

Consultation Institute submission to the 24th Meeting of the Parties to the Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters, July 1 – 3 2020

Item 3 (c) Public Participation in Decision-making

The Consultation Institute has 17 years' experience of advocating *best practice* in public engagement and consultation and works with many hundreds of practitioners across the full spectrum of public services and stakeholder management environments. It has followed progress on the implementation of the Aarhus and related conventions very closely and sent representatives to a succession of meetings in Geneva and elsewhere.

This submission is a reflection of our recent experience, and is, in part, a commentary on the ***Note by the Chair of the Task Force on Public Participation in Decision-making on the possible future directions for the work***¹ as circulated earlier this year.

Introduction

The UK has suffered an extended period of Lockdown, and, as in other countries seen considerable disruption to planned public engagement across all Sectors of the economy. For infrastructure projects and other Aarhus-covered activities, it has caused delay and confusion. It has increased community anxieties and obliged developers, project sponsors and state agencies to reconsider their approach in the light of social distancing rules. The Institute has led the way in assessing the implications and has now launched a ***Consultation & Restart Service*** to assist organisations meet evolving standards and new notions of best practice.

Many of the challenges chime with issues raised in the Note by the Chair of the Task Force. A short commentary may therefore prove useful

Issue One – The Maastricht Recommendations on Promoting Effective Public Participation

At Paragraph 6:

The survey and the subsequent discussion at the Task Force meeting have shown that the Maastricht Recommendations provided helpful guidance to authorities when carrying out public participation procedures

It is now several years since the Maastricht document was published and could not possibly have anticipated the impact of a pandemic that has, almost overnight obliged *consultors* and project sponsors to adjust their modus operandi. Internet usage has increased and the range of digital engagement tools, vastly increased.

¹ http://www.unece.org/fileadmin/DAM/env/pp/wgp/WGP_24/AEC/Inf.2_Chair_s_Note_PPDM.pdf

In addition, home working has dramatically increased the propensity to use video-conferencing and other collaborative technologies.

The current Maastricht recommendations are strong on oral submissions (at paragraphs 116-123) but weak on online consultations (at paragraphs 114-115), where the hazards and potential misuse of technologies need to be highlighted and, maybe a *Code of practice* considered. Over-reliance on online technologies for the publication of information and the conduct of dialogues carries risks of unfairness, The Institute supports strengthening this Guidance, and making further investments in associated training (see Issue Five below)

Issue Two – Vulnerable and Marginal groups

At Paragraph 7:

The Task Force ... will debate in greater details participation of vulnerable and marginalized groups in decision-making and will allow for exchange of practices that facilitate more effective public participation without entailing additional significant resources on the part of public authorities.

Recent experience of COVID-19 has exacerbated health and social inequalities. In the UK, we have mostly abandoned the use of the term ‘*hard-to-reach*’ in favour of ‘*seldom-heard*’, but irrespective of terminology, we believe that dialogues with credible representative groups in this area is now a priority. We are, however, cautious about the aspiration to focus upon this requirement at no additional cost. Experience suggests that this is unrealistic.

Issue Three – A shrinking space for civil society

At Paragraph 13.

With regard to environmental rights 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 ...

We are also concerned about this trend. As economies emerge from the pandemic, there will be political and institutional pressure to proceed with large infrastructure projects and prestige investments. Some of these will be controversial, especially if viewed as contrary to climate change policies, and the trade-offs between these pressures will need unrestricted public participation and engagement. Whilst large national NGOs can fundraise through crowdsourcing and high net worth donors, local community groups are seldom supported and funded. A greater emphasis on this will be welcomed.

Issue Four – Climate change

At Paragraph 17.

Due to continuous interest of public participation in climate change related decision-making, it is suggested to also look at this subject.

The Institute welcomes this commitment. Before the pandemic about two-thirds of UK local authorities (250+) had declared a ‘climate emergency’ and were expected to adopt ambitious programmes to reduce carbon emissions and their exposure to climate-related problems. Whilst attention is temporarily diverted, the Institute expects a groundswell of stakeholder and public interest in pursuing such policies, with inevitable implications for the nature and content of the debate about environmental protection.

This is particularly relevant with major transport or energy initiatives. In 2019, a notable High Court case ruled that it was not lawful for the UK Government to disregard its commitments under the Paris Agreement when it gave approval to a third runway at London Heathrow Airport. Lawyers now speculate that that this may become a factor in all major investment decisions, and we expect to see vigorous campaigning by environmental groups and others when such projects are promoted. We welcome the commitment to examine the forces at work here and to ensure that public participation methods can accommodate a healthy debate.

Issue Five – Capacity-building and training

At Paragraph 18.

Training 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.

This has to be a priority, but is often much more challenging than it seems. Traditional ‘classroom’ training has many advantages, including bringing people together to share experiences in a transboundary context. For the time being, social distancing has prevented this, and the Institute (having developed and delivered more specific consultation/engagement training courses than anyone else in the English-speaking world) has found that the appetite for online *e-learning* has proved an almost-satisfactory alternative. Although developed primarily for the UK market, our extensive suite of cost-effective online courses² is now being used by international agencies. We are currently assessing the possibility of converting them for use in a wider multinational context, but it is clear that the best solution is for the Task Force to take a central initiative.

Summary

In terms of public engagement, we are at a critical moment. Trust in governments and state institutions has been affected by the pandemic; some favourably and others unfavourably. But a public that was once disinterested and feeling largely unaffected by external economic or political shocks is suddenly more aware that everyone is vulnerable to the unexpected. The Institute believes this will result in higher awareness and a greater interest in participation. With technology barriers being overcome, and advocates of major change in society and business able to see how behaviour change can happen, we foresee a greater interest in all developments that might impact the environment.

For that reason, the work of the **Task force on public participation** is uniquely important and we are happy to assist in its deliberations

**Quintin Oliver,
Chair, The Consultation Institute**

² <https://www.consultationinstitute.org/e-learning/>