

# **UNFCCC and the Aarhus Convention**

Recommendations How To Improve Public  
Participation in the Framework of  
UNFCCC Processes

Position Paper

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In August 2011 Justice and Environment (J&E) compared the UNFCCC (draft) rules of Procedure with the Almaty Guidelines of the Aarhus Convention addressing Public Participation in International Forums in a study called UNFCCC and the Aarhus Convention: An Analysis of Existing Rules (<http://justiceandenvironment.org/publications/climate-change>).

Based on this J&E comes to the following conclusions and recommendations for decision makers:

#### UNFCCC and the Aarhus Convention

1. Based on **Principle 10** of the **1992 Rio Declaration**, the UNECE **Aarhus Convention** (in force since 2001) builds up on three pillars, access to information, public participation and access to justice.
2. The UN Framework Convention on Climate Change (**UNFCCC**), the major international legal instrument which is concerned with climate change, currently has 195 parties, the Aarhus Convention 44. While the obligations arising from the latter mostly concern national law and practice, the **Aarhus Convention** also makes **reference to public participation in international forums**, such as the UNFCCC, in its Art 3 (7): *“Each Party shall promote the application of the principles of this Convention in international environmental decision-making processes and within the framework of international organizations in matters relating to the environment.”* This provision is formulated as soft law and does not oblige the parties to carry out specific activities. However, based on this provision, the 2005 **Almaty Guidelines** (AG) have been established.
3. The AG provides **recommendations on access to environmental information** and offer guidance for state behaviour as regards **public participation in international forums**.

Hence, **regarding environmental information**, parties to the Aarhus Convention *i.a.* should encourage international forums to develop and make available to the public a clear and transparent set of policies and procedures on access to the environmental information; environmental information contained in official documents or developed and held in international forums should proactively be made available to the public (without costs), in the official languages of the concerned forum. Requests for information shall only be refused based on specific grounds for refusal (AG paras. 19-27). **Public participation** should be allowed and proactively sought in all different forms (observer status, advisory bodies, webcasts...), at all relevant stages of decision-making processes (especially at the early stages), and should only be excluded according to transparent and clearly stated standards. Moreover, public participation at meetings in international forums should include the entitlement to have access to all relevant documents as well as to circulate written statements and to speak. Due account should be taken of the outcome of public participation when taking decisions (see AG paras. 28-39).

#### Access to Information and Public Participation in the UNFCCC system

4. The **UNFCCC makes direct reference** to public participation and access to information. In addition **Guidelines for the participation of NGOs** at meetings of the bodies of the UNFCCC<sup>1</sup> have been published. Also there is **Draft Rules of Procedure**<sup>2</sup> which has not yet been adopted, even though the UNFCCC factually operates under them.
5. Both the Guidelines as well as the Draft Rules of Procedure limit themselves to mentioning the **possibility for participation of non-government actors** as observers in CoP sessions or other proceedings without voting rights and subject to notification of the secretariat (see Rules 7, 30 Draft Rules of Procedure, Letters A-D UNFCCC Guidelines). Both are by far not as ambitious or comprehensive as those of the Aarhus Convention and the AG, leaving a large space for the discretion of the UNFCCC bodies to decide over participation possibilities.
6. The UNFCCC itself contains provisions directly addressing issues of public participation (see “Commitments”, Art 4 par 1 (i) and Art 6 a *i.a.* oblige the Parties to promote and facilitate education, training and public awareness raising related to climate change and to encourage public **access to information** and **public participation**). The UNFCCC therefore contains various linkages to the Aarhus Convention (Aarhus Arts 3.3, 4-8). A further reference to Aarhus rights is contained in Art 7 par 6 UNFCCC which concerns the right of members of the public to take part in a session of the CoP as an observer. Reference is made to the Rules of Procedure (see also above iv., v.). Moreover, Art 8 par 2 (e) UNFCCC obliges the UNFCCC secretariat to “*ensure the necessary coordination with the secretariats of other relevant international bodies*” (e.g. the Aarhus Convention’s secretariat).
7. However, as the analysis shows, and despite neither the Aarhus Convention nor the AG providing for binding provisions regarding public participation in international

1 Available under: [http://unfccc.int/files/parties\\_and\\_observers/ngo/application/pdf/coc\\_guide.pdf](http://unfccc.int/files/parties_and_observers/ngo/application/pdf/coc_guide.pdf). 17 August 2011.

2 FCCC/CP/1996/2, available under: <http://unfccc.int/resource/docs/cop2/02.pdf>. 16 August 2011.

forums (see above ii.), there is still a long way to go for the UNFCCC if it wishes to approximate its standards to those reflected in the Aarhus Convention and AG.

**Access to environmental information:** While the AG promotes an open and proactive approach towards access to environmental information, the UNFCCC system remains rather closed and passive. In particular, the right to access to the working documents and the documents produced at sessions is not contained in any relevant provision. Moreover, there is little to no proactive dissemination of information.

**Public participation:** Critically in light of the AG, it remains difficult under the UNFCCC for members of NGOs to become an observer. According to the Rules of Procedure, in order to be admitted as an observer to the CoP, an organisation must be qualified in matters covered by the convention; transmit in advance information about its wish to participate to the secretariat; and must not be objected to by 1/3 of the Parties. The participation is even more difficult regarding sessions concerning other matters, informal meetings and working groups.

## Recommendations

8. Generally it is **necessary to create an overarching and binding framework for access to information and public participation under the UNFCCC**. It is necessary to **clarify who gets access** to what and when. The process of revision of the UNFCCC Guidelines for the participation of NGOs, which should include meaningful participation by members of the public, would be the first logical step in this context. An **exchange of information and experiences with the Aarhus Convention's secretariat** would allow for a fruitful cooperation. All relevant development should also be inserted into the rules of procedure; however their amendment has proven to be quite difficult and tedious in the past.
9. Timely **access to all information**, at least a falling under the "environmental information" definition of Art 2 para 3 Aarhus Convention, **should be guaranteed**. At sessions information relevant for the ongoing discussion or negotiation should be provided early in electronic and, where appropriate, also in paper form. More effort should be made to enhance public access to information, not only about climate change but also about the ongoing discussions and negotiations without having to state an interest. Access to information should also be realized **proactively** (*i.a.* AG 22). Concretely, the regulation on access to information should also be laid down under the UNFCCC.
10. Closed meetings should be the exception and not the rule. If a closed session is held, this should be communicated in advance along with the justifying exceptional circumstances. **Participation of the public** should be regulated in a **transparent** way allowing for the **broadest possible participation in all types of sessions, meetings and working groups**. This regulation should include an exhaustive list of reasons for excluding the public. The Parties to the UNFCCC should arrange for participation of NGO observers as part of their delegations. While the numbers of observers might be limited, the presence of a certain minimum amount of members of the public shall be guaranteed. Speaking slots should be provided for members of the public *before and during* sessions. **New methods** for public participation (*e.g.* computer/internet-based) should be explored. **Financial support** for participation should be considered

by the UNFCCC secretariat as well as by the Parties in order to reduce inequalities of the various groups of stakeholders.

11. A last area for recommendations concerns **access to justice**. Although the AG do not refer to this issue, to promote transparency, to enhance awareness and supportive participation of the public, **access to review procedures against decisions interfering with the rights on access to information and participation should be made available** under the UNFCCC.

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