

PARTICIPATE

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Participate is Back!

After a more than two year hiatus, we're happy to announce the re-emergence of the PARTICIPATE newsletter. PARTICIPATE brings you the latest information on developments in ratification and implementation of the Aarhus Convention, as well as examples of best practices and other activities of environmental organisations working on Aarhus issues throughout the pan-European region.

In this issue you will find a number of interesting articles related to the Aarhus Convention, including a summary of the EU implementation survey also known as "Quick scan," published by EEB in

late 2007, a history of the Aarhus convention in Ireland, progress on ratification of the Almaty GMO amendment, an overview of the work of the Task Force on Public Participation in International Forums (PPIF), an explanation of the inner workings of the Compliance Committee and the first of what will become a recurring feature of PARTICIPATE-, a summary of compliance cases by country, this time focusing on Kazakhstan, location of the largest number of communications from the public.

Our PARTICIPATE website is also currently undergoing some changes. We're

going to be updating news and calendars, as well as adding a new section on compliance, which will contain information on how to submit a communication under the Aarhus Convention. Check it out at www.participate.org.

If you have any questions or comments about the PARTICIPATE newsletter, or would like to make a contribution to a future issue - we are always on the lookout for your stories - please contact Mara Silina, PARTICIPATE Editor

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What's new with the Aarhus Convention?



In December 2007, at the European ECO Forum strategy meeting in Vienna, a declaration was adopted, which will serve as the basis for the demands of environmental NGOs at the 3rd Meeting of Parties (MOP-3) in Riga in June 2008. To date the Declaration has been supported by more than 190 organisations from 43 countries. The full text of the Vienna Declaration can be found at <http://www.participate.org/documents/vienna-decl-final-version-060208-with-logo.pdf> (in English) and <http://www.participate.org/documents/vienna-decl-rus-final.pdf> (in Russian).

[final.pdf](#) (in Russian) [get photo from conference]

During the first half of 2008, most Aarhus Convention efforts are being focused on preparing for MOP-3. Among other issues to be discussed under the Aarhus Convention, the Meeting is expected to adopt a Long Term Strategic Plan for the Convention which would not only highlight the importance of implementation but also raise awareness for its expansion and emphasise the necessity of further development.

In mid-February, the 9th Working Group of Parties met in Geneva for the second to last time before MOP-3 and finalised most of the draft decisions related to different areas of the work on the Aarhus Convention and other documents. For the official report of the meeting, please follow the link: http://www.unece.org/env/pp/wgp/ece_mp_pp_wg_1_2008_2_as_submitted.pdf

European ECO Forum will organise its Strategy meeting just prior the MOP-3 in Riga (8-9 June) - for more please check our website regularly.

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Happy Birthday to Aarhus!

The UNECE Aarhus Convention provides for Access to Information, Public Participation in Decision Making and Access to Justice in Environmental Matters. The Convention was adopted in June 1998 and will have its 10th anniversary this year. Since its adoption, 40 countries and the European Community have ratified the Convention bringing the total number of Parties to 41.

A LONG ROMANCE - IRELAND AND THE AARHUS CONVENTION

By Michael Ewing



Having signed the Convention in 1998, the Irish ratification process has taken a long and circuitous route and has yet to reach its climax. Like any lover of democracy in the region, Ireland signed up to the Convention with ardour, but then realised, as in all marriages, there has to be give and take. For the next nine years the love affair cooled and even the European Directives on access to information and public participation didn't succeed in warming the chill that was freezing Irish environmental democracy. Legislation was passed which dramatically reduced public participation in the planning process. These changes were said to be made to speed up the development of such infrastructural projects as motorways, as well as incinerators and other waste management projects. Waste management was taken out of the hands of the elected representatives in local government, and the decision-making powers handed to unelected officials. The free-

dom to take a judicial review of a decision by the Planning Appeals Board (An Bord Pleanala) was dramatically reduced when standing was only given to those with a "substantial interest", as opposed to the previous need to have "sufficient interest".

But more recently, despite the slow start to this romance, it looked like a shotgun wedding was underway. Following the instigation of proceedings in the European Court of Justice by the European Commission and four years and three months after Directive 2003/4/EC on access to environmental information came into force, it was finally transposed into Irish law in May 2007, as the European Communities (Access to Information on the Environment) Regulations 2007 (Statutory Instrument 133 of 2007). The European Commission is continuing with the case against Ireland for late transposition of 2003/4/EC as well

as pursuing a parallel case with respect to the lack of transposition of 2003/35/EC, the Directive that directs implementation of further public participation provisions of Aarhus at EU level.

With the shotgun still waiting in the background, the romance has definitely heated up again with Ireland's new government. In June 2007, the Green Party entered into government for the first time as a coalition partner with Fianna Fáil, the largest party in Ireland. They introduced the ratification of Aarhus as one of the items in the Programme for Government to be pursued during the next term (of 5 years!). The author is reliably informed by senior officials in the Department of the Environment that ratification will proceed as soon as Directive 2003/35 is transposed. The new Green Party Minister for the Environment reportedly considers Aarhus high priority, though nobody is willing to set a date for the 'Big Day'. The reason given by officials for the delay is that they are waiting for other ministries to adopt changes in a range of permitting processes. It seems that Ireland may yet embrace the Aarhus Convention, so leave your diaries open for celebrations on the big day for environmental democracy in Ireland.

This article is the personal opinion of Michael Ewing, who is currently Senior Researcher at the Centre for Sustainability, Institute of Technology Sligo, Ireland.

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2007 EEB SURVEY: HOW IS THE AARHUS CONVENTION WORKING IN THE EU MEMBER STATES?

By Ralph Hallo

The EU now includes 27 countries, nearly 500 million people, with different histories, cultural backgrounds and legal systems. So of course it cannot be taken for granted that an instrument such as the Aarhus Convention will be used perfectly, even more so when we consider that it grants rights and so power to citizens and NGOs to be involved with deci-

sion-making by public authorities.

Thanks to a grant from Fundación Biodiversidad of Madrid, the EEB has been able to organise a survey of experiences of the Convention's implementation and practical application across the EU Member States. Responses from 20 of the 27 Member States to a questionnaire

and discussions from a seminar have been incorporated into a booklet authored by the EEB's former President, Ralph Hallo. This illuminates many different experiences gathered through a network of contributors, and is described as a "set of first impressions". A number of

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recommendations are made to help implement each pillar of the Convention. Transposition of the Convention begins with European Community legislation which is the starting point for all EU countries. But even here the cracks begin to show. While the first two pillars of Aarhus - access to information and public participation - are reasonably transposed (mainly by Directives 2003/4 and 2003/35), the third pillar of access to justice has never been incorporated into a Directive, despite a draft proposal in existence. This brings the whole question of complete ratification of the Convention by the Community into doubt and is certainly not helpful for countries struggling (or not) to re-shape authoritarian legal systems.

The survey comes to the following preliminary conclusions about EU legislation and compliance in the Member States. As far as access to information is concerned, the answer to the question of compliance is a clear 'Yes'. As for public participation, the answer is 'No, not really'. And for access to justice, the view the Survey gives is that without the Directive on access to justice, the EU Member States cannot be considered to be in compliance with the Aarhus Convention's requirements.

Environmental organisations and citizens have also made use of national courts and proceedings to secure the rights granted by the information and public participation Directives. Again, cases brought to gain access to environmental information have been 'successful' more often

than those brought to secure participation in permitting and other proceedings, such as EIA reviews. It is worth noting, however, that success in the information cases is relative, since frequently the court-ordered release of the information comes too late for the information still to be of use.

Read the details with lots of real-life examples in the booklet to see how your own country is doing! The booklet is available online at

<http://www.eeb.org/activities/transparency/AARHUS-FINAL-VERSION-WEBSITE-12-07.pdf>
Individual country surveys are available online at

http://www.eeb.org/activities/transparency/Aarhus_survey.html

Paper copies are available on request from [press@eeb.org](http://press.eeb.org).

THE AARHUS CONVENTION COMPLIANCE COMMITTEE

By Thomas Alge and Andriy Andrusevych - European ECO Forum Aarhus Convention Focal Points

What is unique about the Aarhus Convention and its Compliance Committee?

The Aarhus Convention is unique in many ways. It is the first international treaty with the purpose of granting rights directly to the public with regard to protection of the environment. Its focus is not the protection of the environment *per se* but the procedural rights of civil society to participate in decision-making that relates to environmental matters.

Another unique aspect of the Convention is its compliance procedure. Article 15 of the Aarhus Convention required the first Meeting of the Parties to establish arrangements for reviewing compliance with the Convention. For that purpose a "Compliance Committee" (or ACCC) has been mandated to discuss and decide on possible violations of the Convention. The ability of the public (individuals, NGOs etc) to directly report potential violations to the committee is also unique in international environmental law. All Committee members serve in a personal capacity (not representing any country) and are nominated by Parties, signatories and NGOs.

Who can approach the Committee?

Any individual or group of individuals and NGOs can approach the ACCC regarding a potential violation by any country as long

as the subject country is a Party to the Convention. This is called a "public trigger". A "communication" is submitted to the Committee explaining why this country is suspected of non-compliance. In addition, any Party to the Convention may make a submission (a "complaint") about another Party or about its own potential non-compliance. The Secretariat of the Convention may also make a referral to the ACCC.

finding a Party non-compliant, the ACCC may develop recommendations and other measures to be adopted at the Meeting of the Parties. If the Party agrees, the ACCC can directly provide such recommendations (and take some other soft measures), which could include providing advice and facilitating assistance for the affected Party.

The Meeting of the Parties of the Convention (MOP) has the highest power in the compliance procedure. It adopts the Committee's findings and measures. It is only the MOP that can take hard measures against a country, including declarations of non-compliance, cautions, and suspension of a country's participation in the treaty. So far the MOP has never used hard measures.

What are the procedural steps at the ACCC?

Communication

Members of the public (individuals, NGOs) submit a communication to the Committee claiming a Party (a country or the European Community) is in non-compliance with the Convention. The communication should address events that occurred at least one year after the Convention entered into force for that country.



What are the powers of the ACCC?

The ACCC may find that a Party is compliant or non-compliant with the Convention with regard to a specific case, such as an unjustified refusal to supply environmental information. The ACCC may also find a Party generally in non-compliance with its obligations to the Convention, such as in a case when a country was found to have failed to establish a clear, transparent and consistent framework to implement public participation procedures. After

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kazakhstan

KAZAKHSTAN'S COMPLIANCE CASES

The full significance of the 20 compliance cases submitted to date regarding national implementation of the Aarhus Convention itself will take some time to unfold. A complete listing and summaries of all 20 cases has been prepared by the European ECO Forum legal focal points team and will be published on the www.participate.org web site with useful URLs to the official documents. Each edition of the Participate newsletter will provide an update of case status, as well as a summary of cases to date, by country. This time, we focus on **Kazakhstan**, the country where the most communications came from.

Case # and communicant	Charge	Articles Concerned	Background	Committee's Findings	Outcome
Case 2004/01 Green Salvation www.green-salvation.org	Denial of information and lack of access to justice	4.1, 4.7 (failure to provide information), 6.6 and 9.1 (denial of standing).	In November 2002, Green Salvation requested information concerning a proposal by the National Atomic (Nuclear) Company of Kazakhstan to allow import and deposit foreign radioactive waste. The company failed to reply. Green Salvation challenged the failure to provide information in numerous courts with no success. Green Salvation filed a communication to the Compliance Committee on February 7, 2004 (by e-mail).	<p>The Committee took its final decision on February 18, 2005. The Committee found that Kazakhstan was not in compliance with:</p> <ul style="list-style-type: none"> a) Article 4.1 and 4.2 by having failed to ensure that bodies performing public functions implement them; b) Article 9.1 due to lengthy review procedure and denial of standing to the NGO in a lawsuit on access to environmental information; and c) Article 3.1 due to the lack of clear regulation and guidance with regard to the obligations of bodies performing public functions to provide information to the public and with regard to the implementation of Article 9.1. <p>Note that the Compliance Committee cannot make a judgment about the information request itself (and so cannot order release of information) but draws conclusions about the implementation of the Aarhus Convention and tries to correct these fundamental problems.</p>	<p>The Second Meeting of the Parties (MOP) (Almaty, 2005) considered two Kazakh cases and integrated the findings of both of them (see also Case 2004/02 below). The MOP took a decision reflecting recommendations made by the Committee. In particular, it requested the Government of Kazakhstan to submit a strategy (by the end of 2005), including a time schedule, for transposing the Convention's provisions into national law and developing practical mechanisms and implementing legislation that would set out clear procedures for their implementation. A strategy was submitted in February 2006, and the Compliance Committee made further comments. The strategy is still being developed, as of July 2007 but not adopted yet.</p>
Case 2004/02 Green Salvation www.green-salvation.org	Lack of public participation in environmental impact assessment (EIA)	6.1-6.4, 6.6-6.8 and 9.3-9.4.	Complaint filed with the Compliance Committee regarding construction of a high voltage power line (110 kV) in 2002, following a decision by the Mayor of Almaty and two EIAs. Local residents demanded public hearings but were not invited when hearings were held. The lack of public participation was challenged in several law suits but all were unsuccessful.	<p>At 110 kV and 1 km long, the power line did not meet the threshold values in Annex 1, paragraph 17 of the Convention (220 kV and 15 km). Yet the Committee found that construction fell under the scope of Article 6.1 since it fell under Annex I, paragraph 20, because a public participation procedure was required by national legislation. Without nationally legislated public participation procedures for this type of activity, the Committee said Kazakhstan would not have been in non-compliance.</p> <p>Further, the Committee found that Kazakhstan was not in compliance with Article 6.2. Residents living along the proposed route of the power line were clearly among the "public concerned" but they had not been informed of the process nor invited to participate. The Committee also said that the lack of being informed violated the "sufficient time" requirement under Article 6.3 and that in practice residents did not have opportunity for early and effective participation that should have been available (Article 6.4) or opportunity to provide input in accordance with paragraph 7. Therefore, whatever views residents might have had to offer could not have been taken into account as required by Article 6.8.</p> <p>The Committee found that holding the hearing after construction had started was in violation of the requirement under Article 6.3 and 6.4 for "reasonable time frames" and "early public participation, when all options are open." They also found that such public</p>	<p>The Second Meeting of the Parties (MOP) (Almaty, 2005) considered two Kazakh cases and integrated the findings of both of them (see also Case 2004/01 above).</p> <p>Kazakhstan has received very clear instructions that it cannot ignore its own legislation even if particular thresholds specified in Annex 1 are not met. Paragraph 20 of Annex 1 acts as a safety net and ensures that "[A]ny activity not covered by paragraphs 1-19 above where public participation is provided for under an environmental impact assessment procedure in accordance with national legislation" is still subject to the Convention.</p>

kazakhstan

Case # and communicant	Charge	Articles Concerned	Background	Committee's Findings	Outcome
				hearings did not count as "public participation" unless the hearings had genuinely involved all key groups of the public concerned. The Committee did not find non-compliance with Article 6.6 and 9 since dissatisfaction with a court decision does not constitute denial of access to justice.	
Case 2004/06 Gatina et al	Effective remedies, fair and timely court review.	Article 9.3 (failure to consider part of the lawsuit) and Article 9.4 (unfair process)	On September 4, 2004, three Kazakhstan citizens submitted a communication regarding an industrial facility. In the national courts the communicants had challenged the legality of an industrial cement storage facility, located next to their houses, which had been emitting cement dust and operating without an environmental permit. But court had only partly considered their suits, not addressing the failure to act and enforce environmental standards by the governmental authority. In addition, they claimed that the court review process was unfair due to a failure to notify them about the court hearings, lack of notification about the decision and too long a process.	The Committee found that for several reasons, Kazakhstan was not in compliance with Article 9.4 after establishing Article 9.3 applied. The Committee said there was no evidence that parties in the law suit were notified about the date, time and place of the court hearing (despite the fact that the court decision has numerous references to such notifications). In addition, the failure to communicate the court decision to the parties constituted a lack of both fairness and timeliness of procedures. Lastly, the fact that part of the law suit (the failure to enforce national environmental legislation with respect to the polluting facility) was not considered constituted a failure to provide effective remedies as required under Article 9.4.	The Government of Kazakhstan agreed to accept the final findings and recommendations of the Committee. In particular, the Committee recommended that the Government of Kazakhstan include in its strategy (to be developed under MOP-2 Decision II/5a) publication of the courts' decisions and statistics related to environmental cases and allocate specific significance to capacity-building activities for the judiciary. The Committee is going to review the case before MOP-3 (September, 2008) to see whether any action is required by MOP. The strategy is still under development, as of August 2007.
Case 2004/10 Green Salvation www.green-salvation.org	Admissibility	Articles 1, 3.2, 3.4, 3.9, 6.1(b), 6.8, 6.9, 9.3, 9.4 and 9.5		Case inadmissible. The Committee found the communication more about the interpretation of national laws than procedural rights under the Convention, relative to paragraph 20 (d) of the Decision I/7 which established the compliance mechanism ("Incompatible with the provisions of this decision or with the Convention"). In addition, in the view of the Committee the communication was about re-considering decisions of national courts that were unsatisfactory to the communicant.	
Case 2007/20 Green Salvation www.green-salvation.org	<i>Locus standi</i> , failure to act, Committee's effectiveness in dealing with Communication	Articles 3.1 (implementation of the Convention) and 9.3 (access to justice)	On May 10, 2007, Green Salvation, submitted a communication alleging the Government of Kazakhstan had failed to adopt public participation procedures for EIAs, even though required to do so. In addition, they were not granted locus standi to challenge this failure in court.	The Committee decided it must balance its obligation to deal with communications in an expeditious manner with limited resources in the most effective way to promote balanced compliance with the Convention by all parties. The Committee suggested these issues could be dealt under the strategy to be developed by the Government of Kazakhstan under decision II/5a of MOP-2 (see case 2004/1).	This has been done by a letter addressed to the Government of Kazakhstan and the communicant.

It is interesting to note that eight of the first ten communications came from Eastern Europe and Central Asia (four cases from Kazakhstan, two from Armenia, one from Turkmenistan and Ukraine), whereas only two came from the EU (Poland, Hungary). In contrast, with the exception of one from Albania, communications 11 to 19 came from the EU only, including one from the European Community. The 20th communication was submitted by an NGO from Kazakhstan in May 2007. The Committee has also received one submission from a Party (Romania concerning Ukraine) but no referrals from the Secretariat.

Information about the ACCC and its work, including full information on compliance cases and copies of all correspondence and reports from ACCC meetings, is at www.unece.org/env/pp/compliance.htm. With thanks to Thomas Alge and Claudia Scheinecker of OEKOBUERO, Austria, and Andriy Andrusevych of the Resource & Analysis Center "Society and Environment", Ukraine, for the summaries.

almaty

THE ALMATY AMENDMENT ON GMOS: IS RATIFICATION MOVING FORWARD?

By Serhiy Vykhryst (European ECO Forum legal expert on GMOs) and Ilya Trombitsky (GLOBE Europe & Eco-TIRAS International Environmental Association, Moldova)

In one of the previous issues of this newsletter (#20, 2005) we discussed the need to ratify the Almaty Amendment to the Aarhus Convention, which deals with public participation in decisions on the deliberate release into the environment and market placement of genetically modified organisms (GMOs), but since then local civil society organisations have not taken full advantage of our evident success in amending the Aarhus Convention. Nine countries, namely Bulgaria, Czech Republic, Denmark, Estonia, Lithuania, Luxembourg, Moldova, Spain and Sweden and the European Community have ratified the amendment:

The main obligation for Parties to the Almaty Amendment is to provide for transparency and early and effective information and public participation prior to making relevant decisions. The principle of early information primarily means that the responsible public authority should at the earliest stage of the decision-making procedure inform the public either by public notice or individually, as appropriate, that an application for a permit for deliberate release and placing on the market of GMOs has taken place, as well as providing a summary of the permitting notification and the assessment report, where available.

The principle of "effective information" means that the relevant information should be provided in an easily understood, comprehensible form and with sufficient detail within a "reasonable time frame," which would give the public adequate time and opportunity to express an opinion. Allowing the public to submit comments, information, analyses or opinions that it considers relevant to the proposed decision is an essential element of the public participation process.

Ensuring that the outcome of the public participation procedure is taken into account is a critical component of the principle of transparency. At the final stage of public participation the procedure requires the text of the final decision to be made publicly available along with the reasons and considerations upon which it is based. Hence, if a public

authority only informs or provides information on the proposed decisions upon request and does not ensure an outlet for proper feedback, they are not in compliance with the public participation requirement of the Almaty Amendment.

It is also important that the mechanism of public participation form an essential part of the national biosafety framework with each state identifying a single public authority responsible for issuing permits for the deliberate release or placing on the market of GMOs. Bearing in mind that the biotechnology industry is actively expanding, the amendment's earliest entry into force will facilitate stronger biosafety for each Party and for the entire UNECE region as a whole. Since many countries are undergoing changes in their biosafety regulatory framework and in many instances re-developing them, it is crucial that UNECE countries adopt and implement the Almaty Amendment without delay. Kick starting the slow-moving ratification process requires renewed efforts from NGOs. Our goal should be to attract the attention of national governments and parliaments to the necessity of ratification and implementation of the amendment.

Some of the important arguments for the Amendment's ratification include:

- (a) the Almaty Amendment is not about preventing GMOs from use, it is about access to information and public participation in decision-making related to GMO activities;
- (b) the amendment is not an additional burden for Parties to the Aarhus Convention, because it is more simple than the general public participation procedure laid down in Article 6 of the

Convention;

- (c) for EECCA countries, especially for the Parties to the Cartagena Protocol, the Almaty Amendment should be ratified as an essential component of the national biosafety frameworks which are currently being developed; and
- (d) for the European Union states, ratification will not require major changes to the EU legal framework in this area.



Even before the Almaty Amendment enters into force, the stakeholders should remember that paragraph 2 of Decision II/1 of the Second Meeting of Parties encourages Parties to ratify, accept or approve the amendment at the earliest opportunity and to apply it to the maximum extent possible pending its entry into force. Paragraph 3 of the Decision also encourages Parties to renew their efforts to implement the earlier Guidelines on Access to Information, Public Participation and Access to Justice with respect to Genetically Modified Organisms (MP.PP/2003/3).

The brochure "Amendment to the Aarhus Convention (Almaty, 2005) as an international mechanism for public access to decision-making in the field of biosafety" has been written by Serhiy Vykhryst, Olexiy Angurets, Andriy Ostapenko, Ivan Ignatiev and Ilya Trombitsky. It is published by the European ECO Forum in English and Russian and aims to inform decision-makers, environmental NGO representatives, consumers' rights associations, farmers, local self-governing authorities and all those interested in the right to public participation in decision-making related to GMOs as set forth in the 2005 Almaty Amendment to the Aarhus Convention. Copies are available at: www.participate.org.
http://www.participate.org/index.php?option=com_docman&task=doc_view&gid=49&Itemid=50 Requests for printed copies should be sent to Ilya Trombitsky at ecotiras@mtc.md noting name, postal address, number of copies and language.

THE TASK FORCE ON PUBLIC PARTICIPATION IN INTERNATIONAL FORUMS

By Dr. Anke Stock, Women in Europe for a Common Future (WECF), Germany

Background

Due to the pressure of the European ECO Forum at the second Meeting of the Parties to the Aarhus Convention in Almaty in May 2005, the Parties adopted "The Almaty Guidelines on Promoting the Application of the Principles of the Aarhus Convention in International Forums".¹ The Task Force on Public Participation in International Forums (PPIF) was established in order to consult with international forums regarding the Almaty Guidelines. The aim of the consultation process, which was conducted from June 2006 until July 2007, was to obtain views of other international forums on the Almaty Guidelines and also to learn from their experiences regarding access to information, public participation in decision-making and access to justice in environmental matters. The results of this process will be used to provide Parties to the Aarhus Convention with further guidance in implementing their obligation to promote the application of the principles of the Aarhus Convention.

Results of the Questionnaire

Part of the consultation included sending out questionnaires to 97 international forums identified as "high priority" for the consultation. The questionnaire² contained five broad, open-ended questions in relation to the Guidelines and any rules and procedures regarding access to information, public participation and access to justice. The output was very good: by January 2007, 65 international forums identified as high priority had replied, 48 of them had completed the questionnaire.³

Nearly all of the forums that responded have either formalised or non-formalised rules and procedures regarding access to information. The majority also reported that they have regular meetings and/or conferences in which they allow accredited NGOs to participate. The procedures for the accreditation and the status of the

observer NGOs are often stipulated in the rules of procedure of the respective forum, although sometimes non-formalised ways exist for NGOs and other interested stakeholders to participate.

Not even a quarter of those forums that replied indicated that they have rules, procedures or practices regarding access to justice in environmental matters. The Bern Convention, the Alpine Convention and the Water Convention provide formalised compliance mechanisms that allow NGOs to complain about issues of compliance. Some go even further than the Guidelines recommend. For example the Bern Convention provides for the possibility of observers to make proposals to be put to vote as long as these are supported by a delegation. Other forums/institutions, such as the European Bank for Reconstruction and Development, felt the Guidelines were not broad enough to include institutions that have different working methods.

The main reported obstacles to implementation were funding for the participation of civil society and representation.

The consultation process also included a "Workshop on Involving the Public in International Forums Dealing with Matters Relating to the Environment", organised by the Aarhus Secretariat in Geneva in June 2007. Prominent speakers from the Basel Convention and the World Bank, as well as NGOs such as WWF and ANPED and individual experts attended, which provided a good platform to meet and exchange experiences. However, input from NGOs was disappointing, although in October 2007 the European ECO Forum submitted a short paper with comments on the Almaty Guidelines from some of its members.^{4,5}

The Future

On 8 and 9 November 2007, the PPIF Task Force met for the last time before the

third Meeting of the Parties (MOP) in Riga in June 2008. The meeting mainly dealt with future work on public participation in international forums beyond the third MOP. All members of the Task Force agreed that there was no immediate need to amend the Almaty Guidelines, in particular since so far insufficient experience had been gained with the Guidelines in their current form. However, there was consent that substantial work on public participation remained to be done and that the Guidelines should be reassessed before the fourth MOP. Furthermore, there were lengthy discussions on the purpose of the ongoing work and the concrete activities that should be planned for the next inter-sessional period. The delegates at the ninth Meeting of the Working Group of the Parties in Geneva in February 2008 were in favour of keeping the Task Force intact, with a final decision to be taken at the MOP in June.

Conclusions

The Task Force, with the help of the Secretariat, managed to conduct this large scale consultation, which provided a good overview of rules, procedures and practices that are used by international forums to involve the public. It showed how important the Almaty Guidelines are because rules to establish habits, change cultures and create certainty and continuity in the application of Aarhus principles are needed. In practice the attitude of international forums towards public participation by NGOs very often still depends on the civil servants who work in the secretariats and forums as representatives of national governments. Their background, culture and general attitude towards transparency and democracy as well as towards civil society organisations is still forming too pivotal a role in determining the opportunities of NGOs to meaningfully participate. Public participation should be a right, not a privilege or something open to chance!

1 For the full text see here:
<http://www.unece.org/env/documents/2005/pp/ece/ece.mp.pp.2005.2.add.5.e.pdf>.

2 See here for full questionnaire: http://www.unece.org/env/pp/pipif.htm#consultation_2.

3 For the Synthesis Paper and its addenda prepared by the Secretariat see here: http://www.unece.org/env/pp/pipif.htm#consultation_2.

4 See here for full text <http://www.unece.org/env/pp/pipif/Comments%20on%20experience%20with%20the%20Guidelines/European%20ECO-Forum.pdf>.

5 For a complete overview of all comments on experience regarding the application of the Almaty Guidelines (decision II/4, para. 7) received by the Secretariat see here: <http://www.unece.org/env/pp/pipif/Synthesis%20paper%20of%20comments%20on%20experience%20with%20the%20Guidelines.pdf>.

NEW RATIFICATIONS

The PRTR protocol to the Aarhus convention was ratified by Switzerland, Estonia and Germany in 2007, bring the total number of ratifications to five (adding to the previous ratifications by Luxembourg and the European Community.) **Twelve further ratifications** are needed to bring the protocol into force.

In 2007, four more countries ratified the amendment on public participation in GMO decision-making (Bulgaria, Lithuania, Moldova and Luxembourg).

Three more countries ratified the Strategic Environmental Assessment (SEA) Protocol to the Espoo convention, which, once in force, will require its Parties to evaluate the

environmental consequences of their official draft plans and programmes and provide for extensive public participation in government decision-making in numerous development sectors. The 2007 ratifications by Norway, Germany and Bulgaria bring the total number to eight, half the number needed to bring the instrument into force.

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Admissibility

The Committee then determines if the communication fulfils all procedural requirements, for example checking that the Convention has already entered into force for that country, and that the communication refers sufficiently to subjects covered by the Convention. A decision of "admissible" or "inadmissible" is made very quickly by the Committee, usually in the first meeting after the communication was submitted, sometimes within days.

Discussion at Committee meeting

If the communication is admissible the case goes onto the agenda of a future ACCC meeting, where the communicant and the concerned Party may participate in the discussions and may be asked by the Committee to provide additional information. More complicated cases may be discussed by the Committee at more than one meeting. The only time when the public may not observe and comment is during the very last stage of finalising findings and recommendations when the Committee meeting is closed.

Findings and recommendations of the Committee

If a case is ready for decision the Committee prepares its findings and a draft recommendation, on which the party and the communicant may comment. If there are no substantive comments, the recommendation can be adopted at a future meeting, otherwise further consideration of the case can follow.

Communication to the Parties

The final findings and recommendations are published in the official reports of the

Committee meetings and communicated to the Meeting of Parties to the Convention, which may adopt the findings of the Committee and take measures against a specific country.

How much time does the Committee need to decide?

The Committee makes relatively quick decisions as compared to national litigation and international arbitration cases. The average time between the date of an initial communication and the final conclusions of the Committee is 389 days (at end of November 2006). The ACCC has met, on average, four times a year since 2003. Normally, it is sufficient to submit a communication two weeks before a meeting to have it considered at the next meeting of the Committee. The schedule of Committee meetings is available at www.uncece.org/env/pp/.

Our NGO legal focal point team

One of the major objectives of the current project "Making the Aarhus Convention work for Civil Society" is the establishment of "focal points" in the European ECO Forum Network. These consist of members of NGOs who work on legal issues related to the Aarhus Convention. Under this project, their work includes helping NGOs based in Party countries to effectively use the rights and possibilities of the Convention by giving individual advice and support with regard to complaints by NGOs and providing continuous information on the activities of the ACCC. See the back page of this issue of Participate for Focal Point contact details.

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