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Aarhus Convention 7th MOP

Francesca Carlsson, EEB, European ECO Forum

18 October 2021, Agenda item 2:

Good morning, dear madame Chair, dear Secretariat and dear Delegates and colleagues,

I think I can speak for everyone that it would have been nice to meet all together again in Georgia, although it is a real pleasure to be here this morning after two years of absence from the Palais. I thank and congratulate the Secretariat for being able to organise this 7th Meeting of the Parties in this hybrid format, while we still have not overcome the COVID-19 pandemic which makes full in-person meetings impracticable.

The pandemic has had widespread effects on how participation in decision-making is carried out, and indeed affected the way in which the Convention rights have been exercised. In some Parties, we have experienced severe restrictions, sometimes opportunistically, questioning basic foundations of the Rule of Law in these countries. We will hear more about this from colleagues of the European ECO Forum throughout this Meeting of the Parties. Maybe we don't need reminding, but we care to highlight the context of the pandemic in which we find ourselves while decisions related to this Convention are taken.

Other Parties have faced a near collapse of the Rule of Law, aside from the pandemic, and the European ECO Forum is relieved that the Compliance Committee has issued a supplementary report on compliance of Belarus and that there is an updated draft decision on Belarus. This will allow for a more targeted and in-depth discussion on the developments there, which have raised serious concerns and alarmed the NGO community and beyond.

We appreciate the efforts made to develop specific rules with the Draft operating procedures to facilitate remote participation, and we would remind all Parties of the general principle that "all efforts must be pursued to achieve a consensus" at this MOP. From the NGO side, we have done our best to prepare for this hybrid meeting collectively, and we are grateful for the opportunity to participate in person as well as remotely. We count on the assumption that anyone can ask for the floor to react and be engaged, and we trust that both in person and remote participants will be treated equally as far as possible.

Thank you very much for having given me the floor and for your attention.

European Environmental Bureau

● Rue des Deux Églises 14-16, 1000 Brussels, Belgium ● ☏ +32 228 91090 ● eeb@eeb.org ● www.eeb.org
International non-profit association ● Association internationale sans but lucratif (AISBL) ● EC register for interest representatives:
ID number: 06798511314-27 ● BCE ID number: 0415.814.848 ● RPM Tribunal de l'entreprise francophone de Bruxelles

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Aarhus Convention 7th MOP

Christian Schaible, EEB, European ECO Forum

19 October 2021, Agenda item 6(a): Access to information, including electronic information tools

The current keynote statement by European Eco Forum focuses on experience gained mostly in a European Union context.

We support the work started by the Task Force on, among others, broadening the scope of environmental information, removing existing barriers in access to information, reviewing the application of restrictions on access to environmental information, active and effective dissemination of environmental information using wide range of electronic information tools and linking together activities of this Task Force with other international forums dealing with access to environmental information.

We also welcomed the initiative of the Task Force to update the Recommendations on electronic information tools to provide public access to environmental information adopted by the MOP in Almaty, Kazakhstan in 2005. The 'updated recommendations on the more effective use of electronic information tools' prepared by the Taskforce, in particular aimed to promote interoperability and data exchange between different information systems and priority items of information and its accessibility –and the work approach motto "open by design and by default" are going in the right direction and are welcome. Thank you Ms Tapish and the Taskforce contributors for their efforts.

20 years after the adoption of the Aarhus Convention, and 18 years for the related PRTR Protocol, context and know-how has changed as to what is possible in terms of data flow handling (quantitatively and qualitatively) and useability of the interface relating to access to Information. We need to catch up with the digital age in terms of information access and let information and communication technologies work for the various purposes in terms of access to information, in particular on the following:

- timely and effective public participation in environmental matters
- improving accountability in decision makers to serve common interests first
- providing the platform for faster and more meaningful access to usable content, also beyond language barriers, instead of high amount of information in user-unfriendly format.
- support new innovations and emerging forms of data and processing – from sensors to satellite and to citizens who collect vast amounts of environmental information.

The EU's Green Deal and related policies contain various forward-looking objectives, e.g. climate-neutrality, a toxic-free environment and zero pollution, all connected to the global Sustainable Development Goals (SDGs). Industry committed to achieve carbon neutral and sustainable production. So where are then the tools that will enable all stakeholders to track progress and benchmark economic actors, including decision makers', against those objectives? Am not aware of publicly

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available environmental databases – including carbon-/ environmental footprint ones – that would enable all actors to share knowledge on this transition path globally, are you?

Compatibility between the pillars - particularly the public participation pillar and the information pillar cannot be sufficiently stressed, the end-user perspective and purpose of the information provided is therefore to be better taken into account prior to designing out the tools to serve the identified needs. Access to information is not just about the quantity of data available but its quality and useability for various purposes (e.g. benchmarking and compliance promotion, timely access to info before decisions are actually taken), this is where we expect significant progress to be made.

There are major shortcomings in the EU relating to reporting and information access on industrial activities / benchmarking and compliance promotion, including those activities mentioned in Annex I of the Aarhus Convention / PRTR Protocol some are as follows:

- Not possible to rate / benchmark ambition level in regulatory limits / permit conditions
- Hard to impossible to compare industry performance on specific aspects linked to environmental performance, data outdated, out of context
- Environmental footprint linked to products not available (the 'product passports' to improve access to products info)
- Information on radioactive waste still missing
- For some parties, (especially some eastern European countries) we appeal to increase the scope of environmental information, some countries are missing very basic env information, for example, air pollution in cities.
- reliability issues of information provided by authorities in some countries have been reported
- some public authorities also charge high fees for providing environmental information upon request.

There is a general lack of transparency and accountability in the decision-making steps, some to highlight are the following , and will be elaborated further by my colleague from ClientEarth:

1. European Commission expert groups, despite important roles as legislative consultancy bodies – "the devil is in the details" and details matter since these lay down the substantive requirements! and the

2. European Council meetings

Both hold deliberations in closed setting. There is no open access to the deliberations and generalized absence of accountability to the public due to lack of Key Performance Indicators as to outcome expectations on those decision-making bodies. Decisions should be compatible with the high level of protection and SDG goals set and information should enable a tracking of progress towards delivery of those goals/objectives. An important element of public participation in decision making is the possibility to know what governments positions actually are [on the environmental matter] as well as opportunity to effectively participate in the design of policy that will affect the environment / climate for several decades to come.

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Confidential business information is also used as a blanket excuse for refusing access to otherwise public information. Information shared for elaboration of regulatory standards and resource consumption aspects (energy, resource inputs) have an impact on the environment and public health and therefore there is an overriding interest to access to this environmental information

Citizen science open up for the parties of the convention a new source, and we might envisage a right to produce environmental information by citizens, which if it is produced at appropriate standards and rigor, need to be accepted by the authorities. This can fill the data gaps and support monitoring efforts.

Infrastructure / practical Access points:

- Electronic Info Tools should not replace “traditional A2I” tools, need to ensure new means for information access do not disenfranchise those who do not have good internet access
- Covid context: On requests, we saw EU institutions were particularly overloaded. The experience of backsliding within the Parties consequent on Covid pandemic on access rights and practices.

We need the digital age work towards improving the timely accessibility to information but also improve the usefulness of the information to better track progress, benchmark efforts and support delivery on the new Zero Pollution and public accountability objectives, so more forward looking instead of reporting on the status quo. The IT/Artificial Intelligence should provide us for the tools to that end.

Thank you, Madam Chair and wishing a good productive meeting

European Citizen Science Association

Aarhus Convention 7th MOP

Muki Haklay, ECSA, European ECO Forum

19 October 2021, Agenda item 6a:

The European Citizen Science Association welcomes the adoption of the updated recommendations on the effective use of electronic information tools. These tools – from sensors, satellites, to machine learning – have a great potential in creating and sharing of environmental information with the public.

We especially welcome the inclusion of citizen science as a useful tool for engaging and empowering citizens to take part in environmental decision making. Citizen science has a role in access to information, participation, and justice. The European Citizen Science would recognise the significant investment of many governments who are party to the convention over the last decade in developing this area and would be very happy to support the parties in developing capacity and skills in this area. We would be delighted to see citizen science flourishing in all the countries that are party to the convention.

Johannes Vogel, Ph.D.
Chair

European Citizen Science Association
c/o Museum für Naturkunde Invalidenstraße 43 10115 Berlin
+49 (0) 30 889 140 87 76
ecsa-admin@mfn.berlin
ecsa.citizen-science.net/

ClientEarth

7th Meeting of the Parties to the Aarhus Convention

Statement under Item 6(a): Access to information, including electronic information tools

Honourable chair, honourable delegates, members of the secretariat. The newly revised EU Aarhus Regulation shines fresh light on the some of the very serious barriers preventing access to environmental information at EU level, particularly the information that is needed to hold EU decision-makers to account. I will highlight three such barriers.

First, a great deal of the EU's non-legislative decisions are adopted through comitology. This is how the EU determines technical additions to and implementation of EU legislation. As part of this procedure, Member States representatives meet in committees, which are chaired by an EU Commission representative. EU decisions with widespread environmental impacts are taken this way, for example on chemicals regulation, pesticide approvals, vehicle emissions limits, maritime conservation measures, and many more.

Yet, there is very little information in the public domain on how these decisions are taken and requests for access to the relevant documents are summarily refused by the European Commission. Even the voting positions of the Member State representatives are withheld. The European Ombudsman has held that the lack of access to information on these processes amounts of maladministration and has issued recommendations to improve transparency. This has not yet led to any systematic change.

The second barrier relates to the fact that information is time sensitive. To be able to use it, information must be accessible at the right time. In our experience, particularly since the COVID 19 pandemic, the Commission is systematically failing to respond to confirmatory applications within the deadlines laid down in EU law and the Aarhus Convention. To compound the problem, with a few specific exceptions, little has been done by any of the institutions to improve the active dissemination of the environmental information involved in EU decision-making. The EU seems to be missing both the political willingness and the resources to implement Articles 4 and 5 of the Aarhus Convention.

The third barrier is the resistance of the EU institutions to changing their transparency practices in light of judgments of the Court of Justice against them. We now find ourselves in the position of having to relitigate the same issues, despite already having won before the court, for example on access to the Commission's impact assessments and legal opinions of the Council. This is hugely problematic for civil society with limited resources, and a serious rule of law issue.

Thank you Madam Chair.

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AARHUS CONVENTION 7th MOP

Anke Stock, Women Engage for a Common Future and European ECO Forum

Key Note on Public Participation in Decision-Making (Agenda Item 6 (b)) - 19 October 2021

Public participation is a cornerstone of the Aarhus Convention enshrined in the second pillar of the Convention. Public participation enhances the quality and the effective implementation of a decision since it has greater public support once it has been taken in a consultative and real participatory way. It also fosters accountability and transparency in environmental decision-making.

One of the most recent and most frightening challenges to this right under the Convention was probably the COVID-19 pandemic. Due to the **pandemic situation** Governments introduced measures – such as "state of emergency" which impacted, i.a. on procedural rights of public participation in decision-making. Thus, public hearings were cancelled, postponed or moved online. The use of virtual meeting rooms and digital tools for participation may have offered new chances for broader public participation, but at the same time they entail risks: not all members of the public are able to access such tools, in particular elderly, people living in rural areas, persons with low literacy skills, economically disadvantaged persons and not to forget the digital gender gap leading to less women being able to participate. Last week's World Wide Web Foundation report showed that globally men are still 20 % more likely to be online than women.

The CC made clear – at various occasions - that all alternative means of public participation introduced due to the pandemic situation need to guarantee the full enjoyment of Aarhus rights and this is something we want to underline here.

But there are **other obstacles** to effective public participation which are not a consequence of the pandemic situation – many have been identified and are named in the draft decision VII/2, I only want to highlight a few specific issues.

The national implementation reports reveal that still very few state parties have translated the **Maastricht Recommendations** into their respective national languages. This might provide an indication how frequently and thoroughly these recommendations are used at national level.

Parties to the Convention fail to adequately undertake public participation on **national or regional plans/programmes** (Art 7) related to the environment. This is often the case if there is no requirement to prepare a strategic environmental assessment. Adequate procedures for public participation on national plans and programmes are often not in place at national or EU level (examples are that only selected stakeholders are consulted or that the process on how to take the outcome into account is unclear). The EU is increasingly relying on this kind of plans/programmes as part of its environmental legislation developed in the framework of the European Green Deal, such as the National Energy and Climate Plans. We also receive reports from EU partners regarding the lack of public participation in the preparation of the Strategic Plans under the Common Agricultural Policy. So, this is significant and an urgent issue to address on the respective national levels and the EU level.

Within the last intersessional period the Task Force on PP in DM discussed examples of **emerging technologies**, such as climate geoengineering. An expert of the Heinrich-Böll-Stiftung illustrated that national approaches to public participation are not sufficient if new technologies that might impact the planet as a whole or where the areas of their potential impact have not yet been fully identified are introduced. There is a danger that research is more advanced than governance provisions regulating the appliance of these technologies. The TF concluded that it was best to apply the precautionary principle in cases of emerging technologies and that awareness raising amongst the public was needed since issues around these emerging technologies are not necessarily well known. It is key to have a proactive approach, in terms of sharing information and raising awareness to overcome barriers to public participation in these areas of concern. Here we see the need of urgent action.

The TF also exchanged on **the participation of marginalised groups and people in vulnerable situations** and realised that a broad range of neglected stakeholders is existing and that they all have specific requirements in order to be able to effectively participate. A due consideration of their varying needs and abilities to participate is important. Furthermore, a clarification of the definition of "marginalised groups and people in vulnerable situations" is pertinent. The difficulties hindering the effective public participation of these groups have been affecting a significant segment of society, and not only in the context of the COVID-19 pandemic, but more generally. Currently, we do not have sufficient guidance on how the participation of these groups can be best ensured in practice in line with the Convention, except for a reference in the Maastricht Recommendations where in para. 20 (e)(i) we can find a small enumeration of potentially affected persons. When aiming for equal and integrative public participation we need to explore this further and develop guidelines. In this context I also want to mention the importance to be able to take part in public participation without harassment, persecution or penalisation and I am happy that this MOP will have the opportunity to establish the Rapid Response Mechanism.

Last not least I want to mention the **right of future generations** in the context of public participation in decision-making. The right of present and future generations to live in a healthy environment is a particular aim of the Aarhus Convention. They will bear the brunt of our environmental decision-making and we all realise the urgency of this with the climate crisis. Therefore, we have to develop better ideas about how to include them as "stakeholders" in participation processes – at least their interests have to be taken into account, by e.g. mandatory youth participation.

Item 6(b) Public participation in decision-making

Intervention by Pegah Maysa Moulana, Youth and Environment Europe at the 7th Meeting of the Parties to the Aarhus Convention

Madam Chair, dear delegates, on behalf of Youth and Environment Europe we are delighted to be able to be here with you and we would like to take this space to stress the importance of including the youth dimension in promoting effective public participation in decision-making.

Today's youth tend to be associated with a negative connotation, specifically that they are organised in protests and strikes, please do not get me wrong, these are essential components of young people exercising their rights enshrined under International Human Right frameworks, but the role of youth is so much more than that.

Young people are instead solution providers, the early awoken generation who want to have an environment to inherit to future generations after them. But to this day, there are power hierarchies and imbalances which are particular to young people and limit youth participation in spaces of climate governance.

To bridge this gap, in order to implement effective youth participation, first, it must be acknowledged that young people play a fundamental role but are also vulnerable to the lack of policy protections. Second, young people must be provided a regular space to voice their views not only at national level but also at an international scale. Third, young people must be given the practical ability to influence decision making processes.

As a recommendation, we strongly encourage and call upon the Task Force on Public Participation in Decision [if its mandate is extended] to examine the capacity and opportunities for young people to be better mainstreamed throughout the Aarhus Convention.

Last but not least, one fundamental barrier to the young people's effective participation in decision making processes is the lack of access to sufficient funding and if there is one message I can leave you all with is the hope that parties to the Aarhus Convention not only continue but increase their support in providing financial assistance for NGOs.

Thank you.

AARHUS CONVENTION 7th MOP

Anke Stock, Women Engage for a Common Future and European ECO Forum

Statement on Agenda Item 6 (b) on gender equality in public participation (19.10.2021)

I had wanted to deliver this statement yesterday under Agenda Item 6(b) but as time was short it was skipped. But it also pertains to this agenda item since it is a matter of general concern and needs to be kept in mind when implementing the strategic plan.

At the last Task Force meeting on public participation in decision-making gender equality came up as an issue when we exchanged on challenges and opportunities of the participation of "marginalised groups and persons living in vulnerable situations". Do women and girls fall under this category? The Maastricht Recommendations suggest that this is the case for "women in some societies" (para 34).

But this is not reality – gender equality has not been reached so far in any society. The last EU report on the implementation of the SDGs states that the only SDG the EU is regressing is SDG 5 – the goal on gender equality.

Gender equality needs to be looked at via various dimensions - some are: work (reproductive/productive work), decision-making, allocation of resources and health and body. Data from the EU suggest with a gender pay gap of 16% and an even worse gender pension gap that women in productive work are still not on par with men. Also in decision-making women are not equally represented as men – only around 33% of members of parliaments are women and even less are in ministerial positions.

How can we assume that gender does not play a role in public participation in decision making within the Aarhus context? This is even more valid if we think of intersecting dimensions, such as race, age, disability and others. Persons who face multiple discriminations are even more unlikely to have equal decision-making powers. This has to be addressed since we know that gender blindness will exacerbate existing inequalities and this does impede the Convention's aim of equal participation.

Keynote statement by the European Eco Forum on Item 6(c) Access to Justice by Csaba Kiss

Tuesday, 19 October, 11:30 – 12:10 (5 min)

Thank you, Madam Chair!

Distinguished delegates, dear participants,

The current keynote statement by European Eco Forum focuses on access to justice in environmental matters mostly in a European Union context.

As a matter of fact, access to justice is only partly regulated by European Union law. A large part of it is still Member State competence in a number of cases. The reason for this is the lack of a general access to justice Directive.

The Court of Justice of the European Union plays a progressive role with its case law in issues where access to justice is harmonized, e.g. in Environmental Impact Assessment cases. Where access to justice is only partly harmonized or regulated in a manner that allows for multiple interpretations (e.g., the Environmental Liability Directive) these diverse interpretations by the Member States create uneven situations.

The Court also plays a progressive role in cases not falling under EU secondary legislation, e.g. Art. 9.3 cases but the overall impact of these judgments is questionable. These issues in many cases cannot wait until the Court can make a judgment, and the effect across the EU Member States is sadly variable.

The Commission's Communications published in this regard (the so-called Notice from 2017 and the new one from 2020) while a very useful and important reflection of the EU Court of Justice's case law, are simply not sufficient. Some even say, they are ineffective. They should also include the jurisprudence of the Compliance Committee of the Aarhus Convention. They cannot compensate for the lack of a binding piece of legislation which would have a harmonizing effect on implementation across the broad constituency of the EU's Member States.

And the picture is even darker if we look further. What we see are a number of signs of crisis, in the EU but also beyond. These all have serious implications on access to justice. The new challenges include

- the Covid-19 pandemic and that a number of countries including EU Member States thought it a good idea (or just waited for a good excuse) to restrict access rights under the cover of the public health related restrictions
- the growing number of SLAPP cases against environmental human rights defenders and fact-finding journalists against which the EU should clearly do something effectively
- the vexation of NGOs by a growing number of governments (again, including EU Member States) who otherwise favor restrictive policies
- and finally, the broader Rule of Law issues that seem to tear the Union apart and which – despite the need for a fast reaction by the Commission – are dragged along for years and feed those forces who work against the spirit of the Union (as we could see lately in Poland)

Neither can the awareness raising measures supported or implemented by the EU solve these problems. The EU has provided support to a joint civil society project called EARL for training the judiciary and other legal professionals on access to justice in environmental matters. The EU has also invested into updating its citizen information website, the eJustice portal, on environmental access rights. These are all positive signs but still do not go deep enough into the root of the problem which is: lack of proper implementation and lack of an access to justice directive.

Thank you, Madam Chair!

ClientEarth

7th Meeting of the Parties to the Aarhus Convention

Statement under Item 6(c): Access to Justice

Honourable chair, honourable delegates, members of the secretariat.

We would like to extend our thanks to Mr Darpö for his dedicated service to the Task Force on Access to Justice over the last 13 years. His tireless work has been central to the success of the Task Force and of pivotal importance to the development and promotion of access to justice rights in environmental matters. We sincerely hope that he will continue to be active as part of the Aarhus community.

Due to technical difficulties which have prevented Mr Darpö from delivering his report to the Meeting of the Parties live, we have just had sight of his written statement and would like to address an important point that he raises in relation to the Study undertaken by the Task Force on Access to Justice regarding dealing with review of requests for environmental information.

In his report, Mr Darpö notes that two ENGOs voiced concerns that the study exceeded the mandate of the Task Force and that the Secretariat's reaction to this.

We would like to reiterate our support for the Secretariat in this matter. As one of the NGOs that voiced its concerns, it is our position that it must be beyond doubt that the only Convention body competent to interpret the provisions of the Convention is the Compliance Committee and that the Task Force must refrain from doing so. It is also important to note that giving credence to NGO concerns when they are voiced in a clear and substantiated manner is good practice and should not be criticised by any of the Convention's bodies.

Now, as the Communicant in case C-32, we would also like to take this opportunity to welcome the steps taken by the EU to implement the findings of the compliance committee in that case. At this time last year, the European Commission published its proposal to revise the Aarhus Regulation. While removing some of the main barriers to compliance, the proposal introduced some significant new problems. We therefore commend, in particular, the European Parliament and the Council of the EU, who engaged in the process under considerable time pressures. Together they adopted the amendments needed to bring the EU into compliance with C-32.

It should also be noted that the European Parliament's first reading position was to bring the EU into compliance with the findings in case C-128 by deleting the exclusion for state aid decisions. This amendment was adopted by a large majority in the European Parliament and enjoyed wide cross-party support. This demonstrates very clearly that there is no legal impediment to the EU coming into compliance with these findings and there is wide political support for a solution. In these circumstances, the EU's position to postpone, adopted without the participation of the European Parliament, is all the more unacceptable.

With the entry into force of the revised Aarhus Regulation at the end of this month, we look to the EU institutions to interpret its provisions in a way that provides wide access to justice and in compliance with Article 9(4). We also note that two weeks ago the Court of Justice handed down only its second judgment on the merits of an internal review request under the existing Regulation. Unfortunately, the Court did not engage in some of the wider questions that still remain about the scope and standard of the Court's review of these decisions. Questions also remain about the available remedies. We will continue to monitor the evolution of the case law very carefully.

ClientEarth

Finally, turning to the Communication on Access to Justice published the same day as the proposal, we welcome the Commission's commitment to include access to justice provisions in sectoral environmental proposals. We do hope, however, that the experience with the EU Climate Law is not indicative of what is to come. The proposal did not include an access to justice provision and, when the Parliament introduced one in its first-reading position, the Council firmly refused to accept it. In the absence of a horizontal access to justice directive, this missed opportunity is frankly very concerning. We call on the Commission to make good on this commitment and include access to justice provisions where appropriate in all of its legislative proposals in environmental matters and on the Member States to stop preventing their adoption.

Thank you Madame Chair

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6 (d) GMOs

Speaker: Antje Lorch (Ecoropa) for EcoForum - remotely

Thank you chair for giving me the floor.

I speak on behalf of the ECO Forum and the NGO Ecoropa.

One more ratification by one of nine Parties[1] is needed to finally bring the *Almaty Amendment* into force. All of these Parties have ratified the *Cartagena Protocol on Biosafety*. They have **already** committed to access to information and public participation with regards to GMOs.
As civil society in **all** Aarhus countries: we appeal to all Parties **concerned** to take this long overdue step.

Meanwhile, let's not waste time: **Now** is the time to **implement** the *Almaty Amendment.* **Targeted support** and capacity building is needed for Parties and civil society organisations - especially in EECCA countries.

What we need is to build **legal** capacity, **risk assessment** capacity - and of course capacity to **implement effective participation** in decision making: ranging from good practices of **notification** and **provision of information** to effective mechanisms of public participation.

New genetic engineering **technologies** and their products pose new **challenges.**

So far, when we talked about GMOs, we thought of GM **crops**: crops grown on fields, harvested and processed. These GMOs are **not meant** to spread, and when they did, it was considered an unintended side-effect or accident.

But now we have **new** methods of genetic engineering: mostly based on CRISPR-Cas techniques, often called **synthetic biology** and **gene editing.**

Among these, the applications called "**gene-drives"** are of special concern. These methods create GMOs that are **meant** to spread in the wild. **Uncontrollable distribution** is their **explicit** goal – there is nothing accidental or unintended about that.

The risks of such gene drives are **inherently different** from those of GM crops.
Their effects on biodiversity are **multiple** and **complex**, and cannot be sufficiently assessed.
The risk of impacting populations, species and ecosystems is real, and the release of a gene-drive organism is **irreversible**.

Capacity building in **risk assessment** is therefore needed for both the public and state authorities.
And most importantly: the Precautionary Principle needs to be applied to **all** GMOs, **old** and **new.**

1 The nine Parties are: Armenia, Azerbaijan, Belarus, Kazakhstan, Kyrgyzstan, North Macedonia, Tajikistan, Turkmenistan and Ukraine.
https://unece.org/environment-policy/public-participation/aarhus-convention/gmo-amendment

Also, gene drives will **not** stop at borders.
This raises new questions for public participation: How will Parties ensure public participation in decisions to release gene drives in **neighbouring** countries?
What about the **sovereign** rights of countries that do **not** approve of such GMOs?

The Aarhus Convention is not the only treaty that deals with GMOs, and Parties have to apply the principles and provisions of these other treaties as well.

All Aarhus Parties are parties to the CBD - the *Convention on Biological Diversity;* and most have ratified its *Cartagena Protocol on Biosafety,* which has a special focus on **risk assessment** and the **Precautionary Approach**.
The *Subsidiary Protocol on Liability and Redress* also spells out the **"Polluter Pays"** principle.

Parties need to ensure the *Free Prior Informed Consent* of *Indigenous Peoples and Local Communities* in decisions on GMOs – as specified in the CBD and in the two *UN Declarations on the Rights of Indigenous Peoples* and *of Peasants.*[2]

Most Aarhus Parties are also Parties to the *Espoo Convention on Environmental Impact Assessment in a Transboundary Context*.
Transboundary considerations and **consultation requirements** are therefore necessary for decisions on gene-drives and other GMOs that might cross borders, and they need to be compatible with the Espoo provisions.

The good news:
Gene editing and gene drives **are being addressed** at many levels; for example in the *CBD* and its *Cartagena Protocol*, the EU, but also in the IUCN who just agreed on a 3-year consultation process on them.

So now is also the time to ensure that the Aarhus Principles – access to information, public participation in decision making and access to justice – are promoted and implemented with regard to GMOs in these international forums.

In conclusion:

We have to make sure that the *Almaty Amendment* comes into force and is **implemented well**;

We have to ensure that Aarhus Principles are applied to GMOs by **all Parties** and on **all levels**;

And we have to take up the challenge to apply these principles to novel GMOs – especially to gene-drive organisms - before they appear at our doorstep.

As members of civil society organisations, as the public, we are ready to do our very best.

Thank you for your attention.

2 Full titles: *Declaration on the Rights of Indigenous Peoples* (UNDRIP) and United Nations Declaration on the Rights of Peasants (UNDROP)

Meeting of the Parties to the Aarhus Convention (MoP-7)

Statement on behalf of Environment Links UK

Introduction

Environment Links UK (ELUK) collectively represents voluntary organisations with more than 8 million members across the UK. It comprises the combined memberships of Wildlife and Countryside Link (WCL), Scottish Environment Link (SEL), Wales Environment Link (WEL) and Northern Ireland Environment Link (NIEL). Each is a coalition of environmental voluntary organisations, united by common interest in the conservation and restoration of nature and the promotion of sustainable development across the terrestrial, freshwater and marine environments.

ELUK welcomes the opportunity to submit a Statement to MoP-7 on the UK's compliance with the Aarhus Convention. In the context of the current climate and ecological emergency the need for robust environmental rights has never been stronger – whether that is seeking information, effectively engaging in planning and decision-making processes or bringing legal cases to court. And yet, all jurisdictions in the UK are failing, as yet, to fully implement these rights and, in some cases, the trajectory is to weaken these rights. This Statement raises issues of particular concern at devolved national and UK level.

National Implementation Report (NIR)

ELUK members submitted detailed comments on the UK's draft NIR in Autumn 2020. Despite this engagement, the NIR is substantially out of date and fails to reflect ongoing public concerns about the UK's implementation of the Convention in relation to many issues (some of which are highlighted here). The NIR also fails to consistently specify the geographical extent of the legislation or other measures referred to - reference is made to existing measures, or to the UK Parliament passing new legislation, without specifying its extent, which might lead some to assume wrongly that it applies throughout the UK. Such precision will become more important as the Brexit transition period comes to an end and the likelihood of regulatory divergence between the devolved administrations and the UK Government grows. The NIR is also incomplete, failing to include communications made but not determined and imminent legislative changes such as the Environment Bill.

General provisions - Article 3(3)

We are unaware of any UK measures to inform and educate the public about their Convention rights. There is online guidance about environmental Judicial Reviews (JR) in England/Wales and Northern Ireland, but it does not provide the lay person with an understanding of the system and their Aarhus rights. Similarly, there is no UK-wide, government run or supported Aarhus Centre providing information and/or education about the Convention. The new Environmental Rights Centre for Scotland (ERCS) is a third-sector initiative aiming to increase public awareness and facilitate the realisation of environmental rights, including Aarhus rights (it receives limited funding from the Scottish Government). Two groups in Ireland are currently working (separately) to set up an ad hoc mobile version of an Aarhus centre covering Ireland and Northern Ireland.

While the UK provides for general environmental and citizenship education in the National Curriculum (as does Scotland in its Curriculum for Excellence), it neither covers rights under the Convention and there is no provision for people leaving school or in higher education. The Aarhus Implementation Guide makes clear that the education requirement is directed towards people at all levels. All nations

of the UK need to do more to fully implement the Convention, raise public awareness, support and facilitate its application, and educate and encourage its full use.

Access to Information

Transparency and accountability in public decision-making are essential components of a functioning democracy and the rights exercised under the Environmental Information Regulations (EIRs) 2004 are a mainstay for those engaged in environmental protection. The EIRs reflect the main requirements of the Convention but we highlight the following concerns:

- **Definition of public authorities** – the EIRs do not currently reflect the requirement in the Convention[2] that bodies performing public administrative functions (including privatised bodies having public functions in relation to the environment) are bound by their requirements.

- **Provision of environmental information** – public bodies routinely rely on (and seek to extend) the statutory time-period of 20 working days in the EIRs, which makes it challenging for claimants contemplating JR to obtain the information they need to comply with the Pre-Action Protocol. There is also late reliance on exemptions under the Regulations, with requests for an extension being made at the very end of the 20-day period. For example, Friends of the Earth England, Wales and Northern Ireland (FoE EWNI) has two extant complaints against Defra and the Health and Safety Executive (HSE) before the Information Commissioner (IC) concerning extensive delays in responding to information requests into the Government's decision in January 2021 to grant an emergency authorisation for the use of neonicotinoids for the treatment of sugar beet seeds. In June, the IC found that the HSE had breached the EIRs by not undertaking an internal review following FoE EWNI's request[3], requiring HSE to provide this by 4 August 2021. However, HSE did not do this until 16 August 2021; 3 months after the 40 working day deadline for a review expired.[4]

- **Publication of data on the environment** – Article 5(4) of the Convention requires contracting Parties to: "*… at regular intervals not exceeding three or four years, publish and disseminate a national report on the state of the environment*". While an English report was published in 2020 there were no equivalent reports in the devolved administrations - or a UK-wide report.

- **Monitoring and compliance** – while Government bodies publish quarterly and annual statistics and reports on the Government's obligations under the EIRs, there is no assessment of the extent to which the UK complies with Article 4 of the Convention or the provision of public services relating to the environment (at all levels) in accordance with Article 5(7).

Public Participation in Decision-Making

Planning reforms in England

The Aarhus Convention guarantees the public rights of participation in established democratic processes such as the town and country planning system and Parliamentary procedures, focusing on the procedures for Environmental Impact Assessment (EIA), Strategic Environmental Assessment

2 Or the 2015 ruling of the English Upper Tribunal (following a reference to the ECJ) that water companies in England & Wales are "public authorities" for the purposes of the EIRs: *Fish Legal v Information Commissioner* [2015] UKUT 0052 (AAC)

3 Available here. The ICO is continuing to investigate other aspects of FoE EWNI's complaint against the HSE and is also continuing to investigate the complaint against Defra

4 FoE EWNI had requested an internal review by HSE on 18 March 2021

(SEA) and the preparation of legislation and normative instruments in Articles 6, 7 and 8 respectively. We are concerned about the UK Government's intention to review EIA and SEA as part of a programme of wider planning reforms[5]. More generally, the proposed reforms to the planning system as set out in the White Paper '*Planning for the Future"* have significant repercussions for UK compliance. Despite recent suggestions that many of the original reform proposals will be scrapped (including the removal of public participation rights and local democracy and the zonal system) we remain concerned about the replacement of Sustainability Appraisals by a simplified process for assessing the environmental impact of plans and the removal of SEA in relation to Local Plans and certain Neighbourhood Plans. Changes to the Permitted Development Rights regime have also removed swathes of development from the public's right to object to site specific proposals.

Third Party Right of Appeal

We welcome the Findings of the Compliance Committee in Communication ACCC/C/2013/90 (Northern Ireland), which concludes that the UK has failed to ensure that review procedures under Article 9(2) of the Convention are fair because developers of proposed activities subject to Article 6 are entitled to a full merits review of the decision on the proposed activity - but that members of the public who seek to challenge the same decision are not. We note that this is the case not just in Northern Ireland but across the jurisdictions of the UK.

Pesticides

The EU regime for the approval of pesticides aims to ensure a high level of protection of both human and animal health and the environment, only authorising products that "*shall not have any unacceptable effect on the environment*". Post Brexit, decisions on pesticide authorisations are a matter for the UK Government and Devolved Administrations[6]. These decisions are taken by Defra and/or the Health & Safety Executive (HSE) (the framework for decision taking is not explained so the decision maker in any particular case is not clear to the public) based on expert assessment by the HSE with occasional advice from the UK Expert Committee on Pesticides (ECP), when requested[7].

We are concerned that public consultation is restricted to the approval of new pesticides, and not to derogations that allow the use of pesticides that have failed to meet the criteria for approval. We are also concerned that, to-date, the only available document prior to authorisation is the applicant's Draft Assessment Report (DAR), a summary dossier may follow, but as yet the format and content of such a dossier are unknown. The first DAR consultation (which was not effectively publicly announced, being circulated only to a pre-existing HSE mailing list) extended to 2,500 pages of highly technical material and posed 360 questions [8] . There has to-date been no consultation on any expert risk assessment based on the DAR (or additional evidence) or on the decision maker's proposed decision. This process is the antithesis of the Cabinet Office Consultation Principles, which require consultations to be clear and concise and questions to be necessary, easy to understand and easy to answer[9]. It also fails to comply with the requirements of Article 6(2)-(5) of the Convention concerning public participation in decision-making on specific activities[10]. Finally, despite its length, the DAR failed to fulfil any of the

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5 WCL briefing (February 2021) here

6 Regulation (EC) 1107/2009 as it has effect in Great Britain. EU pesticides legislation continues to apply in Northern Ireland under the terms of the NI Protocol

7 We are also concerned that the ECP does not conduct itself in a transparent way. For example, the latest advice to ministers on the neonicotinoid emergency authorisations for sugar beet was only made public through FoE EWNI's EIR requests (see comments above on access to information)

8 See here

9 See here

10 While not listed under Annex 1, pesticides decisions are covered by Article 6(1)(b) of the Aarhus Convention because "*they may have a significant effect on the environment*"

requirements of Article 6(6) of the Convention concerning a description of the site, significant effects on the environment, a description of the measures envisaged to prevent and/or reduce the effects, a non-technical summary, an outline of the main alternatives studied or the main reports and advice issued to the public authority. In bringing these regulatory processes into UK statute there does not appear to have been any attempt to ensure that the authorities reconsidered the application of Article 6 or made any appropriate changes to secure compliance with the Convention (in accordance with Article 6(10) of the Convention).

Consultation Principles

We are also concerned that Cabinet Office Consultation Principles[11] introduced in 2012 have been progressively weakened. An early revision limited consultation to targeted "stakeholders" and reduced consultation periods from a general practice of 12 weeks to between 2-12 weeks (with no consultation at all in some cases). Further revisions in 2016 and 2018 encouraged officials to consult primarily only where there is a legal duty to do so and removed safeguards regarding duration of consultation. Moreover, the Principles do not require compliance with Article 8 of the Convention, which concerns public participation during the preparation of laws and normative acts that may have a significant effect on the environment. As a general point, it should be noted that the requirements of Article 8 of the Convention have never been incorporated into UK law[12].

Access to Justice

In light of the UK's ongoing failure to comply with Article 9 requirements regarding the high costs of legal action, MoP-6 endorsed Decision VI/8k[13]:

> *"The Meeting of the Parties …*
> *2. Reaffirms its decision V/9n and requests the Party concerned to, as a matter of urgency, take the necessary legislative, regulatory, administrative and practical measures to:*
> *(a) Ensure that the allocation of costs in all court procedures subject to article 9 is fair and equitable and not prohibitively expensive;*
> *(b) Further consider the establishment of appropriate assistance mechanisms to remove or reduce financial barriers to access to justice;*
> *(c) Further review its rules regarding the time frame for the bringing of applications for judicial review in Northern Ireland to ensure that the legislative measures involved are fair and equitable and amount to a clear and transparent framework;*
> *(d) Establish a clear, transparent and consistent framework to implement article 9, paragraph 4, of the Convention;*
> *…*
> *6. Recommends that the Party concerned review its system for allocating costs in private nuisance proceedings within the scope of article 9, paragraph 3, of the Convention and undertake practical and legislative measures to overcome the problems identified in paragraphs 109 to 114 of the Committee's findings on communications ACCC/C/2013/85 and ACCC/C/2013/86 to ensure that such procedures, where there is no fully adequate alternative procedure, are not prohibitively expensive;"*

11 See here for England. Corresponding Scottish Principles with minor differences can be found here, pages 14-15. Nidirect has consultation guidelines here, which appear to be based on those recommended by the Northern Ireland Equality Commission here

12 See Communication ACCC/C/2017/150 submitted by FoE England, Wales and Northern Ireland.

13 See Communications 23, 27, 33, 77, 85 and 86, all of which can be accessed via this link

The Compliance Committee's Report to MoP-7 reaffirms decision VI/8k and recommends the UK urgently takes the necessary measures to ensure compliance. We welcome the call for the UK to submit a timed plan of action and provide detailed progress reports thereafter.

The Ministry of Justice in England failed to undertake a promised review of the Environmental Cost Protection Regime (ECPR) in 2020, despite finding resource and capacity to undertake a broader Independent Review of Administrative Law (including certain aspects of JR) during the same time period. Similarly, no reviews of the ECPR have been conducted in Scotland or Northern Ireland. Indeed, it is regrettable that the Compliance Committee has been unable to reach a conclusive view on some issues due to a lack of data. We urge jurisdictions of the UK to collect and publish data on environmental claims so that the Compliance Committee, and civil society, can gauge UK compliance. Further concerns are highlighted below.

England

Prospective only remedies

Clause 1 of the Judicial Review and Courts Bill gives judges the power to issue prospective only quashing orders[14], thus prohibiting future unlawful decisions without invalidating any prior action(s) based on that decision. In deciding whether to exercise these powers, the court must have regard to a non-exhaustive list of factors, including the interests or expectations of persons who have relied on the impugned act. This apparently broad discretion is contradicted elsewhere in the Bill, which states that where a prospective-only quashing order would *"offer adequate redress in relation to the relevant defect",* then it must exercise these new powers *"unless it sees good reason not to do so".* We are concerned that this proposal undermines the value of procedural environmental rights (which is what the Aarhus Convention is concerned with), offends the legal principle of fairness, preventing claimants from achieving meaningful redress as required by Article 13 of the European Convention on Human Rights (the right to an effective remedy) and Article 9(4) of the Aarhus Convention (which confirms a right to timely and effective remedies). It may also allow adverse and irreversible effects on the environment and human health arising from improperly made decisions to stand.

Other concerns persist in relation to environmental JR including:

- **Type and eligibility of claims covered** – private law environmental claims in all jurisdictions of the UK are still not covered by the ECPR. The application of costs caps to certain groups, such as unincorporated associations and individuals representing them, also remains unclear.

- **Variation of costs caps** – the default costs cap are rarely, if ever, varied downwards for a claimant and, as far as we are aware, they have never been varied upwards for a defendant. Default cap levels for a claimant of £5,000 (individuals) and £10,000 (other) can only be acceptable if variation downwards is not only theoretically available but can be predictably relied upon in practice. Meanwhile, defendants frequently apply to vary cost caps upwards for claimants. This creates uncertainty, and time-consuming satellite litigation; the very outcomes that the changes to the Civil Procedure Rules which introduced the default costs caps were purportedly seeking to avoid.

[14] Clause 1(1)(a) and clause 1(1)(b) of the Bill respectively – see here

- **Costs for procedures with multiple claimants** – there is no basis for the rule requiring separate default costs caps for each claimant, particularly where claimants make the same legal arguments on the same factual basis.

- **Costs protection on appeal** – the lack of any cost caps in CPR 52.19A and in the Rules and Practice Directions of the Supreme Court fails to ensure sufficient clarity or costs protection for claimants in appeals regarding Aarhus claims.

- **Cross-undertakings for damages** - the 2017 CPR amendments do not give any further clarity to applicants seeking interim injunctions as to: (a) whether a cross-undertaking will be required, and (b) if a cross-undertaking is required, what its level will be.

- **Costs orders against or in favour of interveners** – members of the public who join proceedings as interveners in support of the claimant should be entitled to benefit from the Convention's requirement that proceedings must not be prohibitively expensive. At present, only interveners who join proceedings in support of the defendant are protected in this way. This is a further example of where access to justice is skewed/unequal.

- **Costs for procedures with multiple defendants –** the Supreme Court has recently handed down its judgment in *CPRE Kent v Secretary of State for Communities and Local Government*[15], clarifying the costs position for unsuccessful claimants in JRs and statutory reviews involving multiple defendants. When permission is refused, a claimant may now be liable to pay the costs of more than one defendant and/or Interested Party (IP) to prepare and file an Acknowledgement of Service and summary grounds. It is not necessary to show 'exceptional' or 'special' circumstances apply, although costs must be reasonable and proportionate. The effect has been immediate, with an IP in one case immediately seeking costs of just under £24,000 for simply preparing both documents. We fear aggressive IPs will be encouraged to routinely request high costs, with consequential chilling effects for potential claimants.

Scotland

- **Own legal costs** - the Protected Expenses Order (PEO) regime is fundamentally flawed in failing to recognise that the actual costs incurred by an unsuccessful petitioner are not limited to the £5,000 default cap on adverse costs liability, but also include their own legal costs. Furthermore, in the event of a successful judicial review, a PEO limits the amount the petitioner can recover from the other side to only £30,000 (costs often amount to much higher than £30,000).

- **Level of cost caps** – the introduction of powers under the 2018 PEO rules to vary the default costs cap up or down "on cause shown" has introduced legal uncertainty. The default levels of the cap and the cross cap are arbitrary and fail to reflect a realistic assessment of the overall costs faced by an Aarhus petitioner.

- **Cost protection on appeal** – when a respondent appeals, the petitioner's total costs remain capped at £5,000 and the respondent's cross-cap at £30,000. When a petitioner appeals, they must re-apply for a new PEO and if successful, a new cap of £5,000 and cross-cap of £30,000 will apply. This is unfair and renders proceedings prohibitively expensive for petitioners.

[15] *CPRE Kent v Secretary of State for Communities and Local Government* [2021] UKSC36

- **Interveners** – third-party interveners may be found liable for other parties' costs; likewise, petitioners may be liable for costs of third party interveners. The quantum of liability is entirely at the courts discretion and may remain undetermined until the conclusion of proceedings.

- **Court fees** – the requirement to ensure that costs are not prohibitively expensive applies to the costs of the proceedings in their entirety. It should be clear that the £5,000 and £30,000 caps include liability for court fees and the caps should be set at an appropriate level given the high cost for Aarhus litigants. Court fees have more than doubled in recent years as a result of the Scottish Government's policy of full cost recovery, meaning that court fees can run into 5 figures for a complex JR. This policy should be reviewed to avoid the chilling effect and ensure Aarhus litigants who lose their case are not faced with prohibitive costs from court fees on top of their own solicitor and counsel fees.

- **Legal aid:** there are significant barriers to accessing legal aid in environmental matters. Civil legal aid is available only to 'persons' and therefore environmental NGOs and community groups are ineligible. Individuals applying for legal aid also face difficulties. The Civil Legal Aid (Scotland) Regulations 2002 limit any grant of legal aid where a person applying has a 'joint interest' in the matter with others. It is likely that in most environmental litigation there will be a number of individuals with similar concerns about the issue in dispute (e.g. in the case of a large development in a conservation area, or air pollution in a city).

There is an urgent need to review and overhaul the costs regime in its entirety. Consideration should be given to the overall costs faced by an Aarhus litigant, with options including introducing one-way cost shifting, exemption from court fees, and the reform of legal aid for Aarhus cases.

Northern Ireland

- Regulation 5 of The Costs Protection (Aarhus Convention) Regulations (Northern Ireland) 2013 gives the court the power to require applicants to provide a cross-undertaking in damages to obtain an interim or emergency injunction. The Court has the discretion not to require such an undertaking, but potential applicants cannot know until the end of the interim hearing how, and if, that will be exercised. This is a major deterrent to applicants.

- In common with other jurisdictions of the UK, the above Regulations do not address the difficulty unsuccessful applicants may have in being able to afford their own legal costs, which explains why a significant number of environmental applicants have felt obliged to bring applications to the High Court without the benefit of legal representation.

- The absence of Conditional Fee Arrangements and scant provision of legal aid for environmental cases in Northern Ireland make the burden of an applicant's own legal costs prohibitively expensive regardless of any cost capping arrangements.

Intensity of review (UK-wide)

Article 9(2) of the Convention requires Parties to provide a review of procedural and substantive legality for decisions, acts and omissions falling within the scope of Article 6 of the Convention. Article 9(3) of the Convention requires public access to administrative and judicial procedures to challenge acts and omissions which contravene national environmental law. Across all jurisdictions, 'conventional/strict' *Wednesbury* unreasonableness is the usual test for administrative action in the absence of illegality or procedural impropriety or where proportionality is explicitly required.

However, the threshold for meeting the test is very high and, in reality, a court will not intervene and set aside an administrative decision unless it is perverse. There is no difference in approach for environmental cases – the courts apply the 'strict *Wednesbury*' threshold throughout.

In 2017, ELUK members the RSPB, FoE EWNI and FoE Scotland submitted a Communication to the Compliance Committee arguing that the standard of review applied in UK courts fails to provide a review of procedural and substantive legality in accordance with Article 9(2) and (3) of the Convention. A substantive hearing took place before the Compliance Committee in November 2019, and their findings are awaited. However, in the interim we note the Committee found that the failure by the High Court of Northern Ireland to undertake its own assessment of whether particular legal tests relating to an Environmental Impact Assessment were adhered to, amounted to non-compliance with the Article 9(2) requirement to provide for a review of the substantive legality of those decisions[16]. Should the Committee subsequently find the UK in non-compliance with Article 9(2) at a wider level, we call upon the Governments of the UK to introduce measures to ensure the appropriate intensity of review in JR and statutory reviews.

September 2021

[16] See Communication ACCC/C/2013/90, paras 115-141

Association Justice and Environment, z.s.
European Network of Environmental Law Organisations

Statement by Justice and Environment on the behalf of the European ECO Forum as regards the reporting mechanism: Item 7(a) of the agenda

7th Meeting of the Parties to the Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters

Thank you Madam Chair for the floor.

Briefly, whilst this issue of reporting comes, together with compliance under item 7 of the agenda, we wish to underscore at the outset that the purpose of the reporting mechanism is different from that of compliance. Because sometimes Parties have shown some confusion in this regard.

The reporting mechanism establishes that the MOP must keep in continuous review the implementation of the Convention on the basis of regular reporting by the Parties, and at its 4th session, the MOP adopted decision IV/4 with the reporting format. Moreover the Compliance Committee set out specific guidance on the reporting requirements. We urge Parties to consult this and implement the recommendations therein.

This is different than the compliance mechanism which charges the Committee to consider specific allegations concerning noncompliance by the parties. Which is a more urgent matter.

We highlight secondly that we have concerns regarding the reporting mechanism and its functioning in practice.

As the Chair noted, some Parties do not submit their reports at all, few Parties submitted in time, and there were problems as regards depth and quality. Some questions are left completely unanswered, and in some cases word limits were massively exceeded. Moreover, some of the reports are rather formal, reporting mostly as to compliance with legislation but fail to mention well-known jurisprudence and other obstacles towards practical implementation.

But most crucially, we note that para. 9 of the draft decision on reporting "welcomes the fact that all Parties that submitted reports prepared their reports through a process involving consultations with various governmental agencies as well as civil society." Now it may be that some countries do indeed undertake proper consultations. However we highlight that in other countries consultations did not take place at all or were poor indeed, as touched upon by our colleague from the UK. This is not acceptable.

Moreover, I do indeed hear from multiple stakeholders, NGOs and Parties alike, that the reporting mechanism is becoming a bit formal and there may be ways to improve and the format and update any guidance and make it more helpful for Parties, civil society organizations, and other stakeholders.

In this regard, we highlight one significant gap in the format, which says nothing clear, concrete, or binding as regards reporting on the implementation of the article 1 of the Convention.

There is a reason why this specific text comprises article 1 of the Convention and it highlights that the Convention is not just an instrument concerning the environment but is also, in its very essence, a human rights treaty. But currently in the format for reporting there is only a section "On General comments on the Convention´s objective," with the instructions that:

> *If appropriate, indicate how the implementation of the Convention contributes to the protection of the right of every person of present and future generations to live in an environment adequate to his or her health and well-being.*

That is not enough.

We submit this issue alone is a point indicating that some further work needs to be done. The Parties need to take their reporting obligations seriously, and perhaps changes are needed to the format and guidance, so as to best facilitate their reporting and the effective involvement of and input thereon by civil society.

Statement on behalf of the European Eco Forum on agenda item 7 (b) Compliance mechanism of the 7th session of the Aarhus Convention MOP

Madam Chair,
Distinguished delegates,

On behalf of the European ECO Forum I would like to start with a tribute for the Compliance Committee's work and commitment. Much work has been done by the CC in the intersessional period, just to mention the fact the Committee considered and made findings with respect to the substance of 26 communications!

I want to particularly thank the outgoing members of CC (Mr. Alexander Kodjabashev, and Mr. Jonas Ebbesson), as well as to those staying on and to the Secretariat for work done. Eco Forum would like to thank you Madam Chair for speaking to the loss of Veit Koester, and join the Parties in commemorating his enormous contributions to the Aarhus Convention. I am fortunate enough to have known him personally. He was not just a great lawyer and Chair, but also a truly lovely man.

We are concerned, though, that length of case consideration remains a challenge: it takes more than a single intersessional period to consider a communication. This requires significant additional resources by communicants to simply follow the process properly.

Some parties remain too long under non-compliance and/or make little progress and, again, reviewing that situation takes additional resources by everyone involved.

In light of the above, we are confident that the committee should further benefit from the support of the parties, including to the secretariat's instrumental support.

We also note that non-discrimination and equal treatment principle must be observed at all stages of compliance review process: all parties should be treated equally.

It's time for MOP to be a champion of the rights of environmental defenders and take a strong position regarding flagrant case of non-compliance with article 3 (8) by Belarus.

Delivered by Andriy Andrusevych, Resource & Analysis Center "Society and Ukraine", Oct 19, 2021.

Item 7(b) Compliance mechanism

Intervention by Laura Hildt, Youth and Environment Europe at the 7th Meeting of the Parties to the Aarhus Convention

Thank you Chair for the floor. I speak on behalf of Youth and Environment Europe.

Most young Europeans have grown up with a sense of trust that the EU protects the rule of law, which provides a crucial safety net for youth in the context of the biodiversity and climate crisis. Environmental democracy rights enable young people to make our fears about our future - which are not just subjective fears but the established scientific consensus - heard, including in court. Respect for the rule of law is the fundamental pillar upon which the exercise of these rights rests and must include the full respect for the Aarhus Convention Compliance Mechanism.

By failing to endorse all the findings of the Compliance Committee, including on the case C128, the EU, and with that its Member States, are eroding that trust and are risking to establish an extremely problematic practice. Taking out a reference to C128 does not resolve the issue but merely ignores it and delays it for four more years - at a time when environmental issues have never been more urgent.

International law is not to pick and choose - the EU and its Member States doing so is utter hypocrisy and undermines the EU's credibility on all fronts. It is further sending the very worrying signal to young people across Europe that, in the midst of a continued failure to adequately address the climate and biodiversity crisis, the EU is continuing to cut into the fundamental rule of law safety net that enables us to be heard.

We are therefore very disappointed by the failure of the EU and its Member States to endorse all the findings of the Compliance Committee. We deeply deplore this approach and strongly urge all parties that this is not repeated.

Thank you.

Statement of OEKOBUERO – Alliance of the Austrian Environmental Movement on the behalf of the European ECO Forum regarding item 7(b): Draft decision VII/8b concerning compliance by Austria

7th Meeting of the Parties to the Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters

OEKOBUERO welcomes the work of the Aarhus Convention Compliance Committee, its report and draft decision VII/8b with regard to compliance by Austria.

OEKOBUERO is convinced that the compliance mechanism is one of the most effective tools to achieve the improved implementation of international treaties. We appreciate the work of the Compliance Committee, the secretariat, the delegations of the Parties to the Convention, the delegation of Austria in particular, and the efforts of civil society, which works towards the implementation of the Convention.

Almost ten years after the Compliance Committee's findings and recommendations regarding access to justice in Austria, it is disappointing that Austria still fails to comply with the Convention.

OEKOBUERO acknowledges the progress made in the last intersessional period with amendments in different sectoral laws. However, access to justice is still the exception, not the rule in Austria.

1. There are many legal fields like climate change, spatial planning or road construction without any regulations providing for access to justice below the EIA threshold.
2. In areas such as water, waste or nature conservation access to justice is restricted to a small number of procedures, whereas the public is blocked from many other procedures.
3. Finally, new barriers on access to justice were implemented recently, such as new restrictive registration requirements for environmental organizations and recent jurisprudence of the Highest Administrative Court blocking NGOs from substantive review.

We are aware of the political challenges implementing the Convention in Austria due to the resistance of most political parties and stakeholder groups.

However, Austria ratified the Aarhus Convention and has an obligation to the other Parties and Austrian citizens to comply with this treaty. We therefore call upon Austria to seriously strengthen its efforts towards implementing effective access to justice in Austria. And as civil society organizations, we need support of this compliance mechanism now, and in the future.

Statement by the liquidated NGO Ecohome, Belarus

Item 7(b) compliance Belarus

Marina Dubina

18.10.2021

The systematic non-compliance of Belarus with its obligations under the Aarhus Convention should not be underestimated.

Belarus is still in a state of non-compliance, this is not only about the absence of in implementation of the recommendations of the Meeting of the Parties to the Convention for more than 10 years, but also about dramatic deterioration of the situation. Harrasement of environmental activists and organizations causes extreme concern and significantly complicates the implementation of the Convention in the country. Since Party's compliance with paragraph 8 of Article 3 is fundamental for exercising other rights under the Convention.

In 2017, the Decision of the Meetings of the Parties VI/8c had already established the facts of persecution of environmental activists in Belarus and recommended to the country to take administrative, legislative and practical measures to stop this practice. However, Belarus has still not implemented these recommendations which are based on Communication 102 findings. The situation has significantly deteriorated since then. During the follow-up period the Compliance Committee revealed new cases of persecution. One of those is the liquidation of Ecohome, the oldest NGO that has made a significant contribution to the implementation of the Aarhus Convention in Belarus.

Considering the systematic and frequent non-compliance with the obligations under the Convention and the serious degree of violations, we consider it necessary to adopt the measures, proposed by the Compliance Committee in option A of paragraph 63 of the Supplementary Report. Specifically, we guess it's time to apply temporary deprivation of Belarus of its special rights and privileges under paragraph 37g of Decision I/7 by this Meeting of Parties

We ask you to support this measure for the following reasons:
- Belarus had enough time to implement the recommendations of the Committee and improve the situation, but the country didn't do it. Belarus also will have enough time to 1 December of 2021, to take practical steps to prevent the entry into force of this sanction.
- If this sensitive for Belarus measure is not taken, it will send a clear signal to the country that the practice of harassment can be continued with impunity.

The adoption of this measure is also important to avoid a precedent that would show other countries that it is possible to violate the fundamental provisions of the Convention and, at the same time to enjoy all the rights and privileges under it, on a par with those who spend much time and resources to eliminate and prevent violations.

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Aarhus Convention 7th MOP

Jeremy Wates, EEB, European ECO Forum

Agenda item 7(b) Belarus non compliance:

On behalf of the European ECO Forum, I would like to express our support for the statements made by our colleague from Ecohome.

The violation of rights under the Aarhus Convention takes place within a broader context of erosion of rule of law, human rights, and democracy in Belarus. But the fact that many others besides those exercising their rights under the Convention are penalised, persecuted or harassed does not make it any less a violation of the Convention when those who are exercising their rights under it are penalised, persecuted or harassed.

We agree with the Committee (para 61) supplementary report that [quote] 'the silencing by the Party concerned of a communicant actively engaged in the Committee's follow-up procedure is a particularly flagrant case of non-compliance with article 3 (8)' and for that reason, we believe that a strong response from the MOP is needed. In fact, a failure to come with a swift and robust response will reflect very poorly on the MoP and would be damaging to the Convention.

The detail set out in paras 49 to 52 of the ACCC supplementary report shows clearly that there was an 'egregious lack of due process', but that even if due process had been followed, the action taken by the Belarussian authorities, namely the liquidation of Ecohome, was out of all proportion to the supposed failings.

We understand why, from a legal perspective, the ACCC report focuses on the liquidation of Ecohome which is just one of the NGOs which was liquidated. It is unprecedented that a communicant to a case who is actively engaging with the compliance mechanism should have been liquidated by the authorities of a Party about which it made a communication alleging non-compliance.

But we should not forget that hundreds of other NGOs have been similarly targeted – at least 245 are known to have been liquidated as of late September. And while liquidation is a formal procedure against an organisation, we should also not forget the harassment of the individuals working for those organisations, who have also faced intimidation, having their homes searched and facing criminal charges.

We welcome the updated draft decision prepared by the Bureau. Our clear preference between the two options is for the first (option A), for the reasons that have been well-articulated by the EU and others. The facts speak for themselves. It is also worth emphasising that this is not a new case - it is the direct result of the absence of any action on Communication C-102. The Party has been given an opportunity to refute them that is similar to the opportunity provided to all Parties when reacting to the Committee's draft reports to the MoP on the follow-up to MoP decisions.

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Aarhus Convention 7th MOP

Francesca Carlsson, EEB, European ECO Forum

21 October 2021, Agenda item 7(b): Regarding decision VII/8c concerning compliance by Belarus with its obligations under the Convention

The European ECO Forum regrets that we have reached a situation where no consensus could be found. As was mentioned in our opening statement on Monday, "all efforts must be pursued to achieve a consensus" as per the operating procedures to facilitate remote participation at this Meeting of the Parties. All decisions under the Convention have so far always been taken by consensus and we have always been in favour of this. However, given the gravity of the facts before us and the egregious behaviour of one of the Parties, a compromise on the revised Bureau proposal, just for the sake of reaching consensus, would, not only have been a slap in the face to the Belarussian NGOs and environmental defenders, in particular Ecohome, but been a slap in the face to all those protected under the Aarhus Convention and a betrayal by all Parties. Our preference for Parties to vote on this matter rather than to compromise and reach consensus is a measure of how extreme the situation is, as only a vote at this stage was able to preserve the values and fundamentals of the Aarhus Convention.

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● Rue des Deux Églises 14-16, 1000 Brussels, Belgium ● ☏ +32 228 91090 ● eeb@eeb.org ● www.eeb.org
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Statement of OEKOBUERO – Alliance of the Austrian Environmental Movement on the behalf of the European ECO Forum regarding item 7(b): Draft decision VII/8e concerning compliance by Czechia

7th Meeting of the Parties to the Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters

Madam Chair, distinguished delegates, we welcome the Committee´s report concerning the implementation of decision VI/8e in the last intersessional period as well as the Committee´s efforts and those of the secretariat during that period, which we consider were clear capacity building measures, so as to help Czechia implement paragraphs 3 and 6 of decision VI/8e. We note in this regard that the Committee in paras. 52, 53, 54 of its report states that it stands ready to answer and questions, provide further detailed written advice or undertake a mission, as Mr. Ebbesson mentioned today and also at the start of this MOP.

We regret however, that despite these facilitative outreach efforts that not only has Czechia failed to meet the requirements of that decision, but also has failed to make any progress towards this implementation. It has also notably failed to engage with the Committee.

Thus we also welcome the conditional caution as expressed in paragraph 3 of decision VII/8e and indeed hope that this will serve as a wake-up call to the Party concerned that action is needed. Now.

We also welcome the findings on our case ACCC/2016/143, which are also part of draft decision VII/8e. We thank the Compliance Committee and the secretariat as regards the excellent work and analysis that supported these findings and hope that this part of decision VI/8e will also be addressed and implemented as a matter of urgency by the Party concerned.

Statement of OEKOBUERO – Alliance of the Austrian Environmental Movement on the behalf of the European ECO Forum regarding item 7(b): Draft decision VII/8f concerning compliance by the European Union

7th Meeting of the Parties to the Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters

I represent the communicants, OEKOBUERO and GLOBAL 2000 in case ACCC/C/2015/128 (EU) (C128). We thank the Committee and the secretariat for their work on this case, as well as the helpful interventions of observers.

We also truly appreciate and welcome the expressions of concern and the comments voiced by the Chair, as well as those raised by Switzerland and Norway.

The EU is a Party to the Convention. Full stop. Under Article 27 of the Vienna Convention on the Law of Treaties (VCLT), a Party may not invoke the provisions of its internal law as justification for its failure to perform a treaty.

At any event, as my colleagues have pointed out, the Committee has already considered the structure and nature of the European Union and the role of national courts within that system. This examination already evaluated comprehensively the different competencies between the EU and its member States, notably in ACCC/C/2008/32 (C32) and ACCC/C/2014/123, for example.

Thus it will come as no surprise that we oppose the amendments to draft decision VII/8f unequivocally and condemn in the strongest terms what is essentially a repeat of the appalling behavior of the EU at Budva with respect to the Committee´s earlier findings on C32.

Specifically, we oppose the proposed amendment in paragraph 11 that draft decision VII/8f merely "acknowledges the concerns and raised in the findings" with respect to C128, as well as the removal of all reference to the Committee´s recommendations.

Moreover, we oppose the proposed amendment to paragraph 12 of decision VII/8f, according to which the Parties to the Convention are to "take note" of the EU´s stated intention to analyze the implications of the findings and assess the options available towards implementation.

Such a statement does not belong in a MOP decision and we strongly oppose this amendment as well.

Nonetheless we acknowledge the proposed steps and think indeed that would be an excellent opportunity for engagement with the communicants and observers in the course of a MOP decision implementation review or, should it come to that, a MOP request. There is time in the intersessional period for the EU to come into compliance, and we would welcome engagement with the EU in order to realize this.

That being said, we find the failure to endorse the findings on C128 and the postponement on the decision thereon unacceptable and, ultimately, totally unnecessary. It moreover sets a terrible precedent for the special treatment by a single party. A precedent we cannot and will not accept, and doubt very much other Parties will either.

ClientEarth

7th Meeting of the Parties to the Aarhus Convention

Statements under Item 7(b): Compliance Mechanism

On compliance by the European Union in reaction to the discussion on Draft Decision VII/8f

Honourable Chair, honourable delegates, members of the secretariat,

Thank you for giving me the floor. As the communicant of case ACCC/C/2008/32, we welcome the actions taken by the EU to implement the recommendations on these findings by the ACCC. In reaction to the statement of the EU just now, I would also like to note that the possibility of the preliminary reference mechanism, as the ACCC has clearly emphasised, dos not in itself sufficient to ensure access to justice in environmental matters. It is disappointing to see that the EU continues to emphasis the central role of this mechanism again today. We would have hoped that the EU would by now acknowledge the "central role" of the internal review mechanism, instead of insisting that its judicial review mechanism is solid by itself.

However, we are also dealing with a much more pressing issue at this Meeting related to the findings on ACCC/C/2015/128, in which we have participated as an observer. It is disappointing that the EU continues to seek special treatment under the Convention by seeking to postpone the decision on these findings. Many of us in this room today have been in Budva four years ago, at the last Meeting of the Parties. We remember the difficulties that resulted from the EU's position at that meeting. For this reason, the decision to postpone the compliance decision back then was meant to be exceptional, as the honourable Chair has also just reminded us. In light of this, it simply it is difficult to believe the EU again insists on the postponement of the Decision and goas as far as to propose to only "acknowledge the concerns expressed by the ACCC."

It is unacceptable that the EU continues to undermine the Aarhus Convention compliance mechanism in this way. It is a common situation for many Parties to the Convention that they need to assess first how to best implement the findings of the Aarhus Convention Compliance Committee. However, this does not mean that these Parties do not endorse the findings directed at them. The EU must realise that the equal treatment of all Parties lays at the heart of the success of the compliance mechanism.

We therefore urge the EU, including all of its individual Member States, to reconsider its position and to endorse the findings on case C128.

On ACCC procedure & on compliance by Bulgaria in reaction to Draft Decision VII/8d

Honourable Chair, honourable delegates, members of the secretariat,

First, I would first like to join in thanking Jonas Ebbeson, as well as Alexander Kodjabashev, for their invaluable and tireless work for the Compliance Committee.

Second, I would like to make point on the procedure before the Committee. The figures just presented by the Chair show that there is an increasing amount of cases and the resulting backlog. It is therefore crucial that the ACCC can use the full intersessional period to adopt findings and that there is no extension of the period in which, prior to the MOP, the ACCC cannot adopt findings. Such a rule would increase this backlog even more; another 4 years would be added to the resolution of many communications.

ClientEarth

Third, EcoForum is very concerned about the continued non-compliance of Bulgaria with the Convention and, specifically the continued stance of Bulgaria that no changes are needed in order to bring about compliance.

The ACCC has been clear that it is not sufficient to challenge SEA Decisions to fulfil the access to justice requirements and that the public participation possibilities currently provided under Bulgarian law are insufficient.

Reacting to what Bulgaria said yesterday at the meeting, it should be emphasized that he Aarhus Convention applies to all institutions of the Parties to the Convention with equal force and this includes the judiciary. Equally, the internal legal order of a Party may not be used as an excuse for non-compliance.

We also noted with concern that Bulgaria did not attend the hearing on communication ACCC/C/2016/144 in November 2019, despite repeated reminders of the secretariat.

We therefore support he continued imposition of a caution on Bulgaria and urge Bulgaria to cooperate with the Aarhus Convention Compliance Committee in the upcoming intersessional period, seize its resistance to the clear findings of the Committee and bring about the necessary changes of legislative framework.

ClientEarth is an environmental law charity, a company limited by guarantee, registered in England and Wales, company number 02863827, registered charity number 1053988, registered office 10 Queen Street Place, London EC4R 1BE, a registered international non-profit organisation in Belgium, ClientEarth AISBL, enterprise number 0714.925.038, a registered company in Germany, ClientEarth gGmbH, HRB 202487 B, a registered non-profit organisation in Luxembourg, ClientEarth ASBL, registered number F11366, a registered foundation in Poland, Fundacja ClientEarth Poland, KRS 0000364218, NIP 701025 4208, a registered 501(c)(3) organisation in the US, ClientEarth US, EIN 81-0722756, a registered subsidiary in China, ClientEarth Beijing Representative Office, Registration No. G1110000MA0095H836. ClientEarth is registered on the EU Transparency register number: 96645517357-19. Our goal is to use the power of the law to develop legal strategies and tools to address environmental issues.

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Aarhus Convention 7th MOP

Jeremy Wates, EEB, European ECO Forum

Agenda item 7(b) European Union compliance

On behalf of the European ECO Forum, I wish to express our dismay at the proposal from the EU that the MoP should only acknowledge the finding of non-compliance in the C128 case.

I had hoped at this very moment to be taking the floor to welcome the steps that were taken to address the C32 findings. Long process but the resulting amendment of the EU's Aarhus Regulation has done so However, any brief hope for a moment of celebration was snuffed out when the EU decided to oppose the MoP endorsement of the ACCC (Aarhus Convention Compliance Committee) finding of non-compliance in the C/128 case concerning Access to Justice in relation to EU level decisions on state aid.

This proposal is reflected in the EU's amendment to para 11 of the Draft Decision, where it proposes to replace 'Endorses the findings' with 'Acknowledges the concerns raised in the findings'.

Let us reflect for a moment on what this means:

With the sole exception of the C-32 findings that were presented at MOP-6 in Budva, every finding of non-compliance since the Compliance Committee was established in 2002 has been endorsed by the Meeting of the Parties by consensus and therefore with the support of the EU and its Member States. There is a good reason why this should be so: the MoP established the Compliance Committee, by consensus, for the express purpose of reviewing compliance by Parties with their obligations under the Convention. The MoP has elected the members of the Compliance Committee, being 'persons of high moral character and recognised competence in the fields to which the Convention relates', again always by consensus, including with the active support of the EU.

What distinguishes it from any individual Party or any configurations of Parties is its independence. Democratic governments accept the findings of such independent bodies that they themselves have put in place even when they do not agree with them. And even while acknowledging and indeed stressing that the Committee is not a court, the analogy of a government that only support the decisions of a court when they do not go against the government is nonetheless apposite.

When the EU blocked the endorsement of the C-32 findings at the MoP-6 in 2017, it led to the worst crisis under the Convention since its adoption in 1998 and caused considerable damage to the EU's credibility and reputation as well as to the function of the compliance mechanism under the Aarhus Convention. The EU showed it was willing to recklessly jeopardise not only the compliance mechanism but the Convention itself in its efforts to prevent greater public accountability of the EU institutions. The EU's new proposal implies that it has learned nothing from this. If it is not rejected by the MoP, it will send a message to the world that there is one rule for the EU and another for all other Parties.

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The EU delegation has just now tried to justify the exceptional treatment on the basis of the specificities of the EU. But first, those specificities have been very carefully taken into account and indeed explicitly addressed by the Committee, which unlike the institutions of the EU is an independent, expert body without a vested interest. And second, even if the EU thinks the Committee got it wrong, that was also the case for several of the other Parties who spoke in the past hour but who nonetheless respect the authority of the Committee.

It is of course nice that the EU has set out a specific roadmap to address the issues raised in C128. Maybe that is marginally better than post-Budva, where the EU made the vaguer commitment to exploring ways and means.

The EU prides itself on standing for the rule of law, whether in relation to Brexit, in relation to Belarus or when dealing with some of its own Member States. And as EU citizens and NGOs committed to democracy and rule of law, we also take pride in seeing the EU standing up for those values, when it does. But all of that rings hollow when the EU actively undermines the rule of law and seeks exceptional treatment in this distinguished forum. And then our pride turns to shame. This is betrayal of the core values of the EU.

Budva was supposed to be a one-off, never to be repeated. But now the EU wants to repeat it. In fact, it has locked itself into a position whereby we are bound to repeat, at best, the Budva experience.

We have seen from a series of interventions before lunch just how fragile the consensus is around the values that this Convention represents. Which is why the EU's behaviour is so reckless.

In conclusion, we strongly condemn the EU position (in case I did not make that clear) and hope that no other Party will support it.

To be included in the report of the 7th session of the Meeting of the Parties under Item 7(b) on the compliance of the EU

The European ECO Forum condemns the position taken by the European Union at the seventh session of the Meeting of the Parties (MOP) to the Aarhus Convention, leaving no choice to the MOP but to postpone the endorsement of the findings of the Aarhus Convention Compliance Committee as regards case ACCC/C/2015/128. We recall with concern the similarly deplorable position the EU took at MOP-6 to postpone endorsement of the findings on communication ACCC/C/2008/32. In particular in view of this repetition, the ECO Forum emphasises that the EU is a Party to the Convention like all other Parties and as such must abide by its duties under international law.

The ECO Forum's youth organisation further particularly deplores this lack of respect for the rule of law as it endangers the environmental democracy rights that are crucial to challenge the EU's continued failure to adequately address the climate and biodiversity crisis with grave consequences for the rights of younger generations.

The ECO Forum therefore calls upon all Parties to the Convention to ensure that this decision remains exceptional and does not establish a practice under the Convention.

Comments on MOP7 Draft decision VII/8n concerning compliance by the Republic of Moldova with its obligations under the Convention on communication ACCC/C/2017/147 of the NGO Eco-Tiras International Association of River Keepers

by Ilya Trombitsky, Eco-Tiras Executive Director
ilyatrom@mail.ru

Dear Chair, dear distinguished delegates,

Regarding the implementation of the Aarhus Convention by the Republic of Moldova, following my previous speech in Maastricht at MOP5 in 2014, I would like to once again draw the attention of the Compliance Committee and the Meeting of the Parties to the fact that without a comprehensive approach to the implementation of the convention, this problem cannot be resolved. As you may remember, in 2014 the Meeting of the Parties, following the Compliance Committee, "forgave" Moldova on its case 30, also dedicated to the limited access to environmental information, although it did not take practical steps to implement the adopted national plan for the implementation of the convention which was provided by the MOP4 (2011) recommendations to the country. In fact, this decision of the Meeting of the Parties was perceived by the leadership of the Republic of Moldova as an indulgence for non-implementation of the Convention in the future. The Convention Secretariat felt this very quickly when Moldova did not submitted national report in 2017 and even was not presented at the MOP6 by any public servant.

There can be only one conclusion from this sad experience: firstly, the recommendations of the Compliance Committee should be comprehensive and include the need for the Party to develop and adopt a national plan, adopted with public involvement by the national government, for the implementation of the Aarhus Convention over the next few years. Secondly, the Party should be required to report periodically on the implementation of this plan. Without such monitoring, there is no chance of achieving the implementation of the convention in countries that are not distinguished by political stability.

In this respect, the current ACCC recommendations and the MOP7 draft recommendations for Moldova are limited by only by measures to reach the progress in the respect of the article 4 (8) of the Convention, in conditions, when we observe the long term stagnation in the implementation of the whole Convention. So the Governmental Plan on implementation of the Aarhus Convention should include all debts dealing with the treaty, and not only one line of one article.

The authorities that have come to Moldova recently give hope for an improvement in the situation. However, the situation remains fragile, therefore support of this process is required with the corresponding obligations imposed on the country.

We recently elaborated together with the Czech NGO „Arnika" the shadow report for the Republic of Moldova on its implementaion of the Aarhus Convention, which is available in the MOP7 materials and should help in further steps adoption and realization.

Thank you for your attention.

Comments on MOP7 Draft decision VII/8q concerning compliance by Turkmenistan with its obligations under the Aarhus Convention on the Requests from the Meeting of the Parties ACCC/M/2017/2

by Ilya Trombitsky,
Executive Director
Eco-Tiras International Association of River Keepers
ilyatrom@mail.ru

Dear Chair, dear distinguished delegates,

On behalf of the initiator of the current case which derives from the Communication ACCC/C/2004/5 (2004), when the Ecological Society BIOTICA, where I was a board member, by its communication attracted the attention of the ACCC to the non-comliance of Turkmenitstan with the provisions of the Aarhus Convention dealing with the limitation of natural persons rights to the environmental non-governmental associations, I like to share with the CC our concerns that after 17 years this issue is still not fully solved.

In this respect we fully support the current draft decision of the MOP7 under number VII/8q concerning compliance by Turkmenistan with its obligations under the Convention and are waiting, that the Turkmen national legislation will be changed in a way which will permit any natural person independently of the nationality to be a member of any environmental NGO without any legal obstacles.

Thank you for your attention.

Statement of OEKOBUERO – Alliance of the Austrian Environmental Movement on the behalf of the European ECO Forum regarding item 7(b): Slovakia´s implementation of MOP decision VI/8i and general issues of compliance

7th Meeting of the Parties to the Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters

One our tasks as NGOs is to be critical. And some mean this and/or it is understood purely in the negative sense. That we only complain about what is problematic.

Let me just say that many of us, myself included, understand our role rather differently. To be critical, to my mind, means to be thoughtful, acknowledge also those things that worked well and the people who helped make those positive developments possible.

In this regard Slovakia is a bit of a stand-out at this MOP and has been during this last intersessional period.

And rightly so. Slovakia undertook the necessary steps to fulfil its MOP decision stemming from Budva.

For that reason alone we would speak up and welcome Slovakia´s efforts. But we also want to speak up now because during the course of the implementation, Slovakia engaged well with the Committee, the secretariat, the communicants and observers. Provided timely and helpful answers, legislation, and translations. Simply said: They were engaged. That was noticed by all involved and should be reflected in the report of this meeting. That should truly serve as a model as to what is needed from all Parties.

European Eco-Forum Statement on Item 7(c) Rapid Response Mechanism – in French

By Yves Lador

Merci Mme la Présidente.

Permettez-moi d'offrir à nos discussions une brève incursion dans la langue de Molière.

Je prends la parole au nom de l'Eco-Forum européen.

Cette décision de créer ce mécanisme de réponse rapide (RRM) en nommant un rapporteur spécial sur les défenseurs environnementaux est une étape importante dans la vie de notre Convention.

Son objectif est éviter des violations de l'art 3.8 de la Convention. Or cet article 3.8 joue un rôle crucial pour la mise en œuvre de tout le reste de la Convention. D'ailleurs, nous voyons combien cet article 3 prend de l'importance au fil du temps.

Il est à certains égard regrettable que nous ayons à mettre en place un tel mécanisme, car lors de l'élaboration de la Convention, ce sujet nous semblait aller de soi. Par contre, nous aimerions souligner combien la réponse aux récents développements a été prise au sérieux et nous tenons à remercier toutes celles et ceux qui s'y sont investi, au sein des organes de la Convention, de son secrétariat et des Parties et au sein de la société civile.

La particularité de ce mécanisme de réponse rapide est

- d'avoir une approche **préventive**,
- d'agir **rapidement**, avant que les situations ne se détériorent,
  - *L'exp dans la prévention de violations de DH au cours des dernières décennies a montré combien une action rapide peut éviter qu'une situation empire et même sauver des vies dans les pires des cas.*
- d'agir dans un **esprit de coopération et de facilitation**, en espérant pouvoir éviter de montrer quiconque du doigt.
- En cas de nécessité, et espérons que ce n'ait à être qu'exceptionnel, le mécanisme pourra ouvertement demander que des **mesures de protections** soient prises.

Ce mécanisme de la Convention pourra utilement compléter les mécanismes onusiens existants, en y apportant cette approche préventive, d'autant plus que la tendance internationale est malheureusement à ce que ce soit dans

les questions environnementales que les violations des droits fondamentaux connaissent les plus inquiétantes aggravations.

Il sera intéressant de partager cette expérience au sein de ce que nous pouvons appeler désormais la communauté Aarhus-Escazu, car ce dernier instrument comprend des dispositions particulièrement fournies pour protéger les défenseurs environnementaux.

Après cette 7ème Réunion des Parties, il sera urgent de mettre en place sans délai ce mécanisme et de le faire fonctionner. A ce égard, nous tenons à sincèrement remercier l'Autriche et l'Irlande pour leur engagement dans ce domaine. Leur soutien est précieux.

Enfin, permettez mois de souligner l'importance que nous attribuons à la désignation d'une personne hautement qualifiée à cette fonction par le biais du processus détaillé dans l'annexe au projet de décision. Nous y apporterons tout notre concourt.

Je vous remercie de votre attention.

———————-

- Important step for the AC to create this RRM with a Special Rapporteur
- Crucial role of art 3.8 for the implementation of all the rest of the Convention.
- Particularity the RRM to act to avoid infringements of art 3.8
    - with a preventive approach,
    - quickly, before situations deteriorate

    - in a spirit of facilitation and not aiming particularly at finger pointing

- Will complement usefully existing UN mechanisms
- Will be interesting to share in the community of instruments created with Escazu, where a « parent » mechanism could also be developed

- Will be urgent to get it up and running without delay
- Stresses the need to start right after MOP the steps to launch it, including mobilizing the resources
- Make the appointment decision efficient, like at an ExMOP, back to back to a WGP or by the WGP.
- Stresses the need to appoint someone of high qualification and credibility, through the process designed in the draft decision.

To be included in the report of the 7th session of the Meeting of the Parties under Item 7(c) on the Rapid Response Mechanism

The European Eco-Forum acknowledges that Parties have a full right to have their views recorded in the report. However, it should be recalled that the Rules of Procedure apply to all Parties. This is a fundamental rule of international law and treaty law, ensuring the integrity of process

Association Justice and Environment, z.s.
European Network of Environmental Law Organisations

Statement by Justice and Environment on the behalf of the European ECO Forum as regards capacity building: Item 7(d) of the agenda

7th Meeting of the Parties to the Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters

Thank you Madame Chair.

Firstly we warmly thank the secretariat for its many great efforts to extend capacity building in this intersessional period, be it through task force meetings, special side meetings and events for the judiciary, the Aarhus Clearinghouse and so on.

But secondly we reiterate what we alluded to with respect to the MOP decision concerning Slovakia. That we see the Committee´s MOP follow up process as a capacity building mechanism. The Committee then steps into its most facilitative role, reviewing drafts, answering questions, providing advice, and can undertake missions.

Thus we very much support the contribution of resources to the Compliance Committee and any efforts by the secretariat to support those efforts as part of the budget for capacity building.

But more specifically to move to some concerns of our Justice and Environment members, we point out that IIDMA in Spain has pointed to real problems with weak court decisions. And I must say the situation in Austria is not so much better. Our members are in countries where many courts lack certain basic knowledge regarding EU and international law and in that regard further capacity mechanisms, such as missions by the Compliance Committee, and/or the EU Commission, could be most helpful. We note further that Mr. Sauer, the German National Focal Point, undertook a mission in Austria a few years ago which was most helpful, and we would suggest that perhaps he can do so again, circumstances permitting.

That being said, we must emphasize that capacity building initiatives should not just be for judges and authorities and lawyers. Rather, there should be funding for projects *by* and *for* young people. They are not only our future, but are already here and now raising their voices in a most powerful way, as evidenced at this MOP.

Finally, Justice and Environment and ClientEarth recently concluded a major capacity project and the essential conclusion at the end was that more capacity building is needed, and funding for such future projects is needed as well. We stand ready to support capacity building efforts, but need the support to do so.

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Aarhus Convention 7th MOP

Francesca Carlsson, EEB, European ECO Forum

20 October 2021, Agenda item 8:

It is with great pleasure that the European ECO Forum welcomes the accession of the first African Party to the Aarhus Convention, Guinea-Bissau.

The Aarhus Conventions is sometimes wrongly referred to as a "European" Convention, but Article 19(3) allows for universal accession. Some 20 years ago, when the Convention entered into force, the idea of universal accession was forward thinking for its time, as UNECE agreements were limited to the accession of UNECE states only, which is one of the reasons why the Aarhus Convention is so special. Other instruments, such as the Water Convention of 2003, decided to follow the footsteps of the Aarhus Convention. It is only in 2011, that the MOP established a stricter process, where states have to demonstrate they fulfilled certain legislative requirements before acceding; and, today, we congratulate Guinea-Bissau for having been through and completed this process successfully.

Given the global climate emergency and biodiversity collapse that we are facing, having common international rules on environmental governance is crucial: the Aarhus Convention on access and participatory rights can be instrumental to ensuring that no one is left behind in our transition to living within planetary boundaries. The specific threats as well as levels of consumption are different between and within counties, and efforts for this transition must be made collectively. The European ECO Forum encourages other States who have already expressed their interest in the Aarhus Convention, such as Uzbekistan and Mongolia, to follow Guinea-Bissau's footsteps of accession and we encourage in turn the Parties and the Secretariat to continue to support them. We furthermore hope to see other states, such as other African states and those in the Mediterranean region, to start their process of accession too.

We are therefore delighted that the Aarhus Family has been enlarged and enriched, and that the Aarhus Convention has reached this milestone after 20 years of its entry into force. We very much look forward to sharing experiences under the framework of the Aarhus Convention with the government of Guinea-Bissau and especially with its civil society.

European Environmental Bureau

● Rue des Deux Églises 14-16, 1000 Brussels, Belgium ● ☏ +32 228 91090 ● eeb@eeb.org ● www.eeb.org
International non-profit association ● Association internationale sans but lucratif (AISBL) ● EC register for interest representatives:
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Intervention at the 7th Meeting of the Parties to the Aarhus Convention

Public Participation in International Forums

Wednesday 20th October 2021

Thank you, Madam chair,

My name is Sébastien Duyck, of the Center for International Environmental Law (CIEL), and I speak today on behalf of the EEB.

I would like to begin by thanking the Secretariat, the chair of the thematic session, and France as the country leading this work.

This meeting today takes place at a critical moment for environmental governance and one during which we believe that matters related to the protection and promotion of Aarhus-protected rights in international forums is particularly important.

Firstly, as we all are aware of, the pandemic is still going on, having started 18 months ago. The constraints associated with Covid-19 have reshaped the practical modalities related to public participation in international forums. As we now resume in-person meetings and decision-making sessions of the various forums and processes, we must collectively be vigilant and seize the opportunities this moment offers. We must work to ensure that we build on any new practices that can truly enable effective and meaningful participation in international decision making related to the environment.

At the same time, preventing any form of backsliding from the principle that decisions adopted by international bodies must result from a truly participatory process in order to be legitimate and effective. In several forums, we see attempts to streamline public participation in ways that would render participation tokenistic and not meeting any environmental democracy standards.

Even before the pandemic, representatives from the public have been the target of intolerable harassment for seeking to participate in UN environmental processes, as documented in the most recent report of the UN Special Rapporteur on Freedom of Assembly and Association. We also heard just last week during a dedicated MOP7 side event the eye-opening testimony of an environmental advocate who was unjustifiably denied participation in the UN Climate COP-24 in Katowice.

During the pandemic, the level of corporate capture of international environmental processes has continued to grow, as the recent Food System Summit demonstrated. The Parties to the Aarhus Convention and other related instruments must use rights-based commitments and

obligations as a compass to ensure that participation of non-state actors actors is promoted in a manner that strengthens, rather than undermines, environmental democracy.

In this context, we welcome the mandate provided in the draft decision related to public participation for a consultation process with regard to good practices and modalities contributing to ensuring balanced and equitable participation as defined in the Almaty Guidelines.

Secondly, the entry into force of the Escazu Agreement is a critical moment for the promotion of public participation in international forums - as it contains provisions that mirror the legal obligation for all Aarhus Parties to promote public participation in international forums. The accession of Guinea Bissau to the Aarhus Convention further signals that States across all regions have rallied beyond this commitment to global environmental democracy.

This offers a more solid ground for all Aarhus Parties to ensure that they fulfil their obligation under article 3.7 of the Aarhus Convention to promote participation - both in the modalities of international forums related to the environment, but also in the substantive outcomes of these processes.

We are right now at a critical turning point for many environmental frameworks.

In relation to climate change change, the COP-26 beginning at the end of next week in Glasgow offers several opportunities to promote procedural rights but could also result in decisions undermining such rights in very concrete ways, in particular in the context of carbon trading and other mechanisms for international cooperation. Aarhus Parties must not allow decisions to be adopted if they undermine these rights.

Furthermore, Aarhus obligations must form the basis of any initiative taken by Parties to regulate other aspects of climate governance whether with regards to geoengineering or to the environmental footprint of the civil aviation and maritime transportation sectors.

In relation to biological diversity, the protection of the rights of indigenous peoples and local communities must be made central to the new post 2030 framework.

In relation to chemicals and wastes, the review of SAICM and discussions related to a new intergovernmental panel on the science related to toxic substances must also fully guarantee and promote the rights protected under the Aarhus Convention.

Environmental human rights must also be fully protected in the context of the negotiations towards a **legally binding treaty on business and human rights**. The same applies in relation to all bilateral and multilateral agreements and institutions related to **trade.**

It is time to treat the obligation of all Aarhus Parties to promote the principles of the Aarhus Convention systematically with the actual political commitment that such an obligation requires. Aarhus Parties and statement

Let me conclude with a positive message and an encouragement building on the very recent recognition of the universal right to a clean, healthy and sustainable environment and the establishment of a new UN Special Rapporteur on Human Rights and Climate Change.

Only three or four months ago, the odds of positive decisions on either issue seemed really deem. What made these outcomes possible was the steady commitment of a handful of nations, especially Costa Rica, the Republic of the Marshall Islands, and Parties to the Aarhus Convention including Slovenia, Switzerland as well as Germany.

This experience demonstrates that States are successful when they hold firm on core values and refuse to compromise under the pressure of a minority of States seeking to weaken human rights and environmental democracy worldwide. We hope that all of you, States and civil society delegates, will take pride in these recent achievements and will recommit to these values when participating in international forums.

Madame chair, I have kept my intervention shorter than the initial time allocated to me so I hope that civil society colleagues will be provided with the opportunity to intervene on this agenda item dedicated to the participation of the public in international forums.

European Ecoforum: 3rd Addnl statement from Attracta Uí Bhroin for:

Agenda Item **8 (b)Promotion of the Convention's principles**

Madame Chair, Distinguished delegates, Dear Participants,

This addition to our European Eco-Forum statement pertains to the UN negotiations on a new UN international legally binding instrument to regulate, in international human rights law, the activities of transnational corporations and other business enterprises.

We very much welcome that paragraph 14 of the Draft Geneva Declaration notes these negotiations and stresses the importance for all Parties to uphold the Aarhus principles in them, and to press for inclusion of those principles in the substantive text, in line with our obligations international decision-making under article 3 (7) of the Aarhus Convention, and the calls therein.

The 7th session for the negotiations of the open ended inter-governmental working group takes place next week, in Geneva from the 25 to 29 October 2021. A third revised draft will serve as the basis for State-led direct substantive intergovernmental negotiations.

Therefore the moment is upon you as Parties to the Aarhus Convention to demonstrate compliance with those obligations.

We note with regret that while there are many elements of the text which can and should be building and drawing on Aarhus principles – but simply do not do so sufficiently, be that in relation to information, participation, or access to justice rights and obligations, or in respect of equality and non-discrimination. **Also as always in approaching any further round of negotiation as we do next week, there is a need for vigilance to ensure the text is not weakened either.**

Yet to date, the voices of Aarhus Parties have not been sufficiently heard in calling for a progressive text, and most disappointingly, given its potential influence, the European Union's voice continues to remain significantly absent in this regard, with it seems little progress on negotiating mandates.

We therefore call on the EU and it's member states, and indeed all Parties to the Convention to fully embrace the call in the Geneva declaration, and for focal points and delegates to engage with the counterparts attending these negotiations next week, and to assist them in breathing the principles of "Aarhus" into this new text, and in how it is being developed.

Let us remember this is the Meeting of the Parties to the Aarhus Convention where we move forward with a Rapid Response Mechanism for Environmental Defenders, but complementary to this, is the need to address and indeed prevent human rights abuse consequent on major environmental damage, and those engaged in trying to address that, and this is where this new instrument should complement what we are doing here.

We also call on parties to support and generously support, proposals in the work plan to ensure there is capacity in the Secretariat to meaningfully engage in these negotiations and to leverage the expertise and experience of our most valued Aarhus Secretariat. This is all consistent with meaningfully engaging on our Article 3(7) obligations.

At a time where trade deals are being negotiated with special clauses to afford extraordinary protections and special investor settlement dispute systems and tribunals for investors, to protect their interests against States, it is only appropriate that equal vigour and impetus is expended on ensuring remedy and recourse against corporate interest where it has compromised human rights, including environmental human rights.

Thank-you for your attention and should any Party wish further information, we would be delighted to facilitate liaison with those working closely on this matter.

Attracta Uí Bhroin

7th session of the Meeting of the Parties to the Aarhus Convention
4th session of the Meeting of the Parties to the Protocol on PRTRs
18 - 22 OCTOBER 2021 I PALAIS DES NATIONS I GENEVA

Pan-European Coalition of Environmental Citizens Organisations
EUROPEAN ECO FORUM

20 October, 2021 [Item 8b]

Intervention by Christiana Mauro on behalf of European ECO Forum

Promoting Convention principles in the nuclear sector through international reforms

Dear Madam Chair, distinguished Delegates and Colleagues,

With the publication of the IPCC report a growing number of people perceive the future as an existential threat. A critical task of the Aarhus Convention is to open up the environment of the future to public control, and, until today, the Convention has established itself as a respected instrument in realizing this collectively beneficial aim.

On the occasion of the 20th Anniversary of the entry into force of the Aarhus Convention we would like to express our deep appreciation for the efforts of the many members of the Working Groups, Secretariats and Committees who have supported an inclusive environment in which NGOs have been able to make strides in helping to realize the Convention's goals. We also wish to express an expectation that these MOPs will continue to offer a platform that enables NGOs to discuss systemic implementation challenges.

Some of the systemic challenges to securing implementation in the nuclear sector are a lack of transparency and environmental informational gaps considerable enough to prevent public participation in decision-making.

Nuclear accidents similar to, or worse than, the ones that some territories have been subjected to in past decades should be expected with certainty, and in the near future; the grounds for this claim is that the mechanisms in place to ensure the safety of nuclear technology are sufficiently flawed at every level of governance.[1]

The IAEA is also not forthcoming when it promotes the idea that atomic power can make a significant contribution to climate change alleviation, that it is resilient under severe

[1] Jaczko, Gregory B. Confessions of a Rogue Nuclear Regulator, Simon & Schuster, 2020

weather conditions or that it is reliable in the face of extreme flooding and drought; but it is acting in line with the mandate of its 1957 statutes to expand the use of nuclear energy.

We are grateful for the opportunity to be able to speak on this subject, and would like to take this occasion to offer two suggestions to promote the principles of the Convention, for the consideration of the Parties.

We naturally expect that the decisions of the IAEA, as a UN-affiliated agency, would asses risk in line with environmentally sound principles, and would promote climate science even at the risk of jeopardizing its commitment to atomic energy. But this is not the case.

According to Greenpeace East Asia's Senior Nuclear Specialist, in violation of international law the IAEA recently facilitated a decision to discharge contaminated water into the Ocean without a full environmental impact assessment, without having consulted with stakeholders, and without addressing the concerns of UN human rights Special Rapporteurs.[2] In fact, the IAEA has supported and justified the global dumping of nuclear waste into the world's marine environment since its inception in 1957.[3]

Top-down reform

A combination of circumstances can go far to explain what has deteriorated in the area of nuclear regulation. The containment of historical data related to nuclear accidents, flawed technologies, regulatory failures and their environmental effects should be opened to public and scientific scrutiny. Systems of controls of environmental data in the nuclear sector have to some extent become counterproductive, leading to great distrust.

This account raises a problem: if secrecy is the result of structural conditions, can it be resolved in the absence of reforms that begin at the top of the pyramid?

We therefore urge the Parties to come to an agreement on a re-examination of the status of the Agency as a regulatory body, to seek a clarification of the rights and obligations which exist in relation to transparency and public participation in its decision mechanisms, and to bring an end to the dependence of the World Health Organization on the IAEA for access to raw health data.[4]

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[2] Shaun Bernie, private communication, 10 August 2021

[3] As the IAEA reported "since 1957, the date of its first meeting to design methodologies to assess the safety of "radioactive waste disposal into the sea", the IAEA has provided guidance and recommendations for ensuring that disposal of radioactive wastes into the sea will not result in unacceptable hazards to human health and marine organisms, damage to amenities or interference with other legitimate uses of the sea", IAEA Bulletin, Ocean disposal of radioactive waste: Status report", 1989, see https://www.iaea.org/sites/default/files/31404684750.pdf; Discharges are planned to begin late next year and will release radioactive tritium, strontium-90, carbon-14 and other hazardous radionuclides into the Pacific Ocean.

[4] The WHO is not able to conduct research on the consequences of nuclear accidents without the consent of the IAEA; after Chernobyl the IAEA interfered with WHO research on the effects of radiation.

An Aarhus Task Force could enter into negotiations with the IAEA with a view to a preparation of a framework in which its safety regulation activities are democratized, on the one hand, and on the other, this function is formally separated from its mandate to promote the industry it is designed to monitor.

Bottom-up initiatives

At the bottom of the nuclear environmental data structure are citizen-driven, citizen-generated, independently collected data.

In the absence of adequate and reliable official data in post-disaster circumstances groups of citizens have coped with the fear of radiation exposure and uncertainty by bypassing the traditional information sources. Geiger counters made available to the public in the aftermath of the Fukushima disaster helped communities to fill the information gap through collaboration on data production. In many cases citizen-generated data challenged official and increased distrust in the public authorities.

Legal scholars argue that citizen science can do much to promote enforcement of the Convention; some even suggest that it could change the face of environmental risk governance or transform environmental law doctrine.[5]

A global convention on citizen science that builds on studies showing that bottom-up data collection is an effective way to prevent environmental degradation or save lives can also serve to increase compliance with the Convention.

Citizen science communities that have challenged the dominant norms of data control need legal frameworks that legitimize and support their activities.

We therefore encourage the Parties to consider measures for advancing inclusive approaches to science communication and open and collaborative data sharing.

We emphasize the responsibility assumed by the Parties and Signatories who have committed to enabling public participation regarding international forums.[6] This includes promotion of the Convention's principles "in the procedures of other international forums and in the work programmes, projects, decisions, instruments and other substantive outputs of those forums whose practices do not presently reflect the Guidelines or the principles of the Convention"

In light of this, we hope that delegates will undertake to:

[5] Anna Berti Suman, "Citizen Sensing from a Legal Standpoint: Legitimizing the Practice under the Aarhus Framework," Journal for European Environmental & Planning Law, 10 February, 2021

[6] Para. 5, Decision V/4 of the Meeting of the Parties to the Aarhus Convention, ECE/MP.PP/2014/2/Add.1

- commit to the adoption of a legal framework that encourages public engagement; intensify efforts to integrate citizen science approaches into official monitoring mechanisms; and strengthen the creation of data integration platforms
- encourage UN agencies to work with these initiatives to help leverage this data for monitoring purposes, and
- mainstream this principle into environmental policies, programmes and legislation

We also encourage the Parties to agree on steps to increase transparency of the IAEA and its participation modalities. Allegations of failure of the IAEA to disclose environmental data and conduct root cause analyses of radioactive waste depository failures and contamination issues, and of promoting misinformation that has influenced national, regional and intergovernmental policies and practices should be examined.

As a first step, since it may not be possible to apply the modalities typically deployed in public participation procedures in the IAEA, a needs assessment should be carried out to identify what modalities would, in practice, ensure effective opportunities to secure information and participate in decision-making under the Convention.[7]

To conclude, while it has taken many long decades to reach widespread acknowledgement of the fragility of our planet's ecosystems, we are all aware that the habitability of earth is at risk and our objectives and priorities today could be pivotal to outcomes.

Referring to non-democratic regimes, statesman Vaclav Havel argued that the responsibility for the period of abuse against individuals, society and nature belong to each individual; to blame predecessors "would blunt the duty that each of us faces today: namely, the obligation to act independently, freely, reasonable and quickly."

I warmly encourage the delegates interested in an elaboration of these arguments or the sources of these statements to consult the published version of this intervention.

Thank you Madam Chair.

[7] Modern UN transparency aspirations conflict with the 1947 Convention provisions on Privileges and Immunities of the Specialized Agencies and the inviolability of UN documents. See Article 105, paragraph 3 of the UN Charter; inviolability provisions are present in the 1946 UN Convention on the Privileges and Immunities and the 1947 Convention on Privileges and Immunities of the Specialized Agencies.

ClientEarth

7th Meeting of the Parties to the Aarhus Convention

Statement under Item 8(b): Promotion of the Convention's principles

Honourable Chair, honourable delegates, members of the secretariat,

Thank you for giving us the floor on this important issue.

We have heard today from the European Investment Bank that access to information on request and, especially, active dissemination of environmental information is very important to the Bank. This is encouraging to hear.

However, in our experience there is still a significant lack of proactive disclosure of environmental information by the Bank. In fact, together with two other NGOs we have complained to the European Ombudsman, who saw a lot of room for improvements in the Bank's practices and recently issued suggestions on how to improve the active dissemination of environmental information held by the EIB. The Ombudsman has been clear that the Environmental and Social Data Sheets (ESDS) and Environmental and Social Completion Sheets (ESCS) mentioned today do not contain all of the environmental information relevant to decision-making by the EIB.

The amendment of the EIB Transparency Policy taking place this year would be the perfect opportunity to improve the applicable rules and increase active dissemination of environmental information. However, the first draft presented by the EIB would in fact reduce the current level of transparency. The EIB thereby also falls far behind in comparison with other international financial institutions, which are significantly more transparent, as well as ignoring consistent calls from the European Parliament for increased transparency.

We therefore urge the EIB to take these concerns and the requirements of the Aarhus Conventions fully on board when revising the EIB Transparency Policy and significantly increase active dissemination of environmental information.

Thank you Madam Chair.

ClientEarth is an environmental law charity, a company limited by guarantee, registered in England and Wales, company number 02863827, registered charity number 1053988, registered office 10 Queen Street Place, London EC4R 1BE, a registered international non-profit organisation in Belgium, ClientEarth AISBL, enterprise number 0714.925.038, a registered company in Germany, ClientEarth gGmbH, HRB 202487 B, a registered non-profit organisation in Luxembourg, ClientEarth ASBL, registered number F11366, a registered foundation in Poland, Fundacja ClientEarth Poland, KRS 0000364218, NIP 701025 4208, a registered 501(c)(3) organisation in the US, ClientEarth US, EIN 81-0722756, a registered subsidiary in China, ClientEarth Beijing Representative Office, Registration No. G1110000MA0095H836. ClientEarth is registered on the EU Transparency register number: 96645517357-19. Our goal is to use the power of the law to develop legal strategies and tools to address environmental issues.

Statement by Magdolna Tóthné dr. Nagy, Guta Environmental Law Association, on behalf of the European ECO Forum, Agenda item 8 c.

Madame Chair, distinguished delegates,

On behalf of the European Eco Forum and the Guta Environmental Law Association, we warmly welcome the entry into force of the Regional Agreement of Access to Information, Public Participation and Justice in Environmental Matters in Latin America and the Caribbean, the Escazú Agreement, which is a new landmark in the history of environmental democracy and sustainable development. After the entry into force on April 22, 2021, preparations are now underway for the first COP, planned to be held in April 2022, where the rules of procedure, civil society participation and the Committee to Support Implementation and Compliance will be discussed, among others.

The entry into force of this treaty opens up new opportunities for a more strategic, regular and systematic cooperation between the Aarhus Convention and the Escazú Agreement, to which is worth to give more attention in the coming years.

The side event on the Cooperation between the Aarhus Convention and the Escazú Agreement", organized on October 15th, 2021 by the Guta Association in cooperation with CIEL, EarthJustice, EarthRights, EEB and ECLAC, reinforced the needs and identified some areas where the cooperation could be beneficial to both legal instruments, and also support the implementation of the Escazú Agreement. These areas include: the experiences of the operation of the Aarhus Compliance Committee, the protection of environmental defenders, the Rapid Response Mechanism, implementation of the three pillars, etc. In addition to capacity building, exchange of experince, sharing of best practices, joint sessions could be held between the Working Group of Parties and the Task Forces and the Escazú Agreement, and also joint initiatives could be taken in different international forums (e.g. to promote and implement the principles of these agreements in different international fora, on the protection of environmental defenders, etc. .) These areas for cooperation should be further identified, discussed, and actions should be taken.

We thank the assistance provided so far to the Escazú agreement by the Secretariat, some Parties and CSOs. We call on the Aarhus Parties, the Secretariat and stakeholders to support more intensively the closer cooperation between the two agreements in the next intersessional period, and we offer our support to this process from the civil society side. We hope this cooperation will attract also financial support.

We also welcome the developments regarding human and environmental rights, particularly, the resolution of the Human Rights Council which recognized the right to a clean, safe and healthy environment as a human right. We hope that the recognition of this universal right will also be acknowledged by the UN General Assembly. Another important initiative of the Council of Europe is to draft a new protocol to the European Convention on Human Rights on the right to healthy environment.

These initiatives closely relate to the Aarhus Convention, will contribute to the stronger protection of human and environmental rights, the protection of environmental defenders and could strengthen access to justice. Therefore, the Convention, Parties, civil society and other stakeholders, should continue to build synergies with them and should support them, actively.

Thank you for your attention!

EEB
European
Environmental
Bureau

Aarhus Convention 7th MOP

Frederik Hafen, EEB, European ECO Forum

Agenda item 9:

On behalf of the ECO Forum I would like to thank the Working Group of the Parties and the Bureau for their work on the strategic plan which will guide all of us into the next years of the Aarhus Convention.

While we welcome the strategic plan, we would like to call on all parties to increase their aspirations in promoting and implementing environmental democracy rights in the years to come. Today I would like to make three points:

Firstly, more than 20 years after the adoption of the Aarhus Convention, very little progress has been made in relation to the third focal area proposed in the draft strategy, namely substantive development of the provisions and principles of the Convention, despite this having been a focal area in the previous and current strategic plans. The GMO amendment is still not in force and potential for stronger commitments has been left largely untapped. We hope that this will be given higher priority in the implementation of the new strategic plan, for example through developing a new protocol to the Convention on access to product-related environmental information so that consumers can make more informed environmental choices in line with Article 5, paragraph 8, of the Convention. This could bring together the environmental, consumer and digital agendas in a positive way and ensure that the likely development of product passports takes place in a harmonised way throughout a wide region.

Secondly, as highlighted in the plan itself, many parties are still failing to implement the Convention, which has been identified in past and present strategic plans as well as the proposed future one as the first priority. We would like to remind parties, that the Convention provides minimum standards only, and that full implementation has to be step number one.

Thirdly, throughout the pandemic new barriers to participation for citizens and civil society were erected. We are hopeful that these are temporary and that the pandemic will not be used as an excuse for a longer-term erosion of participatory rights.

The Aarhus Convention has links to all of the sustainable development goals and as such we remind parties that their ambitions in this forum reflect on their general commitment to sustainability.

Thank you

European Environmental Bureau

● Rue des Deux Églises 14-16, 1000 Brussels, Belgium ● ☏ +32 228 91090 ● eeb@eeb.org ● www.eeb.org
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EEB
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Aarhus Convention 7th MOP

Jeremy Wates, EEB, European ECO Forum

20 Oct, Agenda item 11: Nomination of civil society observer to Bureau

Thank you, Madam Chair. I have had the pleasure and privilege to serve as the designated NGO observer on the Bureau since MoP-4 in 2011, more than 10 years ago.

It has been a rich and interesting experience, with some periods where not much happens but others when there are intense bursts of activity, with e-mails exchanged during weekends and evenings, even in holiday periods, when the situation required it, showing the very high level of commitment of the Bureau members and the secretariat. Just as I have been very happy to play the role of NGO observer over this past decade, I am now also happy to be passing on the torch to a very competent successor.

I am happy to announce that the environmental NGO community, brought together under the umbrella of the European ECO Forum, has appointed Ms Summer Kern of Ökobüro and Justice & Environment as the designated NGO observer on the Bureau for the forthcoming period.

I would like to thank the Bureau members and especially you Maia as Chair for your support and openness to listen to an NGO perspective before making your decisions, and of course to Ella and the secretariat for their fantastic support throughout.

European Environmental Bureau

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Association Justice and Environment, z.s.
European Network of Environmental Law Organisations

Statement by Justice and Environment on the behalf of the European ECO Forum as regards the election of Bureau members and NGO observer thereto: Item 9(11) of the agenda

7th Meeting of the Parties to the Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters

Thank you Madam Chair,

And thanks to the members of European ECO Forum, who have placed this trust in me.

But my biggest thanks of all go to Jeremy, for his outstanding, expert, and tireless service as the NGO observer to the Bureau. You have been absolutely brilliant and I am sure you will continue to be so in your many other roles.

I have very big shoes to fill indeed. I am not sure I will be able to fill those shoes, but I always welcome a challenge and will do my utmost to serve well and fulfill my role as observer.

And I very much look forward productive, engaged exchanges with the Bureau members.