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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

**Your ref:**  
**Our ref:**  
**Date:** 9 March 2018

Dear Ms Marshall

**PRE/ACCC/C/2017/156: UK comments on admissibility**

Thank you for informing us of the preliminary admissibility meeting which will take place on Monday 12 March. To assist the Committee, we wanted to provide you with a brief note in advance of the meeting which sets out why the United Kingdom considers communication PRE/ACCC/C/2017/156 to be inadmissible.

Summary

1. We consider that communication PRE/ACCC/C/2017/156 is inadmissible as it is:
  - **manifestly unreasonable (Paragraph 20(c) of the Annex to Decision I/7);**  
and
  - **it is an abuse of the right to bring a communication (Paragraph 20(b) of the Annex to Decision 1/7 Article 20 (b))**
2. Further, the communicants have **not themselves taken steps to make use of the available domestic remedies**, as envisaged by paragraph 21 of the Annex to Decision I/7 and paragraph 6(b) of Decision V/9.
3. The Committee has an extremely heavy workload. Therefore, in order for it to be able to maintain its ability to give communications the scrutiny they deserve, we

would urge the Committee not to give further consideration to this lengthy and unfocused communication.

#### Submissions on admissibility

4. This communication concerns the allegation of a general failure by the UK to provide an adequate review of the “substantive legality” of certain decisions, acts and omissions in accordance with Articles 3(1) and 9(2), (3) and (4) of the Aarhus Convention. In addition to stating that this is a generic communication, the communicants by their own admission state they do not provide any details of specific measures the UK would need to ensure compliance with their generic allegations.
5. The communicants’: (i) failure to detail a substantive example of why the UK may have failed to implement one of the requirements of the Convention; and (ii) its provision of a lengthy paper which simply details the UK’s case law throughout the years, is an abuse of the right to bring a communication before the Committee.
6. If the communicants had a specific example of an instance where the UK had allegedly failed to implement a provision of the Convention, they could have instigated proceedings before the domestic court. But by the communicants’ own admission, at page 17, a case that “dealt with exactly the right issues” would be needed, but that “no such case has come to light to any person as far as we are aware”. It appears to be this, rather than the “practical and financial difficulties with access to justice in the UK”, that has prevented the high profile and established NGOs, who have retained a QC for this case, from bringing a case in the domestic courts.
7. Utilising available domestic remedies is the appropriate procedure for such matters, instead of choosing, as a first step, to obtain findings from an international committee such as the Committee on the speculative and generic basis advanced by the communicants. It is not appropriate for an international compliance mechanism to be used as an alternative to available domestic procedures because the Committee’s case load will become unsustainable. Providing domestic courts the opportunity to deal with such issues forms an integral part of any Party’s means of complying with the Convention. The communicants have sought to omit this by bringing this case directly to the Committee. In the cases listed by the communicants the specific points they raise have not been brought before the courts in the context of compliance with the Convention.
8. It is evidently clear that this communication is **manifestly unreasonable** and is an **abuse of the right to bring a communication**: (i) as the communicants have not utilised or exhausted domestic remedies before approaching the ACCC; (ii) the

communicants have failed to provide a specific example of their allegation and have instead produced a lengthy paper, which provides an overview of UK case law more academic in its nature than would be expected for a Party to be able to respond to specific allegations of non-compliance with the Convention,.

9. We therefore respectfully request that the Committee finds this generic communication as a whole to be inadmissible.

We would be happy to provide further clarification on any points to assist the Committee in its deliberations.

Yours sincerely

Jane Beeko and Brian Ruddle