

Secretary to the Aarhus Convention Compliance Committee
Economic Commission for Europe
Environment, Housing and Land Management Division
Geneva
Switzerland

**DRAFT REPORT ON COMPLIANCE BY SPAIN WITH ITS OBLIGATIONS
UNDER THE AARHUS CONVENTION:**

COMMENTS BY THE COMMUNICANT

In relation with the Draft Report on Compliance by Spain based on the review of the findings and recommendations of the Compliance Committee with regard to communication ACCC/C/2008/24, the NGO “Asociación para la Justicia Ambiental”, representing the interest of “Asociación de Vecinos Senda de Granada Oeste” from Murcia (Spain) would contribute to the follow-up process with the following comments:

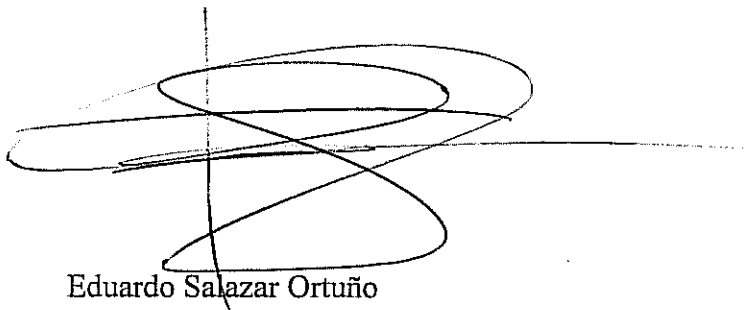
1. We agree with the Compliance Committee taking note of the participation of the Party by the last part of the process and that there are some progress on Aarhus Convention implementation at the national level by the MARM, as Ministry with environmental competences, and the INAP. Anyway we can not assume that the Recommendations were completely followed.
2. We kindly ask to look forward the Recommendations to the Party after de Draft and Findings in order to know if the measures adopted were enough.

3. We recognise that there are new regulatory measures in Murcia municipality in order to avoid expensive charges for environmental information, but we know that this new regulation is not enough (1,07 € is not reasonable) and is not enforced at the Urban Planning office (see the documents sent by the Association last February, when they paid 2,15 € for each page). For this reason we think the Party must ensure the enforcement of the ordinance with capacity building measures to the civil servants they are attending the public, dissemination of this information in the local offices, in order to avoid that this measure is just a document for this non-compliance process. Anyway this measure has a local impact and we think the Party must ensure with a national legislation (developing the Law 27/2006) that the cost of the information (including urban planning information in Land Use Law Royal Decree 2/2008) will be reasonable.
4. It still remains a problem by understanding that urban planning information means “environmental information”, which can be solved using regulatory measures. We share the CC approach referring that “the Party concerned has not submitted information on why information relating to urban planning and building does not fall under the definition of environmental information in Spain”.
5. The indicators expressing the time for response for environmental information request are not related to the Administration of Murcia, so this information cannot prove that the Party is following the recommendations.
6. With regard to the monographic courses by the INAP we understand that there are useful but not enough. These courses are not part of a program for every public stakeholder and were organized for specific public administrators and judges, without a general scope of them. They are not including local administrations, provincial commissions granting free legal aid’s members, prosecutors, lawyers, authorities, etc. and they are not established in a permanent manner, so the Party cannot guarantee its continuity and results on the effective enforcement of the Convention’s duties.

7. Regarding public participation we disagree with the Compliance Committee since there aren't any legislative, regulatory and administrative measures to establish clear requirements for the public to be informed of decision making processes in an adequate, timely and effective manner. We understand that the Party has neither "engaged in training and capacity building activities to raise awareness and to limit as much as possible the cases where the deadlines for information of the public during the decision-making are not properly kept".
8. In the public participation field, we understand that the Party did not develop any measures to implement that "public participation procedures include reasonable time frames for the different phases allowing for sufficient time for the public to prepare and participate effectively, taking into account that holiday seasons as part of such time frames impede effective public participation"; and **"did not review land use legislation be reviewed to expand the existing time frame of 20 days"** in the light of the findings and conclusions of the Committee.
9. Regarding Access to Justice's Recommendations the Party did not justified the existence of *"a study on how article 9, paragraph 4, is being implemented by courts of appeal in Spain; and in case the study demonstrates that the general practice is not in line with the provision at issue, to take appropriate measures to align it to the Convention"*; and there were not any measures exploring if *"adequate, timely, and effective remedies, including injunctive relief, which are fair, equitable, and not prohibitively expensive be made available at first and second instance in administrative appellate courts for members of the public in environmental matters"*, despite a short report from the Ministry of Justice which do not recognises the need of any change in the Spanish procedural system. It seems to be that the proofs by the Communication of the barriers on access to environmental justice are not real for the Ministry of Justice. The communicant agrees with the Committee that the Party gave not any information or clear answers. The CC invitation to examine, with appropriate involvement of the public, the relevant legislation and in particular the court practice with regard to injunctive relief in cases of environmental interest, award of legal aid to environmental NGOs, and the rule of dual representation is crucial for the

implementation of article 9 of the Convention and the guaranty for the rights on access to information and public participation.

Murcia, March 15th 2011

A handwritten signature in black ink, consisting of several overlapping loops and a long horizontal stroke extending to the right.

Eduardo Salazar Ortuño

Lawyer

Asociación para la Justicia Ambiental

