

UNECE Meeting of the Parties to the Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters Working Group of the Parties, Twenty-fifth meeting, Geneva, 3 May 2021

Slot I.2: Thematic session on promotion of the principles of the Convention in international forums

Intervention by Christiana Maria Mauro on behalf of European ECO Forum

Transboundary pollution challenges and EU duties to facilitate IAEA data disclosure

European ECO Forum notes with appreciation the Working Group's commitment to promoting Almaty Principles in the Convention's subsidiary bodies and its willingness to convene thematic sessions to offer stakeholders opportunities to share their concerns.

We strongly support the Bureau's identification¹ of major obstacles to effective public participation in decision-making, which include systemic problems with the public availability of relevant data, meaningful public participation opportunities and the failure to take due account of stakeholder input in decisions; we would stress that these obstacles apply in the transboundary context too and should be recognized as issues to be addressed at this level.²

Given the transboundary nature of environmental consequences it's critical that constituencies have access to effective channels of input into international decision-making processes. In view of the commitment of the Parties and Signatories to promote Aarhus principles outside of their jurisdictions, we present a case of global interest.

Our purpose is to highlight the role that the EU in particular may have in expanding the relevance of the Convention, so that stakeholders ready to engage meet a more enabling environment. Parties must bear in mind an obligation to be *pro-active* in acquiring access to requested environmental information held by international bodies.

Japan's water disposal resolution

In the face of forceful and sustained opposition from local and international communities Japan's recent decision to release contaminated water from the Fukushima Daiichi nuclear facilities into the sea reveals the limits of rights-based multilateral agreements. While

¹ Point 13 (d) of Draft decision VII on promoting effective public participation in decision-making, ECE/MP.PP/WORKING GROUP.1/2021/15, www.unece.org/sites/default/files/2021-03/ECE.MP.PP.WG.1.2021.15_aec.docx

² The obstacles of a systematic nature identified in point 13 (d) of draft decision VII are limited to the national, subnational and local levels of governance.

national and international stakeholders have urged the Japanese government to remain faithful to its legal obligations with respect to the international principles applicable to the disposal of nuclear waste, Japan's Prime Minister Yoshihide Suga announced on 13 April 2021 government plans to discharge the contaminated water stored at Fukushima into the Pacific Ocean,³ releasing radioactive tritium, strontium-90, carbon-14 and other hazardous radionuclides.

International appeals disregarded

In April of 2020 five UN Special Rapporteurs called on Japan to delay any decision on the dumping of its contaminated water in consideration of the impact the COVID-19 crisis would have on international consultations.⁴ Instead, the government accelerated its schedule.

Discharges are planned to begin in late 2022 or early 2023 and scheduled to take 32 years.⁵

In March of 2021 the Rapporteurs again submitted evidence to the Japanese government, stating that the contaminated water “poses major environmental and human rights risks and any decision to discharge it into the Pacific Ocean cannot be an acceptable solution”⁶. The lack of transparency concerning the level of threat posed by the contaminated water was also noted, along with the lack of meaningful public participation in the decision-making process.

While the UN Special Rapporteur on toxics and human rights maintains that the plan would impose “considerable risks to the full enjoyment of human rights of concerned populations,” and warned of “potential threats to human health and the environment,”⁷ the International Atomic Energy Agency (IAEA), a UN agency, is advocating for Pacific discharges as a preferred option for managing the contaminated water, hailing it as a “milestone that will help pave the way for continued progress in the decommissioning of the Fukushima Daiichi nuclear power plant.”⁸

3 Japan Times, “Government OKs discharge of Fukushima nuclear plant water into sea,” 13 April 2021, see www.japantimes.co.jp/news/2021/04/13/national/fukushima-water-release/

4 Communication to the Japanese government from the Special Rapporteur on the implications for human rights of the environmentally sound management of disposal of hazardous substances and wastes, the Special Rapporteur on the right to food, the Special Rapporteur on the rights to peaceful assembly and of association and the Special Rapporteur on the rights of Indigenous peoples, 20 April 2020, see www.spcommreports.ohchr.org/TMResultsBase/DownloadPublicCommunicationFile?gld=25195

5 It is projected that an estimated additional 217,000 m³ will accumulate by 2025 and continue thereafter. As of 15 April 2021 over one million m³ of radioactive water is stored in tanks at the Fukushima Daiichi nuclear power plant at the site of the 2011 meltdown of three reactors. The source of the contamination is the melted cores from units, estimated to be in the range of 600-1100 metric tons. Groundwater that enters the site is tainted after coming into contact with contamination under the reactor structures (TEPCO water portal site, 30 April 2021, www.tepco.co.jp/en/decommission/progress/watertreatment/index-e.html).

6 OHCHR, “Japan must step up efforts to solve human rights fallout from Fukushima disaster: UN experts,” 11 March 2021, see www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=26882&LangID=E

7 UN News, “Japan: UN experts say deeply disappointed by decision to discharge Fukushima water,” 15 April, 2021, see www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=27000&LangID=E

8 IAEA press release with video, “Statement by IAEA Director General on Fukushima water disposal,” 13 April, 2021, www.iaea.org/newscenter/pressreleases/iaea-ready-to-support-japan-on-fukushima-water-disposal-director-general-grossi-says

Japan's decision was premised on the basis that discharge is the only option. However, alternative solutions, though more costly, do exist.⁹

Greenpeace Japan described the decision as “wholly unjustified” and a large number of states and civil society organizations remain deeply concerned about the failure¹⁰ to mediate in a decision that could result in an ecological catastrophe.¹¹

IAEA policy and Convention principles

The IAEA does possess a mandate to promote the use of nuclear technologies; but it must also act as a public entity committed beyond the level of rhetoric to the safe employment of these technologies.¹² In its response to Japan's decision the IAEA has demonstrated an open disregard for international human rights and safety standards, and its conclusions are decidedly at variance with environmentally sound hazardous waste management and disposal principles.

As we anticipate efforts to secure documents from the IAEA over the coming two years that the Japanese authorities have not been willing to disclose, we are concerned that the Agency will defer to Japan on requests for access to information. What the Agency has discovered during its missions to Fukushima during the 2011-2018 period will also be of interest to environmental experts and analysts.

Insofar as it is engaged in multilateral international environmental decision-making, the IAEA falls into the category of ‘international forum’¹³.

⁹ The government's own Committee on Contaminated Water confirmed that additional storage space was available on site and in the neighboring districts adjacent to the site; See also 2018 Tokyo Electric Power Company report, available at www.tepco.co.jp/en/wp-content/uploads/hd05-02-03-002-tir2018.pdf

¹⁰ Principal issues raised by NGO's, communities, fisheries federations and local governments in Japan, as well as governments in the Asia Pacific region: failure to conduct extensive prior consultation with stakeholders domestically and internationally; lack of transparency in terms of radiological content of water both in storage and proposed to be discharged to the marine environment; no comprehensive environmental impact assessment, including potential transboundary pollution; the failure to develop the alternative options to environmental release which have been technically confirmed as viable; is contrary to the aims and objectives of the London Convention on the prohibition of disposal of nuclear waste at sea; that discharging the contaminated water into the Pacific Ocean is in non compliance with multiple articles of the United Nations Convention on the Law of the Sea, including Articles 192, 194, 195, 197 and 206.

¹¹ The decision by the Japanese government has been criticized by governments in the Asia Pacific region, including: The Republic of Korea, Peoples Republic of China, Philippines, Taiwan, Vietnam, Mexico, Belize, Costa Rica, El Salvador, Guatemala, Honduras, Nicaragua, Panama and the Dominican Republic, the Russian Federation and the Secretariat of the Pacific Island Forum, which is made up of 13 nations (Australia, Cook Islands, Fiji, French Polynesia, New Caledonia, New Zealand, Niue, Papua New Guinea, Samoa, Solomon Islands, Tonga, Tuvalu, and Vanuatu); On 27 April 2021, it was also reported that the Danish Foreign Minister Jeppe Kofod had called for transparency, responsibility and international efforts regarding marine environment issues (Yonhap, “S. Korea seeks Denmark's cooperation over Japan's Fukushima water release plan”, 27 April 2021, see www.en.yna.co.kr/view/AEN20210427012100325).

¹² The IAEA is authorized to establish standards of safety for the protection of health and minimization of danger to the environment and to provide for the application of these standards (Article II, IAEA Statutes)

¹³ Almaty Guidelines, Article 2 paragraph 9

As such, can European citizens expect its EU institutions and national authorities to lobby for IAEA reforms with a view to advancing Aarhus principles of participatory democracy?

Will these parties support the Agency in fulfilling its mandate to “make available and foster [an] exchange of information”¹⁴ and encourage it to do so with public interest watchdogs?

Call to action for IAEA reforms

In the context of promotion of Convention Principles in international forums we ask that the Working Group call on the parties to urge the IAEA to manage its environmental decision-making more democratically and to enable public access to all data related to emissions into the environment. To improve multilateral cooperation in this regard, the parties should agree on steps that may be taken to increase the transparency of the IAEA and its inclusive participation modalities.

Equally important is the role of individual EU governments in actively helping to secure relevant records and other information requested from its constituents and in ensuring that decisions having an impact on the global environment are addressed with the participation of the public within and outside of national jurisdictions.

EU institutions and national authorities are, in principle, obliged, in accordance with EU law, to make the environmental information at their disposal available upon request; officials are further required to actively assist stakeholders seeking access to information.¹⁵

With respect to participatory tools and mechanisms for consulting the public on international decision-making, the IAEA is in need of a comprehensive review.¹⁶ Given environmental NGO experiences of great reluctance to make its data public,¹⁷ we hope that the Working Group will also consider mandating a group of experts to examine these allegations and report on its findings.

¹⁴ Articles II and VIII.C, IAEA Statutes

¹⁵ Directive 2003/4/EC, Articles 3 (1), (4) and (5); Articles 4(2) and (4); Article 5(2)

¹⁶ In accordance with Article 105, paragraph 3 of the UN Charter, UN members have acceded to the UN Immunity Convention, thereby providing, without reservation in Article II, § 4 of the Convention that the documents of the UN are inviolable; the inviolability provisions of the 1946 UN Convention on the Privileges and Immunities and the 1947 Convention on Privileges and Immunities of the Specialized Agencies may conflict with modern UN transparency aspirations.

¹⁷ Consider *inter alia* IAEA actions in response to requests in 2017 for Ruthenium-106 measures, “WISE wins appeal against ANVS for information about secret Russian nuclear accident” [in Dutch] 19 April, 2020, see www.laka.org/nieuws/2020/wise-wint-hoger-beroep-tegen-anvs-om-informatie-over-geheim-russisch-kernongeval-12692; Ruling of the Council of State of the Netherlands Uitspraak 201903851/1/A3, 15 April 2020, available at: www.uitspraken.rechtspraak.nl/inziendocument?id=ECLI:NL:RVS:2020:1071