

Note on Civil Society Space

prepared by the secretariat of the Aarhus Convention

Civil society has played a crucial role in the drafting of both the Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters (Aarhus Convention) and its Protocol on Pollutant Release and Transfer Registers (Protocol on PRTRs) and continues to do so in the operation of both instruments. As noted in paragraph 4 of Human Rights Council Resolution 32/31, the central tenets of facilitating a space in which civil society can strive and participate in decision-making are an “enabling” and “safe environment”. This note is accordingly structured in line with these two headings. Due to the fact that the Aarhus Convention and the Protocol on PRTRs are focused to a great extent on ensuring a safe and enabling environment for civil society, this note provides both information on relevant procedures and practices of the Convention and Protocol bodies and also on pertinent requirements imposed on the Parties to both instruments.

I. Enabling environments

A. Requirements applicable to the Parties

This section briefly addresses the main obligations of the Parties under the Aarhus Convention and the Protocol on PRTRs related to providing an enabling environment for civil society. While the obligations under the Convention and the Protocol relate to environmental matters, the constituent elements of the three pillars of the Convention (access to information, public participation in decision-making and access to justice), as well as the other factors mentioned, are easily transferrable to other subject areas as good practice indicators.

Inclusive definition of the “public”

A first crucial step for ensuring effective participation of civil society is to use a broad definition of right-holders. In both the Aarhus Convention¹ and the Protocol on PRTRs,² this is ensured via the definition of “the public” as any “one or more natural persons or legal persons and, in accordance with national legislation or practice, their associations, organizations and groups.” This broad definition ensures that no sectors of civil society are excluded from being heard or given the possibility to participate. Note, however, that this does not exclude giving additional rights to specifically qualified participants in the process, such as non-governmental organizations (NGOs), as will become apparent at various points below.

First Pillar: Access to Information

As noted in paragraph 14 (b) and (c) of resolution 32/31, access to information is a crucial element to facilitate participation of civil society in decision-making processes. The Aarhus Convention requires its Parties to both provide “environmental information”³ to the public on

¹ Aarhus Convention, article 2, paragraph 5.

² Protocol on PRTRs, article 2, paragraph 3.

³ Environmental information is given a broad definition via article 2, paragraph 3, of the Aarhus Convention.

request⁴, except if clearly defined exemptions apply,⁵ as well as to hold and actively disseminate environmental information.⁶ Access to information is clearly linked to informed decision-making⁷ and must be enforceable via legal review procedures (see access to justice below). Similarly, the Protocol on PRTRs requires Parties to establish a publicly accessible register of releases and transfer of pollutants. Access for the general public must be ensured⁸ and confidentiality is limited to clearly defined exemptions.⁹

Important elements of effective access to information are that requests must not be motivated,¹⁰ should be free of charge or not cost more than a reasonable amount¹¹ and that information requests are processed swiftly, with the Convention setting a maximum time limit of one month or, exceptionally, two months for requests relating to a large number of documents.¹² The mentioned exemptions from disclosure must be interpreted restrictively, taking into account the public interest served by disclosure¹³ and whether the information can be partially disclosed.¹⁴ If a request for information is nonetheless refused, sufficient reasons must be given for non-disclosure.¹⁵ This also facilitates a potential court review of the refusal at a later stage.

Second Pillar: Public Participation

As noted in paragraph 14 (b) and (d) of resolution 32/31, participation of civil society in decision-making processes is a crucial element of providing an enabling environment for civil society. The Aarhus Convention requires its Parties to conduct public participation in the decision-making on specific activities enumerated in Annex I or which otherwise potentially carry significant effects on the environment¹⁶ as well as in the preparation of plans and programs and, to the extent appropriate, policies relating to the environment.¹⁷ Furthermore, Parties are required to strive to promote public participation in the preparation of executive regulations and generally applicable legally binding rules.¹⁸ Participation of the public shall also be ensured in the preparation of the PRTR registers under the Protocol on PRTRs.¹⁹

For public participation to be effective, it must be ensured that the public likely to be affected by, or having an interest in the decision-making (including, for example, NGOs), are informed in an adequate, effective and timely manner of the nature of the impending decision and requisite information,²⁰ are given sufficient time to prepare and to comment on all aspects of the decision²¹ and to submit comments both in writing and orally during potential public hearings.²² Public

⁴ Aarhus Convention, article 4, paragraph 1.

⁵ Aarhus Convention, article 4, paragraphs 3-4.

⁶ Aarhus Convention, article 5.

⁷ Aarhus Convention, article 6, paragraph 6, and article 7.

⁸ Protocol on PRTRs, article 11.

⁹ Protocol on PRTRs, article 12.

¹⁰ Aarhus Convention, article 4, paragraph 1(a). See also Communication ACCC/C/2004/1 (Kazakhstan), ECE/MP.PP/C.1/2005/2/Add.1, para. 20.

¹¹ Aarhus Convention, article 4, paragraph 8.

¹² Aarhus Convention, article 4, paragraph 2.

¹³ Aarhus Convention, article 4, paragraph 4, last sentence. See also Communication ACCC/C/2010/51 (Romania), ECE/MP.PP/C.1/2014/12, para. 80 and 95.

¹⁴ Aarhus Convention, article 4, paragraph 6.

¹⁵ Aarhus Convention, article 4, paragraph 7.

¹⁶ Aarhus Convention, article 6, paragraph 1(a) and (b).

¹⁷ Aarhus Convention, article 7.

¹⁸ Aarhus Convention, article 8.

¹⁹ Protocol on PRTRs, article 13.

²⁰ Aarhus Convention, article 6, paragraph 2.

²¹ Aarhus Convention, article 6, paragraph 3 as well as article 7.

²² Aarhus Convention, article 6, paragraph 7.

participation must be conducted when all options are open, including not to commence with the decision at all. Moreover, effective public participation requires that due account is taken of the outcome of the public participation.²³ Decision-making authorities must further demonstrate that due account is indeed taken of the outcome of public participation²⁴ and they must promptly inform the public of the decision itself and provide reasons on which it is based.²⁵

Third pillar: Access to justice

As noted in paragraph 7 and 14 (a) of resolution 32/31, access to justice is a necessary element to enforce the rights of civil society and to challenge otherwise illegal practices of public authorities and private parties. The Aarhus Convention's third pillar finds expression in article 9 of the Convention, which provides for access to justice with regard to access to information requests, for decisions on specific activities, as mentioned above, as well as acts and decisions violating a Party's national law relating to the environment.²⁶ For these decisions, the Convention requires access to adequate and effective remedies which are fair, equitable, timely and not prohibitively expensive, including injunctive relief as appropriate.²⁷ Parties shall also ensure that the public is provided with relevant information on this procedure and to consider establishing assistance mechanisms to reduce or remove financial or other barriers.²⁸

Facilitating a supportive environment

As noted in paragraph 14 (e) of resolution 32/31, education is a necessary element of a long-term supportive environment for civil society. The Parties to the Aarhus Convention are required to promote environmental education and awareness²⁹ and the Protocol on PRTRs similarly requires awareness-raising, assistance and guidance.³⁰ The Convention further requires the Parties to provide for appropriate recognition and support of associations, organizations and groups promoting environmental protection recognizing the crucial role of civil society organizations.³¹

Non-discrimination

A final crucial provision of the Convention requires Parties to apply no discrimination as to citizenship, nationality or domicile, and, in the case of legal persons, as to registered seat or effective centre of activities when implementing the Aarhus Convention.³² This requirement serves to create an environment in which civil society actors can be active across borders, thereby considerably enlarging the space in which civil society actors can operate and participate in decision-making procedures which are of relevance to them. This element has also given rise to a number of communications before the Compliance Committee concerning situations in which the participation of the foreign public likely to be affected or otherwise interested in a project was not adequately ensured.³³

²³ Aarhus Convention, article 6, paragraph 8.

²⁴ Aarhus Convention, article 6, paragraph 8.

²⁵ Aarhus Convention, article 6, paragraph 9.

²⁶ Aarhus Convention, article 9, paragraphs 1, 2 and 3.

²⁷ Aarhus Convention, article 9, paragraph 4.

²⁸ Aarhus Convention, article 9, paragraph 5.

²⁹ Aarhus Convention, article 3, paragraph 3.

³⁰ Protocol on PRTRs, article 17.

³¹ Aarhus Convention, article 3, paragraph 4.

³² Aarhus Convention, article 3, paragraph 9.

³³ See Communications ACCC/C/2004/5 (Turkmenistan), ECE/MP.PP/C.1/2005/2/Add.5, para. 16; ACCC/C/2004/3 (Ukraine), ECE/MP.PP/C.1/2005/2/Add. 3, para. 26 and ACCC/C/2013/92 (Germany), which is currently at the draft findings stage.

Promotion of the principles of the Convention in International Forums

The Parties to the Convention are further required to promote the Convention principles in international forums,³⁴ thereby creating an enabling environment in international processes as well. The Meeting of the Parties has adopted the *Almaty Guidelines on Promoting the Application of the Principles of the Aarhus Convention in International Forums* (*Almaty Guidelines*) to facilitate this process and to outline requisite obligations.³⁵ According to the *Almaty Guidelines*, international processes should in principle be open to the public at large and measures should be taken to provide a balanced and equitable process, promoting transparency, minimizing inequality, preventing the exercise of undue political influence and ensuring that those most directly affected are able to participate without discrimination as to citizenship, nationality or domicile.³⁶ The *Almaty Guidelines* also encourage capacity-building activities aimed at facilitating access of the public concerned, in particular of environmental NGOs in developing countries and in countries with economies in transition.³⁷ The *Guidelines* further emphasize the necessity to provide resources, including to provide financial support for travel and subsistence costs to facilitate participation.³⁸

The core requirements under the *Almaty Guidelines* are otherwise closely tailored to the Convention. Firstly, international forums should establish a clear and transparent set of policies to provide environmental information both proactively via online tools and on request.³⁹ Secondly, broad public participation of the public concerned, meaning those most directly affected, environmental NGOs and organizations representing other relevant interests, shall be ensured, providing, if necessary, for transparent accreditation and selection procedures based on clear and objective criteria.⁴⁰ Public participation shall furthermore be ensured at an early stage, providing access to all documents relevant to decision-making, to allow the public concerned to provide its comments and speak at meetings and to have their comments duly considered.⁴¹ Thirdly, consideration should be given to the establishment of adequate review procedures.⁴²

B. Procedures and Practices of the Convention and Protocol bodies

The bodies of the Aarhus Convention and the Protocol on PRTRs place great care on providing an enabling environment for civil society in their activities.

Transparency

To ensure that civil society can fully monitor and engage in the activities of the Convention and the Protocol bodies, it is first of all of utmost importance that work processes are transparent. The Convention and Protocol bodies therefore publish all official documents and a number of important unofficial documents on the website of the United Nations Economic Commission for Europe (UNECE). Furthermore, the secretariat notifies civil society actors that have indicated an

³⁴ Aarhus Convention, article 3, paragraph 7.

³⁵ Annex to Decision II/4 on promoting the application of the principles of the Convention in international forums, ECE/MP.PP/2005/2/Add.5 (<https://www.unece.org/index.php?id=21464>) – “*Almaty Guidelines on promoting the application of the principles of the Aarhus Convention in international forums*”.

³⁶ *Almaty Guidelines*, paras. 14-16.

³⁷ *Almaty Guidelines*, paras. 17 and 38.

³⁸ *Almaty Guidelines*, paras. 18 and 39.

³⁹ *Almaty Guidelines*, paras. 19-27.

⁴⁰ *Almaty Guidelines*, paras. 28-31.

⁴¹ *Almaty Guidelines*, paras. 32-37.

⁴² *Almaty Guidelines*, para. 40.

interest in a specific matter about the upcoming meetings and availability of the related documents. Moreover, members of the public have the possibility to request further information from the secretariat on all relevant matters and the secretariat places great care to answer all queries in the shortest time possible.

Capacity Building

Next to providing information to the public and interested actors, the Convention task forces on access to information, public participation in decision-making and access to justice as well as expert workshops further facilitate the participation of civil society in the implementation of the Convention and the Protocol. In addition, the secretariat services a region-wide capacity building coordination for the Convention and a global coordinating group for the Protocol. Important online capacity-building mechanisms are the Aarhus Clearinghouse⁴³ and PRTR.net⁴⁴ which serve as additional resources compiling information and best practices on the implementation of the Convention and Protocol. Civil society actors can also request further assistance from the secretariat where relevant, although due to limited resources most national and subregional capacity building activities are carried by partner organisations such as the Organization for Security and Co-operation in Europe (OSCE), Regional Environmental Centres and Aarhus Centers.⁴⁵

The Aarhus Convention and the Protocol on PRTRs rely on National Focal Points to have a direct connection point with the government of the Parties but they also encourage interested organizations to designate focal points.⁴⁶ A number of “Aarhus Centres”, most supported by OSCE, have been established as a neutral platform for Governments and civic society to promote the Convention and the PRTR Protocol, raise awareness of rights and seek to further the implementation of both agreements.

Participation in meetings and other processes

Both under the Convention and under the Protocol on PRTRs, the Meetings of the Parties (MOPs) are held in public unless the Meeting exceptionally decides otherwise.⁴⁷ Both the Aarhus Convention⁴⁸ and the Protocol on PRTRs⁴⁹ further establish that the MOPs are open to participation of NGOs qualified in relevant fields, unless one third of the Parties present at the MOP object. In practice, all sessions of the Meeting of the Parties have so far been conducted in public and with participation of civil society actors. Civil society actors can apply to participate and receive the necessary accreditation that allows them to access the meeting venue with reasonable formalities in accordance with procedures of the United Nations on security. They can make statements at meetings and submit comments to the documents that are subject to negotiations.

⁴³ The Aarhus Clearinghouse can be accessed from: <https://aarhusclearinghouse.unece.org/>.

⁴⁴ The PRTR.net can be accessed from: <http://prtr.net/>.

⁴⁵ Decision I/10 on clearinghouse mechanism and capacity-building service, para. 5, adopted by the Meeting of the Parties to the Aarhus Convention (ECE/MP.PP/2/Add.11).

⁴⁶ Decision I/9 on Designation of Focal Points, para. 2, adopted by the Meeting of the Parties to the Aarhus Convention (ECE/MP.PP/2/Add.10).

⁴⁷ Decision I/1 adopted by the Meeting of the Parties to the Aarhus Convention on Rules of Procedure (ECE/MP.PP/2/Add.2), Annex, rule 26, adopted by the Meeting of the Parties to the Aarhus Convention and Decision I/1 on Rules of Procedure, Annex, rule 7, para. 1, adopted by the Meeting of the Parties to the Protocol on PRTRs (ECE/MP.PRTR/2010/2/Add.1).

⁴⁸ Aarhus Convention, article 10, paragraph 5.

⁴⁹ Protocol on PRTRs, article 17.

The Meetings of the Parties of both the Convention and the Protocol establish each a Bureau that operates as an overseeing mechanism during the intersessional period (between MOPs). In accordance with the rules of procedure of the Aarhus Convention one NGO representative is appointed by the NGOs present at the preceding session of the MOP and takes part in the Bureau meetings as an observer until the next MOP session, with the possibility to follow the process and raise issues important to civil society.

Civil society actors are also invited to, and do actively participate in meetings of the Working Groups of the Parties, established by the Meetings of the Parties to the Convention and the Protocol, which govern the implementation of the work programmes under the two treaties during the intersessional period. The same applies, where relevant, to subsidiary task forces, roundtables, workshops and other expert events organized under the auspices of both instruments. Civil society actors have the possibility to take the floor on an equal footing with government representatives, unless there is a time limit, and are given the possibility to present on thematic issues where relevant. For instance, the last meeting of the Working Group of the Parties to the Convention (Geneva, 15-17 June 2016) included a presentation of an NGO representative on public participation during the Climate Change Conference in Paris (30 November – 11 December 2015). In addition, task force meetings, workshops and roundtables also include such interventions from NGO representatives. The active contribution of these actors is of pivotal importance for the implementation of the Convention and the Protocol as well as the exchange of good practices during these meetings.

The secretariat provides limited financial support to environmental NGOs to participate in meetings. Sufficient funding is, however, an ongoing challenge and largely dependent on the voluntary contributions of the Parties. To further expand the possibilities for members of the public to participate, the Convention and Protocol bodies have on various occasions relied on audio-visual equipment to provide access for members of the public lacking the possibility to attend in person. In fact, the rules of procedure for the Protocol on PRTRs even formally specify that in the case that the existing facilities cannot accommodate all members of the public wishing to participate, then audio-visual equipment shall be utilized.⁵⁰ While this specific rule did not need to be applied yet, members of the public have attended via audio or video conference a number of meetings, for instance of the Compliance Committee.

Environmental NGOs have chosen to establish the European ECO Forum network, as a representative body of 200 environmental NGOs of the UNECE region to better coordinate their participation in different UNECE processes, including the Aarhus Convention and its Protocol. While attention must be paid to not exclude other actors, be it organisations or natural persons not involved in this network, such networks can be very useful to allow NGOs to fulfil a monitoring role of the processes, to have an easy point to liaise with NGOs on a number of issues and to give a better opportunity to contribute to the processes under the Convention and its Protocol. This does not mean that other actors were excluded from participating at the meetings under the Convention and the Protocol but rather that an informed and involved network is able to facilitate the participation of other NGOs, for instance by giving information, organizing coordination meetings, providing substantive inputs and assisting members of the public in bringing communications to the Compliance Committee.

⁵⁰ Decision I/1 on rules of procedure, Annex, rule 7, para. 2, adopted by the Meeting of the Parties to the Protocol on PRTRs (ECE/MP.PRTR/2010/2/Add.1).

Reporting

Parties to the Convention and to the Protocol are required to prepare their national implementation reports in a transparent and consultative process involving the public⁵¹. NGOs providing support in the implementation of the Convention and the Protocol are invited to provide the secretariat with reports on their programs, activities and lessons learned as well.⁵²

Communications from the public as well as Observer comments and participation in compliance mechanism

Both the Aarhus Convention and the Protocol on PRTRs include internationally exceptional compliance mechanisms, which allow civil society actors to submit communications concerning non-compliance by one of the Parties with its obligations.⁵³ Submissions are open to any member of the public and will only be rejected on limited grounds, namely where they are anonymous, an abuse of the right to make such communications, manifestly unreasonable or incompatible with the provisions of the decisions on review on compliance or the Convention/Protocol itself, manifestly ill-founded or falling below the *de minimis* threshold.⁵⁴ The Committee further considers whether domestic remedies have been exhausted.⁵⁵

While the younger PRTR Compliance Committee is currently still awaiting its first communication, the Aarhus Compliance Committee has proven very successful over the years, with all findings of the Committee having so far been endorsed by the Meeting of the Parties. As of February 2017, the mechanism depends crucially on the direct input of civil society actors with 143 communications having been lodged by the public as opposed to only 5 submissions/requests originating from the Parties and the MOP.⁵⁶ Communications to the Compliance Committee strengthen the implementation of the Convention and provide civil society actors with a powerful tool to help Parties to improve their compliance.

As a further point of civil society input, NGOs can make proposals for nominations of members for the Aarhus Compliance Committee⁵⁷ and, while no direct right to nominate exists for the PRTR Compliance Committee, Parties shall take due account of proposals for candidates made by NGOs as well.⁵⁸ Members of the two Committees are elected by the Meetings of the Parties.⁵⁹

⁵¹ Decision I/8 on Reporting, para. 3, adopted by the Meeting of the Parties to the Aarhus Convention (ECE/MP.PP/2/Add.9), and Decision I/5 on Reporting on implementation of the Protocol, para. 3, adopted by the Meeting of the Parties to the Protocol on PRTRs (ECE/MP.PRTR/2010/2/Add.1).

⁵² Decision I/8 on Reporting, para. 7, adopted by the Meeting of the Parties to the Aarhus Convention (ECE/MP.PP/2/Add.9) and Decision I/5 on Reporting on implementation of the Protocol, para. 7, adopted by the Meeting of the Parties to the Protocol on PRTRs (ECE/MP.PRTR/2010/2/Add.1).

⁵³ Decision I/7 on Review of compliance, Annex, para. 18, adopted by the Meeting of Parties to the Aarhus Convention (ECE/MP.PP/2/Add.8) and Decision I/2 on Review of compliance, Annex, para. 18, adopted by the Meeting of the Parties to the Protocol on PRTRs (ECE/MP.PRTR/2010/2/Add.1).

⁵⁴ Aarhus Decision I/7, Annex, para. 20 and PRTR Decision I/2, Annex, para. 20. Note that the last two points (manifestly ill-founded and *de minimis*) are not explicitly mentioned in Aarhus Decision I/7, Annex, para. 20, but are applied in the practice also by the Aarhus Compliance Committees.

⁵⁵ Decision I/7 on Review of compliance, Annex, para. 21, adopted by the Meeting of Parties to the Aarhus Convention (ECE/MP.PP/2/Add.8) and Decision I/2 on Review of compliance, Annex, para. 21, adopted by the Meeting of the Parties to the Protocol on PRTRs (ECE/MP.PRTR/2010/2/Add.1).

⁵⁶ There have been so far two submissions by Parties concerning compliance by other Parties, one submission by a Party concerning its own compliance, one request for advice/assistance from one Party and one request from the Meeting of the Parties.

⁵⁷ Decision I/7 on Review of compliance, Annex, para. 4, adopted by the Meeting of Parties to the Aarhus Convention (ECE/MP.PP/2/Add.8).

⁵⁸ Decision I/2 on Review of compliance, Annex, para. 4, adopted by the Meeting of the Parties to the Protocol on PRTRs (ECE/MP.PRTR/2010/2/Add.1).

The members are acting in their personal capacity, thereby ensuring greater independence.⁶⁰ This provides civil society with a mechanism for independent review of the actions of Parties.

Communications are processed openly from the beginning, with every document submitted by the Parties concerned and the communicant(s) being made public, unless confidentiality is requested by the communicant(s) (see further below).⁶¹ The Committee usually holds a public hearing with the Parties concerned and the communicants to further assess the information submitted. Besides submitting a communication themselves, members of the public are also free to submit observer comments in the process of pending communications, both in writing and orally during the mentioned public hearings. This possibility facilitates an avid exchange of views and information between national and foreign civil society actors, as appropriate, with the Party concerned. Moreover, it is an additional valuable source of information for the Compliance Committee.

When the Compliance Committee makes a finding of non-compliance and this is endorsed by a decision of the Meeting of the Parties, the Committee follows up with the Parties in bringing about the changes necessary to comply with the Convention.⁶² In this process, the original communicant, as well as any member of the public, retain the possibility to participate by responding to reports submitted by the Party concerned, providing their perspective on the progress made and pointing to issues arising in the adoption of measures intended to implement the findings.

Promotion of the principles of the Convention in International Forums

Each Party to the Convention shall promote the application of the principles of the Convention in international environmental decision-making processes and within the framework of international organizations in matters relating to the environment.⁶³ The secretariat is also tasked with promoting the application of the principles of the Convention in international forums. The work is conducted in line with the Almaty Guidelines.⁶⁴ To that end, the secretariat cooperates with other international organizations and Parties that host large conferences to increase possibilities for the public to participate in international processes. For example, the secretariat cooperated closely with the secretariat of the United Nations Framework Convention on Climate Change concerning the climate processes, in particular the 2015 United Nations Climate Change Conference. In 2017 the secretariat has been cooperating with the World Health Organization (WHO) concerning the Environment and Health process. The secretariat, in close cooperation with France, lead country for this work area, is regularly preparing thematic sessions on the promotion of the principles of the Convention in international forums. These sessions are held at the meetings of the Working Group of the Parties. In preparation of such meetings, the secretariat circulates a survey to the Parties requesting information on how they have been promoting the

⁵⁹ Decision I/7 on Review of compliance, Annex, para. 7, adopted by the Meeting of Parties to the Aarhus Convention (ECE/MP.PP/2/Add.8) and Decision I/2 on Review of compliance, Annex, para. 7, adopted by the Meeting of the Parties to the Protocol on PRTRs (ECE/MP.PRTR/2010/2/Add.1).

⁶⁰ Decision I/7 on Review of compliance, Annex, para. 1, adopted by the Meeting of Parties to the Aarhus Convention (ECE/MP.PP/2/Add.8) and Decision I/2 on Review of compliance, Annex, para. 1, adopted by the Meeting of the Parties to the Protocol on PRTRs (ECE/MP.PRTR/2010/2/Add.1)..

⁶¹ All communications from the public and all relevant documents and submissions can be accessed under the following link: <<http://www.unece.org/env/pp/cc/com.html>>.

⁶² Current and past Decisions on the implementation of findings as well as all pertinent documents and submissions can be accessed under the following link: <<http://www.unece.org/env/pp/ccimplementation.html>>.

⁶³ Aarhus Convention, article 3, paragraph 7.

⁶⁴ <<https://www.unece.org/fileadmin/DAM/env/documents/2005/pp/ece/ece.mp.pp.2005.2.add.5.e.pdf>>.

Convention's principles in the forum concerned. Additionally, the secretariat analyses the rules of procedure of the forum and works with the governing institution and the host Party to enhance implementation of the Almaty Guidelines (as discussed in Section I.A. above).

II. Safe environment

A. Convention requirements applicable to the Parties

The Aarhus Convention requires its Parties to maintain a safe space for civil society dialogue via article 3, paragraph 9 of the Convention:

“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. This provision shall not affect the powers of national courts to award reasonable costs in judicial proceedings.”

Similarly, the Protocol on PRTRs contains a provision to protect persons reporting violations (article 3, paragraph 3 of the Protocol on PRTRs):

“Each Party shall take the necessary measures to require that employees of a facility and members of the public who report a violation by a facility of national laws implementing this Protocol to public authorities are not penalized, persecuted or harassed by that facility or public authorities for their actions in reporting the violation.”

The Convention and the Protocol significantly contribute to preventing the penalization, persecution and harassment of civil society actors attempting to participate in relevant processes. Combined with the possibility to bring a communication to the Compliance Committee, members of the public have also the possibility to appeal at the international level when domestic review procedures remain ineffective. The Convention's Compliance Committee has dealt with such allegations in the past already, concerning cases of libel, unreasonable searches and arrests.⁶⁵ The Committee has also emphasized that the pursuit of unreasonable costs can also constitute a form of penalization.⁶⁶ Furthermore, it has noted that the fact that organizations choose not to pursue litigation because of the fear of strategic law suits against public participation (SLAPP) indicates the existence of obstacles in access to justice.⁶⁷

⁶⁵ ACCC/C/2009/36 (Spain), (ECE/MP.PP/C.1/2010/4/Add.2), especially para. 64 and ACCC/C/2009/44 (Belarus), (ECE/MP.PP/C.1/2011/6/Add.1), especially para. 65.

⁶⁶ ACCC/C/2008/23, (ECE/MP.PP/C.1/2010/6/Add.1), para. 53 and ACCC/C/2008/27, (ECE/MP.PP/C.1/2010/6/Add.2), para. 47 (both United Kingdom).

⁶⁷ ACCC/C/2004/6 (Kazakhstan), (ECE/MP.PP/C.1/2006/4/Add.1), para. 32.

B. Procedures and Practices of the Convention and Protocol bodies

In the regular operation of the Aarhus Convention and Protocol on PRTRs bodies, usually few risks arise for individuals and NGOs getting involved. Nonetheless, the Convention and Protocol bodies are open to accord confidentiality where it is requested by civil society actors. This is particularly relevant in the operation of the Compliance Committees under both the Convention and the Protocol to prevent the risk that civil society actors are penalized, persecuted or harassed for submitting a communication to one of the Committees.

Confidentiality

In cases in which civil society actors fear domestic reprisals for partaking in international processes or appealing to an international mechanism, it is crucial that their identity is protected to shield actors from potential harm. While communications to the Compliance Committee may not be anonymous,⁶⁸ it is possible to bring a communication with a disclaimer that the identity of the applicant may not be disclosed, ensuring that the identity will only be known to the Compliance Committee. Furthermore, communications can be submitted in relation to violations experienced by other persons, which constitutes another possibility to protect the identity of victims afraid of reprisals.⁶⁹

⁶⁸ Decision I/7 on Review of compliance, Annex, para. 20 (a), adopted by the Meeting of Parties to the Aarhus Convention (ECE/MP.PP/2/Add.8) and Decision I/2 on Review of compliance, Annex, para. 20 (a), adopted by the Meeting of the Parties to the Protocol on PRTRs (ECE/MP.PRTR/2010/2/Add.1).

⁶⁹ Communications to the Compliance Committee are generally intended to improve compliance by the Party concerned, rather than constituting an individual redress mechanism. Communications before the Committee therefore often relate partially, and sometimes even exclusively, to violations of the Convention experienced by persons and organizations distinct from the communicant. In relation to situations where persecutions of activists has been alleged, this possibility has for instance been utilized in communications ACCC/C/2009/44, (ECE/MP.PP/C.1/2011/6/Add.1), and the pending communication ACCC/C/2014/102 (both Belarus).