

RIFS-Blogpost

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Environmental Procedural Rights at Risk? Inadequate Financial Contributions Threaten to Undermine the Aarhus Convention

From 2-4 July, the Working Group of the Parties to the Aarhus Convention met for the 28th time in the UN Headquarters in Geneva. The agenda featured critical topics such as access to justice, public participation in international forums, the protection of environmental defenders, compliance cases, capacity-building, and possible topics of future work. However, one cross-cutting issue loomed over the discussions: the significant shortfall in financial contributions to support the growing workload of the Secretariat and Compliance Committee.

Those of us following international institutional processes may often be tempted to gloss over these procedural discussions in favour of the more 'exciting' substantive issues. However, the inadequate level of contributions questions the parties' commitment to the Convention and potentially seriously undermines the protection of environmental rights in Aarhus member states.

! Zum Aktualisieren der Textelemente, Zitation markieren und dann F9 drücken !

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1 Environmental Democracy under the Aarhus Convention

When the Aarhus Convention was first adopted in 1998, the UN Secretary-General at the time, Kofi Annan, described it as the ‘most ambitious venture in environmental democracy undertaken under the auspices of the United Nations’. The Convention enshrines procedural environmental rights into law, obliging its members (currently 46 states, plus the EU) to protect and uphold the three rights of public participation, access to information, and access to justice in matters related to the environment.

Many would say that, since its adoption, the Convention has lived up to Kofi Annan’s optimistic hopes. It has led to substantial reforms in its member states to integrate democratic values into environmental decision-making processes, thereby also supporting greater effectiveness, legitimacy, and protection of the substantive right to a healthy environment. It has also inspired similar regional initiatives, most notably the recent adoption of the Escazú Agreement in the region of Latin America and the Caribbean.

2 Operationalising the Convention

While parties are responsible for implementing the Convention domestically, part of its perceived success and effectiveness relies on its institutional structure and implementation of its work programme through relevant bodies and mechanisms. The Secretariat plays a central role in providing administrative, technical and legal support. There are also two significant implementation mechanisms. The first is the Compliance Committee (ACCC), which deals with cases of non-compliance. The second is the, only very recently established, rapid response mechanism, designed to support environmental defenders at risk.

At Meetings of the Parties (MoPs), member states convene to make important decisions relating to the Convention’s development (roughly every three years – the next MoP is scheduled to take place in 2025). In the interim, the Working Group of the Parties (WGP) meets annually to discuss the ongoing implementation of the Convention’s work programme.

3 Financial Crisis

These institutional bodies require financial support to function. However, the Convention relies on voluntary contributions from the parties, which means its funding position is not guaranteed and unpredictable. And recently, contributions have been consistently falling far short of the growing workload, putting their proper functioning and performance into jeopardy.

While it is not uncommon for international bodies to cite a lack of resources as a constraint on their work, the atmosphere in the room at July's WGP meeting was particularly serious. Extremely strong language was being used by experienced delegates present, including warnings of a 'crisis' and the 'risk of collapse'. Pleas, at times marked with emotion, for enhanced resources were made. Three key areas at risk were highlighted: the ACCC, the rapid response mechanism, and the Secretariat's work on capacity-building and promotion of the Convention.

The Compliance Committee: The ACCC is widely regarded as a world-class international compliance mechanism. Over the years, it has developed a rich body of case law, taking a facilitative rather than adversarial approach, which has been instrumental in the interpretation of the law and steering best practices of the parties. The ACCC may receive submissions by parties or communications from members of the public. In response, it will then gather information, hold hearings, adopt findings, produce recommendations, and follow-up on cases with progress reports and reviews. The Committee may also give advice or assistance to parties that request it. But, as the Chair of the Committee described at the WGP meeting, their work is complex, time-consuming and increasing in volume. The Secretariat team has recently doubled their hours to support the growing demands of the Committee to address cases and issue advice. Yet, delays are still increasing, putting its highly regarded role and authority into question.

The Rapid Response Mechanism for Environmental Defenders: In 2022, Mr. Michel Forst was elected as the first Special Rapporteur on Environmental Defenders under the Convention, to operationalise the rapid response mechanism. His role is to receive complaints and take measures to protect any person experiencing penalization, persecution, or harassment for seeking to exercise their Aarhus rights. The number of complaints received since its inception has grown fast, with 54 received so far. While this demonstrates the added value of the mechanism, it has significantly increased the workload of the Secretariat, which is now

responsible for assessing complaints, acting as a helpdesk to the public and providing other legal support to the Special Rapporteur. Signs are already visible of the impact of insufficient resources. For example, a legal officer of the Secretariat recently could not accompany the Special Rapporteur on a country mission due to lack of capacity. For some activities, the Rapporteur has had to rely on private funding. At the WGP meeting, he also highlighted that complaints cannot be assessed in a timely way without adequate financial support.

Capacity-Building and Promotion of the Convention: The Secretariat also plays an important role in capacity-building and promoting the Convention. It does so through various outreach activities, cooperation and advisory support to a multitude of other international agencies, bodies, organisations, and states. But the ability of the Secretariat to fulfil this role properly is also threatened by the current lack of resources. For example, a group of countries in the Mediterranean region recently made a commitment, under the Mediterranean Strategy for Sustainable Development 2016–2025, to ensure that by 2025 two thirds of them will have acceded to the Convention. While this is an extremely positive development for the Convention, these acceding countries will need capacity-building support to assist them in their transition. Although the Secretariat recently delivered a training event for ministry officials, they also stressed that additional assistance will be needed from Aarhus parties to support the upcoming accession processes of these countries.

4 Should Contributions Become Mandatory?

Based on current accounting, the final decision of the WGP called upon all parties to 'strive' to increase their contributions by at least 40%. However, this language captures the still discretionary nature of contributions and provides no guarantee that parties will actually follow through with the request. Several countries have not made any contributions for several years.

In order to ensure greater financial sustainability and predictability on a long-term basis, some parties, including Norway and Switzerland, expressed support for introducing a system of mandatory contributions, based on UN scales of assessment that take into account different parties'



capacities. However, others, including the EU, do not support mandatory contributions and consensus therefore seems unlikely.

A compromise position put forward at the meeting would be the option to adopt 'recommendatory' contributions. The Secretariat noted that this language could strike a balance that would help parties to convince their appropriate governmental decision-makers of the need to allocate funds. Further feedback has been invited on this proposal.

5 A Question of Commitment

It remains to be seen what kind of follow-up will emerge from this WGP meeting and the grave emphasis that has been put on the Convention's financial position. But what was clear from the meeting is that the ongoing effectiveness of many dimensions of the Convention hinges on parties showing greater leadership and increasing their financial contributions. If parties fail to do so, their commitment to the protection of procedural environmental rights could be cast into doubt.

This article was first published on [EJIL: Talk!](#) on 18 July, 2024.

The 2035Legitimacy project brings together an interdisciplinary group of researchers to consider how to ensure the legitimacy and social support of climate policy in Finland, including the role of public participation in decision-making processes.

