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MEETING OF THE PARTIES TO THE
CONVENTION ON ACCESS TO INFORMATION,
PUBLIC PARTICIPATION IN DECISION-MAKING AND
ACCESS TO JUSTICE IN ENVIRONMENTAL MATTERS

Working Group of the Parties to the Convention

Eighth meeting
Geneva, 31 October–2 November 2007
Item 5 of the provisional agenda

PUBLIC PARTICIPATION IN INTERNATIONAL FORUMS

**REPORT OF THE MEETING OF REPRESENTATIVES OF INTERNATIONAL
FORUMS DEALING WITH MATTERS RELATING TO THE ENVIRONMENT**

Report by the secretariat¹

Summary

A meeting bringing together participants from a number of international forums dealing with matters relating to the environment was held at the Palais des Nations in Geneva on 20 and 21 June 2007. The topic of the meeting was “involving the public in international forums”. The meeting was organized by Parties to the Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters (Aarhus Convention), pursuant to the Working Group of the Parties’ work plan for 2006-2008 (ECE/MP.PP/WG.1/2006/2 and Add.2).

¹ This document was submitted on the above date to accommodate consultation with the Chairs on its final draft.

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PART ONE: OVERVIEW OF THE MEETING

I. ATTENDANCE

1. The meeting was attended by representatives of 11 Parties to the Aarhus Convention, namely Armenia, Belgium, France, Georgia, Italy, Kyrgyzstan, Latvia, Norway, Sweden, Ukraine and the European Community; two other States, Switzerland and the United States of America, also attended.
2. The following United Nations bodies, specialized agencies, related organizations and convention secretariats were represented: Basel Convention on the Control of Transboundary Movement of Hazardous Waste and their Disposal, Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES), Stockholm Convention on Persistent Organic Pollutants, United Nations Commission on Sustainable Development (UNCSD), United Nations Conference on Trade and Development (UNCTAD), United Nations Convention to Combat Desertification (UNCCD), UNECE Convention on Environmental Impact Assessment in a Transboundary Context, UNECE Convention on Transboundary Effects of Industrial Accidents, United Nations Environment Programme (UNEP) Caribbean Environment Programme, UNEP Chemicals, UNEP Regional Office for Europe, United Nations Institute for Training and Research (UNITAR), United Nations Office at Geneva, World Bank and World Trade Organization (WTO).
3. Other intergovernmental organizations represented were: African Development Bank's Independent Recourse Mechanism, Asian Development Bank's Compliance Review Panel, European Bank for Reconstruction and Development (EBRD), International Sava River Basin Commission, North East Atlantic Fisheries Commission, Organization for Security and Co-operation in Europe and Regional Environmental Center for Central and Eastern Europe (REC).
4. The following non-governmental organizations (NGOs) attended: CEE Bankwatch Network, Center for International Environmental Law, Earthjustice, European ECO-Forum, European Environmental Bureau, International Court of Environmental Arbitration and Conciliation, NGO BIOS, Stakeholder Forum, TETA "KHAZRI", The Northern Alliance for Sustainability (ANPED), Union for the Defence of the Aral Sea and Amudarya, Women in Europe for a Common Future, World Business Council for Sustainable Development (WBCSD), World Resources Institute and World Wildlife Fund (WWF).

II. ORGANIZATIONAL MATTERS

5. Ms. Hanne Inger Bjurstrøm, Chair of the Meeting of the Parties to the Aarhus Convention, chaired the first day of the meeting. Mr. Marc Pallemarts (Belgium) chaired the second day of the meeting.
6. The Chair opened the meeting by providing a brief overview of the background to the meeting and its agenda. Mr. Kaj Bärlund, Director, Environment, Housing and Land Management Division, UNECE, made further introductory remarks regarding the meeting's aims and purpose. He also thanked the Government of France for its political leadership of the Convention's task force on this topic and for its financial support for the meeting and other work in this area.

7. The opening session of the meeting considered different conceptual approaches to 'involving the public in international forums' means and the challenges therein.
8. The Chair of the Task Force on Public Participation in International Forums, Mr. Laurent Mermet (France), together with the consultant assisting the Task Force in its work, gave an overview of the consultation process carried out over the past 12 months on the Almaty Guidelines and the issues they address.
9. The results of an academic study commissioned by France on the state of the art on issues raised by public participation in international forums were presented. The plenary had an opportunity to ask questions or give comments about the academic study and the consultation process on the Almaty Guidelines on Promoting the Application of the Principles of the Aarhus Convention in International Forums.
10. One of the aims of the meeting was to provide a forum where participants from various international forums could exchange good practices with respect to access to information, public participation in decision-making and access to justice. The meeting included eight presentations by representatives of secretariats, NGOs and academics who each discussed good practices with regard to a particular aspect of involving the public in international forums.
11. Participants were able to take part in discussion groups according to their area of interest. There were four tracks of discussion groups, namely:
 - (a) Track A: Providing and disseminating environmental information;
 - (b) Track B: Identifying, contacting and involving stakeholders;
 - (c) Track C: Involving the public in internationally-funded projects and in promoting compliance;
 - (d) Track D: Capacity-building, resources and infrastructure.Tracks B and C each had two discussion groups devoted to them, giving a total of six discussion groups. Participants took part in two of the six discussion groups.
12. The discussion groups each opened with two brief presentations by representatives of governments, secretariats and NGOs in which speakers shared their views of the most significant challenges to involving the public in international forums with regard to the subject of that discussion group.
13. Each discussion group had a moderator who moderated the discussion and made a report to the plenary in the afternoon of the second day of the meeting. The moderators also reported on points of consensus, significant challenges, good practices, possible innovations that could be made and recommendations for the implementation of the Almaty Guidelines.
14. The penultimate session of the meeting was a panel discussion focusing on the questions "Where do we go from here?" and "How do we get there?".
15. Part Two of this document, prepared by the Chairs of the workshop, reflects the main substantive points of the discussions which took place at the meeting. The list of issues considered by the discussion groups is contained in the annex to this report.

PART TWO: CHAIRS' SUMMARY

III. INTRODUCTION

16. This two-day meeting was held in culmination of a 12-month consultation process carried out by the Parties to the Convention with international forums on the Almaty Guidelines and the issues they address. Its main aim was to provide a forum for participants from various international forums, including representatives of governments, secretariats, NGOs and academia, in which they could exchange experiences with respect to access to information, public participation in decision-making and access to justice. The outcomes of the meeting will, inter alia, be used to assist the Working Group of the Parties to the Convention in its task of reviewing the Guidelines and making recommendations, as appropriate, for consideration by the Parties at their third ordinary meeting in June 2008.

17. There were three identifiable threads running through the meeting: first, to identify the most significant challenges to access to information, public participation and access to justice in international forums dealing with matters relating to the environment; second, to identify and consider the good practices already used by some international forums to address these challenges, and to brain-storm regarding further innovations that could be made; and thirdly, to make recommendations that Parties to the Convention might wish to consider in their implementation of the Guidelines.

18. This summary aims to bring together the most significant points arising from the presentations and discussions. It draws, inter alia, on the outcomes of the six discussion groups as reported back to the plenary.² Not all of the points included here were necessarily supported by all of the participants, and in any case the participants were for the most part not formally representing particular forums with a mandate to reach agreement or decide upon something. The points contained in this summary should therefore be regarded as a source of ideas considered useful by significant numbers of participants which might be drawn on by forums where so desired, rather than as an agreed set of recommendations.

IV. REPORT ON THE STATE OF THE ART ON ISSUES RAISED BY PUBLIC PARTICIPATION IN INTERNATIONAL FORUMS

19. One important input into the meeting was an academic study commissioned by France on the state of the art on issues raised by public participation in international forums.³ It found that universal enjoyment of the right to a healthy environment is, inter alia, conditional upon the principles contained in the Convention and the Guidelines. To promote participative democracy at the international level, the study recommended that the international community should:

- (a) Replace the current lack of clarity with a minimum framework in the form of guidelines, a code of conduct, a global code of practice or a protocol;

² For the purposes of providing a succinct summary, points have been placed under the most appropriate subject headings, notwithstanding the fact that they may have been raised during another session of the meeting.

³ Synthesis of report commissioned by France on the state of the art on issues raised by public participation in international forums, available at <http://www.unece.org/env/pp/ppif.htm>

- (b) Formulate common principles for the participation of the public irrespective of their standing as subjects of international law, addressing, inter alia, representativeness, independence and conflicts of interest, legitimacy, pluralism (North/South) and transparency;
- (c) Establish rules for participation in international law-making, distinguishing between public participation in the negotiation and implementation phases;
- (d) Encourage access to justice at the international level, including in the statutes of international courts and tribunals and in compliance review mechanisms of international forums dealing with matters relating to the environment.

V. PROVIDING AND DISSEMINATING ENVIRONMENTAL INFORMATION

20. Some good practices or possible innovations noted during the meeting with respect to providing and disseminating environmental information included: adopting a clear and transparent set of policies and procedures on access to environmental information; making all official documents available through the Internet; providing access to all meeting documents that are relevant to the decision-making process; making draft documents available to the public for comment, to alert the public to their opportunities to access environmental information and participate in decision-making; ensuring that the public can provide publicly documented feedback on proposed activities, plans, programmes, policies and legally binding instruments electronically; and providing information in electronic form if so requested, and where the information exists in that form.

21. Some participants expressed concern that different groups and audiences request information for different reasons and this could have an impact on the accuracy of the information when used, hence they felt it necessary to carefully consider the audience and the objective of the request when distributing information.

22. Some participants felt that organizations should start with the premise that meetings should take place in an open rather than a closed manner, since this would add to the legitimacy and accountability of the process. However, there was a lack of consensus on the degree to which meetings should be open or closed to the public. While complete public scrutiny might not be appropriate for certain issues, closed meetings might exclude the public from important discussions and hamper a more informed and balanced approach and decisions.

23. It was observed that some members of the public, particularly in developing and transition countries, lack adequate Internet access and were thus unable to access information made available by international forums electronically. To help overcome this "digital divide", the suggestion was made to support or create public facilities where environmental information could be accessed, both physically and electronically, such as the public environmental information centres or "Aarhus Centres" supported by OSCE. For members of the public with Internet access, information and communications technology such as clearing houses, interactive databases and registers, could be used to enhance the dissemination of information on environmental issues.

24. Participants observed that a number of international forums were making efforts to overcome language barriers by providing timely multilingual dissemination of information.

However, ensuring the timeliness of translations was a key challenge, as translating could be time-consuming and expensive and result in delays hindering the timely consideration of information by local groups. Online translation services, albeit still in their infancy, might have the potential to partially solve this issue.

25. It was remarked that documentation was often written in a technical and/or legal style familiar to governments and bureaucrats, but difficult for the public to understand. Where feasible, greater effort could be made to produce documents suitable for a broader readership and understanding.

26. There were diverging views as to when information should be kept confidential. One view was that if there were no provision for confidentiality, this could potentially limit the effectiveness and decision-making capacities of international forums. For example, strategic positions taken by Parties during negotiations might not be understood by the public. Similarly, there was disagreement as to whether the public should have access to draft documents or just the final documents. Some also thought that international forums needed to be able to maintain confidentiality in accordance with defined criteria such as those listed in the Convention, e.g. in the interests of public security.

27. An alternative view expressed was that restrictions on access to public proceedings resulted in an uneven playing field and should be entirely excluded in the context of international forums.

28. Many participants felt that there was a need for a minimum level of formal rules and procedures to guide the practice of providing and disseminating environmental information. The public should be informed about the relevant bodies and agencies that it could turn to in order to request information. Informing the public of the grounds on which a request could be refused and how they might appeal a refusal was also viewed as important.

VI. IDENTIFYING AND CONTACTING STAKEHOLDERS

29. It was noted that natural resources are public goods, and consistent with constitutional ideas of popular sovereignty, these resources should be managed with the participation of all citizens and people. However, because resources (money, time, space) are inevitably limited, a three-tier approach to help guide priorities as to who should participate might be appropriate, namely affected parties, interested parties, and parties able to contribute to the process through expertise or through proactive and consistent attention to the underlying issues. It was suggested that efforts to identify and engage affected, interested or expert parties (“outreach”) might also be guided by the above priorities. The three-tier approach, however, should be applied with flexibility.

30. Using major groups to organize public participation, such as the nine major groups of Agenda 21 and the Commission on Sustainable Development (CSD), was felt to be best done on a flexible basis. Depending on the nature and focus of the forum, these particular groups might be more or less important, and other groups might be more relevant.

31. Some participants felt it to be important that secretariats make proactive efforts to identify and engage affected and interested parties, especially those that otherwise could not attend or participate. Proactive efforts were also considered to be especially important with

respect to traditionally under-represented persons/communities (e.g. women and indigenous groups). It was asserted that sometimes the most affected people were the least organized, and this presents a special challenge to effective participation. Therefore, outreach should focus on communities and groups that were affected even if they were not organized.

32. In the context of public participation in international forums, a relevant criterion of legitimacy was considered to be how well a group or person facilitates the flow of information and/or interests to/from populations (affected and interested) to/from a relevant forum or process.

33. Participants noted that networks could add legitimacy and often have additional clout. They could also serve as useful ways to channel public/NGO interest. However, they had their own internal challenges, e.g. inclusiveness and the selection of 'representatives' to forums.

VII. INVOLVING STAKEHOLDERS: MODALITIES OF PUBLIC PARTICIPATION

34. In the context of high civil society interest, the self-organization of stakeholders was felt to be an important factor for effective involvement, and NGOs should be encouraged but not obligated to organize themselves in platforms. It was also important that international forums have "open doors" with active consultative processes to integrate the views of a wider range of people.

35. In the context of low civil society interest, it was remarked that the public would not be interested to participate in a process if it was not meaningful to them or if their input was not respected. Lack of funding might also prevent civil society from participating. Alternatively, the public might not be aware of the opportunities to participate. The primary responsibility of encouraging civil society interest lay with NGOs, but the secretariats of international forums might also need to actively reach out and invite, encourage and support participation. As with high civil society interest, participants felt that as a baseline, international forums should maintain an "open door" for those interested in participating.

36. It was observed that most NGOs do not agree with disruptive behaviour, and this should not be used as an excuse for not involving NGOs in general. Disruptive civil society involvement often resulted from a lack of openness and good governance on the part of the international forums and the governments involved, and NGOs could make a useful contribution to the discussion and dialogue, even on highly sensitive issues such as trade.

37. Participants felt that there was a need for both formal rules and procedures and informal practices. Public participation should be a right and not a privilege, and should not be open to luck or chance. Rules were necessary, i.e. rules not open to wide interpretation and that would establish habits and change cultures. Such rules might include both active information obligations on the international forums and the governments that take part, as well as specific rights for the public for taking part in the decision-making and implementation process. However, building a truly participatory culture meant filling the rules and procedures with life, and this happened through communication and meaningful dialogue.

38. In the environmental arena, it was considered that partnerships between NGOs and governments are vital for implementation and that it would be useful to improve understanding of what is a good partnership and how to enhance and improve them.

39. With respect to WTO, it was said that there is little willingness amongst members to formally increase the involvement of the public in its processes at this stage. However, NGOs have been able to influence the WTO agenda and WTO negotiations by focusing on advancing relations informally, based on substance. To effectively participate, it was suggested that NGOs should invest in the substance to the point of reaching a comparative advantage at the advocacy level based on sound research and reliable expertise.

40. Participants felt that it was useful to have some transparent criteria for selection when many NGOs want to participate in a particular forum, although an accreditation process as such might not be necessary. These criteria should be clearly set out in writing, e.g. in the convention and/or its rules of procedure.

41. When designing participatory processes, a number of good practices for systematic public participation in international forums dealing with matters relating to the environment were identified. These included:

- (a) Systematic access to information provided by secretariats and member governments, early in the process, and during the process;
- (b) National public participation processes that give citizens opportunities to express their views and to comment on the progress of the formulation and implementation of international agreements. This might include having one or more environmental NGOs in national delegations, not only to the final event but in the preparations as well;
- (c) The timely involvement of the public. For example, accredited civil society organizations have the possibility to submit comments on unedited working documents of the UNEP Governing Council/Global Ministerial Environment Forum for distribution to the governments.⁴ It was observed that early contact with governments at the national level is the most effective way for the public to influence decision-making. By the time of an intergovernmental meeting, government representatives would have discussed their positions with their departments;
- (d) Relevant NGOs, preferably organized into international platforms, having broad access to the decision-making process. This did not mean voting rights, but rather the right to participate in all levels of negotiations, including informal groups such as “friends of the Chair”. It was observed that this was not to say that negotiations behind closed doors were never appropriate;
- (e) Efforts to ensure that the results of public participation are taken into account in the actual outcomes, rather than public participation being regarded as a mere formality. This might include the contributions of NGOs being analysed, responded to, and points of disagreement explained;
- (f) Financial support for environmental NGOs to participate in international forums, not only for travelling to major meetings, but to facilitate their involvement in formulation of positions and implementation of decisions at the national level. Funding

⁴ Addendum to the Synthesis Paper (Rules, procedures and practices on public participation) (ECE/MP.PP/WG.1/2007/L.2/Add.2), para. 34, available at <http://www.unece.org/env/pp/ppif.htm>

was identified as a significant constraint on public participation in international forums, even more so for smaller NGOs. International forums should also work with civil society to involve them in the design of appropriate participatory processes.

42. It was noted that when designing processes that include public participation, a number of design decisions needed to be made as there was no “one size that fits all”. For example, how much power or influence was the intergovernmental body/institution willing to give to the public? Should it be expert-oriented or popular participation? Should communication be adversarial or deliberative? Whichever choice was made, it was important that the outcome was clear and reached objectively and that the public participation was equal and balanced. It was important to consider how to involve wider communities and not just official stakeholders.

43. In designing modalities for public participation, it could be useful to consider what kind of conversations were desirable, as the type of conversation could determine what was achieved. In particular, it might be worthwhile to take more time to encourage reflective conversation and to consider opportunities for generative conversation where possible and appropriate. Similarly, it was suggested that there was a need to be more rigorous about articulating the purpose for involving the public in a particular international forum. For example, if an international forum designs processes to allow all stakeholders to interact what is it hoping to achieve by doing so? The modalities of public participation will only deliver desired results if and when they are tailored to fit the purpose.

VIII. INVOLVING THE PUBLIC IN INTERNATIONALLY FUNDED PROJECTS

44. Regarding challenges to access to information in internationally funded projects, it was said that international financial institutions (IFIs) often placed restrictions on accessing environmental data and on making environmental impact assessments (EIAs) public. Many projects had confidentiality clauses and environmental information was considered proprietary. Environmental information concerning “Category B and C” projects was more restricted than information regarding “Category A” projects, although there had been some developments toward greater public access, e.g. at the World Bank. There was limited access to environmental documentation in the implementation phases (although the International Finance Corporation had a requirement to release the annual report on its Action Plan). There was limited access to environmental information at the evaluation stage. A coalition of NGOs had prepared a web tool that compared IFI information policies (<http://ifitransparencyresources.org/en/Indicators.aspx>). It had also prepared a transparency charter for IFIs.

45. Regarding challenges to public participation in decision-making in internationally-funded projects, participants remarked that it was a challenge to determine which NGOs were truly representative. For example, it was easier to converse with international NGOs than smaller national ones, but the former might not necessarily represent the wishes of local people. At the project level, the EIA was often first prepared according to national standards before the IFI became involved, and then when IFI financing was sought, it was re-done or upgraded according to the requirements of that IFI. For an IFI, it could be difficult to assess whether the quality of the due diligence and consultation carried out prior to its involvement was of a satisfactory standard. Also, projects might be split into stages or sections, the “salami method”, without a cumulative impact assessment.

46. Some participants felt that there is a gap between the reality in the field and discussions at the national and international level. It was noted that at the policy level, while there were public consultations on the various policies relating to the environment, the quality of these consultations varied. Strategic environmental assessment was rarely used. At the board level, the public had no access to board meetings where decisions were made about environmental policies and projects with significant environmental impact. Also, neither meeting transcripts nor board voting records were made available.

47. With respect to challenges regarding access to justice in internationally funded projects, it was remarked that IFI compliance review mechanisms generally could not review the actions of governments or other actors involved in projects, but only the IFI's compliance with its own policies. NGOs and local communities said that IFI compliance mechanisms rarely brought effective remedies. There was little follow up after a review by an IFI compliance review mechanism was completed. IFI compliance mechanisms established restrictions on the range of persons or entities that might avail of the mechanism, and some IFIs had a quite limited time period in which a complaint could be brought. For IFIs, the cost of a review by its compliance review mechanism could be more than that of a significant project.

48. A number of good practices and possible innovations with respect to involving the public in internationally funded projects were identified. Full EIAs could routinely be made available on the Internet, not just summaries. To reduce translation costs but to preserve the detail that would be lost in summaries, full documents could be posted in their original language. Local populations could be empowered with the skills and resources to invest in the long-term viability of projects. IFIs could routinely verify that States in which they operate have complied with their international obligations. One person could be deemed sufficient for bringing a complaint to an IFI compliance review mechanism. The synergies between IFIs' efforts to promote opportunities for participation in projects and "country systems" could be further explored. Strategic environmental assessment could be used more. Concrete commitments regarding actual practice (e.g. the Equator Principles) could be adopted in place of general statements (e.g. the Global Compact). Specific examples of good practice adopted by particular IFIs include early disclosure policies, the consideration of environmental issues in the context of IFI procurement guidelines and an annual sustainability report to check the IFI's own ecological footprint.

IX. INVOLVING THE PUBLIC IN PROMOTING COMPLIANCE

49. The involvement of the public increased the legitimacy and the effectiveness of a compliance review process. Partnership between stakeholders gave greater trust, therefore involving the public as partners in promoting compliance built greater trust in the process.

50. Participants noted that public involvement in compliance mechanisms could be direct or indirect. Direct involvement of the public might include the right to nominate members of the compliance review body (so far only available with respect of the Aarhus Convention Compliance Committee) and the right to trigger the compliance mechanism (so far only a few multilateral environmental agreements provide the public with such a right).

51. Indirect involvement of the public might include the right of access to information, i.e. on pending cases, the status of proceedings and conclusions, the right to participate in meetings, the right to be involved in the follow-up to the compliance body's findings, and the right to provide information on compliance issues, either to the secretariat for forwarding or through oral or

written statements. It was felt to be important to limit neither the information sources on which the compliance review body could draw nor transparency as to these information sources.

52. Participants remarked that a communication to a forum's compliance review mechanism should be viewed as a matter of last resort. It was considered important that governments ensure access to justice in environmental matters is fully enshrined in their countries so that the public could play their role in the enforcement of international agreements at the national level.

53. It was observed that if lack of space or resources were an obstacle to holding open meetings, this could be overcome by more creative use of electronic tools, e.g. the Inter-American Court of Human Rights webcasts its proceedings.

54. The extent to which the members of the compliance body were independent was viewed to be an important consideration. If members of the public were not to have the power to nominate members of the compliance review body, or if the process was different, such as the appointment of an ombudsman in IFIs, there were other possibilities for involving the public in the nomination process, e.g. the names of the nominees might be disclosed and the public given the possibility to comment on the nominations.

55. It was noted that public participation might be provided for in the follow-up to a finding of non-compliance and in the implementation of the compliance review body's recommendations. For example, in its recommendations, the compliance review body might consider recommending that the Party concerned involved NGOs in implementing the recommendations at the national level.

X. CAPACITY-BUILDING, RESOURCES AND INFRASTRUCTURE

56. Participants felt that careful thought should be given to the selection process that decides which groups should receive funding to carry out capacity-building and how the transparency of the financial process should be ensured. Twinning projects between governments and certain NGOs might be useful. Capacity-building should be designed to ensure that the work did not end when the aid stops. Evaluating the results of capacity-building work was an important part of a capacity-building process.

57. The following were identified as existing good practices or possible innovations to support effective and resource-efficient capacity-building: well-designed "training the trainers" programmes; national centres such as the Aarhus Centres established by OSCE in the countries of Eastern Europe, the Caucasus and Central Asia; information tools such as distance learning courses and clearing houses; annual capacity-building coordination meetings with donors and/or implementing organizations; "specialized" coalitions working together such as the Danube Environmental Forum and the joint project between NGO partners and the interim secretariat of the Convention on the protection and sustainable development of the Carpathians (Carpathian Convention); participation funds such as that established by the Government of Canada to assist the public participation in decision-making regarding national infrastructure projects; and training for those working in the environmental area to build skills in process facilitation.

58. It was felt that international forums and NGOs should both be involved in capacity-building for the public. Working through local partners was considered to be preferable and the need to strengthen national infrastructure should not be overlooked.

59. It was remarked that in selecting the targets for capacity-building, equal opportunities should be ensured to widen participation and opportunities for community-based organizations (CBOs) and larger types of organizations should be balanced. A distinction should be made between advocacy NGOs and CBOs; both had scarce resources but the latter generally find it more difficult to obtain resources to participate at the international level. Ideally, support should go first to CBOs, and possibly government structures where appropriate. However, it was noted that, even after capacity-building, CBOs might lack sufficient staff or resources to be effective at the international level, or have too narrow an interest.

60. The following were identified as good practices or possible innovations by which international forums might help to promote capacity at the national level so as to support more effective participation at the international level: requirements for effective public participation could be mainstreamed in national legislative and administrative frameworks, including budgeting; projects could include measures for the infrastructure development of NGOs and CBOs, not just one-off programmes; international forums could share good practice examples and promote the exchange of information, including indicators, on legislative, administrative and scientific infrastructure at the national level that supports access to information/public participation at the international level; efforts to develop infrastructure at the national level could be followed up and verified; and international forums could consider developing and adopting specific guidelines on capacity-building strategies.

XI. A BUSINESS PERSPECTIVE ON PARTICIPATION IN INTERNATIONAL FORUMS

61. The business community participates in international forums in various ways, e.g. through partnerships, technical assistance projects, capacity-building and advocacy. From time to time, business organizations team up at international forums. For example, at the United Nations Commission on Sustainable Development, business organizations came together on the subject of water (Business Action for Water) and energy (Business Action For Energy). A distinction should be made between business organizations such as the World Business Council for Sustainable Development (WBCSD) and the International Chamber of Commerce (ICC), and individual companies. It is business organizations that participate in international forums. Participation of individual companies is low and is largely limited to multinational companies with a particular stake in the subject of the discussion. Opportunities for business to participate vary greatly between forums.

62. On behalf of the business community, it was said that business welcomed the growing openness of international forums processes and their efforts to include business' views. However, there remains a degree of frustration. Business felt that it had no real influence on setting the agenda of international forums because, with few exceptions, it had no representation on their governing boards. It had limited access and participation in plenary sessions. There was a lack of recognition of business as a "special" group. Side-events were often the only time when real discussion with the business community took place. Business was concerned that a proliferation of multi-stakeholder dialogues and forums, indiscriminately including more groups, or putting all groups on an equal footing regardless of their size and constituency, might lead to important business views being curtailed or lost altogether. If the United Nations wanted to sustain its role as the first and foremost international convener and avoid informal networks creating a parallel structure to it, with all the complications and inconsistencies that this would

entail, the business community believed it was imperative that the United Nations give serious consideration to the way in which business could participate in its processes.

XII. RECOMMENDATIONS FOR THE IMPLEMENTATION OF THE ALMATY GUIDELINES

63. The discussions gave rise to the following suggestions that might be of relevance to the implementation of the Almaty Guidelines:

(a) It was observed that the fact that a State is a Party to the Convention does not necessarily mean that all its representatives in other international forums dealing with matters relating to the environment would automatically start working to promote the Convention principles in those forums. Three preconditions would seem to be required: first, that all relevant government officials be fully informed about the Convention and its principles; secondly, that the officials be encouraged to consider public participation as an asset and be motivated to learn and understand about the ways environmental NGOs work, what expectations one could have of them, and what not; and thirdly, that there be sufficient clarity as to what the Convention's principles mean in the context of such forums.

(b) It was noted that the Almaty Guidelines were intended to help the third precondition. The first two were the responsibility of each Party to the Convention in promoting the Convention and the Guidelines amongst its civil servants. It was remarked that the need for each Party to raise the profile of the Convention amongst its national administration could easily be underestimated. For example, some officials participating in other UNECE forums had demonstrated a lack of knowledge of the Convention and its principles, notwithstanding the fact that they come from the same government ministries as those participating in the Convention.

(c) It was also observed that in practice an international forum's attitude towards public participation might depend to a large extent on the civil servants who work in the secretariats and as representatives of the member governments, and their attitudes towards transparency, democracy and NGOs in general. It might also depend on the ambitions of governments in a particular forum, e.g. civil servants might be very open to public participation because they saw that NGOs could be allies in support of their own position. Political support for involving the public in international forums therefore needed to be secured and maintained. It was remarked that the public's right of access to information was more generally accepted by international forums, whereas the right to public participation in decision-making was sometimes viewed with suspicion and an intrusion on the process.

(d) In the particular context of internationally funded projects, it was remarked that there was limited or no awareness at the board level within the IFIs about the principles of the Convention or the Parties' obligations under article 3 (7) of the Convention. Parties had obligations to promote the application of the principles of the Aarhus Convention in their role as board members of IFIs. Their obligations under the Convention also applied at the level of local management of IFI projects.

XIII. WHERE TO GO FROM HERE AND HOW TO GET THERE

64. During the discussion of “where to go from here and how to get there”, the following comments were made:

- (a) There might be some scope for harmonizing global standards of involving the public in international forums, but in doing so there should not be a move towards the lowest common denominator. The need for global guidelines for transparency and NGO participation could be considered.
- (c) The Convention could be cross-referenced by other international forums as a tool for increasing public participation in environmental decision-making, including reference to its website, etc., to build synergies between processes and to be a channel for exchange between forums.
- (d) It is important to increase awareness of the benefits of public participation and to be able to demonstrate how it improves the quality of decision-making. Documenting evidence of the benefits and lessons of public participation in international forums is very important as is creating opportunities for exchange of experience with public participation at the international level (e.g. through the Environment Management Group).
- (e) An integrated approach to public participation is desirable. Public participation cannot happen at the international level without happening on the national level.
- (f) The Convention could serve as an example for other regions and the Guidelines could play a useful role. Their principles need to be spread. The main question is, how could this be done?
- (g) Synergies between the application of the Guidelines and the recommendations of the Report of the Panel of Eminent Persons on United Nations–Civil Society Relations⁵ should be promoted.
- (h) Normative frameworks for formal relations between the public and international forums could be limiting and therefore there is a need to reach out beyond existing formal rules such as those applied by United Nations Economic and Social Council.
- (i) NGOs might wish to consider how they could organize themselves to make public participation work best, and perhaps to develop their own guidelines to this effect. As well as the supply side of involving the public in international forums, there is a need to build the demand side, e.g. through initiatives such as the Access Initiative.
- (j) The business community might wish to consider how to work with interested governments to explore a new model structure where business would be better considered and which could be replicated if the model were successful.

⁵ “We the peoples: civil society, the United Nations and global governance” Report of the Panel of Eminent Persons on United Nations–Civil Society Relations (A/58/817)

(k) Secretariats of international forums dealing with matters relating to the environment such as multilateral environmental agreements are not decision-makers but could nevertheless play an important role in supporting public participation. They are often asked by their members to draft proposals and recommendations. In doing so, they have opportunities to propose ways to further the public's involvement in forum processes.

(l) In respect of Parties to the Convention, their next challenge is to look at how they are applying the principles of the Convention and the Guidelines in forums other than the Convention itself. For each Party, this will require internal consultation and self-assessment in respect of all international forums dealing with matters relating to the environment in which it is involved.

Annex

Questions for discussion group tracks

Track A:

Providing and disseminating information on the environment

- (a) What are the most significant challenges and some good practices/possible innovations with respect to:
 - (i) Dealing with information requests?
 - (ii) Passive transparency, including open/closed meetings?
 - (iii) The proactive dissemination of environmental information?
- (b) How to conquer the digital divide, particularly for developing countries and countries in transition?
- (c) How to overcome language barriers as obstacles to access to information and public participation in decision-making?
- (d) When should information be kept confidential? When does the issue of legal ownership of information arise?
- (e) What characteristics might determine whether an international forum should have greater or less access to information?
- (f) Should access to information be promoted through formal rules and procedures or informal practices, or both?

Track B:

Identifying, contacting and involving stakeholders

- (a) Who should participate? What makes the participation of various representatives of the public in an international forum legitimate?
- (b) What is the usefulness or legitimacy of targeting a particular group of the public, such as the “affected public”, etc.?
- (c) What are some good practices/possible innovations and challenges for getting the public interested and engaged, in the context of low civil society interest?
- (d) How can international forums promote effective public participation if there is limited or non-existent civil society at the national level?

- (e) How can the media be used?
- (f) How to promote the effective involvement of the affected public and/or special interest groups?
- (g) How to promote effective participation in the context of high civil society interest, while maintaining an effective process?
- (h) How to promote effective participation in the context of low civil society interest?
- (i) How to balance divergent interests, including public vs. private sector interests; environmental, social, economic interests; and local vs. national/regional/global interests?
- (j) How to deal with the possibility of disruptive civil society involvement?
- (k) How might the public participate in decision-making? Should the public ever have voting rights?
- (l) What characteristics might determine whether an international forum should have greater or less public participation in decision-making?
- (m) Should public participation be promoted through formal rules and procedures or informal practices or either or both?
- (n) Does accreditation help or hinder?

Track C:

Public participation in projects and in promoting implementation and compliance

- (a) How can the principles of:
 - (i) Access to environmental information;
 - (ii) Public participation in decision-making;
 - (iii) Access to justice in environmental matters

be incorporated into the projects and policies of international forums that develop and implement projects?

- (b) How can the public be effectively involved in promoting compliance?
- (c) What are the benefits and risks of:
 - (i) The public being able to trigger a compliance review procedure?

- (ii) The public being present as observers during sessions of the compliance review body?
- (iii) The public being able to nominate members of the compliance review body?
- (d) How can the public be effectively involved in improving national reporting?

Track D:

Capacity-building, resources and infrastructure

- (a) How to provide effective access to information in the face of scarce financial, physical and human resources?
- (b) How to provide effective public participation in the face of scarce financial, physical and human resources?
- (c) What are some good practices/possible innovations for effective and resource-efficient capacity-building to promote effective public participation?
- (d) Should international forums or NGOs or both be responsible for capacity-building for the public? If both, through what kind of partnerships?
- (e) How can international forums promote the development at the national level of the legislative, administrative and scientific infrastructure necessary to ensure access to information at the international level?
- (f) How can international forums promote the development at the national level of the legislative, administrative and scientific infrastructure necessary to ensure public participation at the international level?
