which states that there shall be early public participation when all options are open and effective public participation can take place, because public participation related to technology choice does not take place at all.

The practice also breaches art. 6.6, which prescribes the public authority to give the public concerned access [...] to all information relevant to the decision-making, and especially art. 6.6.a the physical and technical characteristics of the proposed activity, and 6.6.b its significant effects on the environment.

It is furthermore in breach with art. 6.7, because the promoter and authority do not enable the public to submit comments etc. relevant to the proposed activity, but to a basically virtual - abstract activity as outlined in the law and not as happening in reality.

In order to repair this, we propose that the promoter and authority make the relevant information available to the public and give the public another chance to give its viewpoints both in written form and in the form of a public hearing.

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