

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-eighth meeting

Geneva, 2–4 July 2024

Item 4 (c) of the provisional agenda

Substantive issues: Public participation in decision-making

Note by the Chair of the Task Force on Public Participation in Decision-making on possible future directions for the work¹

This note was prepared by the Chair of the Task Force on Public Participation in Decision-making to facilitate the discussion on the future work in this area and preparation of the draft elements of the future work programme by the Bureau at its 52nd meeting (Geneva, 28 March 2024) and by the Working Group of the Parties at its 28th meeting (Geneva, 2-4 July 2024).

The outcomes of the work in the current intersessional period

1. During the current intersessional period, the activities in the work area on public participation in decision-making is guided by decision VII/2², adopted by the Meeting of the Parties at its seventh session (Geneva 18–21 October 2021). Pursuant to this decision, the tenth meeting of the Task Force on Public Participation in Decision-making was held on 10 and 11 October 2022³. A thematic session on the subject matter was organized during the twenty-seventh meeting of the Working Group of the Parties to the Aarhus Convention on 26 and 28 June 2023.⁴ The next eleventh meeting of the Task Force will be held on 12 and 13 December 2024.

Task Force on Public Participation in Decision-making

2. The Task Force continued to provide an important platform for experts from governments, civil society and other stakeholders from Parties and other interested Member States to exchange good practices, look at systemic and specific challenges and identify the common priorities.

3. Numerous examples of concrete practical implementation shared by speakers at the meetings demonstrated how different aspects of the Convention's articles 6, 7 and 8 can be enacted in diverse circumstances.

4. Pursuant to decision VII/2, the Task Force at its tenth meeting addressed in great details the following issues related to challenges in all types of decision-making (including at national, subnational and local level) within the scope of articles 6, 7 and 8 of the Convention:

¹ This document was not formally edited.

² See: <https://unece.org/environment/documents/2022/03/pp-aarhus-convention-mop7-decision-vii2-public-participation-decision>

³ <https://unece.org/info/Environmental-Policy/Public-Participation/events/369122>

⁴ See meeting web page: <https://unece.org/environmental-policy/events/twenty-seventh-meeting-working-group-parties-aarhus-convention>

- Issues of a systemic nature, namely: (i) Meaningful and early public participation; (ii) The availability of all relevant documents to the public; (iii) Effective notification and time frames for public participation; and (vi) Ensuring that account is taken of comments from the public in the final decisions, and ensuring the appropriate provision of feedback on how the public's comments have been taken into account in the decisions.
- Coronavirus disease (COVID-19) pandemic and public participation: challenges and opportunities.
- Public participation in decision-making on health-related issues linked to air pollution.
- Public participation in decision-making on urban development/cities.

5. In line with decision VII/2, it is planned that the eleventh and last meeting of the Task Force in the current intersessional period will debate in greater details participation of persons and groups in vulnerable situations in decision-making and public participation in decision-making in a transboundary context. In preparation for this meeting, a survey will be carried out under the auspices of the Task Force on the issue of participation of persons and groups in vulnerable situations. In addition, the thematic focus at that meeting will be on decision-making related to agriculture, fishery, oceans, seas, marine resources as well as on climate change and emerging technologies.

6. Relevant sections of the national implementation reports and of the findings of the Compliance Committee are being used as background materials for the work of the Task Force.

Thematic session on Public Participation in Decision-making at the meeting of the Working Group

7. The thematic session on public participation in decision-making held at the twenty-seventh meeting of the Working Group of the Parties proved to be a true success. In addition to expert discussions of practical measures by the Task Force, issues that deserve particular attention of national focal points were brought to the attention of the Working Group. The session focused on recent developments with regard to: (a) safe public participation and protection of environmental defenders in the context of decision-making on environmental matters and (b) public participation in decision-making on large-scale infrastructure/transport. Delegates had opportunity to share challenges, good practices and lessons learned from legislative, policy and other developments aimed to ensure effective public participation in relation to the above subject. In addition, the Working Group considered specific examples that illustrated experience of public participation in these fields. To promote synergy between the two work areas under the Convention, the Special Rapporteur on Environmental Defenders was invited to share experience under his mandate regarding the above subjects. The session revealed the critical importance of protection of environmental defenders in the decision-making process, including for mining and large infrastructure projects. The discussions addressed the issue of civil disobedience and specific challenges faced by youth and child environmental defenders. The issue of strategic lawsuits against public participation (SLAPPs) was highlighted as a common form of harassment of environmental defenders, which presents a major obstacle to public participation. At the same time, several successful examples of initiatives to protect environmental defenders were demonstrated by Parties and stakeholders.

Conclusions

8. The Task Force format continued to allow for open expert discussions, focusing in greater detail on various practical measures and on identifying common issues for the way forward. The Working Group of the Parties, in its turn, allowed Parties and stakeholders to address at policy level issues that deserve particular attention of national focal points. It also provided opportunity for Parties to see positive trends, learn from each other, agree on common systemic challenges and take commitments for the required actions.

9. Despite numerous good examples demonstrated by Parties and stakeholders and positive trends across many Parties, the outcomes of the work still revealed the need for serious efforts to ensure

effective public participation in decision-making in line with the Convention. A number of systemic shortcomings were identified in this regard. These included, specific constraints for effective public participation in the context of the COVID-19 pandemic, SLAPPs, requirements on protecting environmental defenders in laws and concession contracts; the need to properly regulate the use of digital technologies, which could otherwise lead to increased surveillance and the consequent undermining of effective public participation as well as democratic governance and human rights; engaging different target groups of society, in particular, those in vulnerable situations, such as women, the elderly and indigenous and rural communities; lack of awareness and engagement of young people in consultations; and the need to carry out human rights impact assessments. With regards to large-infrastructure/transportation projects, short-comings include lack of requirements to involve the public during the process of planning of such projects; the disengagement of municipalities and developers from public participation; the disenfranchisement of large portions of vulnerable populations; and the failure to provide adequate and timely information to the public. Challenges specific to certain articles, included:

- **For Article 6**, (i) lack of evidence demonstrating that due account is taken of the outcome of public participation in a transparent and traceable way; (ii) limited modalities for public participation and lack of tailoring modalities to the needs of specific target groups (e.g., face-to-face meetings, opportunities for online participation, thematic radio programmes with the possibility of remote intervention, telephone recordings and offline recording of meetings, among other things); (iii) lack of sufficient information relevant to the decision-making for the public to participate in the decision-making process; (iv) insufficient timeframes for public participation; (v) inadequate and ineffective notification of the public concerned regarding proposed activities; (vi) lack of public participation in decision-making on changes/extensions/reconsideration and updates of permitted activities; (vii) agreements which foreclose all options being open at the time of the permitting procedure; (viii) limiting options of a proposed activity before the public participation procedures have been concluded; (ix) inadequate information provided to the public about the decision to permit an activity.

- **For Article 7**, (i) an insufficient framework and lack of public participation procedures, as not all plans and programmes might be identified and covered; (ii) limiting public participation to plans and programmes subject to strategic environmental assessment; (iii) no systemic approach to identifying the public that may participate; (iv) insufficient public access to the “necessary information”; (v) failure to ensure that due account is taken of the outcome of public participation in decision-making on proposed plans and their amendments, including in cross-border consultation procedures; and (vi) application of article 7 to amendments and modification of plans and programmes relating to the environment.

- **For Article 8**, (i) identification of the scope of executive regulations and other generally applicable legally binding rules “that may have a significant effect on the environment”; (ii) whether those legal instruments should be commented on directly by the public or through representative consultative bodies; (iii) application of article 8 during the preparation of primary legislation; (iv) identification of the scope of requirements under article 8(a)-(c); and (v) insufficient understanding of the scope of term “representative consultative bodies” for the purposes of article 8.

10. With regard to environmental defenders, a general trend of shrinking space for civil society to exercise their environmental rights and the need for urgent measures to remedy this situation appeared to be a serious matter. Also, lack of awareness about the obligations under article 3 (8) among, in particular, officials of public authorities, law enforcement agencies, prosecutors, members of judiciary, providers of private security services and developers, including for large-scale infrastructure projects, continued to be a serious concern.

11. Activities in this work area continued helping countries and stakeholders to further effective public participation thereby supporting the achievement of targets 16.7 on responsive, inclusive, participatory and representative decision-making at all levels and 16.10 on protection of fundamental freedoms; they also reinforced the implementation of other Goals and targets.

The way forward

12. Both the Task Force and the Working Group of the Parties each had specific added value for considering the public participation matter. It is therefore suggested that the work in the next intersessional period will be carried out by both bodies in a similar format.

13. Considering a number of identified challenges, it is suggested that the future work will continue addressing the main systemic obstacles to effective public participation in decision-making within the scope of articles 6, 7 and 8 of the Convention, in particular with regard to the above-mentioned subjects (see paras 9-10).

14. In addition, it is suggested to consider the following subjects: (i) making institutional and organisational arrangements to improve participation practices and promoting the broader involvement of the public; and (ii) experience with “Citizen Assemblies” as means for effective public participation in decision-making in environmental matters.

15. Sessions at the Task Force meetings devoted to a particular type of decision-making or sector have also proved to be very beneficial for Parties and stakeholders. It is suggested to focus future work on those subjects that are particularly linked to the triple planetary crisis: biodiversity loss, pollution and climate change. In this regard, the Task Force is suggested to consider public participation with regard to natural habitats (marine and terrestrial); pollution (e.g., air, soil and marine pollution) as well as continue to consider public participation in climate change related decision-making. The Task Force should further continue monitoring the use of the Maastricht Recommendations.

16. International organizations, regional environmental centres, Aarhus Centers, NGOs and other partners should be called upon to continue supporting capacity-building activities to further the implementation of the second pillar of the Convention at sub-regional, national, subnational and local levels. Trainings for public officials involved in the day-to-day task of carrying out public participation procedures should continue receiving priority. Further, specific trainings and awareness raising events about the obligations under article 3 (8) among, in particular, officials of public authorities, law enforcement agencies, prosecutors, members of judiciary, providers of private security services and developers should be strongly encouraged.

17. With the establishment of a rapid response mechanism to protect environmental defenders and extensive activities carried out by the Special Rapporteur on Environmental Defenders it is expected that challenges related to implementation of article 3(8) will be also addressed through the Special Rapporteur’s work.

18. Parties and stakeholders should be also encouraged to continue providing case studies to the Aarhus Clearinghouse Good Practice database.