



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/2023/14 (Switzerland)
(Please use this reference in your reply)

7 June 2024

Excellency,

I have the honor to again address you in my capacity as 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).

I refer to Switzerland's letter dated 30 October 2023 regarding the alleged persecution, penalization and harassment of the non-profit association Bruno Manser Fonds and its director, Dr. Lukas Straumann (complaint ACSR/C/2023/14).

In its letter Switzerland raises a number of points which are important that I address. I also wish to underline my ongoing concern regarding the continued persecution, penalization and harassment of Bruno Manser Fonds and Dr. Straumann.

Applicability of article 3 (8) of the Aarhus Convention

In its letter, Switzerland states that it considers the persecution, penalization or harassment of Bruno Manser Fonds and Dr. Straumann to fall outside the scope of application of the Aarhus Convention and my mandate under decision VII/9¹ of the Meeting of the Parties to the Aarhus Convention. I would like to address your submissions on this point.

First, Switzerland sets out the Government's understanding of the territorial scope of the Aarhus Convention. I must emphasize that the alleged penalization, persecution or harassment of Bruno Manser Fonds and Dr. Straumann as set out in points 1-12 of my letter of allegation dated 8 August 2023 entirely concern acts by Swiss public authorities and courts, and private legal and natural persons within the territory of Switzerland. Specifically, I expressed my grave concerns about:

- (i) The civil proceedings against Bruno Manser Fonds and Dr. Straumann before the Civil Court of Basel-Stadt under article 28 of the Swiss Civil Code for alleged unlawful personal injury;
- (ii) The criminal complaints submitted to the Basel public prosecutor's office against Dr. Straumann;
- (iii) The denunciation of Bruno Manser Fonds before the Basel tax authority;
- (iv) The denunciation of Bruno Manser Fonds before the ZEWO foundation;

¹ Available at: https://unece.org/sites/default/files/2022-01/Aarhus_MoP7_Decision_on_RRM_E.pdf.

- (v) The public relations campaign against Bruno Manser Fonds and Dr. Straumann by the Geneva-based public relations company, Cabinet Privé de Conseils;
- (vi) The involvement of the Swiss law firm, Vischer AG (Vischer), in the various complaints and proceedings brought against Bruno Manser Fonds and Dr. Straumann before Swiss public authorities and courts.

Each of (i)-(vi) above are acts within the territory of Switzerland. Accordingly, no issue of extraterritoriality arises with respect to any of these matters.

Second, in its letter Switzerland states that “while Article 3 (8) AC does protect environmental defenders, it only does so in the context of these three pillars” (access to information, public participation and access to justice in environmental matters). On this matter, I draw to your attention that the Aarhus Convention Compliance Committee has made clear that article 3 contains a number of obligations, including those in article 3 (8), that stand alone as well as complement the other articles of the Convention.² With respect to article 3 (8), the Compliance Committee has held that:

“the rights referred to in article 3, paragraph 8, encompass the broad range of rights granted to members of the public by article 1 of the Convention, namely the rights of access to information, public participation in decision-making and access to justice, which contribute to the right of every person of present and future generations to live in an environment adequate to their health and well-being. The exercise of these rights would include situations in which the provisions of the Convention concerning access to information, public participation in decision-making and access to justice set out in articles 4 to 9 of the Convention are applicable and also situations covered by the general provisions of article 3 of the Convention, but is not limited to them. Accordingly, the Committee finds that article 3, paragraph 8, applies to all situations in which members of the public seek access to information, public participation or access to justice in order to protect their right to live in an environment adequate to their health or well-being.”³

Therefore, the Compliance Committee has made clear that article 3 (8) covers all situations in which members of the public seek access to information, public participation or access to justice (each understood in the broad sense) in order to protect their right to live in an environment adequate to their health or well-being.

Third, in its letter Switzerland states that it:

“seems reasonable that the exercise of the affected right must take place in the territorial scope of the Convention, so that the protection can take effect and be enforced. In other words, the acts must occur in relation to an exercised right guaranteed by the Convention within the sphere of power of a party. To our knowledge, however, it seems the activities carried out by the Bruno Manser Fonds and Dr. Straumann are outside the scope of protection of the Convention (both in terms of location and subject matter) and many facts take place in Malaysia and Canada.”

Bruno Manser Fonds and Dr. Straumann are working to protect Sarawak from deforestation. Bruno Manser Fonds is a registered non-profit association under Swiss law, with its offices in Basel. Dr. Straumann is a Swiss citizen. The fact that a natural or legal person is seeking to protect the environment outside the territory of a Party to the Convention in no way diminishes their status as an environmental defender, and their rights under the Aarhus Convention, including their protection under article 3 (8) of the Convention. The Aarhus Convention provides for no such limitation. The sole criterion is that the act or omission constituting persecution, penalization or harassment of the

² ECE/MP.PP/C.1/2017/15, para. 84.

³ See the Compliance Committee’s findings on communication ACCC/C/2014/102 (Belarus), ECE/MP.PP/C.1/2017/19, para. 66 (emphasis added), available at <https://unece.org/fileadmin/DAM/env/pp/compliance/CC-58/ece.mp.pp.c.1.2017.19.e.pdf>.

environmental defender must be within the control of the Party concerned. Any other view is clearly flawed and, moreover, dangerous. It would mean, for example, that an environmental non-governmental organization based in Switzerland working to save endangered species, such as whales or pandas, would not qualify for protection under article 3 (8) of the Convention in Switzerland, because whales and pandas are not found in Switzerland. Switzerland's submission on this point is clearly erroneous and must be promptly rejected.

To sum up, Switzerland has a binding obligation under article 3 (8) of the Aarhus Convention to ensure that, in exercising the broad range of rights granted by article 1 of the Convention in order to protect the right to live in an environment adequate to health or well-being,⁴ Bruno Manser Fonds and Dr. Straumann are not subject to any acts or omissions within Switzerland's control that amount to penalization, persecution or harassment. As the Compliance Committee has made clear, this includes "penalization, persecution or harassment by private natural or legal persons that the Party concerned did not take the necessary measures to prevent."⁵ The sole criterion is that the alleged persecution, penalization or harassment must be within the control of the Party concerned. I stress once again that each of the acts listed in points (i)-(vi) on page 1-2 of the present letter are taking place on Swiss territory and are thus within Your Excellency's Government's control.

Independence of the judiciary and SLAPPs

On page 2 of its letter, Switzerland emphasizes the principle of separation of powers and explains that the Government is prohibited from taking a position or influencing the decision-making process in the ongoing court proceedings against Bruno Manser Fonds and Dr. Straumann before the civil court of Basel-Stadt. Separation of powers and the independence of the judiciary are, of course, important pillars of the rule of law. However, as the Compliance Committee has made clear, they do not in any way limit Switzerland's obligation under article 3 (8) of the Convention to ensure that environmental defenders are not subject to "penalization, persecution or harassment by any State body or institution, including those acting in a judicial or legislative capacity".⁶ Indeed, there are various measures that Switzerland could take to protect environmental defenders from strategic lawsuits against public participation (SLAPPs) without interfering with the independence of its judiciary.

First, the Swiss Government could apply to join the ongoing court proceedings against Bruno Manser Fonds and Dr. Straumann as an intervenor and inform the court about Switzerland's obligations under article 3 (8) of the Aarhus Convention and explain the identifying features of a SLAPP and the serious implications that such a lawsuit has on an environmental defender's ability to exercise his or her rights under the Convention. Seeking to intervene in this way would in no way interfere with the independence of the judiciary of Switzerland.

Second, Switzerland could take one or more of the following more systemic measures to protect Bruno Manser Fonds and Dr. Straumann from the ongoing SLAPP against them as well as to protect environmental defenders from SLAPPs before Swiss courts in the future. For example, Switzerland could:

- a) Adopt new legislation on the use and prevention of SLAPPs.
- b) Amend existing primary or secondary legislation (such as rules of court) to ensure Swiss courts have the necessary powers and tools, including procedural safeguards, to identify

⁴ See the Compliance Committee's findings on communication ACCC/C/2014/102 (Belarus), ECE/MP.PP/C.1/2017/19, para. 66, available at <https://unece.org/fileadmin/DAM/env/pp/compliance/CC-58/ece.mp.pp.c.1.2017.19.e.pdf>.

⁵ Ibid., para. 70.

⁶ Ibid.

and promptly dispose of SLAPPs as well as to ensure that SLAPP victims are fully compensated for any harm caused by the abusive proceedings, including for court fees, legal fees and any other material and non-material harm.

- c) Adopt prosecutorial and judicial guidelines on preventing and dismissing SLAPPs.
- d) Establish appropriate support mechanisms for the victims of SLAPPs, including legal support, legal aid and funds to cover costs arising from SLAPPs.

None of the measures outlined above would in any way interfere with the independence of the judiciary of Switzerland.

Further developments in Sakto's court proceedings against Bruno Manser Fonds and Dr. Straumann before the Civil Court of Basel-Stadt

Based on the information received, I understand that the Civil Court of Basel-Stadt issued an order on 12 September 2023 announcing that it will lift the previous limitations on which claims it will review and instead will address all claims brought by Sakto, apart from those relating to litigation value and compensation.

As I set out in my letter dated 8 August 2023, Sakto's claims before the Civil Court include requesting an order for the deletion of more than 200 publications published by Bruno Manser Fonds and Dr. Straumann over the course of nearly ten years and an order preventing Bruno Manser Fonds to make specific statements in relation to Sakto in the future, including in relation to its alleged corrupt practices and money-laundering. These are far-reaching demands that seek to retroactively silence Bruno Manser Fonds' efforts to highlight environmental harms and the alleged corruption of Sakto's activities in Malaysia. Moreover, if the Civil Court of Basel-Stadt were to grant Sakto's requests and a subsequent proceeding on damages were to be opened, this would expose Bruno Manser Fonds and Dr. Straumann to the risk of very serious financial harm. All the while, the ongoing court proceedings, including the hearing on 16 August 2023, continue to increase the legal fees incurred by Bruno Manser Fonds, a non-profit association.

As I made clear in my letter of 8 August 2023, I am deeply concerned about the apparent use of civil proceedings by Swiss lawyers before Swiss courts to silence Bruno Manser Fonds and Dr. Straumann's environmental protection activities and to effectively prevent them from exercising their rights under the Aarhus Convention. I am particularly concerned at the attempt to silence Bruno Manser Fonds and Dr. Straumann's environmental protection activities both retroactively, nearly ten years into the past, and prospectively, for a potentially unlimited time into the future.

As I have explained on pages 3-4 of the present letter, there are a number of concrete actions that Switzerland can take to protect Bruno Manser Fonds and Dr. Straumann from being subjected to further penalization, persecution and harassment without in any way interfering with the independence of the Swiss judiciary. I thus call on Your Excellency's Government to take effective measures as a matter of urgency to protect Bruno Manser Fonds and Dr. Straumann from the ongoing SLAPP against them.

Denunciations of Bruno Manser Fonds before the ZEWO foundation and the Basel tax authority

In August 2019, Sakto's legal counsel, Vischer, wrote a denunciation letter to ZEWO,⁷ a foundation that certifies Swiss charities, alleging that Bruno Manser Fonds had committed financial crimes. After three years, ZEWO rejected Vischer's denunciation in May 2022 although ZEWO still requested Bruno Manser Fonds to report regularly to ZEWO on Sakto's ongoing court proceedings against it. In 2023, that reporting condition was lifted and Bruno Manser Fonds has been successfully recertified by ZEWO for the period 2022-2026.

However, also in August 2019, Bruno Manser Fonds was denounced before the local tax authority of Basel (Steuerverwaltung Basel-Stadt). The denunciation remains pending and could result in Bruno Manser Fonds losing its status as a charitable, tax-exempt association. To date, the Basel tax authority has refused to give Bruno Manser Fonds access to the denunciation file. In July 2022, Bruno Manser Fonds appealed the decision to deny it access to the denunciation file. That appeal was rejected in July 2023, and Bruno Manser Fonds filed an appeal to the higher appeal body (Steuerrekurskommission Basel-Stadt). On 29 February 2024, the Steuerrekurskommission informed Bruno Manser Fonds that its appeal seeking access to the denunciation file had been rejected. As no reasons for the decision were provided, on 14 March 2024, Bruno Manser Fonds filed a request for written reasons for the decision. Based on the information received, this request for written reasons for the continued denial of access to the file remains pending.

Based on the information received, the pending denunciation of Bruno Manser Fonds to the Basel tax authority as well as the now rejected denunciation before ZEWO each appear to have been deliberate attempts to prevent Bruno Manser Fonds from continuing its environmental protection activities as a certified charitable organization. As such, the denunciations may amount to persecution, penalization and harassment of Bruno Manser Fonds in violation of article 3 (8) of the Aarhus Convention.

I would therefore be grateful for your response regarding the concrete actions that Your Excellency's Government has taken, or proposes to take, to protect Bruno Manser Fonds from these apparent attempts to hamper its ability to carry out its charitable environmental protection activities, and in particular the still pending denunciation before the Basel tax authority.

Vischer's involvement in the persecution, penalization and harassment of Bruno Manser Fonds and Dr. Straumann

In my letter dated 8 August 2023, I expressed my serious concern about the role played by the Swiss law firm, Vischer, in enabling and exacerbating the alleged persecution, penalization and harassment of Bruno Manser Fonds and Dr. Straumann. This has included, among other things, Vischer's role as Sakto's legal counsel in the ongoing court proceedings before the Civil Court of Basel-Stadt as well as in the denunciation of Bruno Manser Fonds before the Basel tax authority and ZEWO.

As noted in Switzerland's letter of 30 October 2023, in 2019 Bruno Manser Fonds brought criminal complaints against three lawyers at Vischer for defamation (article 174 Civil Code) and false accusations (article 303 Civil Code) in the light of their involvement in the persecution, penalization and harassment of Bruno Manser Fonds and Dr. Straumann.

⁷ See <https://zewo.ch/en/>.

However, based on the information received, on 17 October 2023, the Public Prosecutor's Office of Basel announced its intention to close its investigation into the criminal complaints against the three lawyers from Vischer due to (i) the expiry of the limitation period with regards to the complaints for defamation, and (ii) a lack of evidence with regards to the complaints for false accusations.

It is my understanding that, by their criminal complaints, Bruno Manser Fonds and Dr. Straumann have availed themselves of the main remedies available under Swiss law to address the role played by Sakto's Swiss legal counsel in exacerbating and enabling the ongoing persecution, penalization and harassment. I am therefore greatly troubled that, four years after Bruno Manser Fonds filed its criminal complaints, and despite my letter of 8 August 2023 highlighting Vischer's central role in the persecution, penalization and harassment of Bruno Manser Fonds and Dr. Straumann, the Public Prosecutor closed its investigation in October 2023 without ever opening formal proceedings.

I would therefore be grateful for your response regarding the concrete actions that Your Excellency's Government has taken, or proposes to take, to ensure that Vischer, in its role as Sakto's legal representative in Switzerland, does not engage in conduct that amounts to persecution, penalization or harassment of Bruno Manser Fonds and Dr. Straumann.

I warmly welcome the commitment of Your Excellency's Government as stated in Switzerland's letter dated 30 October 2023 to continue its efforts to uphold the rights under the Aarhus Convention and to protect environmental defenders invoking these rights in Switzerland. In accordance with my responsibility under the mandate entrusted to me by the Meeting of the Parties to the Aarhus Convention, I therefore look forward to your response providing information on the concrete actions that the Swiss Government has taken, or intends to take, as a result of the present letter.

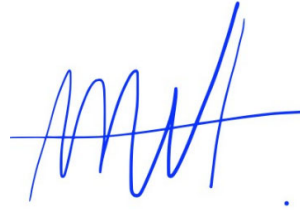
I would appreciate receiving your response to the present letter within four weeks, that is by **5 July 2024**.

Please note that the present letter will be published on the Aarhus Convention's website promptly upon the expiry of the above deadline.⁸ I will also report on the present letter in my report to the eighth session of the Meeting of the Parties in 2025.

⁸ Available at: <https://unece.org/environmental-policy/public-participation/correspondence-regarding-complaints-special-rapporteur>.

While awaiting your response, I reiterate that all necessary measures be undertaken to ensure that the alleged persecution, penalization and harassment of Bruno Manser Fonds and Dr. Straumann is promptly ceased and to ensure the accountability of all person(s) responsible therefor. In this regard, Your Excellency's Government should take great care that nothing is done that could put Bruno Manser Fonds and Dr. Straumann at risk of further persecution, penalization or harassment.

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