

Statement for Aarhus Working Group of States Parties, 3 July 2024 Geneva

Thematic Session on Public Participation in International Forums Regarding: the International Seabed Authority

To be delivered by Hannah Lily (independent expert) on behalf of other experts: Drs. Jeff Ardron Neil Craik, Aline Jaeckel, Surabhi Ranganathan and Pradeep Singh.

[This statement is made pursuant to the States Parties' duty to promote the application of the principles of the Aarhus Convention in international environmental decision-making processes and within the framework of international organizations in matters relating to the environment.]

- This statement is delivered on behalf of a group of independent experts. Our research identifies key concerns as regards the application of Aarhus Convention principles in the environmental decision-making processes of the International Seabed Authority (ISA).
- 46 Aarhus Convention parties are members of the ISA. This is more than a quarter of the ISA's membership.
- The ISA has the role to decide whether or not to permit mining on the deep seabed beyond national jurisdiction, and if so under what conditions.
- The minerals under the ISA's jurisdiction are designated the common heritage of humankind. Their conservation or use is of interest to all of humankind, including future generations.
- [The maritime zone ("the Area") under the ISA's control is almost half the total surface of our planet.
- The minerals of the Area sit beneath the international high seas, the three dimensional space which is estimated to represent 95% of the habitable area of the Earth, with vast biodiversity largely unseen yet by humans.]
- Seabed mining, if permitted, will cause direct and indirect environmental impacts both to the ocean floor and the high seas. Pollution caused by seabed mining may travel great distances in the water column. Indications are that negative impacts on biodiversity are significant and may be irreversible on human timescales.
- These ocean areas contain vast biodiversity, much of which is poorly understood or not yet known to humans. The scientific community remains uncertain as to whether impacts from seabed mining may compromise complex ocean ecosystems that provide critical services to humankind, such as carbon sequestration, oxygen production, and fisheries.
- We find ourselves in a situation of scientific uncertainty. Also: regulatory uncertainty, as ISA member States have yet to agree on the rules for mining. Yet the ISA is expected to receive its first application for deep seabed mining, this year.
- Upholding the three pillars of the Aarhus Convention at the ISA should be a priority. [There needs to be adequate access to information, public participation, and access to justice at the ISA.] Otherwise, globally significant environmental decisions will be determined through a process that currently limits access to comprehensive information, and limits

opportunities for robust public participation, negatively impacting accountability and public support.

- As it stands, the ISA's publicly accessible information systems are difficult to use and incomplete; stakeholder engagement is discretionary, ad hoc and irregular; and there are no independent complaints or oversight mechanisms. Campaigners - as well as ex-staff, media representatives and scientists - describe a climate of institutionalized hostility and exclusion to those expressing environmental concerns.
- [Previous to this meeting, the group of independent experts submitted a written statement outline which is available on the meeting's website, in which we provide more detail of observed issues at the ISA - with links to supporting evidence and commentaries.]¹
- In light of these issues, we would also like to provide the following four specific recommendations for the membership's consideration:

(1) *That Aarhus Convention States Parties*, as ISA Assembly members, should request that assessment of the application of Aarhus principles is included in the scope of the next institutional review of the ISA. Such a review is required by Article 154 of UNCLOS, and is due to commence later this year.

(2) *That Aarhus Convention States Parties* should propose for policies and procedures to be adopted by the ISA's organs, with the aim to bring the ISA into full alignment with the Aarhus principles. For example, State Parties could pursue adoption and publication of:

- i. an ISA public participation and stakeholder engagement policy,
- ii. an ISA environmental information sharing policy,
- iii. a public complaints and whistle-blower procedure, and
- iv. reform of decision-making processes for environmental impact assessment.

Each of these instruments should be developed with public consultation.

(3) *That Aarhus Convention States Parties* should request the Aarhus Secretariat to:

- i. Strengthen coordination with the ISA Secretariat; and
- ii. Prepare commentary to inform Parties on the extent to which the latest draft of the ISA's Regulations for mineral exploitation, currently under negotiation, implement the Aarhus principles.

(4) *That Aarhus Convention States Parties* should invite the Special Rapporteur on environmental defenders to look into relevant issues at the ISA, including the right to peaceful protest at sea; and seek cooperation with the UN Special Rapporteur on the Human Right to a Healthy Environment.

- We are grateful to this Working Group for the opportunity to contribute this statement. We stand ready to provide further information or assistance, at your request. Thank you.

¹ https://unece.org/sites/default/files/2024-03/WGP27_PPIF_session_Statement_on_ISA_by_Experts_0.pdf