

A number of meetings related to the Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters (Aarhus Convention), including the Working Group of the Parties and the Task Force on Access to Justice, were held in Geneva from 15 to 19 June 2015.

The Working Group discussed, among other matters, one of the greatest successes of the Aarhus Convention — the enhancement of the role of civil society in international decision-making. Thanks to the committed Aarhus Parties and stakeholders the Aarhus principles are guiding international decision-making on matters relating to the environment across the globe.

Another focus of the week was on the effectiveness of access to justice in environmental matters and the role access to justice could play for the future sustainable development goals (SDGs).

Transparency in international decision-making:

why the Aarhus Convention matters for the global agenda

From the preparations for a new climate agreement in Paris in December at COP 21 to the expected adoption of a new agenda for global action in September following discussions on the post-2015 development agenda, “2015 is shaping up to be a milestone year for environmental governance. Therefore the principles of the Aarhus Convention are of increasing relevance”, stressed Monika Linn, Principal Adviser at UNECE, at the opening of a thematic session on promoting the application of the principles of the Aarhus Convention in international forums in Geneva last Thursday. The session, led by France, was part of the nineteenth meeting of the Working Group of the Parties.

Despite many efforts made by Aarhus Parties, public participation in international environmental decision-making faces serious challenges. This thematic session provided an opportunity for Governments, stakeholders and representatives of international forums to discuss how to make environmental decision-making more transparent, participatory and effective.

While it was reported that there has been an unprecedented level of stakeholder engagement in shaping and developing SDGs and the post-2015 agenda, NGOs expressed concern over a lack of clarity regarding stakeholder participation in the future processes due to a recent decision to apply the ECOSOC rules of procedure to the processes of HLPF. If such decision is taken it could impact stakeholder engagement in this critical process. NGOs expressed their appreciation to Aarhus Parties for their efforts to align the UNEP access to information and stakeholder engagement policies with the Convention’s principles. At the same time, both Parties and stakeholders regretted that their comments

had not been properly addressed in the current draft policies. The importance of transparency is critical here as UNEP work impacts environmental international decision-making across the globe. Alexander Juras (UNEP) encouraged Parties and civil society to stay engaged in the process of preparing new drafts.

Progress has also been made with regard to implementing the Aarhus Convention's principles in international climate change negotiations. New tools and online services have been put in place to provide access to documents on the UNFCCC website. France, the host of the UNFCCC COP 21, reported on a number of measures it took to apply Aarhus in practice. "We want civil society to be involved as much as possible before and during the event. This is why we are following a diversified approach, using existing and unconventional channels, new dialogues and forums", said Philippe Ramet, Counsellor at the Permanent Mission of France to the United Nations Office at Geneva. He also reported that, for the first time in the history of UNFCCC COPs, civil society will have a dedicated space next to the formal COP-21 venue. Through "World Wide Views" (WWViews) — a global initiative to consult citizens — a new method was tested to include citizens in COP 21 negotiations in a structured way. Aarhus Parties collectively invited UNFCCC Parties to consider organizing a joint formal session between civil society and high-level officials at COP 21. In addition, they encouraged them to promote public participation in the text of the future Paris agreement and to address outcomes of WWViews consultations in formal documents.

These measures will offer a good opportunity to Governments, NGOs, business, academia and other stakeholders to discuss challenges and to reach a joint commitment for a universal climate agreement. And it is only through a participatory process, engaging all nations and diverse stakeholders, that we stand any chance of attaining the objective of mitigating and adapting to impacts of climate change.

Widespread concerns over lack of transparency in international trade negotiations made this topic high on the Aarhus agenda. The issue was discussed for the first time under the Convention's auspices and attracted the keen interest of participants. The European Union reported that efforts were being continuously made to enhance public participation and increase the opportunities for stakeholders to express their views and opinions. This was achieved through the establishment of a civil society dialogue, which featured regular meetings between civil society representatives, the European Commissioner and the Director General of Trade of the European Commission. TTIP negotiations included stakeholder events, which were wider in scope than civil society dialogue as they included industry, citizens and the press. In the European Union (EU) only three criteria needed to

be met in order to participate in the civil society dialogue. The interested organizations needed to be non-profitable, EU-based and registered in the EU transparency register. Civil society organizations were included as observers in EU delegations attending WTO biannual ministerial conferences. For the WTO, access to information seemed no longer a contentious issue for the organization. WTO was an example of ensuring transparency in trade negotiations although public participation remained a restricted area. NGOs reported that initially the public had no chance to engage in discussions on TTIP, which threatened the application of the principles of the Convention. They saw a clear improvement in transparency but stressed at the same time that TTIP remained controversial as it could be a case where trade agreements had a negative impact on environmental legislation. “The promotion of Aarhus Convention principles helps improve transparency in international trade negotiations, such as TTIP” said Gita Parihar of the European ECO Forum. Discussions demonstrated that international trade negotiations required stronger engagement of Aarhus Parties to bring the application of the Convention’s principles to the high standards in this area.

Not least, the interest in the Convention beyond the geographic limits of the UNECE region is growing. It has already inspired processes in Asia and Latin America and the Caribbean. Under the leadership of Chile and with support of ECLAC, countries in Latin America and Caribbean are negotiating a “ Principle 10 instrument” for the region similar to the Aarhus Convention.

Access to justice for all in post-2015 agenda — Can the Aarhus Convention help?

What indicators could measure the effectiveness of access to justice in environmental matters and monitor the progress in the implementation of SDGs? What instruments could help to remove financial barriers to access to justice? Can NGOs claim damages on behalf of the environment?

These were some of the questions discussed by the Task Force on Access to Justice led by Sweden. The meeting gathered representatives of numerous Parties, high-level judges, other members of the judiciary, NGOs, IFIs and other stakeholders from across the region. Discussions focused on the scope of review, costs and remedies — in particular, what decisions, acts and omissions can be reviewed, to what extent substantive and procedural issues can be reviewed and whether courts could alter administrative decisions which contravene provisions of domestic law

The participants also took stock of approaches for mitigating costs and removing financial barriers to access to justice. The focus was on the application of the loser pays principle, experts’ and witness’ fees and bonds for injunctive relief. They also gained better knowledge

of what kind of remedies could be claimed by NGOs in case of environmental damage. The participants highlighted a number of challenges in access to effective remedies in environmental cases. Remedies should be available and effective not only on paper, but also remedy the conflicting situation on the ground. A serious concern was also raised that in some jurisdictions NGOs are still denied access to courts to challenge acts or omissions which contravene provisions of domestic law. These challenges may impact effective implementation of the Convention's third pillar in the Parties concerned.

It was agreed that the collection of adequate and comparable quantitative data concerning the implementation of the access to justice pillar of the Convention could assist Parties to monitor the effectiveness of access to justice and to contribute to monitoring the relevant SDGs to be adopted in September 2015.

The pivotal role that courts play in interpreting provisions of domestic law on access to justice and the importance that such provisions be interpreted in accordance with the Aarhus Convention was stressed. In this regard, participants highlighted the importance of strengthening networking of members of the judiciary, judicial institutions and other review bodies across the pan-European region and welcomed the initiative of establishing such network under auspices of the Task Force. "The issue of networking is not only training but exchange of information on practices of law where one can find inspiring solutions for the countries" said Matanat Asgarova of the Academy of Justice of Azerbaijan.

The meeting also featured a special session for judges and judicial training institutions dedicated to the promotion of judicial networking on environmental matters across the pan-European region. Participants learned about the functioning of the EU Forum of Judges for the Environment and the Association of European Administrative Judges, and noted a growing need for greater involvement of judiciary from Eastern and South-Eastern Europe, the Caucasus and Central Asia in judicial networking on environmental matters. Marc Clement, a judge from the Administrative Court of Appeal in Lyon and a representative of the EU Forum of Judges for the Environment, stressed that "We are sharing in common the Aarhus Convention as a common good."

The outcomes of the Task Force's work are expected to facilitate the removal of existing barriers to access to justice in environmental matters.

Note on abbreviations: Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters (Aarhus Convention), sustainable development goals (SDGs), non-governmental organisations (NGOs), twenty-first session of the Conference of the Parties (COP 21) to the United Nations Framework Convention on Climate Change (UNFCCC), High-level Political Forum (HLPF), World Trade

Organization (WTO), Transatlantic Trade and Investment Partnership (TTIP), United Nations Economic and Social Council (ECOSOC), United Nations Environment Programme (UNEP).
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