

**Meeting of the Parties to the Convention on Access to Information,
Public Participation in Decision-making and Access to Justice
in Environmental Matters**

Fourth session

Chisinau, 29 June - 1 July 2011

General Segment

Item 4 (c):

**Substantive issues: public participation
in decision-making**

**Statement by the Chair of the Task Force on Public Participation in
Decision-making (PPDM) to MoP-4, Chisinau, June 29th, 2011**

Background

The Task Force was established by the extraordinary Meeting of the Parties in April 2010. It was preceded by an ad hoc Expert Group that met on one occasion to share experiences and gather information and to agree a draft Terms of Reference for the Task Force. Ireland had undertaken to lead this work and I was honoured to be appointed to act as Chair for both bodies.

The report of the Expert Group provides a record of the status of implementation of Articles 6, 7 and 8 in a variety of different contexts and also an overview of the many anomalies, difficulties and obstacles that still persist. It is a valuable resource for the Task Force to draw on and there is probably a good case of convening the experts again in some forum.

The terms of reference of the TF included:

- To share expertise and gather information on public participation;
- To identify common difficulties in implementation and obstacles at different levels;
- To prepare draft recommendations on improving implementation with reference to different levels of decision-making;
- To investigate public participation in particular fields of activity covered by specific regulations;
- To consider innovative forms and tools of public participation beyond traditional consultation procedures;
- To examine how NGO capacity in this area might be developed and similarly how the work of the Aarhus Centres might be enhanced;
- To co-operate with the Espoo Convention and the SEA Protocol and other relevant bodies and organizations.

This is not an exhaustive list but gives the major foci.

The Task Force was requested to undertake the tasks above in the remaining intersessional period leading to this Meeting of the Parties and, if its work plan is endorsed by this Meeting, to continue with this work and to address specific relevant activities in focal area III of the Strategic Plan 2009-2014, notably objectives III 3, III 4, III 5 and III 7.

Task Force – first meeting

The Task Force held its first formal meeting over two days at the end of October 2010 in Geneva. Representatives of only 8 Parties attended. This is disappointing and something of a puzzle given that representatives of 21 parties attended the Expert Group meeting. I would like to take this opportunity to urge Parties and others to send delegates to future meetings of the Task Force so as to contribute their experiences, participate in the debate and contribute to the work.

Sharing of information and experience

The Task Force shared experiences in good practices in PPDM and considered a template for the collection of case studies. An opportunity was allowed for amendments to this template to be submitted. The template will be put online in the very near future and I invite everyone to use it and send good practice case examples to the secretariat.

Challenges to the successful implementation of PPDM were also considered with reference to the work of the Expert Group and the national implementation reports. As well as the many challenges already identified by the Expert Group particular further obstacles such as poverty were identified. A presentation from The Access Initiative illustrated how disadvantaged communities can experience major constraints preventing or reducing their involvement in PPDM.

Innovative forms of public participation were also considered. A presentation was made via video-link by an expert from the UK. The expert addressed the latest methods of public participation using social networking media and the internet. This is an evolving area that requires further attention and liaison with the Task Force on Electronic Information Tools. However, the over-reliance on electronic means of communication as the sole source of information in some countries has also been flagged as a cause for concern.

A number of participants made presentations on the topic of capacity-building for non-governmental organizations and the strengthening of civil society. These presentations are detailed and are available on the website.

Workplan 2011 -2014

Under this heading perhaps the most significant theme to emerge was the series of requests from various bodies for cooperation with the Task Force. This is gratifying in that it confirms the appropriateness of its establishment but is of concern in that it highlights the extent to which public participation is seen as problematic and underdeveloped in a wide variety of contexts.

The 3 bodies requesting collaborative activity are:

- The Water and Health Protocol
- The Aarhus and Nuclear Initiative and
- The Espoo Convention and the Protocol on Strategic Environmental Assessment (SEA)

These bodies made presentations to the Task Force meeting in October and it is proposed to hold joint activities with each of them back-to-back with meetings of the Task Force over the next intersessional period if the MoP agrees to endorse this work plan. They will be excellent opportunities to explore the implementation of the Convention in particular contexts and regulatory regimes and also at different levels in accordance with some of the specific terms of reference.

In relation to one of the collaborations some initial exploratory work has begun. As Task Force Chair I was invited to attend the Water and Health Protocol's 2nd MoP in Bucharest in November last. It was evident there that they regard public participation as an area where they are continuing to experience considerable difficulty. They are looking to the PPDM Task Force for guidance and assistance in this area.

Because all currently proposed Task Force meetings are of the joint activity type there is some concern that there may not be sufficient time for the Task Force to attend to its other agenda items that do not intersect with these particular themes. This will require further consideration because of the resource constraints that are affecting all sectors including the lead country. It will require some creativity to achieve some of the objectives in the Task Force's workplan. We may have to consider conducting workshops in less expensive settings, perhaps in local communities, with multilingual colleagues doing the translation.

Recommendations on PP

An initial provisional list of recommendations was discussed at the first meeting. This was compiled from a sample of the academic literature from both sides of the Atlantic and from the recommendations of the Compliance Committee. It was agreed to provide a revised and elaborated draft to the next meeting of the TF in late 2011 or early 2012. It is intended to engage a consultant with appropriate specialist expertise to undertake this work in the second half of this year. He or she will prepare this draft to be ready for consideration by the TF at its next meeting.

All of the above has to be undertaken with reference to the revision of the Implementation Guide (which is, I understand, nearing completion) and to the Convention's communications strategy.

Co-operation with the Task Force on Access to Justice and the Task Force on PP in International Forums will be required to ensure appropriate synergies.

To date, both in the Expert Group and the first meeting of the Task Force, although a great deal of ground was covered, there was still a sense of being in a preparatory phase awaiting approval to proceed with the more substantive elements of the workplan. It is hoped that the endorsement will be received to proceed to develop all the components of the work plan as proposed by the Task Force and the Working Group of the Parties.

It is good to note in the Synthesis Report prepared for this meeting that there are many positive developments including:

- Countries of South-Eastern and Eastern Europe, the Caucasus and Central Asia reported significant progress in the development of legislative and regulatory frameworks implementing article 6.
- Many reporting Parties mentioned synergies between the Aarhus Convention and the Espoo Convention with regard to public participation procedures.
- It has been reported that the implementation of the Compliance Committee's recommendations led to the incorporation of many relevant provisions of EU legislation into national legal frameworks.
- The majority of reporting Parties mentioned that the requirement of article 6, paragraph 4, for early public participation, when all options are open, has been incorporated into national legislation.

At the same time some of the previously highlighted challenges remain:

- Information was limited with respect to recent efforts to improve procedures on public participation and to promote access to justice.
- Sometimes framework laws are not accompanied in time by regulations stipulating details on public participation procedures and this may impede enforcement of the laws.
- Attention should be given to the definition of the "public concerned" so as to avoid a very narrow interpretation that would considerably limit public participation opportunities.
- Apart from the lack of adequate regulation, including with regard to early notification, implementation problems mentioned by countries in the EECCA region included the lack of procedures for taking comments into account and the lack of financing.

Conclusions

- Significant progress is noted in all reporting Parties in elaborating legislation and developing practice on access to information and public participation, according to the requirements set by the Convention.
- To enhance public participation in decision-making, it would be useful for Parties to continue capacity-building activities for public authorities and other stakeholders, including the dissemination of information material on laws and trainings. The use of electronic tools has boosted implementation of the public participation provisions of the Convention; however, these should not be the only form of public participation.

A final personal observation:

The absence of definitions of 'decision' and 'decision-making' in the text of the Convention may be contributing to the difficulties of implementing the public participation provisions of the Convention. Different forms of decision-making permit or prevent certain forms of PP. The focus is on the public participation rather than the decision-making. I hope we may find a way to address this in the course of the work of the Task Force.

Phil Kearney,
Chair,
TF on PPDM