

Communication to the Aarhus Convention Compliance Committee

I. Information on correspondent submitting the communication:

Full name of organization or person(s) submitting the communication: **ASOCIACIÓN AUTONÓMICA E AMBIENTAL PETÓN DO LOBO** and **ASOCIACIÓN AMIGOS E AMIGAS DOS BOSQUES "O OURIOL DO ANLLÓNS"**

Permanent address: Barrio do Campo 17, Portal 3, 2ºA, Silleda, Pontevedra (Galicia, SPAIN)

Telephone: (+34) 689 532 863

E-mail: asociacionpetondolobo@hotmail.com

If the communication is submitted by an organization, provide the following information for the contact person authorized to represent the organization in connection with this communication:

Name: Mr. **ISMAEL ANTONIO LÓPEZ PÉREZ**

Title/Position: President, *Asociación Autonómica e Ambiental Petón do Lobo*

Telephone and e-mail: Same as above; asociacionpetondolobo@hotmail.com

Name: Ms. **ANA MARTINA VARELA VELO**

Title/Position: President, *Asociación Amigos y Amigas de los Bosques "O Ouriol do Anllóns"*

Telephone and e-mail: Same as above; amigoseamigasdosbosques@hotmail.com

II. Party concerned:

KINGDOM OF SPAIN (Autonomous Community of Galicia)

IV. Facts of the communication:

This communication addresses two instances of alleged non-compliance by the Galician Regional Directorate General of Energy and Mines. The facts of each Instance are presented.

Instance 1, relative to administrative files of the "Santa Comba" mining concessions:

1.1- On 13/02/2017 *Asociación Autonómica e Ambiental Petón do Lobo*, an NGO included in the Galician Registry of Environmental Organizations with n.º 2014/129, made a formal request to the Regional Minister of Economy, Employment and Industry of a digital copy of the full administrative files of the "Santa Comba" group of mining concessions [**Annex 1**].

1.2.- On 06/03/2017, the Directorate General of Energy and Mines issued a Communication to *Asociación Petón do Lobo* indicating that the procedure had been suspended for a period of 15 days or until the concessionaire company, Galicia Tin & Tungsten S.L., expresses its allegations in opposition [**Annex 2**]. This "or" is manifestly illegal. After the expiration of the 15 day suspension however, no additional communications from the Directorate General have been received regarding this request, that is the first instance of the Communication.

1.3.- A second, related request for documents specifically sought access to a series of administrative documents which were identified in the request and clearly not subject to any argument as to proprietary information of Galicia. This second request was made on 28/02/2017 by *Asociación Petón do Lobo*, in anticipation of denial by the Directorate General, together with *Asociación Ouriol do Anllóns* and *Asociación Cova Crea*, specifically requesting the following documents: 1) Environmental Impact Assessment of the "Santa Comba" mining group; 2) Mining concessions transmission resolutions of 25/03/2009 and 2015 (unknown date); 3) Reports by the Territorial Delegation regarding these transmissions;

4) Resolution approving the Mining Project and Mining Restoration Plan of the "Santa Comba" mining group, and reports by the Territorial Delegation regarding this resolution. However, this restricted request by no means implied renouncement by *Petón do Lobo* to its original request of digital copy of the full administrative files of the "Santa Comba" group of mining concessions of 13/02/2017, which is relevant to this Communication.

1.4.- On 03/05/2017, the Director General of Energy and Mines issues a new Communication (sent on 06/05/2017) to *Asociación Petón do Lobo*, *Asociación Cova Crea* and *Asociación Ouriol do Anllóns*, indicating that the procedure had also been suspended for a period of 15 days (starting in 03/05/2017) to once again allow the concessionaire company, Galicia Tin & Tungsten S.L., to express its opposition. However, after the expiration of the 15 day suspension, no additional communications from the Directorate General have been received.

1.5.- In response to these delays and procedures imposed by the Director General, on 29/05/2017 *Asociación Petón do Lobo* filed a complaint to the Commission for Transparency of Galicia [Annex 3]. On 14/06/2017 the Commissioner for Transparency admits the complaint, that initiates procedure RCTG 055/2017. However, at the time of this Communication being sent to the Compliance Committee, no further response from the Commission for Transparency of Galicia has been received.

Instance 2, relative to Inventory of Abandoned Mines and a Urgent Risk Assessment of Deposits of Mining Tailings and Mining Waste Tips:

2.1.- On 20/04/2017 *Asociación Amigos y Amigas de los Bosques "O Ouriol do Anllóns"*, an NGO included in the national registry of associations with n.º 1ª/612359, made a formal request of a digital copy of the following documents that are in custody of the Directorate General of Energy and Mines: **1) *Inventory of Abandoned Old Mining Works of the Autonomous Community of Galicia* (1999); 2) *Updated Inventory of Abandoned Old Mining Works of the Autonomous Community of Galicia* (2008); 3) *Inventory of Underground Abandoned Mining Works of the Provinces of Lugo and Coruña* (1999); 4) *General Collaboration Agreement between the Regional Ministry of Economy and Industry, the Regional Ministry of the Environment, Territory and Infrastructures and the Galician Association of Excavators for securing the shafts of abandoned mining works and the restoration of the degraded natural areas* (2010), with its associated files of securing plans; 5) *Study for the Urgent Check and Risk Assessment of the Deposits of Mining Tailings and Mining Waste Tips of the Autonomous Community of Galicia* (1999) [Annex 4].** It must be noted that the Archive of Galicia informed this Association that the only copy of document 5) was held at the Directorate General of Energy and Mines.

2.2.- After a month had passed after the initial request, no response has been received. Because of this "O Ouriol do Anllóns" filed on 29/05/2017 a complaint to the Commission for Transparency of Galicia [Annex 5]. On 14/06/2017 the Commissioner for Transparency admits the complaint, that initiates procedure RCTG 054/2017. However, at the time of this Communication being sent to the Compliance Committee, no further response from the Commission for Transparency of Galicia has been received.

Contextual facts regarding Instance 1.

- a) In 2008 the company *Incremento Grupo Inversor S.L* obtained the mining concessions of the "Santa Comba Mining Group". Prior to the approval of this transmission by the Regional Director General of Mines and Energy, the mining engineer at the Coruña Territorial Delegation of Mines and Energy, Ms. Mijares Coto, issued, on 23/09/2008, a report indicating that the Mining exploitation project for the Santa Comba group must be subjected to an environmental impact assessment, as it is an underground mine operation that can cause acid mine drainage with environmental impact.
- b) On 25/03/2009 the Director General of Industry, Energy and Mines, Mr. Calvo Silvosa, issued a resolution approving the transmission of the mining concessions that make up the so-called Santa Comba Mining Group, under the condition of presenting in the term of 3 months an Environmental Impact Study according to Spanish Royal Legislative Decree 1/2008, January

- 11, on Environmental Impact Assessment. The same Resolution stated that to start the mining operation the mine should have an approved Environmental Impact Declaration.
- c) Subsequently, Mr. Tahoces is appointed as new Director General of Industry, Energy and Mines. Mr. Tahoces in turn, appointed Ms. Mijares Coto as Deputy Director of Mineral Resources and a new engineer, Mr. Recuna Carrasco, takes on her responsibilities of the Santa Comba Group at the Territorial Delegation. Mr. Recuna Carrasco issues a new report regarding the Santa Comba group, which no longer states the obligation to subject the mining project to Environmental Impact Assessment procedure. On 01/09/2011, the Secretary General of Environmental Quality and Evaluation, Mr. de Benito Basanta, issued a notice indicating that the mining project needs not to be subjected to an Environmental Impact Declaration, a conditionality of the 25/03/2009 Resolution of the former Director General, based on the earlier reports by Ms. Mijares Coto.
 - d) Subsequently, Director General Mr. Tahoces issued a Resolution approving the Mine Exploitation Project of Santa Comba, that included a mock "Environmental Impact Study" that is only such in title, as it was not subjected to public scrutiny or the mandatory procedures of the environmental impact assessment procedure. The document that is included in the file under the title "Environmental Impact Study" makes no mention to existing acid mine drainage (AMD), that has been pointed out earlier by Ms. Mijares Coto, and currently no AMD treatment facilities exist in Santa Comba mine. The so-called "Environmental Impact Study" was never subjected to public information. In 2015, the same Director General issued another Resolution transmitting the mining concessions to the current concessionaire company. As the Directorate General of Mines and Energy has refused to provide the requested public information regarding this procedure, the concerned environmental NGOs cannot take legal measures to challenge the current situation of the mines.

Contextual facts regarding Instance 2.

- a) In 2008 the company *Incremento Grupo Inversor S.L* obtained the mining concessions of the "San Finx Mining Group". The mining group had been without operation since 1990 and in 2000 it ceased to present the compulsory Annual Works Plan. This last Plan, as in the previous ones, featured to large mining waste tailing dams, placed on the river course. In 2000, as a repercussion of the 1998 Aznalcollar disaster in Spain and 2000 Baia Mare spill in Romania, the Ministerial Order of April 26, 2000, approving Complementary Technical Instruction 08.02.01, establishes strict security regulations for mining tailing dams.
- b) On 27/10/2004 the Territorial Delegation of Coruña, following a report of 25/10/2004, demanded that the concessionaire at the time presents a Mining Exploitation Project in 3 months together with the corresponding Environmental Impact Study, warning that failure to do so would entail the withdrawal of the concessions. The project and environmental impact study are not presented, but no administrative action occurs.
- c) In 2008 the above mentioned *Incremento Grupo Inversor S.L* purchased the concessions and presented a Mining Exploitation Project. However, this project intentionally excludes the two mining tailing dams featured in the 2000 and earlier plans. It must be noted that during all this period the Mine Director is the same person, who also signs the Work Plans of 1996-2000 and the 2008-2009 Projects. A 30/12/2008 Resolution by the then Director General of Industry, Energy and Mines, Mr. Calvo Silvosa, approved the transmission of the mining concessions, under the condition of presenting in the term of 3 months an Environmental Impact Study according to Spanish Royal Legislative Decree 1/2008, January 11, on Environmental Impact Assessment. However, the company never produces such an Environmental Impact Study, which is not an obstacle for the next Director General, Mr. Tahoces, to pass a Resolution in 28/12/2009, approving the Mining Exploitation Project, Restoration Plan and Mining Plant Project without being subjected to an Environmental Impact Assessment (and the mandatory public participation process and public scrutiny) and deliberately excluding the abandoned tailings dams.
- d) In 2015 the "San Finx" mining group is transmitted to a new concessionaire, *Tungsten San Finx S.L.*, fully owned by the Sacyr Group, that, when requested by the Galician Water Authority "Augas de Galicia" to guarantee the security of the tailings dams and proceed to

register them with the authorities, argued that it had no responsibility over the abandoned tailings dams, as they were not featured in the project approved in 2009. Several environmental organizations involved in the procedures were forced to demonstrate to the authorities that these were indeed tailing dams belonging to the infrastructures of the "San Finx" mining group, with great difficulties to obtaining information kept by the competent authorities. These include the documents listed in the request and, particularly, the *Study for the Urgent Check and Risk Assessment of the Deposits of Mining Tailings and Mining Waste Tips of the Autonomous Community of Galicia* (1999), which was produced for the administration by the same Mine Director of the "San Finx" mine group.

V. Provisions of the Convention alleged to be in non-compliance.

1. Unjustifiable delay.

Under the Aarhus Convention and Spanish Acts 27/2006 and 19/2013, access to information must be provided "as soon as possible" and in most cases **within one month after a public authority received a request**. So far, no information AT ALL has been provided. If the public authority can justify an extension of up to one month based on the volume or complexity of the request, it must notify the applicant of the need for the extension within one month after receiving the request. This has not occurred. Also, the public authority should inform the applicant within one month after receiving the request if the authority refuses to provide the information in the form requested because it does not hold it or believes that an exemption for disclosure applies. This has not happened. The public authority failed to provide any facts showing that the request justified a two-month response timeframe (rather than the normal one month) based on volume or complexity. Such reasons should have been stated in writing to the requesting environmental organization.

The unjustifiable delay in providing access to requested information and the failure to provide a written refusal (stating the reasons for the refusal) within one month after receiving the request are contrary to:

- Spanish Law nº 27/2006 (Title II, Article 10, para. 2(C)¹ and Article 11, para. 1²
- Aarhus Convention, Article 4, para. 2³ and para. 7⁴
- Spanish Law nº 19/2013, Article 20, para. 1⁵ and Article 22, para. 1⁶

¹ "The public authority competent to decide shall provide the requested environmental information or shall inform the applicant of the reasons for refusal to provide it, taking into account the timetable specified by the applicant, as soon as possible and at the latest within the time limits indicated then:

1. Within a maximum period of one month from the receipt of the application in the register of the competent public authority to resolve it, in general.
2. Within two months of receipt of the application in the register of the competent public authority to resolve it, if the volume and complexity of the information are such that it is impossible to meet the aforementioned deadline. In this case, the applicant must be informed, within a maximum period of one month, of any extension thereof, as well as the reasons justifying it.

In the case of reporting a refusal to provide the information, the notification shall be in writing or electronically, if the request has been made in writing or if the author so requests. The notification shall also inform the appeal procedure provided for in accordance with Article 20."

² "When the public authority decides not to provide the information, in part or in full, in the form or format requested, it must inform the applicant of the reasons for such refusal within a maximum period of one month from the receipt of the request in the Informing it of the form or formats in which the requested information may be provided and indicating the remedies against such denial under the terms set forth in article 20."

³ "The environmental information referred to in paragraph 1 above shall be made available 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 after the request. The applicant shall be informed of any extension and of the reasons justifying it."

⁴ "A refusal of a request shall be in writing if the request was in writing or the applicant so requests. A refusal shall state the reasons for the refusal and give information on access to the review procedure provided for in accordance with article 9. The refusal shall be made as soon as possible and at the latest within one month, unless the complexity of the information justifies an extension of this period up to two months after the request. The applicant shall be informed of any extension and of the reasons justifying it."

Under the Spanish Law 27/2006 and the Aarhus Convention, the normal timeframes apply to requests where some parts of documents are not disclosed or redacted to protect exempt commercial, industrial, personal or third-party information. The procedure followed by the Galician Regional Directorate General of Mines and Energy regarding the 13/02/2017 by Petón do Lobo to have a copy of the Santa Comba mines administrative file – giving Galicia Tin & Tungsten S.L. fifteen days to provide arguments against the requested access to information – did not justify exceeding the normal timeframes. **This opportunity granted to Galicia Tin & Tungsten did not suspend the timeframes under Spanish Act 27/2006, Article 13, para. 6.**⁷ Any issues involving exempt information must be resolved by the public authority within one month of receiving the request, unless one additional month is justified on the basis of complexity or volume of the information requested. In the case of the request regarding the documents on the abandoned mine, the response was administrative silence, without any explicit communication regarding the request.

Among the guidance and examples from ACCC, the following may be mentioned:

- In ACCC/C/2008/24, the ACCC found the Kingdom of Spain (Murcia City Council) in noncompliance because of delays in providing information beyond two months from receipt of the request.
- In ACCC/C/2009/36 against the Kingdom of Spain (Almendralejo), the ACCC rejected “positive silence” by a public authority in providing or refusing to provide requested information. “The right to information can be fulfilled only if public authorities actively respond to the request and provide information within the time and form required. Even establishment of a system which assumes that the basic form of provision of information is by putting all the available information on publicly accessible websites does not mean that Parties are not obliged to ensure that any request for information should be individually responded to by public authorities, at least by referring them to the appropriate website” (See also ACCC/C/2010/51 involving Romania).

The ACCC and the Aarhus Convention’s Meeting of the Parties have previously recommended strong actions by the Kingdom of Spain to avoid such repeated noncompliance by a Spanish public authority regarding access to information: Decision IV/9f of the Aarhus Convention’s Meeting of the Parties in 2011 on noncompliance by the Kingdom of Spain (Murcia City Council) and the recommendations for actions by Spain in the 2011 Report of the ACCC to the UNECE⁸. The ACCC recommended that Spain should take legislative, regulatory, and administrative measures and practical arrangements to ensure that:

- Information requests were answered as soon as possible, and at the latest within one month after the request had been submitted, unless the volume and the complexity of the information justified an extension of that period up to two months from the date of the request;
- Related legislation was reviewed to provide for an easy and specific procedure to be followed, in the event of a lack of response to a request.

The Complainants urge the ACCC to quickly act on this Communication showing another failure by Spain. In the first Instance, the original request by *Petón do Lobo* was submitted by official Registry of the Autonomous Regional Government on 13/02/2017. On 06/03/2017, the Directorate General of Energy and Mines issues a Communication to Petón do Lobo regarding this request, that had been

⁵ “Decisions in which access is granted or denied must be sent to the applicant and to those affected third parties that have so requested within a maximum of one month after receipt of the request by the body responsible for taking a decision. This period may be extended by another month if the volume or complexity of the information requested so necessitates, and after notifying the applicant.”

⁶ “Access to information shall preferably be given by electronic means, unless this is not possible or the applicant has expressly indicated other means. When access cannot be given at the time of notification, it should be provided, in all cases, within a maximum of ten days.”

⁷ “Refusal to provide all or part of the information requested shall be notified to the applicant stating the reasons for the refusal within the time limits referred to in Article 10 (2) (c).”

⁸ ACCC/C/2008/24; page 22

received by the Directorate General on **13/02/2017** (one week after). By the date this Communication document is signed (24/07/2017), **161 days have passed (5 months and 11 days)** since the original request was made. In the second Instance, the original request by *Ouriol do Anllóns* was submitted by official Registry of the Autonomous Regional Government on 20/04/2017. No response has been received since. By the date this Communication document is signed, **95 days have passed (3 months and 4 days)** since the original request was made.

In all terms, the Complainants consider that both instances represent a case of noncompliance by the Kingdom of Spain (Autonomous Community of Galicia) because of delay in providing information beyond two months from receipt of the request, with no justifiable extension having been communicated to this organization and no response at all having been made in the second instance. In any case, it must be noted that at the time this Communication to the Aarhus Convention Compliance Committee is filed, **ABSOLUTELY NO INFORMATION HAS BEEN PROVIDED.**

In the case of the first Instance, regarding the administrative files of an active mining concession, it must be noted how, in a complaint against Romania, the Aarhus Convention Compliance Committee (ACCC) found that mining falls within the scope of environmental information as an activity affecting or likely to affect soil, landscape, and natural sites. The decision found that “licences and other mining-related information requested, including the ‘quantities of non-ferrous ore’ that were entitled to be extracted under those licences, are clearly ‘environmental information’”. (ACCC/C/2012/69) The same decision found that the public authority should have provided “copies of the actual documentation, with any information exempted from disclosure redacted.... The Party concerned has provided no evidence to justify the failure to disclose the remainder of the licenses, including copies of the actual licenses themselves and annexes. Moreover, the analysis of what was to be exempted and what disclosed should have been on a document-by-document basis.”

Any refusal to provide the requested access to information (in part or full) must be interpreted in a restrictive way, taking into account the public interest served by disclosure. Thus, the Regional Mining Authorities have thus far failed to comply with:

- Spanish Law nº 27/2006, Title II, Article 13, para. 4.9
- Aarhus Convention, Article 4, para. 4.¹⁰

Regardless of the previous, the Regional Directorate General of Mines and Energy **should have made available the part of the requested information that was not exempt from disclosure.** In particular, it should have promptly disclosed all the documents related in the reiteration request made on 28/02/2017 by *Asociación Petón do Lobo*, together with *Asociación Ouriol do Anllóns* and *Asociación Cova Crea*, specifically requesting a series of administrative documents to which access could by no means be restricted as they included emissions information and were not subject to exemptions for confidentiality of commercial, industrial, personal or third-party information. In spite of this, the Directorate General again provided Galicia Tin & Tungsten with a 15 day period for contesting the new request. Thus the Regional Directorate General failed to comply with:

- Spanish Law nº 27/2006, Article 13, para. 5¹¹ and Article 14¹²
- Aarhus Convention, Article 4, para. 4(d)¹³

⁹ “The grounds for refusal referred to in this article must be interpreted restrictively. For this, the public interest served with the disclosure of information with the interest served by its refusal will be weighted in each specific case.”

¹⁰ “The aforementioned grounds for refusal shall be interpreted in a restrictive way, taking into account the public interest served by disclosure and taking into account whether the information requested relates to emissions into the environment.”

¹¹ “Public authorities may not, under any circumstances, rely on the grounds set out in paragraph 2 (a), (d), (f), (g) and (h) of this Article, to refuse a request for information on emissions in the environment.”

¹² “The requested environmental information held by the public authorities or of another subject on their behalf shall be made available to the applicant when it is possible to separate from the text of the information requested the information referred to in Article 13 (1) (D), (e) and (2).”

¹³ “A request for environmental information may be refused if the disclosure would adversely affect....The confidentiality of commercial and industrial information, where such confidentiality is protected by law in order to protect a legitimate

- Spanish Law n°19/2013, Article 16¹⁴

Similarly, the Directorate General should have promptly disclosed documentation in the file in connection with the original and any other environmental impact assessments. In ACCC/C/2005/15 against Romania, the ACCC concluded that it “*doubts very much that this exemption [based on intellectual property rights] could ever be applicable in practice in connection with EIA documentation. Even if it could be, the grounds for refusal are to be interpreted in a restrictive way, taking into account the public interest served by disclosure.*” Also, while allowing for the possibility of exempting parts of EIA studies, the ACCC found noncompliance for a general exemption of EIA studies (para. 30). **The documents requested in Instance 2, which never received an explicit response other than administrative silence, could not be interpreted as being subject to exemptions for confidentiality of commercial, industrial, personal or third-party information, but nevertheless, the Directorate General failed to even respond to such request.**

In lieu of the contextual information regarding the administrative and environmental facts regarding these requests, the failure to disclose the requested information impedes the right to public participation in decisions on proposed activities having major environmental impacts. This public right includes “*that relevant information on such proposals is intelligible and made available to the public*”, pursuant to:

- Spanish Law n° 27/2006, Title III, Article 16, para. 1(A) and Article 18;
- Aarhus Convention, Article 6, paras. 2(d) and 6.

This public right is also stated on the pending draft finding of noncompliance by Spain in failing to properly inform the public concerning the proposed change in a cement company’s environmental permit: “[T]he Committee finds that, by not properly informing the public concerned about the proposed change or extension to an activity subject to article 6 or update to its operating conditions, nor the public authority responsible for making the decision, and by not indicating what environmental information relevant for the proposed activity was available and that the activity was subject to an EIA procedure, the Party concerned failed to comply with article 6, paragraph 2(a), (c), (d)(vi) and (e) of the Convention in this case” (ACCC/C/2014/99, draft finding para. 93).

2. Denial of public participation in the proceedings on the environmental impact statements, in violation of Article 6 of the Aarhus Convention.

The mining projects of the “San Finx” and “Santa Comba” mining groups were submitted to the Public Authority in 2008. In the case of “San Finx”, a 30/12/2008 Resolution by the then Director General of Industry, Energy and Mines, Mr. Calvo Silvosa, approved the transmission of the mining concessions, under the condition of presenting in the term of 3 months an Environmental Impact Study according to Spanish Royal Legislative Decree 1/2008, January 11, on Environmental Impact Assessment. In the case of “Santa Comba”, a 25/03/2009 Resolution by the same Director General of Industry, Energy and Mines, conditioned the transmission of the said concession to presenting in the term of three months an Environmental Impact Study according to Spanish Royal Legislative Decree 1/2008, January 11, on Environmental Impact Assessment. The same Resolution stated that to start the mining operation the mine should have an approved Environmental Impact Declaration. Earlier administrative documentation regarding the San Finx mines indicates that the administration had repetitively demanded that the mine was to be subjected to Environmental Impact Assessment.

However, with the change of Director General in 2009, these legally-binding conditionalities are ignored and both the “San Finx” and “Santa Comba” mining projects are approved by Director General Mr. Tahoces without subjecting the projects to the public information process established in

economic interest. Within this framework, information on emissions which is relevant for the protection of the environment shall be disclosed....”

¹⁴ “In those cases where application of any of the limits set forth in Article 14 does not affect the totality of the information, partial access shall be granted after removing the information affected by said limit, unless this would result in providing distorted or senseless information. In this case, the applicant must be told that part of the information has been omitted.”

the environmental impact assessment procedure. In the case of the "Santa Comba" mines, on 01/09/2011, the Secretary General of Environmental Quality and Evaluation, Mr. de Benito Basanta, issued a notice indicating that the mining project needs not to be subjected to an Environmental Impact Declaration. Lack of public participation at this point implied major environmental flaws to be deliberately ignored by the administration, including the omission of the abandoned mine tailings dams in the San Finx mine and the lack of treatment of Acid Mine Drainages in both San Finx and Santa Comba mines. The severity of the contamination in the San Finx mine (including toxic substances as Cadmium, Copper and Zinc many times over the legal limits) was only made public in 2016 with the access to river water analysis by the Galician Water Authority (*Augas de Galicia*) under discharge permit procedure DH.V15.54967, causing widespread civil protest.

Denial of public participation in the proceedings on the environmental impact statements is in violation of Article 6 of the Aarhus Convention. The *Aarhus Convention Implementation Guide*, for example, states in page 156: *"The need for authorities to seriously consider the outcome of public participation and to address it in decision-making, policymaking and law-making is a key aspect of the Convention."* Case Law of the Aarhus Compliance Committee, regarding ACCC/C/2008/24 on Spain states: *"The Convention does not make the EIA a mandatory part of public participation; it only requires that when public participation is provided for under an EIA procedure in accordance with national legislation (para. 20 of annex I to the Convention), such public participation must apply the provisions of its article 6. Thus, under the Convention, public participation is a mandatory part of the EIA, but an EIA is not necessarily a part of public participation."* Not making an EIA public, as was the case of the "Santa Comba", both at the point in which it should have been subjected to public information/participation, prior to its approval, and at the current point (with the denial of public information requests addressed in this Communication), appear to violate the public's right to participate in the EIA proceeding under Article 6. See ACCC/C/2009/44 (Belarus): *"In addition, failing to inform the public about the possibility to examine the full EIA Report when notifying the public under article 6, paragraph 2, and informing it only during the hearing about this document, deprives the public in practice of its right under article 6, paragraph 6. Therefore, the Committee considers that by not informing the public in due time of the possibility of examining the full EIA Report, which is a critical document containing important details about a proposed project, the Party did not comply with article 6, paragraph 6, of the Convention."*

See also the ACCC decision on mines in Armenia (ACCC/C/2009/43)-- *"In this case, a special mining licence was issued for the developer to exploit deposits in the Teghout region in 2004, and the developer organized public participation in the framework of the EIA procedure in 2006. Providing for public participation only after the licence has been issued reduced the public's input to only commenting on how the environmental impact of the mining activity could be mitigated, but precluded the public from having input on the decision on whether the mining activity should be pursued in the first place, as that decision had already been taken. Once a decision to permit a proposed activity has been taken without public involvement, providing for such involvement in the other subsequent decision-making stages can under no circumstances be considered as meeting the requirement under article 6, paragraph 4, to provide "early public participation when all options are open". This is the case even if a full EIA is going to be carried out (ACCC/C/2005/12, para. 79). Therefore, the Committee finds that the Party concerned failed to provide for early public participation as required in article 6, paragraph 4, of the Convention."*

In dealing with inadequate notice for public participation in an EIA proceeding, ACCC/C/2014/99 (Spain) (draft findings) stated (<https://www.unece.org/environmental-policy/conventions/public-participation/aarhus-convention/tfwg/envppcc/envppcccom/accce201499-spain.html>):

93. *In addition, the Committee points out that public notice no. 5590 did not specify the public authority responsible for making the decision as required by article 6, paragraph 2(c) of the Convention; an indication of what environmental information relevant to the proposed activity is available, as required by article 6, paragraph 2(d)(vi) and the fact that the activity was subject to an EIA procedure, as required by article 6, paragraph 2(e) of the Convention.*

94. *In the light of the above, the Committee finds that, by not properly informing the public concerned about the proposed change or extension to an activity subject to article 6 or update to its operating*

conditions, nor the public authority responsible for making the decision, and by not indicating what environmental information relevant for the proposed activity was available and that the activity was subject to an EIA procedure, the Party concerned failed to comply with article 6, paragraph 2(a), (c), (d)(vi) and (e) of the Convention in this case.

That fact that both "San Finx" and "Santa Comba" mining projects were subject to EIA procedure not only under Spanish Law and European Directives, but also in explicit administrative resolutions regarding these mines specifically, and that required EIA to be submitted within three months of the Resolutions, but that the procedure was never implemented in either case, appears to be a serious legal violation and the main reason for the administration's opacity and denial of environmental information regarding these instances. The fact that in both instances these are active mines producing constant spills of acid mine drainages polluted with toxic heavy metals that can have serious effects on the environment and population, and the existence of two abandoned mine tailings dams in San Finx that could produce a large scale environmental disaster of is especially aggravating.

VI. Nature of alleged non-compliance.

Unjustifiable delay in providing environmental information (at the point of this Communication no information has been provided). Failure to respond to a request of environmental information.

VII. Use of domestic remedies.

As stated, on 29/05/2017 *Asociación Petón do Lobo* filed a complaint to the Commission for Transparency of Galicia regarding the first instance [**Annex 3**]. On 14/06/2017 the Commissioner for Transparency admits the complaint, that initiates procedure RCTG 055/2017. Also on 29/05/2017, "O Ouriol do Anllóns" filed on a complaint to the Commission for Transparency of Galicia regarding the second instance [**Annex 5**]. On 14/06/2017 the Commissioner for Transparency admits the complaint, that initiates procedure RCTG 054/2017. However, at the time of this Communication being sent to the Compliance Committee, no further response from the Commission for Transparency of Galicia has been received. The Commission for Transparency of Galicia is the administrative body in Galicia with competence over non-compliance with public information issues in Galicia. **To the current date, no further communication has been received from the Commission for Transparency of Galicia by none of the Complainants regarding both their complaints.**

After and if the Commission for Transparency of Galicia adopts a Resolution, and if the administration proceeds to not fulfilling such a Resolution, the Complainants would only have the option of initiating legal action at Court for contentious Administrative Proceedings. The average cost for such court action is between 1,000-1,500 euros and according to the 2015 statistics of the Spanish General Council of the Judiciary the average time lapse for a contentious Administrative proceeding is **ONE YEAR**. This is a continuing problem in Spain in relation to Party's failure to remedy the financial barriers to access to justice to a small nongovernmental organizations. Considering the current procedures regarding this mining concession that are being administrated by the Galician Directorate General on Energy and Mines, it is most likely that by the time the Complainants have access to the full file through a judicial ruling (that would have resulted from a proceeding that is financially out of reach for the Complainants), **the information will have lost its relevance. This appears to be the goal of the Administration, as in previous cases.** The complainants are aware that another environmental organization from Galicia, Verdegaiá, filed a Communication in May 2017 regarding similar alleged non-compliance by the Regional Directorate General of Mines and Energy (regarding a different mining concession, situated in a different province). It appears that the Directorate General's conduct described in this Communication continues the alleged violations of the Aarhus Convention described in the earlier Communication by Verdegaiá. The fact that the government agency continues to deny access to information covered by the Aarhus Convention in response to separate requests demonstrates the need for prompt, strong actions by the ACCC. This has motivated the Complainants decision to take these new instances of alleged non-compliance to the Compliance Committee without further delays.

VIII. Use of other international procedures

No.

IX. Confidentiality

Not requested.

X. Supporting documentation (copies, not originals)

The right to Environmental information is regulated by *Act 27/2006 of 18 July, which governs rights regarding access to information, public participation and access to justice in matters concerning the environment*. Other applicable legislation in Galicia and Spain is mentioned in the Annexes.

- Annex 1. Public information request by *Petón do Lobo* (13/02/2017)
- Annex 2. Communication by Directorate General of Mines and Energy (06/03/2017)
- Annex 3. Complaint to the Commission of Transparency by *Petón...* (29/05/2017)
- Annex 4. Public information request by *Ouriol do Anllóns* (20/04/2017)
- Annex 5. Complaint to the Commission of Transparency by *Ouriol...* (29/05/2017)

All annexes have been translated to English by a certified legal translator.

XI. Signed and sealed,

in Silleda (Galicia), July 24, 2017,



Mr. ISMAEL ANTONIO LÓPEZ PÉREZ

President, *Asociación Autonomía Ambiental Petón do Lobo*




Ms. ANA MARTINA VARELA VELO

President, *Asociación Amigos y Amigas de los Bosques "O Ouriol do Anllóns"*

**XII. Sending the communication**

Send the communication by **e-mail** and **registered post** to the following address:

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

Clearly indicate: "Communication to the Aarhus Convention Compliance Committee"