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Access to Information, Public Participation
in Decision-making and Access to Justice
in Environmental Matters

Working Group of the Parties

Twenty-third meeting

Geneva, 26–28 June 2019

Item 3 (a) of the provisional agenda

**Substantive issues: Thematic session on public participation
in decision-making**

Report of the Task Force on Public Participation in Decision-making on its eighth meeting

Summary

At its second extraordinary session (Geneva, 19–22 April and 30 June 2010), the Meeting of the Parties to the Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters established the Task Force on Public Participation in Decision-making (ECE/MP.PP/2010/2/Add.1).¹ At its sixth session (Budva, Montenegro, 11–14 September 2017), the Meeting of the Parties further extended the Task Force's mandate and placed it under the authority of the Working Group of the Parties (ECE/MP.PP/2017/2/Add.1, decision VI/2, para. 9).² Decision VI/2, paragraph 11, sets out the issues to be addressed by the Task Force at its meetings.

In accordance with the above mandates, the report of the Task Force on its eighth meeting (Geneva, 8–9 October 2018) is being submitted to the Working Group of the Parties for its consideration.

¹ Available at [www.unece.org/env/pp/emop2010.html#/.](http://www.unece.org/env/pp/emop2010.html#/)

² Available at [www.unece.org/env/pp/aarhus/mop6_docs.html#/.](http://www.unece.org/env/pp/aarhus/mop6_docs.html#/)



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Introduction

1. The eighth meeting of the Task Force on Public Participation in Decision-making under the Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters (Aarhus Convention) was held in Geneva, on 8 and 9 October 2018.³
2. The meeting was attended by representatives of the following Parties to the Convention: Albania, Armenia, Belarus, Bosnia and Herzegovina, France, Georgia, Germany, Italy, Kazakhstan, Latvia, Malta, Romania, Serbia, Slovakia, Spain, Sweden, Switzerland, Tajikistan and Ukraine. A representative of the European Commission, representing the European Union, also participated in the meeting, as did a representative of the European Investment Bank. A delegate from Morocco attended the meeting.
3. Representatives of the Office of the United Nations High Commissioner for Human Rights and the United Nations Environment Programme were also present.
4. Representatives of Aarhus Centres, the judiciary and business, professional, research and academic organizations were also present, as were representatives of international, regional and local non-governmental organizations (NGOs), many of whom coordinated their input within the framework of European ECO-Forum. The Chair of the Aarhus Convention's Compliance Committee participated through a video link.

I. Opening of the meeting and adoption of the agenda

5. The Chair of the Task Force, Ms. Loredana Dall'Ora (Italy), opened the meeting, delivering an introductory statement on the important role of public participation in decision-making for the implementation of the 2030 Agenda for Sustainable Development.
6. The Task Force adopted the agenda as set out in document AC/TF.PP-8/Inf.1 and took note of the information provided by the Chair, including on the upcoming United Nations Economic Commission for Europe (ECE) Regional Forum on Sustainable Development (21 and 22 March 2019), which would be devoted to Sustainable Development Goal 16, along with other Sustainable Development Goals. The Regional Forum would provide an opportunity to highlight the outcomes of the Task Force's work at the regional and global levels. The Task Force highlighted, in that regard, the fact that effective public participation in decision-making in environmental matters supported the achievement of the Sustainable Development Goals and targets, in particular target 16.7 (responsive, inclusive, participatory and representative decision-making at all levels).
7. The secretariat introduced the five following background documents: selected relevant resources (AC/TF.PP-8/Inf.2); overview of the implementation of articles 6, 7 and 8 of the Aarhus Convention (AC/TF.PP-8/Inf.3); selected considerations, findings and reports of the Compliance Committee relating to effective public participation (AC/TF.PP-8/Inf.4); overview of the implementation of article 3, paragraph 8, of the Aarhus Convention (AC/TF.PP-8/Inf.5); and selected considerations, findings and reports of the Compliance Committee relating to the implementation of article 3, paragraph 8, of the Aarhus Convention (AC/TF.PP-8/Inf.6).

II. Ensuring effective public participation

8. The Chair introduced the agenda item on the full chain of decision-making procedure based on the Maastricht Recommendations on Promoting Effective Public Participation in Decision-making in Environmental Matters (within the scope of articles 6, 7 and 8 of the Convention). Participants were invited to consider a number of issues in that regard, namely: (a) meaningful and early public participation; (b) the availability of all relevant documents to the public; (c) effective notification and time frames for public participation; and (d) ensuring that greater account was taken of the comments from the public in the final decisions and ensuring the appropriate provision of feedback on how the public's comments had been

³ Documents for the eighth meeting, including a list of participants, statements and presentations, are available at www.unece.org/env/pp/aarhus/ppdm8.html.

taken into account in the decisions. The session also aimed to provide a platform for an exchange of good practices on the subjects and to identify key positive trends and challenges. The discussions of the session were facilitated by Mr. Dmytro Skrylnikov. Each sub-item included a presentation by the facilitator, who explained the relevant provisions of the Convention, gave illustrative examples and provided clarification if there was any difference in implementation of the subjects addressed in the context of articles 6, 7 and 8. The facilitator also gave a description of the model for effective public participation in decision-making under the Aarhus Convention, based on the Maastricht Recommendations. He stated that, as Parties had different experiences and traditions of public participation, it was important to share such knowledge in order to identify common approaches and new trends and to promote best practice.

A. Meaningful and early public participation

9. Introducing the session on meaningful and early public participation, the facilitator stated that the topic referred to public participation when all options were open, meaning that any option, including the “zero option”, could still be chosen as the preferred option. The framework for public participation in multistage decision-making might reflect the concept of tiered decision-making whereby, at each stage of the decision-making process, certain options were discussed and selected with the participation of the public, and each consecutive stage of decision-making addressed only the issues within the option already selected at the preceding stage. At each stage, where public participation was required, it should occur when all the options to be considered at that stage were still open and effective public participation could take place. If a particular tier of the decision-making process did not foresee public participation, then the next stage that did foresee public participation should provide the public with the opportunity to also participate regarding the options decided on at that earlier tier. In the case of large infrastructure projects, when it came to the eventual redesigning of the project, the public should participate and have the right to comment on eventual changes in the project design.

10. The incorporation of article 6 (4) into the text of article 7 of the Convention meant that Parties must provide for early public participation in plans and programmes relating to the environment when all options (including the “zero option”) were open and when due account could be taken of the outcome of the public participation.

11. Article 8 of the Convention stated that each Party would strive to promote effective public participation at an appropriate stage, and while options were still open, during the preparation by public authorities of executive regulations and other generally applicable legally binding rules that might have a significant effect on the environment. Article 8 referred to the following steps that should be taken: (a) time frames sufficient for effective participation should be fixed; (b) draft rules should be published or otherwise made publicly available; and (c) the public should be given the opportunity to comment, directly or through representative consultative bodies.

12. For articles 6, 7 and 8, effective public participation at an appropriate early stage was a key issue in ensuring proper public participation in decision-making on activities, plans, programmes, policies, legislation and executive regulations.

13. The facilitator gave some examples of situations where all options might no longer be considered open, including: (a) when a public announcement of a preferred option had been made even though the plan or programme had not yet been adopted; (b) when a formal decision on the issue had been taken by a public body (including representative bodies such as local, regional or national parliaments); (c) when a decision-maker had promised constituents that it would pursue or avoid particular options; and (d) when a public authority had concluded contracts or agreements with private parties related to a decision subject to the Convention that would have the effect of foreclosing options prior to meaningful input from the public.

14. Opening the discussion, the representative of Italy gave a presentation on new legislation, due to be implemented in the near future, concerning public debates on major infrastructure projects, and on how that legislation was aligned with the efforts of the Government of Italy to fully implement European Union legislation and the relevant articles of the Aarhus Convention, as well as to follow the Maastricht Recommendations. Decree No.

76 of the President of the Council of Ministers, of 10 May 2018, regulated the modalities, types and threshold of projects subject to public debate and was the first legal act to translate such principles into operational and concrete terms. The scope of the Decree included feasibility projects concerning major infrastructure, submitted to public debate according to time frames and methods defined by the Decree. The aim was to improve the design of interventions, anticipate and deal with the conflicts that normally arose regarding the carrying out of major projects, and strengthen the relationship between citizens and institutions. The presenter gave further details of the definition and scope of public debates as defined in the Decree, the types of projects covered, the governance mechanism and procedural steps.

15. The representative of the Hellenic Society for the Protection of the Environment and Cultural Heritage spoke about the types of public participation procedures applied in Greece in general, focusing on the good practice example of the early public participation process for strategic management plans in the water management sector. The strategy had been a successful one, implemented by the public authorities, who had organized an open consultation process through an interactive website involving citizens and other stakeholders, with the help of multiple information activities (conferences, seminars, publications, questionnaires). Those activities had focused on topics related to the quality, quantity and availability of water resources, programming consumption and the use of water and programmes containing measures for the protection of water resources and economic analysis of water use. Assessments of the consultations had been published online and comments and relevant material studied, analysed and adopted accordingly. Based on that experience, the Greek authorities had created a strategy involving early public participation at all stages of the consultation process that was currently being applied to the new cycle of public consultation programmes for the first review of the water management plans, in line with the European Union Water Framework Directive (2000/60/EU).

16. During the ensuing discussion, the representative of Italy stated that the process of appointing the coordinator of the public debate was regulated by legislation on the basis of the independence criteria. The coordinator was nominated by the proponent and had to be a ministry representative or, where profile was irrelevant, should be hired from outside. During voluntary public participation procedures, a particular provision in the law allowed, where the projects were below the threshold, for the holding of a public debate, upon request, which could be put forward by the proponent and also by a number of citizens and the national authorities. The facilitator pointed to the importance of further developing capacity-building measures, such as electronic courses, for educating local authorities and the public about the benefits of, and perspectives regarding, implementation of the Aarhus Convention.

B. The availability of all relevant documents to the public

17. The facilitator stated that access to information was an essential prerequisite for effective public participation. To ensure effective participation, all information relevant to the decision-making process must be made available to the public concerned. Article 6 (6) of the Convention referred to the exceptions to disclosure provided for in article 4 (3) and (4) of the Convention. When designing and implementing legal frameworks for article 6, the following issues should be taken into the account: provision of access to relevant information for the purposes of examination; provision of barrier-free access to information; provision of access, free of charge, to information for the purposes of examination; provision of copies at no more than a reasonable charge and provision of information as soon as it became available.

18. The representative of France presented a recently launched platform providing the public with access to environmental information and data. It was an easy-to-use tool that made it possible to: find relevant information gathered at one point; easily locate projects in a given territory; and actively participate in the decision-making process. The tool was a guarantee of transparency that allowed the public to have an overview of the projects in its territory and helped to inform the public about different projects and ensure effective public participation. The tool also assisted in integrating environmental considerations into decision-making and in the design of projects through an improved overview of projects in a given territory.

19. The representative of Ukraine presented experiences regarding the creation of an electronic register for environmental impact assessments, currently at the testing stage, that would provide new opportunities for effective public participation. The register provided

access for the public to all documents created during the environmental impact assessment procedure, including those available to the authorities. The register raised awareness of environmental impact assessments among various stakeholders. Further steps to improve the register included: the expansion of the functionality of a transboundary module; the strengthening of the institutional capacity of the authority concerned and coordination between regional and ministry-level authorities; the improvement of the provisions of the law on environmental impact assessment; and the integration of the register system into other open-data portals.

20. The representative of Green Dossier, speaking also on behalf of the Eastern Partnership Civil Society Forum, informed participants about the implementation of an ongoing European Union-funded project, entitled “Environmental Assessment Watch”. The goal of the project was to develop and test in practice a common system for civil society monitoring of implementation of the strategic environmental assessment and environmental impact assessment tools in Belarus, the Republic of Moldova and Ukraine. Common challenges observed included: the lack of community interest in environmental assessment, especially at the early stages; existing obstacles in legislation to enjoyment of the right to access to information; and the lack of publicly available user-friendly information. The next step was to develop a model system for civil society monitoring of strategic environmental assessment and environmental impact assessment, based on country-level research and European Union experience, to be shared with other countries.

21. During the ensuing discussion, a representative of the NGO Ecohome informed participants about a recent Ecohome report on monitoring access to environmental information in Belarus. Of the 65 public hearing protocols referred to in the report, there had been only three cases of public participation, initiated by Ecohome itself. The importance of raising public awareness for more active participation was noted by the speaker. In that regard, the representative of Italy stated that the Directorate-General for Environmental Assessments and Authorizations of the Ministry for the Environment, Land and Sea maintained a portal that provided many relevant documents to the public that helped the public to participate meaningfully.

22. It was concluded that, in addition to improving legislation, it was important, in practice, to provide the public with sufficient and user-friendly information that would lead to a better understanding of the use of such information and, consequently, to more effective and meaningful participation.

C. Effective notification and time frames for public participation

23. The facilitator gave a brief insight into the topic of effective notification and time frames for public participation (article 6 (2) of the Convention). He spoke about methods of notifying the public and reasonable time frames for informing the public and for the public to prepare and participate effectively (article 6 (3), (7) and (8) of the Convention). The different phases of the public participation procedure for which reasonable time frames were required might include: (a) informing the public concerned about the commencement of the procedure (article 6 (2)); (b) enabling the public concerned to become acquainted with the documentation (article 6 (6)); (c) enabling the public to submit any comments, information, analyses or opinions that it considered relevant (article 6 (7)); (d) considering the comments, information, analyses or opinions submitted by the public (article 6 (8)); (e) taking the final decision, while taking due account of the outcome of the public participation (article 6 (8)); (f) preparing the statement of reasons and considerations on which the decision was based; (g) preparing the text of the decision; (h) notifying the public of the decision, together with how the public might access the text of the decision and the statement of reasons and considerations on which it was based (article 6 (9)). Finally, the facilitator gave several examples of reasonable and unreasonable time frames for the different phases of public participation procedures.

24. The representative of Sweden presented a good practice example of the country’s system of public participation, which was based on a long tradition of public participation in decision-making processes concerning environmental permit procedures and environmental impact assessment procedures, established in the country even before prior to the ratification by Sweden of the Aarhus Convention and the transposition of the European Union Environmental Impact Assessment Directive (2011/92/EU). The Swedish system was

characterized by elaborate permit processes, as a part of which consultations were mandatory at the early stage of public participation and should be held before the permit application was submitted to the permit authority and before the environmental impact assessment was designed. Information and time frames for early consultations were available, transparent and strictly adhered to. Consultations must be held well in advance of submitting the permit application and preparing the environmental impact assessment report. Prior to any early consultations, the developer must provide information about, among other things, the anticipated environmental impact. The public was informed through public notice, in line with the Swedish Environmental Code (on a public website and in a local newspaper), and also individually. The application, including the environmental impact assessment report, must be made available by the decision-making authority and by the keeper of the file, for example, in a municipal office near the place where the activity was to be conducted. The public should be given a reasonable time frame – a minimum of 30 days – to comment on the application and the environmental impact assessment report.

25. During the ensuing discussions, the speaker clarified the fact that, in the early stages of the environmental impact assessment procedure, the developer was responsible for informing the public, whereas, following the submission of the application for environmental impact assessment, the task of informing the public became the responsibility of the permit authority. There was flexibility regarding how the public concerned was notified prior to early consultations but individual contact was the first choice. Following the submission of the environmental impact assessment application, the public was informed through the publication of a notice, in line with the Swedish Environmental Code (on a public website and in a local newspaper). At that stage in the process, the public concerned was also informed individually to the extent possible. It was noted that information provided in public notices in electronic and print formats should, by law, be the same. The representative of BlueLink Foundation shared experiences from the findings of a comparative legal study carried out in eight countries in Europe regarding the legal scope of public participation, including the issue of notification and time frames for public participation.

D. Taking greater account of the comments from the public and provision of feedback

26. Introducing the session on the topic of ensuring that greater account was taken of the comments from the public in the final decisions and ensuring the appropriate provision of feedback on how the public's comments had been taken into account in the decisions, the facilitator highlighted the fact that the issue was the core element of public participation. He gave an introductory presentation on the relevant provisions of the Convention (articles 6, 7 and 8). The right to comment was granted to "the public" and not to the "public concerned" and the public should be entitled to submit any comments, information, analyses or opinions that it considered relevant to the proposed activity. The public was not required to provide proof of residence, citizenship or domicile, or any evidence as to its sources of information or any justifications or reasoning for its views. Comments could be provided in written form, as oral submissions through public hearings and also through online consultations.

27. Article 6 (8) of the Convention referred to activity that required taking due account of the outcome of public participation. Article 6 (8) had been incorporated into the text of article 7, meaning that all requirements contained in article 6 (8) should be applied regarding plans and programmes and, to the extent appropriate, to policies. Article 8, which addressed the issue of public participation during the preparation of executive regulations, stated that the result of the public participation would be taken into account as far as possible. Taking due account of comments might result in: (a) the amendment of the proposed decision in the light of the public's comments; (b) the taking of additional measures for mitigation or monitoring of potential harmful effects of the proposed decision; (c) the selection of an alternative option on the basis of the public's input; and (d) the rejection of the proposed decision entirely. Therefore, the public's comments should be properly taken into account.

28. The representative of Romania presented good practice examples of effective public participation during environmental impact assessment and strategic environmental assessment procedures in Romania, which demonstrated how the public's comments were taken into account in the decisions issued at different stages for the plans and programmes of the two procedures. The final decisions, called "Environmental Approvals", issued by the

competent environmental authority at the end of the strategic environmental assessment procedures for the General Transport Master Plan of Romania for the Short, Medium and Long Term 2014–2030, the National Strategy on Climate Change and Growth Based on a Low-carbon Economy for the Period 2016–2020 and the National Action Plan on Climate Change 2016–2020 provided information on public comments received, had been incorporated into the relevant documents and made available to the public throughout the procedure and made reference to those organizations whose interventions had been taken into account. The transparent transboundary environmental impact assessment procedure, stage and decisions issued regarding the Cernavodă nuclear power plant were presented as an example of effective public participation in environmental decision-making regarding environmental impact assessment decisions.

29. The representative of BlueLink Foundation informed the participants about the ongoing work of Justice and Environment in the field of national legal frameworks and implementation practice across European Union countries regarding public participation in assessment procedures. He presented the main findings of a recently published comparative legal study entitled “Assessing environmental impacts of plans and programmes. Implementation of key requirements of the [Strategic Environmental Assessment] Directive in selected [European Union] Member States”. The study contained analysis of the statutory obligations concerning the taking into account of the results of strategic environmental assessments in decision-making processes. Strictly speaking, the strategic environmental assessment should influence planning processes and decision-making leading to integration of environmental considerations into public participation, but that obligation was not always clear or strict enough to be enforced. The legal standing of the public was an instrument that would ensure the taking into the account of all inputs coming in via public participation. Another avenue for ensuring that greater account was taken of the comments from the public in the final decisions and for ensuring the appropriate provision of feedback on how the public’s comments had been taken into the account in the decisions, was the institutionalization of NGOs’ partnerships with the competent environmental authorities.

30. The Task Force thanked the facilitator and presenters, took note of the insights, good practices and challenges shared by them, and noted the issues addressed during the subsequent discussions and comments from the floor including, among other things:

(a) Current trends, such as the fact that several Parties had recently revised, or were currently revising, their legislation aimed at improving public participation procedures. Different practical tools and arrangements put in place to make such procedures more effective;

(b) Existing challenges, such as the need to present information relevant to decision-making in a user-friendly way, so as to encourage broader public participation.

31. The Task Force:

(a) Reiterated the need for Parties to ensure that practical arrangements for public participation procedures were designed in such a way as to ensure truly effective participation and to allocate the necessary resources in that regard;

(b) Welcomed further steps taken by the Parties to establish online platforms for notification and access to all relevant information – critical for effective participation of the public in decision-making – and called on Parties and stakeholders to continue sharing and learning from such experiences, in order to improve the functionality of web portals;

(c) Highlighted the importance of involving the public in developing the above-mentioned platforms, so as to address the needs of different users;

(d) Highlighted, at the same time, the need for using other (non-digital) means for notification and access to information, in order to overcome the existing digital divide;

(e) Encouraged Parties, international organizations, Aarhus Centres and other stakeholders to initiate or continue training courses for public officials responsible for designing and carrying out procedures on public participation in decision-making, especially at the subnational and local levels.

III. Protection of persons exercising their rights in conformity with the provisions of the Convention

32. The session aimed to discuss the issue of protection of persons exercising their rights in conformity with the provisions of the Convention. Introducing the agenda item, the Chair referred to the Budva Declaration on Environmental Democracy for Our Sustainable Future,⁴ through which Parties had strongly voiced their concerns regarding the increase in the harassment, silencing and even murder of environmental activists around the world. Parties had also expressed their great concern that human rights violations, terrorism, and radicalism were undermining the foundations of democracy in many countries around the world, including in countries that were Party to the Aarhus Convention and its Protocol and other ECE countries. The Chair stressed the fact that the implementation of article 3 (8) of the Convention could support the achievement of target 16.10 of Sustainable Development Goal 16 on the protection of fundamental freedoms. She pointed out that the meeting would provide a platform for addressing systemic challenges and for sharing good examples of how that important matter was tackled in different countries. The session began with introductory statements by the Chair of the Compliance Committee and by the representative of the NGO Earthjustice, speaking on behalf of the European ECO Forum. There then followed two panels: on relevant experiences of Parties and stakeholders; and on the existing mechanisms and tools.

33. Opening the discussion, the Chair of the Compliance Committee, Mr. Jonas Ebbesson, gave a presentation on the Committee's approach to protecting persons exercising their rights in conformity with the Convention. He began by providing some context with respect to the ongoing penalization, persecution and harassment of persons exercising their rights under the Convention. The Chair pointed out that, according to the media, approximately four environmental defenders were killed every week worldwide. That concern had been highlighted in a specific article of the Regional Agreement on Access to Information, Public Participation and Justice in Environmental Matters in Latin America and the Caribbean (Escazú Agreement), which set out that the Parties were obliged to guarantee a safe and enabling environment for persons, groups and organizations that promoted and defended human rights in environmental matters, so that they were able to act free from threat, restriction and insecurity. In the Aarhus Convention, the protection of persons exercising their rights was addressed through one very explicit provision, which was no less strict. Article 3 (8) of the Convention sets out that Parties – i.e. Governments, legislators, and the courts – must ensure that persons were not penalized, persecuted or harassed when attempting to exercise their rights under the Convention. That provision was key to the entire Aarhus Convention and, if that requirement were not met, then members of the public might not dare to make their voices heard in the first place. The findings and recommendations regarding case ACCC/C/2014/102,⁵ as considered by the Compliance Committee, showed how the Compliance Committee approached violations of article 3 (8), and how the matter was linked to notions of human rights. The speaker further explained how the Committee examined allegations concerning non-compliance with article 3 (8).

34. The representative of the NGO Earthjustice gave a presentation, from an NGO perspective, on systemic challenges encountered during the application of the provision contained in article 3 (8) of the Convention. The speaker outlined the overall situation regarding threats to environmental defenders at the international level. In 2017, the Global Witness report had documented 207 killings of land and environmental defenders – ordinary people murdered for defending their forests, rivers and homes against destructive industries. That figure had increased by six killings compared to the figure for the previous year, making 2017 the worst year on record. Those figures were underestimates because not all countries provided real data on cases of threats against environmental defenders. The violations documented mainly reflected the situation in South and Central America. The

⁴ ECE/MP.PP/2017/16/Add.1-ECE/MP.PRTR/2017/2/Add.1, adopted by the Parties to the Aarhus Convention and its Protocol at the Joint High-level Segment of the Meetings of the Parties (Budva, Montenegro, 14 September 2017).

⁵ See www.unece.org/environmental-policy/conventions/public-participation/aarhus-convention/tfwg/envppcc/envppcccom/accc2014102-belarus.html.

types of affected sectors included: agrobusiness; mining and extractive industries; logging; poaching; and water and dams.

35. The speaker also referred to examples of threats and harassment of environmental defenders that had occurred in countries that had ratified the Aarhus Convention. Those examples were documented in a report entitled “Dangerous work: Increasing pressure on Environmental NGOs and activists in the countries of the former Soviet Union and the [United States]”,⁶ containing country cases from the ECE region. In addition to the Aarhus Convention, other relevant instruments included the framework principles on human rights and environment of the Special Rapporteur on the issue of human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment,⁷ which outlined the main human rights obligations relating to the enjoyment of a safe, healthy and sustainable environment. In 2018, the Human Rights Council had adopted the draft guidelines for States on the effective implementation of the right to participate in public affairs,⁸ the two parts of which, on participation in non-electoral contexts and on the right to participate in public affairs at the supranational level, including in international organizations, complemented the obligations provided for in the Aarhus Convention. Other relevant instruments existing in Europe, which had to be taken into account in coordination with the implementation of the Aarhus Convention, were the Declaration of the Committee of Ministers on Council of Europe action to improve the protection of human rights defenders and promote their activities,⁹ of 2008, the Guidelines on the Protection of Human Rights Defenders of the Organization for Security and Cooperation in Europe Office for Democratic Institutions and Human Rights,¹⁰ of 2014, and the European Union Guidelines on Human Rights Defenders,¹¹ of 2008.

36. The participants discussed a suggestion to provide shelters in the Parties to the Aarhus Convention and to the Escazú Agreement for environmental defenders, who were persecuted throughout the world. People must have the capacity to exercise their rights to protect the environment. It was then suggested that consideration be given to establishing an arrangement under the Aarhus Convention that would allow for rapid reaction in such cases and for the creation of “environmental defender shelters” in countries that were Parties to the Aarhus Convention.

37. During the ensuing discussion, the representative of Earthjustice stated that there were no shelters specifically for environmental defenders and that such people should not be considered as a specific category, but as people who were exercising their rights and who were called defenders. Due to greater competition for resources, there were more cases of classic human rights violations related to the environment or triggered by environmental issues. There was probably now a need to undertake specific action to open shelters for environmental defenders.

38. During the subsequent discussions, responding to questions, the Chair of the Compliance Committee clarified the fact that the general obligation of the Parties to the Convention was to comply with the Convention within their jurisdictions, therefore one Party could not be responsible for actions that had taken place in, or had been carried out by, another Party. Nevertheless, a Party might be responsible for violations of the Convention’s provisions even outside its own territory, for example, in the case of foreign aid, provided that said Party had jurisdiction.

39. The representative of Morocco shared the country’s experience of public participation in decision-making and the existing practice of national environmental defenders attempting to merge their efforts with those of relevant actors, such as parliamentarians or civil society in neighbouring countries, in order to increase pressure on the authorities or developers. She

⁶ Report by Crude Accountability and Ecoforum of NGOs Kazakhstan, available at http://crudeaccountability.org/wp-content/uploads/CA_Report_Dangerous_Work-compressed.pdf.

⁷ A/HRC/37/59, annex.

⁸ A/HRC/39/28.

⁹ Available at www.ohchr.org/Documents/Issues/Defenders/DeclarationHRDCoECommitteeMinisters.pdf.

¹⁰ Available at www.osce.org/odihr/guidelines-on-the-protection-of-human-rights-defenders?download=true.

¹¹ Available at https://eeas.europa.eu/headquarters/headquarters-homepage_en/3958/EU%20Guidelines%20on%20Human%20Rights%20Defenders.

also noted that a structure had recently been created in the country to address human rights violations related to the environment.

40. The Chair of the Compliance Committee made final remarks regarding the global outreach needed to protect environmental defenders and gave example of legal regimes applicable in Africa. He also mentioned the launching, in 2017, of the Global Pact for the Environment, an initiative to conclude a legally binding international instrument under the United Nations that synthesized the principles outlined in the existing international environmental instruments. The Global Pact was intended to solidify the environmental rule of law around the world and to facilitate the implementation of the 2030 Agenda for Sustainable Development. Work to develop the content of the Global Pact was ongoing. One of the issues addressed was that of participatory rights, which was directly linked to the current discussion on the protection of the rights of environmental defenders, as provided for in article 3 (8) of the Aarhus Convention.

A. Panel 1: Experiences of Parties and stakeholders

41. The representative of Latvia gave a presentation entitled “Effective public participation in decision-making from the Latvian perspective”. The speaker outlined the existing national legal framework on public participation in decision-making and informed participants about the relevant provisions in the Constitution and other national legislation concerning State obligations regarding the adoption and enforcement of effective measures of environmental protection and protection of persons exercising their rights in conformity with the provisions of the Convention. The presenter spoke about the areas of regulation of public participation in decision-making at the State and municipal levels and interlinkages between territorial planning and public participation in decision-making. An example of public participation in decision-making regarding the draft territorial plan, including building of contemporary burial and religious infrastructure, was given.

42. The representative of the Aarhus Centre in Osh, Kyrgyzstan, informed the participants about the centre’s work, focusing on a number of capacity-building activities, such as consultations regarding the registration of public associations and training on public participation procedures for authorities and NGOs. The speaker gave an example of an incident that had occurred in 2018 in one of the country’s districts, which had led to one authorized and six unauthorized peaceful rallies, at which concern had been expressed about the possible negative impact on the environment and environmental safety of the activities of a gold mining company that was setting up operations. One rally had ended with rioting and the authorities had initiated criminal proceedings in that regard. The speaker noted that the possible causes of such a negative outcome might include the following: a lack of public information about the feasibility study and environmental impact assessment; public anxiety about environmental safety; the absence of any meaningful reaction from the company to the rallies; failure by the company to organize public hearings; and non-provision of public participation in practice at the early stages of decision-making. As a result, the following questions were raised: who was responsible for the incident; who would pay for the damage; and what measures to undertake to prevent such cases occurring in the future. The speaker pointed out that exchange of experiences in addressing similar situations would be useful.

43. The representative of the International Code of Conduct for Private Security Service Providers’ Association informed the participants about the Association’s work, focusing on the issues of security and protection of persons’ lives and rights, and about how that work could potentially be relevant to the obligations under the Aarhus Convention. The Association was a multi-stakeholder, non-profit organization, established in Switzerland with the aim of promoting, regulating and overseeing the implementation of the International Code of Conduct for Private Security Service Providers and promoting the responsible provision of security services and respect for human rights and national and international law in accordance with the International Code of Conduct. The speaker provided information on the Association’s history, purpose and organization of work, and identified issues regarding the provision of security that were relevant to the provisions of the Convention currently under discussion. The work of the Association that was relevant to the agenda item under discussion focused on raising the standards of private security companies, whose clients come from a range of sectors and included corporate entities, Governments, international organizations, NGOs, humanitarian agencies and private individuals. There was a lack of systematic

reporting on human rights challenges in the private security industry, either by the media or by human rights monitoring and reporting organizations.

44. The speaker noted the following: the need for better monitoring of private security companies' actions by a stronger network of civil society organizations; and the connection between the work done by the Association and that carried out under the Aarhus Convention and within the framework of the Escazú Agreement. The speaker stated that the main focus of future work should be on how to interact with security providers to deal with security incidents, rather than only with community members who were causing incidents. Moreover, it was important to raise awareness among civil society organizations, in order to identify their issues of concern and to bring the different communities to the table. The speaker highlighted the fact that there was a clear link in terms of protection of persons exercising their rights in conformity with the provisions of the Aarhus Convention and the provision of security mechanisms on a practical level to ensure that individuals could be heard and not be harmed by security companies operating on behalf of the client or the Government, for example, when developing a project with environmental consequences.

45. The Chair concluded that it was important to have in place effective measures that would prevent possible harassment of and pressure on environmental defenders and enable safe public participation.

B. Panel 2: Mechanisms and tools

46. The representative of the Office of the United Nations High Commissioner for Human Rights (OHCHR) gave a presentation on the special procedures on the protection of environmental human rights defenders and gave an overview of their purpose and mandate. Special rapporteurs were appointed by the Human Rights Council to address country situations or global thematic issues. The experts (special rapporteurs) or a group (Working Group) of experts were appointed from each region for a maximum term of two or three years, served voluntarily in their personal capacity and must act independently and impartially. There were 44 thematic mandates to monitor thematic human rights issues globally and 12 country mandates to monitor the situation in specific countries. All special rapporteurs had a mandate from the Human Rights Council and there was a Code of Conduct. The special rapporteurs were provided with policy, research and logistical support by OHCHR personnel. Examples of relevant special rapporteur mandates included: environment and human rights; human rights defenders; freedom of expression; freedom of association and assembly; and other types of violations. Environmental defenders were trying to assist countries in improving the situation with regard to environmental protection and, as a result, they suffered for their activities. According to the Global Witness report, in 2017, four defenders had been killed worldwide every week. The special rapporteurs helped environmental defenders because of the grave situation in that area. Summarizing the presentation, the speaker pointed to the definition of environmental defenders used in the United Nations Declaration on Human Rights Defenders, article 1 of which defined human rights defenders through a broad range of activities, focusing on promoting and striving for the protection of human rights.

47. The representative of the United Nations Environment Programme (UNEP) presented a summary of the work areas and objectives of the UNEP Environmental Rights Initiative, launched at the thirty-seventh session of the Human Rights Council, in March 2018. The Initiative aimed to promote greater protection for people defending their environmental rights and to identify solutions to mitigate the abuse of environmental rights, which affected a growing number of people in many parts of the world. The speaker provided statistics on the rising death toll of environmental defenders during recent years. The year 2017 had been the deadliest year on record. In that year, 207 environmental defenders had been killed, with 60 per cent of those murders recorded in Latin America. To date, in 2018, around 50 defenders had lost their lives while protecting their communities' environment and natural resources. Around 40 per cent of those killed, harassed and intimidated had been from indigenous and local communities from around the world.

48. The Initiative had been developed in response to the increasingly severe nature of environmental rights problems and shrinking civil society space. The main objectives of the Initiative included: promoting awareness, inter-agency cooperation and access to information on environmental rights; and strengthening and building the knowledge base on environmental rights. Work areas included communications and public outreach, advocacy,

information sharing and building partnerships. A rapid response mechanism had been set up to enable the UNEP to take action on receiving alerts and to respond to information about attacks on defenders. An update on the Initiative's activities would be presented at the upcoming meeting of the United Nations Environmental Assembly of the United Nations Environment Programme in 2019.

49. The representative of the NGO Ecohome made a statement from the floor about existing and continuing cases of persecution and pressure on environmental activists. There was a lack of mechanisms and procedures for proper immediate protection in cases of persecution of activists in the country that made it impossible to effectively implement the environmental rights guaranteed by the Convention. That situation pointed to the crucial importance of creating effective and time-sensitive procedures for responding to such cases of persecution.

50. During the ensuing discussion, the representative of OHCHR informed the participants that OHCHR was working with the UNEP Law Division on global recognition of the right to safe health and environment, and was organizing a number of joint activities and reporting to the relevant United Nations bodies on raising awareness of the issue among the member States, including Parties to the Aarhus Convention.

51. The representative of Earthjustice added that the issue of the right to a healthy and sustainable environment should be integrated into the framework of the Global Pact for the Environment and that the forthcoming report of the Secretary-General on gaps in international environmental law and environment-related instruments would launch that process.

52. The Task Force thanked presenters, took note of the insights, good practices and challenges shared by them, and noted the issues addressed during the subsequent discussions and comments from the floor including, among other things, on:

(a) The serious situation regarding environmental rights defenders that had even resulted in the killing of such defenders;

(b) Existing challenges, such as fear of reporting such cases, impunity and difficulty in uncovering persons behind the ordering and carrying out of such acts;

(c) The crucial importance of establishing and maintaining a safe and enabling environment that empowered members of the public to exercise their rights in conformity with the Convention;

(d) Different mechanisms dealing with such cases established under OHCHR and UNEP;

(e) The proposal that consideration be given to establishing an arrangement under the Aarhus Convention that would allow for rapid reaction in such cases and the creation of "environmental defender shelters" in countries that were Parties to the Aarhus Convention.

53. The Task Force:

(a) Underscored the fact that the lack of effective and inclusive public participation in decision-making on environmental matters could serve as a trigger escalating potential conflicts;

(b) Called on Parties to review their legal frameworks and practical arrangements, in line with the obligations arising from the Convention, and to address other systemic challenges, as reported by speakers, to ensure that persons exercising their rights in conformity with the Convention's provisions were not penalized, persecuted or harassed in any way for their involvement;

(c) Noted that the implementation of article 3 (8) of the Aarhus Convention could support the achievement of target 16.10 of Sustainable Development Goal 16 on the protection of fundamental freedoms;

(d) Called on Parties to continue efforts to raise awareness of the obligations under article 3 (8) of the Aarhus Convention among, in particular, public officials, law enforcement agencies, prosecutors, members of the judiciary, providers of private security services and developers;

(e) Welcomed initiatives by Parties, Aarhus Centres, NGOs, international organizations and other stakeholders to promote safe, inclusive and effective participation of the public in decision-making free from persecution and harassment, as reported by the speakers, and invited them to further raise awareness of, and encourage peer-learning regarding, those initiatives, and to conduct training and other capacity-building activities for relevant target groups;

(f) Invited Parties, NGOs, Aarhus Centres, international organizations and other stakeholders to further populate the Aarhus Clearinghouse for Environmental Democracy with relevant resources of a systemic nature regarding initiatives, mechanisms and tools dedicated to protection against persecution and harassment, in order to facilitate knowledge exchange and peer-learning and to disseminate and use those resources.

IV. Thematic focus: chemicals- and product- related decision-making

54. Introducing the session, the Chair noted that the objective of the session was to share good practices and experiences on two interrelated subjects, namely: chemicals- and product-related decision-making. It was highlighted that the subject was very complex, making it difficult for the public to comprehend often highly technical information and engage effectively in decision-making. The Chair also pointed out that transparency and public participation in chemicals- and product-related decision-making could support Governments' efforts to implement a number of Sustainable Development Goals, in particular, Sustainable Development Goal 16 (strong institutions) and Sustainable Development Goal 12 (responsible production and consumption), which were closely linked to Sustainable Development Goal target 1.5 (poverty eradication), target 3.9 (good health and well-being), target 5.5 (gender equality), target 6.3 (clean water and sanitation), target 8.4 (economic growth), target 9.4 (industry, innovation and infrastructure), target 11.6 (cities), Sustainable Development Goal 14 (life below water), Sustainable Development Goal 15 (life on land), Sustainable Development Goal 17 (partnerships) and relevant multilateral environmental agreements.

55. The representative of Serbia presented the national experience on the management of chemicals and related products and public participation in the decision-making process. The presentation gave an overview of the existing related national legal and institutional frameworks and international legislative instruments and agreements and pointed to the key characteristic features of the national legislative framework. She also spoke about the role of the public in the preparation of legislation, the role and responsibilities of industry and civil society as key partners in establishing a system for the safe management of chemicals, and about experiences in building capacity regarding and raising awareness of the issue. The main challenges to be addressed by the Government included: the need for continuous harmonization with European Union legislation; the development of an institutional framework through the establishment of a joint body for integrated management of chemicals; and the development of supporting instruments to implement the Convention's provisions on public participation in decision-making. Industry and civil society organizations had been recognized as key partners in establishing a system for the safe management of chemicals.

56. The representative of Georgia presented an overview of the existing relevant national legal and policy frameworks and of alignment with the relevant international instruments and European Union *acquis*. She identified the main challenges in addressing the issue in Georgia, such as: the absence of framework legislation on chemicals management; incomplete alignment with European Union legislation; insufficient capacity for the identification of all chemicals; the lack of chemicals- and product- related information; insufficient monitoring; the lack of general knowledge of safety measures among staff working at chemical sites; the chemicals- and product-related safety culture in the country; the lack of public awareness and civil liability regarding the safe utilization and storage of chemical and products. She also reported on, among other things, ongoing and planned activities aimed at improving the relevant national legislation and ensuring harmonization with European Union directives (for example, on product safety related to household chemicals, products for children and cosmetics, among others), the development of a unified

database, the preparation of standard operating procedures and the improvement of laboratories, training and awareness-raising.

57. The representative of the NGO Women Engage for a Common Future spoke about the NGO perspective regarding the issue of chemicals- and product-related decision-making and presented, as a good practice example, the results of a project to raise the awareness of parents, health experts and political decision-makers regarding hazardous chemicals, especially endocrine disrupting chemicals.

58. Following the presentations, the representative of Serbia clarified the fact that the procedures for public participation were fully prescribed by the laws on environmental impact assessment and on strategic environmental assessment, as well as by International Plant Protection Convention processes, from the early stage of public participation to the final stage of appeal against a decision. The issue of the release of chemicals into the environment was addressed under strategic environmental assessment and International Plant Protection Convention procedures, and also through a publicly available pollutant release and transfer register, which provided for public involvement in the monitoring of levels, sources and types of environmental pollution. Currently, a new law on chemicals, which would cover public participation, was being prepared, along with a new law on biocidal products. Recently a joint body for the integrated management of chemicals had been established as the institutional form of public participation, involving all stakeholders, with the purpose of preparing strategic documents and plans that would contribute to the implementation of article 7 of the Aarhus Convention.

59. The representative of Georgia stated that, in 2017, a new environmental impact assessment code had been adopted, which established a broader and effective procedure for public participation in decision-making and with regard to which public awareness-raising activities were required.

60. During the ensuing discussion, the participants inquired about the best way for the public to be involved in and participate in discussions on chemicals as dangerous products without creating fear and panic. The panellists said that the best solution was to inform the public through awareness raising, education and the provision of reliable information, in order to create trust regarding the issue and encourage discussion free from panic and anxiety. Multi-stakeholder dialogue and cooperation with the Government, private producers and civil society were important, especially in order to resist significant pressure from the chemicals industry. There was a need to be able to clearly identify the responsibilities of all involved stakeholders, including the producers of chemical products and representatives of health agencies, regarding the impact of chemicals. Such a development would allow citizens to participate meaningfully and make decisions. It was also important to ensure that: civil society had the relevant expertise; independent researchers were available; the State was obliged to fund research capacities; and there was an open dialogue with independent researchers studying the complex issue of chemicals.

61. The UNEP framework of the Strategic Approach to International Chemicals Management was referred to as an example of the multi-stakeholder process aimed at fostering the sound management of chemicals. The framework provided a platform for States, civil society and the chemicals industry to discuss safe chemicals management issues. In Serbia, a good example of involving the public was a helpdesk, established within the Ministry of Environmental Protection, which provided an opportunity to access information regarding, and discuss, the issue. Public involvement had also been improved by holding a multi-stakeholder dialogue with chemicals sector actors, under the auspices of the Serbian Chamber of Commerce.

62. The Task Force thanked presenters, took note of the experiences, good practices and challenges shared by them and noted the issues addressed during the subsequent discussions and comments from the floor on, among other things:

(a) Current trends, such as that fact that several Parties had recently revised or were currently revising their legislation, and the promotion of synergy with other intentional instruments dealing with chemicals, in order to enhance public participation procedures in that field;

(b) Existing challenges, given that the subject was highly complex and rather technical, there was a need to present information relevant to decision-making in a complete

and comprehensive way, including information on the composition of substances and their possible impact on the environment and health;

(c) Possible suggestions regarding reaching out to and engaging with authorities responsible for health matters and initiating, in countries, a multi-stakeholder dialogue involving authorities and different stakeholders, including producers, researchers, NGOs, and health and environmental specialists.

63. The Task Force:

(a) Reiterated that effective public participation in chemicals- and product- related decision-making remained crucial to ensuring environmental protection, safe management of chemicals and wastes and sustainable consumption and production;

(b) Highlighted the fact that transparency and public participation in chemicals- and product- related decision-making could support Governments' efforts in implementing a number of the Sustainable Development Goals, in particular, Sustainable Development Goal 16 (peace, justice and strong institutions) and Sustainable Development Goal 12 (responsible production and consumption);

(c) Welcomed the initiatives of Parties and stakeholders, as reported by the speakers, to further promote transparency and public participation in chemicals- and product – related decision-making and called for the continued sharing of experiences in that regard;

(d) Called on Parties to ensure that public participation in chemicals- and product – related decision-making was effectively provided for in relation to all types of decision-making, in accordance with articles 6, 7 and 8 of the Convention.

V. Maastricht Recommendations on Promoting Effective Public Participation in Decision-making in Environmental Matters

64. The Chair introduced the discussion on the use of the Maastricht Recommendations on Promoting Effective Public Participation in Decision-making in Environmental Matters (Maastricht Recommendations), inviting participants to share good practices and experiences and discuss existing challenges.

65. The representative of Kazakhstan reported on the promotion of the Maastricht Recommendations in her country and shared the measures undertaken to comply with the provisions of the Convention. In Kazakhstan, public participation in the decision-making process was implemented through public hearings, by means of: (a) the carrying-out of public hearings; (b) the carrying-out of public environmental assessment; (c) the carrying-out of public environmental controls; (d) the submission of comments and proposals to State bodies during the State environmental review; (e) participation in public councils within public authorities; and (f) the submission of comments and proposals regarding draft normative legal acts on environmental protection issues, including draft documents of the State planning system. The results of public hearings were documented in a report, which reflected comments and proposals from the public concerned. The report reflected information on the possibility of appealing against decisions. There was also a practice of carrying out public hearings in the form of interviews. The speaker gave several examples of public hearings held in Almaty in recent years. Public participation was also ensured during the preparation of environmental policies, including the ongoing 2018–2019 reform of environmental legislation.

66. During the ensuing discussion, the role of the Aarhus Centres in assisting governments in organizing public participation was highlighted. The representative of Italy also shared national experiences regarding the implementation of a project, funded by the European Commission Directorate-General for Environment, on drafting a charter of intent – a guidance document for public participation related to environmental impact assessment and strategic environmental assessment procedures. The guidance document was largely informed by the Maastricht Recommendations and had been developed on the assumption that the availability of necessary and relevant environmental information was a prerequisite for meaningful public participation.

67. The Task Force:

- (a) Thanked the presenter and took note of the experiences shared by her in relation to the use of the Maastricht Recommendations;
- (b) Welcomed the initiatives to promote the Maastricht Recommendations shared by the participants during the subsequent discussions and comments from the floor;
- (c) Reiterated its call to Parties, international organizations, Aarhus Centres, and other stakeholders to further promote the application of the Maastricht Recommendations, translate them into national languages and provide those translations to the secretariat;
- (d) Called on Parties, international organizations, Aarhus Centres and other stakeholders to continue documenting good practices for the Aarhus Good Practice database.

VI. Any other business

68. Participants exchanged views on how to measure the effectiveness of public participation. It was noted that monitoring of effectiveness was a complex issue, which entailed the analysis of the entire public participation procedure to establish whether the opportunity for participation was provided and whether the public was satisfied with the outcome of the participation. A number of factors had to be considered, such as the provision of adequate effective notification, reasonable time frames for participation and proper procedures for appeal to relevant authorities. The representative of the European Commission informed the participants about an ongoing project on the establishment of a framework for the assessment of environmental governance. The first results of the project should be available in 2019 and the next meeting of the Task Force would provide a good opportunity to share the project outcomes.

VII. Closing of the meeting

69. The Task Force thanked the speakers for their useful presentations and agreed on the key outcomes of the meeting, as presented by the Chair at the meeting (AC/TF.PP-8/Inf.7), which would be incorporated into the meeting report. The Chair thanked the participants, the secretariat and the interpreters and closed the meeting.
