Date: 22 February 2014

Ms Fiona Marshall

United Nations

Economic Commission for Europe

Palais des Nations

Room 429-2

CH-1211

GENEVA 10

Dear Ms Marshall

Ref: ACCC/C/2013/90 – COMMUNICATION TO THE AARHUS CONVENTION'S COMPLIANCE COMMITTEE.

Finally on 21 February 2014, having been delayed twice, the High Court set down its (verbal) judgement on the case of the River Faughan Anglers-v-Department of the Environment for Northern Ireland.

Unfortunately for our cross-community, not-for-profit organisation the Judge ruled in favour of the Department, placing determining weight on the affidavits submitted by the Department's officials. A written judgement is to be expected in the coming weeks and this will be forwarded to the Aarhus Convention's Compliance Committee (ACCC) as soon as it becomes available.

In the question of costs, the judge has asked for submissions from both parties, before considering liability, although the Department made clear at the judgement that it would be seeking costs from RFA. Our legal team emphasised the public interest in our challenge and the fact that rather than engage with RFA on environmental concerns prior to the development consent, the Department actually declined to enter into what it considered would be *"…expansive correspondence"…,* as there was *"…an appropriate remedy through judicial review."* (see paragraphs 8 and 9 of my original submission)

Even before the detail judgement becomes available, our legal team is clear that the judge has misdirected himself and are strongly advocating an appeal. An initial estimate for an appeal lies between £150,000 (182,000 Euros) to £160,000 (194,000 Euros). As much as we agree with our legal advice, this is simply out of the question for our organisation and RFA is not in a position to appeal this decision, irrespective of how strong we believe our grounds to be. This we believe is a further infringement of Article 9 of the Aarhus Convention.

The fact is that this legal challenge, which was first lodged in December 2012, has cost our voluntary organisation £156,000 (189,000 Euros) with the likelihood of that increasing by a

further £2,000 (2,400 Euros) to cover any separate costs hearing. What we have had to pay out so far amounts to around 2.5 years of our actual running costs. These costs have been accrued because of the timetabling by the courts which was entirely outside of our control and meant that the case had to be heard over five days spread between May, June and October 2013. It then took four months to provide the verbal judgement.

Given the prohibitively expensive nature of judicial review in NI, as it stands RFA does not have the money to cover our remaining outstanding legal fees, although it is hoped by the end of March 2014 we will be in a position to meet that obligation.

Should costs be awarded against RFA, we will not be in a position to pay and our long standing community organisation, by attempting to protect the River Faughan and Tributaries Special Area of Conservation, will go into liquidation. Even had a Protected Costs Order been secured, such is RFA's financial position that it simply would not have been in a position to cover that, highlighting the inadequacy of Protected Costs Orders.

Should the Department seek to recover those costs from me under the Champerty law, I stand to lose all of my retirement fund and perhaps more, for simply wanting to protect the environment.

I truly believe that such a prohibitively expensive (and only) method of challenge to environmental decisions made by the state is contrary to the Aarhus Convention and not only acts as a deterrent to individuals and community groups, but perpetuates poor decision making and environmental harm in NI.

I respectfully request that the ACCC takes this into account.

Should you require further information I will be happy to provide.

Yours sincerely

Dean Blackwood

[*Address redacted on request*]