

Comments for Aarhus Convention Task Force on Access to Justice Draft report on the outcomes of the survey on measures to enable effective access to justice in environmental matters

UK Centre for Animal Law and Compassion in World Farming

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Comments Summary: We recommend incorporating a wider definition of the environment, to allow access to justice for public-interest cases involving human-animal-environmental interaction

We commend the taskforce in undertaking a survey on measures to improve access to justice in environmental matters and are grateful for the opportunity to make submissions, and to take part in the recent meeting of the Task Force on Access to Justice on 4-5 April 2023.

We appreciate measures that have been taken by Member States to reduce costs barriers in relation to cases falling under the Aarhus Convention. We were pleased to see the reference to the rights of nature at 3(c) of the Outcomes document, and agree that this will be an important mechanism to achieve environmental justice. We would also commend the call to Member States in the Outcomes document to implement the Kunming-Montreal Global Biodiversity Framework targets.

We would like to make the following additional comments:

We would propose that, in the interests of improving access to justice on environmental issues, the definition of environment under the Aarhus Convention needs to be made adequately comprehensive to encompass animal-human-environment interaction beyond exclusively 'wild' animals as this is critical to contemporary challenges facing the environment. This would both advance achievement of the Kunming-Montreal Global Biodiversity Framework and assist with achievement of the upcoming WHO instrument on pandemic prevention, preparedness and response.

One environmental matter which does not yet clearly fall under the Aarhus Convention definition, yet arguably should in the interest of biosecurity, is that of farmed animal health. The present conditions in which farmed animals live give rise to significant threats to human health and the health of wildlife through the release of pathogens caused by conditions of farming.

For example, avian influenza is on the rise, with 200 million birds being killed by or because of it since start of 2022. The Scientific Task Force on Avian Influenza stresses that wild birds are not the cause but are the victims of highly pathogenic bird flu which evolves in industrial poultry sheds, as it can move very quickly among birds mutating into highly virulent strains. While this does not commonly spread to humans directly, recently highly pathogenic avian influenza has spread to other mammals. Pigs, in particular, can act as 'mixing vessels', hosting both bird, pig and human viruses. The U.S. Centres for Disease Control and Prevention states that "the resulting new virus might then be able to infect humans and spread easily from person to person". In light of this, both the poultry and pig sectors need to be restructured, a matter which is arguably an environmental issue but does not currently seem to be covered by the definition of the environment under the Aarhus Convention, and thus benefit from access to justice measures under the same, because the animals in question are not wild.

Pathogens do not respect the categorisation of animals as wild or domesticated and thus the distinction may have become an unhelpful one in the context of public and environmental health.

Kunming-Montreal Global Biodiversity Framework

Such concern for all species, not just wild ones, would arguably align with and advance the Kunming-Montreal Global Biodiversity Framework. Outcome 3(d) of the meeting of the Task Force on Access to Justice of 4-5 April 2023 noted that ‘that the effective implementation of the Convention’s access to justice provisions can underpin the achievement of the relevant targets under the Kunming-Montreal Global Biodiversity Framework...’ We would argue that the Aarhus Convention can more directly support the achievement of the Kunming targets if the definition of the environment is expanded in a manner that incorporates ‘domesticated’ animals, as the Kunming Framework envisages:

Goal A ‘The integrity, connectivity and resilience of all ecosystems are maintained, enhanced, or restored’;

Target 5 ‘Ensure that the use, harvesting and trade of wild species is sustainable, safe and legal, preventing overexploitation, minimizing impacts on non-target species and ecosystems, and reducing the risk of pathogen spillover, applying the ecosystem approach.’ And

Target 10, ‘Ensure that areas under agriculture, aquaculture, fisheries and forestry are managed sustainably, in particular through the sustainable use of biodiversity, including through a substantial increase of the application of biodiversity friendly practices, such as sustainable intensification, agroecological and other innovative approaches, contributing to the resilience and long-term efficiency and productivity of these production systems, and to food security, conserving and restoring biodiversity and maintaining nature’s contributions to people, including ecosystem functions and services.’

A more inclusive definition of the environment by the Aarhus Convention, incorporating ecosystems created by humans in this way which interplay with the natural environment, would thus be a practical way of supporting the successful achievement of the Kunming-Montreal Global Biodiversity Framework, as potential litigants would be able to access justice more effectively than would otherwise be possible.

Pandemic Prevention

This is particularly pertinent in light of the more general global concern as to the spread of pathogens and reducing the risk of another global pandemic, as enabling access to justice on such matters would assist with prevention and preparedness, one of the key purposes of the upcoming WHO instrument on ‘pandemic prevention, preparedness and response’. The draft of that Convention (of 1 February 2023¹) recognises the central role played by domesticated animals, at 23 of the preamble:

‘Understanding that most emerging infectious diseases originate in animals, including wildlife and domesticated animals, then spill over to people’.

Under its guiding principles at Article 4 point 14, it defines the ‘One Health’ approach which should guide policy, namely,

¹ https://apps.who.int/gb/inb/pdf_files/inb4/A_INB4_3-en.pdf

'Multisectoral and transdisciplinary actions should recognize the interconnection between people, animals, plants and their shared environment, for which a coherent, integrated and unifying approach should be strengthened and applied with an aim to sustainably balance and optimize the health of people, animals and ecosystems, including through, but not limited to, attention to the prevention of epidemics due to pathogens resistant to antimicrobial agents and zoonotic diseases.'

The draft envisages that existing instruments such as the Aarhus Convention should be used to support this issue: draft Article 18, point 5 states,

'The Parties commit to strengthen synergies with other existing relevant instruments that address the drivers of pandemics, such as climate change, biodiversity loss, ecosystem degradation and increased risks at the human-animal-environment interface due to human activities.'

Conclusion

If the Aarhus Secretariat could be clear that such matters fall under the Convention, it would support, in a practical and action-oriented manner, an integrated, coordinated and collaborative approach to pandemic prevention. Interested groups would be more able to bring legal actions with respect to such matters, with important environmental implications, in their respective jurisdictions without the risk of incurring impossibly heavy legal costs in the event of an unsuccessful outcome.

We thank the Taskforce for considering our comments.