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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

5 May 2015

Dear Ms Marshall

Re: Communication to the Aarhus Convention Compliance Committee concerning compliance by the United Kingdom with the access to justice provisions of the Convention in relation to the in relation to the Legal Aid, Sentencing and the Punishment of Offenders Act 2012 (ACCC/C/2013/85)

and

Communication to the Aarhus Convention Compliance Committee concerning compliance by the United Kingdom in connection with access to justice in private nuisance proceedings (ACCC/C/2013/86)

1. Thank you for your letter of 15 April 2015 enclosing a revised draft of the Committee's findings in respect of the above communications. We welcome the revisions made by the Committee to the initial version of its draft findings. In particular it is noted that there is now no finding of non-compliance in relation to article 9(5) of the Convention or associated recommendation in relation to these communications.
2. However, our view remains that the issues raised in these communications are separate to those which were the subject of the communications mentioned in decision V/9n. In the absence of any previous detailed consideration of costs in private nuisance claims or indeed general findings of non-compliance or associated recommendations applicable to costs in private nuisance claims, we find it difficult to understand how the Committee reaches the conclusion on article 9(5) on the basis of decision V/9n. In particular, paragraph 123 continues to draw a link between the earlier decision and the present findings.
3. We maintain the position that the issues raised in these communications must be viewed separately from those covered by decisions IV/9i and V/9n. Although we appreciate the steps taken by the Committee to address these concerns, and welcome the amendments to the draft decision, the United Kingdom is still unable to agree to the draft findings in their present form. We therefore request that paragraph 126 is amended to reflect the need to refer these finding to the next Meeting of the Parties.



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4. In addition, there are a number of specific comments in the Annex that we would be grateful if the Committee could consider when finalising its findings.

Yours sincerely

A handwritten signature in black ink, appearing to read 'Ahmed Azam'. The signature is written in a cursive style with a horizontal line under the name.

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

- Paragraph 17 - the last sentence states that “*all were invited to provide comments by 1 May 2015*”. This should read “*5 May*” in line with the covering letter.
- Paragraph 30 (previously paragraph 31) – We note that the Committee has not implemented our request at paragraph 15 of our letter of 23 March 2015 (that the second and third sentences be prefixed with “the communicant contends that...”). We consider this to be important because the first relevant sentence sets out the communicant’s assertion about the meaning of article 9(3) and (4), without explaining that this is only an assertion and not a fact. This needs to be addressed as this misrepresents article 9(3) as a requirement for judicial procedures alone, ignoring the possibility of administrative procedures.
- Paragraph 47 – There is still an assertion presented as a fact in the third sentence (our request at paragraph 19).
- Paragraph 86 – A statement is made to the effect that private nuisance claims are often related to the environment. The text refers the reader to paragraph 78 as the authority for this statement. However, paragraph 78 has been changed and, in light of the changes, it cannot be used to support this statement. The wording of this paragraph will need to be reconsidered.
- Paragraph 88 – Typo: the new text reading “with a view of” should read “with a view to”.
- Footnote 36 – The reference to *Austin v Miller Argent* is still incorrect (it refers to is at “*Argent v Miller*”; it should be “*Austin v Miller Argent*”).
- Paragraph 115 – The Civil Procedure Rules reference is still incorrect. The general rule is now found at CPR 44.2(2).