

**Comments from the communicant
to the draft findings and recommendations
with regard to communication ACCC/C/2014/99**

1. Paragraphs 27 i 77

May we suggest that we believe that it would be convenient to substitute “local residents” for “immediate local residents” as it is written in paragraph 47. This is deemed not only for formal reasons but also for material reasons since the notification of the neighbours participation requirement is not directed to all the local residents but only to the immediate local residents. In fact, some neighbours did submit actions and appeals in front of the public administration. And as mentioned in the previous comments only two companies were notified during this local consultation (another cement plant - Cementos Molins- and an international manufacturer and supplier of commercial trucks, parts and diesel engines –IVECO-) basically because there are no more local immediate residents next to the cement plant.

2. Paragraph 67

Here we would like to underline again the fact that indeed the appeal in front of an administrative court would be prohibitively expensive for a local NGO like Col.lectiu Bosc Verd and worse for citizen. Moreover, the costs and the length of court procedures in Spain do not provide effective redress generally and also in this specific case. Apart from all the evidence submitted at previous comments this is only and simply clear when analyzing environmental protection cases in front of the Spanish administrative courts. All environmental NGO’s are reporting this collapse of environmental protection in Spain and the lack of effective response when this destruction goes together with law violation. There is no effective protection in courts due to its costs and length.

3. Paragraph 75

As stated in the oral hearing in Geneve we believe that here it also applies art. 6.1 as annex 20 concurs when it states “Any activity not covered by paragraphs 1-19 above where public participation is provided for under an environmental impact assessment procedure in accordance with national legislation”.

4. Paragraph 94

It is true, as the Committee notes, that no member of the public has sought to challenge, either before a court of law or another independent and impartial body established by law, any decision, act or omission relating to the decision-making procedure on environmental permit of 3 June 2010 (File BA20090192) concerning the substantial modification to the scope of waste used in Uniland’s energy recovery activities. On this

basis, the Committee accordingly finds the communicant's allegations concerning article 9, paragraphs 2 and 4 of the Convention to be unsubstantiated and the Committee states that will not deal with these allegations further considering that just Administrative appeals have been submitted.

Accordingly, although no new allegations are submitted here we would like to comment on some aspects just for the record:

First, it's true that the Counselor of Land and Sustainability of Catalan Government is not an independent and impartial body. But art. 9.2 includes also a preliminary review procedure before an administrative authority when such a requirement exists under national law. And in this case, ex officio reviews and administrative appeals have been used and they are in Spanish law.

Second, we believe that arts. 9.2 and 9.4 violation in front of the public administration has occurred when Bosc Verd NGO and sixteen neighbors appeals were not accepted on the basis of lack of standing and clear groundless as it was pointed at the comments and at the hearing.

Third, the inadmissibility of the administrative claims and the reject of the administrative appeals due to lack of standing constitutes a clear violation of the art. 9.2 and art. 2.5 Aarhus Convention which state the objective of giving the public concerned wide access to justice and also that NGO promoting environmental protection shall be deemed to have an interest. And also it's a breach of art. 9.4 on the requirement of effectiveness of a preliminary review procedure before an administrative authority (paragraphs 21 to 30 of communication).

a) Lack of standing cannot be a cause of inadmissibility in art. 102.3 Spanish Act 30/1992. This is only possible if a nullity cause is not corrected, clear groundless or if it would have been rejected on substantially equivalent appeals. The response of Catalan Government accepts it many times such when it says in pages 15-16 that this can not be rejected based on the lack of legitimacy. Therefore, this occurs not for not acceptance but for the resolution after the procedure is accepted.

b) It cannot be accepted that the NGO lack standing stating that it has not been proved that the main aim of such group (to protect woodland and the fauna) can be affected by the permit.

c) The NGO has clearly standing by legal empowerment because it fulfills all the arts. 2.2.b and 22 of the Spanish Act 27/2006, 18 July, requirements on access to information, public participation and access to justice on environmental matters: Indeed, it has the primary stated objective of promoting environmental protection in general or some of its elements in particular, it has existed for more than two years (it was created in 1986), is actively pursuing the objective referred and its scope is in the wide area affected by the activity. The response of Catalan Government have said again that aims of this NGO are not the protection of the environment in general (only woodland and its wildlife) and did not state or prove that these aims could be affected by the challenge Decision. This legal empowerment does not require general environmental protection or affection.

d) The NGO has standing by a collective interest to environment by art. 2.2.a and 22 of the Spanish Act 27/2006, 18 July, on access to information, public participation and access to justice on environmental matters. Spanish Constitutional Court and Supreme Court admits NGOs legitimacy for the environmental protection. They only have to show that there is some kind of direct or collateral harm to their environmental protection aims. And it is clear that the woodland and the fauna of the area can be strained by this newly authorized activity to burn waste in a cement plant as the NGO alleged to the Administration and it was eventually recognized by the same Administration in different official documents (see paragraphs 27 and 28 of communication).

e) The NGO has standing by *actio popularis* on catalan waste law. The response of Catalan Government says that NGO did not any time invoke, even circumstantially, the violation of any provision of the Waste Law. This is not true because NGO and 16 neighbors did show up that the infringement of one of the key aspects of the waste law which is the need of a clear authorization to carry on waste treatment and, particularly, the requirement of public participation on it. Specifically, this implies the contravention of some articles referred to at the waste treatment authorization (please see paragraph 29 of the communication).