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**Background note related to the
decision on the implementation of the rapid response mechanism
for the protection of environmental defenders under the
Convention on Access to Information, Public Participation in Decision-making and
Access to Justice in Environmental Matters (Aarhus Convention)**

I. Background

1. The world is facing a number of fundamental environmental challenges, such as climate change and the depletion of natural resources, which require profound transitions towards sustainable development, including by ensuring sustainable consumption and production patterns, introducing a circular economy and minimizing releases of pollutants. The effective engagement of civil society greatly reinforces and complements the ability of Governments to address these problems. Whether groups who protest against the construction of a dangerous dam or individuals who speak out against harmful agricultural practices in their local community, environmental defenders are vital to the preservation of the environment across the globe. Safe, effective and inclusive public participation in decision-making is at the core of the 2030 Agenda for Sustainable Development (2030 Agenda). Owing to its crosscutting nature, Sustainable Development Goal 16 therefore applies across the 2030 Agenda and is the major precondition for the effective achievement of all Sustainable Development Goals.
2. The Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters – the Aarhus Convention (Aarhus, 1998) acknowledges that we owe an obligation to future generations. Such feature makes it critical for implementing the 2030 Agenda for Sustainable Development. Moreover, the Convention is furthering environmental democracy across different sectors and processes and thereby plays an important role in the achievement of all of the Sustainable Development Goals, in particular Goal 16, by empowering the public with the right to participate effectively in decision-making on a wide range of issues addressed by the Goals, such as: health protection (Goal 3); water and sanitation management (Goal 6); clean energy (Goal 7); green economy (Goals 8, 9 and 12); the reduction of inequalities (Goal 10); climate action (Goal 13); tourism (Goals 8, 12, 14 and 15); urban planning (Goals 11 and 13) and disaster risk reduction (Goals 9 and 11).
3. The Convention thereby provides a solid and comprehensive framework for Governments to engage the public effectively in implementing the 2030 Agenda for Sustainable Development. Implementation of the Convention also supports countries efforts in implementing many other multilateral environmental agreements, including the United Nations Framework Convention on Climate Change (UNFCCC) and Convention on Biological Diversity (CBD).
4. With forty-five States and the European Union now Parties to the Convention, the Convention is widely accepted as the leading example of the implementation of principle 10 of the Rio Declaration on Environment and Development. The Aarhus Convention is an unprecedented instrument of international environmental law, representing a significant step forward both for the protection of the environment and for the consolidation of democracy. As the only existing legally binding instrument to implement principle 10 which is open to all UN Member States, it has drawn global attention and has inspired the development of similar processes and instruments in other regions.
5. Since its entry into force (30 October 2001), the Convention has driven the development of national legislation and practice, bringing about positive changes that would otherwise not occur. Being a Party to the Convention help countries to ensure universal implementation of Principle 10 of the Rio Declaration and the Agenda 2030, in particular its Goal 16, to the common standards. Another important lesson learnt is that the Aarhus Convention is beneficial for countries with different levels of economic development which allows for sharing of expertise and good practices between nations with different political, economic and social backgrounds.

Achievements under the Convention

6. Based on reports by Parties and stakeholders, since its entry into force, the Convention has seen a number of important achievements in promoting Principle 10 and participatory approach to implementing Sustainable Development Goals across the region and beyond, including the following:

- ***Laws and practices have been revised to bring them into line with the Convention. Members of the public are learning to use the Convention to make their governments more transparent and accountable.*** There is a ***growing body of jurisprudence based on the Convention and the legislation that implements it.***
- ***Public authorities*** across the UNECE region ***have established and are operating a number of special structures facilitating implementation of access to environmental information and public participation provisions.*** Many Parties have made considerable efforts to ***establish and further use modern technologies to promote e-governance.*** ***Electronic tools*** (webpages, web-portals, social networks) are increasingly ***used to disseminate environmental information and to hold public consultations.***
- A special and active role in this sphere is played by ***Aarhus Centres***, which have been established by the OSCE in 14 countries including South and Eastern Europe, Caucasus and Central Asia. Aarhus Centres cover both the national and local levels by offering guidance to the public, performing awareness-raising activities, facilitating access to information and public participation and assisting Governments in the performance of their functions and in cooperating with the public. Furthermore, ***non-governmental organizations*** (NGOs) have been leading actors in monitoring and facilitating the implementation of the principles of the Convention throughout the UNECE region as well as in relevant international forums. They often are valuable partners in disseminating information, in raising awareness and in helping countries build the necessary capacities for greater access to information, public participation in decision-making and access to justice.
- By promoting transparency and public participation in ***international decision-making***, the Aarhus Convention is helping to improve a wide range of international processes dealing with matters relevant to environmental concerns such as e.g. climate, health, chemicals, trade, finance, biodiversity. It has been also used as reference for the ***review of safeguard and information policies of other agencies of the United Nations as well as international financial institutions.***
- A number of ***guidance documents have been produced to facilitate the implementation of the Convention's different areas*** at national and international level. The Implementation Guide of the Aarhus Convention is an essential reference for policy-makers, legislators and officials at all levels of government.¹ It contains important guidance for members of the public, including non-governmental organizations, seeking to exercise their rights, as well as for those in the private sector engaged in activities that are subject to the Convention. Furthermore, the wide distribution of quick guides to the Convention² (published in the 6 official languages of the United Nations) and to the Protocol on PRTRs³ (published in the 3 official languages of the ECE) aim to help raise awareness on the rights enshrined in these treaties. The Maastricht Recommendations on Promoting Effective Public Participation in Decision-making in Environmental Matters set out practical guidance on how to improve the implementation of the Convention's provisions on public participation in decision-

¹ http://www.unece.org/fileadmin/DAM/env/pp/Publications/Aarhus_Implementation_Guide_interactive_eng.pdf

² http://www.unece.org/fileadmin/DAM/env/pp/Publications/Aarhus_brochure_Protecting_your_environment_eng.pdf

³ http://www.unece.org/fileadmin/DAM/env/pp/prtr/guidance/PRTR_simple_guide_web_2011_03_29.pdf

making.⁴ The Almaty Guidelines on Promoting the Application of the Principles of the Aarhus Convention in International Forums provide a helpful tool to promote effective public participation in decision-making⁵. The Lucca Guidelines on Access to Information, Public Participation and Access to Justice with respect to genetically modified organisms help countries to promote the Convention in the context of genetically modified organisms⁶.

- Using the above tools, Governmental authorities, NGOs as well as other international organizations are regularly producing guidance material tailored to different target groups to facilitate public access to information, access to justice and public participation in decision-making (e.g. handbooks, codes of practice, consultation guides).
- These efforts are accompanied by *capacity-building activities* at local, national and regional level (training workshops for public officials, civil servants, non-governmental organizations, legal professionals).
- The entering into force of the *Kyiv Protocol on Pollutant Release and Transfer Registers* in 2009 established a new legally binding international benchmark for reporting on emissions of pollutants from a wide range of potentially harmful activities. The Convention's provisions of access to information, participation and legal redress are mirrored in its Protocol. In common with the Convention, the Protocol is open to all UN Member States. Parties to the Protocol do not need to be Parties of the Convention. The Protocol, ratified by 37 States and the European Community.⁷
- Whereas the Convention primarily establishes obligations on public authorities towards the public, *the Protocol introduces a new dimension in that it implies reporting obligations for the private sector and may therefore be seen as a tool promoting corporate accountability* in a specific context. PRTR reporting systems invite the public to participate in the regulatory system, both by monitoring the environmental performance of facilities and sectors and by engaging in dialogue with companies and government agencies on ways of improving such performance.
- The *Aarhus Clearinghouse for Environmental Democracy and PRTR.net* have emerged as leading global online repositories of information on activities relevant to the Convention, the Protocol and principle 10 of the Rio Declaration on Environment and Development. These tools are important sources of information on public's environmental rights. The Clearinghouse provides a forum for the collection, dissemination and exchange of information on laws, policies, existing jurisprudence and good practices relevant to the Convention, its Protocol on PRTRs and principle 10 of the Rio Declaration. PRTR.net is a global portal with information and activities from countries and organizations around the world. It aims to assist countries in the development, implementation and improvement of PRTRs .
- The *Convention attracts interest of States outside the ECE region* in a number of ways: as instrument to which such States might eventually accede, as an inspiration for developing similar instruments in other regions or as model for development of national legislative frameworks.
- The *Aarhus Convention has already acted as a model example for initiatives in other regions and forums aimed at applying the principles contained in the Convention*, namely the Escazu Agreement - Regional Agreement on Access to Information, Public Participation and Justice in Environmental Matters in Latin America and the Caribbean. Where requested and within available resources, the secretariat and Parties to the Convention are offering advisory support to the process

⁴ http://www.unece.org/fileadmin/DAM/env/pp/mop5/Documents/Post_session_docs/ece_mp.pp_2014_2_add.2_eng.pdf

⁵ See: <https://www.unece.org/fileadmin/DAM/env/documents/2005/pp/ece/ece.mp.pp.2005.2.add.5.e.pdf>

⁶ See: <https://www.unece.org/fileadmin/DAM/env/pp/documents/gmoguidelinesenglish.pdf>

⁷ More information on the Protocol is available on www.unece.org/env/pp/prtr.htm.

in Latin America and the Caribbean and to initiatives in other regions and forums. The UNECE has also been supporting the United Nations Environment Programme in its efforts to promote the Bali guidelines on the application of Principle 10 and other relevant activities⁸.

II. Recent Developments

7. Under article 3 (8) of the Convention, Parties shall ensure that persons exercising their rights in conformity with the provisions of the Convention shall not be penalized, persecuted or harassed in any way for their involvement. It is crucial that environmental defenders be able to exercise their rights under the Convention without fear. However, incidents of harassment and violence against environmental defenders are far from uncommon. Unfortunately, Parties, NGOs, and other stakeholders have reported shocking cases in which environmental defenders face dismissal from employment, surveillance, heavy fines, threats and intimidation, criminalization, detention, violence, and even killings for their environmental work.

8. Among the Parties to the Aarhus Convention, [incidents of persecution, penalization and harassment of environmental defenders have been reported in 16 countries since January 2017. A report to the Human Rights Council](#) by the Special Rapporteur on the situation of human rights defenders Ms. Mary Lawlor found that one in two human rights defenders recorded killed in 2019 had been working with communities around issues of land, environment, impacts of business activities, poverty and rights of indigenous peoples, Afrodescendants and other minorities. [Global Witness recorded that 1,539 environmental defenders were killed between 2012 and 2020 worldwide](#), and this is widely regarded as a gross underestimate due to widespread underreporting.

9. To address this issue, the Meeting of the Parties to the Aarhus Convention at its [seventh session](#) (Geneva, 18-21 October 2021), through [Decision VII/9](#), established a rapid response mechanism (RRM) for the protection of environmental defenders.

10. RRM plays a key role in supporting the firm determination of States Members of the United Nations to implement the 2030 Agenda for Sustainable Development through participatory processes. Furthermore, the mechanism is closely linked with the implementation of a number of regional and global commitments made by Parties and other member States. Notably, improved legislative frameworks and authorities' capacities to effectively provide access to information and to justice and ensure safe, inclusive and meaningful public participation are critical for the success of such initiatives as, for example:

(a) A new European Green Deal,⁹ which sets a path for a transition that is “green”, just and socially fair.

(b) A number of Human Rights Council resolutions, in particular resolutions 37/8 on human rights and the environment (A/HRC/RES.37/8), 40/11 on recognizing the contribution of environmental human rights defenders to the enjoyment of human rights, environmental protection and sustainable development (A/HRC/RES/40/11), 42/21 on protection of the rights of workers exposed to hazardous substances and wastes (A/HRC/RES/42/21), and processes such as

⁸ See:

<http://wedocs.unep.org/bitstream/handle/20.500.11822/11182/Guidelines%20for%20the%20Development%20of%20National%20Legislation%20on%20Access%20to%20information%2c%20Public%20Participation%20and%20Access%20to%20Justice%20in%20Environmental%20Matters.pdf?sequence=1&isAllowed=y>

⁹ See https://ec.europa.eu/info/strategy/priorities-2019-2024/european-green-deal_en.

universal periodic reviews¹⁰ and special procedures¹¹ with direct relevance to environmental matters.

(c) Pledges made under the auspices of the United Nations Framework Convention on Climate Change to pursue mitigation and adaptation measures through participatory processes, including through implementation of article 6 of the Framework Convention on Climate Change and of the Paris Agreement.

(d) Open government and open data initiatives,¹² which are key to furthering transparency and preventing corruption across different sectors.

(e) Strategies and action plans aimed at protecting biodiversity requiring the full engagement of the population, in particular local communities.¹³

11. The mechanism will function in the form of a Special Rapporteur on environmental defenders to provide a rapid response to alleged violations. Austria and Ireland announced their commitment to co-lead the rapid response mechanism.

12. This is the first such mechanism specifically safeguarding environmental defenders to be established within a legally binding framework either under the United Nations system or other intergovernmental structure. The decision marks an important step for the advancement of environmental democracy and helping to uphold the universal right to a clean, healthy and sustainable environment – which has been recently recognized by the [UN Human Rights Council](#) and [UN General Assembly](#).

13. Pursuant to this decision, the Meeting of the Parties elected by consensus Mr. Michel Forst (national of France) as the independent Special Rapporteur on environmental defenders at its [extraordinary session](#) held in Geneva on 23-24 June 2022. The Rapporteur's role is to take measures to protect any person experiencing, or at imminent threat of penalization, persecution, or harassment for seeking to exercise their rights under the Aarhus Convention. Furthermore, the Rapporteur will take a proactive role in raising awareness of environmental defenders' rights under the Aarhus Convention and will cooperate with other relevant human rights bodies and organizations.

14. This landmark decision demonstrates a new level of commitment to upholding the public's rights under the Aarhus Convention, as well as Parties' willingness to respond effectively to grave and real-time challenges seen in the Convention's implementation on the ground. This is an important contribution to help advance United Nations Secretary-General [Call to Action for Human Rights](#)".

III. The secretariat of the Aarhus Convention: current situation and additional resource needs

15. The Aarhus Convention is serviced by UNECE. At UNECE, the secretariat of the Convention is provided by the Aarhus Unit within the Environment Division.

- Since the 2000s, the Aarhus Unit comprises two Regular Budget (RB) professional staff: one at P-4 level (who manages the Aarhus unit and acts as Aarhus Convention Secretary and Protocol on PRTRs

¹⁰ See www.ohchr.org/en/hrbodies/upr/pages/uprmain.aspx.

¹¹ See www.ohchr.org/EN/HRBodies/SP/Pages/Welcomepage.aspx.

¹² See <https://publicadministration.un.org/en/ict4d>; www.oecd.org/gov/open-government/; www.oecd.org/gov/digital-government/open-government-data.htm; and <https://ec.europa.eu/digital-single-market/en/open-data>.

¹³ See www.cbd.int/nbsap/.

Secretary) and the other at P-2 level (YPP), who supports main bodies under the Aarhus Convention (Meeting of the Parties, Working Group of the Parties and the Bureau);

- In addition to RB staff, the secretariat has only two extrabudgetary (XB) posts at P-3 level at continuous basis which are servicing four other bodies of the Convention (three thematic open-ended task forces and the Compliance Committee) and its numerous advisory, promotional, reporting and capacity building activities;
- The establishment of a new rapid response mechanism coupled with increased demand to the Aarhus Convention secretariat and the corresponding increase of the UNECE Aarhus Unit's workload is an additional challenge in terms of resources.

16. Given the establishment of the new mechanism which requires a full-time professional support and the associated range and complexity of the activities, the RB resources available to manage the delivery of expected outputs under the Convention are not adequate. The Meeting of the Parties to the Convention, at its seventh session, considered the above challenges faced by the UNECE secretariat and discussed the need for adequate resources. Based on such discussion, the Meeting of the Parties, through [Decision VII/9](#), para 18, requested the United Nations Secretary-General "to strengthen the secretariat's capacity to facilitate the implementation of the rapid response mechanism" .

17. Without adequate regular budget resources, the UNECE secretariat will not be able to deliver on the extended work area on RRM under the Convention, in support of the 2030 Agenda, support its increasing membership and deliver adequate secretariat services.

18. The UNECE Executive Committee (EXCOM) is invited to submit the draft decision, contained in [document ECE/EX/2023/L.6](#), to the Commission for consideration at its seventieth session in 2023.

19. A note detailing the programme budget implications of the abovementioned decision is being presented together with this draft decision.
