



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

18 December 2023

Excellency,

We write to you with reference to the call for written submissions made by the Inter-American Court of Human Rights in accordance with article 73 (3) of its Rules of Procedure in the framework of the request for an advisory opinion submitted by the Republic of Chile and the Republic of Colombia on 9 January 2023 regarding “Climate Emergency and Human Rights” under article 64 (1) of the American Convention on Human Rights.

We have the honor to transmit herewith to the Court the joint written submission by the secretariat of the Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters (Aarhus Convention) and the UN Special Rapporteur on environmental defenders under the Aarhus Convention.

This joint written submission is made on a voluntary basis without prejudice to, and should not be considered as a waiver, express or implied, of the privileges and immunities of the United Nations, including the secretariat of the Aarhus Convention, its officials and experts on mission, pursuant to the Charter of the United Nations and the 1946 Convention on the Privileges and Immunities of the United Nations.

Please accept, Excellency, the assurances of our highest consideration.

Ella Behlyarova (Ms.)

Secretary to the Aarhus Convention and its Protocol on Pollutant Release and Transfer Registers

Michel Forst

UN Special Rapporteur on environmental defenders under the Aarhus Convention

Inter-American Court of Human Rights

Request for an Advisory Opinion submitted by the Republic of Chile and the Republic of Colombia on 9 January 2023 regarding “Climate Emergency and Human Rights”

Joint written submission from the secretariat of the Aarhus Convention and the UN Special Rapporteur on environmental defenders under the Aarhus Convention

I. Introduction

1. On 9 January 2023, the Republic of Chile and the Republic of Colombia submitted a request for an advisory opinion (the Request) to the Inter-American Court of Human Rights (the IACtHR or the Court). The Request, made pursuant to article 64 of the American Convention on Human Rights, sought advice on a number of specific questions relating to “the scope of State obligations, in their individual and collective dimension, in order to respond to the climate emergency within the framework of international human rights law, paying special attention to the differentiated impacts of this emergency on individuals from diverse regions and population groups, as well as on nature and on human survival on our planet.”¹
2. In accordance with article 73 (3) of its Rules of Procedure, the Court has called for written submissions from interested actors regarding the subject-matter.² The secretariat of the Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters (Aarhus Convention)³ and the UN Special Rapporteur on environmental defenders under the Aarhus Convention are honored to submit this joint written submission.
3. The Aarhus Convention was adopted on 25 June 1998 and entered into force on 30 October 2001. While sometimes mistakenly referred to as a “regional instrument”, the Aarhus Convention is in fact an international instrument open to accession by any UN Member State.⁴ It currently has 47 Parties, including 45 countries from Europe, the Caucasus and Central Asia, one country from Africa, plus the European Union.
4. The present submission aims to (i) provide an overview of the legal framework on the rights of access to information, public participation in decision-making and access to justice in environmental matters under the Aarhus Convention (Part II below), and (ii) describe the rights and obligations under the Aarhus Convention on the protection of environmental defenders (Part III below). In doing so, the submission also addresses the questions on those matters posed to the Court by the Republic of Chile and the Republic of Colombia in their Request.
5. The present submission is primarily drawn from the following sources:
 - (a) The provisions of the Aarhus Convention itself;⁵

¹ Available at: https://www.corteidh.or.cr/docs/opiniones/soc_1_2023_en.pdf (Request for Advisory Opinion).

² Available at: https://www.corteidh.or.cr/observaciones_oc_new.cfm?nId_oc=2634&lang=en&lang_oc=en.

³ UNECE Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters (1998), available at: <https://unece.org/environment-policy/public-participation/aarhus-convention/introduction>.

⁴ Aarhus Convention, article 19(3).

⁵ The text of the Aarhus Convention, in various languages, is available at: <https://unece.org/environment-policy/public-participation/aarhus-convention/text>.

- (b) The Implementation Guide to the Aarhus Convention;⁶
 - (c) Relevant findings of the Aarhus Convention Compliance Committee;⁷
 - (d) Public statements and commentary from the UN Special Rapporteur on environmental defenders under the Aarhus Convention.⁸
6. By way of background on the above sources: the Aarhus Convention Compliance Committee was established by the Meeting of the Parties of the Aarhus Convention at its first session (Lucca, Italy, 21-23 April 2001) to review compliance with the provisions of the Convention.⁹ The Compliance Committee has several innovative features, including that members of the public can submit communications to the Committee, Committee members are independent experts serving in their personal capacity and environmental nongovernmental organizations (NGOs) can nominate Committee members for election.¹⁰
 7. Regarding the Special Rapporteur on environmental defenders: concerned by the alarming trend of penalization, persecution and harassment of environmental defenders, the Meeting of the Parties of the Aarhus Convention at its seventh session (Geneva, 18-21 October 2021), adopted, by consensus, decision VII/9 establishing a rapid response mechanism for the protection of environmental defenders in the form of a Special Rapporteur.¹¹ This is the first international mechanism specifically safeguarding environmental defenders to be established within a legally binding framework either under the United Nations system or other intergovernmental structure.
 8. At its third extraordinary session (Geneva, 23-24 June 2022), the Meeting of the Parties elected, by consensus, Mr. Michel Forst as its first Special Rapporteur on environmental defenders under the Aarhus Convention. The Special 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.¹²

II. The legal framework under the Aarhus Convention

A. General Overview

9. The Request rightly acknowledges the close relationship between the human right to a healthy environment and procedural rights that have an impact on the life, survival and development of present and future generations. Indeed, the Request specifically refers to the Aarhus Convention and the Regional Agreement on Access to Information, Public Participation and Justice in Environmental Matters in Latin America and the Caribbean (the Escazú Agreement)¹³ as providing relevant obligations “to confront the situations arising from the climate emergency”.¹⁴
10. Effective implementation of the human right to a clean, healthy and sustainable environment critically hinges on the public's effective access to information, public participation in decision-making and access to justice in environmental matters. The Aarhus Convention is highly relevant in this regard as it provides a legally binding framework on how to effectively implement these procedural rights in practice.

⁶ *The Aarhus Convention: An Implementation Guide*, second edition (2014), available at: <https://unece.org/environment-policy/publications/aarhus-convention-implementation-guide-second-edition>.

⁷ See <https://unece.org/environment-policy/public-participation/aarhus-convention/compliance-committee>.

⁸ See <https://unece.org/env/pp/aarhus-convention/special-rapporteur>.

⁹ Decision I/7 on review of compliance, ECE/MP.PP/2/Add.8, available at: <https://unece.org/DAM/env/pp/documents/mop1/ece.mp.pp.2.add.8.e.pdf>.

¹⁰ See <https://unece.org/environment-policy/public-participation/aarhus-convention/compliance-committee>.

¹¹ Decision VII/9 on a rapid response mechanism to deal with cases related to article 3 (8) of the Convention, ECE/MP.PP/2021/2/Add.1, available at: https://unece.org/sites/default/files/2022-01/Aarhus_MoP7_Decision_on_RRM_E.pdf.

¹² See <https://unece.org/env/pp/aarhus-convention/special-rapporteur>.

¹³ ECLAC, Regional Agreement on Access to Information, Public Participation and Justice in Environmental Matters in Latin America and the Caribbean (Escazú Agreement), 2018.

¹⁴ Request for Advisory Opinion, pp. 1-2 and fn. 2.

11. Article 1 of the Aarhus Convention, which sets out the Convention’s objective, specifically acknowledges that:

“In order to contribute to the protection of the right of every person of present and future generations to live in an environment adequate to his or her health and well-being, each Party shall guarantee the rights of access to information, public participation in decision-making, and access to justice in environmental matters in accordance with the provisions of this Convention”.
12. Article 1 thereby makes the direct link between the realization of the rights of both present and future generations to an environment adequate to health and well-being and the procedural rights prescribed under the Convention.¹⁵
13. In the more than two decades since its entry into force in 2001, the Aarhus Convention has not only driven positive change in the legislation and practice of its Parties but has also served as a benchmark for developments in other countries also, including the Escazú Agreement in the Latin American and Caribbean region. The Aarhus Convention therefore forms part of the relevant legal background for the Court to consider when responding to the questions in the Request.
14. In section B below, the submission outlines some of the key definitions and general provisions of the Aarhus Convention. Sections C–F of the submission then provide an overview of the main elements of the Convention’s three pillars – access to information, public participation in decision-making and access to justice – that are of relevance to the Request.

B. Key definitions and general provisions under the Aarhus Convention

15. The rights under the Aarhus Convention are granted to “the public” and “the public concerned”. The Convention adopts inclusive definitions of each of these terms.
 - (a) Article 2 (4) of the Convention defines “the public” as “one or more natural or legal persons, and, in accordance with national legislation or practice, their associations, organizations or groups”.
 - (b) “The public concerned” is defined in article 2 (5) of the Convention as “the public affected or likely to be affected by, or having an interest in, the environmental decision-making; for the purposes of this definition, non-governmental organizations promoting environmental protection and meeting any requirements under national law shall be deemed to have an interest” (emphasis added).
16. These broad definitions are highly pertinent to the climate emergency as, while the international community does not experience the effects of the climate emergency uniformly,¹⁶ it affects all members of the public, as defined under the Aarhus Convention, to a greater or lesser extent.
17. Question C.2 of the Request asks about States’ obligations to provide children with significant and effective means to express their opinions freely and fully, including the opportunity to initiate or participate in administrative or judicial proceedings to prevent climate change. In this regard, children and youth are each encompassed within the above definitions of “the public” and “the public concerned”. They are therefore entitled to exercise the full set of rights granted to the public and the public concerned under the Aarhus Convention, including to have access to information, to participate in decision-making and to have access to justice. Significantly, in its seventh preambular paragraph and its article 1, the Aarhus Convention expressly refers to the rights of “future generations”, thus directly acknowledging the critical stake and interest of children and

¹⁵ See also Aarhus Convention, seventh preambular paragraph: “Recognizing also that every person has the right to live in an environment adequate to his or her health and well-being, and the duty, both individually and in association with others, to protect and improve the environment for the benefit of present and future generations”.

¹⁶ Request for Advisory Opinion, pp. 1, 5.

the youth in environmental matters. Indeed, it appears that the Aarhus Convention was the first hard-law text to recognize the rights of future generations.¹⁷

18. The Aarhus Convention imposes its obligations on Parties and their “public authorities”. “Public authorities” are broadly defined in article 2 (2) of the Convention as:

- “(a) Government at national, regional and other level;
- (b) Natural or legal persons performing public administrative functions under national law, including specific duties, activities or services in relation to the environment;
- (c) Any other natural or legal persons having public responsibilities or functions, or providing public services, in relation to the environment, under the control of a body or person falling within sub-paragraphs (a) or (b) above;
- (d) The institutions of any regional economic integration organization referred to in article 17 which is a Party to this Convention.

This definition does not include bodies or institutions acting in a judicial or legislative capacity.”

19. Through the definition of “public authority” in article 2 (2) (b) and (c), the Aarhus Convention imposes obligations on Parties for the acts of private entities that have perform public functions or services in relation to the environment.
20. As the IACtHR has noted in its jurisprudence, climate change and other environmental impacts often extend across country borders and international environmental law therefore imposes an obligation to prevent transboundary environmental damage.¹⁸ In recognition that environmental impacts are not limited by country borders, article 3 (9) of the Aarhus Convention requires that “the public shall have access to information, have the possibility to participate in decision-making and have access to justice in environmental matters without discrimination as to citizenship, nationality or domicile”. The Aarhus Convention Compliance Committee has held that this means that the public outside the Party concerned is entitled to no less favourable treatment than the public in the Party concerned.¹⁹ This is particularly relevant in the context of the climate emergency, being a triple planetary crisis (climate change, biodiversity loss and pollution) that transcends national borders.
21. Given that addressing the climate emergency requires effective action at the global level, article 3 (7) of the Aarhus Convention is also an important provision to keep in mind. Article 3 (7) requires that each Party “shall promote the application of the principles of this Convention in international environmental decision-making and within the framework of international organizations in matters relating to the environment.” This means that, for example, when engaging in an international forum, like the Conference of the Parties (COP) of the United Nations Framework Convention on Climate Change (UNFCCC), Parties to the Aarhus Convention are under a binding obligation to promote the Aarhus Convention’s principles both in the procedures of that forum and in its substantive outcomes.²⁰

¹⁷ *The Aarhus Convention: An Implementation Guide*, second edition (2014), p. 30.

¹⁸ IACtHR. Advisory Opinion OC-23/17, Request by the Republic of Colombia on “The Environment and Human Rights”, paras. 95-103, available at: https://www.corteidh.or.cr/docs/opiniones/seriea_23_ing.pdf (IACtHR, Advisory Opinion on Environment and Human Rights).

¹⁹ Findings on communication ACCC/C/2012/71 (Czechia) ECE/MP.PP/C.1/2017/3, para. 107.

²⁰ See also Almaty Guidelines on Promoting the Application of the Principles of the Aarhus Convention in International Forums (available at: <https://unece.org/environment-policy/publications/almaty-guidelines-promoting-application-principles-aarhus>) and Snapshot on the Almaty Guidelines (available at: <https://unece.org/environmental-policy/public-participation/snapshot-almaty-guidelines>).

C. First pillar: Access to environmental information

22. Question B of the Request addresses the scope of the right of access to environmental information in the context of the climate emergency.
23. As the Court has noted in its jurisprudence,²¹ the Aarhus Convention, through its articles 4 and 5 and its Protocol on Pollutant Release and Transfer Registers (PRTRs),²² imposes clear, legally binding obligations on Parties to ensure the public's access to environmental information. As the Aarhus Convention Implementation Guide explains, the Convention's provisions on access to information ensure that members of the public are able to know and understand what is happening in the environment around them and are able to participate in an informed manner.²³
24. Question B.2 of the Request asks the extent to which "access to environmental information constitutes a right the protection of which is necessary to guarantee the rights to life, property, health, participation, and access to justice, among other rights that are negatively affected by climate change". In the case of the Aarhus Convention, the fundamental premise behind its legally binding obligations on access to environmental information is that the right of access to environmental information is critical for the realization of other rights, including the right to participate in decision-making, the right of access to justice and, more fundamentally, the right of every person to live in an environment adequate to their health and well-being. The protection of the right of access to environmental information therefore is necessary to guarantee and advance a plethora of other rights that are otherwise negatively affected by the climate emergency.
25. Question B.1 of the Request asks the scope that States should give to their obligations with respect to a list of various types of information related to the climate emergency. To answer question B.1 of the Request, it may be helpful to first set out the definition of "environmental information" in article 2 (3) of the Aarhus Convention, namely:

"any information in written, visual, aural, electronic or any other material form on:

 - (a) The state of elements of the environment, such as air and atmosphere, water, soil, land, landscape and natural sites, biological diversity and its components, including genetically modified organisms, and the interaction among these elements;
 - (b) Factors, such as substances, energy, noise and radiation, and activities or measures, including administrative measures, environmental agreements, policies, legislation, plans and programmes, affecting or likely to affect the elements of the environment within the scope of subparagraph (a) above, and cost-benefit and other economic analyses and assumptions used in environmental decision-making;
 - (c) The state of human health and safety, conditions of human life, cultural sites and built structures, inasmuch as they are or may be affected by the state of the elements of the environment or, through these elements, by the factors, activities or measures referred to in subparagraph (b) above."
26. When considering the types of information listed in points (i)-(v) of question B.1 in the light of the above definition, it appears that most, if not all, the information in points (i)-(iv) may be "environmental information" under article 2 (3) of the Aarhus Convention. For example:
 - (a) "Environmental information for every individual and community, including such information related to the climate emergency" is clearly environmental information under article 2 (3) of the Convention (see point (i) of question B.1);

²¹ IACtHR, Advisory Opinion on Environment and Human Rights, paras. 215-216.

²² For more information, see <https://unece.org/env/pp/protocol-on-prtrs-introduction>.

²³ *The Aarhus Convention: An Implementation Guide*, second edition (2014), p. 75, available at: <https://unece.org/info/Environment-Policy/Public-participation/pub/2289>.

- (b) “Climate adaptation and mitigation measures” may be “measures...affecting or likely to affect the elements of the environment” under article 2 (3) (b) of the Aarhus Convention (see point (ii) of question B.1).
 - (c) “Responses to prevent, minimize and address economic and noneconomic damage and losses associated with... climate change” may also be “measures” under article 2 (3) (b) of the Aarhus Convention if those responses affect or are likely to affect the elements of the environment (see point (iii) of question B.1);
 - (d) Information on greenhouse gas emissions, air pollution, deforestation, and short-lived climate forcers may be information on the “state of elements of the environment” under article 2 (3) (a) of the Convention (see point (iv) of question B.1);
 - (e) Analyses of activities and sectors that contribute to emissions may be information on “activities or measures...affecting or likely to affect the elements of the environment” under article 2 (3) (b) of the Aarhus Convention (see point (iv) of question B.1);
 - (f) Determination of human impacts, such as human mobility, migration, forced displacement, effects on health and on life, may be information on the “state of human health and safety, conditions of human life...inasmuch as they are or may be affected by the state of the elements of the environment” under article 2 (3) (c) of the Aarhus Convention (see point (v) of question B.1).
27. Since it appears that most, if not all, of the information listed in points (i)-(v) of question B.1 may be “environmental information” for the purposes of the Aarhus Convention, the submission considers below the rights and obligations under the Aarhus Convention with respect to access to environmental information.

Access to environmental information upon request

28. Article 4 of the Aarhus Convention governs access to environmental information upon request.
29. Under the Aarhus Convention, the requested environmental information is to be made available as soon as possible and at the latest within one month, unless the volume and complexity of the information justify an extension of up to two months. In that case, the applicant must be informed of the extension and the reasons justifying it.²⁴
30. The Aarhus Convention expressly precludes its Parties from requiring members of the public to state the reason that they want the requested environmental information or how they intend to use the information once received.²⁵
31. Article 4 (3) and (4) of the Aarhus Convention set out a list of grounds under which disclosure of environmental information may be refused. Notably, the grounds in article 4 (3) and (4) are optional, meaning that a Party may decide not to include one or more of the exceptions in its national law. Moreover, the listed grounds in article 4 (3) and (4) are exhaustive, which means that Parties cannot invoke any other grounds for refusing access to environmental information.
32. With respect to the grounds for refusal in article 4 (4), the Convention expressly provides that each ground must be “interpreted in a restrictive way, taking into account the public interest served by disclosure and taking into account whether the information requested relates to emissions into the environment”.²⁶ In connection with this balancing exercise, the Aarhus Convention Compliance Committee has found that “in situations where there is a significant public interest in

²⁴ Aarhus Convention, art. 4(2).

²⁵ Aarhus Convention, art. 4(1)(a). See also *The Aarhus Convention: An Implementation Guide*, p. 80.

²⁶ Aarhus Convention, art. 4(4).

disclosure of certain environmental information and a relatively small amount of harm to the interests involved, the Convention would require disclosure.”²⁷

33. If environmental information is withheld from disclosure on the ground that it is commercial or industrial information, the Aarhus Convention requests that any information on emissions which is relevant for the protection of the environment must still be disclosed.²⁸
34. In addition, if any information exempted from disclosure under article 4 (3) or (4) can be separated out without prejudice to the confidentiality of the exempted information, the remainder of the requested environmental information is required to be disclosed.²⁹

Collection and dissemination of environmental information

35. As the Court recognized in its Advisory Opinion on the Environment and Human Rights,³⁰ in addition to the obligation to provide access to environmental information upon request, States have an obligation of “active transparency”. This obligation is addressed in article 5 of the Aarhus Convention, which requires Parties to actively collect and disseminate environmental information.
36. As a first step, article 5 of the Aarhus Convention requires that public authorities possess and update environmental information which is relevant to their functions.³¹ It also requires that Parties provide sufficient information to the public about the type and scope of environmental information held by the relevant public authorities, the basic terms and conditions under which such information is made available and accessible, and the process by which it can be obtained.³²
37. Article 5 of the Aarhus Convention also requires that each Party ensure that environmental information held by its public authorities progressively becomes available in electronic databases which are easily accessible to the public.³³
38. In the context of policy-making, article 5 of the Aarhus Convention requires each Party to proactively “publish the facts and analyses of facts which it considers relevant and important in framing major environmental policy proposals”.³⁴ This may include policies related to addressing the climate emergency.
39. Of particular importance in the context of the climate emergency, article 5 (1) (c) of the Aarhus Convention requires that:

“In the event of any imminent threat to human health or the environment, whether caused by human activities or due to natural causes, all information which could enable the public to take measures to prevent or mitigate harm arising from the threat and is held by a public authority is disseminated immediately and without delay to members of the public who may be affected.”
40. In conclusion, the Aarhus Convention provides for broad rights of access to environmental information in the context of the climate emergency, covering both “active transparency” and access upon request.

²⁷ Findings on communication ACCC/C/2007/21 (European Community), ECE/MP.PP/C.1/2009/2/Add.1, para. 30 (c).

²⁸ Aarhus Convention, art. 4(4)(d).

²⁹ Aarhus Convention, art. 4(6).

³⁰ IACtHR, Advisory Opinion on Environment and Human Rights, para. 222.

³¹ Aarhus Convention, art. 5(1)(a).

³² Aarhus Convention, art. 5(2)(a).

³³ Aarhus Convention, art. 5(3)(a).

³⁴ Aarhus Convention, art. 5(7)(a).

D. Second pillar: Public Participation in Decision-Making

41. The public's right to participate in decision-making on environmental matters is the second pillar of the Aarhus Convention. As recognized in the Aarhus Convention's ninth preambular paragraph, public participation in decision-making enhances the quality and the implementation of decisions, contributes to public awareness of environmental issues, gives the public the opportunity to express its concerns and enables public authorities to take due account of such concerns.
42. However, since the Convention's pillars are intimately linked, the public cannot effectively participate without having access to information, as provided under the first pillar (as discussed above), nor without the possibility of enforcement through access to justice, under the third pillar of the Aarhus Convention (as discussed below).
43. Indeed, the IACtHR has already acknowledged the intimate link between these procedural rights. In its advice regarding the Environment and Human Rights, the Court specifically referenced the Aarhus Convention and held that "the State obligation to ensure the participation of persons subject to their jurisdiction in decision-making and policies that could affect the environment, without discrimination and in a fair, significant and transparent manner, is derived from the right to participate in public affairs and, to this end, States must have previously ensured access to the necessary information."³⁵
44. The key rights and obligations on public participation under the Aarhus Convention are set out in articles 6, 7 and 8 which prescribe the requirements for public participation in:
 - (a) Decisions on specific activities (article 6);
 - (b) Plans, programmes, policies relating to the environment (article 7);
 - (c) Draft regulations and other generally applicable legally binding rules that may have a significant effect on the environment (article 8).³⁶
45. Article 6 of the Aarhus Convention requires public participation on decisions on the activities listed in Annex I of the Convention. It also requires public participation on decisions on other activities which may have a significant effect on the environment.
46. With respect to public participation in decision-making on specific activities, article 6 of the Convention requires, among other things, that:
 - (a) The public concerned be notified in an adequate, timely and effective manner;³⁷
 - (b) Early public participation be provided when all options are open and effective public participation can take place;³⁸
 - (c) Public participation procedures include reasonable timeframes for the public to prepare and participate effectively;³⁹
 - (d) The public concerned has access to all information relevant to the decision-making;⁴⁰
 - (e) The public has opportunities to submit any comments, information, analyses or opinion that it considers relevant to the proposed activity;⁴¹
 - (f) Due account be taken in the decision of the outcomes of the public participation;⁴²
 - (g) The public is promptly informed of the decision, once taken, and has access to the text of the decision along with the reasons and considerations on which the decision is based.⁴³

³⁵ IACtHR, Advisory Opinion on Environment and Human Rights, para. 231.

³⁶ See also for useful guidance on the obligations under the Aarhus Convention in relation to public participation, Maastricht Recommendations on Ensuring Effective Public Participation in Environmental Matters (November 2015), available at: <https://unece.org/info/Environment-Policy/Public-participation/pub/2290>.

³⁷ Aarhus Convention, art. 6(2).

³⁸ Aarhus Convention, art. 6(4).

³⁹ Aarhus Convention, art. 6(3).

⁴⁰ Aarhus Convention, art. 6(6).

⁴¹ Aarhus Convention, art. 6(7).

⁴² Aarhus Convention, art. 6(8).

⁴³ Aarhus Convention, art. 6(9).

47. If a public authority subsequently reconsiders or updates the operating conditions for an activity subject to article 6, public participation meeting the requirements of article 6 may need to be carried out again.⁴⁴
48. Article 6 (7) of the Aarhus Convention stipulates that the public is entitled to submit any comments, information, analyses or opinions that it considers relevant to the proposed activity. In practice this means that the decision-maker cannot impose any limitations on the nature or subject matter addressed by the public in its comments.⁴⁵
49. While it is up to the decision-maker to decide how to take the substance of the comments received into account in the decision-making, the decision-maker must demonstrate that “due account” has been taken of all the comments received.⁴⁶ To this end, the public must be able to see how their comments have been taken into account in the decision-making in a transparent and traceable way.⁴⁷ The right of any member of the public to submit their views and have them duly taken into account is a cornerstone of ensuring a truly participatory process.
50. Moreover, in accordance with article 3 (9) of the Aarhus Convention, the rights under the Convention apply irrespective of citizenship, nationality or domicile.⁴⁸ This means that any member of the public that is affected by or has an interest in the decision-making has the right to participate in that decision-making, irrespective of whether they reside in the Party concerned or not.
51. Question D.2 of the Request asks to what extent the obligation to consult should take into account the consequences of an activity on the climate emergency. With respect to the level of environmental impact beyond which public participation is required, the Aarhus Convention sets different thresholds depending on the type of decision-making:
- (a) Article 6 (1) (a) of the Aarhus Convention requires public participation in decisions on any activity listed in Annex I of the Convention. This means that if a proposed activity is one listed in Annex I of the Convention, and it meets any criteria or thresholds for that activity set out in the Annex, then public participation meeting the requirements of article 6 is automatically required. The activities in Annex I include activities in the energy sector, waste management, the extraction of petroleum and natural gas, and production and processing of metals, among others.⁴⁹
 - (b) Article 6 (1) (b) of the Aarhus Convention requires public participation on activities not listed in Annex I of the Convention that may nevertheless have a significant effect on the environment. It is for Parties to determine whether a proposed activity may have a significant effect on the environment, for example, through a positive EIA screening decision.⁵⁰
 - (c) Article 7 of the Aarhus Convention requires Parties to provide for public participation during the preparation of any plan, programme or policy “regarding the environment”, irrespective of whether it will have an impact on the environment or not.
 - (d) Article 8 of the Aarhus Convention governs public participation during the preparation of executive regulations and other generally applicable legally binding rules that “may have a significant effect on the environment”.

⁴⁴ Aarhus Convention, art. 6(10), see also findings on communication ACCC/C/2014/121 (European Union), ECE/MP.PP/C.1/2020/8, para. 103.

⁴⁵ Findings on communication ACCC/C/2010/50 (Czech Republic), ECE/MP.PP/C.1/2012/11, para. 71.

⁴⁶ Aarhus Convention, art. 6(8).

⁴⁷ Recommendations on request for advice ACCC/A/2020/2 (Kazakhstan), ECE/MP.PP/C.1/2021/6, para. 68.

⁴⁸ Aarhus Convention, arts. 2(5) and 3(9).

⁴⁹ Aarhus Convention, annex I.

⁵⁰ Findings on communication ACCC/C/2013/90 (United Kingdom), ECE/MP.PP/C.1/2021/14, para. 83.

52. Importantly, if a proposed activity, plan, programme, policy or law meets the relevant threshold in article 6, 7 or 8 as set out above, the public participation requirements of that article of the Convention must be met in full.
53. Question A.2.A of the Request asks what a State should take into consideration when implementing its obligations regarding the climate change-related matters listed in that question. With respect to the matters listed question A.2.A, public participation would be required under the Aarhus Convention if the relevant threshold in article 6, 7 or 8 is met (see para. 51 above) when a State implements its obligation:
- (a) To regulate – article 8 of the Aarhus Convention;
 - (b) To request and adopt environmental impact assessments – article 6 (1) (a) or (b) of the Aarhus Convention;
 - (c) To establish a contingency plan – article 7 of the Aarhus Convention;
 - (d) To mitigate any activities under its jurisdiction that exacerbate or could exacerbate the climate emergency – depending on how it is proposed that the activities will be mitigated, articles 6, 7 or 8 of the Aarhus Convention.
54. In conclusion, the public’s right to participate in decision-making on environmental matters is a critical element in ensuring a rights-based approach to the climate emergency. It moreover ensures both informed decision-making and an inclusive process with a sense of shared ownership. The rights and obligations under the Aarhus Convention stand as a reference of best practice on States’ obligations in relation to public participation in decision-making in the context of the climate emergency.

E. Third Pillar: Access to justice in environmental matters

55. Recognizing the importance of access to justice to the protection of the right to every person to live in an environment adequate to his or her health and wellbeing,⁵¹ the Aarhus Convention has access to justice as its third pillar.
56. The purpose of the Aarhus Convention’s pillar on access to justice is to provide procedures and remedies to members of the public so they can have the Convention’s rights on access to environmental information and public participation in environmental decision-making, as well as national laws relating to the environment, enforced by law. It thus ensures that the rights and obligations concerning access to information and public participation set out in the Convention, as well as provisions of national law relating to the environment, can be enforced not only by the Party’s public authorities, but also by environmental NGOs and other members of the public.
57. Question B.2 of the Request asks about potential links between the right of access to justice and the right of access to information. As outlined above, there is an intimate link between the right of access to information and the right of access to justice – without access to information, the public may not have the necessary information to challenge specific decisions, acts or omissions regarding the environment; and without access to justice, the right of access to information cannot be effectively enforced.
58. Article 9 of the Aarhus Convention sets out the rights and obligations in relation to access to justice. A distinction in the Convention’s provisions is made between review procedures regarding:
- (a) Refusals and inadequate handling by public authorities of the public’s requests for environmental information (article 9 (1));

⁵¹ Aarhus Convention, article 1.

- (b) Decisions, acts and omissions by public authorities concerning decision-making on specific activities within the scope of the Convention (article 9 (2));
 - (c) Acts and omissions by private persons and public authorities which contravene national law relating to the environment (article 9 (3)).
59. Question D.1 of the Request invites submissions on “the nature and scope of a State Party’s obligation in relation to the establishment of effective judicial remedies to provide adequate and timely protection and redress for the impact on human rights of the climate emergency”. In this regard, access to justice regarding each of the matters in paragraph 58 above are relevant when considering the scope of States’ obligations regarding effective judicial remedies for the impact on human rights of the climate emergency.
60. The Aarhus Convention’s eighteenth preambular paragraph expresses concern that “effective judicial mechanisms should be accessible to the public, including organizations, so that its legitimate interests are protected and the law is enforced”. In keeping with this, the Aarhus Convention takes a broad approach to standing, while allowing different degrees of flexibility for the Parties in providing access to justice depending on which of the matters in paragraph 58 above is subject to review.
- (a) First, in relation to refusals or inadequate handling of access to environmental information requests, article 9 (1) of the Convention entitles “any person” who has requested information to have access to a review procedure.⁵² The Aarhus Convention Compliance Committee has made clear that “any person” refers to both natural and legal persons, including NGOs.⁵³
 - (b) Second, with respect to access to a review procedure to challenge the substantive or procedural legality of decision-making on specific activities subject to article 6 of the Convention, article 9 (2) requires that any member of the public concerned having a “sufficient interest” or “maintaining an impairment of a right” is to be granted standing. Significantly, article 9 (2) of the Convention explicitly deems that NGOs promoting environmental protection are to be granted standing for this purpose.⁵⁴
 - (c) Third, in relation to standing to enforce national law relating to the environment, while noting article 9 (3) enables Parties to set criteria for standing under national law, the Aarhus Convention Compliance Committee has made clear that standing under article 9 (3) of the Convention for members of the public to challenge acts and omissions by private persons or public authorities which contravene national law relating to the environment should “be the presumption, not the exception.”⁵⁵
61. Of particular relevance for question D.1 of the Request, article 9 (4) of the Convention imposes a set of minimum standards that review procedures within the scope of article 9 of the Convention must meet. Specifically, such review procedures must:
- “provide adequate and effective remedies, including injunctive relief as appropriate, and be fair, equitable, timely and not prohibitively expensive. Decisions under this article shall be given or recorded in writing. Decisions of courts, and whenever possible of other bodies, shall be publicly accessible”.
62. With respect to “adequate and effective remedies”, the Aarhus Convention Compliance Committee has held that “adequacy requires the relief to ensure the intended effect of the review

⁵² Aarhus Convention, art. 9(1).

⁵³ Findings on communication ACCC/C/2004/1 (Kazakhstan), ECE/MP.PP/C.1/2005/2/Add.1, paras. 22 and 26.

⁵⁴ Aarhus Convention, arts. 2(5) and 9(2).

⁵⁵ Findings on communication ACCC/C/2005/11 (Belgium), ECE/MP.PP/C.1/2006/4/Add.2, para. 36.

procedure. This may be to compensate past damage, prevent future damage and/or to provide for restoration.”⁵⁶

63. Regarding injunctive relief, the Compliance Committee has emphasized that “taking into account the particularly important public interest in the protection of the environment and the need for precaution with respect to preventing environmental harm it is of crucial importance that injunctive relief is granted whenever there is a risk of environmental damage and that situations in which development consent is granted prior to the completion of judicial proceedings related to the project should be prevented.”⁵⁷
64. Concerning the requirement that review procedures be “fair”, the Compliance Committee has stressed that “‘fairness’ in article 9, paragraph 4, refers to what is fair for the claimant, not the defendant, a public body.”⁵⁸ The Compliance Committee has also held that fairness requires that “in cases of judicial review where a member of the public is pursuing environmental concerns that involve the public interest and loses the case, the fact that the public interest is at stake should be accounted for in allocating costs.”⁵⁹
65. With respect to the requirement in article 9 (4) that review procedures under article 9 not be prohibitively expensive, the Compliance Committee has held that “considerable discretion of the courts...in deciding the costs, without any clear legally binding direction from the legislature or judiciary to ensure costs are not prohibitively expensive, leads to considerable uncertainty regarding the costs to be faced where claimants are legitimately pursuing environmental concerns that involve the public interest”.⁶⁰
66. More generally regarding barriers to access to justice, article 9 (5) of the Convention requires that each Party “shall consider the establishment of appropriate assistance mechanisms to remove or reduce financial and other barriers to access to justice.”
67. Article 9 (5) also requires that “each Party shall ensure that information is provided to the public on access to administrative and judicial review procedures”.
68. Concerning timely review procedures, the Compliance Committee has noted “the importance of court decisions being provided with supporting reasoning and in a timely manner. This is an essential part of a fair and timely procedure, not least because the reasons may be needed in order to mount an appeal”.⁶¹
69. With respect to the expiry of the time limit within which members of the public may challenge a particular decision or act, the Compliance Committee has held that “in the interest of fairness and legal certainty it is necessary to (i) set a clear minimum time limit within which a claim should be brought, and (ii) time limits should start to run from the date on which a claimant knew, or ought to have known of the act, or omission, at stake.”⁶²
70. To conclude on access to justice and question D.1 of the Request, the requirements in paragraphs 58-69 above are among those that apply under the Aarhus Convention with respect to establishing effective judicial remedies for adequate and timely protection and redress in the context of the climate emergency.

⁵⁶ Findings on communication ACCC/C/2013/85 and ACCC/C/2013/86 (United Kingdom), ECE/MP.PP/C.1/2016/10, para. 99, citing *The Aarhus Convention: An Implementation Guide*, second edition (2014), p. 200.

⁵⁷ Findings on communication ACCC/C/2013/106 (Czechia), ECE/MP.PP/C.1/2020/3, para. 115, citing the Compliance Committee’s findings on communication ACCC/C/2012/76 (Bulgaria), ECE/MP.PP/C.1/2016/3, para. 77.

⁵⁸ Findings on communication ACCC/C/2008/27 (United Kingdom), ECE/MP.PP/C.1/2010/6/Add.2, para. 45.

⁵⁹ Findings on communication ACCC/C/2008/27 (United Kingdom), ECE/MP.PP/C.1/2010/6/Add.2, para. 45.

⁶⁰ Findings on communication ACCC/C/2008/33 (United Kingdom), ECE/MP.PP/C.1/2010/6/Add.3, para. 135.

⁶¹ Findings on communication ACCC/C/2013/89 (Slovakia), ECE/MP.PP/C.1/2017/13, para. 97.

⁶² Findings on communication ACCC/C/2008/33 (United Kingdom), ECE/MP.PP/C.1/2010/6/Add.3, para. 138.

F. Part II – Conclusion

71. For many decades, the protection of the environment and the promotion of human rights were considered through separate forums and processes at international and national levels. The adoption of the Aarhus Convention in 1998 was a major step forward to bring the two streams together, resting on a recognition that the procedural rights under the Convention are essential for the realization of the right to live in an environment adequate to health and well-being. As set out above, the Aarhus Convention imposes key procedural rights that go to the core of the rights of the public and the obligations of States in the context of the climate emergency. It provides a robust legal framework that is informed by the more than two decades of implementation since the Convention's entry into force in 2001.

III. States' obligations and measures to protect environmental defenders and facilitate their work

72. Question E of the Request poses questions regarding the protection of environmental defenders in the context of the climate emergency.
73. In this regard, question E.1 asks which measures and policies States should adopt to facilitate the work of environmental human rights defenders. Question E.5 asks which measures of due diligence States should take into account to ensure that attacks and threats against environmental defenders in the context of the climate emergency do not go unpunished.
74. The present submission responds to question E.1 in particular and is of relevance for question E.5 also.

A. General observations

75. The triple planetary crisis cannot be addressed without guaranteeing that those who seek to have their voices heard in addressing the climate emergency can safely exercise their fundamental freedoms of expression, association, and assembly, and their rights to have access to information, public participation in decision-making and access to justice in environmental matters.
76. To this end, article 3 (8) of the Aarhus Convention imposes a legally binding obligation requiring that "each Party shall ensure that persons exercising their rights in conformity with the provisions of this Convention shall not be penalized, persecuted or harassed in any way for their involvement."
77. The Aarhus Convention Compliance Committee has held 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."⁶³
78. In line with the Compliance Committee's findings, the Meeting of the Parties of the Aarhus Convention has recognized that an "environmental defender" is "any person exercising his or her rights in conformity with the provisions of the Convention".⁶⁴ In accordance with the definition of "the public" in article 2 (4) of the Convention, this includes both natural and legal persons and their associations, organizations and groups.
79. The Special Rapporteur on environmental defenders under the Aarhus Convention has identified the following seven principles which should underpin States' actions to protect environmental defenders:

⁶³ Findings on communication ACCC/C/2014/102 (Belarus), ECE/MP.PP/C.1/2017/19, para. 66.

⁶⁴ See decision VII/9 on a rapid response mechanism to deal with cases related to article 3 (8) of the Convention, ninth preambular paragraph.

- (a) Principle 1: They should adopt a rights-based approach to protection, empowering defenders to know and claim their rights and increasing the ability and accountability of those responsible for respecting, protecting and fulfilling rights.
 - (b) Principle 2: They should recognize that defenders are diverse; they come from different backgrounds, cultures and belief systems. From the outset, they may not self-identify or be identified by others as defenders.
 - (c) Principle 3: They should recognize the significance of gender in the protection of defenders and apply an intersectionality approach to the assessment of risks and to the design of protection initiatives. They should also recognize that some defenders are at greater risk than others because of who they are and what they do.
 - (d) Principle 4: They should focus on the “holistic security” of defenders, in particular their physical safety, digital security and psychosocial well-being.
 - (e) Principle 5: They should acknowledge that defenders are interconnected. They should not focus on the rights and security of individual defenders alone, but also include the groups, organizations, communities and family members who share their risks.
 - (f) Principle 6: They should involve defenders in the development, choice, implementation and evaluation of strategies and tactics for their protection. The participation of defenders is a key factor in their security.
 - (g) Principle 7: They should be flexible, adaptable and tailored to the specific needs and circumstances of defenders.⁶⁵
80. In the light of the above, it is critical to adopt a broad and inclusive definition of “environmental defender”. It is important to remember that environmental defenders may not self-identify or be identified by others as such. Environmental defenders who do not identify themselves as such are often particularly vulnerable because they may be unaware of their rights and existing mechanisms for their protection.⁶⁶
81. Moreover, while it is essential to have a broad and inclusive definition of who is an environmental defender, within this definition it is important to give special attention to certain groups of environmental defenders and to tailor the protection to their specific needs.⁶⁷ This applies in particular to vulnerable groups, such as minorities, indigenous communities, women and children.
82. It is also important to make clear that environmental defenders are themselves human rights defenders and thus enjoy the same rights and protections granted to human rights defenders under international human rights law.⁶⁸

B. Key risks and threats faced by environmental defenders

83. In order to ensure that prevention and protection strategies for environmental defenders are effective, it is crucial to understand the key risks and threats faced by environmental defenders. This section of the submission outlines some of the main risks and threats currently faced by environmental defenders in Parties to the Aarhus Convention. It is, however, important to recognize that the risks and threats environmental defenders face are constantly evolving, sometimes very rapidly.⁶⁹

⁶⁵ Vision for the Mandate, Statement by the Aarhus Convention’s Special Rapporteur on Environmental Defenders, 23 November 2022, p. 1, available at: https://unece.org/sites/default/files/2022-11/Vision_for_mandate.pdf (Vision for the Mandate); see also Report of Special Rapporteur on the situation of human rights defenders to thirty-first session of the UN Human Rights Council, A/HRC/31/55, p. 21, available at: https://ap.ohchr.org/documents/dpage_e.aspx?si=A/HRC/31/55.

⁶⁶ Vision for the Mandate, p. 4.

⁶⁷ See Request for Advisory Opinion, questions E.2 and E.3.

⁶⁸ Vision for the Mandate, p. 1.

⁶⁹ Ibid., pp. 1-2 and 6.

84. Some of the key threats and risks reported in Parties to the Aarhus Convention include, but are by no means limited to:

i. Physical attacks against environmental defenders, and impunity of attackers

85. Physical violence and attacks against environmental defenders, including killings, have been reported in a number of Parties to the Aarhus Convention.⁷⁰ In addition to physical and verbal attacks, environmental defenders report being followed and receiving death threats. In some countries, beatings, threats and intimidation tactics against environmental defenders are described as “commonplace”.⁷¹

86. In some cases, the physical attacks and harassment are carried out by law enforcement themselves. In other situations, law enforcement fails to investigate and prosecute the physical attacks perpetrated by others.⁷²

ii. Strategic Lawsuits Against Public Participation

87. There is an increasing trend by both State and private actors in Parties to the Aarhus Convention to use Strategic Lawsuits against Public Participation (SLAPPs) against environmental defenders, often as a result of those defenders speaking out about environmental harm caused by the activities of specific State-owned entities or private companies. SLAPPs can take the form of civil, administrative or criminal proceedings, or a combination thereof. Indeed, the threat of criminal sanction can create a particularly heavy burden for an environmental defender and have a significant deterrent effect.

88. The growing use of SLAPPs against environmental defenders have a significant chilling effect on the exercise of their rights and are a major barrier to securing a safe and enabling environment for their environmental protection activities.⁷³

iii. Increased criminalization and repression of environmental defenders engaged in acts of civil disobedience regarding the climate emergency

89. Disillusionment with the perceived ongoing lack of effective action to address the climate emergency has resulted in new forms of environmental activism emerging, including the use of civil disobedience, in particular by young climate activists and movements. Even if these actions, such as road blockades, the interruption of sporting events, or the targeting of paintings, may cause inconvenience or disruption, civil disobedience remains an essential component of democratic life and should not be criminalized.⁷⁴

90. However, within Parties to the Aarhus Convention, restrictions on civic space and fundamental freedoms are one of the main tools to penalize, persecute and harass environmental defenders, including journalists. Restrictions on environmental defenders’ basic rights of freedom of expression, association and assembly are becoming increasingly frequent, especially through bans on demonstrations and the right of peaceful protest or the issuing of preventive house arrests to protesters.⁷⁵

⁷⁰ Working Group of the Parties to the Aarhus Convention, Information note on the situation regarding environmental defenders in Parties to the Aarhus Convention 2017–2020, AC/WGP-24/Inf.16, pp. 15, 23, 24, 29, 31 and 32, available at: https://unece.org/fileadmin/DAM/env/pp/wgp/WGP_24/Inf.16_Situation_of_environmental_defenders_in_Parties_to_the_Convention.pdf.

⁷¹ See Office of the Council of Europe Commissioner for Human Rights, Environmental Rights Activism and Advocacy in Europe Issues, Threats, Opportunities, Council of Europe, March 2021, para. 40, available at: [A distress call for human rights \(coe.int\)](#).

⁷² Ibid., paras. 41–42.

⁷³ Vision for the Mandate, p. 9.

⁷⁴ Ibid., p. 8.

⁷⁵ Ibid., p. 9.

91. Moreover, a recent report of the Commissioner for Human Rights of the Council of Europe found that in many Council of Europe Member States, most of which are Parties to the Aarhus Convention, environmental-related protest movements are subjected to “constant and disproportionate criminalization”.⁷⁶ In addition to the direct impacts on the lives of those environmental defenders subjected to criminal sanctions, the fear of possible arrest, criminal charges, imprisonment and other sanctions may have a wider chilling effect on environmental defenders exercising their human right to protest and engage in civil disobedience actions.⁷⁷

iv. Increasingly restrictive legal frameworks

92. In a number of Parties to the Aarhus Convention, environmental NGOs are operating in increasingly restrictive legal frameworks. This includes, for instance, legislation that imposes disproportionate limitations on the registration of NGOs or on their funding, including through the use of counterterrorism laws.⁷⁸

v. Increasingly toxic narrative by public figures and the media

93. Closely connected with the use of criminal sanctions and other legal mechanisms to restrict the activities of environmental defenders is the growing use by the media and senior public figures, including the judiciary, of rhetoric that depicts environmental defenders as “eco-terrorists”, “criminals”, “racketeers” and such like. Narratives that associate environmental defenders with grave and illegal actions, such as terrorism, not only represent a threat to the safety of environmental defenders, but also to democratic values.⁷⁹

vi. Digital surveillance, cyber-bullying, cyber-attacks and other digital threats

94. Environmental defenders are increasingly targeted by cyberbullying, cyberattacks, and other forms of digital threats. This includes “online smearing” in which articles are posted online with the aim to tarnish the reputation of individuals or organizations speaking up against environmental harm. Environmental defenders have had their emails and computers hacked as a result of their campaigning and digital surveillance has been identified as a key concern.⁸⁰ A number of human rights NGOs and other actors provide essential training, resources and support in these different areas, but those who need it, in particular environmental defenders, are often not aware such support exists.⁸¹

C. Obligation to protect environmental defenders

95. As noted above, article 3 (8) of the Aarhus Convention imposes a legally binding obligation requiring that “each Party shall ensure that persons exercising their rights in conformity with the provisions of this Convention shall not be penalized, persecuted or harassed in any way for their involvement.”

⁷⁶ See Office of the Council of Europe Commissioner for Human Rights, Environmental Rights Activism and Advocacy in Europe Issues, Threats, Opportunities, Council of Europe, March 2021, p. 12, available at: [A distress call for human rights \(coe.int\)](https://www.coe.int/en/web/commissioner/-/let-us-make-europe-a-safe-place-for-environmental-human-rights-defenders).

⁷⁷ See Vision for the Mandate, p. 9.

⁷⁸ Ibid., p. 9.

⁷⁹ Ibid., p. 8; see also Commissioner for Human Rights, Council of Europe, Human Rights Comments, “Let us make Europe a safer place for environmental human rights defenders”, 25 May 2021, available at:

<https://www.coe.int/en/web/commissioner/-/let-us-make-europe-a-safe-place-for-environmental-human-rights-defenders>.

⁸⁰ Office of the Council of Europe Commissioner for Human Rights, Environmental Rights Activism and Advocacy in Europe Issues, Threats, Opportunities, Council of Europe, March 2021, para. 44, available at: [A distress call for human rights \(coe.int\)](https://www.coe.int/en/web/commissioner/-/let-us-make-europe-a-safe-place-for-environmental-human-rights-defenders).

⁸¹ Vision for the Mandate, p. 7.

96. The Aarhus Convention Compliance Committee has emphasized the seriousness of a Party's non-compliance with article 3 (8) of the Convention, holding that "if members of the public are penalized, harassed or persecuted for exercising their rights under the Convention, it puts in grave jeopardy the implementation of the Convention as a whole by the Party concerned."⁸²
97. As the Meeting of the Parties and the Compliance Committee of the Aarhus Convention have made clear, the duty to prevent the penalization, persecution and harassment of environmental defenders imposed on each Party by article 3 (8) is broad. For one, the obligation in article 3 (8) is *owed to* any member of the public who seeks "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".⁸³ In line with the definition of "the public" in article 2 (4) of the Convention, this includes both natural and legal persons, as well as their associations, organizations and groups.
98. Additionally, the obligation is *owed by* a wide range of actors. As the Aarhus Convention Compliance Committee has clarified in its findings, article 3 (8) "is not limited in its application to acts of public authorities as defined in article 2, paragraph 2, of the Convention, but rather covers penalization, persecution or harassment by any State body or institution, including those acting in a judicial or legislative capacity. It also covers penalization, persecution or harassment by private natural or legal persons that the Party concerned did not take the necessary measures to prevent".⁸⁴
99. Furthermore, as explained in the Aarhus Convention Implementation Guide, article 3 (8) "is a broadly worded provision which aims to prevent retribution of any kind."⁸⁵ For example, the Aarhus Convention Compliance Committee has found that, among other things, public insults in local and mass media,⁸⁶ prolonged police presence in front of an apartment or building,⁸⁷ and phone calls by State security services⁸⁸ have amounted to penalization, persecution or harassment under article 3 (8), where not shown to be reasonable, proportional and pursuing a legitimate purpose.⁸⁹

D. Creating a safe and enabling environment for environmental defenders

100. In addition to the obligation in article 3 (8) to ensure environmental defenders are not persecuted, penalized or harassed, a number of provisions of the Aarhus Convention require Parties to create a safe and enabling environment for members of the public to exercise their rights under the Convention. These include:

i. Article 3 (1) – Clear, transparent, consistent framework and proper enforcement mechanisms

101. Article 3 (1) of the Convention requires that "each Party shall take the necessary legislative, regulatory and other measures...as well as proper enforcement measures, to establish and maintain a clear, transparent and consistent framework to implement the provisions of this Convention."

102. With respect to establishing a clear, transparent and consistent framework, and proper enforcement mechanisms, for the implementation of article 3 (8) of the Convention, States should develop guidelines and trainings for prosecutors, the judiciary and law enforcement on the protection of environmental defenders. This could, for example, include guidelines on appropriate

⁸² Findings on communication ACCC/C/2014/102 (Belarus), ECE/MP.PP/C.1/2017/19, para. 110.

⁸³ Ibid., para. 67.

⁸⁴ Ibid., para. 70.

⁸⁵ *The Aarhus Convention: An Implementation Guide*, second edition (2014), p. 71.

⁸⁶ Findings on communication ACCC/C/2009/36 (Spain), ECE/MP.PP/C.1/2010/4/Add.2, para. 64.

⁸⁷ Findings on communication ACCC/C/2014/102 (Belarus), ECE/MP.PP/C.1/2017/19, para. 101.

⁸⁸ Findings on communication ACCC/C/2013/98 (Lithuania), ECE/MP.PP/C.1/2021/15, para. 154.

⁸⁹ A compilation of the Compliance Committee's findings adopted to date is available at:

https://unece.org/sites/default/files/2023-08/Compilation_of_CC_findings_14.08.2023_eng.pdf.

responses to acts of civil disobedience or on the identification and prevention of SLAPPs. Ensuring awareness, information sharing and education around these issues are key due diligence measures that States should take for the protection of environmental defenders in the context of the triple planetary crisis.⁹⁰

103. In this regard, the Special Rapporteur on environmental defenders under the Aarhus Convention has been contributing to the development and strengthening of national and regional legislative frameworks to combat SLAPPs. This has included, for instance, providing input⁹¹ on the forthcoming European Union Directive on protecting persons who engage in public participation from manifestly unfounded or abusive court proceedings (“Strategic lawsuits against public participation”)⁹² and the Council of Europe’s forthcoming Recommendation of the Council of Ministers on countering SLAPPs.⁹³

ii. Article 3 (2) – Assistance in accessing information, public participation and justice

104. The provision of assistance by public officials and authorities to members of the public seeking access to information, to participate or to have access to justice regarding the environment is also a core component of ensuring an enabling environment for environmental defenders.

105. In this regard, article 3 (2) of the Aarhus Convention requires that “each Party shall endeavour to ensure that officials and authorities assist and provide guidance to the public in seeking access to information, in facilitating participation in decision-making and in seeking access to justice in environmental matters”.

iii. Article 3 (4) – Recognition and support of associations, organizations and groups promoting environmental protection

106. As the Special Rapporteur on environmental defenders has observed, in a number of Parties to the Convention the legal framework for environmental NGOs is becoming increasingly restrictive, for example through limitations on the registration of NGOs or on their funding.⁹⁴

107. In this regard, article 3 (4) of the Aarhus Convention requires that “each Party shall provide for appropriate recognition of and support to associations, organizations or groups promoting environmental protection and ensure that its national legal system is consistent with this obligation”.

iv. Article 3 (9) – No discrimination as to citizenship, national it or domicile

108. Unlike many international human rights instruments, Parties to the Aarhus Convention are not only bound by the Convention’s obligations with respect to members of the public within a Party’s own territory. Rather, under article 3 (9) of the Aarhus Convention, the public is entitled to its rights under the Convention “without discrimination as to citizenship, nationality or domicile”.

109. This means that each Party to the Aarhus Convention is bound by the Convention’s obligations, including the obligation in article 3 (8) to ensure persons exercising their rights under the Convention are not persecuted, penalized or harassed, also with respect to members of the public outside that Party’s territory.

⁹⁰ See Request for Advisory Opinion, question E.5.

⁹¹ The Special Rapporteur’s statements on the proposed European Union Directive on SLAPPs and the Council of Europe Committee of Minister’s Recommendation on SLAPPs are available at: <https://unece.org/environmental-policy/public-participation/press-releases-and-public-statements>.

⁹² See https://ec.europa.eu/commission/presscorner/detail/en/ip_23_6159.

⁹³ See <https://www.coe.int/en/web/freedom-expression/msi-slp#%7B%22114418796%22%3A%22119911045%22%3A%22%7D>.

⁹⁴ Vision for the Mandate, p. 9.

E. The role of the media

110. The media has a key role to play in securing a safe and enabling environment for environmental defenders. As observed by the Special Rapporteur on environmental defenders, the media is one of the main drivers of negative narratives around environmental defenders (and inflammatory labels such as “eco-terrorists”). Such narratives not only have a direct chilling effect on environmental defenders, but also enable States to exploit those narratives to enact repressive legislation and other measures against environmental defenders.⁹⁵

111. While the independence of the media is a critical element of an open and democratic society, States should ensure that environmental defenders are not subject to harassment or otherwise put at risk by the media. This includes both State and privately owned media since, as the Aarhus Convention Compliance Committee has held, article 3 (8) also “covers penalization, persecution or harassment by private natural or legal persons that the Party concerned did not take the necessary measures to prevent”.⁹⁶

F. Ensuring accountability for reprisals

112. A core component of securing a safe and enabling environment for environmental defenders is the prompt and independent investigation of reprisals against environmental defenders, and the holding of perpetrators to account. However, because large-scale development projects often require vast financial investments, they can be subject to corrupt practices, and the complexity of their structures and processes often makes it difficult to clearly identify the chain of responsibility to ensure accountability for reprisals against environmental defenders.⁹⁷

113. In addition to appropriate legal frameworks and policies, States should have the necessary resources in place, including appropriate training of the police, investigators and prosecutors, legal aid and other forms of victim support, to ensure accountability for reprisals against environmental defenders.⁹⁸

IV. Conclusion

114. The secretariat of the Aarhus Convention and the UN Special Rapporteur on environmental defenders under the Aarhus Convention appreciate the opportunity to submit this joint written submission and hope that the information provided herein will be useful for the Court.

⁹⁵ Vision for the Mandate, p. 8.

⁹⁶ Findings on communication ACCC/C/2014/102 (Belarus), ECE/MP.PP/C.1/2017/19, para. 70.

⁹⁷ Vision for the Mandate, p. 9.

⁹⁸ Ibid., p. 9.