

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

**Task Force on Public Participation in International Forums
(Third meeting, Geneva, 8-9 November 2007)**

**Synthesis of comments on experience regarding
the application of the Almaty Guidelines**

Prepared by the secretariat

1. Through decision II/4, paragraph 7, the Meeting of the Parties invited Parties, Signatories, other interested States, non-governmental organizations (NGOs), interested international forums and other relevant actors to submit to the secretariat comments relating to their experience regarding the application of the Guidelines for consideration by the Task Force.¹
2. At its seventh meeting in May 2007, the Working Group agreed a procedure for the submission of such comments.² In accordance with this procedure, the secretariat wrote to Parties, Signatories, interested States, NGOs and other relevant actors inviting them to share their experiences with the application of the Guidelines. The extended deadline for comments was 26 October 2007.
3. To date, the secretariat has received comments from three Parties (Denmark, France and Germany) and six NGOs (ECO-Tiras (Moldova), European ECO Forum, International Center for Environmental Research (Georgia), Law and Environment Eurasia Partnership (Kazakhstan), NGO BIOS (Moldova) and the Northern Alliance for Sustainability (ANPED)). The comments of European ECO Forum are a summary of comments made by NGOs in its pan-European network.
4. This paper synthesizes the comments around the following issues:
 - a) Parties' efforts to inform their representatives involved in other international forums about the Guidelines;
 - b) Experience regarding the application of the Guidelines at the national level;
 - c) Experience regarding the application of the Guidelines at the international level.The third topic considers both examples of good practice and the challenges regarding the application of the Guidelines identified in the comments. Some of the comments received address experience with the issues covered by the Guidelines rather than the application of the Guidelines per se. In such cases the paper takes an inclusive approach. The paper ends with some brief concluding remarks.

¹ Decision II/4 of the Meeting of the Parties, ECE/MP.PP/2005/2/Add.5.

² Report of the seventh meeting of the Working Group of the Parties, ECE/MP.PP/WG.1/2007/2, paragraph 27.

I. Parties' efforts to inform their representatives involved in other international forums about the Guidelines

5. Denmark reports that there have been internal consultations with regard to the implementation of the Guidelines between its officials dealing with the Aarhus Convention and those involved in other international forums in matters relating to the environment. It states that the Guidelines have thus been distributed and promoted in its internal networks for environmental conventions.

6. France's Ministry for Ecology, Sustainable Development and Planning reports that, in order to sensitize its focal points in other multilateral environmental agreements (MEAs) to the issue of public participation, in 2006 it undertook a study of the practices of its negotiators with respect to public participation in decision-making on the basis of the Almaty Guidelines. A similar study was undertaken in parallel with a certain number of French NGOs, the idea being to compare perceptions of NGOs with those of the focal points. The conclusions of these studies have been circulated to the Task Force and will be presented at its third meeting on 8-9 November 2007.

7. Germany reports that all relevant bodies of the Federal Government have been informed of the principles of the Aarhus Convention and the Almaty Guidelines. The departments have received German versions of the Guidelines. Additionally, an internal dialogue has been initiated in order to collect and exchange experiences on the application of the Guidelines in international forums.

II. Experience regarding the application of the Guidelines at the national level

8. Denmark reports that it has a practice of including NGO members in its delegations for international environmental negotiations. Its practice is also to involve NGO members in the national process forming the official position for such negotiations as well as in follow-up meetings. For example, there are NGO members as part of the Danish delegation in most of the negotiation meetings for the Convention on Biological Diversity (CBD), and if not it is because they have chosen not to participate. Also, the procedure forming the official Danish position involves NGOs and other stakeholders. The national process in the periods between CBD meetings includes international contact groups for biodiversity and forests and a stakeholder backup group for negotiations under the Convention.

9. In autumn 2006, France's Ministry for Ecology, Sustainable Development and Planning (MEDAD) established a regular consultation process with NGOs regarding preparation for major international environmental events. The objectives of this consultation process are:

- a) to give better visibility to emerging problems (i.e. a prospective role);
- b) to involve NGOs in the preparation of major forthcoming events at a sufficiently early stage in the process (i.e. a role in identifying the priority subjects to which emphasis should be given in the preparatory process);
- c) to communicate the French official position to NGOs *a posteriori* and to discuss the results obtained during the international meetings.

In addition, MEDAD is holding consultations with these NGO partners on a timely basis before major international events.

III. Experience regarding the application of the Guidelines at the international level

A. Examples of good practice

10. Denmark reports that it has promoted the principles of the Aarhus Convention in international forums at both global and regional levels. One such example was during the negotiations at the World Summit on Sustainable Development in Johannesburg in 2002.

11. Germany reports that the internal dialogue it undertook to collect and exchange experiences regarding the Almaty Guidelines showed that some of its representatives considered the concrete applicability of the Guidelines as difficult given the specific autonomous decision structures in the different forums. Nevertheless, the general view was a positive one, namely that the Convention's principles were implemented in the international context by all parties involved even if there was not always a direct reference to the Guidelines. In the case of water-related conventions for example (in particular river basin commissions and agreements on marine protection), the Guidelines' content is de facto implemented through the EU Water Framework Directive's requirements for active public participation. In some cases clear reference has been made in international decision-making procedures to informing the public at the suggestion of Germany, for example in a UNECE document on pipeline safety.

12. Eco TIRAS (Moldova) reports that between 2004 and 2007 substantial progress has been made in involving the public in the transboundary negotiations of Moldova and Ukraine regarding the Dniester River. The negotiations for a new river basin agreement are still not finalised but the process has demonstrated the willingness of Parties to include the public in the process. For example:

- a) NGOs have been included as members with full voting rights in the national working groups tasked with developing the draft Transboundary Dniester Basin Agreement under the framework of the OSCE/UNECE Project "Dniester-1" and "Dniester-2" (2004 – 2007). The draft Transboundary Diagnostic Analysis led to public hearings and emails proposing more than 150 amendments and corrections, the great majority of which have been taken into account by the working groups.
- b) A regulation which will permit the public and other stakeholders like non-involved state agencies and local authorities to comment on the draft decisions of Moldova and Ukraine's "empowered persons" has been drafted under the framework of the 'old' (1994) Agreement of Moldova and Ukraine on Boundary Waters. The regulation will provide access to drafts, time-frames for commenting and public participation in meetings of "empowered persons". The regulation is expected to be signed soon.
- c) A draft Regulation on Public Participation in the Activities of the Dniester River Commission has been developed by NGOs and supported by governments under

the framework of the new draft Agreement on Protection and Sustainable Development of the Dniester River Basin. This document provides access to draft decisions, time for commenting and participation in meetings of the Commission. The right of NGOs to participate in Commission sessions is still to be discussed. The draft Regulation will be signed only when the basic Agreement is approved by both governments.

B. Challenges regarding the application of the Guidelines at the international level

13. European ECO Forum reports that in order to provide a NGO perspective on the issues addressed in the official consultation process undertaken by the Task Force on Public Participation in International Forums, it circulated a short questionnaire to its network formulated as follows:

- a) Does the international forum you are involved in have any formalized rules or procedures concerning access to information, public participation in decision-making and access to justice in environmental matters?
- b) Does the international forum you are involved in have any non-formalized practices concerning access to information, public participation in decision-making and access to justice in environmental matters?
- c) Are there any current or future workplans of the international forum you are involved in that may affect the extent of or modalities for access to information, public participation in decision-making and access to justice in environmental matters?
- d) In particular, what kind of challenges, if any, has your organisation encountered with regard to access to information, public participation in decision-making and access to justice in environmental matters when working with international forums or trying to get involved in their work?
- e) Is there a need to amend the Almaty Guidelines, and, if yes, what would be your concrete textual suggestions?

14. With respect to question (a) above, European ECO Forum reports that its members said that international forums' formalized rules primarily dealt with access to information, less with public participation and seldom with access to justice in environmental matters. In a number of instances, its members were actively involved in the drafting of the rules. However, in almost every case, many of their progressive proposals and ideas were either not supported or disregarded by other stakeholders.

15. European ECO Forum reports that its members indicated that information on forums' formalised rules and procedures concerning access to information and public participation is not widely publicised or even always accessible. Sometimes the rules are complicated and unclear, containing general principles with little by way of their practical application. Another concern was that many of the forums' rules do not define the scope of those who may participate in their proceedings.

16. Regarding question (b) above, European ECO Forum reports that non-formalised practices were mentioned primarily by larger NGOs or NGO networks that have been involved in certain international forums for a long time already. It reports that

information on such practices is seldomly publicised or widely disseminated. In some instances its members indicated that the absence of formalised rules and procedures allowed additional participation opportunities to its members. In other cases, the absence of formalised rules and procedures made it almost impossible to challenge the existing practice and some forums preferred to maintain the practice of “limited and selective” participation rather than formally adopting relevant rules.

17. With respect to question (c) above, European ECO Forum reports that its members’ responses regarding international forums’ current or future workplans largely accorded with the responses obtained during the official consultation process by the Task Force. However, in almost all cases its members indicated that developments had been slow with lengthy and complicated discussions and deliberations. It notes that MEAs which were established or entered into force more recently seem more inclined to develop modalities for access to information and public participation in decision-making (less regarding access to justice).

18. Regarding question (d) above, European ECO Forum reports the following challenges with regard to access to information, public participation in decision-making and access to justice in international forums dealing with environmental matters:

- a) Not all forums have developed clear and transparent policies and procedures on access to environmental information or have made information on those procedures available to the public;
- b) Though environmental information contained in official documents developed and produced within the international forums is gradually made available to the public through the internet and other electronic tools, due to translation procedures and other reasons information is often not provided in a timely manner and sometimes only in final texts;
- c) National focal points for international forums often lack capacities, knowledge and necessary skills to provide effective flow of information between the national authorities, international forums and the public;
- d) There are examples when information is not provided upon request or the provided information does not fulfil the requirements of the Almaty Guidelines;
- e) Members of the public are not always informed of the opportunities, procedures and criteria for public participation in the decision-making processes;
- f) Selection and accreditation procedures for public participation are not always clear, objective or transparent, or are overly-formalised;
- g) In a number of forums the public is invited only to the final official events and is not entitled to participate at the negotiations/preparations stage;
- h) Even where members of the public are able to attend meetings of international forums (usually as observers), are entitled to have access to documents relevant to the decision-making process and have an opportunity to circulate written statements, speak at meetings and present general comments, their role remains rather limited. It was frequently unclear how their comments had been taken into account by the decision-making body and very often it was not explained why their position/proposals were disregarded;
- i) Measures to facilitate public access to review procedures relating to the application of rules and standards regarding access to information and public

participation are still scarce. Implementation of the access to justice pillar of the Guidelines is the least developed;

- j) An extremely limited number of international forums engage in capacity building activities to facilitate international access for the public concerned. Usually international forums are reluctant to introduce or apply innovative, cost-efficient and practical approaches to maximize public participation. The lack of finances is often used as a major reason for not supporting public participation in MEAs. This remains one of the major challenges and barriers in the process of effective public participation in international forums.

21. With respect to question (e) above, European ECO Forum reports its members did not seek any major textual changes of the Guidelines.

22. The International Center for Environmental Research (Georgia) supports European ECO Forum's comments above and adds that often government officials attending international meetings are not fully aware of the problems at issue. It therefore recommends that all participants both governmental and NGO should provide their input in written form before the meeting. It also emphasises the importance of complimenting environmental thinking at the global level with local action as well.

23. Law and Environment Eurasia Partnership (LEEP, Kazakhstan) reports that in 2004 and 2005, unsuccessful attempts were made to apply the principles of the Aarhus Convention and later, the Almaty Guidelines, in the negotiations and development of the Framework Convention for the Protection of the Marine Environment of the Caspian Sea (Tehran Convention) and its protocols. It believes that the main obstacle was that two of the five Parties of the Tehran Convention are not Parties to the Aarhus Convention and so opposed proposals to apply its principles in the negotiation process.

24. LEEP reports that it believes that the Caspian Environment Programme has its own strategy on public participation but neither it nor other Kazakh environmental NGOs in the Caspian region have seen it. Furthermore, it reports on a situation where an NGO representative was denied entry into an Aarhus Party country for a meeting of the Tehran Convention, apparently on the basis of nationality. LEEP refers to paragraph 16 of the Guidelines and articles 3, paragraphs 7 and 9, of the Convention in this regard.

25. ANPED remarks that the Almaty Guidelines are relevant but there is work to be done on their practical implementation. It reports that, in respect of the participation of NGOs and observers in the Carpathian Convention, the Almaty Guidelines stand as part of the 'commonly accepted principles of working'.

26. ANPED reports that a general level of access to information has been achieved under the Carpathian Convention but improvements could still be made. For example, reports could come quicker and the mechanism for information provision could be improved and formalized, e.g. there is no communication strategy. ANPED states that the real challenge lies in promoting paragraphs 28 to 39 of the Almaty Guidelines, as these require actions which are proactive and not easily defined. Public participation is not just about access to documents or meetings, but feeling an equal part of a process to stimulate actions.

27. Perspectives regarding the purpose, audience and target group for public participation are a key issue, according to ANPED. It remarks that NGOs no longer view the Convention as the key forum for their regional cooperation or for the development of actions for the Carpathians in all the ways they had imagined during its development phase.

28. ANPED comments that several issues that are often considered as ‘practicalities’ – such as the cost of participation of observers in meetings and the provision of documentation in national languages - are in fact key issues. Availability of funds often decides whether NGOs can participate in a meeting or not. If a Convention body decides to fund two observers to attend a meeting for example, then it is very likely that two observers, and no more, will attend. Sponsors sometimes support Convention meetings which can mean that Carpathian meetings happen far from the Carpathian region. Some of the larger NGOs can allocate funds to follow the processes of international forums, but this is rare. The same is true of national languages. The official language of the Carpathian Convention is English and there are no official arrangements to provide translation of documents or interpretation at meetings. If all documentation is in one language, that will have a direct impact on the circle of participation. If some of the key documentation is provided, even just in summary form, in a relevant national language, that will widen considerably the potential circle of participation. If such issues are recognized as the key issues for participation that they are, then they should be considered in key planning stages and the normal budget planning process. Public participation has to be seen as a key part of core costs if it is to be viewed as a key part of core activities of a convention.

IV. Conclusion

29. Although the number of comments received on experience regarding the application of the Guidelines was not large, those that were received provide useful insights. These include examples of actions that Parties have taken to build awareness of the principles of the Aarhus Convention and the Guidelines amongst their representatives in other international forums and practices that Parties have employed at the national level to promote the participation of their own public in international forums in which they are involved. The comments also provide some examples of good practices with respect to the application of the Guidelines at the international level. Finally, they highlight many of the challenges NGOs and other stakeholders perceive that they face with respect to access to information, participation and access to justice in international forums in which Aarhus Parties take part.