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7 January 2011

Mr. Juan Manuel García Bartolomé  
Head of Information service  
Technical General Secretariat  
Ministry of the Environment and Rural and Marine Affairs  
Paseo de la Infanta Isabel  
E-28071 Madrid  
Spain

Dear Mr. Bartolomé,

**Re: Follow-up on communications ACCC/C/2008/24 and ACCC/C/2009/36 to the Aarhus Convention  
Compliance Committee concerning compliance by Spain**

We refer to the findings and recommendations of the Aarhus Convention Compliance Committee with regard to communications ACCC/C/2008/24 and ACCC/C/2009/36. The Committee, pursuant to paragraph 36 (b) of the annex to decision I/7 and noting the agreement of Spain that the Committee take the measure referred in paragraph 37 (b) of the annex to decision I/7, had made a number of recommendations to the Party concerned with regard to its findings on communications ACCC/C/2008/24 and ACCC/C/2009/36.

You are now requested to submit information on progress from Spain in implementing the recommendations of the Committee on the above referenced communications no later than **11 February 2011**. On the basis of this information, the Committee will decide on the recommendations to make to the Meeting of the Parties on how to follow up. The Committee will conclude its report to the Meeting of the Parties, including its recommendations on issues of non-compliance, at its thirty-first meeting (22-25 February 2011).

For your convenience, the recommendations of the Committee are also annexed to this letter.

Please do not hesitate to contact the secretariat ([public.participation@unece.org](mailto:public.participation@unece.org)) if you require any further information.

Yours sincerely,

Aphrodite Smagadi  
Secretary to the Aarhus Convention Compliance Committee

Cc: Permanent Mission of Spain to the United Nations Office at Geneva and other international

organizations in Switzerland

Mr. Salazar Ortuño, Asociación para la Justicia Ambiental (AJA)

Mr. Felix Lorenzo Donoso, President of the Platform against the Contamination of  
Almendralejo, Tino, Spain

Enc Recommendations set out in the findings on communications ACCC/C/2008/24 and ACCC/C/2009/36

## **ANNEXES**

### **Annex I**

#### **Findings and recommendations with regard to Communication ACCC/C/2008/24 concerning compliance by Spain (paras. 114–119)**

#### **IV. Conclusions**

114. Having considered the above, the Committee adopts the findings and recommendations set out in the following paragraphs.

##### **A. Main findings with regard to non-compliance**

115. The Committee finds that as a result of a public authority ignoring a request for environmental information for a period of three months after the submission of the request, by failing to provide the information in the form requested without giving any reasons and by imposing an unreasonable fee for copying the documents, Spain failed to comply with article 4, paragraphs 1 (b), 2, and 8, of the Convention (see paras. 70, 74 and 79 above).

116. The Committee finds that as a result of a public authority setting a time frame of 20 days during the Christmas holiday season for the public to examine the documentation and to submit comments in relation to the Urbanization Project UA1, Spain failed to comply with the requirements of article 6, paragraph 3, of the Convention, referred to in article 7 (see para. 92 above).

117. The Committee finds that the failure of Spanish system of access to justice to provide adequate and effective remedies as shown in this case constitutes non-compliance with article 9, paragraph 4, of the Convention (see para. 104 above). Furthermore, if the trend referred in paragraph 109 above reflects a general practice of court of appeals in Spain regarding costs, this would also constitute non-compliance with article 9, paragraph 4.

118. In addition to the above main findings and conclusions, the Committee notes with regret that Spain, by failing to submit written explanations or statements clarifying the matter addressed by the communication (para. 6 above), it failed to comply with its obligations under the Convention as related to paragraph 23 of the annex to decision I/7. In the view of the Committee it is of the utmost importance for the effectiveness and credibility of the compliance mechanism that the procedural rules laid down in decision I/7 on review of compliance are complied with not only by the Committee, communicants and the secretariat, but also by the Parties to the Convention.

##### **B. Recommendations**

119. The Committee, pursuant to paragraph 36 (b) of the annex to decision I/7, and noting the agreement of the Party concerned that the Committee take the measure referred in paragraph 37 (b) of the annex to decision I/7, recommends to the Party concerned:

(a) To take the necessary legislative, regulatory, and administrative measures and practical arrangements to ensure that:

(i) Only reasonable costs, equivalent to the average costs of a photocopy on paper or electronic means (CD-ROM/DVD) are charged for providing access to environmental information to the public at central, regional and local level, with such measures including a review of the Murcia City Council Fees Chart for Services;

(ii) Information requests be answered as soon as possible, and at the latest within one month after the request has been submitted, unless the volume and the complexity of the information justify an extension of this period up to two months from the date of the request; and that related legislation be reviewed to provide for an easy and specific procedure to be followed, in the event of a lack of response to a request;

(iii) Clear requirements be established for the public to be informed of decision-making processes in an adequate, timely and effective manner, including informing public authorities that entering into agreements relevant to the Convention that would foreclose options without providing for public participation may be in conflict with article 6 of the Convention;

(iv) A study be carried out 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;

(v) 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; due to the complexity and the need to consult with experts, 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;

(vi) 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; and

(b) To develop a capacity-building programme and provide training on the implementation of the Aarhus Convention for central, local and regional authorities responsible for Aarhus-related issues, including provincial commissions granting free legal aid, and for judges, prosecutors and lawyers; and to develop an awareness-raising programme on Aarhus rights for the public.

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## Annex II

### **Findings and recommendations of the Compliance Committee with regard to communication ACCC/C/2009/36 concerning compliance by Spain**

(paras. 68–76 )

#### **IV. Conclusions and recommendations**

68. Having considered the above, the Committee adopts the findings and recommendations set out in the following paragraphs.

##### **A. Main findings with regard to non-compliance**

69. The Committee finds that as a result of public authorities not making the requested information available unless an interest was stated on the part of the requester, the Party concerned failed to comply with article 4, paragraph 1, of the Convention (see para. 54 above).

70. The Committee finds that as a result of public authorities not responding or delaying response to requests for environmental information, and without notifying the requester that a one-month delay is needed along with reasons for that delay, the Party concerned was not in compliance with article 4, paragraph 2, of the Convention (see para. 59 above).

71. The Committee finds that the public authorities did not allow for access to information in the form requested, and did not provide copies, and as a result the Party concerned failed to comply with article 4, paragraph 1 (b), in conjunction with article 6, paragraph 6, of the Convention (see para. 61 above).

72. The Committee also finds that public authorities set inhibitive conditions for public participation, and as a result the Party concerned failed to comply with article 6, paragraphs 3 and 6, of the Convention (see para. 62 above).

73. The Committee also finds that local authority officials insulted the communicant publicly in the local mass media for its interest in activities with potentially negative effects on the environment, and thus that the Party concerned failed to comply with article 3, paragraph 8 of the Convention (see para. 64 above).

74. Finally, the Committee finds that, by failing to consider providing appropriate assistance mechanisms to remove or reduce financial barriers to access to justice to a small NGO, the Party concerned failed to comply with article 9, paragraph 5, of the Convention, and failed to provide for fair and equitable remedies, as required by article 9, paragraph 4, of the Convention (see para. 66 above); and also stresses that maintaining a system that would lead to prohibitive expenses would amount to non-compliance with article 9, paragraph 4, of the Convention (see para. 67 above).

##### **B. Recommendations**

75. The Committee, pursuant to paragraph 36 (b) of the annex to decision I/7, and noting the agreement of the Party concerned that the Committee take the measures requested in paragraph 37 (b) of the annex to decision I/7, recommends the Party concerned:

(a) To take the necessary legislative, regulatory and administrative measures and practical arrangements to ensure that the recommendations of the Committee in paragraph 117 (a) (ii) and (iii) of its findings for communication ACCC/C/2008/24 become effective;

(b) To ensure the implementation of recommendations of the Committee in paragraph 117 (a) (iv) of its findings for communication ACCC/C/2008/24;

(c) To change the legal system regulating legal aid in order to ensure that small NGOs have access to justice;

76. To examine the requirements for dual legal representation (“abogado” and “procurador”) for the court of second instance in the light of the observations of the Compliance Committee in paragraph 66 of the present document.

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