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ОБЪЕДИНЕННЫЕ НАЦИИ

ЕВРОПЕЙСКАЯ ЭКОНОМИЧЕСКАЯ  
КОМИССИЯ

UNITED NATIONS

ECONOMIC COMMISSION  
FOR EUROPE

Palais des Nations, Room 332  
CH-1211 GENEVA 10

21 October 2015

Dear Mr Mokhiber,

Thank you for your letter of 21 August 2015 where you invited ECE to provide an input to the study on the relationship between climate change and enjoyment of the human right to health.

In response to your request, I am pleased to convey brief note prepared by the secretariat of the Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters (Aarhus Convention). See Annex I.

I thank you once again for opportunity to support the important work carried out by the Office of the High Commissioner and the Human Rights Council, and I am looking forward to our cooperation in the future.

Yours sincerely,

A handwritten signature in black ink, appearing to read 'Zaal Lomtadze'.

Zaal Lomtadze  
Chief of Section

Environment for Europe and Sustainable Development Section  
Environment Division  
United Nations Economic Commission for Europe



## ANNEX I

# THE CONVENTION ON ACCESS TO INFORMATION, PUBLIC PARTICIPATION IN DECISION- MAKING AND ACCESS TO JUSTICE IN ENVIRONMENTAL MATTERS AND ITS PROTOCOL ON POLLUTANT RELEASE AND TRANSFER REGISTERS AS TOOLS FOR ENHANCING THE ROLE OF THE PUBLIC IN TACKLING CLIMATE CHANGE

### Briefing note

Prepared by the ECE secretariat of the Convention and the Protocol

### Introduction

1. Climate change affects each of us, just as we all contribute to it - although with different regional intensities. To achieve behavior change, information and awareness-raising are key tools. Also, effective public participation leads to better decision-making as well as greater ownership and buy-in by citizens. In this regard people's legal rights to information and participation constitute a necessary precondition for addressing the challenge of climate change. The Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters, in short Aarhus Convention, has proved that it is possible for Governments to commit themselves to an agreement on these rights. The adoption of the Aarhus Convention in 1998 was a major step forward in the field of procedural environmental rights.
2. The Aarhus Convention provides a model of good environmental governance and recognizes the right to a healthy environment. It acknowledges that we owe an obligation to future generations. For the first time, the interlinked rights of access to information, public participation and access to justice were addressed in a comprehensive way in a single international treaty. These three pillars are furthering accountability and transparency in climate change-related decision-making, and strengthen public support for decisions. In her statement at the occasion of the entry into force of the Convention, former UN High Commissioner for Human Rights Mary Robinson said that the Convention is "a remarkable achievement not only in terms of protection of the environment but also in terms of the promotion and protection of human rights."
3. With forty six States and the European Union now Parties to the Convention, the Convention "remains the most ambitious venture in the field of environmental democracy under the auspices of the United Nations"<sup>1</sup> and is widely accepted as

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<sup>1</sup> See foreword by the Secretary-General of the United Nations, Mr Ban Ki-Moon in Jonas Ebbesson and others, "The Aarhus Convention: An Implementation Guide", United Nations publications, 2014.



the leading example of the implementation of principle 10 of the Rio Declaration on Environment and Development.<sup>2</sup> It is open to accession by non-ECE countries, subject to approval of the Parties. The Aarhus Convention is an unprecedented instrument of international environmental law, representing a significant step forward both for the protection of the environment and for the consolidation of democracy. As the only existing legally binding instrument to implement principle 10, it has drawn global attention and has inspired the development of similar processes and instruments in other regions. The Convention and its Protocol could also serve as valuable reference points if there were a decision to develop a global instrument, either binding or non-binding, on procedural environmental rights.

4. In general, the Convention is characterized by the following features relevant to human right to health and environment protection:
  - a. It requires Parties to guarantee rights of access to information, public participation in decision-making and access to justice in environmental matters. It also refers to the goal of protecting the right of every person of present and future generations to live in an environment adequate to health and well-being. These rights underlie the various procedural requirements in the Convention;
  - b. It establishes minimum standards to be achieved but does not prevent any Party from adopting measures which go further in the direction of providing access to information, public participation or access to justice. The Convention prohibits discrimination on the basis of citizenship, nationality or domicile against persons seeking to exercise their rights under the Convention;
  - c. It imposes obligations on public authorities, which are broadly defined so as to cover governmental bodies from all sectors and at all levels and bodies performing public administrative functions. Bodies acting in a judicial or legislative capacity are excluded. The definition of “public authority” also covers the institutions of regional economic integration organizations which become Party to the Convention (e.g. the institutions of the European Union);
  - d. It contains a general requirement on Parties to promote the application of its principles within the framework of international bodies and processes in matters relating to the environment.
5. Importantly, Article 10 of the Convention established reporting requirements for the Parties in order to continually review the implementation of the Convention. Decision 1/7 the Meeting of the Parties established the Compliance mechanism that has to be of a “non confrontational, non-judicial and consultative” nature and allow for “appropriate public involvement”. The Aarhus compliance mechanism is unprecedented among multilateral environmental agreements in the extent to which it gives the public, including NGOs, a role in triggering a review of a

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<sup>2</sup> See for example Birnie and Boyle, *International Law and the Environment*, 2001, p. 262.

Party's compliance. Since October 2003, the Compliance Committee established under the mechanism has dealt with approximately 130 communications from NGOs and individuals and two submissions from two governments. The Convention's compliance and reporting mechanisms, both of which provide a role for the public, have yielded valuable information on the extent and nature of the challenges in implementation.

6. The Convention has the Kiev Protocol on Pollutant Release and Transfer Registers which entered into force in 2009. It established a new legally binding international benchmark for reporting on emissions of pollutants from a wide range of potentially harmful activities. The Convention's provisions of access to information, participation and legal redress are mirrored in its Protocol. In common with the Convention, the Protocol is open to accession by non-ECE countries. The Protocol, signed by 36 States and the European Community, is open for accession to all UN Member States and regional economic integration organizations.
7. Whereas the Convention primarily establishes obligations on public authorities towards the public, the Protocol introduces a new dimension in that it implies reporting obligations for the private sector and may therefore be seen as a tool promoting corporate accountability in a specific context. PRTR reporting systems invite the public to participate in the regulatory system, both by monitoring the environmental performance of facilities and sectors and by engaging in dialogue with companies and government agencies on ways of improving such performance. Importantly, through the PRTRs greenhouse gas emissions (GHG) can be traced back to their source. The data made available on the Internet includes all substances covered by of the UNFCCC and Kyoto Protocol and can thus help countries meet the objectives of UNFCCC. Not only can the data of national pollutant registers supplement information needed to calculate national GHG inventories, it can also be used to cross-check data derived from other sources and help identify data gaps. In addition, GHG data incorporated into a national PRTR can raise public awareness of major emitters of greenhouse gases and contribute to the demand for improved environmental performance from industry and other sources. Experience shows that making emission data publicly available is already a powerful incentive for polluters to invest in voluntarily reducing their emissions. In this regard, it is also important to mention other sources of information on citizens' environmental rights such as the Aarhus Clearinghouse for Environmental Democracy (<http://aarhusclearinghouse.unece.org>) and PRTR.net (<http://prtr.net/>).
8. The Convention and Protocol establish that sustainable development can be achieved only through the involvement of all stakeholders. They recognize that access to the environmental information and public participation are essential for addressing the challenge of climate change. The Convention and Protocol promote the achievement of these goals at both national and international level.



9. There are linkages between the Aarhus Convention, Kiev Protocol and UNFCCC. For example, all three instruments recognize the importance of education, public awareness and access to information. Furthermore, climate-related decisions covered by the Aarhus Convention include decisions on permits, licenses for certain specific projects involving GHG emissions, national, provincial or local plans, programmes and policies on climate change or on energy, transport, agriculture, industry. Notably:

- **UNFCCC Article 6** requires Parties inter alia to "Promote and facilitate... in accordance with national laws and regulations, within their respective capacities the development and implementation of **educational and public awareness programmes** on climate change and its effects;"  
**Aarhus Convention art. 3.3** states that "Each Party shall promote environmental education and environmental awareness among the public..."  
**Aarhus Convention art. 5** provides for obligations on the collection and dissemination of information.
- **UNFCCC Article 6** requires Parties inter alia to "Promote and facilitate .. in accordance with national laws and regulations, within their respective capacities ...(ii) **public access to information** on climate change and its effects;"  
**Aarhus Convention art. 4** provides for obligations on public right of access to information upon request.  
**Aarhus Convention art. 5** provides for obligations on collection and dissemination of information.  
**Kiev Protocol on PRTRs** promotes free of charge, online access to environmental data.
- **UNFCCC Article 6** requires Parties inter alia to "Promote and facilitate .. in accordance with national laws and regulations, within their respective capacities ...(iii) **public participation** in addressing climate change and its effects and developing adequate responses..."  
**Aarhus Convention art. 6** provides for obligations on public participation in decision-making on specific activities.  
**Aarhus Convention art. 7** provides for obligations on public participation in decision-making on plans, programmes and policies.  
**Aarhus Convention art. 8** provides for obligations on public participation in decision-making on regulations and other legally binding instruments.

10. Thus, the Aarhus Convention and Kiev Protocol on PRTR can contribute to implementation of UNFCCC article 6.

11. The Aarhus Convention also provides a solid framework for the promotion of the principles of the Convention in international forums, including in climate change-

related decision-making. To facilitate this work, Parties adopted the Almaty Guidelines on Promoting the Application of the Principles of the Aarhus Convention in International Forums.<sup>3</sup> Parties to the Convention are committed to promote the principles of the Aarhus Convention in international environmental decision-making processes and within the framework of international organizations. The regular exchange of information on best practices and challenges regarding promotion of the principles of the Convention in relevant international processes and forums took place under the auspices of the Working Group of the Parties. At its ninetieth meeting, the Working Group of the Parties<sup>4</sup> devoted special attention to the UNFCCC processes on the road to Paris. During this meeting, the Governments and stakeholders were able to exchange experiences, including the good practice examples and challenges.

12. A number of guidance documents have been produced to facilitate the implementation of the Convention and its Protocol. The Implementation Guide of the Aarhus Convention is an essential reference for policy-makers, legislators and officials at all levels of government.<sup>5</sup> It contains important guidance for members of the public, including non-governmental organizations, seeking to exercise their rights, as well as for those in the private sector engaged in activities that are subject to the Convention. Furthermore, the wide distribution of a quick guide to the Convention<sup>6</sup> (published in the 6 official languages of the United Nations) and to the Protocol on PRTRs<sup>7</sup> (published in the 3 official languages of the ECE) aims to help raise awareness on the rights enshrined in these treaties. The Maastricht Recommendations on Promoting Effective Public Participation in Decision-making in Environmental Matters set out practical guidance on how to improve the implementation of the Convention's provisions on public participation in decision-making.<sup>8</sup>

### **Selected good practices and challenges<sup>9</sup>**

13. Public was involved in designing low-carbon scenarios in the framework of a federal-level project on transition of Belgium to a low-carbon society by 2050. The project had the dual objective of contributing to the elaboration of a low-carbon strategy and also promoting the discussion on the low-carbon transition.

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<sup>3</sup> Decision II/4 on the Application of the Convention in International Forums (ECE/MP.PP/2005/2/Add.5)

<http://www.unece.org/env/pp/mop2/mop2.doc.html#/>

<sup>4</sup> <http://www.unece.org/env/pp/aarhus/wgp19.html#/>

<sup>5</sup> [http://www.unece.org/fileadmin/DAM/env/pp/Publications/Aarhus\\_Implementation\\_Guide\\_interactive\\_eng.pdf](http://www.unece.org/fileadmin/DAM/env/pp/Publications/Aarhus_Implementation_Guide_interactive_eng.pdf)

<sup>6</sup> [http://www.unece.org/fileadmin/DAM/env/pp/Publications/Aarhus\\_brochure\\_Protecting\\_your\\_environment\\_eng.pdf](http://www.unece.org/fileadmin/DAM/env/pp/Publications/Aarhus_brochure_Protecting_your_environment_eng.pdf)

<sup>7</sup> [http://www.unece.org/fileadmin/DAM/env/pp/prtr/guidance/PRTR\\_simple\\_guide\\_web\\_2011\\_03\\_29.pdf](http://www.unece.org/fileadmin/DAM/env/pp/prtr/guidance/PRTR_simple_guide_web_2011_03_29.pdf)

<sup>8</sup> [http://www.unece.org/fileadmin/DAM/env/pp/mop5/Documents/Post\\_session\\_docs/ece\\_mp.pp\\_2014\\_2\\_add.2\\_eng.pdf](http://www.unece.org/fileadmin/DAM/env/pp/mop5/Documents/Post_session_docs/ece_mp.pp_2014_2_add.2_eng.pdf)

<sup>9</sup> See report of the fifth meeting of the Aarhus Convention Task Force on Public Participation in Decision-making and presentations, available from <http://www.unece.org/environmental-policy/conventions/public-participation/meetings-and-events/public-participation/2015/task-force-on-public-participation-in-decision-making-under-the-aarhus-convention/tfppdm5.html#/>



Within the Project there were identified the sources of emissions for the country by sector, the main levers to reduce greenhouse gas emissions in those sectors and four ambition levels, with level 1 as “business as usual” and level 4 as “very ambitious”. Across Belgium there had been a discussion, with broad public participation that resulted in 60 identified levers. Finally, the web tool was established that made it possible to view the levers, see what the key debates would be, and gave the public the possibility to design their own low-carbon scenarios and submit them.

14. Participation of different stakeholders took place in the Netherlands in relation to the spatial plan for all activities in the country, including the Delta Programme (protecting the Netherlands from sea level rise), which had used websites to advise people on what to do if the dykes broke. The newest development in the Netherlands involved bottom-up public participation, such as Energie U, a non-profit organization that sought to develop enough solar energy to supply the city of Utrecht at a cheaper price.
15. Albania used a number of electronic and media tools to disseminate information on climate change and adopted a strategy for effective communication on climate change as well as carried out media campaigns to raise public awareness.
16. A number of activities for awareness raising in relation to UNFCCC process were carried in Georgia. These included conferences, exhibitions, trainings, television programmes and social and electronic media.
17. The Danish Board of Technology coordinated the World Wide Views on Climate and Energy (WWViews), which was the largest ever structured citizens’ consultation process ever made. The aim was for countries to take the results into consideration when negotiating a Paris agreement. The results of this process demonstrated that 4 out of 5 citizens from both developing and developed countries were very concerned about climate change.
18. European Environmental Bureau and European ECO Forum carried out the survey to receive an overview from an NGO perspective regarding involvement of NGOs in the climate-related decision-making processes in a number of countries namely, Belarus, Bosnia and Herzegovina, Germany, Hungary, Kazakhstan, Kyrgyzstan, the Republic of Moldova, the Russian Federation and Ukraine. The survey showed that generally, the NGOs said that they had mostly not been involved in the decision-making process, that there was no specific structure for involving them, and that participation had not been stimulated or encouraged by administrations. Other obstacles are caused by lack of legal mechanisms. Accordingly, the survey determined that there was a clear need to establish functioning and efficient mechanisms for participation in decision-making in the area of climate change, and to further align relevant activities under UNFCCC and the Aarhus Convention.

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