

Upholding Aarhus rights in a changing world



The task of safeguarding environmental defenders and achieving effective access to justice and meaningful public participation and transparency in international trade negotiations and in International Civil Aviation Organization (ICAO) processes was in the spotlight at the twenty-fourth meeting of the Working Group of the Parties to the Aarhus Convention. Due to restrictions associated with the coronavirus disease (COVID-19) pandemic, the meeting was held in two slots: (a) items of an informational nature in a virtual format session on 1 to 3 July 2020; and (b) items requiring decision-making in a hybrid format session on 29 and 30 October 2020. The meeting was chaired by Georgia. The event featured two thematic sessions, one on access to justice, led by Sweden, and the other on the promotion of the principles of the Convention in international forums, led by France. Furthermore, delegations considered several key documents in preparation for the upcoming seventh

session of the Convention's Meeting of the Parties, namely a proposal to establish a rapid response mechanism to protect environmental defenders, the future work programme and the strategic plan.

During the discussion, a number of positive trends and challenges were identified, along with actions that Parties can take to overcome those challenges. The impact of the COVID-19 pandemic on public participation procedures was highlighted through different statements at the meeting. The outcomes of the event will assist Parties and other interested States in their efforts to achieve a number of Sustainable Development Goals, in particular Goal 16 (peace, justice and strong institutions), with its targets 16.3 (rule of law and equal access to justice for all), 16.7 (responsive, inclusive, participatory and representative decision-making at all levels) and 16.10 (protection of fundamental freedoms), as well as Goal 17 (partnerships for the Goals).

The meeting brought together more than 190 participants representing Governments, international financial institutions, intergovernmental and non-governmental organizations (NGOs), Aarhus Centres and other stakeholders from numerous countries.

Safeguarding environmental defenders

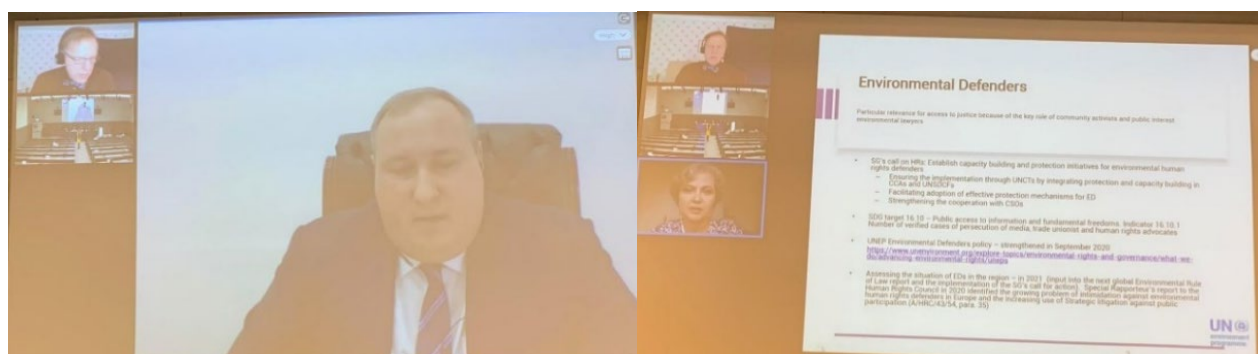


According to data from the NGO Front Line Defenders, land, environmental and indigenous peoples' rights remained the most dangerous sector of human rights defence. In 2019, Front Line Defenders recorded the killing of 304 human rights defenders, 40 per cent of whom were working on land rights, indigenous peoples' rights and environmental rights. Reports, decisions and other documents of United Nations organizations and mechanisms dealing with human rights and of other intergovernmental and non-governmental organizations and mechanisms highlight serious threats to environmental defenders, including in Parties to the Aarhus Convention. At the same time, the Aarhus Convention ensures that persons exercising their rights under the Convention shall not be penalized, persecuted or harassed in any way for their involvement. In response to these alarming warnings, a proposal on establishing a rapid response mechanism to protect environmental defenders was developed by the Convention's Bureau. Delegations of the European Union, Norway and the European ECO-Forum spoke on this topic. It was recognized that environmental defenders increasingly face safety issues as a result of their work and support was voiced for their protection. Such a mechanism could contribute to increased protection and understanding of the important role that environmental defenders play in promoting the Convention, human rights and the 2030 Agenda for Sustainable Development. It could also contribute to setting a high standard for the protection of the rights of environmental human rights defenders internationally. NGOs shared examples of persecution and harassment of

environmental defenders and voiced their support for the creation of the position of special rapporteur on environmental defenders within the framework of the rapid response mechanism. They also expressed the hope that the establishment of such a mechanism would prevent future cases of harassment and persecution.



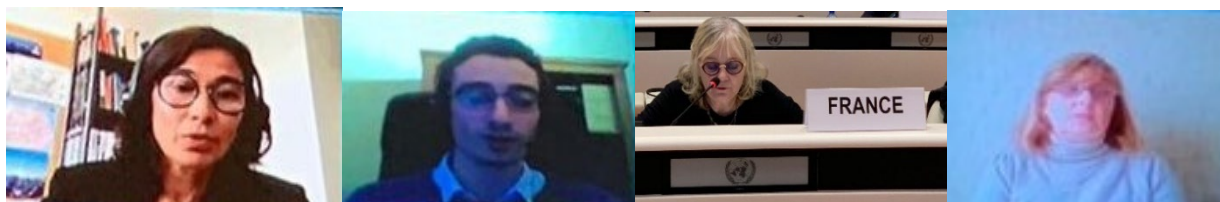
Strengthening access to justice



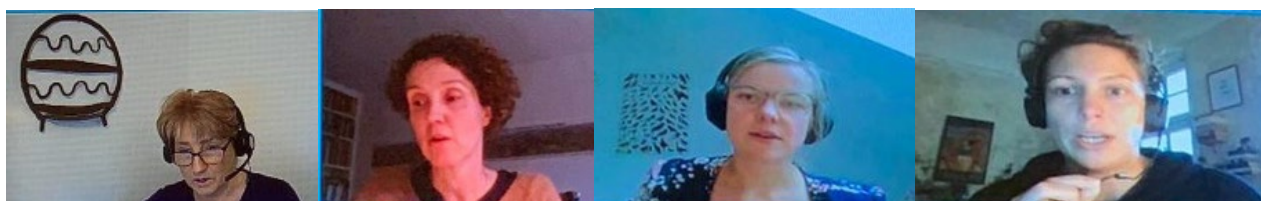
At the thematic session on access to justice, the Working Group considered the role of public interest litigation, which provided an opportunity to discuss achievements and barriers regarding the following key issues: (a) standing; (b) scope of review; (c) assistance mechanisms and costs; (d) timeliness; (e) remedies; and (f) protection against harassment and other forms of retaliation. Participants also looked at synergies with relevant activities under other international forums and cooperation between ministries of the environment and ministries of justice. Representatives of ministries of justice, judges, representatives of other judiciary and of environmental public interest lawyers presented their perspectives. Examples and case studies were shared by Lord Robert Carnwath and Mr. John Bonine, representatives of Latvia, Serbia, Switzerland, the United Nations Environment Programme (UNEP), the Supreme Court of Ukraine and the European ECO-Forum.

The Working Group welcomed several positive trends that were identified, namely: (a) increasing use of the human rights approach to the protection of a safe, clean, healthy and sustainable environment; (b) increasing admissibility of public interest litigation cases in such areas as protection of air quality, species and habitats, climate change, spatial planning and energy-related decision-making; (c) increasing review by courts and other review bodies of the substantive legality of the decisions challenged, acts and omissions; (d) measures undertaken to remove or reduce financial barriers; and (e) promoting awareness-raising and specialization of judiciary and other legal professionals in environmental matters. Participants also reiterated the importance of public interest litigation in environmental matters and noted a number of challenges identified, namely: (a) lack of access to justice in relation to several environmental subjects; (b) increased challenges in adhering to the rule of law in some countries; (c) insufficient guarantees of the independence of judiciary; (d) increased risks faced by environmental defenders; (e) adjustments made to the functioning of administrations and justice systems due to the adverse impact of the pandemic and its economic recovery phase; and (f) insufficient digitalization of review procedures that could meet the needs of members of the public seeking justice in environmental matters. For the way forward, Parties were called on to take measures with regard to: (a) standing; (b) the scope of review; (c) burden of proof; (d) financial and other related barriers; (e) timeliness in review procedures, especially with regard to information cases; (f) remedies, including injunctive relief; (g) preventing abuse of the justice system by strategic lawsuits against public participation and other forms of retaliation against environmental defenders; (h) compatibility between domestic legislative provisions related to access to information, public participation in decision-making and access to justice; (i) inclusive use of electronic information tools and e-justice initiatives for review procedures; and (j) awareness of the Convention among the public and legal professionals.

Promoting transparency and public participation in international processes



Parties and stakeholders showcased their experiences in promoting transparency and public participation in different circumstances. Representatives of France, Georgia, Kazakhstan, the International Coalition for Sustainable Aviation (ICSA), the Heinrich Böll Foundation and the European ECO-Forum shared good practices and challenges. Written updates about efforts to improve transparency and public participation under respective processes were submitted by the Asian Infrastructure Investment Bank, the European Bank for Reconstruction and Development, the European Investment Bank, the World Bank, the secretariat of the United Nations Framework Convention on Climate Change, UNEP and the United Nations Economic Commission for Europe (UNECE). The Working Group welcomed the progress made in promoting the principles of the Convention in international forums but recognized that more efforts should be made to further transparency and effective public participation in international environmental decision-making.



International trade negotiations

A representative of Georgia presented the country's successful experience with its national coordination mechanisms, which include consultations with different stakeholders for different trade agreements. There is a joint civil society forum under the Deep and Comprehensive Free Trade Area (DCFTA). Through the DCFTA website (www.dcfta.gov.ge), information is available in English and Georgian on implementation progress, practical and legal issues, ongoing reforms and legislative initiatives, and comments/recommendations/proposals can be submitted for consideration. Civil society involvement is ensured in the implementation of DCFTA and there is a commitment to information exchange on multilateral environmental agreements, transparent implementation and public communication/consultation.

Kazakhstan shared its recent progress on trade and the green economy, as well as clean technologies, green bonds, pollution reduction and the development of a new environmental regulation that will assist with the implementation of the Aarhus Convention by bringing together the Government, business, civil society and the public.

Key systemic challenges regarding the implementation of the Convention's principles in international trade negotiations were identified by the European ECO-Forum and included the lack of inclusion of environmental NGOs with regard to trade negotiations and their consequences (except for European Union agreements), the discussion of the Eurasian Economic Union trade agreements and the Belt and Road Initiative. They urged the promotion of the principles of transparency and effective public participation regarding environmental issues in bilateral trade agreements of all countries of the UNECE region and the development of programmes to increase the capacity of countries of Eastern Europe, the Caucasus and Central Asia regarding both the relationship between trade and sustainable development and the involvement of civil society organizations in these processes.



International Civil Aviation Organization processes

A representative of France gave a presentation on how the principles of the Conventions are implemented in various aviation policies. She described how there is political will to enhance public participation in these processes and gave

examples of how public participation is enshrined in law. For instance, she stated that environmental advisory commissions are consultative bodies composed of aeronautical professionals, the concerned communities, associations of residents and environmental protection associations, for all environmental issues relating to airports. France is proactively applying the principles of the Aarhus Convention in its national territory, thus providing all Parties with examples of good practice and participation guaranteed by law.

A representative of ICISA stated that there is limited public access to the ICAO decision-making procedure, resulting in a negative impact on decision-making and communication. ICAO does not make public statements following important decisions. ICISA is the only observer NGO allowed to attend ICAO meetings. The information that is made publicly available is for sale only and cannot be disseminated any further. The representative further reported that papers submitted by ICAO member States that are also Parties to the Aarhus Convention are not made public. There were recommendations for all Parties to: support making public all papers presented to ICAO; question the mode of working of ICAO through the Committee on Aviation Environmental Protection, the ICAO Council and the Assembly; and question the ICAO external communication strategy.



Geoengineering

A representative of the Heinrich Böll Foundation presented the topic of geoengineering and its potential impacts, which make the topic relevant to a wide range of international processes, including the United Nations Framework Convention on Climate Change, the United Nations Environment Assembly of UNEP, the Convention on Biological Diversity and the Aarhus Convention. The development of an International Organization for Standardization voluntary standard on the topic of high-risk geoengineering technologies is highly controversial and has been the subject of extremely controversial governance debates in multilateral forums. Its development is being driven by actors with commercial interests in its adoption. NGOs are concerned that such standards are being developed within an industry-led body when they relate to questions of values and policy regarding which public participation is key.

