

Dear colleagues,

Thank you for the opportunity provided to highlight the main challenges identified by stakeholders involved in the UNFCCC processes.

## 1. State of Play

### ***SBI process on Observer organizations in the intergovernmental process***

- In the climate change regime, The **Subsidiary Body for Implementation – SBI** – is the main forum for negotiations defining the modalities of civil society participation in the intergovernmental process.
- Under this body, an in-depth review of these modalities was conducted between 2009-2011. NGOs engaged in this process highlighting best practices applied in other international fora. Unfortunately this process revealed a lack of support among country representatives for many of these proposals and concluded as a **missed opportunity** to improve the conditions of stakeholders participation to an appropriate level, despite some improvements.
- The report attached by the climate change secretariat is certainly helpful. However as the report does not provide figures in relation to the overall number of workshops and sessions organized, it does not offer a comprehensive assessment of the constraints limiting our ability to participate actively in the process.
- Earlier this month, the SBI was prevented to begin its work during the full duration of the session due to dispute over the adoption of the agenda. As a consequence no **formal discussions** will take place this year on the modalities for stakeholders engagement.

### ***Importance of practice***

- In any case, it is important to highlight that the **priority of NGOs** involved in the process is to focus on improving practices rather than aiming at changing rules and procedures.
- In relation to the negotiating process itself, the most important constraints to NGOs effective engagement remain **the lack of access to many meetings** and the **limited opportunities offered to intervene in these meetings**, in particular in a manner allowing direct response to ongoing discussions rather than statements delivered at the end of the meetings.
- Within the scope of the current rules, much depends on the discretion of the chair or facilitator who can open a meeting and give the floor to civil society representatives.
- Most closed meetings are closed as no country challenged the established practice, **Aarhus parties have responsibility** to raise this matter with the chairs before and/or during the meetings. In practice, other parties seldom object to such a proposal.

- Within the limit of its mandate, the ability of the **secretariat** to facilitate the participation of stakeholders is limited by constraints related to funding. In the past, several countries have funded special activities of the secretariat to support stakeholders' engagement, a practice that should be encouraged.
- Finally, it is important to highlight that the **host of the annual conferences have a large responsibility** in relation to the participation of civil society in the lead up to and during these important events. We therefore have high expectations from **Poland** this year and **France** in 2015 with regards to this opportunity for them to ensure effective stakeholders participation.

## 2. Processes parallel to the climate negotiations

### *Subsidiary Bodies established since the Cancun Agreements*

- Beyond the constraints limiting effective stakeholders engagement in the negotiation process itself (COP and intersessional meetings), our main concerns relate to the modalities for stakeholders participation in **the bodies established under the convention since the Cancun agreement**.
- These bodies have very important responsibility over implementation of some of the elements of the UN climate framework, for instance related to climate finance, technology transfers and adaptation. Therefore the provision of technical expertise and the representation of impacted communities is particularly important.
- The modalities for the participation of stakeholders in these new institutions should be based on best practices with rules allowing for effective participation as routine standards.
- In practice, these bodies renegotiate however the terms for stakeholders participation. The technical negotiators engaged in these discussions lack expertise and awareness about legal basis for stakeholders participation.
- Currently, our main issues currently relate to the modalities adopted in relation to:
  - The Green Climate Fund
  - The Advisory Board of Climate Technology Center and Network

### *Informal technical meetings*

- The members of our network have also growing concerns regarding the practice of organizing informal thematic processes designed to advance negotiations outside of the UNFCCC and to feed into the UN negotiations once an outcome has been agreed upon.
- The nature of these processes is different from coalition meeting as they gather a large range of countries representatives to discuss a very specific item of the negotiations.

- One key example relates to the discussions related to Land Use, Land Use Change and Forestry, with a 2-years long informal negotiating process facilitated by Australia and Iceland.

### **3. Two key entry points to promote participation in climate decision making in the coming months**

#### ***Flexibility Mechanisms/Carbon markets established under the Convention***

- Beyond public participation in the climate negotiations, it is also essential to promote the implementation of Aarhus principle regarding projects funded through the flexibility mechanisms (such as the Clean Development Mechanism) established under the Kyoto Protocol.
- Currently, the modalities and procedures of the CDM provide only very limited standards. This lack of adequate standards has in practice resulted in cases of gross violation of human rights of the members of local communities affected by the project, for instance in Honduras (Bajo Aguan case) and Panama (Barro Blanco) cases.
- Ongoing negotiations related to the CDM provide to key opportunities to address this shortcoming. Aarhus parties should promote the full implementation of the principles of the convention in relation to the review of the procedures and modalities of the CDM as well as in the negotiations related to the legal standing and scope of an appeal process of decisions made by the CDM Executive Board in order to enable local communities to oppose projects implemented in violation of the standards.
- This issue is particularly important as it currently provides the most **distressing example of a case in which the lack of guarantee for procedural rights** has resulted in a violation of other human rights.

#### ***UNFCCC Article 6***

- Access to information and public participation in domestic decision-making related to climate change are provided in Article 6 of the UNFCCC: *the Parties shall [...] promote and facilitate public access to information on climate change and its effects; and public participation in addressing climate change and its effects and developing adequate responses.*
- Since 2004, **a dedicated work program** has been adopted in order to implement this article. Since the COP-18 in Doha in Nov. 2012 a new structure of the work program has been adopted enabling a more focused approach to access to information and public participation (15/CP.8).
- First of all, it is useful to note that all countries are to nominate an article 6 focal point, which should serve as an interlocutor for national Aarhus focal
- Starting in 2014, **a biannual “in-session dialogue”** with focus on participation/access to information/awareness raising will be hosted during the June sessions. This dialogue offers opportunity to share best practices and address challenges, Aarhus parties should seize the opportunities to

exchange best practices and promote more effective procedures to guarantee domestic access to information and public participation.

- The new work program also invites parties to report back on their domestic implementation of public participation and access to information in their **national communication**. This provides a timely opportunity for countries to assess the current status of their procedures and practices regarding the application of the Aarhus principles in relation to climate change decision making and to identify gaps and opportunities for improvements.

## To conclude

**I would like to conclude this brief review with four key messages.**

1. **Aarhus parties have the responsibility to challenge current practices** and request chairs/facilitators to open sessions to stakeholders and to give them the opportunity to react to the discussions.
2. **Modalities for participation in recently created bodies**, such as the green climate fund and the technology bodies, need to be based on best practices rather than to renegotiate existing standards.
3. Opportunities for stakeholders to participate should also be provided in **parallel informal processes** to the negotiations.
4. **Procedural rights should be guaranteed in relation to projects funded through the UNFCCC mechanisms**, with high standards applied and a remedy being provided.