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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-fifth meeting

Geneva, 3 May and 7 and 8 June 2021

Item 9 (e) of the provisional agenda

#### Preparations for the seventh session of the

**Meeting of the Parties: rapid response mechanism to  
deal with cases related to article 3 (8) of the Convention**

## **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-fourth meeting of the 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 (online), 1–3 July and Geneva (hybrid), 28–29 October 2020) regarding the consideration of the draft note on a rapid response mechanism to deal with cases related to article 3 (8) of the Aarhus Convention (ECE/MP.PP/WG.1/2020/13).<sup>a</sup> The draft document has been circulated to Parties and stakeholders for comments prior to its finalization for the twenty-fifth meeting of the Working Group. The Working Group of the Parties requested the Bureau to revise the draft note in the light of the comments received at and after the meeting<sup>b</sup> for its submission to the twenty-fifth meeting of the Working Group for consideration and approval and subsequent submission to the Meeting of the Parties for consideration and possible adoption. Based on the comments received, the present document contains a possible draft decision on the subject matter along with an Annex containing a mandate of the Rapporteur on environmental defenders.

The original version of the document was prepared by the Bureau pursuant to the outcomes of the twenty-third meeting of the Convention's Working Group of the Parties

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\* This document was scheduled for publication after the standard publication date owing to circumstances beyond the submitter's control.



(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>c</sup>

<sup>a</sup> See AC/WGP-24/Inf.21, list of decisions and major outcomes of the twenty-fourth meeting of the Working Group of the Parties, item 7 (a) (i). Available at, [https://unece.org/fileadmin/DAM/env/pp/wgp/WGP\\_24/WGP-24\\_List\\_of\\_outcomes\\_28-29\\_October\\_session\\_as\\_adopted\\_-\\_Copy.pdf](https://unece.org/fileadmin/DAM/env/pp/wgp/WGP_24/WGP-24_List_of_outcomes_28-29_October_session_as_adopted_-_Copy.pdf)

<sup>b</sup> Comments received are available at <https://unece.org/environmental-policy/events/twenty-fourth-meeting-working-group-parties-aarhus-convention-site>

<sup>c</sup> See ECE/MP.PP/WG.1/2019/2, paras. 25–35, available at <https://unece.org/environmental-policy/events/twenty-third-meeting-working-group-parties-aarhus-convention>.

## Introduction

1. Article 3 (8) of the Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters (Aarhus Convention) deals specifically with the protection of persons exercising their rights under the Convention. This article 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.”

2. Pursuant to relevant discussions at the twenty-third meeting of the Convention’s Working Group of the Parties to the 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<sup>1</sup>. 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 a draft note on a rapid response mechanism to deal with cases related to article 3 (8) of the Aarhus Convention (ECE/MP.PP/WG.1/2020/13) for the consideration of the Working Group of the Parties at its twenty-fourth meeting (Geneva (online), 1–3 July and Geneva (hybrid), 28 and 29 October 2020).<sup>2</sup> The present document was prepared by the Bureau pursuant to the outcomes of the twenty-fourth meeting of the Working Group of the Parties regarding consideration of the draft note. The Working Group of the Parties requested the Bureau to revise the document in the light of the comments received<sup>3</sup> for its submission to the twenty-fifth meeting of the Working Group for consideration and approval and subsequent submission to the Meeting of the Parties for consideration and possible adoption.

3. The comments received demonstrated a preference for option 3 on a Rapporteur on environmental defenders. The present document therefore contains a possible draft decision on the subject matter along with an Annex containing the proposed mandate of the Rapporteur on environmental defenders. The other options are not included in the present document.<sup>4</sup> For convenience, any substantive revisions to the original draft are shown in track-changes. The supporting background information is provided through several documents: the original draft note on a rapid response mechanism (ECE/MP.PP/WG.1/2020/13), the overview of existing mechanisms under other treaties and organisations that cover or may potentially cover rights of environmental defenders (AC/WGP-24/Inf.7); the explanatory note regarding comments by European Union and its member States (AC/WGP-24/Inf.15); the information note on the situation regarding environmental defenders in Parties to the Aarhus Convention from 2017 to date (AC/WGP-24/Inf.16); and the information note collating excerpts from the Parties’ 2017 National Implementation Reports regarding article 3 (8) of the Convention (AC/WGP-24/Inf.17).<sup>5</sup>

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<sup>1</sup> See document ACB-44, report of the Bureau on its forty-fourth meeting, para. 4. Available at [https://unece.org/fileadmin/DAM/env/pp/bureau/ACB-44\\_Report.pdf](https://unece.org/fileadmin/DAM/env/pp/bureau/ACB-44_Report.pdf).

<sup>2</sup> See document ACB-46, report of the Bureau on its forty-sixth meeting, para. 11. Available at [https://unece.org/fileadmin/DAM/env/pp/bureau/ACB\\_46\\_report.pdf](https://unece.org/fileadmin/DAM/env/pp/bureau/ACB_46_report.pdf).

<sup>3</sup> Comments received are available at <https://unece.org/environmental-policy/events/twenty-fourth-meeting-working-group-parties-aarhus-convention-site>.

<sup>4</sup> A detailed overview of options is provided in the original draft note on a rapid response mechanism to deal with cases related to article 3 (8) of the Convention (ECE/MP.PP/WG.1/2020/13)

<sup>5</sup> Available at <https://unece.org/environmental-policy/events/twenty-fourth-meeting-working-group-parties-aarhus-convention-site>

## **I. Draft decision on a rapid response mechanism to deal with cases related to article 3 (8) of the Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters**

*The Meeting of the Parties,*

*Recalling* article 3 (8) of the Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters (Aarhus Convention) which deals specifically with the protection of persons exercising their rights under the Convention,

*Recalling also* article 10 of the Convention, which, among other things, provides that the Parties shall keep under continuous review the implementation of the Convention on the basis of regular reporting by the Parties, and, with this purpose in mind, shall review the policies for and legal and methodological approaches to access to information, public participation in decision-making and access to justice in environmental matters, with a view to further improving them and to consider and undertake any additional action that may be required for the achievement of the purposes of the Convention,

*Recalling further* article 15 of the Convention through which the Meeting of the Parties shall establish, on a consensus basis, optional arrangements of a non-confrontational, non-judicial and consultative nature for reviewing compliance with the provisions of the Convention,

*Recognizing* the critical importance of establishing and maintaining a safe environment that enables members of the public to exercise their rights in conformity with the Convention,

*Acknowledging* 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>6</sup>

*Recalling* mechanisms and instruments dealing with such cases established under the Office of the United Nations High Commissioner for Human Rights, as well as 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, which also recognizes, among other things, the need to develop mechanisms for their protection,<sup>7</sup>

*Alarmed* by the serious situation faced by environmental defenders, including, but not limited to, threats, violence, intimidation, surveillance, detention and even killings, as reported by States Members of the United Nations, and by intergovernmental and non-governmental organizations and other stakeholders,

*Cognizant* of the existing challenges, such as fear of reporting such cases, impunity and difficulty in uncovering the identity of those behind the ordering and conducting of such acts,

*Recognizing* that an "environmental defender" is any person exercising his or her rights in conformity with the provisions of the Convention,

*Acknowledging* that the safety of environmental defenders is critical in achieving the entire 2030 Agenda for Sustainable Development, and in particular its Sustainable Development Goal 16,

1. *Welcomes* the initiatives by Parties, signatories, international organizations and other stakeholders to promote and strengthen the protection of environmental defenders

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<sup>6</sup> ECE/MP.PP/WG.1/2021/11, draft decision on the Strategic Plan for 2022–2030, annex, para. 10 (b).

<sup>7</sup> A/HRC/RES/40/11.

against penalization, persecution, harassment and other forms of retaliation for their involvement, and calls on Parties, signatories, international organizations and other stakeholders to further support such initiatives;

2. *Calls* on Parties to review their legal frameworks and practical arrangements in line with the Convention's obligations and to take all necessary measures to ensure that persons exercising their rights in conformity with the Convention's provisions are not penalized, persecuted or harassed in any way for their involvement;

3. *Also calls* on Parties to continue efforts to raise awareness regarding their obligations under article 3 (8) among, in particular, officials of public authorities, law enforcement agencies, State intelligence and security agencies, prosecutors, members of the judiciary, providers of private security services and developers;

4. *Decides* that all Parties shall ensure that penalization, persecution, harassment and other forms of retaliation against environmental defenders are promptly brought to an end and that Parties shall take effective measures to eliminate these actions, including through conducting thorough and impartial investigations into all suspected cases to identify and to bring to justice those responsible;

5. *Encourages* Parties, signatories, international organizations and other stakeholders to conduct training sessions and other capacity-building activities on article 3 (8) of the Convention for relevant target groups, and to prepare training materials to support the work;

6. *Underlines* the need to ensure greater protection for environmental defenders under the Convention through a mechanism that can deliver a rapid response;

7. *Establishes* a mechanism under the authority of the Meeting of the Parties in the form of an independent Rapporteur on environmental defenders to provide a rapid response to alleged violations of article 3 (8);

8. *Decides* that the mechanism shall function in line with the mandate set out in the annex to the present decision;

9. *Requests* the secretariat to organize a call for candidates and a nomination process for the election of the independent Rapporteur on environmental defenders;

10. *Decides* to hold an extraordinary session of the Meeting of the Parties in 202x in order to elect the independent Rapporteur on environmental defenders;

11. *Welcomes* the offer of [Party] to lead the work on environmental defenders;

12. *Calls* on Parties and other stakeholders to facilitate and assist the work of the Rapporteur by providing him/her with information and inviting him/her to undertake country visits;

13. *Appeals* to the Secretary-General and to the Executive Secretary of the United Nations Economic Commission for Europe to provide the Rapporteur with all necessary assistance for the successful fulfilment of his/her mandate;

14. *Encourages* Parties, United Nations agencies and other intergovernmental and non-governmental organizations, as well as the private sector, members of the public, and all other relevant stakeholders, to engage in a process of consultation, dialogue and cooperation with the Rapporteur to enable him/her to fulfil his/her mandate effectively;

15. *Encourages* the Rapporteur to cooperate with the relevant United Nations organizations and specialized agencies and the secretariats of relevant multilateral agreements with a view to promoting synergy and avoiding duplication;

16. *Recognizes* the importance of ensuring the provision of adequate funding to support the work on environmental defenders;

17. *Also recognizes* the ongoing need for extra-budgetary funding to support the work and calls upon Parties and interested organizations and other stakeholders to provide voluntary contributions to support the work;

18. *Requests* the Secretary-General to strengthen the secretariat's capacity to facilitate the implementation of the rapid response mechanism.

## Annex

### **Mandate of the Rapporteur on environmental defenders under the Aarhus Convention**

#### **A. Task of the Rapporteur**

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

- (a) Experiencing persecution, penalization or harassment, or
- (b) At imminent threat of persecution, penalization or harassment

for seeking to exercise their rights under the Aarhus Convention. Such penalization, persecution or harassment may arise from the acts or omissions of public or private entities or individuals.<sup>8</sup>

#### **B. Complaints to the Rapporteur**

2. A complaint may be submitted to the Rapporteur on environmental defenders by:

- (a) Any member of the public, either on their own behalf or on behalf of another member of the public;
- (b) A Party to the Convention;
- (c) The secretariat.

#### **C. Admissibility**

3. The Rapporteur will consider any complaint, unless he/she determines that the complaint is:

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

#### **D. Domestic remedies**

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

#### **E. Confidentiality**

5. Information submitted to the Rapporteur, including any information that may relate to the identity of the complainant, will be kept confidential unless he or she has explicitly waived the right to confidentiality. The Rapporteur may clarify the impact of maintaining confidentiality, if any, on the Rapporteur's ability to perform his or her functions.

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<sup>8</sup> ECE/MP.PP/C.1/2017/19, para. 70.

## **F. Information gathering**

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

- (a) Gather information from any publicly available source;
- (b) Gather information from other relevant international human rights bodies;
- (c) Send questions to the complainant;
- (d) With the consent of the complainant, send questions to the Party concerned;
- (e) 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 have perpetrated the penalization, persecution or harassment, the independent national human rights institution in the Party concerned);
- (f) With the consent of the complainant and the Party concerned, undertake a mission to gather information in person in the territory of that Party, and/or through video-conferencing;
- (g) With the consent of the complainant and any other State, undertake information gathering in the territory of that State.

## **G. Measures to protect environmental defenders**

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

- (a) Issue an immediate protection measure to the Party concerned (see para. 13 below);
- (b) Issue an ongoing protection measure to the Party concerned (see para. 14 below);
- (c) Issue public statements and press releases and distribute them actively via the Rapporteur's website, the media and social media;
- (d) Use diplomatic channels;
- (e) Request the Chair of the Bureau of the Meeting of the Parties to use diplomatic channels, including bringing the matter to the attention of the Head of State or Government and/or another senior official of the Party concerned;
- (f) 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. When addressing any body or entity of the Party concerned, the Rapporteur will inform the national focal point of the Aarhus Convention in parallel.

### **Protection measure**

9. A protection measure is 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.

10. A protection measure may be either an "immediate protection measure" or an "ongoing protection measure" (see paras. 13 and 14 below). For both immediate and ongoing protection measures, the precise content of the protection measure will in every case be



tailored to the particular situation, taking into account the nature of the alleged persecution, penalization and harassment which is the subject of the complaint.

11. The protection measure lists the particular actions the Party concerned is directed to take to ensure that the complainant and any other person(s) named in the protection measure are not subjected to further persecution, penalization and harassment. In some cases this may mean that a protection measure will list several actions that the Party concerned is directed to take in order to ensure that the person(s) named in the protection measure are not subjected to further persecution, penalization and harassment.

12. The Rapporteur may issue a protection measure to:

(a) Any body of the executive branch of the government of the Party concerned, especially the ministers responsible for environment, justice and foreign affairs; and

(b) Any other ministry or government entity of the Party concerned that the Rapporteur may consider appropriate.

#### *Immediate protection measure*

13. An immediate protection measure is 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 can be issued by the Rapporteur at any point after the complaint has been determined to be admissible. The Rapporteur may issue an immediate protection measure if he/she has reasonable grounds to believe that a person is very likely to face, or is presently facing, persecution, penalization, or harassment for exercising his/her rights under the Convention.

#### *Ongoing protection measure*

14. An ongoing protection measure is a protection measure issued to the Party concerned by the Rapporteur upon him or her concluding that the Party concerned has or may have violated article 3 (8) of the Convention. The ongoing protection measure will remain in force until it is lifted by the Rapporteur, the Meeting of the Parties or, by the Compliance Committee if a referral is made to it (see para. 15(b) below).

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

15. The purpose of the Rapporteur is to provide a "rapid response" aimed at preventing or stopping penalization, persecution or harassment arising in relation to alleged violations of article 3 (8) of the Convention. As such, the procedure overseen by the Rapporteur is complementary to the procedures of the Compliance Committee and its establishment does not in any way change the Committee's procedures for considering communications, submissions, secretariat referrals and requests in accordance with decision I/7.<sup>9</sup> Thus, a complaint may be made to the Rapporteur while a related case is pending before the Compliance Committee and vice versa. The Rapporteur shall interact with the Compliance Committee in the following ways:

(a) The Rapporteur will 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 may make a referral to the Compliance Committee. Upon receiving such a referral, the Committee will forward it to the Party concerned, which shall 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

<sup>9</sup> ECE/MP.PP/2/Add.8, annex.

review of the progress made by a Party concerned in implementing findings of non-compliance with article 3 (8), the Committee may seek the expert input of the Rapporteur.

## **I. The Rapporteur's reporting obligations**

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

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

(b) The Rapporteur shall report any referrals he or she makes to the Compliance Committee 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 decide to 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.

## **J. Awareness-raising**

17. In addition to his or her work dealing with requests for a rapid response, the Rapporteur shall perform a proactive role in raising awareness regarding Parties' obligations under article 3 (8) of the Convention. This includes awareness-raising at relevant meetings of Convention bodies and other international events, as well as through other awareness-raising means as appropriate, including capacity building, recommendations, toolkits, studies, notes, using traditional and social media, and in the course of the Rapporteur's in-country visits.

## **K. Election**

18. The Rapporteur shall be a national of the Parties and signatories to the Convention and a person of high moral character and recognized competence in the field of the human rights defenders and shall preferably have relevant legal experience.

19. Candidates meeting the requirements contained in the preceding paragraph can be nominated for election by Parties, signatories and non-governmental organizations falling within the scope of article 10 (5) of the Convention and promoting environmental protection, or can nominate themselves.

20. Unless the Meeting of the Parties, in a particular instance, decides otherwise, the procedure for the nomination of candidates shall be the following:

(a) Nominations shall be sent to the secretariat in at least one of the official languages of the Convention not later than 12 weeks before the opening of the session of the Meeting of the Parties during which the election is to take place;

(b) Each nomination shall be accompanied by the candidate's curriculum vitae not exceeding 600 words;

(c) The secretariat shall distribute the nominations and the curricula vitae in accordance with rule 10 of the Rules of Procedure.<sup>10</sup>

21. The Rapporteur shall be elected on the basis of nominations. The Meeting of the Parties shall give due consideration to all nominations. The Meeting of the Parties shall elect the candidate by consensus or, failing that, by secret ballot.

22. The Rapporteur shall serve until the end of the next ordinary session. He/she shall be eligible for re-election but may not serve three consecutive terms.

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<sup>10</sup> ECE/MP.PP/2/Add.2, annex.

23. If the Rapporteur can no longer perform his or her duties for any reason, the Bureau of the Meeting of the Parties shall appoint another candidate fulfilling the criteria to serve the remainder of the term. Nominations from the previous round that fulfil the criteria can be considered for appointment as Rapporteur to serve the remainder of the term.

24. The Rapporteur shall, before taking up his or her duties, make a solemn declaration at the session of the Meeting of the Parties that he or she will perform his or her functions impartially and conscientiously.

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