



Economic and Social Council

Distr.: General
29 April 2021

Original: English

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

Working Group of the Parties

Twenty-fifth meeting

Geneva, 3 May and 7 and 8 June 2021

Item 3 of the provisional agenda

**Reports by the Chairs of the task forces and other updates
on recent developments in the areas of access to information,
public participation in decision-making and access to justice**

Report of the ninth meeting of the Task Force on Public Participation in Decision-making*

Summary

At its second extraordinary session (Geneva, 19 and 22 April and 30 June 2010), the Meeting of the Parties to the Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters established the Task Force on Public Participation in Decision-making through decision EMP.II/1 (ECE/MP.PP/2010/2/Add.1).^a At its sixth session (Budva, Montenegro, 11–14 September 2017), the Meeting of the Parties further extended the Task Force's mandate and placed it under the authority of the Working Group of the Parties (ECE/MP.PP/2017/2/Add.1, decision VI/2, para. 9).^b Decision VI/2, paragraph 11, sets out the issues to be addressed by the Task Force at its meetings.

In accordance with the above-mentioned mandates, the report of the Task Force on its ninth meeting (Geneva (online), 1 and 2 March 2021) is being submitted to the Working Group of the Parties for its consideration.

^a Available at <https://unece.org/environmental-policy/events/extraordinary-session-meeting-parties-aarhus-convention>.

^b Available at <https://unece.org/environmental-policy/events/sixth-session-meeting-parties-aarhus-convention>.

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



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Introduction

1. The ninth meeting of the Task Force on Public Participation in Decision-making under the Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters (Aarhus Convention) was held in Geneva on 1 and 2 March 2021. Due to travel restrictions linked to the coronavirus disease (COVID-19) pandemic, the meeting was held in an online format with remote participation.¹
2. The meeting was attended by representatives of the following Parties to the Convention: Albania, Armenia, Belarus, Estonia, Finland, Georgia, Germany, Greece, Ireland, Italy, Kazakhstan, Latvia, Malta, Montenegro, Norway, Portugal, Republic of Moldova, Serbia, Slovenia, Spain, Ukraine and United Kingdom of Great Britain and Northern Ireland. A representative of the European Commission, representing the European Union, also participated in the meeting, as did representatives of the European Environment Agency and the European Investment Bank.
3. Representatives of the Organization for Security and Cooperation in Europe (OSCE), the European Bank for Reconstruction and Development and the World Bank were also present.
4. Representatives of Aarhus Centres and professional, research and academic organizations were also present, as were representatives of international, regional and local non-governmental organizations (NGOs), many of whom coordinated their input within the framework of the European ECO-Forum.

I. Opening of the meeting and adoption of the agenda

5. The Chair of the Task Force, Ms. Loredana Dall’Ora (Italy), opened the meeting. She mentioned that the meeting aimed to provide a platform for discussing in greater detail participation of vulnerable and marginalized groups in decision-making and would allow for exchange of practices that facilitated more effective public participation without entailing additional significant resources on the part of public authorities. The thematic focus of the meeting would be on decision-making in the extractive industries sector, energy and climate, and emerging technologies.
6. The Chair also brought to the attention of participants the following background documents: Selected excerpts of 2017 National Implementation Reports relating to participation of vulnerable and marginalized groups in decision-making as well as effective participation without additional significant resources (AC/TF.PP-9/Inf.3); 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 (AC/TF.PP-9/Inf.4); the Synthesis report on the status of implementation of the Convention (ECE/MP.PP/2017/6); *The Aarhus Convention: An Implementation Guide – Second edition*;² and the *Maastricht Recommendations on Promoting Effective Public Participation in Decision-making in Environmental Matters: Prepared under the Aarhus Convention*.³
7. The Chair underlined the importance of the discussions also in the global context, as effective public participation in decision-making in environmental matters supports the achievement of Sustainable Development Goals and targets, in particular target 16.7 of the Sustainable Development Goals.
8. In her opening statement, a representative of the European ECO-Forum, expressed her concern that, as a result of the extraordinary circumstances of the ongoing COVID-19 pandemic, many countries under special legal regimes or a state of emergency had introduced

¹ Documents for the ninth meeting, including a list of participants, statements and presentations, are available at <https://unece.org/environmental-policy/events/ninth-meeting-task-force-public-participation-decision-making>.

² United Nations publication, Sales No. E.13.II.E.3.

³ United Nations publication, Sales No. E.15.II.E.7.

measures and practices that seriously affected, or might affect or curtail the right to public participation in decision-making in environmental matters, in addition to the rights under the other two pillars of the Aarhus Convention. She stressed that Parties should ensure effective public participation in decision-making during the pandemic, referring to the call of the Chair of the Convention's Compliance Committee in that respect. She emphasized the need to apply the safeguards of the precautionary approach, strategic environmental assessment and environmental impact assessment while observing public participation procedures and rights, when activities with potential hazards or risks to the environment were planned, or before they were permitted during the green recovery. While welcoming examples of a positive, more generous and facilitative approach to public participation during the pandemic, she also pointed out the increasing intimidation, threats, penalization, harassment, and even persecution, use of physical force and detention in some countries, against environmental defenders. She called for effective and fast means to protect environmental defenders, and for the adoption of a rapid response mechanism at the next session of the Meeting of the Parties, supporting the option of establishing an independent Rapporteur on environmental defenders.

9. The Task Force took note of the information provided by the Chair and adopted the agenda as set out in document AC/TF.PP-9/Inf.1. It also took note of the opening statement of the representative of the European ECO-Forum and noted the need for ensuring effective public participation in decision-making during the pandemic and in similar challenging circumstances. The Task Force encouraged Parties and stakeholders to translate into national languages and promote widely the Compliance Committee's Statement on the application of the Aarhus Convention during the COVID-19 pandemic and the economic recovery phase⁴ and the Recommendations with regard to request for advice ACCC/A/2020/2 by Kazakhstan (ECE/MP.PP/C.1/2021/6) on the holding of public hearings during the pandemic as useful guidance for promoting public participation during the pandemic and in similar challenging circumstances. The Task Force noted the shared concerns linked to the safety of environmental defenders and took note of a call on Parties to establish a Rapid Response Mechanism to protect them effectively at the next session of the Meeting of the Parties.

II. Participation of vulnerable and marginalized groups in decision-making

10. The Chair introduced the first agenda item on participation of vulnerable and marginalized groups in decision-making and introduced the first panel of speakers.

11. The representative of the Finnish Network for Sustainable Mining presented the example of the Network, which aimed to help mining companies evaluate and manage their environmental and social responsibilities. It provided a platform for interaction and trust between the mining sector and key stakeholders, including the Sami peoples through the Reindeer Herders' Association. The Network was based on cooperation and shared interests and offered a range of different tools and indicators to manage mining risks at participating mining and metallurgical facilities, including new sustainability standards for mining and ore exploration.

12. The representative of the European Bank for Reconstruction and Development spoke about the Bank's audit methodology for areas of potential forced labour risks based on the example of the time- and labour-intensive cotton sector. The Bank's Strategy to Manage Forced Labour Risks engaged vulnerable persons through extended labour audit procedures. Key considerations were a need for strong representation of women, the potential for trauma amongst respondents and the risks of reprisals. The audit methodology included confidential targeted interviews with client, contractor and subcontractor employees that were not recorded.

13. The representative of The Consultation Institute spoke about the impact of the pandemic on marginalized groups and how it had exacerbated existing inequalities and

⁴ See https://unece.org/DAM/env/pp/compliance/CC-67/ece.mp.pp.c.1.2020.5.add.1_advance_unedited.pdf.

disparities. She stressed that the digital divide was an issue of affordability rather than of age and that it was difficult to reach marginalized groups online. Online engagement techniques used during the pandemic excluded large sections of society without Internet access. To maximize participation of these groups, a combination of online and traditional methods of communication should be used, and public officials should make every effort to understand their profiles and break down barriers that often hampered decision-making processes, connect with community assets, and use effective engagement techniques and approaches. Engagement with vulnerable and marginalized groups required a coordinated long-term approach to: build capacity and confidence; develop trust and build relationships; and demonstrate the utility of public participation.

14. The representative of Women Engage for a Common Future, also speaking on behalf of the European ECO-Forum, spoke about the consideration of gender equality issues within the Aarhus Convention. She said that she considered article 3 (9) of the Convention, on non-discrimination as to citizenship, nationality or domicile, as well as para. 15 of the Almaty Guidelines on Promoting the Application of the Principles of the Aarhus Convention in International Forums (ECE/MP.PP/2005/2/Add.5, annex) to be entry points. Gender issues should be taken into account when planning public participation (e.g., tools for gender mainstreaming). In addition, issues such as access to technology, in particular in rural areas, but also language, literacy and disability, needed to be considered in that regard.

15. The representative of the Central and Eastern Europe Bankwatch Network, also speaking on behalf of the European ECO-Forum, gave a presentation on the participation of post-war returnees and ethnic minorities in decision-making on the Corridor Vc motorway project in Bosnia and Herzegovina. She noted that there had been a lack of public participation in the route selection as meetings excluded route opponents, and that not all options were open. She stressed the need to engage all affected persons in the decision-making process, especially vulnerable groups and ethnic minorities. Project promoters needed to seek to build consensus in communities and to support peace-building efforts, rather than using “divide and rule” tactics that could cause or deepen community conflicts.

16. In the ensuing discussion, the representative of European ECO-Forum reflected concerns about neglected categories of stakeholders. She claimed that future generations were systematically marginalized and public interest stakeholders too were being marginalized by the increased presence and influence of environmental polluters mimicking green activists. She called on the Task Force to consider what actions it could take to reinvigorate inclusiveness for future generations and offer guidance on identifying industry lobbyists playing a disproportionate role in public deliberative mechanisms.

17. The Task Force thanked the panellists and took note of the insights and examples shared by them. It encouraged Parties to assess procedures and tools related to public participation in decision-making with a view to increasing their accessibility for vulnerable and marginalized groups, including children, older persons, women, migrants, displaced persons and refugees, persons with disabilities, indigenous peoples, persons with low literacy skills or facing language barriers, ethnic or religious minorities and economically disadvantaged groups and persons. The Task Force highlighted the important role of NGOs, Aarhus Centres, libraries and other community information centres in promoting environmental awareness and facilitating the participation of vulnerable and marginalized groups in decision-making.

18. The Task Force took note of the interventions by participants and of the key messages derived from the presentations and discussion on the item, including the following:

(a) The COVID-19 pandemic cannot justify any restriction of the public’s rights to information, participation and justice in environmental matters; the pandemic has an impact, in particular on vulnerable and marginalized groups, and it exacerbates existing inequalities and disparities;

(b) There is a great need for further engagement with future generations and with vulnerable and marginalized groups through a coordinated long-term approach aimed at removing barriers that prevented their participation;

(c) All affected persons need to participate in the decision-making process, especially vulnerable and marginalized groups;

(d) Project promoters need to seek to build consensus in communities and to support peace-building efforts, rather than using “divide and rule” tactics that could cause or deepen community conflicts;

(e) It is important to take gender aspects into account when planning public participation procedures;

(f) Challenges related to access to online technology and tools (e.g., in rural areas) and aspects such as language, literacy and disability should be seriously considered in public participation processes;

(g) New engagement techniques through electronic information tools and traditional methods of communication are important for effective public participation;

(h) Non-discrimination as to citizenship, nationality or domicile is critical for public participation processes;

(i) Considering the importance of the effective participation of vulnerable and marginalized groups, there is a need to continue addressing the subject under the auspices of the Task Force during the next intersessional period.

III. Effective public participation without significant resources

19. The Chair introduced the next agenda item on effective public participation without significant resources and invited participants to exchange practices that facilitated more effective public participation without entailing additional significant resources on the part of public authorities. She brought to the attention of participants the draft updated Recommendations on the more effective use of electronic information tools (ECE/MP.PP/WG.1/2020/14) that were planned to be adopted at the upcoming seventh session of the Meeting of the Parties. The Chair expressed her expectation that the Recommendations would also assist authorities in promoting both efficient and effective public participation procedures.

20. The representative of Albania presented the example of an Electronic Registry for Public Notification and Consultation to enable the cost-effective participation of the public and experts in decision-making. The Registry provided an interactive virtual forum as part of other government services on the e-Albania.al website. The platform had been used successfully during the process of forest registration and the development of a solid waste management plan. Challenges included raising capacity and developing the spirit of a democratic decision-making culture along with interinstitutional coordination.

21. The representative of Latvia presented the United Portal for Draft Normative Acts, Normative Acts and Policy Documents. It supported the engagement of the public at the early stages of legislative initiatives and policymaking by providing free access to legal, regulatory and policy documents and the option to upload comments and/or files. The public would remain informed through public notices posted on a public website and published in a local newspaper.

22. The representative of Norway informed participants about a digital tool called “Barnetråkk”, which was designed to facilitate inputs from children and adolescents in land use planning processes. The aim of the tool was to ensure a quality knowledge base while protecting and promoting the perspective of that group in decision-making processes when their interests were affected. The tracking technology had also paved the way for the development of a similar planning tool for other vulnerable groups.

23. The representative of the international charitable organization Green Dossier, also speaking on behalf of the European ECO-Forum, shared lessons learned on public participation during the pandemic. She noted improved access and possibilities to participate in events as many took place online. However, options for participants to actively engage in discussions were often limited due to the high number of participants, lack of time and/or

deactivation of public chat functions. It was important to enhance the level of digital literacy, including careful planning and moderation of virtual consultations. She also recommended combining online and offline tools for public participation in future.

24. During the ensuing discussion, the representatives of the Centre for International Environmental Law and the Guta Environmental Law Association highlighted the increasing digital divide, which required additional efforts to ensure participation of those otherwise invisible, and the relevance of: providing sufficient time for commenting; making all comments accessible; and providing information on how comments had been taken into account in the final decision.

25. The Task Force thanked the panellists and took note of the insights and examples shared by them. It called on Parties to promote broad accessibility to electronic information tools for all members of the public. The Task Force further encouraged Parties to promote the use of electronic information tools to facilitate public participation in decision-making in an effective way, while ensuring at the same time that the needs of different target groups were met. It also called on Parties, partner organizations and stakeholders to continue raising the awareness and building the capacities of public officials and members of the public, especially members of vulnerable and marginalized groups, regarding the use of the above-mentioned tools.

26. The Task Force took note of the interventions by participants and of the key messages derived from the discussion on the item, including the following:

(a) It was important to have an appropriate legislative framework for public participation in environmental matters in place at all levels (e.g., State and local), because, if designed properly, such a framework supported both the efficiency and effectiveness of decision-making processes;

(b) Strengthening interinstitutional cooperation is critical for delivering one coordinated output, thereby saving time and resources;

(c) Increasing the level of digital literacy and using virtual platforms and tools could assist in engaging the public in decision-making in an efficient and effective way;

(d) There is a need to combine online and in-person formats for events/activities aimed at public participation, in particular during the COVID-19 pandemic and in similar challenging circumstances;

(e) When organizing events/activities aimed at public participation, the format and approach should take into consideration the purpose of those events/activities (e.g., decision-making, gathering comments, information sessions, etc.);

(f) Rules and procedures for online events/activities should be transparent and communicated to the public in advance, and appropriate methods to engage the public should equally consider the use of offline tools, such as free telephone services or radio to notify members of the public of and/or involve them in decision-making.

IV. Thematic focus

A. Emerging technologies-related decision-making

27. Introducing the session, the Chair noted that examples of emerging technologies include geoenvironment, nanotechnology, artificial intelligence and climate engineering. Geoenvironment comprised large-scale interventions in the Earth's systems with the objective of delaying or suppressing some of the symptoms of climate change. The topic appeared to be very challenging and unknown.

28. To illustrate public participation in climate geoenvironment governance and decision-making, the representative of the Heinrich Böll Foundation, also speaking on behalf of the European ECO-Forum, presented the example of the Stratospheric Controlled Perturbation Experiment. It was planned to inject reflective particles into the stratosphere to reflect sunlight back into space to lower the Earth's temperature. She noted that, for such

interventions with planetary impact, public participation must go beyond the national or even the regional level, and instead be organized at the international level. The current fragmentation of governance and decision-making processes on geoengineering made it difficult to express meaningful opposition.

29. During the ensuing discussions, a representative of Earthjustice expressed his concern that efforts to regulate emerging technologies were advancing at a slower pace than research progress. A representative of the Guta Environmental Law Association echoed her concerns regarding climate justice, as geoengineering could also have effects in areas where no decision on the use of that emerging technology had been taken. They requested that the topic be kept on the Task Force agenda for the next intersessional period.

30. The Task Force thanked the panellist and took note of the challenges and experiences shared. It took note of the interventions by participants and of the key messages derived from the discussion on the item, including the following:

(a) The issue of emerging technologies is rather unknown to the general public and, therefore, awareness-raising to facilitate the public's involvement in decision-making would be required; the role of science is important in that regard in order to provide reliable science-based information;

(b) As the impacts of emerging technologies are not fully known, it is important to apply the precautionary principle when considering decision-making on such technologies, and also to take into account at the same time the need to allow for scientific progress;

(c) Depending on the subject of decision-making (e.g., emerging technologies-related legislation, policies or projects), the corresponding relevant decision-making procedures would apply;

(d) As there is very limited experience in public participation in decision-making regarding the topic, there is a need to continue its consideration under the auspices of the Task Force during the next intersessional period.

B. Decision-making in the extractive industries sector, on energy and climate

31. The Chair introduced the topic of decision-making in the extractive industries sector, on energy and climate and highlighted the importance of that topic given that the twenty-sixth session of the Conference of the Parties to the United Nations Framework Convention on Climate Change would be held in November 2021 and new Nationally Determined Contributions (NDCs) were being submitted.

32. The representative of Ukraine spoke about public engagement in climate policy development in the country. A multi-stakeholder working group had been established to develop the Environmental Security and Climate Change Adaptation Strategy of Ukraine. It used different channels and types of communication, including virtual meetings, email and collaborative online software, to share information and gather input for and comments on the draft Strategy.

33. The representative of Kazakhstan shared experience of promoting public participation in decision-making in the mining sector. She reported on several improvements to the Environmental Code of Kazakhstan, including new approaches to environmental impact assessment, payment for emissions to the environment, automated emissions monitoring systems, as well as improved environmental control.

34. The representative of Italy shared an example of public consultations on the National Energy and Climate Plan conducted in 2019. The consultations had focused on energy and climate policies and targets included in the first version of the Plan. The consultations had comprised an online stakeholder consultation, an expert consultation, the discussion of the Plan in Parliament and comments from the regions. All comments received by the different stakeholders had been taken into account in the final version of the Plan.

35. The representative of Eco-Partners for Sustainable Development in Albania, also speaking on behalf of the European ECO-Forum, spoke about transparency and accountability in the extractive and energy industry sector in the rural areas of Albania. The Rural Watch project aimed at strengthening civil society by providing professional legal and policy support and media outreach. The project had revealed that, although Albanian legislation was being aligned with the European Union *acquis*, its enforcement lagged behind in terms of administrative, institutional and financial capacities to address environmental degradation as industrial development continued. Access to information, to public participation and to justice as pillars of inclusive governance and the rule of law was not fully developed and integrated. There was a lack of real and productive dialogue between the authorities and the public; however, the local population was ready to participate when the means were provided.

36. The representative of Nuclear Transparency Watch, also speaking on behalf of the European ECO-Forum, argued that failure to take “due account” of stakeholder input was a widespread problem and presented the case of the use of copper canisters in radioactive waste management in Sweden to illustrate that point. She stressed that the regulatory authority had lost public confidence after crucial concerns about the technology had been systematically disregarded. She proposed that consultation reports be made publicly accessible, include a summary of the comments received and a brief justification for the acceptance or rejection of stakeholder evidence. Traceability of the decisions taken and their motivations were considered important elements of accountability.

37. The representative of the Central and Eastern Europe Bankwatch Network, also speaking on behalf of the European ECO-Forum, shared challenges in public participation in the energy sector of Georgia based on the example of the Nenskra Dam project in the Upper Svaneti region. She claimed that there had been a lack of transparency in decision-making that had led to the approval of the project before the environmental impact assessment had been concluded. Free, prior and informed consent should have been obtained regarding investment projects that might have an impact on the access to land and land use rights of rural communities, including indigenous and tribal peoples and ethnic minorities.

38. The Task Force thanked the panellists and took note of the insights and examples shared by them. It highlighted that ensuring effective public participation in decision-making in matters related to the extractive industries sector, energy and climate was critical not only for the fulfilment of national legislation and commitments, but also for the implementation of a number of international commitments, notably the Paris Agreement and the 2030 Agenda for Sustainable Development. The Task Force also called on Parties to ensure effective public participation in decision-making on the above-mentioned matters in accordance with the Convention at all levels, e.g., the national, subnational and transboundary levels.

39. The Task Force took note of the interventions by participants and of the key messages derived from the discussion on the item, including the following:

(a) Ensuring effective public participation in decision-making in the extractive industries sector, on energy and climate remains challenging;

(b) There is great importance and value in using different channels and types of communication to engage the public in such decision-making;

(c) Ensuring public participation at the stage of development and approval of policies is critical;

(d) Effective and inclusive public participation in such complex and far-reaching activities improved the quality of the final decisions and the transparency and accountability of public authorities and businesses;

(e) Considering the complexity of the subjects, public participation in decision-making would require extensive multifaceted consultations, at both the general public and the expert levels;

(f) There should be equal and meaningful opportunities for different types of social groups and stakeholders (e.g., inhabitants, NGOs, academia, etc.) to participate;

(g) Inhabitants of land where extractive industries have projects should be informed of such projects and be part of the decision-making process as it might also have an impact on land access and land use rights;

(h) The role of the younger generation in decision-making on climate and energy policies is particularly important as they are the ones most affected;

(i) The public should also play a significant role in: national debates on decarbonization; defining the NDCs; adaptation strategies and security issues; recovery measures and how to integrate climate change-related actions and evaluations (whether the measures taken had a positive, negative or neutral effect on climate change); reshaping society as a whole (just transition); and choosing the energy mix and promotion of renewables.

V. Closing of the meeting

40. The Task Force thanked the speakers for their useful presentations and the participants for their important contributions and agreed on the outcomes presented by the Chair at the meeting, which would be incorporated into the meeting report.
