



Convention on Access to Information,
Public Participation in Decision-making and
Access to Justice in Environmental Matters
(Aarhus Convention)

United Nations Economic Commission for Europe
Palais des Nations, 8-14 avenue de la Paix
CH - 1211 Geneva 10, Switzerland
Email: Aarhus-EnvDefenders@un.org

Michel Forst
UN Special Rapporteur on environmental defenders under the Aarhus Convention

Ref: ACSR/C/2023/11 (Switzerland)
(Please use this reference in your reply)

21 August 2023

Excellency,

I have the honour to address you in my capacity as UN Special Rapporteur on environmental defenders under the Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters (Aarhus Convention).

As you may be aware, article 3 (8) of the Aarhus Convention requires that “Each Party shall ensure that persons exercising their rights in conformity with the provisions of this Convention shall not be penalized, persecuted or harassed in any way for their involvement.” Switzerland has been a Party to the Aarhus Convention since 2014.¹

At its seventh session (Geneva, 18–21 October 2021), the Meeting of the Parties to the Aarhus Convention adopted decision VII/9 on a rapid response mechanism to deal with cases related to article 3 (8) of the Convention.² Decision VII/9 establishes the rapid response mechanism in the form of an independent Special Rapporteur on environmental defenders under the authority of the Meeting of the Parties. At its third extraordinary session (Geneva, 23–24 June 2022), I was elected, by consensus, by the Meeting of the Parties as the Convention’s Special Rapporteur on environmental defenders.

In accordance with the mandate in decision VII/9, I write to bring to your attention information I have received concerning the alleged persecution, penalization and harassment of Mr. Carlos Ernesto Choc Chub in connection with the exercise of his rights under the Aarhus Convention.

Mr. Choc is a journalist and correspondent for environmental and local news based in El Estor, Guatemala and a member of the local Q’eqchi’ community. In his work as a journalist, Mr. Choc has reported extensively on mining activities at the Fénix nickel mine located in El Estor municipality and owned by Compañía Guatemalteca de Níquel, the Guatemalan subsidiary of Solway Investment Group (Solway’s subsidiary). He has also reported upon protests by the local community against the Fénix nickel mine and the impact of the mine on the local community and the environment.

Based on the information received, Mr. Choc is an environmental defender within the meaning of the ninth preambular paragraph of decision VII/9.³

According to the information received, since 2017 Mr. Choc has been subjected to repeated threats, intimidation and other forms of harassment as a result of his efforts as a journalist to cover and

¹ See https://treaties.un.org/Pages/ViewDetails.aspx?src=IND&mtdsg_no=XXVII-13&chapter=27&clang=en

² Available at: https://unece.org/sites/default/files/2022-01/Aarhus_MoP7_Decision_on_RRM_E.pdf

³ Ibid.

report upon the local community's opposition to Solway's mining activities and the environmental impacts thereof.

The alleged acts of persecution, penalization and harassment detailed in the present letter were allegedly carried out by employees of Solway's subsidiary, instigated by Solway's subsidiary, or have a direct link to the activities of Solway's subsidiary, in Guatemala.

These include, but are by no means limited to, the following:

1. In May 2017, Mr. Choc was present as a journalist at protests at the Fénix mine regarding the alleged contamination by the mine of the nearby Izabal Lake. During the protests, one person was killed by police. Mr. Choc captured the incident on camera and reported on the protests. Following Mr. Choc's reporting, he received numerous anonymous threats aimed at stopping his coverage. As a result of Mr. Choc's coverage of the May 2017 protests, seven mining workers employed by Solway's subsidiary, Compañía Guatemalteca de Níquel, brought a criminal complaint against Mr. Choc, and others, invoking six criminal charges, including instigation to commit a crime, threats, illegal detention and illegal association.
2. Based on these complaints, an arrest warrant was issued against Mr. Choc in August 2017.
3. Mr. Choc had to live subject to this arrest warrant for nearly a year and a half. In January 2019, the Izabal criminal court lifted the arrest warrant but replaced it with an order requiring Mr. Choc to report each month to the Public Prosecutor's Office pending the final outcome of the criminal proceedings.
4. Also, in the court order of January 2019, Mr. Ivan Roberto Camey Aguilar, the legal representative of Solway's subsidiary, Compañía Guatemalteca de Níquel, was joined as a co-plaintiff in the criminal proceeding against Mr. Choc and others.
5. Since April 2020, Mr. Choc has been subjected to various defamation campaigns, his home has been raided by persons unknown and by the Guatemalan police and army, and he has suffered police violence while reporting as a journalist on subsequent protests at the Fénix mine. He has also been subject to surveillance by the security team of Solway's subsidiary.
6. In January 2022, further criminal charges were brought against Mr. Choc, this time by Guatemala's National Civil Police, relating to subsequent protests at the Fénix mine at which Mr. Choc was present as a journalist. These charges were dropped in September 2022.
7. In contrast, the criminal proceedings against Mr. Choc initiated in August 2017 by the employees of Solway's subsidiary, and in which the legal representative of Solway's subsidiary is a co-plaintiff, remain pending, with the next hearing scheduled for **23 August 2023**. Mr. Choc also remains subject to the monthly reporting obligation imposed on him by the Izabal criminal court in January 2019.

Without prejudging the accuracy of the above allegations, I wish to express my grave concern about the above sequence of events, which, if correct, amount to an ongoing campaign of harassment and intimidation against Mr. Choc, including criminal proceedings, for the exercise of his rights under the Aarhus Convention. The threat of criminal sanctions imposes a particularly heavy burden on an environmental defender like Mr. Choc and has severe chilling effects on the exercise of his rights under the Aarhus Convention.

I am particularly concerned by the fact that the criminal proceedings initiated by the employees of Solway's subsidiary, and to which the legal representative of Solway's subsidiary is a co-plaintiff, have now been ongoing for **six years**, and Mr. Choc has been subject to, first, an arrest warrant, and, subsequently, a monthly reporting obligation, during this entire time period. I have not seen any evidence to suggest that Solway or its subsidiary have taken any meaningful steps during that period to put an end to the criminal proceedings against Mr. Choc.

Additionally, I express grave concerns about reports of alleged surveillance of Mr. Choc by Solway's subsidiary as well as other actions to actively repress dissent in relation to Solway's mining activities in El Estor.

In this regard, it is important that I draw to your attention that the Aarhus Convention Compliance Committee has made clear that article 3 (8) of the Convention "also covers penalization, persecution or harassment by private natural or legal persons that the Party concerned did not take the necessary measures to prevent."⁴ This means that Switzerland is bound by article 3 (8) of the Convention to ensure that persons are not penalized, persecuted or harassed in any way for exercising their rights under the Convention, including by private companies based in the territory of the Party concerned. This covers any actions committed extraterritorially by Solway Investment Group, a company based in Zug, Switzerland, or its subsidiaries.

Kindly note that the present letter is not the first time that this matter has been brought to the attention of your Excellency's Government. Since 2017, Mr. Choc has contacted the Swiss Embassy in Guatemala on several occasions to seek its assistance regarding the alleged persecution, penalization and harassment to which he has been subject for reporting on Solway's activities in Guatemala. Additionally, in March and April of this year, Mr. Choc met with members of the Ministry of Foreign Affairs and Ministry of Economic Affairs in Bern to alert them to his situation and to seek their assistance in requesting Solway take action to put an end to the criminal proceedings against him. As Switzerland is under a positive obligation to prevent further acts of penalization, persecution and harassment against Mr. Choc, I am concerned that the failure by your Excellency's Government to take prompt measures to ensure that Solway halt the penalization, persecution and harassment of Mr. Choc may in itself amount to a failure by Switzerland to fulfil its obligations under article 3 (8) of the Convention.

As it is my responsibility, under the mandate entrusted to me by the Meeting of the Parties to the Aarhus Convention, to seek to clarify all complaints brought to my attention, I would be grateful for your response to the following matters:

1. Please provide any information and/or comments you may have on the allegations set out in the present letter.
2. Please provide information as to the actions taken, if any, in response to Mr. Choc's repeated appeals to your Excellency's Government for assistance to stop the alleged persecution, penalization and harassment by Solway's subsidiary to which he has been subjected.
3. Please provide information as to the actions taken, if any, as a result of the present letter.

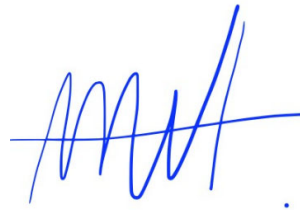
⁴ See the Compliance Committee's findings on communication ACCC/C/2014/102 (Belarus), ECE/MP.PP/C.1/2017/19, para. 70, <https://unece.org/fileadmin/DAM/env/pp/compliance/CC-58/ece.mp.pp.c.1.2017.19.e.pdf>.

I would appreciate receiving your response within 60 days, that is by **20 October 2023**. After this date, the present letter and the response received from your Excellency's Government may be made public on the Aarhus Convention's website.⁵ They will also subsequently be reported upon in my report to the eighth session of the Meeting of the Parties in 2025.

While awaiting your response, I urge that all necessary interim measures be undertaken to halt the alleged persecution, penalization and harassment of Mr. Choc and to prevent their reoccurrence. In this regard, your Excellency's Government should take great care, when looking into the allegations in the present letter, that nothing is done that could put Mr. Choc at risk of further persecution, penalization or harassment.

In the event that your investigations support or suggest the allegations to be correct, I urge you to ensure the prompt cessation of the alleged persecution, penalization and harassment of Mr. Choc and to ensure the accountability of any person(s) responsible therefor.

Please accept, Excellency, the assurances of my highest consideration.



Michel Forst

UN Special Rapporteur on environmental defenders under the Aarhus Convention

To: His Excellency, Mr. Ignazio Cassis, Minister of Foreign Affairs of Switzerland
Cc: Ms. Jasmin Gerber and Mr. Xavier Tschumi Canosa, national focal points for the Aarhus Convention, Federal Office for the Environment, Switzerland

⁵ <https://unece.org/env/pp/aarhus-convention/special-rapporteur>.