

The background of the slide is a blurred photograph of a protest. In the foreground, a hand holds a small globe of the Earth. In the background, a crowd of people is visible, and a large cardboard sign reads "THERE IS NO PLANET B" with a small globe icon. The text "THERE IS" is in black, "NO PLANET" is in green, and "B" is in black.

Safe Public Participation and Protection of Environmental Defenders

Twenty-seventh meeting of the Working Group of the Parties to
the Aarhus Convention
Geneva, 26-28 June 2023

Summer Kern
Justice and Environment
European ECO Forum

Introduction

Benefits of public participation:

- Enhanced quality of decision-making
- Increased awareness
- Greater public acceptance/ownership
- More resiliency

Maastricht Recommendations, SDG 16, Report on the Public Participation Task Force Meeting

Article 3(8):

“Each Party shall ensure that persons exercising their rights in conformity with the provisions of this Convention shall not be penalized, persecuted, or harassed in any way for their involvement”

- Broader than 2nd pillar rights
- Yet public participation context often scene for conflict

Key challenges

Attacks using the justice system (SLAPPs)

- NGO Ecoclub and others submit negative comments in EIA procedure on wood processing plant in Ukraine and publish these on website and in local media
- Project promoter Kronospan (Austrian) sues Ecoclub for defamation and wins in first two instances
- Supreme Court rules in favor of Ecoclub based inter alia on Aarhus arguments

Happy ending?

- Winning not purpose of SLAPPs, takes time, resources to defend. Every SLAPP, regardless of the outcome, chills public participation



Key challenges

Further problems

- Threats of lawsuits against activists and their lawyer based on content of public participation, alleging defamation, conspiracy to inflict economic harm, unlawful funding of litigation, unlawful conspiracy, abuse of the right of public participation (Ireland)
- SLAPPs for bringing lawsuits challenging environmental decision-making on substance or procedure, such as lack of public participation (Bosnia)
- Prohibitive costs to bring challenges of environmental decision-making (Ireland)
- ...

There are many challenges which directly make public participation unsafe, or chill public participation indirectly, making the public fear engagement lest they suffer serious negative consequences for their participation or attempts to enforce these rights in court

Key challenges

Broad intimidation tactics

- Locals opposed to proposed gold mine in Northern Ireland in mountainous Sperrins area face consistent intimidation:
 - Cyber bullying
 - Sexual threats
 - Physical attacks
 - Death threats
- Deters public participation
- Failures in governance
 - Lack of adequate and safe opportunities for public participation
 - Problems with use of police force



Good practices

Clear framework with independent experts and NGOs

- Viennese Waste Management Plan and Viennese Waste Avoidance Program 2019-2024
- Independent expert trained in PP and SEA guided, moderated, and mediated structured process
- Broad public participation plus expert working group, including NGOs
- NGOs can assist not only with expertise and capacity, but public outreach and awareness-building
- Safe and effective platform to develop consensus and find acceptable measures and alternatives
- Address conflicts early or avoid entirely



Suggestions for the way forward

Develop anti-SLAPP legislation, guidance, and capacity building for public authorities, the judiciary, lawyers and other stakeholders

Distribute relevant Committee findings, recommendations, and advice, as well as Special Rapporteur publications

Keep this issue on the agendas of the PP TF Meetings, future WGP, and MOPs, and include in MOP declarations and decisions



Take all measures

Train and use independent experts to guide and moderate procedures to create a safe and enabling environment

Engage with and support NGOs to help facilitate public participation for the broader public (concerned)

Take measures to monitor and prevent multi-national businesses from engaging in abuses related to public participation outside of a Party's territory and address abuses that have occurred

Deliver training and information programs on human rights law relevant to article 3(8) of the Convention for officials in the police, security forces, other relevant authorities and stakeholders

Thank you for your attention!

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