

Economic Commission for Europe

Meeting of the Parties to the Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters

Twenty-fourth meeting

Geneva, 1–3 July 2020

Item 3 (c) of the provisional agenda

Substantive issues: Public Participation in Decision-making

Note by the Chair of the Task Force on Public Participation in Decision-making on the possible future directions for the work¹

This note was prepared by the Chair of the Task Force on Public Participation in Decision-making to facilitate the discussion on the future work in this area and preparation of the draft elements of the future work programme by the Bureau at its 46th meeting (Geneva, 25-26 February 2020) and by the Working Group of the Parties at its 24th meeting (Geneva, 1-3 July 2020).

I. The outcomes of the work in the current intersessional period

1. During the current intersessional period, the activities in the work area on public participation in decision-making is guided by decision VI/2², adopted by the Meeting of the Parties at its sixth session (Budva, Montenegro 11–14 September 2017). Pursuant to this decision, the eighth meeting of the Task Force on Public Participation in Decision-making was held on 8-9 October 2018³ and a thematic session on the subject matter was organized during the twenty-third meeting of the Working Group of the Parties to the Aarhus Convention on 26-28 June 2019⁴. The next ninth meeting of the Task Force will be held on 29-30 October 2020.

Task Force on Public Participation in Decision-making

2. The Task Force continued to provide an important platform for experts from governments, civil society and other stakeholders from different parts of the UNECE region to exchange good practices, look at systemic and specific challenges and identify the common priorities.

3. Numerous examples of concrete practical implementation shared by speakers at the meetings demonstrated how different aspects of the Convention's articles 6, 7 and 8 can be enacted in diverse circumstances.

4. Pursuant to decision VI/2, the Task Force at its eighth meeting addressed in great details the following issues related to challenges in all types of decision-making (including at national, subnational and local level) within the scope of articles 6, 7 and 8 of the Convention:

¹ This document was not formally edited.

² See: https://www.unece.org/fileadmin/DAM/env/pp/mop6/Decison_Excerpts_EN/Decision_VI_2.pdf

³ See meeting webpage: <https://www.unece.org/env/pp/aarhus/ppdm8.html>

⁴ See meeting webpage: <https://www.unece.org/environmental-policy/conventions/public-participation/meetings-and-events/public-participation/2019/twenty-third-meeting-of-the-working-group-of-the-parties-to-the-aarhus-convention/twenty-third-meeting-of-the-working-group-of-the-parties-to-the-aarhus-convention.html>

- Meaningful and early public participation
- The availability of all relevant documents to the public
- Effective notification and time frames for public participation
- Protection of persons exercising their rights in conformity with the provisions of the Convention
- Taking greater account of comments from the public and provision of feedback

5. Further, the Task Force had a special thematic session focused on different aspects and stages of public participation in chemicals- and product-related decision-making.

6. A survey was carried out under the auspices of the Task Force to assess the use of the Maastricht Recommendations on Promoting Effective Public Participation in Decision-making in Environmental Matters by the Parties⁵. The survey and the subsequent discussion at the Task Force meeting have shown that the Maastricht Recommendations provided helpful guidance to authorities when carrying out public participation procedures and were used as a basis for preparing national documents on public participation procedures.

7. It is planned that the ninth and last meeting of the Task Force in the current intersessional period will debate in greater details participation of vulnerable and marginalized groups in decision-making and will allow for exchange of practices that facilitate more effective public participation without entailing additional significant resources on the part of public authorities. The thematic focus at that meeting will be on the interrelated issues of the extractive industries sector, energy and climate; and on emerging technologies.

8. Relevant sections of the national implementation reports and of the findings of the Compliance Committee are being used as background materials for the work of the Task Force.

Thematic session on Public Participation in Decision-making at the meeting of the Working Group

9. The thematic session on public participation in decision-making held at the twenty-third meeting of the Working Group proved to be a true success. In addition to expert discussions of practical measures by the Task Force, issues that deserve particular attention of national focal points were brought to the attention of the Working Group. The session focused on recent developments with regard to: (a) different types of decision-making within the scope of articles 6, 7 and 8 of the Convention; (b) public participation in a transboundary context and (c) protection of persons exercising their rights in conformity with the provisions of the Convention. Delegates had opportunity to share challenges, good practices and lessons learned from legislative, policy and other developments aimed to ensure effective public participation in relation to the above subjects. In addition to issues of a systemic nature, the Working Group considered specific examples that illustrated experience of public participation in mining activities with reference to article 6; examples of strategic environmental assessments within the scope of article 7; regulatory normative acts on fishing with reference to article 8; and planning regimes for public participation in a transboundary context, for e.g. nuclear projects. Special attention received the issue of environmental rights defenders. The Chair of the Convention Compliance Committee and the Special Rapporteur on the situation of human rights defenders laid the basis for discussion. A number of serious concerns have been raised on this item. At the same time, concrete positive examples have been demonstrated by Parties on how to offer shelter to human rights defenders at country level and how to pursue a solid

⁵ Available from: <https://www.unece.org/index.php?id=49142&L=0>

international commitment through the Human Rights Council resolution 40/11. Further, to provide help in “urgent” cases, the establishment of a rapid response mechanism of a preventive nature under the Convention was proposed.

Conclusions

10. The Task Force format allowed for open expert discussions, focusing in greater detail on various practical measures and on identifying common issues for the way forward. The Working Group of the Parties, in its turn, allowed Parties and stakeholders to address at policy level issues that deserve particular attention of national focal points. It also provided opportunity for Parties to see positive trends, learn from each other, agree on common systemic challenges and take commitments for the required actions.

11. Despite numerous good examples demonstrated by Parties and stakeholders and positive trends across many Parties, the outcomes of the work still revealed the need for serious efforts to ensure effective public participation in decision-making in line with the Convention. A number of shortcomings were identified in this regard. These included, the lack of sufficient and reasonable time frames; ineffective notification of the public; ensuring that all options must be actually open; and lack of involvement of vulnerable and marginalized groups. Challenges specific to certain articles included:

- **For Article 6**, (i) a narrow approach to defining the public concerned and to ensuring public participation regarding changes and extensions of specific activities; (ii) the lack of a systematic approach to implementing article 6 (1) (b) regarding the application of article 6 to decisions on proposed activities not listed in annex I that might have a significant effect on the environment; (iii) limiting public participation only to environmental impact assessment procedures and assigning developers with full responsibility to carry out the public participation procedure; (iv) ensuring that all information held by decision-makers to be made accessible to the public; (v) prior agreements which foreclose all options being open at the time of the permitting procedure; (vii) meaning of “mutatis mutandis” and of “where appropriate” (article 6(10)); reconsideration and update of an activity’s permitted duration.

- **For Article 7**, (i) an insufficient framework and lack of public participation procedures, as not all plans and programmes might be identified and covered; (ii) no systemic approach to identifying the public that may participate; and (iii) insufficient public access to the “necessary information”.

- **For Article 8**, (i) identification of the scope of executive regulations and other generally applicable legally binding rules “that may have a significant effect on the environment”; and (ii) whether those legal instruments should be commented on directly by the public or through representative consultative bodies.

12. With regard to public participation in a transboundary context, challenges included: (i) identification of “transboundary context” and the procedures that should apply; and (ii) different legal administrative traditions in the countries concerned and practical problems (for example, translation).

13. With regard to environmental rights defenders, a general trend of shrinking space for civil society to exercise their environmental rights and the need for urgent measures to remedy this situation appeared to be a serious matter. Also, lack of awareness about the obligations under article 3 (8) among, in particular, officials of public authorities, law enforcement agencies, prosecutors, members of judiciary, providers of private security services and developers has revealed.

14. Activities in this work area helped countries and stakeholders to further effective public participation thereby supporting the achievement of targets 16.7 on responsive, inclusive, participatory and representative decision-making at all levels and 16.10 on protection of fundamental freedoms; they also reinforced the implementation of other Goals and targets.

The way forward

15. Both the Task Force and the Working Group of the Parties each had specific added value for considering the public participation matter. It is therefore suggested that the work in the next intersessional period will be carried out by both bodies in a similar format.

16. Considering a number of above-mentioned challenges, it is suggested that the future work will continue addressing the main obstacles to effective public participation in decision-making within the scope of articles 6, 7 and 8 of the Convention. In addition, special attention should be given to public participation in a transboundary context⁶ and to the issue of safe public participation in decision-making without persecution and harassment. For the latter, pursuant to the outcomes of the thematic at the twenty-third meeting of the Working Group, Parties might explore modalities for a possible rapid response mechanism to deal with this critical matter.

17. Sessions at the Task Force meetings devoted to a particular type of decision-making or sector have also proved to be very beneficial for Parties and stakeholders. It is suggested to focus future work on those subjects that were not addressed by the Task Force in the current and previous intersessional periods and that have a particular relevance to achieving the Sustainable Development Goals: e.g. decision-making on agriculture (Goal 2), large infrastructure/transport (Goal 9), urban development/cities (Goal 11), health-related, linked to air pollution (Goal 3), and fishery/oceans, seas, marine resources (Goal 14). The above subjects were selected on the basis of Sustainable Development Goals, as governments identified them as the most pressing. Due to continuous interest of public participation in climate change related decision-making, it is suggested to also look at this subject. The Task Force should further continue monitoring the use of the Maastricht Recommendations.

18. International organizations, regional environmental centres, Aarhus Centers, NGOs and other partners should be called upon to continue supporting capacity-building activities to further the implementation of the second pillar of the Convention at sub-regional, national, subnational and local levels. Trainings for public officials involved in the day-to-day task of carrying out public participation procedures should continue receiving priority. Further, specific trainings and awareness raising events about the obligations under article 3 (8) among, in particular, officials of public authorities, law enforcement agencies, prosecutors, members of judiciary, providers of private security services and developers should be strongly encouraged.

19. Parties and stakeholders should be also encouraged to continue providing case studies to the Aarhus Clearinghouse Good Practice database.

⁶ See section B in the report of the 23d meeting of the Working Group of the Parties to the Aarhus Convention: <https://www.unece.org/environmental-policy/conventions/public-participation/meetings-and-events/public-participation/2019/twenty-third-meeting-of-the-working-group-of-the-parties-to-the-aarhus-convention/twenty-third-meeting-of-the-working-group-of-the-parties-to-the-aarhus-convention.html>