

22 September 2021

Ms. Margarida Marcelino
Portuguese Environmental Agency (APA)
Ministry of the Environment, Territory Management and Energy
Portugal

Mr. Xoan Evans Pin
Montescola Foundation

Dear Ms. Marcelino,
Dear Mr. Evans Pin,

Re: Communication to the Aarhus Convention Compliance Committee concerning compliance by Portugal in connection with access to environmental information regarding the Mina do Barroso open-pit mine

I refer to the open session on the preliminary admissibility of the above communication held at the Committee's seventy-first meeting (Geneva, 5-7 July 2021). At the meeting, the Committee agreed to defer its determination of preliminary admissibility to its seventy-second meeting (Geneva, 18-21 October 2021) in order to send questions to the communicant and the Party concerned for their written reply.

To this end, please find enclosed a list of questions from the Committee for your reply. Please send your replies to the enclosed questions to aarhus.compliance@un.org by **Friday, 15 October 2021**.

Please do not hesitate to contact the secretariat if you have any questions regarding the above.

Yours sincerely,



Fiona Marshall
Secretary to the Aarhus Convention Compliance Committee

Cc: Mr. Fernando Queiroga, Mayor, Municipal Council of Boticas, as an observer
Mr. Nils Völker, MiningWatch Portugal, as an observer

Enc: Questions from the Committee to the Party concerned and the communicant

Questions to both the Party concerned and the communicant:

1. Are decisions of CADA binding or rather non-binding recommendations/opinions? Is there any legal mechanism to enforce a CADA decision?
2. What administrative and judicial domestic remedies exist under Portuguese law to challenge a public authority's refusal of a request for environmental information? What remedies other than those already used by the communicant are still available?
3. What costs would an environmental non-governmental organization (NGO) incur to bring a challenge before the administrative court against a public authority's failure to respond to an environmental information request? Is it mandatory for an NGO to be represented by a lawyer in such a case?
4. Are environmental NGOs entitled to legal aid to challenge an environmental information request before the administrative court? If so, please provide the relevant legislative provisions explaining the eligibility requirements and what the legal aid would cover, together with an English translation thereof.
5. Does the legislation of the Party concerned set a deadline by when an administrative court must decide a challenge regarding a request for environmental information, and if so, what is the required timeframe? If not, what is the typical timeframe for an administrative court to decide a challenge regarding a request for environmental information? Please provide any relevant evidence to support your answer.
6. The Party concerned states that the public consultation on the Mina Barroso mine was from 22 April – 16 July 2021. Please confirm that this means that the public had the opportunity to send written comments from 22 April to 16 July 2021?
7. On what date were each of the following documents posted on the APA website:
 - (a) EIA annexes – Annex I – Climate and climate alterations;
 - (b) EIA annexes – Annex VI – Soils;
 - (c) EIA annexes – Annex III – Water resources;
 - (d) Project – Annex II - 24 – Flocculating agents;
 - (e) Project – Annex III - 1 – Barroso Mine – Parameters – Waste dumps;
 - (f) “Compensation measures report” on Iberian wolf (*Canis lupus signatus*) populations.
8. Has the final decision on the Barroso Mine yet been taken by the decision-maker? If so, on what date? Has Montescola Fund or any other members of the public sought to challenge that decision on the grounds that the public did not have a reasonable timeframe to examine the information relevant to the decision-making and to participate effectively in the decision-making? If so, what was the outcome of those proceedings?

Questions to the communicant:

9. The Party concerned claims that APA provided the requested documents to Montescola Fund on 22 April 2021.¹ Do you agree with that statement? If not, please specify whether there is

¹ Party's statement on preliminary admissibility at Committee's 71st meeting, p. 5.

any further information within the scope of your information request of 7 January 2021 which has to date not been disclosed.

10. In your communication you state that separate complaints to CADA were filed “on 19/03/2021 against the refusal by the DSEF-RG to provide access to the environmental information requested by Montescola on 14/03/2021 and, following the shift in the decision at the CC DR-N, on 08/04/2021”. Has CADA handed down its decision on each of the complaints yet? If so, please provide the full text of its decisions, along with an English translation of the relevant parts. If CADA decided that DSEF-RG and/or CC DR-N should disclose the requested information, did DSEF-RG and CC DR-N comply with CADA’s decisions? If not, what if any further remedies have you sought with respect to your requests to DSEF-RG and CC DR-N?
11. Please provide an update on the status of your proceeding for a “summons of the administrative authority” submitted on 27 April 2021.² If the court has issued its decision on your proceeding, please provide the full text of the court’s decision along with an English translation of its relevant parts.
12. Please provide an update on the outcome of criminal procedure 572/21 submitted to the Public Prosecutor on 10 April 2021.
13. The Party concerned claims that NGOs such as Montescola Fund are “exempt from preparations, costs and stamp duty” for proceedings such as subpoenas for the provision of information.³ You however claim that Montescola Fund had already incurred €1000 for its court proceeding.⁴ What costs did the €1000 cover?
14. What, if any, domestic remedies, have you used with respect to your allegations under article 6 (3) and (4) of the Convention that the Party concerned failed to make the documents listed in question 7 above available online for the full period of the public consultation and to provide a reasonable timeframe to examine the documentation?
15. Upon identifying that the documents listed in question 7 above were not available online, did you send a request for access to those specific documents, and if so, what was the outcome of your request. Please provide copies of your request and the public authority’s reply thereto, together with an English translation thereof.
16. Does your communication claim that the alleged non-compliance is a general/systemic issue in the Party concerned or related to the Barroso mine project specifically? If you claim that the alleged non-compliance is of a general/systemic nature, please provide relevant evidence to support this claim.

² Communicant’s statement on preliminary admissibility at Committee’s seventy-first meeting, p. 2.

³ Party’s statement on preliminary admissibility at Committee’s seventy-first meeting, p. 4.

⁴ Communication, p. 7.