

## Special Rapporteur on Environmental Defenders

Oral update on activities under the Aarhus Convention Rapid Response Mechanism for the 28<sup>th</sup> meeting of the Working Group of the Parties of the Aarhus Convention  
3 July 2024, Geneva, 16.15–17.10

### Let me give you a brief overview on structure of my oral update

- Share information on the activities conducted in the last year, since my update to the 27<sup>th</sup> meeting of the Working Group of the Parties (26 June 2023).
- Share observations reflecting on my *Vision for the mandate* and the two years of activities since I was elected, including:
  - Observations on points raised by Aarhus Parties in their responses to my letters of allegations; and
  - Observations on the current challenges that need to be addressed to ensure that the mandate can function effectively.
- And respond to questions that I have received in advance or that have been raised in my meetings with governments.
- Before starting, I would like to play a short film presenting the mandate.
  - It was made to support awareness raising efforts and reach a large public.
  - It is the first time this film is played, and it is not yet available on my webpage.
  - It will be made public in the coming weeks.

### Complaints received

- The number of complaints is growing very rapidly:
  - In the first year of the mandate I received 10 complaints (June 2022-June 2023).
  - In the second year of my mandate I received 44 complaints (June 2023-June 2024).
- This means that, to date:
  - 54 complaints received, concerning 22 Aarhus Parties.
  - 12 complaints are public (accessible on the Special Rapporteur's webpage for correspondence).
- 54 complaints cover different forms of penalization, persecution or harassment of environmental defenders, including for instance:
  - SLAPPs against individual environmental defenders and NGOs
  - Serious penalization of environmental protesters
  - Intimidation of environmental journalists
- However, the lack of funding and human resources (to which I will come back later in my oral update) are a real challenge in my efforts to ensure a thorough follow up on the complaints:
  - In terms of human resources, for instance: the workload resulting from the number of complaints received represent a huge burden on the shoulders of the small team working with me and we constantly need to struggle on priorities.

- In terms of lack of funding, for instance: the Legal Officers who support my mandate have not been authorized to travel with me, on occasions where it would have provided an important added value.

### **Tools used to deal with complaints**

- The tools I use to deal with complaints depend on the particular situation.
- As soon as possible after we receive a complaint, my team contacts the complainant and/or victim to seek clarification and to explain the mandate. The team spends also time to confirm the allegations received through different sources, such as NGOs, media, UN country offices.
- So far, in dealing with the various complaints, I have used most of the tools listed in [decision VII/9](#) and my [Vision for the mandate](#).
- These include:
  - **Complaints form**
    - The form to submit a complaint is on my website. The Russian version of the complaint form has today been posted on the website, together with the French and English versions already posted there.
  - **Letters of allegation:**
    - These are available in a prominent place on my website.
    - As a general rule, the letter of allegation that I send to the Government (and companies, where relevant), is the first step in dealing with a complaint.
    - As you know, Governments and companies have 60 days to reply. After these 60 days, both my letter and response of the Government or the company are made public.
    - To date, most Governments have provided their responses in time. However, I am still expecting substantive responses to my letters of allegation for three complaints out of the 12 complaints that are public.
  - **We also use public statements and press releases:**
    - Public statements related to a complaint are only used on a case-by-case basis.
    - So far, I have released such public statement in one case only: SRC/26 (UK), [Public statement regarding the criminal prosecution of Mr. Daniel Shaw for his involvement in peaceful environmental protest in the UK](#) (24 June 2024).
  - **The mandate is also able to issue immediate protection measures:**
    - Those measures enable me to act on an urgent basis before the investigation into the complaint is completed. Again, they are also only used on a case-by-case basis.
    - So far, I have issued such immediate measures in one case only: in my [End of mission statement](#) following my visit to the Tarn region of France, to protect environmental defenders who were peacefully occupying trees.
  - **Observation of trials is an important possibility:**
    - In France: I have attended trials on two occasions as an expert witness, to provide expert testimony on the protection of peaceful civil disobedience under international human rights law.

- In Switzerland: a Legal Officer in my team attended a trial as an observer in an alleged SLAPP against two environmental defenders.
- In the UK: tomorrow, I will be attending as an observer the trial of an environmental defender who faces up to 10 years of prison for ‘*conspiracy to cause a public nuisance*’ because of his involvement in a Zoom meeting that discussed the organization of a peaceful protest.

**I will now move to observations on points raised by Aarhus Parties in their responses to my letters of allegation in the context of complaints**

- While we are all together, I think it may be helpful for me to clarify some points that have been raised by Parties in response to my letters of allegation:
  - 1. Regarding the courts:**
    - I have received several complaints of alleged persecution or penalization of environmental defenders through the courts, including criminal prosecutions by States and SLAPPs and defamation proceedings by private individuals and companies.
    - As the Compliance Committee has made clear:
      - Article 3 (8) covers: “*penalization, persecution or harassment by any State body or institution, including those acting in a judicial capacity*”<sup>1</sup>
      - Moreover, States cannot rely on “judicial independence” or “separation of powers” as an excuse not to take action to stop the alleged persecution, since under international law, as you know, a State may **not** invoke its internal law as justification for failure to perform a treaty<sup>2</sup>. This includes internal divisions of powers between the legislative, executive and judicial branches of government.<sup>3</sup>
  - 2. Regarding private companies:**
    - I have received a number of complaints concerning the persecution or harassment of environmental defenders by private individuals or companies. And this is a question that has been raised by some Parties.
    - As the Compliance Committee has also made clear:
      - In addition to persecution by any State entity, article 3 (8) covers “*penalization, persecution or harassment by private natural or legal persons that the Party concerned did not take the necessary measures to prevent.*”<sup>4</sup>
    - I would also like to recall that the Meeting of the Parties intended persecution by private actors to be part of my mandate, which is explicitly stated in paragraph 1 of the annex to [decision VII/9](#). Clearly my mandate has the possibility to protect environmental defenders from persecution, penalization and harassment arising from the acts or omissions of public or private entities, which means also companies.

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<sup>1</sup> Committee’s findings on [C102 \(Belarus\)](#), para. 70.

<sup>2</sup> Full quote: “As a matter of general international law of treaties, codified by article 27 of the 1969 Vienna Convention on the Law of Treaties, a State may not invoke its internal law as justification for failure to perform a treaty. This includes internal divisions of powers ... between the legislative, executive and judicial branches of government. Accordingly, the internal division of powers is no excuse for not complying with international law”.

<sup>3</sup> Committee’s findings on [C11 \(Belgium\)](#), para. 41.

<sup>4</sup> Committee’s findings on [C102 \(Belarus\)](#), para. 70.

### **3. Regarding the extraterritorial scope:**

- I have received complaints concerning the persecution of environmental defenders outside the territory of Aarhus Parties, by private companies headquartered in Aarhus Parties.
- The rights under the Convention are granted to the public – which is “any natural or legal person”<sup>5</sup>.
- As the Compliance Committee has made clear in a number of findings<sup>6</sup> dating all the way back to its earliest findings in 2005,<sup>7</sup> this includes members of the public outside the territory of the Party concerned.

### **4. Finally, regarding environmental protests:**

- The Compliance Committee has made clear that:
  - Peaceful environmental protest is a “*legitimate exercise of the public’s right to participate in decision-making as recognized in article 1 of the Convention*”<sup>8</sup>; and
  - a. Persecuting, penalizing or harassing members of the public seeking to exercise this right violates article 3(8) of the Convention.
- The Compliance Committee has held that article 3 (8) covers members of the public exercising the broad range of rights granted by the Convention, not just those in articles 4-9. For example, the Compliance Committee has held that article 3 (8) covers members of the public engaging in environmental protest, as “a legitimate exercise of the public’s right to participate as recognized in article 1 of the Convention”.
- As you may have understood, in my work I’m constantly referring to the findings made by the Compliance Committee in its capacity to interpret the provisions of the Convention.

### **Raising awareness of the Aarhus Convention, the obligations of the Parties under article 3 (8) and my mandate**

- In the last year I have continued to participate in many events on the protection of environmental defenders, both online and in person in various countries, including in many “human rights” spaces, to strengthen the networks and cooperation between the two communities.
- In February 2024, I traveled to Cyprus, for an official country visit at the invitation of the Government. I thank Cyprus and would like to encourage other Aarhus Parties to extend such invitations.
- In the last two years, I have also traveled to 20 Aarhus Parties, at the invitation of civil society, to meet with environmental defenders and, at every occasion, I have tried to meet with Governments during these short visits.

### **Organizing regional consultations with environmental defenders**

- In addition to conferences and events where I was invited, and as announced in my [Vision for the mandate](#):

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<sup>5</sup> Article 2 (4).

<sup>6</sup> E.g. the Committee’s findings on [C3 \(Ukraine\)](#), [C71 \(Czechia\)](#), [C91 \(UK\)](#), [C119 \(Poland\)](#), [S2 \(Belarus\)](#), and the Committee’s advice on [A2 \(Kazakhstan\)](#).

<sup>7</sup> Committee’s findings on [C3 \(Ukraine\)](#).

<sup>8</sup> Committee’s findings on [C102 \(Belarus\)](#), para. 96.

- I also organized regional consultations with environmental defenders:
  - [In Oslo](#) (November 2023), with Indigenous environmental defenders from Northern Europe: Saami from Finland, Norway and Sweden; and Inuit from Greenland.
  - [In Almaty](#) (March 2024), with environmental defenders from Kazakhstan, Kyrgyzstan, Tajikistan and Turkmenistan.
  - [In Belgrade](#) (May 2024), with environmental defenders from Albania, Armenia, Azerbaijan, Bosnia and Herzegovina, Bulgaria, Georgia, Greece, Montenegro, North Macedonia, Ukraine, Serbia, and Slovakia.
- In 2024 and 2025 I will organize additional consultations:
  - [In Zagreb](#) (although no funding is secured yet), to meet with environmental defenders from countries of Northern and Western Europe.
  - [In Lomé](#) and [in Bogota](#) (September 2024), to meet with environmental defenders from Central and Western Africa and Latin America and the Caribbean, in line with the extraterritorial scope of the Aarhus Convention and the mandate, on which I elaborated a few minutes ago. Which means defenders facing penalization or threats from state-owned companies or other State actors from Aarhus Parties and companies based in an Aarhus Party and operating in Africa or Latin America.
- I will prepare a report on these regional consultations, that will be submitted as a background document to the next Meeting of the Parties in 2025.

**Strengthening the legal recognition and protection of environmental defenders is an important element of my work**

- As part of the prevention component of my mandate, and with a view to contribute to the strengthening of the legal recognition and protection of environmental defenders, I provided inputs to the:
  - [EU Corporate Sustainability Due Diligence Directive](#)
  - [EU anti-SLAPP Directive](#)
  - [Recommendation of the Committee of Ministers of the Council of Europe on countering SLAPPs](#)
  - Request for an Advisory Opinion by the Republic of Chile and the Republic of Colombia regarding "Climate Emergency and Human Rights" ([joint submission with the Aarhus Convention secretariat, to the Inter-American Court of Human Rights](#))
  - [Proposed Council of Europe Framework Convention on Artificial Intelligence, Human Rights, Democracy and the Rule of Law](#)

**You have noted that I have focused part on my work on the repression of environmental protest and civil disobedience**

- In February 2024, I released a [position paper on State repression of environmental protest and civil disobedience](#), drawing from more than a year of information gathering on the repression and criminalization of peaceful environmental protest and civil disobedience that I observed in Aarhus Parties.
- This trend of repression spans at least four dimensions: the media and political discourses, policy and legislation, law enforcement and the courts. As I consider this to

be a major threat to human rights and democracy, in my position paper I urge States to profoundly change their responses to environmental protest, through five calls to action.

- I am currently working on the development of guidelines drawing from these five calls to action, to elaborate on the facilitation of environmental protests and civil disobedience in accordance with international human rights law and principles.
- Of course Parties and civil society will be invited to comment on the draft guidelines.
- These guidelines will be released in 2025 and, like my report on the consultations with environmental defenders, it will be submitted as a background document to the eighth session of the Meeting of the Parties.

**To conclude on funding to make the mandate effective**

- One year ago, I alerted Aarhus Parties that:
- Funding and human resources are a critical issue for an effective rapid response mechanism, as established by Aarhus Parties.
- So far, I have managed to secure private funding that enables me to conduct visits to Parties, to participate in national, regional and international events, to organize regional consultations, etc.
- But clearly the mandate established by Aarhus Parties should not be relying on private funding. To date, the financial contributions of Aarhus Parties are not sufficient and limit my ability to effectively deal with alleged violations of article 3 (8).
- I am happy to elaborate further, during the Questions and Answers, on the various components of my work that need to be strengthened.
- This year again, in line with the call by the Chair of the Compliance Committee, I am calling on Aarhus Parties to comply with the commitment they took to provide this mandate with the resources it needs to be effective.
- Thank you.