

Eco-Forum - Note on amendments to the Draft Decision on the RRM

Eco-Forum fully and without hesitation supports the option presented for the Rapid Response Mechanism (RRM) to allegations of possible violations of article 3.8 of the Convention, in order to protect people active in the defense of the environment.

It is indeed urgent to create such a Mechanism, as year after year, the number exposed of victims increases and the Aarhus Convention region is also concerned.

The amendments proposed only intend to contribute to the good understanding and to the effectiveness of this Mechanism.

- **§7 of the Draft Resolution & Title of the Annex (and all other concerned provisions):**

Mandate of the ~~Rapporteur~~ **Commissioner** on environmental defenders under the Aarhus Convention.

The weaknesses of the word "rapporteur".

The simple term "Rapporteur" does not really convey the mission of the Mechanism, which is to prevent possible violations of Article 3.8, not just to report them. The hope is that the report on activities that the Mechanism will submit to the next MOP8 will not have to be very long and will show that in the region of the Aarhus Convention there is a reversal of the trend that is unfortunately being observed everywhere today and that the cases dealt with by the RRM will not have led to violations of Article 3.8, or other fundamental rights related to environmental issues, thanks to an early and productive dialogue. It is also hoped that outreach activities will have facilitated the prevention of such violations. The Mechanism's reporting function is therefore not its *raison d'être*. Its preventive action is.

Moreover, within the Convention, the function of a rapporteur is to report on the outcomes of a workshop. Clearly, the RRM has nothing to do with communications between bodies of the Aarhus Convention and it is important not to leave any doubt about it or give the wrong impression to anyone who may need to deal with the Mechanism.

The term "Commissioner" proposed here is already well known in the European and Central Asian region, on issues that are quite similar. For example, the function of the Council of Europe's Commissioner for Human Rights is to make states aware of problems that may restrict the ability of people to exercise their rights, and to help them find solutions to improve the protection and implementation of human rights. Another well-known example in the region is the OSCE High Commissioner on National Minorities, who focuses its activities on the early detection and prevention of minority-related tensions, seeking to limit and resolve them as soon as possible. Although the present Mechanism is of a smaller and more modest scope, its nature is not far from these two other known functions. The title of "Commissioner" will therefore make it easier to understand its mandate.

Finally, it should be noted that within the United Nations, the individual mandates of special procedures of the Human Rights Council, which have characteristics in part similar to those of the Mechanism, are designated as "Special Rapporteur" or "Independent Expert",

- §7 of the Draft Resolution

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

Adding “the obligations under” clarifies that the “alleged violations” refer to the first sentence of Article 3.8, concerning the obligation of Parties to 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.” The second sentence does not refer to Parties’ obligations.

- §1 of the Annex

1. In connection with article 3 (8) of the Convention, the Commissioner ’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

in any way, 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.

The addition of "in any way" reflects the exact wording of Art 3(8). A difference of wording could lead to an interpretation that the Rapid Response Mechanism is more restrictive and would deal with acts directly impacting on an environmental defender, not encompassing acts against their families or friends or colleagues, aimed at impacting them. We are often more vulnerable in respect of those we care for, than for our own interests.

- §4 of the Annex

4. Given the urgent nature of the Commissioner ’s mandate, complainants are not required to have **used** or exhausted domestic remedies before making a complaint.

As implied by the first words of this provision, the purpose of the Mechanism is to prevent possible infringements or violations of Art 3.8 of the Convention by acting as early as possible. Therefore, not only the exhaustion of domestic remedies but also the simple use cannot be a prerequisite. Actually, in some situations the simple use can aggravate the defender’s exposure, thus the importance of the Mechanism. To be explicit on this point is very useful.

- §6 of the Annex

Agreement of the complainant

6. In order to gather the necessary information to properly carry out his/her functions, the Commissioner 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, **as the circumstances make it possible**, send questions to the Party concerned;
- (e) With the consent of the complainant, **as the circumstances make it possible**, 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, **as the circumstances make it possible**, 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, **as the circumstances make it possible**, and any other State, undertake information gathering in the territory of that State.

Actions taken under the Mechanism, in relation to a person who may be a victim of alleged violations of provision 3.8 of the Convention should be carried out with his or her consent. This seems very logical, but in reality, experience shows that in some circumstances it is difficult or impossible to reach such a person, or even that he/she is unable to be reached, sometimes precisely because of the measures taken against him/her. It would be totally contradictory to the concept of prevention to allow a case to be addressed only after the person has regained full freedom of action. It would be an easy way for a possible ill-intentioned authority to dispose of the person in this way, preventing any action being taken for him/her. Therefore, we propose to specify that prior consent remains the rule and the priority, as long as the situation and circumstances of this person does not prevent such consent to be given.

- §12 of the Annex

12. The Commissioner 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~~ **State** entity of the Party concerned that the Commissioner may consider appropriate.

The internal organization of Parties can vary significantly and decisions can follow very different channels. In some situations, administrative arrests (i.e. authorized by the courts) are one of the main ways of persecution and penalization of activists. It is essential for the Mechanism to be able to interact with the relevant and concerned bodies, to prevent violations, according to the specificities of the system in place.

- §15 of the Annex

15 (d) The Commissioner can seek the advice of the Compliance Committee.

The exchanges between the Mechanism and the Compliance Committee must be able to go both ways. The Mechanism may need also to seek advice from the Compliance Committee.

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