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March 12, 2018



Ms. Fiona Marshall
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: PRE/ACCC/C/2017/153 Spain 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. Marshall:

During the first session of the sixtieth meeting (Geneva, 12 March 2018) of the ACCC, one Committee member asked me about pending cases in Spain's courts related to PRE/ACCC/C/2017/153 Spain. I answered the question to the best of my ability at that time, and have in the past few hours obtained additional information on the recent developments related to this communication. Some details below update information in the February 15, 2018 response to the Secretariat's questions, and certain details pertain to other recent actions. The communicants wish to clarify the following:

1. February 27 Joint Communications to the Regional Minister and Commission of Transparency Regarding the December 15 Resolution

The communication signed on December 15, 2017, by the Director General of Energy and Mines, Mr. Ángel Bernardo Tahoces (ANNEX 6 to our February 15, 2018 communication) did not fulfill its compliance obligations. Our February 15 communication explained that the response ignored the requests for "digital copies" and actual copies, which made the offered access non-compliant and ineffective.

On February 27, 2018, Petón do Lobo and Ouriol do Anllóns, filed a joint communication (**ANNEX 1**) to the Galician Regional Minister of Economy, Employment and Industry, as hierarchical superior to the Galician Regional Directorate General of Energy and Mines. The communication described how the terms of the December 16 act were not in compliance with the Resolution of the Commission of Transparency, and urged the Government to fulfill its obligations by providing digital copy of the relevant environmental information. A similar communication was sent on the same day to the Commission of Transparency, urging it to act to enforce its resolutions (**ANNEX 2**).

2. March 7 Receipt of February 20 Resolution

On March 7, days before today's meeting of the ACCC, Petón do Lobo and Ouriol do Anllóns received a Resolution signed on February 20, 2018, by the Director General of Energy and Mines, Mr. Ángel Bernardo Tahoces (**ANNEX 3**), and sent by the Subdirector General of Mineral Resources, Ms. María José Mijares Coto. Surprisingly, this Resolution fully ignored the Resolution of the Commission of Transparency and the original request of Petón do Lobo, dated on February 13, 2017, to provide a "full digital copy" of the files of the Santa Comba group of mining concessions.

Instead of providing a full digital copy of these files, the Galician agency offered to provide just six documents that it knew were disclosed a year earlier pursuant to the request by another environmental organization to a different authority.

The Directorate General now provides six documents on Santa Comba that Petón do Lobo requested on February 28, 2017. However, another Galician environmental organization made a similar request to the Territorial Delegation of the Coruña province. Fifteen days later (March 17, 2017), the Chief of the Section of Mines, Mr. Francisco Germán Tuñas Rodríguez, provided copies of all the documents that had been requested, except those of the "Environmental Study and Impact Declaration" because they are not part of the files (they do not exist!) (**ANNEX 4**).

On the other hand, and rather amazingly, while the Chief of Mines of the Territorial Delegation acknowledged on March 17 that no "Environmental Study and Impact Declaration" is part of the file, the February 20, 2018 Resolution by the Director General of Energy and Mines tries to provide the impression that a valid "Environmental Impact Study" is part of the file.¹

The communicants consider that the February 20, 2018 Resolution by the Director General of Energy and Mines clearly was issued with the sole intention of seeking to avoid the admissibility of the present complaint, per request of the Spanish authorities. The administration is fully aware that the communicants have already had access to the information now being "offered", and thus the resolution is purely cosmetic.²

The non-compliant character of the February 20 Resolution is also evident in the fact it provides no instructions on how to access these few documents. It states that copies will be provided after the applicable fees are paid for, but does not indicate what amount is to be paid, or if digital or printed copies will be provided. This is not a minor issue, as the Department of Mines has frequently used abusive and inapplicable copy fees to deter access.

¹ The authority sending the February 20 Resolution, Ms. María José Mijares Coto, was the administration's acting engineer who signed the previous reports stating that the Santa Comba mines should be subjected to an environmental impact assessment, as the 2009 Resolution, firm and never contested, clearly stated.

² The communicants did not pursue domestic remedies targeting non-compliance with the February 28, 2017 request, as the remedies pursued for non-compliance with the February 13, 2017 request for the full administrative files already included these documents and other crucial public information regarding the concessions that the Directorate General continues to withhold.

There currently is at least one instance of this abuse being investigated before the Inspection of Services of the Galician Regional Government (pending resolution). In that case, while the applicant requested digital copies (the official fee is 4 euros per 0,5 Gigabytes of information), the Territorial Delegation of the Coruña province denied the right to obtain digital copies of the information of the file of the San Finx Mining Group, providing only non-certified printed copies of part of the requested documents, but applying the fee for official certified copies (0,1 euros/page). The Chief of the Section of Mines and the Chief of this Service stated that in order to obtain digital copies, the fee for certified printed copies should apply first, and then the fee for digital copy, although there is no legal basis for such digitalisation fee. Besides, there is an obligation of digitalisation based on the Aarhus Convention and national legislation.

3. Legal Basis for Claims before the Commission of Transparency

My oral response stated that the Galician Regional Directorate General of Energy and Mines ignored Administrative Resolutions from the Galician Commission of Transparency. To clarify this statement, the communicants' claims presented before this Commission of Transparency were a relevant use of domestic remedies under national laws.

In Law 19/2013 of Transparency, Access of the Information and Good Governance, the third point in the First Additional Provision states that this Law will be fully applicable to access to environmental information when not provided for in the respective regulations.³ The Preamble explains that the Act "broadens and strengthens active publicity obligations in different spheres" and "develops what has already been done, making up for shortcomings, correcting deficiencies, and creating a legal framework in keeping with the times and with the citizens' interests." The Spanish Council of Transparency and the Regional Commissions of Transparency were not contemplated in Spanish Law 27/2006 (which transposed the Aarhus Convention). Nevertheless, the First Additional Provision makes these agencies fully competent to act as national remedy in cases of access to environmental information.⁴ This is relevant considering the continuing difficulties in using judicial remedies, already noted by several ACCC decisions regarding Spain.

4. Public Prosecutor's San Finx Criminal Case and Lack of Opportunity for Public Participation in the Santa Comba Application

Finally, I mentioned that the Public Prosecutor recently filed a criminal case for corruption against the Galician Directorate General of Energy and Mines. In the San Finx case, a criminal investigation into the processing of the concession is taking place at the competent Instructional Court. Upon request by the Judicial Police, the mines administration had to

³ "3. En este sentido, esta **Ley será de aplicación**, en lo no previsto en sus respectivas normas reguladoras, **al acceso a la información ambiental**."

⁴ The second point in the First Additional Provision in Law 19/2013 ("those matters that have been included in a specific legal system of information access will be governed by their specific rules and, for any matters not provided for herein, by this Law") does not apply to environmental information. There is nothing in the specific rules in Law 27/2006 that bars citizens from the important rights and remedies later provided under Law 19/2013, including the processes of the Commissions of Transparency. It would be contrary to Law 27/2006 and the Aarhus Convention to make environmental information less accessible than other public information.

provide a digital copy of the full administrative files (since 1884 to present) of the San Finx mine to the Public Prosecutor.

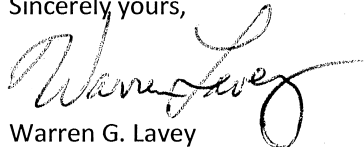
After they have an opportunity to review the Santa Comba administrative files, the communicants intend to press for initiating similar actions based on the flawed processing of the concession. The communicants hope that the Regional and Spanish authorities will be reasonable enough --and comply with the Aarhus Convention -- to provide access to the Santa Comba documents without holding out until there is a request by the Judicial Police.

As in the San Finx case, the lack of public appeals when the San Comba applications were being processed should be blamed on the unlawful conduct by the Directorate General. There were no opportunities for public participation when the applications were being processed, foreclosing any public appeals during the processing. This lack of transparency and participation occurred even though there were firm resolutions stating that the projects for the Santa Comba and San Finx groups of mining concessions were to be subject to "Environmental Impact Assessment", which should have included a public participation process. However, no Environmental Impact Assessment was carried out and no public participation process existed. The lack of an EIA is one of the main issues at stake, including potential criminal responsibilities; the communicants firmly believe these are key reasons for understanding the Directorate's unlawful failure to provide public access to the files.

The waste water discharge permit only applies to the San Finx mine, and not to the Santa Comba files. The procedure for the discharge permit in the San Finx only took place after continuous pressure by the Director General of Energy and Mines, Mr. Ángel Bernardo Tahoces to the Galician Water Authority, over the Galician Water Authority for this body to allow the discharge without proper administrative procedure (and without public participation). Failing in forcing the Water Authority to do so, a window for public participation finally emerged and the grave nature of the environmental impact was understood. Since December 2017, the San Finx mine ceased its operations. The case of the water discharge permit, and the pressures excised by the Department of Mines to avoid procedures involving public participation, clearly illustrates the systematic lack of compliance stated by the communicants.

All that has been stated reinforces the communicants' complaint regarding ongoing violations of Aarhus Convention Articles 4 and 6 and the failure of domestic remedies, urging the ACCC to admit this Communication and take actions to enforce the public's right to access crucial environmental information from the Galician Regional Directorate General of Energy and Mines and to participate in proceedings regarding mines in Galicia.

Sincerely yours,



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