PUBLIC PARTICIPATION

PROPOSAL FOR TERMS OF REFERENCE FOR A TASK FORCE ON PUBLIC PARTICIPATION IN DECISION-MAKING

Proposal submitted by the Chairperson-designate of the Ad Hoc Expert Group on Public Participation

1. Since the entry into force of the Convention, implementation of its public participation pillar has posed serious challenges and continues to do so today. At both the second and third sessions of the Meeting of the Parties, various problems relating to the implementation of the second pillar of the Convention were noted and discussed. Drawing from national reports on implementation, the synthesis report presented at the second session noted that in most countries of Eastern Europe, Caucasus and Central Asia (EECCA), implementation of the public participation pillar was at a preliminary stage, and that it also required significant improvement in countries in South-Eastern Europe (SEE). Even in European Union (EU) and Western

1 In its capacity as lead country, Ireland nominated Mr. Philip Kearney to serve as Chairperson of the Ad-Hoc Expert Group. This note was prepared in consultation with the Bureau and with the assistance of the secretariat.

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countries, where overall implementation was considered to be more advanced, implementation of the public participation pillar was judged to be more problematic than that of the information pillar.

2. During preparations for the third session of the Meeting of the Parties (Riga, 11–13 June 2008), the Bureau noted that while there were task forces addressing the Convention’s first and third pillars (the Task Force on Electronic Information Tools and the Task Force on Access to Justice, respectively), little supranational coordination had taken place with respect to joint activities focused on public participation in decision-making. An important and worthy exception was the workshop on public participation in strategic decision-making held, at the initiative of Austria and Bulgaria, in December 2007 in Sofia (see http://www.unece.org/env/pp/pps.htm).

3. In Riga, the Meeting of the Parties found progress made in the area of public participation in decision-making to be unsatisfactory. The synthesis report presented to the Meeting of the Parties observed that implementation of the public participation pillar was still problematic, especially in EECCA and SEE countries. Although certain advances had been made in the development of general legislative frameworks, uniform regulations were often lacking. Obstacles were created by the lack of adequate control by public authorities over the quality and level of public participation in decision-making, especially where developers were responsible for ensuring public involvement. Although substantial progress had been made in the EU, in some countries there appeared to be a trend to narrow the interpretation of the public concerned as well as the standing criteria for non-governmental organizations.

4. During the discussions in Riga, many delegations expressed concern about problems hampering implementation of the Convention’s public participation pillar, as demonstrated by the national implementation reports and the Compliance Committee’s report, and they perceived a need for further work in this area. Through the Riga Declaration, Parties and other stakeholders recognized that procedures enabling the public to participate effectively in decision-making, whether on specific activities or on more strategic levels, lay at the heart of the Convention, and that despite this, significant challenges in creating the conditions for effective participation remained, such as failure to adequately notify the public concerned, lack of early opportunities for participation, unwillingness among public authorities to take due account of comments received, insufficient expertise among the public or public authorities, and difficulties in applying public participation procedures in transboundary contexts. They further recognized the need to increase activities in this area in such a way as to address these challenges, including by engaging more fully with the experts responsible for designing and facilitating public participation procedures. The Meeting of the Parties also agreed to address implementation of the Convention’s second pillar by establishing an intersessional body under the authority of the Working Group of the Parties in the form of an Ad Hoc Expert Group on Public Participation, as a first step.

5. Through decision III/9 on the work programme for 2009–2011 (ECE/MP.PP/2008/2/Add.17), the Ad Hoc Expert Group was given a mandate to coordinate information-sharing on public participation in decision-making, including through the collection of good practice examples, and to advise the Working Group of the Parties on the terms of reference for a task force on public participation. The Meeting of the Parties further agreed that
such a task force would be established as soon as possible and at the latest by the next ordinary meeting of the Parties, on the basis of a draft decision to be prepared by the Working Group of the Parties. Among the objectives and expected outcomes of the work to be undertaken during the intersessional period, as specified in the work programme for 2009–2011, is the preparation of draft guidance on the implementation of articles 6, 7 and 8 of the Convention or parts thereof.

6. Decision III/8 on the strategic plan for 2009–2014 (ECE/MP.PP/2008/2/Add.16) provided further directions for future work on public participation in environmental decision-making. Through strategic goal III, the Parties agreed to endeavour to implement, inter alia, the following objectives as far as possible, taking account of national circumstances:

   (a) To assess, further reflect on and, where appropriate, elaborate on the provisions on public participation in decisions having a significant impact on the environment, encompassing, inter alia, product-related decision-making (objective III.3);

   (b) To apply, keep under review and further develop the provisions of the Convention relating to public participation in the preparation of plans, programmes and policies relating to the environment, as well as executive regulations and other generally applicable legally binding normative instruments that may have a significant effect on the environment, to enhance public participation from an early stage in strategic decision-making processes. This should be done with appropriate public involvement and taking fully into account the specific nature and constraints of such processes and related obligations under other multilateral environmental agreements, such as in particular the Protocol on Strategic Environmental Assessment to the Convention on Environmental Impact Assessment in a Transboundary Context and by involving its bodies in such processes (objective III.4);

   (c) To encourage the development and application of innovative forms and tools of public participation beyond traditional consultation procedures, to support the development of non-governmental organizations’ capacity and to strengthen civil society, in order to enhance the effectiveness of public participation (objective III.5);

   (d) To explore possibilities for the development of measures under the Convention to ensure greater opportunities for public participation in policy formulation and implementation contributing to sustainable development (objective III.7).

7. The offer of Ireland to lead the work of the Ad Hoc Expert Group on Public Participation was welcomed by the Meeting of the Parties. Since the mandate of the Ad Hoc Expert Group given by the Meeting of the Parties did not limit the Expert Group’s membership, the lead country, in consultation with the Bureau, agreed that all national focal points and other stakeholders should be invited to nominate experts to participate in the activities of the Ad Hoc Expert Group.

8. At its eleventh meeting, the Working Group of the Parties is invited to consider a draft decision on the terms of reference for a task force on public participation in decision-making as set out in the annex to this paper. The draft decision was prepared by the Chairperson-designate of the Ad Hoc Expert Group on Public Participation in consultation with the Bureau and with the assistance of the secretariat. The Working Group is further invited to consider the revisions and
comments to the draft decision from the Ad Hoc Expert Group on Public Participation, revise the
draft as necessary and forward it for adoption by the Meeting of the Parties. The draft decision
could be adopted at an extraordinary meeting of the Parties held in combination with the first
session of the Meeting of the Parties to the Protocol on Pollutant Release and Transfer Registers,
expected to take place in 2010. This would take into account the wish of the Meeting of the
Parties that the task force be established “as soon as possible”.

9. At its first meeting, the Ad Hoc Expert Group on Public Participation is invited to consider
the draft decision set out in the annex to this paper, to prepare such revisions to the draft as it
deems necessary and to forward its proposed revisions and comments on the draft to the
Working Group of the Parties for discussion at its eleventh meeting. The Ad Hoc Expert Group
is also expected to coordinate information-sharing on public participation, including through the
collection of good practice examples in the implementation of articles 6, 7 and 8 of the
Convention.
Annex

DRAFT DECISION ON PUBLIC PARTICIPATION IN DECISION-MAKING

The Meeting of the Parties,

Recalling the provisions of articles 6, 7 and 8 of the Convention, which require each Party to ensure, in a differentiated way, opportunities for public participation in decision-making on activities, plans, programmes, policies and legislation relating to the environment, and mindful of the need to strengthen their implementation,

Recalling also its decisions III/8 on the strategic plan for 2009–2014 and III/9 on the work programme for 2009–2011,

Recalling further paragraphs 72 to 74 of the report of the third session of the Meeting of the Parties, as well as paragraphs 4, 13 and 14 of the Riga Declaration, which note, inter alia, that in a significant number of countries major challenges remain with regard to the quality and level of public participation in decision-making, the need for public authorities to provide for appropriate levels of discussion and feedback in the course of public participation in decision-making, and the need to ensure that members of the public, including non-governmental organizations, are afforded appropriate opportunities to participate effectively in environmental decision-making processes,

Taking note of the national implementation reports and the synthesis reports prepared for the second and third sessions of the Meeting of the Parties, which demonstrate that implementation of the public participation provisions of the Convention continues to be problematic and requires significant improvement,

Welcoming the work undertaken by the Ad Hoc Expert Group on Public Participation established by the Meeting of the Parties, inter alia through coordinating information-sharing on public participation, including through the collection of good practice examples in the implementation of articles 6, 7 and 8 of the Convention,

Recognizing the need to ensure that the work on public participation in decision-making under the Convention is given equal attention to that on access to information and access to justice, in order to achieve effective implementation of all three pillars of the Convention,

Recognizing also the need to ensure that the public participation provisions of the Convention are consistently implemented in all areas of activity that fall under the Convention’s scope, taking into account the fact that different types of activities may be governed by regulatory and institutional frameworks that are specific to that type of activity,

Noting that practices of public participation in decision-making may need to take different forms at the national, provincial and local levels,
1. Establishes a Task Force on Public Participation in Decision-making under the authority of the Working Group of the Parties, to continue and further develop the work undertaken by the Expert Group;

2. Requests the Task Force, with the assistance of the secretariat and subject to the availability of resources, to undertake the following tasks in the period up to the fifth session of the Meeting of the Parties:

   (a) Further document and share expertise, experience and good practices concerning public participation in environmental decision-making and the impact of instruments of participatory democracy in decisions related to all dimensions of sustainable development, including through the organization of workshops, the use of the clearing-house mechanism and other types of electronic exchange of information, and the publication of expert studies and a compendium of good practices;

   (b) Identify regional, subregional and national priorities with respect to improving implementation of the Convention’s provisions on public participation in decision-making;

   (c) On the basis of the priorities identified and taking into account good practices in public participation in environmental decision-making, prepare draft recommendations on strengthening implementation of the Convention’s provisions on public participation in decision-making, including draft guidance on the implementation of articles 6, 6bis, 7 and 8 of the Convention or parts thereof;

   (d) Explore ways to ensure that the public participation provisions of the Convention are implemented in a manner appropriate to the level of decision-making (national, provincial and local) and in all areas of activity that fall under the scope of the Convention;

   (e) Investigate possibilities for focusing in more depth on public participation in decision-making in particular fields of activity that tend to be governed by a specific regulatory or institutional framework;

   (f) Assess and further reflect on the provisions on public participation in decisions having a significant impact on the environment, encompassing, inter alia, product-related decision-making, and, where appropriate, develop recommendations as to how these might be further elaborated on;

   (g) Assess, keep under review and, as appropriate, make recommendations for further developing the provisions of the Convention relating to public participation in the preparation of plans, programmes and policies relating to the environment, as well as executive regulations and other generally applicable legally binding normative instruments that may have a significant effect on the environment, in order to enhance public participation from an early stage in strategic decision-making processes;

   (h) Encourage the development and application of innovative forms and tools of public participation beyond traditional consultation procedures, including through the exchange of experience and best practices on modes of participation and on their evaluation and through
the organization of a workshop on new tools and forms of public participation, in order to enhance the effectiveness of public participation;

(i) Examine approaches for developing the capacity of non-governmental organizations and strengthening civil society, inter alia through the exchange of good practices in providing appropriate recognition of and support to associations, organizations or groups promoting environmental protection;

(j) Identify and where possible contribute to the implementation of other capacity-building measures to enhance public participation, including through developing information materials and training activities in accordance with identified user needs at appropriate national, subregional and regional levels;

(k) Explore possibilities for the development of measures under the Convention to ensure greater opportunities for public participation in policy formulation and implementation contributing to sustainable development, including the use of participatory procedures in the revision and/or development of national strategies for sustainable development2;

(l) Explore synergies and possibilities for cooperation with relevant bodies under the Convention on Environmental Impact Assessment in a Transboundary Context and its Protocol on Strategic Environmental Assessment;

(m) Take into consideration the work being undertaken by Governments, international organizations, non-governmental organizations, research institutes and other stakeholders, in order to benefit from this work and avoid duplication;

3. Also requests the Task Force [to present a progress report on its activities, through the Working Group of the Parties, to the fourth session of the Meeting of the Parties, and] to present the [overall] outcome of its work, through the Working Group of the Parties, to the fifth session of the Meeting of the Parties for consideration and, as appropriate, adoption by the Meeting3;

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2 Some Bureau members expressed the concern that the inclusion of this element from the strategic plan for 2009–2014 (objective III.7), despite being directly related to public participation, might overload the task force at this stage, and that it would go beyond the original rationale for establishing such a task force, namely to deal with problems in the implementation of the second pillar of the Convention. Others considered it important to include this element in the draft terms of reference in light of the need to ensure that progress is made on all of the objectives in the strategic plan. Excluding this element would raise the question of which other body under the Convention would be expected to address this issue.

3 The text in square brackets would be included in the event that the decision establishing the terms of reference is adopted at an extraordinary session of the Meeting of the Parties in 2010. If the decision is adopted at the fourth ordinary session of the Meeting of the Parties, scheduled for 2011, the text in square brackets would not be included. This paragraph and the references to the fifth session of the Meeting of the Parties in the chapeau of paragraph 2 have not been fully discussed with the Bureau.
4. *Invites* Parties, Signatories, other interested States, international organizations, non-governmental organizations, research institutes and other stakeholders to participate in the work of the Task Force;

5. *Also invites* Parties, Signatories and other stakeholders in a position to do so to strengthen implementation of the public participation pillar of the Convention at the national level and to make resources available for this purpose;

6. *Welcomes* initiatives taken by Parties, Signatories, international organizations, non-governmental organizations, research institutes and other stakeholders to study good practices, examine practical means of promoting more effective public participation in environmental decision-making and share their findings and experience, and encourages further activities to this end;

7. *Requests* the secretariat to make information on such activities as widely accessible as possible through the Convention’s website and clearing-house mechanism.

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