

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

Seventh session

Geneva, 18–20 October 2021

Item 7 (c) of the provisional agenda

Procedures and mechanisms facilitating the implementation of the Convention: rapid response mechanism to deal with cases related to article 3 (8) of the Convention

Draft decision VII/9 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

—**Prepared by the Bureau Adopted, as amended at the meeting**

Summary

The present document sets out a 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 (Aarhus Convention) prepared by the Bureau of the Meeting of the Parties to the Convention.

The draft was prepared by the Bureau pursuant to the outcomes of the twenty-fourth meeting of the Working Group of the Parties to the Convention (Geneva, 1–3 July and 28 and 29 October 2020) regarding the consideration of the matter (ECE/MP.PP/WG.1/2020/2). The draft document (ECE/MP.PP/WG.1/2020/13) has been circulated to Parties and stakeholders for comments prior to its finalization for the twenty-fifth meeting of the Working Group (Geneva, 3 May and 7 and 8 June 2021). 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 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.

At its twenty-fifth meeting the Working Group revised and approved, as amended at the meeting, the draft document (AC/WGP-25/CRP.7) and requested the secretariat to submit it to the Meeting of the Parties for consideration at its seventh session.

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",¹

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,²

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 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

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

² A/HRC/RES/40/11.

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 Special Rapporteur on environmental defenders to provide a rapid response to alleged violations of the obligations under 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 Special Rapporteur on environmental defenders;

10. *Decides* to hold an extraordinary session of the Meeting of the Parties in 2022~~*~~ in order to elect the independent Special Rapporteur on environmental defenders;

11. *Welcomes* the offer of Austria and Ireland ~~{Party}~~ to lead the work on environmental defenders;

12. *Calls* on Parties and other stakeholders to facilitate and assist the work of the Special 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 Special 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 Special Rapporteur to enable him/her to fulfil his/her mandate effectively;

15. *Encourages* the Special 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 Special Rapporteur on environmental defenders under the Aarhus Convention

A. Task of the Special Rapporteur

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

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.³

B. Complaints to the Special Rapporteur

2. A complaint may be submitted to the Special 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 Special 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 Special Rapporteur's mandate, complainants are not required to have exhausted domestic remedies before making a complaint.

E. Confidentiality

5. Information submitted to the Special 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 Special Rapporteur may clarify the impact

³ ECE/MP.PP/C.1/2017/19, para. 70.

of maintaining confidentiality, if any, on the Special Rapporteur's ability to perform his or her functions.

F. Information gathering

6. In order to gather the necessary information to properly carry out his/her functions, the Special 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 where circumstances permit, send questions to the Party concerned;
- (e) With the consent of the complainant where circumstances permit, 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 where circumstances permit, and the consent of 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 where circumstances permit, and the consent of 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 Special 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 Special 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 Special 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 Special 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 Special 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 public authority of the Party concerned within the definition of article 2 (2) of the Convention.

Immediate protection measure

13. An immediate protection measure is a protection measure issued to the Party concerned by the Special Rapporteur on an urgent basis before the completion of the Special Rapporteur’s investigation. Applying a precautionary approach, an immediate protection measure can be issued by the Special Rapporteur at any point after the complaint has been determined to be admissible. The Special 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 Special 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 Special 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 Special 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 Special 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/7.⁴ Thus, a complaint may be made to the Special Rapporteur while a related case is pending before the Compliance Committee and vice versa. The Special Rapporteur shall interact with the Compliance Committee in the following ways:

(a) The Special 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 Special 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

⁴ ECE/MP.PP/2/Add.8, annex.

Committee, upon adopting its findings, may decide to lift or uphold any protection measures issued by the Special 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 Special 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 with article 3 (8), the Committee may seek the expert input of the Special Rapporteur.

I. The Special Rapporteur's reporting obligations

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

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

(b) If the Special Rapporteur makes a referral to the Compliance Committee, then he/she shall report that fact to the Meeting of the Parties;

(c) Upon considering a report of the Special Rapporteur and any recommendations contained therein, the Meeting of the Parties may decide to uphold or lift any protection measures issued by the Special 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 Special 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 Special Rapporteur's in-country visits.

K. Election

18. The Special 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.⁵

21. The Special 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 Special 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.

23. If the Special 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 Special Rapporteur to serve the remainder of the term.

24. The Special 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.

⁵ ECE/MP.PP/2/Add.2, annex.