



**International-Lawyers.Org**

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STATEMENT BY INTERNATIONAL-LAWYERS.ORG (INTLAWYERS)  
TO THE PUBLIC SESSION OF THE AARHUS COMPLIANCE COMMITTEE

INTLawyers welcomes the work of the Aarhus Compliance Committee and indeed the mandate of the Aarhus Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters (Aarhus Convention).

INTLawyers is a legal organization with former Attorney-General's, Prime Ministers, and Foreign Ministers on our Advisory Board and members who are prominent professors and practitioners of law situated from the United States and European as well as places as far away as India, Sierra Leone, and the South Pacific. As predominately a lawyers' organization, INTLawyers welcomes the work of Committees which we believe makes an important contribute to ensuring respect for the rule of international law.

INTLawyers or its members have followed the Committee since January 2015, the process under the auspices of the United Nations Framework Convention on Climate Change (UNFCCC) for the past decade, and the United Nations' human rights mechanisms since 1976. It is on each of these processes that we wish to comment.

First, as concerns the work on human rights and climate change at the Human Rights Council (HRC), we express our concern about the lack of both progress and transparency or participation in the Council's work on this issue. While we welcome that the Members States of the Council are considering human rights and climate change annually, we believe that the progress made has been inadequate in part because of issues relating to transparency or participation in this work that fall under the auspices of this Committee. We judge progress on an issue as is common with in the Council by how it is dealt with formally and through mechanisms that might enhance its implementation. Formally, we note that human rights and climate change is not an agenda item on the Council's agenda. It depends on the ad hoc concern of States at any given session or annual cycle of sessions. Moreover, while some States that are disproportionately affected by adverse effects of climate change have kept the issue on the Council's agenda, other States—including State Parties to the Aarhus Convention have tried to remove it—most disturbingly through means that limit transparency or participation by civil society actors. It should be recalled that to date the Council has not given effect to the unanimous call by participating NGOs at the 2010 HRC Social Forum to establish a special procedure or mandate on human rights and climate change. The establishment of a mandate is the most common means of judging progress on an issue before the Council. Instead, the Council's work on human rights and climate change has been mired in a repetitive series of seminars, panels, and half-day discussions without the Council committing to any more substantive action on this issue. Most recently, as occurred in June 2016 as well, when the Council held informals to consider its annual resolution on human rights and climate change the text of the resolution was withheld from accredited NGOs until the actual meeting in which it was discussed and these NGOs were denied their request to intervene at the informal meeting. We regret that some of the most prominent States that apparently endorsed this dual lack of transparency and participation were Aarhus Convention Member States. We would hope that these States, respecting their obligations under the Convention would be at the forefront of pushing for greater public transparency on the issue of human rights and climate change and that they would equally encourage greater civil society involvement in the processes of the Council on this issue.

Second, we note that at the 15<sup>th</sup> Conference of the Parties (COP15) held in Paris in December 2015 our NGO considered initiating proceedings within the national legal system in France to challenge the exclusion of Observers from contact groups. Our action as based on France's failure to observe its

international legal obligations in the Aarhus Convention. The French decision contradicted an undertaking given at the Bonn meetings and the undertaking of the two co-chairs of the Working Group that our NGO had personally solicited in public meeting just days before the start of COP15. Moreover, while the overwhelming majority of UNFCCC Member States had supported the participation of Observers in accordance with past practice, a small number of States, the majority of which appeared to be Aarhus Convention Member States, opposed it. Among those opposing it, was most notably the State holding the COP15 Presidency, France, which is a prominent Aarhus Convention Member State. It was for this reason that we sought to challenge this decision in the French courts. Unfortunately, our action was blocked by a combination of French procedural law that requires that a *giffer* be employed to observe the complained of act—in this case denial of Observer organizations' ability to attend Contact-Group meetings, for which neither our video-taped evidence nor the public decision of the COP15 President was not apparently sufficient—and the UNFCCC Secretariat's decision to prevent the *giffer* from entering the United Nation's premises as he had not been accredited six months in advance of the meeting. As a result, our action—our access to the French judicial system—was completely denied for the purpose of raising a legal issue of compliance with the Aarhus Convention. Had it not been for the representations of some partner NGOs that they wished to discuss this with France, we would have filed a communication with this Committee during the year of the France's COP15 Presidency.

Third, we want to express our appreciation for the efforts of Ambassador Nazhat Shameem-Khan and chief negotiator for the host State, Fiji, for her efforts to try to provide for more transparency and more adequate participation activities for Observers. While we heartily welcome these efforts, we are equally dismayed at the efforts undertaken by several Aarhus Convention Member States to obstruct Fiji's efforts. An example of how this conflict has worked itself out in practice is the disappointing decision to house Observer's side-events in the Green Zone, outside the easy reach of negotiators who often confine themselves to the Blue Zone due to their heavy responsibilities in the negotiations and the fact that their meeting rooms and office are located in the Blue Zone. The result will be, we believe, a significant deterioration of the impact of side-events on the governmental negotiations. In addition, it appears as if Observers will again be excluded from Contact-Group meetings in Bonn, Germany. The deteriorating access of Observers to even passively observe negotiations is troubling and run counter to the object and purpose as well as the express words of the Aarhus Convention. That such action is being supported by Aarhus Member States is troubling and we suggest raises an issue as to whether or not these States are complying with their international legal obligations under the Aarhus Convention.

Finally, while recognizing the complex jurisdictional considerations that may arise we hope that this Committee will view any future communication concerning the UNFCCC process very seriously especially when a meeting is held in a country under this Committee's jurisdiction.

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