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Maastricht Recommendations on Promoting Effective Public Participation in Decision-making in Environmental Matters

prepared under the Aarhus Convention



UNITED NATIONS

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Foreword

In many countries across the world active environmental citizenship is flourishing. Citizens are increasingly aware of their right to have a say on the environment they live in and to demand participation in decisions that may affect their own and their children's lives. However, environmental democracy is not a given. Its increasing importance is a response to the implementation of numerous projects in the past that have had a significant impact on the environment and the livelihoods of people. These projects were pursued over the objections of the public and, in particular, those of vulnerable groups, such as children and women, rural communities and the poor.

At the forefront of the push towards greater environmental democracy are the Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters — or Aarhus Convention — and the Protocol on Strategic Environmental Assessment to the Convention on Environmental Impact Assessment in a Transboundary Context. These international treaties were crafted to serve people's interests and to empower them to participate in decisions that have the potential to affect their lives. Based on the principle of the right to a healthy and favourable environment and the notions of sustainable development and environmental democracy, these treaties put in place mechanisms to realize these ideals in practice. The two instruments detail procedures to enable the public to be informed about and participate effectively in decisions that may affect their lives. While negotiated in the framework of UNECE, both instruments are open to accession by non-UNECE States. They promote universal principles, and there is increasing interest in them both within the region and globally.

The Recommendations on Public Participation developed under these treaties aim to assist policymakers, legislators and public authorities in their daily work of engaging the public in decision-making processes. They provide helpful guidance for engaging all interested stakeholders, so as to improve decision-making, planning and the implementation of policies and programmes at all levels. In addition, the Recommendations will contribute to Government efforts to tackle poverty and inequality by ensuring that all persons, including the poorest segments of society and rural communities, are given the opportunity to participate in decisions that affect them and, as a result, to benefit from the income generated from economic activities.

At the Rio+20 Conference the international community recognized that good governance and a truly sustainable economy require the effective involvement of the public, be it as voters, consumers or shareholders. I am therefore convinced that these Recommendations will also help to pursue a people-centred post-2015 development agenda and sustainable development goals.

Christian Friis Bach
Executive Secretary

United Nations Economic Commission for Europe

Summary

The Maastricht Recommendations on Promoting Effective Public Participation in Decision-making in Environmental Matters, as set out in the present document, were prepared by the Task Force on Public Participation in Decision-making under the Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters. They were drafted in response to the request of the Meeting of the Parties to the Convention,¹ following calls over several years from officials and members of the public for more practical guidance on how to improve the implementation of the Convention's provisions on public participation in decision-making.

The Maastricht Recommendations were prepared through an open and participatory process. In addition to focal points to the Convention and its stakeholders, the drafts were circulated to focal points and stakeholders of the Convention on Environmental Impact Assessment in a Transboundary Context and the Convention on the Protection and Use of Transboundary Watercourses and International Lakes for their comments.

The Maastricht Recommendations are based on existing good practice, and are intended as a practical tool to improve the implementation of the Convention's provisions on public participation in decision-making to be used in two key ways:

- a. To assist Parties when designing their legal framework on public participation in environmental decision making under the Convention;
- b. To assist public officials on a day-to-day basis when designing and carrying out public participation procedures on environmental decision-making under the Convention.

In addition, the Recommendations may also be of value to members of the public, including non-governmental organizations and the private sector involved in decision-making on environmental matters. They may also be of interest to Signatories and other States not party to the Convention, as well as to officials and stakeholders engaged in public participation in decision-making under the scope of other multilateral environmental agreements.

The Recommendations provide helpful guidance on implementing articles 6, 7 and 8 of the Convention, and especially how to address a number of key challenges identified by the Aarhus Convention Compliance Committee and others. They are neither binding nor exhaustive and, depending on the recommendation and the wide range of circumstances in different Parties' territories, they are not necessarily the only means of complying with the Convention. While the Recommendations are not an official interpretation of the Convention, they are an invaluable tool through which to share expertise and good practice, and to assist policymakers, legislators and public authorities in their daily work of implementing the Convention.

To assist officials carrying out public participation procedures under the Convention to do so effectively, it is recommended that the Maastricht Recommendations be translated into relevant national languages and, subject to resources, training be offered to officials in their use.



¹ ECE/MP.PP/2010/2/Add.1, paragraph 2 (c); see also ECE/MP.PP/2011/2/Add.1, decision IV/6, annex I, activity V.

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General recommendations

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A. Definitions

1. The terms “public authority”, “environmental information”, “the public” and “the public concerned” are used in these Recommendations in accordance with their definitions in article 2 of the Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters (Aarhus Convention). By way of further clarification:
 - a. “Public authorities” includes all persons coming within the definition of article 2, paragraph 2, of the Convention. This includes persons or bodies, other than the authority competent to take the decision (the competent authority), to which some tasks related to a public participation procedure are delegated² (see paras. 27–36 below and annex);
 - b. “The public” includes, as well as natural or legal persons, their associations, organizations or groups in accordance with national legislation or practice. As a good practice, the most inclusive definition of “the public” would be that based on the “every person” principle.³ Under the “every person” principle, any natural or legal person and any association, organization or group, regardless of its status in national law, is to be considered among “the public” for the purposes of the Convention. In order to ensure that the framework for public participation is as transparent, clear and consistent as possible, if it is not intended that every association, organization or group of natural or legal persons regardless of its status in national law, is to be included as “the public”, those that are to be considered as coming within that definition should be clearly specified in national law;
 - c. “The public concerned” includes, inter alia, non-governmental organizations (NGOs) promoting environmental protection and meeting any requirements under national law. To ensure the framework for public participation is as transparent, clear and consistent as possible, the following may be clearly specified through national law:
 - i. What constitutes “having an interest in” environmental decision-making;
 - ii. The requirements, if any, which NGOs promoting environmental protection must meet in order to be deemed to have an interest. What constitutes a sufficient interest should be determined in accordance with the objective of giving the public concerned wide access to justice.⁴
2. For the purposes of these Recommendations:
 - a. The “national legal framework” or “legal framework” includes all sources of national law, including constitutional, legislative, regulatory and administrative provisions, as well as case law and established administrative practice;
 - b. The “zero option” means the option of not proceeding with the proposed activity, plan or programme at all, nor with any of its alternatives.

B. General issues

3. Public participation enhances the quality and the effective implementation of decisions concerning the environment. Affording the public the opportunity to express its views and requiring public authorities to take due account of those views in the decision enhances the accountability and transparency of environmental decision-making and may strengthen public support for the decisions taken. In the process, it contributes to greater awareness of environmental issues among both the public and public authorities.
4. For the above reasons, public participation should be seen by all parties as a prerequisite of effective action and an opportunity for real influence, not merely as a formal procedural requirement. To this end, public participation should be fully incorporated into the decision-making on all decisions subject to the Convention, taking into account the specificities of the national procedures in place. Likewise, active public participation should be stimulated and encouraged.

² See the findings of the Compliance Committee on communication ACCC/C/2009/37 concerning compliance by Belarus (ECE/MP.PP/2011/11 Add.2), para. 78.

³ The “every person” principle is used in a number of countries that are party to the Convention.

⁴ See Aarhus Convention, article 9, para. 2.

C. Designing the legal framework for public participation in decision-making

5. To ensure effective public participation, the legal framework for decision-making subject to the Convention should:
 - a. Aim to provide for the most comprehensive, broad, active and accessible public participation possible with regard to:
 - i. The differing types of decisions and activities subject to the framework; and
 - ii. The varied number and characteristics of the public concerned corresponding to those activities;
 - b. Provide for public participation at the earliest stage of the decision-making;
 - c. As a good practice, allow for revision to reconsider past conclusions on the basis of new information;
 - d. As a good practice, be created in consultation with the public.
6. With respect to amendments to the legal framework for decision-making subject to the Convention, it should be kept in mind that any reduction from existing rights of public participation may be perceived as not in line with the objectives of the Convention.⁵

D. Designing a public participation procedure

7. In order to establish and maintain a clear, transparent and consistent framework to implement the provisions of the Convention, the public participation procedure for a decision subject to the Convention should be designed in such a way that both the public authorities and the public know precisely:
 - a. What decisions are to be taken, at which stage, the legal effects of those decisions and who is responsible for taking them;
 - b. The range of options to be discussed and decided at each stage, bearing in mind that the procedure should also be open enough to consider new options identified as a result of the public participation;
 - c. The possibilities for the public to participate in the decision-making at each stage and the procedures to be used;
 - d. The time frames for each stage, to the extent they can reasonably be predicted in advance;
 - e. How the public will be informed about any future steps in the procedure that are not yet elaborated;
 - f. The roles of the different bodies involved in the decision-making, including who is responsible for the various tasks and stages of the public participation procedure and their contact details;
 - g. The costs, if any, for the public to participate or to access information. To ensure effective public participation, there should be “free access” to participate⁶, i.e., no fees or charges for the public seeking to participate beyond the reasonable cost of copying requested information. If there are any costs, a schedule of these costs should be made available at the start of the public participation procedure;
 - h. As appropriate, how to appeal or contest a decision⁷, including the final decision under article 9 of the Convention.
8. When designing a public participation procedure the name or label given to the decision (e.g., “permit”, “consent”, “plan”, “programme”, “policy”, “decree”, etc.) is not decisive in determining whether that decision will fall within the scope of articles 6, 7 or 8 of the Convention. Rather, that will be determined by the decision’s legal functions and effects.⁸
9. There is no specific set of tools or techniques that constitute “best practices” in all contexts. Rather, the most appropriate techniques will be situation-dependent, and practices may need to be adapted to meet the

⁵ See the findings of the Compliance Committee on communications ACCC/C/2004/04 concerning compliance by Hungary (ECE/MP.PP/C.1/2005/2/Add.4), para. 18; and ACCC/C/2011/57 concerning compliance by Denmark (ECE/MP.PP/C.1/2012/7), para. 46.

⁶ See Aarhus Convention, preambular para. 12.

⁷ See Opinions of the Implementation Committee (2001–2010), para. 73 (a). This online publication of the Convention on Environmental Impact Assessment in a Transboundary Context is available from http://www.unep.org/env/eia/implementation/implementation_committee.html.

⁸ See the findings of the Compliance Committee on communication ACCC/C/2005/11 concerning compliance by Belgium (ECE/MP.PP/C.1/2006/4/Add.2), para. 29.

particular context, e.g., specific cultural needs, or to address changes that occur during the procedure. To this end, as a good practice, public authorities:

- a. Should, as a matter of course monitor the procedure while it is ongoing to evaluate how well it is working. Public authorities may, as part of the design process, establish criteria to assist in monitoring and evaluating the procedure. As an additional good practice, the evaluation may be made available to the public;
 - b. May, in the light of the above monitoring, revise or adapt the procedure, including the choice of tools, techniques and personnel, if needed to address deficiencies in the public participation procedure. Expressions of anger or frustration towards the process by certain members of the public concerned should not be viewed as a reason to do away with their participation, but rather as an indication that in some ways the format of the public participation procedure is not meeting its purpose and thus may need to be revisited and improved. Addressing such frustrations at an early stage may reduce the likelihood that members of the public concerned will seek to contest the decision later on. If it is proposed to make any significant changes to the public participation procedure as a result of monitoring its implementation, the public concerned should be duly notified (see paras. 52–70);
 - c. After the decision-making process is concluded, public authorities may, as an additional good practice, evaluate the public participation procedure overall to identify what might be done to ensure more effective public participation in such decision-making in the future. The evaluation might consider both the effectiveness of the procedure in facilitating the engagement of the public and its effectiveness in using that engagement in the decision-making process and, as a good practice, may be made publicly available.
10. As both public authorities and the public have limited time and resources, flexibility in the choice of tools and techniques and tailoring them to the nature of the decision and its context will increase the effectiveness of the public participation procedure. The tools and techniques used should be proportional to the complexity and potential impact of the decision. This will also help to avoid so-called “participation fatigue”.
 11. With respect to the selection of the most appropriate tools and techniques for public participation, experience has shown that:
 - a. For activities subject to the Convention of high potential environmental significance or affecting a large number of people, more elaborate procedures may be appropriate to ensure effective public participation. For example, in addition to opportunities for the public to submit written comments, public inquiries or hearings (more formal, including submission of formal evidence and the possibility for cross-examination in many countries) or public debates or meetings (less formal, possibly with facilitated group processes), may be appropriate;
 - b. For activities subject to the Convention with less significant environmental effects, access to all relevant information and the opportunity to submit written comments and to have due account taken of them

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E. Carrying out a public participation procedure

13. When carrying out a public participation procedure, it is recommended that the public authorities do so with:
 - a. Clarity of purpose. Both the competent public authorities and the public should understand the goal of the procedure;
 - b. Sufficient time frames for all stages of the public participation procedure, including for taking due account of the outcomes of the public participation (see paras. 71–77);
 - c. A commitment, made publicly and at an appropriately high level, to use the procedure to guide their actions.
14. In addition, to the extent feasible, when carrying out a public participation procedure, it is recommended that the public authorities, do so with:
 - a. Due consideration of the needs and abilities (e.g., with regard to language, literacy, access to the Internet, geographic location (rural/urban), mobility) of the public concerned so that they can participate effectively in the procedure;
 - b. A commitment to accountability, self-assessment and learning from experience;
 - c. Adequate funding and staff.
15. It is recommended that, if in the course of the decision-making process the public authorities become aware of significant new information or that the circumstances have changed in some significant way, the public is given a further opportunity to participate before the decision is taken. Depending on the new information or circumstances, this may require the timing for comments to be extended or restarted, or for options already closed to be reopened, if necessary for the protection of the environment or to allow the public concerned to reflect the new information in their deliberations. For example, the submission of revised environmental impact assessment (EIA) or strategic environmental assessment (SEA) documentation in which substantial information that might affect the public's comments on a proposed project or activity has changed could be a circumstance requiring the public to be provided with a further opportunity to participate.

F. Public participation on the zero option⁹

16. In line with the Convention's requirement for the public to have an opportunity to participate when all options are open,¹⁰ the public should have a possibility to provide comments and to have due account taken of them, together with other valid considerations required by law to be taken into account, at an early stage of decision-making when all options are open, on whether the proposed activity should go ahead at all (the so-called zero option).¹¹ This recommendation has special significance if the proposed activity concerns a technology not previously applied in the country and which is considered to be of high risk and/or to have an unknown potential environmental impact. The opportunity for the public to provide input into the decision-making on whether to commence use of such a technology should not be provided only at a stage when there is no realistic possibility not to proceed.¹²

G. Multi-stage decision-making

17. The framework for decision-making may involve various consecutive strategic decisions under article 7 or 8 of the Convention (policies, plans, programmes, legislation or regulations) and individual decisions under article 6 of the Convention (for example, decisions authorizing the basic parameters and location of a specific activity, its technical design, mitigation measures and, finally, its technological details related to specific environmental standards as applicable to the activity in the selected location). Such decision-making is often known as “multi-stage” decision-making.

⁹ See definitions section for definition of “zero option”.

¹⁰ See Aarhus Convention, article 6, para. 4.

¹¹ See the findings of the Compliance Committee on communications ACCC/C/2006/16 concerning compliance by Lithuania (ECE/MP.PP/2008/5/Add.6), para. 74; ACCC/C/2006/17 concerning the European Community (ECE/MP.PP/2008/5/Add.10), para. 51; and ACCC/C/2009/41 concerning compliance by Slovakia (ECE/MP.PP/2011/11/Add.3), paras. 61 and 63.

¹² See the findings of the Compliance Committee on communication ACCC/C/2006/16 concerning compliance by Lithuania (ECE/MP.PP/2008/5/Add.6), para. 74.