

**Draft as at 8 June, 2009**

Humberto Rosa  
Portuguese Environment Secretary

Dear Mr Rosa,

We write to you concerning the upcoming meeting of the International Whaling Commission in Madeira on June 22-27, 2009.

While we look forward to the meeting and to enjoying Portugal's well known hospitality, we are sorry to say that we are writing about unprecedented and specific threat to the transparency and legal functioning of the IWC at the meeting. On June 5, the IWC Secretariat issued a circular entitled "Important issues relating to security arrangements at IWC61", addressed to journalists and NGOs. This Circular is available at [http://www.iwcoffice.org/meetings/observers\\_ngo.htm](http://www.iwcoffice.org/meetings/observers_ngo.htm) (NGOs) and <http://www.iwcoffice.org/meetings/press.htm> (Media).

According to this circular the local security forces in Madeira will require all representatives of NGOs and the Press to undergo security vetting before being issued with an IWC badge by the Secretariat. According to the IWC Secretariat identity badges, which are required to gain access to the meeting, will not be issued to anyone from NGOs and the Media who does not pass the vetting procedure.

We are very concerned to see that for the first time in the history of the IWC, observer rights have been made contingent on the approval of a third party, in this case Portugal as the host state. We are concerned at the precedent this may set in the future. As a matter of international law, it is the IWC itself as an international organisation that may determine who attends its meetings. You will understand that the IWC cannot be accountable only to a single Contracting Government. The recommendations of a national security service should not and may not be binding on the Secretariat of an international organisation. While immigration issues are to some extent under the control of the host State, the host State has no role whatsoever in determining who may attend the meeting.

We note that this is not about immigration. It is made clear that the issue is who will be admitted to the meeting. As such this is intruding upon the IWC's exclusive competence. We are surprised that the Secretariat should have acceded to this request, apparently without further discussion with IWC Commissioners, but in any case, as representatives of organizations that are enjoy Observer Status in accordance to the rules of the IWC, we cannot allow this breach of rules to take place.

In addition, we draw your attention to the fact that this measure applies only to NGOs and the press but not to others attending the meeting including IGOs, national delegations, scientific committee members, non member governments, expert advisors, visitors and interpreters. It is therefore discriminatory. This adds to the breaches of natural justice and of the IWC Rules of Procedure that we have discussed above. It is also contrary to modern practice.

The Aarhus Convention,<sup>i</sup> to which Portugal is a party,<sup>ii</sup> guarantees the rights of access to information and public participation in decision-making.<sup>iii</sup> Each Party must endeavour to ensure that officials and authorities assist and provide guidance to the public in seeking access to information and in facilitating participation in decision-making,<sup>iv</sup> including, specifically, in international environmental decision-making processes and within the framework of international organizations in matters relating to the environment,<sup>v</sup> such as the IWC. The Convention also requires that each Party shall ensure that persons exercising their

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<sup>i</sup> Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters, Done at Aarhus, Denmark,, On 25 June 1998.

<sup>ii</sup> Portugal ratified the Aarhus Convention on 9 June, 2003.

<sup>iii</sup> Aarhus Convention, Article 1.

<sup>iv</sup> Aarhus Convention, Article 3(2).

<sup>v</sup> Aarhus Convention, Article 3(7).

rights in conformity with the provisions of the Convention shall not be penalized, persecuted or harassed in any way for their involvement.<sup>vi</sup> The public is to have access to information and the possibility to participate in decision-making without discrimination as to citizenship, nationality or domicile.<sup>vii</sup>

The Almaty Guidelines,<sup>viii</sup> issued under the Aarhus Convention specifically, apply to meetings such as the IWC's.<sup>ix</sup> They were agreed because access to information, public participation and access to justice in environmental matters are fundamental elements of good governance at all levels and essential for sustainability.<sup>x</sup> Providing international access opportunities in environmental matters, and establishing and strengthening procedures that enable the taking of these opportunities, generally improves the quality of decision-making and the implementation of decisions.<sup>xi</sup> Care should be taken to make or keep the processes open, in principle, to the public at large.<sup>xii</sup>

The Guidelines state that international access should be provided without discrimination on the basis of citizenship, nationality or domicile,<sup>xiii</sup> and that participation of the public concerned in the meetings of international forums in matters relating to the environment should be allowed at all relevant stages of the decision-making process, unless there is a reasonable basis to exclude such participation according to transparent and clearly stated standards that are made available, if possible, in advance.<sup>xiv</sup>

Let us emphasize that we are not questioning the rule that requires that any rally or demonstration be notified in advance to the authorities; we recognize that this is a standard practice. But we cannot recall one incidence in the past 5 years in which accredited Observers to an international environmental meeting have been subjected to “vetting” by the local host.

Knowing your strong commitment in favour of NGO participation we would like to make you aware of this situation, so that you can address it with the local authorities who – we believe – have not realized how detrimental their attitude will be to the image of Madeira and of Portugal as a whole. We hope that once you review the above, and take our concerns into account, the suggested procedure will be set aside and the IWC Secretariat will be told to withdraw its Circular of 5 June.

Yours sincerely

The Undersigned Organisations:

cc. Dr Nicky Grandy, IWC Secretariat  
Dr William Hogarth, IWC Chairman  
Relevant Commissioners; Relevant Ministers of Environmental Affairs

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<sup>vi</sup> Aarhus Convention, Article 3(8).

<sup>vii</sup> Aarhus Convention, Article 3(9).

<sup>viii</sup>

Meeting of the Parties to the Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters, Decision 11/4 Promoting the Application of the Principles of the Aarhus Convention in International Forums, adopted at the second meeting of the Parties held in Almaty, Kazakhstan, on 25-27 May 2005.

<sup>ix</sup> See Almaty Guidelines, para.9. 'international forum' means any multilateral international environmental decision-making process, or any multilateral international organization when dealing with matters relating to the environment, and 'international access' means public access to international forums in accordance with the Guidelines. Para. 10.

<sup>x</sup> Almaty Guidelines, para 11.

<sup>xi</sup> Almaty Guidelines, para 12.

<sup>xii</sup> Almaty Guidelines, para 14.

<sup>xiii</sup> Almaty Guidelines, para 16.

<sup>xiv</sup> Almaty Guidelines, para 29.