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in Environmental Matters

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Preparations for the seventh session of the Meeting of the Parties:

Future work programme

Overview of existing mechanisms under other treaties and organisations that cover or may potentially cover rights of environmental defenders¹

Prepared by the secretariat

Introduction

1. This overview is complementary to the draft note prepared by the Bureau on a rapid response mechanism to deal with cases related to article 3 (8) of the Aarhus Convention (ECE/MP.PP/WG.1/2020/13).
2. The overview considers the following mechanisms that cover or may potentially cover rights of environmental defenders based on the information made available online by the respective organisations:
 - United Nations Environment Programme (UNEP) rapid response mechanism²
 - United Nations (UN) Human Rights Council's Special Rapporteur on the situation of human rights defenders³
 - UN Human Rights Committee procedure under the Optional Protocol to the International Covenant on Civil and Political Rights (CCPR)⁴
 - UN Committee Against Torture (CAT)⁵
 - UN Committee on the Elimination of Racial Discrimination (CERD)⁶
 - UN Committee on the Elimination of Discrimination Against Women (CEDAW)⁷
 - UN Human Rights Council framework against acts of intimidation and reprisal for cooperation with the special procedures⁸
 - United Nations Educational, Scientific and Cultural Organization (UNESCO) Resolution 29 "Condemnation of Violence Against Journalists"⁹
 - European Court of Human Rights¹⁰

¹ This document was not formally edited.

² See

https://wedocs.unep.org/bitstream/handle/20.500.11822/22769/UN%20Environment%20Policy%20on%20Environmental%20Defenders_08.02.18Clean.pdf?sequence=1&isAllowed=y.

³ See <https://www.ohchr.org/en/issues/srhrdefenders/pages/srhrdefendersindex.aspx>.

⁴ See <https://www.ohchr.org/EN/HRBodies/CCPR/Pages/CCPRIndex.aspx>.

⁵ See <https://www.ohchr.org/EN/HRBodies/CAT/Pages/CATIndex.aspx>.

⁶ See <https://www.ohchr.org/en/hrbodies/cerd/pages/cerdindex.aspx>.

⁷ See <https://www.ohchr.org/en/hrbodies/cedaw/pages/cedawindex.aspx>.

⁸ See <https://www.ohchr.org/EN/HRBodies/SP/Pages/Actsofintimidationandreprisal.aspx>.

⁹ See <https://en.unesco.org/sites/default/files/resolution29-en.pdf>.

¹⁰ See https://www.echr.coe.int/Documents/FS_Interim_measures_ENG.pdf.

- African Commission on Human and Peoples' Rights¹¹
- Inter-American Court of Human Rights¹²

I. Situation for trigger

3. All of the mechanisms reviewed address the situation when it is alleged that human rights have already been violated or are currently being violated. In addition, about half of the mechanisms cover situations where there are “fears of a threat to life or ill treatment”¹³ or that human rights are in danger of being violated¹⁴ - the human rights violation need not thus yet to have happened.¹⁵

II. Who can trigger

4. Almost all of the mechanisms reviewed allow communications, complaints or requests to be submitted by an individual whose rights have been violated or are in danger of being violated. In addition to individuals, some of the mechanisms also permit communities¹⁶ or a group of individuals¹⁷ to trigger the mechanism. Some mechanisms allow for complaints be brought by a third party on behalf of an individual¹⁸ and some enable non-governmental organizations to submit complaints.¹⁹ Some of the reviewed mechanisms are targeted at a specific group of people, such as journalists²⁰ or “those who seek to cooperate, cooperate or have cooperated with the United Nations in the field of human rights”²¹.

5. Several of the human rights treaties reviewed contain provisions allowing State parties to complain to the relevant treaty body about alleged violations of the treaty by another State party.²² The UN Human Rights Council's Special Rapporteur on the situation of human rights defenders can receive information and complaints from a variety of sources, including State authorities, non-governmental organizations, United Nations agencies, the media and individual human rights defenders.

6. The UNEP and UNESCO mechanisms must be triggered by the leadership of the organization (e.g. the UNEP Regional Directors or the UNESCO Director-General).

III. Admissibility criteria

7. The mechanisms reviewed impose various conditions for the admissibility of communications, complaints or requests submitted to them. The condition that domestic remedies must have been exhausted is the most common condition. However, for a number of mechanisms, the exhaustion of domestic remedies is not an absolute requirement, for example, if the complainant demonstrates that the remedies are in fact unavailable or would be unreasonably prolonged or plainly ineffective.

8. Some mechanisms also impose a requirement regarding the time period within which complaints must be submitted, for example within six months of the final decision at the domestic level.²³

¹¹ See <https://www.achpr.org/communications>.

¹² See https://www.oas.org/en/iachr/consultation/2_measures.asp.

¹³ E.g. the European Court of Human Rights.

¹⁴ E.g. UNEP rapid response mechanism.

¹⁵ See also the UN Special Rapporteur on the situation of human rights defenders, the African Commission on Human and Peoples' Rights, the Inter-American Court on Human Rights and the European Court of Human Rights.

¹⁶ E.g. UNEP rapid response mechanism.

¹⁷ E.g. CERD, CEDAW and the Inter-American Court of Human Rights.

¹⁸ E.g. the African Commission on Human and Peoples' Rights and CCPR, CAT, CEDAW and CERD.

¹⁹ E.g. the European Court of Human Rights and the UN Special Rapporteur on the situation of human rights defenders

²⁰ UNESCO Resolution 29.

²¹ UN Human Rights Council framework against acts of intimidation and reprisal for cooperation with the special procedures.

²² E.g. Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, article 21.

²³ E.g. CERD.

9. Some mechanisms, such as the individual complaints procedures under CEDAW and under CAT, require that the case has not yet been examined, or be currently under examination, by another mechanism at the international level.

10. With respect to the mechanisms established under international treaties,²⁴ complaints can only be brought against a State that is a party to that treaty, and with respect to an alleged violation of the rights protected by the treaty. In addition, some treaty mechanisms require that the State concerned has expressly accepted the competence of that mechanism to examine complaints brought by individuals.²⁵

11. Several mechanisms make clear that anonymous communications will be considered inadmissible.²⁶ However, although communications cannot be submitted anonymously, some mechanisms permit complainants to request that their identity be kept confidential.²⁷

12. A number of mechanisms specify the kind of information to be included in the complaint and some mechanisms provide a template for complaints. For example, the UN Special Rapporteur on the situation of human rights defenders requires in its template that complainants explain the link between the alleged violation and the victims' human rights work or their exercise of human rights. The European Court of Human Rights requires that, in addition to setting out the details of the violations of the European Convention on Human Rights alleged, the complaint be accompanied by all necessary supporting documents, such as relevant decisions of the domestic courts. UNESCO likewise states that requests need to be accompanied by all necessary supporting documents.

13. No information about the admissibility criteria for complaints to the UNEP rapid response mechanism is available online.

IV. Mechanisms that provide for rapid response measures

Key elements

14. Key elements of the mechanisms reviewed that provide for the possibility of rapid response measures (also known, depending on the mechanism concerned, as “interim measures”, “provisional measures” and “protection measures”) include:

- (a) Providing for the possibility to grant rapid response measures if there is a real or imminent risk of serious, irreversible or irreparable harm;²⁸
- (b) Having a framework in place to provide a systematic and coordinated response.²⁹
- (c) Deciding which rapid response measures should be taken in each case on a case-by-case basis, with the consent of the persons concerned and according to the principle of “do no harm”.³⁰

Length of time for rapid response measures to be issued

15. Most of the mechanisms reviewed provide little information regarding the length of time for rapid response measures to be granted. The individual complaints procedures under the UN human rights treaty bodies provides the most specific indication regarding timeframes. It indicates that it takes “several working days” for the UN human rights committees to process requests for interim measures and that any such request

²⁴ E.g. the European Court of Human Rights, the African Commission on Human and Peoples' Rights, the Inter-American Court of Human Rights and CCPR, CAT, CERD and CEDAW.

²⁵ E.g. CCPR and CAT.

²⁶ E.g. the European Court of Human Rights, CAT and CERD.

²⁷ See, e.g. the African Charter on Human and Peoples' Rights, article 56, or the Rules of the Court (2020), European Court of Human Rights, rule 47(4).

²⁸ E.g. CCPR, CAT, the Inter-American Court of Human Rights and the European Court of Human Rights.

²⁹ E.g. UN Human Rights Council framework against acts of intimidation and reprisal for cooperation with the special procedures.

Available at <https://www.ohchr.org/EN/HRBodies/SP/Pages/Actsofintimidationandreprisal.aspx>

³⁰ Ibid.

should therefore reach the secretariat as early as possible before the action that the complainant is seeking to prevent could materialize.³¹ The European Court of Human Rights will consider a request for interim measures “as speedily as possible” and will deal with such requests as a matter of priority, unless the request is manifestly intended by the applicant as a delaying tactic.³²

Tools for providing a rapid response

16. The majority of the mechanisms reviewed can issue measures to protect complainants or other persons connected to the case who are at risk.

17. The UN human rights committees reviewed (CCPR, CAT, CEDAW and CERD) may, at any stage of the procedure, issue “interim measures” requesting the State party to take measures to prevent any irreparable harm to the complainant or other alleged victim in connection with the human rights violations alleged in the case. Typically, interim measures are issued to prevent actions that cannot later be undone, for example the execution of a death sentence or deportation to a country where the complainant would face a risk of torture. If complainants wish the committee to issue a request for interim measures, they should state this explicitly and explain in detail why such action is necessary.³³

18. In addition, in the course of the proceedings, the UN human rights committees may request the State to take “protection measures” to protect those who might suffer adverse consequences as a result of their cooperation with the UN human rights committee in question. Such measures may be issued to protect the complainants and also other persons, such as their family members or legal counsel.³⁴

19. The UN human rights committees may lift the interim measures if the information received from the parties to the complaint suggests that such measures are no longer required. The State Party has the right to request the committee in question to lift an interim measure at any stage of the proceeding and the complainant has the opportunity to provide comments. Once the comments have been received, a decision is taken on the State’s request on the basis of the information contained in the file.³⁵

20. With respect to who can trigger the issuance of rapid response measures, under the rules of the European Court of Human Rights, interim measures may be granted at the request of a party to the case or any other person concerned. The Court can also decide to grant interim measures at its own initiative.³⁶ The Court has made clear that once a decision to grant an interim measure is made, the State Party concerned is under an obligation to comply with it.³⁷

21. In contrast to the other mechanisms reviewed — which require a case to be submitted to the mechanism before rapid response measures can be issued — the Inter-American Commission of Human Rights can request the Inter-American Court of Human Rights to “take any provisional measure it considers appropriate in serious and urgent cases which have not yet been submitted to it for consideration”.³⁸

22. Other notable elements of the various mechanisms reviewed include:

³¹ Individual Complaint Procedures under the United Nations Human Rights Treaties, Office of the United Nations High Commissioner for Human Rights, 2013, p. 6. Available at: <https://www.ohchr.org/Documents/Publications/FactSheet7Rev.2.pdf>

³² Practice Direction: Requests of interim measures, European Court of Human Rights. Available at https://www.echr.coe.int/Documents/PD_interim_measures_intro_ENG.pdf

³³ Individual Complaint Procedures under the United Nations Human Rights Treaties, Office of the United Nations High Commissioner for Human Rights, 2013, p. 7. Available at: <https://www.ohchr.org/Documents/Publications/FactSheet7Rev.2.pdf>

³⁴ Informal guidance note by the secretariat for the States parties on procedures for the submission and consideration by treaty bodies of individual communications, Office of the United Nations High Commissioner for Human Rights, January 2017, para. 12. Available at <https://www.ohchr.org/Documents/HRBodies/TB/NoteStatesParties.pdf>.

³⁵ *Ibid*, paras. 9 and 10.

³⁶ Rules of the Court (2020), European Court of Human Rights, rule 39. Available at https://www.echr.coe.int/Documents/Rules_Court_ENG.pdf

³⁷ *Mamatkulov and Askarov v. Turkey*, 44 ILM 759 (2005).

³⁸ Statute of the Inter-American Commission on Human Rights, article 19(c). Available at https://www.oas.org/36ag/english/doc_referencia/Estatuto_CIDH.pdf.

- (a) The use of diplomatic channels, including meeting with government officials;³⁹
- (b) Engaging in written communication with Governments (for example, sending an urgent letter of appeal or other letters);⁴⁰
- (c) Responding publicly through press releases and/or media statements and referring to the case in official reports;⁴¹
- (d) Raising the case with United Nations bodies (including human rights representatives in the field and at headquarters, the Human Rights Council, the General Assembly) and/or reporting it to the United Nations leadership (including the United Nations High Commissioner for Human Rights, the President of the Human Rights Council and the Secretary General);⁴²
- (e) Recommending strategies for the protection of human rights defenders;⁴³
- (f) Engaging in written communication with stakeholders;⁴⁴
- (g) Requesting the State concerned to report on a voluntary basis on the actions it has taken;⁴⁵
- (h) Receiving shadow reports by NGOs;⁴⁶
- (i) Relying on the internal accountability mechanisms of the State concerned to strengthen the rule of law and governance.⁴⁷

V. Conclusions

23. Based on this overview, the United Nations Environment Programme rapid response mechanism is the only initiative explicitly aiming to protect environmental defenders.⁴⁸ It is not, however, built upon a binding legal framework that enables it to examine whether the State concerned has violated the rights of environmental defenders. Nor does it have a mandate to take any legal measures to protect the persons at risk. Rather, its aim is to build political pressure through press releases and media statements. It is triggered at the discretion of the United Nations Environment Programme leadership.⁴⁹

24. Of the other mechanisms reviewed, the most relevant for protecting environmental defenders are the European Court of Human Rights and the individual complaints procedures under the Optional Protocol to the International Covenant on Civil and Political Rights and the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.

25. However, none of the mechanisms in the preceding paragraph could truly be considered to be a “rapid response mechanism”. This is because, while each of the mechanisms can grant interim measures to protect persons who are at risk of harm, they can only do so if there is already an ongoing case before the relevant

³⁹ E.g. UN Special Rapporteur on the situation of human rights defenders, African Commission on Human and Peoples’ Rights and UNESCO Resolution 29.

⁴⁰ E.g. UN Special Rapporteur on the situation of human rights defenders, UN Human Rights Council framework against acts of intimidation and reprisal for cooperation with the special procedures and the African Commission on Human and Peoples’ Rights.

⁴¹ E.g. UN Special Rapporteur on the situation of human rights defenders, UN Human Rights Council framework against acts of intimidation and reprisal for cooperation with the special procedures and UNESCO Resolution 29.

⁴² E.g. UN Special Rapporteur on the situation of human rights defenders.

⁴³ E.g. UN Special Rapporteur on the situation of human rights defenders and the African Commission on Human and Peoples’ Rights.

⁴⁴ E.g. UN Special Rapporteur on the situation of human rights defenders.

⁴⁵ E.g. UNESCO Resolution 29.

⁴⁶ E.g. UNESCO Resolution 29.

⁴⁷ E.g. UN Special Rapporteur on the situation of human rights defenders.

⁴⁸ See

https://wedocs.unep.org/bitstream/handle/20.500.11822/22769/UN%20Environment%20Policy%20on%20Environmental%20Defenders_08.02.18Clean.pdf?sequence=1&isAllowed=y, pp. 3 and 4.

⁴⁹ No information is available online as to the extent to which the United Nations Environment Programme rapid response mechanism has been used in practice. The United Nations Environment Programme is currently in the process of reviewing its policy on environmental defenders.

court⁵⁰ or committee⁵¹. In addition, all three mechanisms require available domestic remedies to be exhausted before the underlying case is submitted to them.

26. Obviously, mechanisms established by other treaties or organizations do not have a mandate to respond to alleged violations of article 3 (8) of the Aarhus Convention. The various mechanisms reviewed, however, together contain elements that may be of interest when considering the possibility of developing a rapid response mechanism under the Aarhus Convention to address alleged violations of article 3 (8). Examples of such elements include those mentioned in paragraph 22 above.

⁵⁰ European Court of Human Rights, “Interim Measures”, factsheet, January 2019. Available at https://www.echr.coe.int/Documents/FS_Interim_measures_ENG.pdf.

⁵¹ Informal guidance note by the secretariat for the States parties on procedures for the submission and consideration by treaty bodies of individual communications, Office of the United Nations High Commissioner for Human Rights, January 2017. Available at <https://www.ohchr.org/Documents/HRBodies/TB/NoteStatesParties.pdf>.