

## **Recommendations on Public Participation in Decision-making in Environmental Matters**

**2<sup>nd</sup> Draft – October 2012**

Comments by

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Following Fiona Marshall's invitation to provide comments to the 2<sup>nd</sup> draft Recommendations on Public Participation in Decision-Making in Environmental Matters, herewith I send my contribution. I first make some general comments and then concentrate particularly in section III: Public participation concerning plans, programmes and policies (article 7). These comments may also be applicable to public participation in decision-making regarding genetically modified organisms (GMOs) (article 6, paragraph 11 and article 6 bis), as the issues at stake are of similar nature.

### **General:**

- 1- The recommendations laid out in the document address directly the legal requirements of the Convention, clarifying the meaning of each relevant article and helping to understand the formalities of the requirements;
- 2- In the beginning of the document it says that these recommendations “have been developed at the request of the Meeting of the Parties to the Aarhus Convention, **following calls over several years from officials and stakeholders at the ground level** for more **practical guidance** on how to implement the Convention's provisions on public participation in decision-making”;
- 3- It further states that “The Recommendations are intended as a practical, user-friendly tool to improve the implementation of the Convention's provisions on public participation in decision-making” particularly with respect to the **design of legal frameworks** and the **design and carrying out of procedures** for public participation;
- 4- Looking at the two above paragraphs I can recognize recommendation for the design of legal frameworks and procedures, **but not practical guidance** for ground level public participation, where guidance should adopt a more social sciences approach towards the use of techniques, and methods that would improve the practice of public participation;
- 5- Even though these Recommendations are specifically addressing public participation, it is surprising how limited references exist concerning **access to justice**, particularly when access to information is insufficient.

### **Section III: Public participation concerning plans, programmes and policies (article 7).**

- 6- Reasons provided in 129 are good enough to justify that public participation concerning plans, programmes and policies follow a totally different logic from public participation in decision-making on specific activities, and therefore that the application of mutatis mutandis may not be adequate in most aspects. However I have not made a thorough review of all paragraphs pertaining to section II to be able to provide substantive details;
- 7- The recommendations on plans, programmes and policies are being provided from a projects (specific activities) stand point (evident in the expressions: “harder to understand...”, “it is more uncertain than...”, “wider range of alternatives...”, “the public is larger than...”). This attitude is common since most experience is based on project’s decisions, however there are already sufficient cases of public involvement at different planning and policy contexts (eg sustainable development strategies round tables, local agenda 21, future thinking fora or panels) from which useful learning lessons can be drawn to make it more specific to planning and policy levels, without having to always be on a comparative basis with project’s level;
- 8- The recommendation should encourage learning processes rather than simple information provision in documented formats, for example paragraph 131 should include a point whereby earlier information to the public on the plans, programmes and policies should be ensured to initiate a learning process, and systematic information be provided along the process to ensure an evolving knowledge formation;
- 9- In line with the previous point it would be useful to provide recommendation on what kind of early information would be necessary in order to ensure the public is prepared for a discussion on plans, programmes and policies; What is that the public needs to know to be able to participate? How can this be ensured? The recommendations miss to address this important condition for public participation, which is also a requirements of the Convention – access to information;
- 10- Likewise it would have been useful to give examples of what kind of alternatives could exist for public discussion in policies, plans and programmes, to avoid falling in project, or specific activities, type of alternatives – again most officials and consultants come from project’s EIA practice and it is hard on them to be able to identify what are alternatives in plans, programmes or policies;
- 11- In the same way, when the recommendations refer to uncertainty it should exemplify what kind of uncertainties could occur, as many uncertainties might persist beyond implementation while others could be addressed in a more near future;
- 12- The recommendations refer to the need to involve representatives of the 'public' that do not currently have a voice (129 e) – this is nice to say but how can it be done in a way that is fair, relevant and practical?
- 13- Paragraph 132 is fine but it is only informative, it is not guidance; Guidance needs to help doing, and not only to say what may happen if it doesn’t get done;

- 14- Paragraph 129 b) is rather absurd – public authorities must always be responsive since anything that relates to the environment is always in the public interest; I recommend this to be removed.
- 15- Paragraph 137 b) “Develop criteria for evaluating the significance of the effect on the environment of a proposed law or regulation” - is a technical aspect pertaining to assessment techniques, it needs to be defined at a different level, not when the public is being engaged: what can be done is to engage the public in the definition of criteria, but that would be an input to the definition of significance criteria at a technical level.