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**Economic Commission for Europe****Meeting of the Parties to the Convention on  
Access to Information, Public Participation  
in Decision-making and Access to Justice  
in Environmental Matters****Working Group of the Parties****Twenty-fourth meeting**

Geneva, 1–3 July 2020

Item 7 (a) of the provisional agenda

**Preparations for the seventh session of the Meeting of the Parties:  
future work programme****Draft note on a rapid response mechanism to deal with cases  
related to article 3 (8) of the Aarhus Convention****Prepared by the Bureau***Summary*

The present document was prepared by the Bureau pursuant to the outcomes of the twenty-third meeting of the Convention's Working Group of the Parties (Geneva, 26–28 June 2019) regarding the issue of a rapid response mechanism to deal with cases related to article 3 (8) of the Convention.<sup>1</sup> The Bureau at its forty-fourth meeting (Geneva, 28 June 2019) considered this matter and requested the secretariat to prepare a note on this subject, including, among other things, various options and examples of such mechanisms under other treaties and relevant international instruments, and an estimation of possible financial implications. At its forty-sixth meeting (Geneva, 25 and 26 February 2020), the Bureau discussed the initial draft note prepared by the secretariat and thereafter prepared the present note for the consideration of the Working Group of the Parties at its twenty-fourth meeting (Geneva, 1–3 July 2020).

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<sup>1</sup> See ECE/MP.PP/WG.1/2019/2, paras. 25–35, available at [www.unece.org/index.php?id=50755](http://www.unece.org/index.php?id=50755).



## Introduction

1. Pursuant to relevant discussions at the twenty-third meeting of the Convention's Working Group of the Parties to the Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters (Aarhus Convention) (Geneva, 26–28 June 2019), the Bureau at its forty-fourth meeting (Geneva, 28 June 2019) considered the issue of a rapid response mechanism to deal with cases related to article 3 (8) of the Convention. The Bureau requested the secretariat to prepare a note on this subject, including, among other things, various options and examples of such mechanisms under other treaties and relevant international instruments, and an estimation of possible financial implications. At its forty-sixth meeting (Geneva, 25 and 26 February 2020), the Bureau discussed the initial draft note prepared by the secretariat and thereafter prepared the present note for the consideration of the Working Group of the Parties at its twenty-fourth meeting (Geneva, 1–3 July 2020).

2. Article 3 (8) of the Aarhus Convention deals specifically with the protection of persons exercising their rights under the Convention. Article 3 (8) of the Convention requires that: "Each Party shall ensure that persons exercising their rights in conformity with the provisions of this Convention shall not be penalized, persecuted or harassed in any way for their involvement."

3. The importance of ensuring the safety of environmental defenders is increasingly recognized as critical. This is evidenced by:

(a) Data from the non-governmental organization (NGO) Front Line Defenders, stating that environmental defenders are three times more likely to be attacked than other human rights defenders. More than three quarters (77 per cent) of the human rights defenders killed in 2018 worked on land, indigenous peoples' or environmental rights;<sup>2</sup>

(b) Human Rights Council resolution 40/11 recognizing the contribution of environmental human rights defenders to the enjoyment of human rights, environmental protection and sustainable development (A/HRC/RES/40/11), adopted by the Human Rights Council on 21 March 2019;

(c) Presentations made by representatives of the European ECO Forum at the twenty-second (Geneva, 19–21 June 2018) and twenty-third meetings of the Working Group of the Parties, at which, respectively, they emphasized the urgency of addressing the harassment of environmental defenders and the need to offer them protection under the Convention (ECE/MP.PP/WG.1/2018/2, para. 83); and proposed the establishment of a rapid response mechanism, based on the existing human rights special procedures, to provide help in "urgent" cases concerning article 3 (8) of the Convention;<sup>3</sup>

(d) The outcomes of the twenty-third meeting of the Working Group of the Parties, which noted:

(i) The serious situation regarding environmental rights defenders, and even killings of such defenders;

(ii) Existing challenges, such as fear to report such cases, impunity and difficulty in uncovering the identity of those behind the ordering and conducting of such acts;

(iii) 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;

(iv) Mechanisms and instruments dealing with such cases established under the Office of the United Nations High Commissioner for Human Rights, including the

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<sup>2</sup> Front Line Defenders, *Front Line Defenders. 2018 Global Analysis* (Blackrock, County Dublin, 2019), pp. 6 and 7. Available at [www.frontlinedefenders.org/sites/default/files/global\\_analysis\\_2018.pdf](http://www.frontlinedefenders.org/sites/default/files/global_analysis_2018.pdf).

<sup>3</sup> See ECE/MP.PP/WG.1/2019/2, para. 29.

recently adopted Human Rights Council resolution 40/11 on environmental human rights defenders;

(v) The suggestion to consider establishing an arrangement under the Aarhus Convention that would allow for a rapid reaction in such cases;

(vi) Experience on “shelter cities for human rights defenders”, which also covered environmental rights defenders;<sup>4</sup>

(e) The outcomes of the meetings of the Task Forces under the Convention, namely: the tenth meeting of the Task Force on Access to Justice (Geneva, 27 and 28 February 2017),<sup>5</sup> which addressed the issue of judicial protection of persons exercising their rights in conformity with the Convention against persecution and harassment; the eighth meeting of the Task Force on Public Participation in Decision-making (Geneva, 8 and 9 October 2018),<sup>6</sup> which addressed the issue of protection of persons exercising their right to participate in decision-making in environmental matters; and the sixth meeting of the Task Force on Access to Information (Geneva, 3 and 4 October 2019),<sup>7</sup> which addressed the issue of protection of whistle-blowers and other people disclosing environmental violations.

(f) The Parties’ immediate mission, as set out in the Convention’s draft Strategic Plan for 2022–2030: “To reaffirm the commitment to: (i) ensuring due protection of environmental defenders; (ii) having in place appropriate legislative and policy frameworks so that such defenders can exercise their rights in accordance with the Convention; and (iii) preventing the erosion of civic space”<sup>8</sup>.

4. In its report on general issues of compliance to the sixth session of the Meeting of the Parties (Budva, Montenegro, 11–14 September 2017), the Compliance Committee emphasized the seriousness of a finding that a Party concerned is in non-compliance with article 3 (8) of the Convention. The Committee underlined that if a Party does not ensure that members of the public are not penalized, harassed or persecuted for exercising their rights under the Convention, it puts in grave jeopardy the implementation of the Convention as a whole by the Party concerned (ECE/MP.PP/2017/32, para. 19).

## I. Who is an “environmental defender”?

5. Article 3 (8) of the Aarhus Convention applies to “persons exercising their rights in conformity with the provisions of this Convention”. The Compliance Committee has made it clear that article 3 (8) applies to all situations in which members of the public seek access to information, public participation or access to justice in order to protect their right to live in an environment adequate to their health or well-being. This includes situations to which the rights and obligations in articles 3 to 9 are applicable but is not limited to them (ECE/MP.PP/C.1/2017/19, para. 66).

6. Similarly, at the twenty-third meeting of the Working Group of the Parties, Mr. Michel Forst, the Special Rapporteur on the situation of human rights defenders, made it clear that environmental defenders are not limited to members of large well-known environmental NGOs. Rather, environmental defenders are to be identified by what they do, namely actions for the protection of environmental and land rights.<sup>9</sup>

7. Accordingly, for the purposes of the present note, an “environmental defender” is any person exercising his or her rights in conformity with the provisions of the Convention.

<sup>4</sup> Ibid., para. 31.

<sup>5</sup> See [www.unece.org/env/pp/aarhus/tfaj10.html](http://www.unece.org/env/pp/aarhus/tfaj10.html).

<sup>6</sup> See [www.unece.org/env/pp/aarhus/ppdm8.html](http://www.unece.org/env/pp/aarhus/ppdm8.html).

<sup>7</sup> Available at [www.unece.org/index.php?id=50574](http://www.unece.org/index.php?id=50574).

<sup>8</sup> ECE/MP.PP/WG.1/2020/11, para. 8 (b), available at <https://www.unece.org/index.php?id=53323>.

<sup>9</sup> ECE/MP.PP/WG.1/2019/2, para. 27.

## **II. Can the Compliance Committee serve as a rapid response mechanism for environmental defenders?**

8. The Compliance Committee's role is to review compliance with all provisions of the Convention, including article 3 (8). The Committee accordingly already has a mandate, through decision I/7 of the Meeting of the Parties (ECE/MP.PP/2/Add.8), to consider communications, referrals and submissions related to article 3 (8). It can also undertake missions to Parties, gather information, prepare findings and recommendations and engage in follow-up after a finding of non-compliance. However, as explained below, in its current form, it would not be feasible for the Compliance Committee to act as a rapid response mechanism.

9. First, the Compliance Committee's present function is to review alleged non-compliance that has already occurred. This includes alleged violations of article 3 (8) that have already taken place. Its existing mandate does not enable it to address persecution, penalization or harassment that is occurring right now or is imminent.

10. Second, paragraph 21 of the annex to decision I/7 requires the Compliance Committee to take into account any available domestic remedies. Requiring a member of the public to exhaust the domestic remedies of the Party concerned when they are currently experiencing persecution, harassment or penalization by organs of the Party concerned is not reasonable.

11. Third, paragraph 23 of the annex to decision I/7 establishes a five-month time frame for a Party concerned to provide its response to a communication. Even assuming the Committee did not need to seek any further information or clarification after the response had been received, the Committee would still be unable to commence the preparation of its findings on any alleged violation of article 3 (8) until the five-month time frame had expired, as a minimum. Accordingly, based on its current procedures as set out in the annex to decision I/7 the Committee would not be able to serve as a rapid response mechanism.

12. Lastly, due to its existing high caseload and limited resources, if the Committee were to prioritize the speedy consideration of alleged violations of article 3 (8) or to undertake urgent ad hoc missions, that would have a negative impact on its existing workload. Accordingly, even if the Committee's procedures were adapted to give it a mandate to act as a rapid response mechanism, it would still need to be allocated additional resources to be able to do so.

## **III. Are there existing mechanisms under other international treaties or international organizations that could serve as a rapid response mechanism for article 3 (8)?**

13. An overview of existing mechanisms under other international treaties and international organizations that cover, or may potentially cover, the rights of environmental defenders is provided in document AC/WGP-24/Inf.7.

14. Based on this overview, the United Nations Environment Programme rapid response mechanism is the only initiative explicitly aiming to protect environmental defenders.<sup>10</sup> It is not, however, built upon a binding legal framework that enables it to examine whether the State concerned has violated the rights of environmental defenders. Nor does it have a mandate to take any legal measures to protect the persons at risk. Rather, its aim is to build political pressure through press releases and media statements. It is triggered at the discretion of the United Nations Environment Programme leadership.<sup>11</sup>

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<sup>10</sup> See

[https://wedocs.unep.org/bitstream/handle/20.500.11822/22769/UN%20Environment%20Policy%20on%20Environmental%20Defenders\\_08.02.18Clean.pdf?sequence=1&isAllowed=y](https://wedocs.unep.org/bitstream/handle/20.500.11822/22769/UN%20Environment%20Policy%20on%20Environmental%20Defenders_08.02.18Clean.pdf?sequence=1&isAllowed=y), pp. 3 and 4.

<sup>11</sup> No information is available online as to the extent to which the United Nations Environment Programme rapid response mechanism has been used in practice. The United Nations Environment Programme is currently in the process of reviewing its policy on environmental defenders.

15. Of the other mechanisms reviewed, the most relevant for protecting environmental defenders are the European Court of Human Rights and the individual complaints procedures under the Optional Protocol to the International Covenant on Civil and Political Rights and the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.

16. However, none of the mechanisms in the preceding paragraph could truly be considered to be a “rapid response mechanism”. This is because, while each of the mechanisms can grant interim measures to protect persons who are at risk of harm, they can only do so if there is already an ongoing case before the relevant court<sup>12</sup> or committee<sup>13</sup>. In addition, all three mechanisms require available domestic remedies to be exhausted before the underlying case is submitted to them.

17. Obviously, mechanisms established by other treaties or organizations do not have a mandate to respond to alleged violations of article 3 (8) of the Aarhus Convention. The various mechanisms reviewed, however, together contain elements that may be of interest when considering the possibility of developing a rapid response mechanism under the Aarhus Convention to address alleged violations of article 3 (8). Examples of such elements include:

- (a) The use of diplomatic channels, including meeting with government officials;
- (b) Engaging in written communication with Governments (for example, sending an urgent letter of appeal or other letters);
- (c) Responding publicly through press releases and/or media statements and referring to the case in official reports;
- (d) Raising the case with United Nations bodies (including human rights representatives in the field and at headquarters, the Human Rights Council, the General Assembly) and/or reporting it to the United Nations leadership (including the United Nations High Commissioner for Human Rights, the President of the Human Rights Council and the Secretary General);
- (e) Recommending strategies for the protection of human rights defenders;
- (f) Engaging in written communication with stakeholders;
- (g) Requesting the State concerned to report on a voluntary basis on the actions it has taken;
- (h) Receiving shadow reports by NGOs;
- (i) Relying on the internal accountability mechanisms of the State concerned to strengthen the rule of law and governance.

#### **IV. A possible rapid response mechanism under the Aarhus Convention**

18. Having reviewed the existing mechanisms under other treaties and organizations relevant to environmental defenders, it can be seen that establishing a rapid response mechanism under the Convention to respond to allegations of imminent violations of article 3 (8) would bring added value due to:

- (a) The ability to provide greater protection to environmental defenders due to the legally binding nature of the obligation in article 3 (8) of the Convention;
- (b) The opportunity to design the mechanism as a truly rapid procedure.

<sup>12</sup> European Court of Human Rights, “Interim Measures”, factsheet, January 2019. Available at [https://www.echr.coe.int/Documents/FS\\_Interim\\_measures\\_ENG.pdf](https://www.echr.coe.int/Documents/FS_Interim_measures_ENG.pdf).

<sup>13</sup> Informal guidance note by the secretariat for the States parties on procedures for the submission and consideration by treaty bodies of individual communications, Office of the United Nations High Commissioner for Human Rights, January 2017. Available at <https://www.ohchr.org/Documents/HRBodies/TB/NoteStatesParties.pdf>.

19. A rapid response mechanism under the Convention could take various forms. Taking into account the governing structure and mandates of the Convention's existing bodies, the following four options are considered in the present note:

- Option 1: Zero option (current situation)
- Option 2: A rapid response mechanism is incorporated into the Compliance Committee
- Option 3: A rapporteur on environmental defenders is established under the authority of the Meeting of the Parties
- Option 4: The Meeting of the Parties gives the Chair of the Bureau additional powers to respond to alleged violations of article 3 (8).

20. The above-mentioned options are each discussed in further detail in paragraphs 24–42 below, including their potential advantages and disadvantages and cost implications. A table comparing options 1–4 is provided in annex II to the present note.

21. Irrespective of which option is chosen, the following common elements are pertinent to each option:

(a) The rapid response mechanism would exclusively address requests for urgent assistance regarding current and imminent violations of article 3 (8) of the Convention. The mechanism would, therefore, complement the current mandate of the Compliance Committee, which would continue to review any allegations regarding non-compliance that had already occurred;

(b) Bearing in mind the complementary nature of the rapid response mechanism to the work of the Committee, it is suggested that the mechanism be established under the Convention's work area on compliance;

(c) Taking into account the points raised in paragraphs 3 and 4 above, it is clear that there is a need for systemic and intensified awareness-raising to proactively prevent potential violations of article 3 (8). Such awareness-raising should be carried out both by the Convention's bodies at the international level (for example, at relevant meetings of the Convention's Task Forces) and by each Party at the national level. At the national level, this could entail specific training sessions and awareness-raising events on the obligations in article 3 (8) for, in particular, officials of public authorities, law enforcement agencies, prosecutors, members of the judiciary, providers of private security services and developers, as well as for environmental defenders on how to seek assistance and protection if their rights under article 3 (8) are infringed.

(d) In order both to enhance the rapid response mechanism's effectiveness and the efficient use of resources, possibilities for synergies and cooperation between the Convention's rapid response mechanism and other relevant international bodies, such as relevant United Nations special rapporteurs, will be considered on a case-by-case basis where appropriate.

22. The following is a summary of cost implications of the various options. Option 1, being the current situation, would have no additional cost implications. The cost of the rapid response mechanism itself would be identical whether the mechanism was established in the form of option 2, 3 or 4. However, the total cost of option 2 would be higher than that of option 3 or 4. This is because, in addition to the costs of the mechanism listed in the following paragraph, the cost of the other aspects of the Compliance Committee's work would also increase. This is explained in paragraphs 31 and 34 below.

23. The cost of the rapid response mechanism for options 2, 3 and 4 – to be reflected in the 2022–2025 work programme – would consist of:

(a) Travel and daily subsistence expenses to undertake in-country missions, where appropriate and with secretariat support, and to attend relevant meetings of the Convention and, as appropriate, other international events;

(b) Translation of material and substantive inputs, as required;

(c) Secretariat staff to support the work related to article 3 (8), along with other tasks.

### **Option 1: Zero option (current situation)**

24. To date, requests for an urgent response regarding alleged violations of article 3 (8) have been dealt with in one of the two following ways:

(a) If the alleged persecution, penalization or harassment is in some way related to a case already pending before the Compliance Committee, the Chair of the Compliance has sent a letter to the Party concerned seeking information regarding the alleged violation of article 3 (8);<sup>14</sup>

(b) If there is no related case pending before the Compliance Committee, the Chair of the Bureau has sent a letter to the Party concerned seeking information regarding the alleged violation of article 3 (8).<sup>15</sup>

25. Obviously, if option 1 is chosen, since the present situation would remain unchanged, there would be no additional cost implications.

26. The significant disadvantage of option 1 is that, apart from sending an initial letter seeking information from the Party concerned, neither the Chair of the Bureau nor the Chair of the Compliance Committee has a mandate to take any further action to protect any persons who are, or are at imminent risk of, being persecuted, penalized or harassed for exercising their rights under the Convention.

### **Option 2: A rapid response mechanism incorporated into the Compliance Committee**

27. As explained in paragraphs 9–12 above, the Compliance Committee’s current mandate, procedures and workload mean that it is not able to respond rapidly to alleged violations of article 3 (8) of the Convention.

28. Under option 2, the Meeting of the Parties would adopt a decision at its seventh session granting the Compliance Committee additional powers to rapidly respond to alleged violations of article 3 (8). The decision would also provide for the election of an additional, tenth, Committee member with specific expertise on issues related to article 3 (8) to deal with such requests for an urgent response.

29. The Compliance Committee’s additional role as a rapid response mechanism could function in either of the following ways:

#### **Option 2(a): Compliance Committee continues to take all decisions jointly**

30. Under Option 2(a), the additional Committee member would act as the “curator” for any requests for a rapid response to alleged violations of article 3 (8). However, in keeping with the Committee’s established practice, all decisions would still be taken by the Committee jointly. This means that, in addition to his or her role as “curator” of any requests for a rapid response regarding article 3 (8), the additional Committee member would be expected to take a full and active part in the rest of the Committee’s work.

31. The advantage of Option 2(a) is that the Committee’s established practice of taking all decisions jointly would remain unchanged.

32. Regarding the disadvantages of Option 2(a):

(a) Option 2(a) would have the highest cost of any of options 1–4. In addition to the costs listed in paragraph 23 above, the existing travel and subsistence costs of the

<sup>14</sup> See, for example, [www.unece.org/fileadmin/DAM/env/pp/compliance/MoP6decisions/VI.8c\\_Belarus/Correspondence\\_with\\_the\\_Party\\_concerned/toPartyVI.8c\\_letter\\_from\\_the\\_ACCC\\_Chair\\_final\\_08.04.2019.pdf](http://www.unece.org/fileadmin/DAM/env/pp/compliance/MoP6decisions/VI.8c_Belarus/Correspondence_with_the_Party_concerned/toPartyVI.8c_letter_from_the_ACCC_Chair_final_08.04.2019.pdf).

<sup>15</sup> See tab marked “Correspondence” at [www.unece.org/env/pp/bureau.html](http://www.unece.org/env/pp/bureau.html).

Committee would be increased to cover the costs of the additional Committee member to attend all Committee meetings;

(b) Since each Committee member would be expected to consider all the information received and to deliberate and decide jointly upon any measures to be taken in response to the urgent request, all Committee members' workloads would increase. This could lead to delays in other aspects of the Committee's caseload;

(c) The fact that any decision to issue a rapid response measure would be taken jointly would mean that it would take longer to issue such measures, since all Committee members would need to have sufficient time to appraise themselves of the situation and to deliberate and ultimately to decide on what, if any, response might be appropriate;

(d) Should the alleged violation of article 3 (8) subsequently be submitted to the Committee as a communication, the Party concerned might claim that the Committee, having already issued a rapid response measure against it, had thereby already formed a preliminary view and was therefore not impartial. That could therefore undermine the Committee's ability to examine a communication, submission, request or referral submitted to it in accordance with its mandate established in decision I/7.

### **Option 2(b): Compliance Committee member issues rapid response measures by him or herself**

33. Instead of continuing the Committee's existing practice of taking all decisions jointly, under option 2(b), the additional Committee member would be the only member of the Committee to consider requests for a rapid response to alleged violations of article 3 (8). The additional Committee member would thus be granted the power to issue rapid response measures by him or herself. He or she would not take part in the deliberations on the Committee's other cases.

34. The cost of option 2(b) would be lower than that of option 2(a) but higher than those of options 3 and 4. This is because, in addition to the costs listed in paragraph 23 above, there would still be travel and daily subsistence expenses for the additional Committee member to be present for at least part of some Committee meetings, for example, when the Committee discusses possible developments to its working methods and when it prepares its report to the Meeting of the Parties.

35. Other potential disadvantages of Option 2(b) include:

(a) The fact that the possibility for one Committee member to issue measures on his or her own would undermine the Committee's uniform practice to date that all decisions are taken jointly;

(b) Since the other nine Committee members would not be expected to follow all developments regarding requests for a rapid response under article 3 (8), it could raise questions as to whether the additional Committee member could legitimately be described as "acting on behalf of the Committee";

(c) Should the alleged violation of article 3 (8) subsequently be submitted to the Committee as a communication or submission, the additional Committee member – elected to the Committee because of his or her expertise related to article 3 (8) – would not be able to take part in the Committee's deliberations, since he or she would be considered to have a conflict of interest in the light of his or her past involvement in the case.

### **Option 3: A Rapporteur on environmental defenders**

36. Under option 3, the Meeting of the Parties would adopt a decision at its seventh session establishing an independent Rapporteur on environmental defenders under the Convention to provide a rapid response to alleged violations of article 3 (8).

37. An outline of how a Rapporteur on environmental defenders might function is set out in annex I to the present note.

38. The advantages of option 3 include the following:

(a) In contrast to option 2, option 3 would not add to the Compliance Committee's existing high caseload, but rather would be complementary thereto. For example, in line with paragraph 25 (d) of the annex to decision I/7, the Compliance Committee could, where appropriate, seek the expert assistance of the Rapporteur when dealing with matters relating to article 3 (8);

(b) Also in contrast to option 2, the cost implications of option 3 would be limited to those set out in paragraph 23 above;

(c) In contrast to option 4, option 3 would not interfere with the existing hierarchy of the bodies under the Convention (see para. 42 (b) below).

#### **Option 4: Additional powers given to the Chair of the Bureau**

39. Under option 4, instead of electing a Rapporteur or a Compliance Committee member to provide a rapid response to alleged violations of article 3 (8), the Meeting of the Parties would adopt a decision at its seventh session mandating the Chair of the Bureau, upon receiving a request for urgent assistance regarding an alleged violation of article 3 (8), to provide the rapid response.

40. The cost implications of option 4 would be the same as those as for the Rapporteur under option 3 (see para. 23 above).

41. One advantage of option 4 might be that the Chair of the Bureau, through holding that office, would have political weight when dealing with a Party accused of persecuting, penalizing or harassing persons seeking to exercise their rights under the Convention.

42. However, the disadvantages of option 4 include the following:

(a) The existing workload and responsibilities of the Chair of the Bureau may mean that he or she does not have capacity to take on these additional tasks;

(b) The Chair of the Bureau, when acting as the Chair of the Meeting of the Parties, is the Convention's highest office holder. If the Chair of the Bureau were to be the "first responder" on requests for urgent assistance, it would interfere with the existing hierarchy under the Convention, under which the Meeting of the Parties, overseen by its Chair, is the highest body;

(c) The risk that some Parties might no longer view the Chair of the Meeting of the Parties as neutral and impartial. That the Chair of the Meeting of the Parties is perceived by Parties to be impartial and neutral is fundamental to the effective performance of his or her role as Chair. However, by taking urgent action during the intersessional period against those Parties accused of violating article 3 (8), the Chair might be viewed by those and other Parties as no longer being fully neutral. That could jeopardize the successful fulfilment of the Chair's primary role of chairing the Meeting of the Parties, the Working Group of the Parties and the Bureau.

## Annex I

### **Outline of Option 3: An Aarhus Convention Rapporteur on environmental defenders**

#### **1. Who would a Rapporteur on environmental defenders be intended to protect?**

In connection with article 3 (8) of the Convention, the Rapporteur's mandate would be to take measures to protect any person who is either:

- experiencing persecution, penalization or harassment, or;
- at imminent threat of persecution, penalization or harassment,

for seeking to exercise their rights under the Aarhus Convention. Such penalization, persecution or harassment might arise from the acts or omissions of public or private entities or individuals (ECE/MP.PP/C.1/2017/19, para. 70).

#### **2. Who could make a complaint?**

A complaint might be submitted to the Rapporteur on environmental defenders by:

- Any member of the public, either on their own behalf or on behalf of another member of the public
- A Party to the Convention
- The secretariat.

#### **3. Admissibility**

The Rapporteur would consider any complaint, unless he/she were to determine that the complaint was:

- Anonymous, although anonymous complaints making credible allegations that can be independently verified might be pursued
- An abuse of the right to make such a complaint
- Manifestly unreasonable
- Incompatible with the provisions of the decision establishing the rapid response mechanism or with the Convention
- *De minimis*.

#### **4. Domestic remedies**

Given the urgent nature of the Rapporteur's mandate, complainants would not be required to have exhausted domestic remedies before making a complaint.

#### **5. Confidentiality**

Information submitted to the Rapporteur, including any information that might relate to the identity of the member of the public submitting the information, would be kept confidential unless the person submitting it has waived the right of confidentiality. The Rapporteur may explain to the person concerned the impact of maintaining confidentiality, if any, on the Rapporteur's ability to perform his or her functions.

## 6. Information gathering

In order to gather the necessary information to properly carry out his/her functions, the Rapporteur might use one or more of the following means:

- Gather information from any publicly available source
- Gather information from other relevant international human rights bodies
- Send questions to the complainant
- With the consent of the complainant, send questions to the Party concerned
- With the consent of the complainant, send questions to any other person or institution or entity (for example, the public authority or private body or person alleged to be perpetrating the penalization, persecution or harassment, the independent national human rights institution in the Party concerned)
- With the consent of the Party concerned, undertake a mission to gather information in person in the territory of that Party
- With the consent of any other State, undertake information gathering in the territory of that State.

## 7. Measures to protect environmental defenders

In order to protect the complainant or any other person(s) named in the complaint from persecution, penalization or harassment, the Rapporteur might take one or more of the following measures:

- Issue an immediate protection measure to the Party concerned (see paras. 8 and 9 below)
- Issue an ongoing protection measure to the Party concerned (see paras. 8 and 10 below)
- Issue public statements and press releases
- Use diplomatic channels
- Request the Chair of the Bureau of the Meeting of the Parties to use diplomatic channels, including to bring the matter to the attention of the Head of State or Government and/or another senior official of the Party concerned
- Bring the complaint to the attention of other relevant human rights bodies (for example, special rapporteurs, national independent human rights commissions, etc.) and, to the extent feasible and appropriate, coordinate efforts with those other bodies.

## 8. What is a “protection measure”?

A protection measure would be a measure issued to the Party concerned by the Rapporteur directing the Party concerned either to refrain forthwith from any action that may amount to persecution, penalization or harassment of the complainant and any other person(s) named in the protection measure, or to act without delay in order to protect the complainant and any other person(s) named in the protection measure from persecution, penalization or harassment by third parties. The Rapporteur might issue the protection measure to:

- The Minister of Environment
- The Minister for Foreign Affairs of the Party concerned
- Any other ministry or government entity that the Rapporteur might consider appropriate
- Relevant judicial bodies of the Party concerned.

## **9. What is an “immediate protection measure”?**

An immediate protection measure would be a protection measure issued to the Party concerned by the Rapporteur on an urgent basis before the completion of the Rapporteur’s investigation. Applying a precautionary approach, an immediate protection measure could be issued by the Rapporteur at any point after the complaint has been determined to be admissible. The Rapporteur might issue an immediate protection measure if he/she has reasonable grounds to believe that a person is likely to face penalization, persecution and harassment due to exercising their rights under the Convention.

## **10. What is an “ongoing protection measure”?**

An ongoing protection measure would be a protection measure issued to the Party concerned by the Rapporteur upon his or her concluding that the Party concerned has or may have violated article 3 (8) of the Convention. The ongoing protection measure would remain in force until it is lifted by the Rapporteur, the Meeting of the Parties or, if a referral is made to the Compliance Committee, the Compliance Committee (see para. 11 below).

## **11. Relationship with the Compliance Committee**

The Rapporteur would be a specialized “rapid response” procedure aimed at preventing or stopping penalization, persecution and harassment arising in relation to alleged violations of article 3 (8) of the Convention. As such, the Rapporteur would be a complementary procedure to the Compliance Committee and its establishment would not in any way change the Committee’s procedure for considering communications, submissions, secretariat referrals and requests in accordance with decision I/7. The Rapporteur would interact with the Compliance Committee in the following ways:

(a) The Rapporteur would keep the Compliance Committee informed of his/her work;

(b) Depending on the serious and/or systemic nature of the particular violation(s) of article 3 (8) alleged, the Rapporteur might make a referral to the Compliance Committee. Upon receiving a referral from the Rapporteur, the Committee would forward the referral to the Party concerned, which would thereafter have three months to provide its response. The Compliance Committee, upon adopting its findings, may decide to lift or uphold any protection measures issued by the Rapporteur;

(c) Pursuant to paragraph 25 (d) of the annex to decision I/7, the Compliance Committee may, at any time, decide to seek the advice or assistance of the Rapporteur when dealing with matters related to article 3 (8). For example, in the course of the Committee’s review of the progress made by a Party concerned in implementing findings of non-compliance on article 3 (8), the Committee may seek the expert input of the Rapporteur.

## **12. Reporting to the Meeting of the Parties**

The Rapporteur would be under the authority of the Meeting of the Parties. To that end:

(a) The Rapporteur would report to each session of the Meeting of the Parties. Pending sessions of the Meeting of the Parties, the Rapporteur would keep the Bureau and the Working Group of the Parties informed on a regular basis;

(b) If the Rapporteur were to make a referral to the Compliance Committee, then he/she would report that fact to the Meeting of the Parties;

(c) Upon considering a report of the Rapporteur and any recommendations contained therein, the Meeting of the Parties may uphold or lift any protection measures issued by the Rapporteur and may also request the Compliance Committee to examine the compliance of one or more Parties with article 3 (8) of the Convention.

### **13. Awareness-raising**

In addition to his or her work dealing with requests for a rapid response, the Rapporteur would also perform a proactive role in raising awareness regarding Parties' obligations under article 3 (8) of the Convention. That would include awareness-raising at relevant meetings of Convention bodies and other international events, as well as in the course of the Rapporteur's in-country visits.

## Annex II

## Table comparing Options 1-4 for a rapid response mechanism on article 3(8)

	<i>OPTION 1: Zero option (current situation)</i>	<i>OPTION 2a: Rapid response mechanism incorporated into the ACCC  ACCC continues to take all decisions <u>jointly</u></i>	<i>OPTION 2b: Rapid response mechanism incorporated into the ACCC  Additional “specialised” ACCC member is empowered to take rapid response measures on article 3(8) <u>by him/herself</u></i>	<i>OPTION 3: Rapporteur on environmental defenders</i>	<i>OPTION 4: Additional powers to the Chair of the Bureau</i>
<b>Changes / additional powers needed</b>	No change.	At MOP7, the MOP would adopt a decision adding an additional ACCC member and giving the ACCC additional powers to provide a rapid response to seek to protect those affected by potential violations of article 3(8), <u>acting jointly</u> .	At MOP7, the MOP would adopt a decision adding an additional ACCC member and giving the additional ACCC member powers to provide a rapid response to seek to protect those affected by potential violations of article 3(8), <u>acting by him or herself</u> .	At MOP7, the MOP would adopt a decision establishing a Rapporteur on environmental defenders to provide a rapid response to seek to protect those affected by potential violations of article 3(8).	At MOP7, the MOP would adopt a decision giving the Chair of the Bureau additional powers to provide a rapid response to seek to protect those affected by potential violations of article 3(8).
<b>Possible rapid response measures</b>	No change.  Chair of the Bureau or Chair of the ACCC may write a letter to the Party concerned seeking information about the alleged article 3(8) incident.  No other measures to be taken.	ACCC would be granted the powers set out in paras. 6-10 of annex I to the present document.	Additional ACCC member would be granted the powers set out in paras. 6-10 of annex I to the present document.	Rapporteur on environmental defenders would be granted the powers set out in paras. 6-10 of annex I to the present document.	Chair of the Bureau would be granted the powers set out in paras. 6-10 of annex I to the present document.
<b>Relationship with ACCC’s existing procedures</b>	ACCC’s existing procedures unchanged.	ACCC’s existing procedures unchanged.	Additional ACCC member’s rapid response powers for article 3(8) would be in addition to ACCC’s existing	ACCC’s existing procedures unchanged.	ACCC’s existing procedures unchanged.

	<i><b>OPTION 1:</b></i> <i>Zero option (current situation)</i>	<i><b>OPTION 2a:</b></i> <i>Rapid response mechanism incorporated into the ACCC</i> <i>ACCC continues to take all decisions <u>jointly</u></i>	<i><b>OPTION 2b:</b></i> <i>Rapid response mechanism incorporated into the ACCC</i> <i>Additional “specialised” ACCC member is empowered to take rapid response measures on article 3(8) by <u>him/herself</u></i>	<i><b>OPTION 3:</b></i> <i>Rapporteur on environmental defenders</i>	<i><b>OPTION 4:</b></i> <i>Additional powers to the Chair of the Bureau</i>
	<p>If related case already before ACCC, the ACCC Chair may write the above-mentioned letter to the Party concerned.</p> <p>If no related case before the ACCC, the Chair of the Bureau may write the above-mentioned letter to the Party concerned.</p>	<p>ACCC’s rapid response powers for article 3(8) would be in addition to ACCC’s existing powers established by decision I/7.</p> <p>Additional ACCC member would be expected to take part in all ACCC’s caseload.</p>	<p>powers established by decision I/7.</p> <p>Additional ACCC member would not be expected to take part in the rest of ACCC’s caseload.</p>	<p>Rapporteur would be complementary to the ACCC.</p> <p>ACCC, when dealing with matters relating to article 3(8), may where appropriate seek the expert assistance of the Rapporteur under para. 25(d) of the annex to decision I/7.</p>	
<b>Cost</b>	No additional cost.	Costs listed in para. 23 of the present document plus cost of one additional Committee member to attend all ACCC meetings.	Costs listed in para. 23 of the present document plus cost of one additional Committee member to attend some parts of some ACCC meetings.	Costs listed in para. 23 of the present document.	Costs listed in para. 23 of the present document.
<b>Advantages</b>	<p>No additional cost from present situation (because no change).</p> <p>Chair of the ACCC and Chair of the Bureau may have political weight when asking the Party concerned to provide information.</p>	<p>ACCC’s established practice of taking all decisions jointly would not change.</p> <p>Existing workload of the Chair of the Bureau would slightly decrease as he/she would not need to write urgent letters regarding article 3(8).</p>	<p>Since rapid response measures would be issued by the additional ACCC member on his or her own, such measures may be issued more quickly than under option 2a (though no quicker than option 3).</p> <p>Existing workload of Chair of the Bureau would slightly decrease as he/she would not</p>	<p>Would not add to ACCC’s existing high workload.</p> <p>Rapporteur would be complementary to the ACCC, which might as appropriate request Rapporteur’s expert advice on matters relating to article 3(8).</p>	<p>Chair of the Bureau may have political weight when dealing with a Party accused of persecuting, penalizing or harassing persons seeking to exercise their rights under the Convention.</p> <p>No addition to workload of the ACCC.</p>

	<i>OPTION 1: Zero option (current situation)</i>	<i>OPTION 2a: Rapid response mechanism incorporated into the ACCC  ACCC continues to take all decisions <u>jointly</u></i>	<i>OPTION 2b: Rapid response mechanism incorporated into the ACCC  Additional “specialised” ACCC member is empowered to take rapid response measures on article 3(8) <u>by him/herself</u></i>	<i>OPTION 3: Rapporteur on environmental defenders</i>	<i>OPTION 4: Additional powers to the Chair of the Bureau</i>
			need to write urgent letters regarding article 3(8).	Existing workload of Chairs of the ACCC and Bureau would slightly decrease as they would not need to write urgent letters regarding article 3(8).  Quicker procedure than option 2a.  Costs limited to those set out in para. 23 (thus less costly than options 2a and 2b).	Costs limited to those set out in para. 23 (thus less costly than options 2a and 2b).
<b>Disadvantages</b>	No improvement on current situation.  Beyond sending an initial letter to the Party concerned, neither the Chair of the Bureau nor the ACCC Chair have a mandate to take further action to protect people at risk as a result of possible violations of article 3(8) of the Convention.	Highest cost of any option.  Since the ACCC would take any decision to issue a rapid response measure jointly, more time might be needed for urgent measures to be issued, undermining the requirement that the response be “rapid”.  All ACCC members’ workload would increase, which may delay the rest of the ACCC’s caseload.  If the article 3(8) allegations were subsequently submitted	Higher cost than options 3 and 4 (though less than option 2a).  The fact that the additional “specialized” ACCC member would issue measures on his or her own would undermine the ACCC’s uniform practice to date that all decisions are taken jointly.  Only one (duly appointed) representative of the Convention (the “specialised” ACCC member) would be involved, thus no joint responsibility (though the	Only one (duly appointed) representative of the Convention (the Rapporteur) would be involved, thus no joint responsibility (though Rapporteur of course would still report to MOP).  If the Chair of the Bureau, who is also the Chair of the MOP and the Chair of WGP, were the “first responder” on requests for urgent assistance, it would interfere with the	Only one (duly appointed) representative of the Convention (the Chair of the Bureau) would be involved, thus no joint responsibility (though of course the Chair of the Bureau would still report to MOP).

<i>OPTION 1: Zero option (current situation)</i>	<i>OPTION 2a: Rapid response mechanism incorporated into the ACCC</i>	<i>OPTION 2b: Rapid response mechanism incorporated into the ACCC</i>	<i>OPTION 3: Rapporteur on environmental defenders</i>	<i>OPTION 4: Additional powers to the Chair of the Bureau</i>
	<i>ACCC continues to take all decisions <u>jointly</u></i>	<i>Additional “specialised” ACCC member is empowered to take rapid response measures on article 3(8) by <u>him/herself</u></i>		
	as a communication, the Party concerned might claim that the ACCC, having issued a rapid response measure, had formed a preliminary view and was therefore not impartial to examine the communication. Thus, the ACCC’s existing procedure to examine communications would be undermined.	<p>“specialised” ACCC member would still report to ACCC/MOP).</p> <p>Since other ACCC members would not follow requests for a rapid response under article 3(8), questions might be raised as to whether the additional ACCC member could legitimately be described as “acting on behalf of the ACCC”.</p> <p>If the article 3(8) allegations were subsequently submitted as a communication, the additional ACCC member – elected specifically because of his or her article 3(8) expertise – would have a conflict of interest due to his or her past involvement in the case and thus would not be able to take part in the ACCC’s deliberations.</p>		<p>Convention’s existing hierarchy under which the MOP, overseen by its Chair, is the highest body.</p> <p>By taking urgent action against Parties accused of violating article 3(8), the Chair of the Bureau might be viewed by some Parties as no longer being fully neutral, which could jeopardize the successful fulfilment of the Chair’s primary role of chairing the MOP, Bureau and WGP.</p> <p>Existing workload and responsibilities of the Chair of the Bureau might mean that he or she would not have capacity to take on these additional urgent tasks, which in turn would weaken the Convention if such a procedure is seen as ineffective.</p>

*Abbreviations:* ACCC, Aarhus Convention Compliance Committee; MOP, Meeting of the Parties; WGP, Working Group of the Parties.