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Access to Information, Public Participation
in Decision-making and Access to Justice
in Environmental Matters

Working Group of the Parties

Twenty-fifth meeting

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Item 9 (i) of the provisional agenda

**Preparations for the seventh session of
the Meeting of the Parties: declaration**

Draft Declaration on Environmental Democracy for Sustainable, Inclusive and Resilient Development*

**Prepared by the Bureaux of the Meetings of the Parties to the
Convention and its Protocol**

Summary

The present document contains a draft of a declaration to be considered by the Meetings of the Parties to 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, at a joint segment (planned for October 2021). It was prepared by the Bureaux of the two Meetings of the Parties under the leadership of the Chairs of the Bureaux.

The draft declaration constitutes a short and focused policy-oriented document, which strives to communicate the key messages regarding the role of the Aarhus Convention and its Protocol in promoting sustainable, inclusive and resilient development, and the commitment of the Convention's and Protocol's Parties in that regard. It is expected that all the specific substantive issues regarding the work of the Convention and the Protocol will be addressed through the respective decisions of the Meetings of the Parties, and not through the declaration.

The document was made available to Parties to both treaties and all interested stakeholders for comments, with the deadline for responses being 15 November 2020. National focal points for the Convention and for the Protocol were requested to coordinate their comments on the document and to submit to the secretariat one consolidated input per Party. Thereafter, the document was revised by the Bureaux, taking into consideration the

* This document was scheduled for publication after the standard publication date owing to circumstances beyond the submitter's control.



comments received, and was submitted to the eighth meeting of the Protocol's Working Group of the Parties (16–18 December 2020) and made available to Parties and stakeholders for a second round of comments by 15 January 2021.^a The draft document was revised by the Bureaux in the light of the comments received and made available for submission to the twenty-fifth meeting of the Convention's Working Group of the Parties. The document will then be revised again by the two Bureaux, in the light of the comments received, and submitted to the Meetings of the Parties for consideration at their joint high-level segment.

^a Comments received are available at

<https://unece.org/env/pp/aarhus-convention/tfwg/envppmop/declaration-for-mop7-mopp4>.

I. Introduction

1. We, the ministers and heads of delegation from Parties and signatories to 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, together with representatives of other States, international, regional and non-governmental organizations (NGOs), parliamentarians and other representatives of civil society throughout the United Nations Economic Commission for Europe (ECE) region and beyond, gathered jointly at the seventh session of the Meeting of the Parties to the Convention and the fourth session of the Meeting of the Parties to the Protocol, affirm the following.

2. We recall our commitment made through the Budva Declaration on Environmental Democracy for Our Sustainable Future (ECE/MP.PP/2017/16/Add.1–ECE/MP.PRTR/2017/2/Add.1) to promote environmental democracy and its key components, namely, access to environmental information, public participation and access to justice, in the ECE region and beyond, as essential prerequisites for building a sustainable future for present and future generations.

3. We acknowledge the critical role of the Aarhus Convention and its Protocol in providing the public with concrete rights to have access to information, to participate in decision-making and to have access to justice in environmental matters. In doing so, these treaties have brought tangible positive changes across the ECE region and beyond. These changes have multiple positive effects not only for environmental protection, but also for the social and economic aspects of people's lives.

4. The core purpose of the Convention and its Protocol, notably to contribute to the protection of the rights of every person of present and future generations to live in an environment adequate to his or her health and well-being, is proving even more important today. Despite substantial achievements, serious challenges are still faced in many countries. We observe that some Governments have adopted measures limiting civil liberties with regard to environmental matters.

5. Furthermore, given the coronavirus disease (COVID-19) pandemic, many Governments have responded by declaring a state of emergency and by adopting numerous measures to combat the spread of the virus, which have often included questionable restrictions on the freedoms of assembly and movement. Consequently, these have, or may have, curtailed the public's rights to access information, to participate in decision-making and to access justice, including in environmental matters, without adequate consideration and implementation of solutions to ensure that obligations and rights under the Convention are still observed and complied with fully. At the same time, several Governments have made efforts to find good solutions, such as the extension of timelines before the judiciary or the increased use of electronic means. The need for increased emphasis and focus on proactive dissemination of environmental information has never been greater, given the practical challenges that have emerged with the COVID-19 pandemic and the many new pressures that have resulted on civil society, including financial and social pressures. The rapid development and leverage of digital and online solutions that we have all witnessed during the pandemic must be leveraged fully to support the dissemination of environmental information in particular, recognizing that access to online facilities also needs to be addressed.

6. We note that spatial planning and large-scale infrastructure projects, including those initiated as potential recovery measures, are having a substantial impact on the lives of thousands of people across countries and regions. Such projects create new opportunities for employment, travel and economic growth. At the same time, they may have an immense impact on ecosystems and people's health and well-being. They often result in considerable environmental pressures through, for example, the generation of greenhouse gases, waste and other forms of pollution. Furthermore, they can intensively modify natural habitats and agricultural land and have an impact on biodiversity. These projects are frequently opposed by people concerned about their potential environmental impacts. This may result in social conflict and political unrest that can lead to people living under the threat of harassment or

even in fear of their life. It is therefore critical to ensure that environmental and social concerns are fully considered and addressed from the outset in spatial planning and in the conception of projects, plans, programmes and policies, as well as in connection with lifetime extensions and reconsideration and updating of the operating conditions of existing activities.

II. Aarhus Convention and its Protocol as tools for improving infrastructure development and spatial planning

7. We note that large-scale infrastructure projects, such as motorways, railways, airports, ports, power stations and pipelines, enable access to services and economic opportunities; they can help to improve livelihoods and the well-being of people, and enhance social inclusion and connectivity to different services. They thereby play an important role in supporting the realization of the public's rights and fundamental freedoms.

8. At the same time, such projects, and spatial planning more generally, have complex environmental impacts related to the different components of the Earth's systems: atmosphere, hydrosphere, geosphere and biosphere. They also influence a number of social issues linked to the public's rights, such as displacement, land ownership, cultural heritage, the rights of indigenous peoples and local communities, gender equality, employment, public health, safety and security. A knowledge-based approach and rights-based social safeguards should therefore be applied to infrastructure development and spatial planning to guarantee that they benefit all, leave no one behind, and respect human rights. The assurance of transparency and the rule of law, inclusive, transparent and effective public participation in decision-making, and adequate and effective remedies throughout the planning and development process is paramount in this regard.

9. We further acknowledge that spatial planning is more than a technical tool. It should involve an integrated and participatory decision-making process that addresses competing interests and is linked to a shared vision, an overall development strategy and national, regional and local development policies. Moreover, it represents a core component of the renewed territorial governance paradigm, which promotes democracy, participation and inclusion, transparency and accountability, with a view to ensuring sustainable development and spatial quality.¹

10. In this regard, we stress the important role of the Convention and the Protocol in promoting transparency and effective and inclusive public participation in decision-making on policies, plans and projects related to large infrastructure and spatial planning, including in the transboundary context, and in safeguarding the rule of law in this complex setting. We call on Parties to encourage the use of pollutant release and transfer registers as a tool for assisting sustainable planning and health policies, as well as responding to the need and potential for strengthening the operating conditions of such projects, with a view to preventing, or at least minimizing, the potential risks for the environment and health. For example, a map-based visualization of the geographical location of registered sources of pollutant releases facilitates identification of suitable locations for infrastructure projects. Plans and projects entailing adverse effects on land use should only be implemented where socioeconomic benefits outweigh negative impacts, including on climate and environment.

Supporting regional and global commitments

11. The challenge of developing and delivering sustainable infrastructure, at scale, is central to the global sustainability quest. Many major international instruments, such as the

¹ "Urban and territorial planning represents a core component of the renewed urban governance paradigm, which promotes local democracy, participation and inclusion, transparency and accountability, with a view to ensuring sustainable urbanization and spatial quality." See United Nations Human Settlements Programme (UN-Habitat), *International Guidelines on Urban and Territorial Planning* (2015, Nairobi), p. 8.

2030 Agenda for Sustainable Development,² identify infrastructure as a key means of achieving an inclusive, green and sustainable economy.

12. We recognize that the effective implementation of the Convention and of the Protocol underpin the achievement of a number of regional and global initiatives and commitments, in particular: the 2030 Agenda; United Nations Environment Assembly resolution 4/5 on sustainable infrastructure,³ which recognizes infrastructure's centrality to the 2030 Agenda; United Nations Environment Assembly resolution 4/19 on mineral resource governance,⁴ which addresses such issues as environmental, human rights- and conflict-related risks in mining; the European Union European Green Deal, which recognizes the importance of "smart infrastructure" and "zero pollution" within a circular economy; decisions taken under the auspices of the Convention on Biological Diversity calling for urgent action to, among other things, secure and conserve the planet's variety of life; activities regarding climate-resilient infrastructure under the United Nations Framework Convention on Climate Change; the New Urban Agenda;⁵ and commitments to enhance disaster preparedness and strengthen disaster risk governance under the Sendai Framework for Disaster Risk Reduction 2015–2030. Furthermore, these initiatives and commitments help to promote the implementation of Human Rights Council resolutions 37/8 on human rights and the environment,⁶ 40/11 on recognizing the contribution of environmental human rights defenders to the enjoyment of human rights, environmental protection and sustainable development⁷ and 42/21 on protection of the rights of workers exposed to hazardous substances and wastes,⁸ as well as an initiative aimed at universal recognition of the right to a healthy environment,⁹ which are of direct relevance to the above-mentioned subjects.

13. In this regard, we welcome the adoption of the Regional Agreement on Access to Information, Public Participation and Justice in Environmental Matters in Latin America and the Caribbean (Escazú Agreement) and we reiterate our willingness to continue to cooperate with Parties thereto, civil society and indigenous peoples in the Latin America and the Caribbean region. Furthermore, we reaffirm our pledge to promote the Aarhus Convention, its Protocol and their principles in international forums related to the environment, including in relation to the planning, financing and development of infrastructure, throughout the implementation of the 2030 Agenda and other regional and global commitments in cooperation with Governments, international and non-governmental organizations, Aarhus Centres, the private sector, academia, indigenous peoples and other stakeholders.

14. We welcome the ongoing negotiations on an international legally binding instrument on transnational corporations and other business enterprises with respect to human rights,¹⁰ and we stress the importance for all Parties to uphold the Aarhus principles in these negotiations and to press for their inclusion in the substantive text, in line with our obligations under article 3 (7) of the Aarhus Convention in the context of international decision-making.

2030 Agenda

15. We acknowledge that sustainable and resilient infrastructure and spatial planning influence, directly or indirectly, the attainment of all the Sustainable Development Goals, in particular Goal 9 (Industry, innovation and infrastructure) and Goal 11 (Sustainable cities and communities). Other relevant Goals include: Goal 3 (Good health and well-being), Goal

² General Assembly resolution 70/1 on transforming our world: the 2030 Agenda for Sustainable Development (A/RES/70/1).

³ UNEP/EA.4/Res.5.

⁴ UNEP/EA.4/Res.19.

⁵ General Assembly resolution 71/256 on the New Urban Agenda (A/RES/71/256); and A/CONF.226/4, annex. For additional information see <http://habitat3.org/the-new-urban-agenda/>.

⁶ A/HRC/RES/37/8.

⁷ A/HRC/RES/40/11.

⁸ A/HRC/RES/42/21.

⁹ A/73/188.

¹⁰ A/HRC/RES/26/9.

13 (Climate action) and Goal 15 (Life on land). We stress that Goal 16 (Peace, justice and strong institutions)¹¹ is key for the successful implementation of all Goals.

16. We reaffirm that the Aarhus Convention and its Protocol provide solid frameworks to assist countries in achieving the Sustainable Development Goals by implementing commitments on access to information, public participation and access to justice regarding a wide range of issues that affect the environment, including human health.

Climate and biodiversity

17. We stress that infrastructure and spatial planning should embrace nature-based solutions that provide opportunities to limit and mitigate climate impacts and biodiversity loss, while at the same time increasing the resilience of the infrastructure itself, improving service provision and benefiting the economy and communities in the long term. Since infrastructure in every sector has implications for climate and biodiversity, a broad array of stakeholders must be involved throughout the entire infrastructure planning and development cycle. Institutions and governance mechanisms that support multidisciplinary cooperation and coordination across various policy levels (subnational, national, regional, international) are necessary to enhance cross-sectoral linkages and implement a “system-of-systems” approach. Public participation, due consideration of the rights of future generations and multi-stakeholder consultation should be incorporated at different stages of the process to ensure that infrastructure delivers services of genuine public benefit, in an inclusive manner and offers remedies for those whose rights are infringed.

Belt and Road Initiative

18. We note that the vast majority of the Parties to the Aarhus Convention and to the Protocol are involved in the Belt and Road Initiative, the transcontinental long-term policy and investment programme that aims at infrastructure development and acceleration of the economic integration of countries along the route of the historic Silk Road. Putting safeguards in place through national legislation, international agreements and financial and compliance instruments is critical. We call on Parties to ensure that the obligations under both the Aarhus Convention and the Protocol are fully adhered to in implementing the Belt and Road Initiative.

III. Path for the future

19. We affirm that, in striving for a quick economic turnaround, infrastructure decisions should not bypass transparency or inclusive processes, undermine environmental safeguards, or generate unsustainable debt.

20. At the same time, no physical construction should compromise ecosystems and biodiversity or undermine the enjoyment of human rights. To reduce the risk of supply chain disruption, infrastructure systems should provide solutions that respect cultural heritages and diversity, and recognize the needs of various groups,¹² embrace nature conservation norms and principles¹³ and use sustainable technologies and local¹⁴ and sustainable materials to enhance resource efficiency and create local jobs.

¹¹ Namely, targets 16.3, 16.7 and 16.10 of the Sustainable Development Goals.

¹² “Urban and territorial planning constitutes an essential investment in the future. It is a precondition for a better quality of life and successful globalization processes that respect cultural heritages and cultural diversity, and for the recognition of the distinct needs of various groups.” See UN-Habitat, *International Guidelines on Urban and Territorial Planning*, p. 14.

¹³ Nature-based solutions as defined by the International Union for Conservation of Nature as actions to protect, sustainably manage and restore natural and modified ecosystems that address societal challenges, providing human well-being and biodiversity benefits. See www.iucn.org/theme/nature-based-solutions.

¹⁴ See target 11.c of the Sustainable Development Goals.

21. We call upon Parties to the Convention to ratify the amendment on genetically modified organisms to ensure its entry into force as an effective tool for promoting public rights in sustainable land management.
22. We commit to providing enabling legal and institutional frameworks that ensure effective rights of the public to access to information, participation in decision-making and access to justice as key pillars for infrastructure development and spatial planning; ensuring that developers, planners and financial actors play supportive roles in the implementation of these pillars and encouraging partnerships, consultative mechanisms and forums to enhance policy dialogue on development issues.
23. We note with satisfaction the solid outcomes of the analytical work related to the development of the Protocol during the latest intersessional period, which may lead to Parties submitting appropriate amendments thereto, with a view to keeping the Protocol and its implementation aligned with ongoing developments and technological possibilities related to pollutant release and transfer registers in order to respond to the increased demand for easy-to-access information.
24. We commit to promoting digitalization and modernization of environmental information systems, making the best use of Open Data and pollutant release and transfer registers, and to harnessing best available digital technologies to ensure effective access to information, public participation in decision-making and access to justice in environmental matters.
25. We note the need to continuously promote environmental education, advanced training and retraining of staff, taking into account new trends and conditions.
26. We commit to safeguarding the public's rights under the Convention and its Protocol from the beginning of, and throughout, the infrastructure development and planning cycle (planning, design, financing, construction, operation, reconsideration or updates of the operating conditions and decommissioning) and to ensuring that it respects end users' rights and meets their needs (incorporating gender-related needs and the needs of persons with disabilities, youth, indigenous peoples and other disadvantaged and vulnerable groups). Identifying environmental and social risks and corresponding mitigation measures is most effective at the earliest stages, when the consideration and reconsideration of options is most cost-effective and technically and politically feasible. Early stage public participation helps to capture as many potential risks and impacts as possible and to avoid conflict during later phases of the development cycle.
27. We are alarmed by the serious situation regarding the persecution and harassment of environmental defenders in the ECE region and beyond, which is often linked to infrastructure development. We recognize existing challenges, such as the fear of reporting such cases, impunity and difficulty in uncovering the identity of those behind the ordering and conducting of such acts. We acknowledge that the chilling effect this creates discourages public participation and prohibits access to environmental justice, thwarting the aims of the Convention. We commit to establishing and maintaining a safe and enabling environment that protects members of the public and empowers them to fully exercise their rights in conformity with the Aarhus Convention and the Protocol. [We welcome the decision on setting up a rapid response mechanism to deal with cases related to article 3 (8) of the Convention and pledge for its effective support].
28. We recognize that the pandemic has posed serious tests for the exercise of the public's rights. We stress that it is critical that the implementation of the rights enshrined in the Aarhus Convention and its Protocol not only be maintained, but also strengthened, in such circumstances. These rights are the cornerstones of environmental democracy and are crucial for the protection of the right of every person of present and future generations to live in an environment adequate to his or her health and well-being. They support governance and accountability and contribute to more effective decision-making in environmental matters. They encourage innovative solutions and facilitate the capturing of key local knowledge. In addition, they build public consensus around environmental issues and public ownership of solutions and decisions, which also leads to increased social cohesion and strengthened communities. Moreover, they foster a sense of trust in authorities' decisions. Furthermore, upholding strong environmental democracy and integrating environmental concerns into recovery measures will

help us pave the way for economic development that is sustainable, environmentally viable, socially acceptable and healthy.

29. We reaffirm our commitment to supporting the training and capacity-building of authorities, communities and the public in order to enhance their ability to fully realize the rights under the Convention and the Protocol. Where capacities are limited, we commit to strengthening local government institutions and to ensuring that persons and groups in vulnerable situations and communities are able to participate in decision-making that has an impact on their lives and well-being. We acknowledge the importance of partner organizations in capacity-building for the implementation of the Convention and its Protocol at the national and local levels and in promoting subregional cooperation. We note that the establishment of national offices or ombudspersons for future generations has been particularly beneficial in helping the Parties to enforce the Convention. The effective engagement of civil society, including NGOs, academia, indigenous peoples, local communities, representatives of future generations and other stakeholders, greatly reinforces and complements the ability of Governments to address these problems. Such stakeholders also play a key role in holding Governments to account. Access to information and dialogue with stakeholders remains essential. All existing instruments for promoting partnerships and leveraging the necessary action from all stakeholders, including the innovative science community and the private sector, as well as citizen science, should also be used to the fullest extent.

30. We encourage the integration of the Aarhus Convention and its Protocol into development assistance and technical cooperation programmes, supporting their implementation through the United Nations Sustainable Development Cooperation Framework and the strengthening of the nexus approach to the environment, human rights and good governance.

31. We note with satisfaction that the Aarhus Convention and its Protocol continue to lead and inspire actions to promote democracy and the rule of law in environmental matters across the globe. They offer solid legal frameworks for promoting human rights relating to the enjoyment of a safe, clean, healthy and sustainable environment, and drive the development of national legislation and practice towards a common set of international standards, bringing about positive changes that would otherwise not occur. In this regard, the effective provision of product information to help consumers and suppliers to make informed choices for their health and the environment, including with regard to the lifecycle of products and sustainability, is important.¹⁵ Furthermore, given the prevalence of global production and supply chains, adherence to such standards for pollutant release and transfer registers could contribute to the reduction of releases and transfers across the globe.

32. We [welcome the accession of Guinea-Bissau to the Aarhus Convention and] reiterate our invitation to interested States to accede to the Convention and its Protocol, and to apply their provisions in the meanwhile, and we stand ready to offer our experience and knowledge in this regard and to facilitate accession.

¹⁵ See, for example, <http://wwwen.ipe.org.cn/MapSCMBrand/BrandMap.aspx?q=6>.