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Ms Fiona Marshall
Secretary to the Aarhus Convention Compliance Committee
UN Economic Commission for Europe
Environment Division
Palais des Nations
CH-1211 Geneva 10
Switzerland

2 October 2015

Dear Ms Marshall

ACCC/C/2014/100: Deferring the December 2015 hearing date

1. I refer to the letter dated 30 September 2015 from the Communicants' legal representative seeking to resist deferring the hearing of this Communication. I feel it would be helpful to the Committee in considering this matter if context was provided to support its request. I set out these further points to align with the matters raised by the Communicants.
 - i. The High Speed 2 (HS2) railway project is a vital infrastructure project being undertaken by the UK Government. The route of the railway will be from London to Leeds and Manchester. Phase One of this project covers the route from London to the West Midlands. It is Phase One which is currently before the UK Parliament and is the part of the route which is referred to by the Communicants. While the Committee will recognise that any comments made following the hearing will have a greater influence on the development by the UK Government of Phase Two of HS2, the Committee should recognise that even with a hearing in March 2016 there are still numerous opportunities within the Phase One legislative process for its comments to be considered by Parliament. These include the Commons Third Reading stage, the Lords Second Reading stage and the Lords Third Reading stage.
 - ii. The Communicants suggest that there is sufficient time for the UK Government to appoint alternative Counsel. We disagree with that assertion. The Counsel instructed was fully involved with the HS2 litigation in the UK Courts. He is therefore best placed to assist the Committee in the hearing of the Communication. In the time available it would of course always be possible to instruct another Counsel, but this would be to the detriment of the UK Government and the Committee. The Counsel currently instructed is very experienced in appearing in hearings before the Compliance Committee which will give the Committee further assistance in dealing with the Communication. The replacement Counsel could in no way replicate both the depth and the detail of knowledge gained from being involved in the HS2



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litigation. This would mean the UK Government would be disadvantaged in fully making its arguments and would mean the Committee may make its findings against an incomplete understanding of the issues.

- iii. Counsel instructed has had a long standing commitment in his diary to deal with an inquiry which will last for most of December. That is not a commitment that can be easily rearranged. The Committee should be aware that Counsel thought fully about the possibility of leaving the inquiry for the day of the hearing of the Communication. However, the practicalities of flying to Geneva for the day made this course of action unachievable.
- iv. The Communicants further refer to the Counsel team the UK Government has instructed for the HS2 project as an argument to support the fact that the UK Government has a bank of available Counsel that it could instruct to cover the hearing of the Communication. I would like to correct that assertion. It is indeed the position that there is a Counsel team comprising of two Leading Counsel and four junior counsel, not three and five as asserted by the Communicants. The sole purpose of this team is to provide support in the Parliamentary process in dealing with Phase one. They are all used on a full time basis in this capacity and could not be spared without detriment to the Parliamentary process. Further not all of the Counsel team were involved with the HS2 litigation and therefore the observations made in paragraph 2 would apply here.
- v. The Communicants give further support to their grounds for resisting deferring the hearing by virtue of their Counsel's unavailability in the Committee's first session in 2016. If the Committee were minded to agree deferring the hearing of the Communication there would be more time (and thus greater possibility) for their Counsel to rearrange that commitment.
- vi. While the UK Government would echo the sentiments expressed by the Communicants in their point 3, there is also a need for both parties to be able to provide the necessary information and explanation to the Committee to ensure the Committee has the fullest understanding of the issues. The UK Government would assert that this can be best achieved by the parties having their instructed Counsel.

2. I look forward to hearing from you once the Chair has had the opportunity to consider the matters raised by both the Communicants and the UK Government.

Yours sincerely



Ahmed Azam
United Kingdom National Focal Point
to the UNECE Aarhus Convention