



**Economic and Social
Council**

Distr.
GENERAL

ECE/MP.PP/WG.1/2005/8/Add.1
23 November 2004

ORIGINAL: ENGLISH

ECONOMIC COMMISSION FOR EUROPE

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
(Fourth meeting, Geneva, 1-4 February 2005)
(Item 11 of the provisional agenda)

REPORT OF THE SECOND MEETING OF THE EXPERT GROUP ON PUBLIC PARTICIPATION IN INTERNATIONAL FORUMS

Addendum

DRAFT GUIDELINES ON PROMOTING THE APPLICATION OF THE PRINCIPLES OF THE AARHUS CONVENTION IN INTERNATIONAL FORUMS

prepared by the Expert Group with the assistance of the secretariat¹

Recalling principle 10 of the Rio Declaration on Environment and Development, which states, inter alia, that environmental issues are best handled with the participation of all concerned citizens, at the relevant level,

Recalling also article 3, paragraph 7, of the Convention, which requires each Party to promote the application of the principles of the Convention in international environmental

¹ Paragraphs 49 to 51 were not fully discussed by the Expert Group due to time constraints and are included under the authority of the Chairman.

decision-making processes and within the framework of international organizations in matters relating to the environment, and paragraph 31 of the Lucca Declaration, in which Parties, Signatories and other States and stakeholders recognized the need for guidance on the implementation of this provision of the Convention,

Believing that such guidance would assist Parties and Signatories in understanding and fulfilling their respective legal obligations under the Convention and be of value to other interested States not party to the Convention, as well as to international forums, including their secretariats, and non-governmental organizations,

The Meeting of the Parties

1. Adopts the following Guidelines and recommends their application by all Parties and Signatories as a non-legally binding instrument to assist them in implementing their respective legal obligations under article 3, paragraph 7, of the Convention;
2. Encourages other interested States and regional economic integration organizations to take the Guidelines into consideration and to apply them as appropriate;
3. [Also encourages][Invites] relevant international forums, including their secretariats, non-governmental organizations and other relevant actors to support the application of the principles of the Convention as set out in these Guidelines and to consider how they might adapt their own processes to further the application of these Guidelines;
4. Resolves to keep the Guidelines under review and assess their application and impact at the third and subsequent meetings of the Parties.
5. Requests the secretariat to prepare a compendium of good practices in this field before the third meeting of the Parties and invites interested States and organizations to contribute to its preparation.²

I. PURPOSE AND SCOPE

1. The primary purpose of these Guidelines is to provide guidance to Parties and Signatories on promoting the application of the principles of the Convention in international forums in matters relating to the environment. In order to meet the Convention's objective effectively, Parties and Signatories should ensure the application of these Guidelines to the extent appropriate in the light of reasonable considerations such as the particular characteristics of each international forum concerned and the nature and availability of resources.
2. These Guidelines are intended to be applied by Parties and Signatories, acting individually or in a coordinated way, in the context of:
 - (a) The development, modification and application of relevant rules and practices applied within international forums (e.g. rules of procedure covering issues such as transparency, accreditation, etc.); and

² The Expert Group considered that at a later stage, it might make sense to include the above paragraphs in a draft decision, to which the remaining text ('the Guidelines') would be annexed.

(b) The treatment of relevant substantive issues within those forums.

3. These Guidelines are also intended to serve as a source of inspiration to other interested States and regional economic integration organizations, secretariats of international forums, including secretariats of multilateral environmental agreements such as the other UNECE environmental conventions, non-governmental organizations and other members of the public having an interest in promoting the application of the principles of the Convention in international forums.

4. These Guidelines relate to international forums, including:

(a) The negotiation and implementation of multilateral environmental agreements (MEAs) and decisions and actions taken under their auspices;

(b) The negotiation and implementation of other relevant agreements (e.g. trade agreements), [and dispute resolution processes under such agreements,] if decisions or actions undertaken pursuant to the agreements relate to the environment or may have a significant effect on the environment;

(c) Intergovernmental conferences focusing on the environment or having a strong environmental component (e.g. the “Environment for Europe” conferences and the World Summit on Sustainable Development), and their respective preparatory and follow-up processes;

(d) International environmental and development policy forums (e.g. the UNECE Committee on Environmental Policy, the United Nations Commission on Sustainable Development and the United Nations Environment Programme’s Governing Council);

(e) International financial institutions, if their decisions or actions, including projects, relate to the environment or may have a significant effect on the environment;

(f) Other permanent organizations as well as ad hoc, time-limited organizations set up for specific purposes whose decisions or actions relate to the environment or may have a significant effect on the environment.

5. These Guidelines are relevant at all stages of any given international policy process (including initiation, pre-negotiation, decision-making, implementation and review phases).

6. These Guidelines are intended, through their application, to positively influence the way in which international access is secured in international forums in which Parties and Signatories to the Convention participate. In forums wholly composed of or controlled by Parties to the Convention, these Guidelines are [intended][expected], through their application, to be [more]³ fully reflected, and to shape the way in which international access is secured.

³ The Expert Group considered that the word “more” would be used in conjunction with the word “expected” but not necessarily in a conjunction with the word “intended”.

II. DEFINITIONS

For the purposes of these Guidelines:

7. “Aarhus Convention” and “the Convention” mean the UNECE Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters;
8. “Party” means, unless the text otherwise indicates, a Contracting Party to the Convention;
9. “Environmental information” means any information in written, visual, aural, electronic or any other material form on:
 - (a) The state of elements of the environment, such as air and atmosphere, water, soil, land, landscape and natural sites, biological diversity and its components, including genetically modified organisms, and the interaction among these elements;
 - (b) Factors, such as substances, energy, noise and radiation, and activities or measures, including administrative measures, environmental agreements, policies, legislation, plans and programmes, affecting or likely to affect the elements of the environment within the scope of subparagraph (a) above, and cost-benefit and other economic analyses and assumptions used in environmental decision-making;
 - (c) The state of human health and safety, conditions of human life, cultural sites and built structures, inasmuch as they are or may be affected by the state of the elements of the environment or, through these elements, by the factors, activities or measures referred to in subparagraph (b) above, including documents from all relevant stages of the decision-making process, such as all relevant final documents, draft documents, background data and analyses, studies, raw data, written contributions from participants in decision-making processes, organizational information and information concerning the decision-making processes, the contact points and the timing for decisions.
10. “The public” means one or more natural or legal persons, and, in accordance with national legislation or practice, their associations, organizations or groups;
11. “The public concerned” means the public affected or likely to be affected by, or having an interest in, the environmental decision-making; for the purposes of this definition, non-governmental organizations promoting environmental protection and meeting any requirements under national law shall be deemed to have an interest.
12. “International forum” means any international environmental decision-making process, or any international organization when dealing with matters relating to the environment, as illustrated in paragraph 4. In this context, “international” [includes][comprises] forums involving a regional economic integration organization, or two or more States;

13. “International access” means public access to international forums in accordance with the three pillars of the Convention, namely access to information, public participation in decision-making and access to justice in environmental matters.

III. GENERAL CONSIDERATIONS

14. Access to information, public participation and access to justice in environmental matters, in addition to being guaranteed rights under the Convention, are fundamental elements of good governance and essential for sustainability. This is no less true at the international level than at national and local levels.

15. Providing international access opportunities, and establishing and strengthening procedures that enable the taking of these opportunities, generally contributes to better decision-making and improved implementation of decisions.

16. Providing international access might, for practical reasons, be more complex, costly and difficult to manage than national or local access. In some cases, practices in international forums do not effectively meet, and may even compound, these challenges. There is a need to adapt and structure international processes and mechanisms in order to address these challenges and ensure meaningful, balanced and equitable international access.

17) Processes and mechanisms should facilitate and promote international access by a diverse range of relevant actors within an efficient and manageable process. Such actors may include:

- a) Representatives of the public who are, or are likely to be, most directly affected;
- b) Representatives of public interest organizations, such as environmental citizens’ organizations;
- c) Representatives of commercial or other interests that might cause, contribute to or be in a position to alleviate the problems under discussion;
- d) Other representatives of the public concerned; [and
- e) Those who can offer relevant expertise].

18. When structuring international access, care should be taken to make or keep these processes open, in principle, to the public at large. However, in order to ensure meaningful international access, special attention should be paid to facilitating the involvement of representatives of the public concerned. The scope of the public concerned may vary and should be determined in a consultative and transparent manner, taking into account paragraphs 17, 19 and 20.

19. Special efforts should be made to minimize barriers to access for representatives of those who are, or are likely to be, most directly affected by, or who have an interest in, the outcomes of decisions, including environmental citizens’ organizations and traditionally marginalized constituencies.

20. If members of the public have differentiated capacity, resources, socio-cultural circumstances or economic or political influence, there is a need for differentiated treatment to

ensure a balanced and equitable process. Processes and mechanisms for international access should be designed to promote transparency, minimize inequality and avoid the exercise of undue economic or political influence.

21. International access should be provided without discrimination on the basis of citizenship, nationality or domicile. In the case of a legal person, international access should be provided without discrimination as to where it has its registered seat or an effective centre of its activities.

22. Capacity-building is important, both for public-interest organizations and, in different ways, for secretariats of international forums. Capacity-building in developing countries, in countries with economies in transition and for stakeholders who are new to international forums is of particular importance.

23. Enhancing international access implies investment of resources. Accordingly, sufficient resources should be made available to enable meaningful, balanced and equitable participation.

24. Some codification of procedures governing international access could be beneficial and contribute to transparency and predictability. However, excessive formalization of such procedures (e.g. those relating to accreditation of participants) could in some circumstances be counterproductive and impede or reverse the progress of international access.

25. Effective international access requires involvement at an early stage, when all options are open, and at all relevant levels. This includes access to relevant preparatory processes at the national and regional levels.

26. To ensure the transparency of the decision-making process and thereby strengthen the application of the principles of the Convention, meetings of international forums, including their subsidiary bodies, should be open to the public unless there is [an overriding reason][a reasonable basis] [according to transparent and clearly standards that are made available in advance] [and a reasoned decision or explicit policy to that end has been adopted and made publicly available].

27. In order to ensure the effectiveness of international access without impeding the efficiency of the decision-making processes of international forums, non-governmental organizations (NGOs) and other actors should be encouraged to consider how they organize themselves. The issues that should be taken into consideration in this context include transparency, breadth of representation, openness to participation, coordination and procedures for meaningful consultation with constituencies.

IV. ACCESS TO INFORMATION

28. Each international forum should develop and make available to the public a clear and transparent set of policies and procedures on access to the environmental information that they hold in order to make access by the public more consistent and reliable. Such policies and procedures should enhance and facilitate both accessibility and understanding of the relevant information.

29. Subject to paragraph 30, all official documents developed and produced within each international forum and other related information should be made available to the public through the Internet in a timely manner if such information already exists in electronic form.
30. Having regard to paragraph 36, the practice of classifying documents as restricted should become the exception. Restricted documents should automatically be declassified after a set and reasonable time period, unless a specific decision is made to the contrary for a given document.
31. Providing the necessary technical means for effectively rendering information accessible to the public free of charge using electronic information tools such as clearing houses, interactive databases and registers should be promoted. Live audiovisual broadcasting of events through the Internet may be considered where appropriate. Innovative methods to reach a broader public, especially members of the public that do not have Internet access, should be considered.
32. The designation of information officers or contact persons by international forums will facilitate the flow of information to the public and should be promoted.
33. Information should be provided proactively, having due regard to paragraph 19, in a meaningful, accessible form, so that access to information may translate into an increase in knowledge and understanding. Both raw and processed data should be provided.
34. Subject to the following paragraphs, any member of the public should have access to environmental information held under the auspices or on behalf of any international forum upon request, respecting fully the consideration set out in paragraph 21 and without any requirement to prove or state a legal or other interest.
35. When environmental information is requested by a member of the public, it should be provided as soon as possible following the request, and subject to an appropriate time limit, which should in any case not exceed one month.
36. Only the environmental information that falls within the exempt categories set out in article 4, paragraphs 3 and 4, of the Convention should be permitted to be withheld by international forums, provided that these categories are interpreted in a restrictive way and that the public interest in disclosure is taken into account.
37. A refusal of a request, in whole or in part, should be in writing if the request was in writing or the applicant so requests and should state reasons for the refusal and give information on access to any review procedure referred to in paragraph 53 (a).
38. Environmental information should be provided in the form requested if it exists in that form. It should be made available free of charge or, at most, at a reasonable charge, reflecting only the costs of reproduction and dissemination. If there is a charge, a schedule of charges should be available to the public and cost waivers for public-interest organizations should be considered.
39. Procedures for the independent review of a decision to refuse or restrict access to information, according to paragraph 53 (a) below, should be an integral part of access to information policies.

V. PUBLIC PARTICIPATION

40. Public participation generally contributes to the quality of decision-making in international forums by bringing different opinions and expertise to the process and increasing transparency and accountability. The forms of participation might vary according to the nature and phase of the process, and the format of the meeting (expert, negotiation, etc). Efforts should be made to proactively seek the participation of relevant actors previously not engaged, in a transparent, consultative manner, appropriate to the nature of the forum.

41. Participation of the public concerned in the meetings of international forums, including their subsidiary bodies [and other formal and informal groups, established for purposes such as those described in paragraph 3], should be allowed unless there is [a reasonable basis][an overriding reason] to exclude such participation [according to transparent and clearly stated standards that are made available in advance] [and a reasoned decision or explicit policy to that end has been adopted and made publicly available].

42. Public participation should be as broad as possible. However, even if an international forum, or a process within it, is in principle open to public participation, the number of members of the public participating may be restricted if this is necessary and unavoidable for practical reasons. Any such restriction should take account of the nature and phase of the decision-making process and the form of participation sought and should aim at ensuring the quality, efficiency and expediency of the decision-making process. In such cases, accreditation or, if applicable, selection procedures based on clear and objective criteria should be set up and be public should be informed accordingly. Such procedures should be transparent, fair, accountable and accessible and aimed at securing meaningful, balanced and equitable participation. Selection criteria may include, among others, field of expertise, representation in geographic, sectoral, professional and other relevant contexts, and knowledge of working language. Procedures and criteria should take account of the value of continuity of participation without restricting the entitlement of newcomers and underrepresented stakeholders to participate.

43. In order to ensure the efficiency and expediency of decision-making processes and ensure as far as possible that members of the public purporting to represent a particular sector or interest group are genuinely representative of that sector or interest group, self-organization and self-selection processes among participants sharing common goals should be encouraged.

44. [Having regard to paragraph 20, public-interest organizations should be given no less standing and participation rights in decision-making processes than those enjoyed by business organizations.]

45. The international decision-making processes which should benefit from public participation include national preparation for international decisions, the formulation, implementation and/or execution of rules, plans, programmes, policies and projects, the negotiation and application of conventions and the substantive preparation of international events.

46. Effective public participation may be ensured through a variety of forms, depending on different factors, such as the type of international forum concerned and the nature and phase of decision-making process. Such forms may include consultative status, NGO advisory committees, NGO forums and dialogues, participation of NGOs in governmental delegations, Internet broadcasting of events and general calls for comments.

47. Subject to the more specific guidance contained in other relevant paragraphs, public participation should include the entitlement to have access to relevant documentation, propose items for the agenda, speak at meetings and circulate written statements.

48. Public participation procedures in international forums should include reasonable time frames for the different phases, allowing sufficient time for informing the public and for the public concerned to prepare and participate effectively during the decision-making process. The timing of the opportunities to participate should be compatible with those pertaining to public access to the relevant documents, in order to facilitate informed public participation. The opportunity to participate in a given decision-making process should be provided at a stage when options are still open and effective public influence can be exerted.

49. The public concerned should be informed in due time of the opportunities, procedures and criteria for public participation in the decision-making and of the availability of information for the public, such as drafts for comments, final documents, decisions and reports. Such information should be provided through web sites as well as directly to members of the public concerned having requested to be so notified. To preserve the quality of the decision-making process, transparent and clearly stated standards should be set regarding the provision of comments and the public should be informed accordingly.

50. Participation mechanisms should result in [reasoned] decisions that take due account of public comments. Transparency with respect to the impact of public participation on final decisions should be promoted, through, inter alia, ensuring the public availability of documents submitted by the public and the records of such positions in the related official documents.

51. Decision-making processes in international forums are enhanced by the participation of an informed, knowledgeable, diversely represented and well-coordinated public. Measures that would contribute to such participation, including preparatory meetings organized by or for the public and the forming of coalitions on specific issues, should be recognized as important. Governments, relevant organizations and donors should accordingly be invited to consider providing support, including financial assistance and support to international secretariats and public-interest organizations, taking account of the needs and priorities identified in paragraphs 22 and 23.

52. Noting that traditional arrangements for providing financial support for travel and subsistence costs to facilitate participation in some international forums can be quite costly and thus constrain the number of people who can participate, efforts should be made to apply innovative, cost-efficient and practical approaches which are consistent with good accounting practices with a view to maximizing participation.

VI. PUBLIC INVOLVEMENT IN REVIEW [,][AND] [COMPLIANCE] [AND DISPUTE SETTLEMENT] MECHANISMS

53. Members of the public should have access to review procedures to challenge any act or omission of any international forum, including its secretariat:

(a) In the provision of information or in the process of public participation in the forum's processes, within the framework of its rules and standards; and

(b) Concerning compliance with rules and standards relating to the environment. Such procedures should be impartial, fair, equitable, open and transparent.

54. [Public involvement in international implementation review [and] [compliance] [and dispute settlement] mechanisms could help to ensure the accountability within such mechanisms and contribute to monitoring the implementation of rules related to environmental issues. It could also strengthen the quality of the representation of public interests. The modalities of public involvement may vary depending on the rules and procedures of the international forums but could include, in the case of compliance mechanisms, providing for participation of the public in the development of such mechanisms and [in the process of appointing the members of the relevant bodies (e.g. by providing an entitlement to nominate members), as well as] providing for the mechanism to be triggered by submission of petitions or communications, including amicus curiae briefs by the public. Parties should consider and, where appropriate, promote such methods of involving the public in international implementation review [and] [compliance] [and dispute settlement] mechanisms.]

55. [A broad interpretation of the concept of "standing" or its equivalent in the context of international forums in proceedings involving environmental issues could further the objective of the Convention and should be applied].

VII. IMPLEMENTATION OF THE GUIDELINES

56. In connection with the collective review and assessment of these Guidelines by the Meeting of the Parties, Parties and Signatories should individually review and assess the application and impact of the Guidelines, with appropriate involvement of the public.