

Comments by the Center for International Environmental Law regarding the Draft Declaration on Environmental Democracy for Sustainable, Inclusive and Resilient Development (Aarhus Convention, MOP-7), second commenting round

January 15, 2021

Delisting pipelines as part of the socially beneficial infrastructure listed (para. 7)

The reference to pipelines should be removed from the list of infrastructures listed in paragraph 7 as pipelines do not provide direct benefits to the communities located along their course as might possibly be suggested in relation to the other types of infrastructures mentioned in this paragraph. Contrary to those, major pipelines are built for the sake of the international trade in fossil fuels products and promote a fossil-fuels based economy. In the context of 2021, these developments are in contradiction with the objectives of the Paris Agreement as well as with the SDGs. The planning and construction of new pipelines in addition to all the infrastructure already in place subvert the objective of phasing out fossil fuels and divert public and private resources away from sustainable development. To avoid undermining the credibility of the “Draft Declaration on Environmental Democracy for Sustainable, Inclusive and Resilient Development”, we therefore urge the Bureaux to delete any reference to pipelines as infrastructures contributing to the wellbeing of people and enhancing social inclusion. To stress the importance of guaranteeing the right protected under the Aarhus Convention in the context of the planning and construction of pipelines, we would consequently suggest to refer to pipelines only starting from paragraph 8 (for instance referring to projects listed in paragraphs 7 and other infrastructure p

Reference to infrastructure in the context of the Paris Agreement (para. 11 and 12)

We do not believe that the Paris Agreement mentions infrastructures explicitly and would therefore suggest removing the reference to the agreement in paragraph 11 for the sake of accuracy. In the following paragraph, the reference to “pledges regarding climate resilient infrastructure made under the United Nations Framework Convention on Climate Change” seems to refer only to the adaptation dimension of climate policies ignoring the linkages between mitigation and infrastructures. To better reflect the key obligations contained in the UNFCCC, we therefore suggest to refer to “pledges regarding climate resilient infrastructure and the decarbonization of economies made under the United Nations Framework Convention on Climate Change”.

Recognition of the rights and role of Indigenous Peoples (para. 13 and 28)

The paragraphs mentioning key actors whose participation and engagement is essential for the effective implementation of the vision elaborated in the Declaration should include an explicit reference to Indigenous Peoples in addition to references to civil society and/or stakeholders.

Linkages with the Escazú Agreement (para. 13)

With the congressional approval of the Escazú Agreement in Mexico on November 5th, 2020, the Agreement is expected to enter into force in the near future once the instruments of ratification of Mexico and Argentina are deposited. The entry into force of the Escazú Agreement ushers in a new era for the global promotion of environmental democracy through international legal instruments. The entry into force of the Escazú Agreement offers unique opportunities for cooperation between Aarhus Parties and States parties to this new agreement as well as for the advancement of access to information, public participation and access to justice in international governance. We believe the Draft Declaration should not only welcome this adoption (as done in para 13) but also affirm in the strongest terms the willingness of the Aarhus Parties to continue to cooperate with UN-ECLAC, countries Parties to the Escazú Agreement and civil society and Indigenous Peoples in the Latin America and the Caribbean.

Reference to Public Participation in International Forums (suggested para. 13 bis)

Paragraph 13 refers to the promotion of public participation in the implementation of international commitments but falls short of referring to the obligation provided in article 3.7 for Aarhus Parties to promote the principles of the Convention in international forums related to the environment. We believe that this commitment remains a critical component of the Convention to promote environmental democracy within and outside of the UNECE region. The imminent entry into force of the Escazú Agreement provides a renewed momentum to these efforts and to cooperate more actively with States from Latin America and the Caribbean on the promotion of environmental democracy in relevant forums. We therefore suggest the inclusion of a reference to the commitment of Aarhus Parties to work with other States, civil society and Indigenous Peoples' organizations to promote and guarantee access to information, public participation and access to justice in international forums related to the environment, including in the relation to the planning, financing and development of infrastructures.

Recognizing the importance of promoting Aarhus principles in the context of the regulation of financial actors (para. 21)

The role of public and private financial flows in shaping sustainable development including in third countries is increasingly recognized. This role is currently listed in paragraph 25. For the sake of consistency and to better reflect the importance of ensuring that financial actors contribute to guaranteeing and promoting the rights provided under the Aarhus Convention, we suggest that these actors be listed along with “developers and planners” in paragraph 21 of the Declaration.

Stronger encouragement for non-ECE States to accede to the Convention (para. 31)

The MOP-7 is expected to mark a crucial milestone in the history of the Aarhus Convention with the first accession by a State outside of the UNECE region. This accession provides new hopes for civil society and communities in several countries whose rights are not sufficiently guaranteed. We believe that the Declaration should welcome the accession explicitly and encourage in stronger terms the accession by other States, including a commitment by the Aarhus Parties to work to facilitate such accession.