



February 15, 2018

Fiona Marshall
Secretary to the Aarhus Convention Compliance Committee
Secretary to the Aarhus Convention Compliance Committee
United Nations Economic Commission for Europe
Environment Division
Palais des Nations
CH-1211 Geneva 10, Switzerland
E-mail: aarhus.compliance@unece.org

Re: Communication to the Aarhus Convention Compliance Committee concerning compliance by Spain with the provisions of the Convention in the context of mining developments in Galicia

Dear Ms. Fiona Marshal,

We are writing to you on behalf of the Asociación Autnómica e Ambiental Petón do Lobo and the Asociación Amigos y Amigas de los Bosques "O Ouriel do Anllóns" following your February 1 letter with Questions from the Chair and Vice Chair of the Compliance Committee. In this letter we address the relevant questions and refer to a number of documents, of which we can provide the original Spanish or Galician copies at request. Certified translations can also be commissioned, but some of the document have considerable length and the cost of these translations would become problematic.

Question 1. Failure to carry out public participation with respect to the "San Finx" and "Santa Comba" mining projects. Existing judicial proceedings.

"Petón do Lobo" has communicated the breach of EU and national regulations, as well as public participation procedures set forth by the Aarhus Convention, to the competent Galician Regional administrations, considering the inexistence of an Environmental Impact Assessment for the San Finx Mine: particularly the departments of Mines and Water. We are aware that the Mines department has not initiated any ex officio revision of the file regarding the lack of EIA, while the Water department, responsible for the discharge authorization, has demanded from the Mines department clarification on the absence of EIA, and has not yet provided discharge authorization.

The Environmental Prosecutor of Santiago de Compostela initiated a Criminal Investigation (reference DP 246/2016) in December 2016, regarding the lack of EIA in the San Finx mine and environmental criminal offences connected with the impact of heavy metal pollution. In July 3, 2017, the Environmental Prosecutor, after a result of the criminal investigation, transferred the claim to the Courts of First Instance and Trial of Noia, that opened preliminary criminal proceedings in July 27, 2017 (reference 223/2017). In February 2018, on the basis of new evidence, the Environmental Prosecutor requested the declaration of the criminal investigation case as a "complex case", to allow additional resources for investigation.

In relation to the "Santa Comba" mine, this Association has not been able to present a criminal claim over the absence of EIA and other alleged environmental offences, as a result of the impediment of access to crucial environmental information by the Department of Mines. In relation to our February 13, 2017 petition regarding documents from the "Santa Comba" mine, on November 27, 2017 (288 days after) the

Subdirector General of Mining Resources, Ms. María José Mijares Couto, demanded “Petón do Lobo” and “Ouriol do Anllóns” to show proof of their power of representation (**ANNEX 1**, in Galician). This was immediately sent, but up to the current date (365 days after the original petition) no single document has been provided. This effectively prevents us from initiating any administrative or judicial proceeding regarding the “Santa Comba” mine.

Question 2. State of Complaints with the Commission of Transparency of Galicia. Other domestic remedies.

The Commission of Transparency of Galicia issued on November 8, 2017, two Administrative Resolutions regarding files RSCTG 54/2017 (which refers to the facts related in Instance 2 of our Communication to the ACCC) and RSCTG 55/2017 (which refers to the facts related in Instance 1 of our Communication to the ACCC) (**ANNEX 2** and **ANNEX 3**, in Galician). Both resolutions, in similar terms, upheld the appeal by the applicants against the denial of public information and urged the department of Mines to provide the applicants with the requested information before 15 days. Both resolutions could be challenged by the parties at the Courts in a period of 2 months, after which the resolutions become firm (final and binding). Neither resolution have been challenged by the department of mines.

Regarding Resolution 55/2017 (re. “Santa Comba” mine), the only reaction by the Department of Mines was the November 27, 2017 requirement received the Subdirector General of Mining Resources, Ms. María José Mijares Couto, demanding that proof of legal representation be submitted in 10 days, stating that otherwise the request would be discontinued. This proof was provided immediately (**ANNEX 4** and **ANNEX 5**), but the Department of Mines has not communicated further and is now in full breach of compliance regarding the Resolution of the Commission of Transparency of Galicia, that has become firm. The proceedings of the Commission of Transparency do not halt the time for appeal in contentious administrative proceedings (which is no longer possible at this moment), so the only judicial option left to the applicants is to press criminal charges against Ms. María José Mijares Couto for alleged prevarication and disobedience against the firm and binding resolution of the Commission of Transparency. It must be noted, following the contextual facts regarding Instance 1 presented in the original Communication to the ACCC, that Ms. María José Mijares Couto, prior to being elevated to her current political position, had been engineer officer responsible for the administrative supervision of the “Santa Comba” mine, and had issued, on 23/09/2008, a report indicating that the Mining exploitation project for the Santa Comba group must be subjected to an environmental impact assessment, as it is an underground mine operation that can cause acid mine drainage with environmental impact. “Petón do Lobo” and “Ouriol do Anllóns” will indeed press criminal charges in relation to this case, however it must be noted that such proceedings will not necessarily mean access to the environmental information in question, and, in any case, will mean several years of litigation and associated legal expenses.

Regarding Resolution 54/2017 (re. Inventory of Abandoned Mines and a Urgent Risk Assessment of Deposits of Mining Tailings and Mining Waste Tips, and other associated documents), the applicants received a communication signed on December 15, 2017, by the Director General of Energy and Mines, Mr. Ángel Bernardo Tahoces. The communication (**ANNEX 6**, in Galician) is issued in response of the Resolution 54/2017 of the Commission of Transparency. However, instead of providing copy of the requested documentation, the communication states that the documents can be accessed in the offices of the Directorate General by prior appointment and between 9 am and 2 pm. The communication then proceeds to challenging the environmental nature of the requested information and states that the information should fall under “public security” restrictions. It also challenges the view of the Commission of Transparency that the documents are in effect “public documents” and argues that the documents are subject of being and exception to the right to public information. The communication also makes a formal warning on the security risks and the responsibilities of the applicants regarding the consequences (?) of accessing and using this information. In spite of these statements, the communication pretends to be in compliance with the Resolution of the Commission of Transparency, but ignores both the original request of “digital copies” and the resolution that urged the department to provide such copies, and not physical access. It must be noted that the requested Inventory of Abandoned Old Mining Works and the Study of Deposits of Mining Tailings and Mining Waste Tips included CD-ROMs with the full detailed information in easily accessible format (in the case of the later, the Inventory of Deposits of Mining Tailings is exclusively in CD-ROM format). A digital copy of the featured CD-ROM and the digitalization of other documents such

as the “General Collaboration Agreement between the Regional Ministry of Economy and Industry, the Regional Ministry of the Environment, Territory and Infrastructures and the Galician Association of Excavators for securing the shafts of abandoned mining works and the restoration of the degraded natural areas (2010),” could be easily produced in one single DVD at the fixed administrative fee of 4 euros. The applicant has no interest in physically accessing tens of thousands of pages in a few hours (this is cognitively unfeasible, as the Directorate General will surely know), and thus required a digital copy, which is easily producible. This was expressed in a December 5, 2017 communication by Petón do Lobo to the Directorate General (see **ANNEX 5**, mentioned above). The applicants are in the process of providing a more elaborate response to the communication, a copy of which can be provided to ACCC at request.

Question 3. Systemic failure of the Galician Directorate General on Energy and Mines.

We allege that there is a systemic failure by the Galician Directorate General on Energy and Mines to comply with both Aarhus convention and national and regional laws regarding transparency. In our environmental work, our non-profit organizations frequently request and receive environmental information from different departments of the Galician Regional Administration that are under the leadership of the same political party. Usually, these requests are promptly solved and digital copies provided within 1 or 2 months of the request. Therefore, it seems not a political question of the government in question, but a matter of internal policy set in the specific Department of Mines and Energy.

In terms of relevant examples, allow us to refer to a recent Judgment of the Contentious Administrative Chamber of the High Court of Justice of Galicia dated on November 22, 2017 (Judgment TSJG 600/2017, relative do procedure 7363/2015) (**ANNEX 7**, in Spanish). In this case, an applicant demanded in 2012 from the Mines Section of the Coruña Territorial Delegation copies of environmental information regarding mining concessions of the Corcoesto gold mining project. The relevance of the documents was that they allegedly indicated that the mining concessions in question were expired, and therefore the attempt of reviving them was void. The Department of Mines refused access and this fact could not be demonstrated in the period the mining project was subjected to public information. The mining project in question was brought down on other grounds, but it took 5 years of administrative and judicial litigation until a firm judgement granting access was obtained. Needless to say, at this point the documentation in question is completely irrelevant. The final denegation of the project in question is currently subject to another judicial procedure (PO 7382/2014, Mineira de Corcoesto S.L vs. Galician Regional Government), in which “Petón do Lobo” is also appearing as a party. This procedure, which is currently in its conclusions phase, further illustrates the political-economic complicities of the Department of Mines and Energy. However, it must be noted that the time-frames and costs of these procedures make them almost unviable in most situations and for Galician environmental NGOs in general.

Other recent examples can be seen in the publicly available resolutions of the Commission of Transparency of Galicia (<http://www.comisiondatransparencia.gal/resoluciones-da-comision-da-transparencia/>), for example:

- Resolution RSCTG 0082/17 (December 2017), regarding a request of environmental information to the section of Mines of the Territorial Delegation of the Province of Lugo, of mining concession n.º 6043, by an NGO unrelated to the applicants. Fully upheld.
- Resolution RSCTG 0058/17 (November 2017), regarding a request of two of the documents also featured in resolution 54/2017 by a different environmental organization. Fully upheld.
- Resolution RSCTG 008/17 (June 2017), regarding a request of environmental information to the section of Mines of the Territorial Delegation of the Province of Ourense by a different environmental organization. Fully upheld.
- In 2016, file RSCTG 42/2016, regarding access to environmental information of a mining concession by a common land trust, was not subject of a resolution, as the applicants opted to file an administrative complaint with the Directorate General of Evaluation and Quality of Public Services (that handles internal affairs).

It must be noted, in relation to the cases with the Commission of Transparency, how the Directorate General of Mines and Energy also fails to comply with its internal obligations of providing reports requested by other public bodies. Both resolutions affecting this communication to the ACCC indicate that

the Directorate General failed to submit the mandatory reports regarding these cases of access to public information. Additionally, a number of procedures of other available remedies that illustrate the systematic conduct of the Department of Mines and Energy include complaints with the Spanish National Ombudsman (*Defensor del Pueblo*) and the Directorate General of Evaluation and Quality of Public Services (that handles internal affairs), in which the department of mines fails to comply with the submission of mandatory requests. One example (**ANNEX 8**, in Spanish), provided by Asociación Verdegala, from the Spanish National Ombudsman, indicates that continuing failure to comply with submission of requested reports would lead to the declaration of the Directorate General of Mines and Energy as having a “hostile and obstructive attitude”.

If these examples are not sufficient, given enough time, the applicants can try to request the relevant supportive evidence from different organisms and other NGOs. For example, we are aware that a number of cases regarding access to environmental information held by the Directorate General of Mines and Energy, regarding mining concessions, are currently open in the Galician Ombudsman (*Valedor do Pobo*). Please note that all the information is likely to be in Galician or Spanish. The applicants can provide at request translations or certified translations of select documents if financially viable to pay for professional translation services.

We sincerely hope the responses above and the attached documentation allows for the consideration of determination of preliminary admissibility of our original communication by the Committee at its sixtieth meeting (Geneva, 12-16 March 2018).

Yours faithfully,

Mr. Ismael Antonio López Pérez, President
Asociación Autnómica e Ambiental Petón do Lobo

Ms. Ana Martina Varela Velo, President
Asociación Amigos y Amigas de los Bosques “O Ouriel do Anllóns”