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Secretary to the Aarhus Compliance Committee

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Comments from the communicant to the draft findings and recommendations with regard to communication ACCC/C/2014/99

1. Paragraphs 30 and 96

May we remind again that the called internal administrative instruction issued by the Catalan Government's Department of Territory and Sustainability on 1 April 2014:

1. It's neither a governmental regulation nor an internal administrative instruction as the Catalan Government claims. Unfortunately, it is only an internal administrative guideline and has no clear binding effects. Just the title is self-explanatory: "Criteria" and specifically "Criteria for the documentary homogenization" ("*criterios de homogenización documental*"). There are no references at all to any binding terminology. Significantly, words such as "rules" or "instruction" are not even written in the Catalan Government Publication Criteria text. Indeed, and in this sense, the implementation of such requirements is not granted.

2. Moreover, there is no evidence of public disclosure of such Criteria at the official bulletin or at the official webpage or any other web page or public post.

3. On the other hand, the fact that that these Criteria, recommendations were adopted just after the NGO Col·lectiu Bosc Verd and 16 neighbors' complaints were submitted in front of the Catalan Ombudsman proves that by then and in this case the public information notice was inappropriately enacted.

2. Paragraphs 97 and 109

In this sense, it is decisive to mantain the follorwing recommendations that were already provided in the previous verssions of the draft findings:

> " recommends to the Party concerned, pursuant to paragraph 37 (b) of the annex to decision I/7, to take the necessary legislative, regulatory or other measures as well as practical arrangements to ensure that:
>
> (a) the public concerned is properly informed about:
>
> (i) the nature of proposed activities subject to article 6, including changes or extensions to such activities and updates to their operating conditions;

(ii) the public authority responsible for making the decision;

(iii) the environmental information relevant for the proposed activity available; and

(iv) whether the activity is subject to an EIA procedure;

in accordance with article 6, paragraph 2(a), (c), (d)(vi) and (e) of the Convention."

And, consequently eliminate paragraph 109.

Firstly, because, there are other examples of specific cases and comments in which the "proposed activity" was incorrectly identified in the public notice and so that there is a systemic non-compliance doctrine in the implementation of article 6, paragraph 2(a) of the Convention by the Party concerned in practice.

This is clear for instance in the Spanish Supreme Court Decision 10 June 2015 (Roj: STS 2785/2015- ECLI: ES:TS:2015:2785) http://www.poderjudicial.es/search/contenidos.action?action=contentpdf&databasematch=TS&reference=7424295&links=%222686%2F2013%22&optimize=20150703&publicinterface=true

This decision analyses the Catalan Government same practice where he does not properly inform in the public notice. In this case, again, an essential aspect of the activity was omitted during the public notice. Exactly what was left out was that the rock extraction and its following use as a landfill were subject to an EIA procedure.

Secondly, because the real and effective protection of the participation rights enshrined in the Aarhus Convention require that any infringment regarding communications or public notes should be immediatly, effectivetily and genuinelly rectified. It has to be undelined, that lamentabely the simple publication of the 2014 criteria do not grant such complience as required by the Aahrus Convention. It does not grant a change in the public administration practices.

It is important to bare in mind that this was already required previously, and also common sense was pointing in this direction. It is obvious that the activity for which the permit was required should had been the same as the one published in the public notice and not a different one. Also, other relevan information should had not been ommitted such as the EIA omission. There was no need to adopt an administrative criteria for such clear questions. Hence, it is key to mantain the recomendations stated initially in order to grant the participation rights and to change these viased administrative practives.

It is also decisive to adopt other measures to grant such enforcement such as the proper administrative actions.

Finally, just a quick note to remind that in this case it was not admitted the ex officio review for two reasons that in front of these Committee it was seen that there were absolutely inappropiate (lack of standing of the environmental NGO and a several citizen and clear groundless). Otherwise, the Aarhus Convention will end up being just a piece of paper.