

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

Task Force on Public Participation in Decision-making

Ninth meeting

Geneva, 1-2 March 2021

Item 2 and 3 of the provisional agenda

Participation of Vulnerable and Marginalized Groups in Decision-Making and Effective Participation Without Additional Significant Resources

SELECTED CONSIDERATIONS, FINDINGS, AND REPORTS OF THE AARHUS CONVENTION COMPLIANCE COMMITTEE RELATING TO PARTICIPATION OF VULNERABLE AND MARGINALIZED GROUPS IN DECISION-MAKING AND EFFECTIVE PARTICIPATION WITHOUT ADDITIONAL SIGNIFICANT RESOURCES

Background paper¹
Prepared by the secretariat

This background paper is not intended to be exhaustive but to outline a selection of considerations, findings and reports of the Aarhus Convention Compliance Committee² (hereinafter – the Committee) in regard to items 2 and 3 of the agenda of the ninth meeting of the Task Force on Public Participation in Decision-making under the Aarhus Convention: (i) participation of vulnerable and marginalized groups in decision-making; and (ii) effective public participation without entailing additional significant resources.

Participants are invited to consult this document in advance of the meeting in order to gain an overview of issues to be discussed under agenda items 2 and 3, the challenges encountered by the Parties in implementation, and to discuss good practices and further needs to be addressed under the auspices of the Task Force on Public Participation in Decision-Making.

¹ The document was not formally edited.

² Available from <http://www.unece.org/env/pp/cc.html>

| Reports / cases | Reports on general issues of compliance (to MoPs) / Consideration and evaluation by the Committee (for cases) | Findings and recommendations of the Committee |
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| PARTICIPATION OF VULNERABLE AND MARGINALIZED GROUPS | | |
| Reports of the Compliance Committee to the Meeting of the Parties | | |
| <p>Report by the Committee to the fourth session of the Meeting of the Parties (Document ECE/MP.PP/2011/11)</p> <p><i>Non-discrimination (article 3, para. 9)</i></p> | <p>[...] the Committee found that, while the principle of non-discrimination on the basis of citizenship, nationality or domicile was explicit in article 3, paragraph 9, of the Convention, the provision was silent on matters of discrimination on the basis of language. While the lack of availability of documentation in a particular language might under certain circumstances present an impediment to correct implementation of the Convention, nothing in the present communication suggested that such circumstances pertained. (ECE/MP.PP/2011/11, para. 28)</p> | |
| Relevant considerations, findings and recommendations of the Compliance Committee | | |
| <p>ACCC/A/2020/2 (advance unedited)</p> <p><i>Facilitate the public's participation in decision-making (article 3, para. 2)</i></p> | <p>As a first step, since it may not be possible to apply the modalities typically deployed in public participation procedures in the Party concerned, a needs assessment should be carried out, at the time of preparing the relevant legal framework or on a case-by-case basis, to identify what modalities will in practice ensure effective opportunities for the public to participate in decision-making under the Convention during the COVID-19 pandemic. The needs assessment should identify any barriers to the participation of the public due to technology, language, literacy or disability as well as any particular obstacles to participation experienced by marginalized groups or by members of the public whose opportunities to participate may be limited due to their duties during the pandemic. This should also include an assessment of the portion of the public</p> | |

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| | <p>facing each such barrier. As a good practice, the needs assessment should be prepared in consultation with the public. (ACCC/A/2020/2, para. 26)</p> <p>Any alternative modalities for public participation applied during the COVID-19 pandemic should not result in any additional costs on the public who seek to participate. For example, toll-free phone numbers should be provided during the virtual public hearing in order that the public without access to the internet may still participate without charge. (ACCC/A/2020/2, para. 28)</p> | |
| <p>ACCC/A/2020/2 (advance unedited)</p> <p><i>Access to all information relevant to the decision-making (article 6, para. 6)</i></p> | <p>[I]f the public concerned cannot visit the public authority's premises to examine the information relevant to the decision-making, it must also be possible for those without access to the internet to easily access that information. This may entail posting information packs containing all the relevant information to such persons. In accordance with article 6(6), these information packs must be provided free of charge. If further relevant information subsequently becomes available, this should then be posted to those members of the public concerned too. The rights of members of the public concerned who do not have access to technology should not be prejudiced; rather, extra effort will need to be taken to ensure their opportunities to participate effectively. (ACCC/A/2020/2, para. 42)</p> | |
| <p>ACCC/A/2020/2 (advance unedited)</p> <p><i>Procedures for submitting comments (article 6, para. 7)</i></p> | <p>Care should be taken to ensure that the registration procedure, if any, for the virtual hearing does not present a barrier to participation (including if the registration form could present a barrier due to language or for those without literacy or technical skills) and, insofar as practicable, participants who have not registered to participate should still be allowed to take the floor. (ACCC/A/2020/2, para. 47)</p> | |
| <p>ACCC/A/2020/2 (advance unedited)</p> <p><i>Procedures for submitting comments (article 6, para. 7)</i></p> | <p>Technical barriers to the public's participation in the virtual hearing may include a lack of access to high quality internet or a lack of technical skills to participate in online activities.</p> <p>[...] In both circumstances, alternatives should be provided so that members of the public lacking access to technology or appropriate technical skills are still able to participate effectively.</p> | |

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| | <p>[...] First, members of the public who do not have access to the internet, or who experience technical difficulties, should still be able to participate in the hearing by calling a tollfree phone number to listen to the proceedings and to ask questions and make statements.</p> <p>[...] Second, [...] all members of the public should be entitled to submit written comments.</p> <p>[...] If a significant portion of the public do not have access to internet, alternative low-technology means should be used to broadcast the hearing and to enable the public to make statements and to ask questions. For example, the hearing may be broadcast live on television or radio. However, since radio and television do not themselves enable members of the public to speak remotely, it should in every case be possible for members of the public to make statements and ask questions via a tollfree phone number or, for those with access to the internet, through the internet.</p> <p>[...] Depending on the restrictions in place in the Party concerned during the COVID-19 pandemic, it may be possible for several members of the public to come together to participate in the hearing through one person’s internet connection. However, since for many members of the public such an option may not exist, the Party concerned should ensure that it provides low-technology means such as a tollfree phone number to enable persons without access to the internet to connect to the virtual hearing. (ACCC/A/2020/2, paras. 48-53)</p> | |
| <p>ACCC/A/2020/2 (advance unedited)</p> <p><i>Procedures for submitting comments (article 6, para. 7)</i></p> | <p>As for hearings held in person, appropriate interpretation should be provided on request in order to ensure the effective participation of the public. To that end, the notice of the virtual hearing to be published under article 6(2) of the Convention should, as appropriate, indicate the language(s) in which the virtual hearing will be conducted and inform the public of the possibility to request interpretation if it would be required.</p> | |

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| | <p>[...] For those members of the public that do not speak or understand the language in which the virtual hearing will be conducted, a tollfree phone number could be provided for the virtual hearing with interpretation into their language. In this way, they can both listen to, and participate in, the proceedings in their own language. (ACCC/A/2020/2, paras. 55-56)</p> | |
| <p>ACCC/C/2009/43 (Document ECE/MP.PP/2011/11/Add.1)</p> <p><i>Notification of the public about the decision-making (article 6, para. 2)</i></p> | <p>Whether the notification is effective depends on the particular means employed, which in this case include the national press, local TV and the Internet (websites of the Ministry and the Aarhus Centre). Sometimes, it may also be necessary to have repeated notifications so as to ensure that the public concerned has been notified. The Committee notes that the Teghout is one of the rural communities of the Lori region, close to the border with Georgia, approximately 180 km north from the capital Yerevan, while the nearest urban centre is at approximately 30 km. These circumstances make it obvious that the rural population in the area would not possibly have regular access to the Internet, while local newspapers may be more popular than national newspapers. However, the use of local television may be a useful tool to inform the public concerned in an appropriate manner. Hence, the Committee does not find here that the Party concerned failed to give effective public notice. (ECE/MP.PP/2011/11/Add.1, para. 70)</p> | |
| <p>ACCC/C/2009/44 (Document ECE/MP.PP/C.1/2011/6/Add.1)</p> <p><i>Adequate, timely and effective public notice (article 6, para. 2)</i></p> | <p>The fact that public notice was published in the local press and the project-related documentation could be accessed in Ostrovets compensates for the fact that Internet access is not widespread in rural areas. For these reasons, the Committee is not convinced that the Party concerned failed to comply with article 6, paragraph 2. (ECE/MP.PP/C.1/2011/6/Add.1, para. 73)</p> | |
| <p>ACCC/C/2009/44 (Document ECE/MP.PP/C.1/2011/6/Add.1)</p> <p><i>Possibility to submit comments (article 6, para. 7)</i></p> | <p>[T]he Committee wishes to underline that any discussions in closed groups (for example, within certain professional groups or employees of certain enterprises) or in closed advisory groups cannot be considered as public participation under the Convention and in particular cannot substitute for the procedure under article 6 of the Convention. In order to meet the requirements of article 6 such a procedure must be in principle open to all members of the public concerned, including NGOs, and subject only to technical restrictions based on objective criteria and not having any discriminatory nature. (ECE/MP.PP/C.1/2011/6/Add.1, para. 84)</p> | |

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| <p>ACCC/C/2010/51 (<i>Document ECE/MP.PP/C.1/2014/12</i>)</p> <p><i>Non-discrimination (article 3, para. 9)</i></p> | <p>The communicant claims that the authorities discriminated against foreign members of the public (i.e., Greenpeace CEE Austria), because they refused to grant information in English. While article 3, paragraph 9, is intended to prevent not only formal discrimination but also factual discrimination, this provision cannot be interpreted as generally requiring the authorities to provide a translation of the information into any requested language. If, on the other hand, national law provides for translations to different official languages or sets criteria also for other translations, article 3, paragraph 9, of the Convention implies that these criteria must be applied in a non-discriminatory way. Moreover, if the authority at the time of the request was in possession of such a translation, it would have been obliged under article 4 of the Convention to disclose the translated version to the public. In the present case, however, the Party concerned confirmed that at that time the public authorities did not hold such a translation, and the communicant did not provide evidence to the contrary. (<i>ECE/MP.PP/C.1/2014/12, para. 105</i>)</p> | |
| <p>ACCC/C/2012/71 (<i>Document ECE/MP.PP/C.1/2017/3</i>)</p> <p><i>Limit on number of questions and questions not answered (article 6, para. 7)</i></p> | <p>Parties may choose to codify the rules for public hearings in detail in their legislation or by way of established administrative practice. Alternatively, the rules for public hearings may be set case by case by the authorities responsible for each hearing. Whichever approach is taken, Parties must ensure that the rules to be applied are clear, transparent and consistent, as required by article 3, paragraph 1, and non-discriminatory, as required by article 3, paragraph 9, of the Convention. Furthermore, in accordance with article 3, paragraph 2, Parties should endeavour to ensure that officials provide guidance to the public so that it knows and understands the rules to be applied during the hearing in advance. (<i>ECE/MP.PP/C.1/2017/3, para. 100</i>)</p> | |
| <p>ACCC/C/2014/99 (<i>Document ECE/MP.PP/C.1/2017/17</i>)</p> | <p>In the view of the Committee, informing the public about the decision taken exclusively by means of the Internet does not meet the requirement of article 6, paragraph 9, of the Convention. The Committee commends the practice of making the full text of the decision available electronically on the website of the</p> | <p>The Committee finds that: [...] b) By not informing the public about the decision to permit the activity subject to article 6 of the Convention by any</p> |

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| <p><i>Informing the public about decisions on permitting activities (article 6, para. 9)</i></p> | <p>competent authority (and also, but not only, on the website of the developer). However, relying solely on publishing the decision electronically may exclude members of the public who do not use the Internet regularly or do not have easy access to it from the possibility of being effectively informed about the decision that has been taken. (ECE/MP.PP/C.1/2017/17, para. 104)</p> | <p>other means than publishing the decision on the Internet, the Party concerned failed to comply with article 6, paragraph 9, of the Convention (para. 105). (ECE/MP.PP/C.1/2017/17, para. 108)</p> |
| <p>EFFECTIVE PARTICIPATION WITHOUT ADDITIONAL SIGNIFICANT RESOURCES</p> | | |
| <p>Reports of the Compliance Committee to the Meeting of the Parties</p> | | |
| <p>Report by the Committee to the third session of the Meeting of the Parties (Document ECE/MP.PP/2008/5) <i>Effective means of notification</i></p> | <p>As demonstrated by the national reports submitted by the Parties, there are a significant number of good practices and several advanced practical solutions to effective notification of the public concerned with regard to decision-making. These include notification in several newspapers, using local authorities as mediators, individual notification based on mailing lists, and notification in the locality of the planned activity or at places frequently visited by the public concerned. Unfortunately, countries usually rely on only one of the means of notification. Simultaneous use of several methodologies would often be significantly more effective. (ECE/MP.PP/2008/5, para. 56)</p> | |
| <p>Relevant considerations, findings and recommendations of the Compliance Committee</p> | | |
| <p>ACCC/A/2020/2 (advance unedited) <i>Access to all information relevant to the decision-making (article 6, para. 6)</i></p> | <p>If, due to the restrictions in place during the COVID-19 pandemic, the public concerned will not be able to visit the premises of public authorities to examine the information relevant to the decision-making in person, it will be necessary to put in place alternative possibilities for the public to examine the relevant information. [...] In line with paragraph 113 of the Convention’s 2005 Recommendations on Electronic Information Tools, a good practice would be to establish a user-</p> | |

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| | <p>friendly one-stop online portal where the public concerned can easily access all the relevant information. (ACCC/A/2020/2, paras. 28)</p> <p>The minutes or transcripts of the virtual hearing should be made publicly available so that all those who made oral submissions may verify that their comments have been transcribed accurately. A good practice is to make the minutes or transcripts [sic] available online promptly after the virtual hearing through the same one-stop portal where other information related to the decision-making is to be found. (ACCC/A/2020/2, paras. 67)</p> | |
| <p>ACCC/C/2014/99 (<i>Document ECE/MP.PP/C.1/2017/17</i>)</p> <p><i>Informing the public about decisions on permitting activities (article 6, para. 9)</i></p> | <p>The Convention leaves the Parties some discretion in designing “appropriate procedures” for informing the public under article 6, paragraph 9, about the decision once it has been taken. However, these procedures must ensure that information about the decision taken is communicated to the public in an effective way. In this regard, the Committee notes with approval paragraph 137 of the <i>Maastricht Recommendations on Promoting Effective Public Participation in Decision-making in Environmental Matters</i> which recommend that: “The methods used to notify the public concerned under article 6, paragraph 2, may also be used here, bearing in mind, however, that under article 6, paragraph 9, the right to be informed is granted to ‘the public’ and not to ‘the public concerned’ only.” Drawing on the above, the Committee considers that, as a good practice, the methods used to notify the public concerned under article 6, paragraph 2, should be utilized as a minimum for informing the public under article 6, paragraph 9, of the decision once taken, recalling that the latter requires the public generally to be informed, and not just the public concerned. (ECE/MP.PP/C.1/2017/17, para. 103)</p> | |