



## **Submission to the 24th Working Group of the Parties to the Aarhus Convention**

### **Promotion of the principles of the Convention in international forums**

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In this submission, we wish to present the views of European civil society organizations members of the ECO Forum relating to future work on the promotion of the principles of the Convention in international forums to further the implementation of article 3.7 of the Aarhus Convention. We welcome the work accomplished by the Secretariat, the Parties and other stakeholders as reflected in the report on the implementation of the work programme for 2018–2021 and appreciate the suggestions for future work highlighted in the note by the chair of the thematic session on promoting the application of the principles of the Convention in international forums on possible future directions for the work, including in relation to capacity building for government officials and negotiators and the suggestion to develop a guide on hosting international events to assist host countries in applying good practices.

In the first part of this submission, we propose additions to the agenda of the thematic session on public participation in international forums (PPIF) to be held in October 2020 at the session of the Working Group of the Parties. In the second part of the submission, we put forward issues that we believe should be reflected in the decision related to PPIF to be adopted by the 2021 Meeting of the Parties and/or addressed through intersessional work to be set out by the 2022-2025 work plan.

#### **A. Additions to the agenda of the thematic session on PPIF in October 2020**

##### ***1. The impact of Covid-19 response measures on PPIF***

In response to the ongoing pandemic, the United Nations have taken a wide range of steps to ensure the respect of public health measures, including the cancellation or postponement of many meetings and the replacement of in-person events with web-based consultations. These decisions present governments, UN agencies and civil society and Indigenous Peoples representatives with unprecedented challenges regarding the imperative of ensuring public access to information, public participation and access to remedies, in relation to international forums in matters relating to the environment.

The Aarhus Convention Task Force on Public Participation in Decision-making has recognized that “the exclusive use of electronic tools for public participation can result in a lack of transparency, feedback and debate, as well as a lack of clarity on how public comments will be taken into account”<sup>1</sup> and that drawbacks from the use of electronic tools for participation include “cost (e.g., for

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<sup>1</sup> Report of the Task Force on Public Participation in Decision-making on its first meeting, 2010, ECE/MP.PP/WG.1/2011/5

video-streaming), difficulties in arguing with someone behind a screen, and in gathering and producing collective intelligence”.<sup>2</sup> In our view, key concerns also include the exclusion of parts of the affected public, particularly those constituencies that are most directly affected and might not have the means for participation without encouragement and support or for whom the use of the internet is neither free or safe. In this regard, adopting a gender-sensitive approach is of particular importance. Additional impairments include: poor internet connection, lack of technological literacy, less provision of translation, and inadequate notice periods, as well as the quality of the engagement that is possible online.

The Parties to the Aarhus Convention recognised in the Maastricht Declaration that the economic crisis that happened at the time “should not be seized as an excuse to cut down on environmental protection and procedural rights” and that “in times of economic crisis, access to information, participation and access to justice are even more important, as the focus on solving the crisis has in many cases led to increased pressure to weaken measures aimed at protecting the environment.” Clearly, this statement is applicable to the current intertwined public health and economic crisis as well. Similarly, human rights institutions have emphasized the importance of upholding public participation in times of the Covid-19 crisis.<sup>3</sup>

In order to uphold environmental democracy and particularly the adherence to the principles of the Convention in international forums in the current circumstances, it is crucial that the Working Group of the Parties carefully considers the impact of the Covid-19 response on the modalities for public participation and identifies good practices and lessons learned. **To address issues specific to international forums, these issues - in particular the use of remote-participation modalities - we would like to request the inclusion of a short panel dedicated to these issues during the next thematic session on public participation in international forums, reflecting both the experience of a UN forum with these modalities as well as that of civil society.**

## **II. Geoengineering and the definition of international standards**

Geoengineering refers to a set of proposed techniques to intervene in and alter earth systems on a large scale, particularly through manipulating the climate system. In the context of continuing climate change and lack of governmental action in response, a series of large scale technological proposals for climate manipulation have emerged. Although there is no universally agreed definition of geoengineering, it covers two broad approaches. The first is Carbon Dioxide Removal (CDR) which aims at removing CO<sub>2</sub> from the atmosphere and storing it. The second, Solar Radiation Management (SRM) aims at ‘offsetting’ the warming impact of greenhouse gases by blocking incoming solar radiation, reflecting more of it into space, or allowing more heat to escape the earth’s atmosphere. Key concerns about geoengineering centre around the fact that the scale at which these technologies will need to be deployed to have an impact on climate change carries a risk of very serious impacts on humans and ecosystems - and could also make climate change worse. There are also serious concerns that it risks delaying climate action in the hope of a technological fix and deepens global inequities.

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<sup>2</sup> Report of the Task Force on Public Participation in Decision-making on its fifth meeting, 2015, ECE/MP.PP/WG.1/2015/4

<sup>3</sup> eg UN expert on the rights to freedoms of peaceful assembly and of association, Mr. Clément Voule “States responses to Covid 19 threat should not halt freedoms of assembly and association” April 2020 <https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=25788&LangID=E>, Office of the High Commissioner of Human Rights “Emergency Measures and Covid-19: Guidance” April 2020 [https://www.ohchr.org/Documents/Events/EmergencyMeasures\\_COVID19.pdf](https://www.ohchr.org/Documents/Events/EmergencyMeasures_COVID19.pdf)

An international voluntary standard which covers geoengineering is currently being discussed within the International Standardisation Organisation (ISO) process, with which Aarhus parties are connected. NGO concerns about this include (among others) that the highly technical and confidential nature of ISO processes prevents communication of these discussions, in breach of the Almaty guidelines. In addition, NGOs view the proposed standard as stepping beyond the remit of the ISO by an enabling framework for geoengineering projects, thereby pre-empting democratic discussion and public engagement with policy/law-making on the controversial issue of geoengineering in MEA frameworks, discussed further below.

### **III. International Civil Aviation Organization**

We welcome the inclusion of further discussions related to the International Civil Aviation Organisation (ICAO) at the next PPIF session. Civil society organisations have sought to raise the lack of transparency at this organization through various channels, including through ICAO itself, but ICAO continues to make closed door meetings a standard practice, despite its own rules recommending that meetings be open to the public.

During the covid-19 crisis, airlines have continued to affirm their commitment to climate action, partly to secure multi-billion dollar public bailouts without excessive public backlash, while at the same time lobbying fiercely behind ICAO's closed doors to revise the only international climate policy covering international aviation, the Carbon Offsetting and Reduction Scheme for International Aviation (CORSIA).

The lack of transparency at ICAO greatly contributes to facilitate this type of two-faced approach by industry. In addition, several parties to the Aarhus convention hold significant voting power at ICAO (being members of the ICAO Council, a powerful political body), and fail to respect the principles of the Aarhus convention by failing to publish all documents submitted to ICAO and holding all deliberations behind closed doors.

## **B. Issues to be addressed by the Meeting of the Parties and in future intersessional work**

### **I. Implementation of paragraph 15 of the Almaty Guidelines on ensuring balanced and equitable participation**

In the context of a global shrinking of civil society space and encroachment on environmental democracy, the Aarhus Convention is more than ever a critical instrument to protect the procedural rights of members of the public in environmental decision-making. The promotion of the principles of the Aarhus Principles in international forums is critical to ensure that communities impacted by environmental policies have a say in decisions impacting them and to ensure that decision making remains legitimate by responding to the needs and concerns of the public affected. In this context, we would like to emphasize the importance of paragraph 15 of the Almaty Guidelines which reads:

*Where members of the public have differentiated capacity, resources, socio-cultural circumstances or economic or political influence, special measures should be taken to **ensure a balanced and equitable process**. Processes and mechanisms for international access should be designed to **promote transparency, minimize inequality, avoid the exercise of undue economic or political influence, and facilitate the participation of those constituencies that are most directly affected***

***and might not have the means for participation without encouragement and support.***

The full and effective implementation of this principle in international forums related to the environment would ensure that participatory processes in these forums contribute to promoting the procedural rights of the public. As stressed by this section of the Almaty Guidelines, the promotion of the Aarhus principles in international forums would require both proactive facilitation enabling the participation of those most impacted as well as preventive measures mitigating the risk of undue influence. However, the participatory processes and stakeholders engagement implemented in many international forums fail to reflect these critical considerations. By reviewing existing modalities at the light of paragraph 15 and promoting the sharing of experience and good practices, the Aarhus Convention process could contribute greatly to aligning modalities for participation and engagement with the principles of the Aarhus Convention. Doing so would ensure that the Aarhus Convention can continue to act as a critical instrument to promote environmental democracy beyond the UNECE region.

**We urge the Parties to mandate specific work on this issue during the next intersessional period, including in the 2022-2025 work plan a public call for submissions, a dedicated workshop with experts from governments, UN forums and civil society organizations, and a technical report on lessons learned and good practices with regards to the measures implemented to ensure a balanced and equitable process in line with paragraph 15 of the Almaty Guidelines.**

During the previous reporting cycle, the Secretariat noted in its synthesis report on the status of implementation of the Convention that the parties very rarely refer to the Almaty Guidelines in their reports.

**We further encourage the Parties to include information on steps taken towards the implementation of the Almaty Guidelines, particularly paragraph 15, in their implementation reports ahead of the next Meeting of the Parties in 2021.**

***II. A continued need for capacity building for delegates of Aarhus parties participating in international forums related to the environment***

Our experience in several UN forums has demonstrated that a real challenge with regards to the implementation of article 3.7 relates to a capacity gap among many governmental representatives regarding the principles and obligations set forth in the Aarhus Convention as well as to how these relate to the negotiations to which they are participating. We welcome the efforts of the Secretariat to remedy this gap, including through the publication of a user-friendly “snapshot” of the Almaty Guidelines and the recognition in the note by the chair of the thematic session of the importance of continued capacity building, including for negotiators. The organizations of informal meetings regarding Public Participation in International Forums held in the context of the UNFCCC over the past three years have proven instrumental to build the capacity of governmental representatives as well as to discuss opportunities to promote these principles in the context of the agenda of each intergovernmental meeting. We are grateful to the UNECE Secretariat as well as to France and Georgia for having co-hosted some of these briefings.

Aarhus Parties should mandate more explicitly their representatives in all relevant forums to promote the Aarhus Principles in these forums in line with their legal obligation under article 3.7. As governmental representatives of Aarhus Parties taking part to relevant forums seldom have expertise specifically related to public participation in environmental governance, specialised capacity building

events should be organised in the lead up or in the margins of these forums in order to provide basic knowledge with regards to the Aarhus Convention, to its implication for international forums and to specific opportunities to promote the principles of the Aarhus Convention in the context of that international forum. **We suggest that the importance of such targeted capacity building events be reflected in the work plan and MOP decision on PPIF.**

### **III. Emerging issues and continued monitoring of specific processes**

#### **1. Role of the host country of international forums or processes**

Host countries of international forums, both ongoing processes and larger individual meetings, have a special responsibility when it comes to implementing the principles of the Convention and the Almaty Guidelines in the context of these forums. While some countries have made efforts to fulfil this responsibility in the past, and to inform the Parties of the Convention about their practices,<sup>4</sup> little guidance is available regarding opportunities for such Parties to fully implement and promote the Aarhus Convention obligations and principles.

**We welcome the proposal by the chair of the session to develop a guide for host countries on best practices regarding access to information and public participation when hosting international events. In addition, we suggest holding a panel on this issue at the seventh Meeting of the Parties in 2021, in order to facilitate an initial conversation between Parties and stakeholders in advance of the development of the guide in the intersessional period.**

#### **2. Carbon trading and other market-based mechanisms established under relevant international processes**

An increasing number of international forums rely on market based mechanisms to advance environmental objectives and to incentivize the internalization of environmental cost of certain activities. However, in order to make these schemes effective and to prevent activities under these mechanisms from causing harm to communities, effective public participation in their design and in the implementation of projects is essential as well as the adoption of adequate remedies for any member of the public whose rights are adversely impacted by projects implemented under these schemes. When such safeguards and remedies are not implemented, these mechanisms undermine existing rights for local communities and indigenous peoples, thereby resulting in harms and human rights violations. These challenges have been discussed repeatedly under the Aarhus Convention, for instance in relation to the carbon trading mechanisms established under the UN framework agreements.

**We call upon the Parties of the Aarhus Convention to continue to review these important issues during the intersessional work set out in the future MOP decision concerning PPIF and to recall the importance due process, human rights safeguards and adequate remedies in any such market-based mechanism established under the international instruments related to the environment.**

#### **3. Global governance related to geoengineering**

At present, there is a very concerning lack of international governance and oversight of both research into and implementation of geoengineering technologies. There are no international regimes which

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<sup>4</sup> see e.g. Report of the nineteenth meeting of the Working Group of the Parties:  
[https://www.unece.org/fileadmin/DAM/env/pp/wgp/WGP\\_19/ECE\\_MP.PP\\_WG.1.2015.2.eng.pdf](https://www.unece.org/fileadmin/DAM/env/pp/wgp/WGP_19/ECE_MP.PP_WG.1.2015.2.eng.pdf)

specifically address geoengineering although existing regimes have rules relevant to it. Within the Convention on Biodiversity (CBD) and the London Convention on the Prevention of Marine Pollution by Dumping of Wastes and Other Matter 1972 (London Convention and Protocol/LCLP), for example, parties have adopted decisions which could be viewed as amounting to a de facto moratorium on geoengineering techniques (the CBD) or a restriction on their development, with the exception of scientific research that falls within strict requirements (the LCLP). The International Panel on Climate Change (IPCC) has expressed concern as to the uncertainties and potential risks posed by these technologies. Although bioenergy with carbon capture and storage (BECCS), was featured in the Fifth Assessment Report (AR5), the IPCC has expressed deep concerns about solar radiation management. Geoengineering and its impacts are being discussed in a range of other MEAs and related bodies including UNEA and the Montreal Protocol.

The wide-ranging nature of geoengineering proposals and their potential impacts make them relevant to a wide range of MEAs, including the UNFCCC and the Aarhus Convention as well as Human Rights treaties and related bodies. However, at present discussions around geoengineering in MEAs are patchy and uncoordinated, with varying degrees of both member state and public participation and understanding. Geoengineering has also yet to be considered in detail by human rights bodies. However, as the gap between climate targets and state action expands, the calls to use such technologies will become more vocal and the need for transparent, informed discussion about the risks they pose will become increasingly important. **For this reason, we view it as key that the Aarhus Convention takes note of geoengineering as an emerging area of concern, where public access to information and participation is a key requirement for discussions and decision-making.**

#### 4. UNEA

It should be noted that while there is no formal stakeholder engagement strategy at UNEA, environmental NGOs influence governments and other stakeholders in informal settings wherever possible. Good practices have developed over the years; however, established practices could anytime be taken away by states less favourable to public participation. According to the Rules of Procedure (Rule 67), all meetings in the UNEA process are usually held in public, but the chair can always decide to exclude non-state actors. Moreover, the structure for stakeholder engagement at UNEA - organised into 9 constituencies under the Major Groups system that has come out of the Rio process - has proved to be challenging for environmental NGOs to ensure that their special status awarded under the Aarhus Convention is fully respected. Because environmental NGOs form part of the general NGO Major Group in UNEA, the voice of environmental groups, at the highest UN body dealing with the environment, is equated with other NGOs who may focus on very different causes. This structure does not appear to be designed in a way which is in line with the principles of the Aarhus Convention which recognises the special role of environmental organisations in environmental decision-making.

The UNEA member states that are also Aarhus Convention Parties should therefore strive to replicate, as far as possible, the engagement of environmental groups and promote this best-practice within UNEA. The participation of NGOs during UNEA sessions may vary greatly as it is the Chair's discretion to decide whether to allow stakeholders to take part or not, and, unfortunately, NGOs and other stakeholders have occasionally been excluded from meetings with governments. This is a particular problem now that virtual meetings may be organised in the context of addressing participation during the COVID-19 crisis. As well as the issues with virtual participation that have been outlined in the section above, such meetings may be especially problematic in UNEA given that the best opportunity for environmental NGOs to influence discussions at UNEA is informal.

## 5. Sustainable Development Goals-related processes

Regarding the processes relating to the Sustainable Development Goals, we are concerned about recent developments threatening stakeholder participation in the High Level Political Forum, particularly the “no-objection” procedure which allows any UN member state to effectively veto NGO participation in the negotiations. **We call on Aarhus parties to ensure that such an exclusion of civil society from the process does not take place and that the Almaty Guidelines are implemented with regard to the High Level Political Forum.**

## 6. United National Human Rights Council: Open-ended intergovernmental working group on transnational corporations and other business enterprises with respect to human rights

As the negotiations for this further Human Rights Convention continue, we are concerned with the extent to which the drafts fail to adequately reflect and build upon the environmental human rights at the heart of the Aarhus Convention. We are particularly concerned at the lack of advocacy from parties to the Aarhus convention in this regard and the extent to which they are exercising their obligations to uphold the principles of the convention in international fora, not just in terms of how the negotiations are conducted, but much more so in respect of the interventions and submissions made to support Aarhus principles in the development of the further drafts. Particularly in the context of the extraordinary rights being afforded to transnational corporations and other business enterprises, through the expansion of free trade agreements, it is imperative that a robust instrument is developed to maintain balance, and also to ensure it does not operate to undermine the Aarhus Convention and other like-minded agreements such as the Escazu Agreement.

**We would therefore call upon the Parties of the Aarhus Convention to continue to review this important issue during the intersessional work set out in the future MOP decision concerning PPIF, and to recall in particular the role and locus standi afforded to eNGOs as a voice to represent the voice of the voiceless environment as “the fish cannot go to court”, and the need to be able to take preventative action to protect the environment recognised by the Aarhus Convention and to seek proactively these, and other key Aarhus Principles to be reflected in the text of the new treaty. We also call for practical financial and resource support for the secretariat to enable the following of this convention and other relevant agreements, without that over-burdening the Conventions’ valued staff and all elements of their work.**

## 7. Meeting of the Parties in December 2020 to the UNECE Convention on Environmental Impact Assessment in the transboundary context, “The Espoo Convention”.

Our environment has become increasingly vulnerable, given the extent to which its resilience and ability to recover has been compromised. This means the fundamental objective of the Aarhus Convention in respect of protecting the right of every person to an environment which is adequate to his or her health and wellbeing, has to be viewed ever more vigilantly in how we consider activities, plans and policies which impact our environment from outside our own countries, in addition to those within our own countries. The Espoo Convention is critical in this regard.

**We would therefore call upon the Parties of the Aarhus Convention to be vigilant in upholding the principles of the Convention in supporting the work of the Espoo Implementation Committee, and in the conduct of the Meeting of the Parties in December, while of course respecting the separate and complementary nature of these two conventions.**