

Special study group: “Public participation in international bodies”

Geneva, November 8<sup>th</sup> to 9<sup>th</sup> 2007

## **FINDINGS OF THE STUDY OF PUBLIC PARTICIPATION INTERNATIONALLY – STATUS REPORT ON PRACTICES IN FRANCE**

Study carried out as part of the consultation process on the Almaty Guidelines

### **Background**

1. According to paragraph 7 of article 3 of the Convention, the Meeting of Parties adopted the Almaty Guidelines on the means to promote the application of the Aarhus Convention in international bodies through its Decision n° II/4. Through the same decision, the Meeting of Parties also set up a special team to undertake consultations on the guidelines. A consultation more directly concerning the parties to the Aarhus Convention is currently in progress to assess how the guidelines are implemented in the member states.

2. In order to provide a response to the consultation within the Parties (“at-home consultation”) and to identify how France satisfies its obligations in its implementation of the guidelines, a study has been carried out by the French ecology and sustainable development and planning ministry (MEDAD). Its purpose is to study negotiators’ practices in the field of public participation in decision-making processes and to compare NGOs’ and the focal points’ perceptions to establish an inventory of practices in this field, i.e.:

- The conditions under which French negotiators and delegations organise public participation in their preparation of French positions;
- The conditions under which France, when present in international environmental bodies, ensures that the Aarhus principles on public consultation are applied;
- The extent to which members of the French public feel they effectively contribute to the work of international bodies.

The study's findings were drawn from 29 interviews (22 focal points and 7 NGO/ private sector associations)<sup>1</sup>.

### **Assessment of the quality of public participation internationally**

3. The French negotiators feel that public participation in international bodies is globally satisfactory, although they regret the lack of co-ordination between the various public components<sup>2</sup>. Moreover, the technical complexity of certain conventions is identified as a factor which makes public participation more difficult<sup>3</sup>.

4. For the representatives of civil society, public participation internationally is still too low today. Effective participation measures are lacking in international bodies, in particular because of lack of resources within the NGOs and convention secretariats<sup>4</sup>.

### **Assessment of the quality of public participation in France**

5. At the French level, public participation is globally seen as unsatisfactory by negotiators and representatives of civil society. Even though numerous mechanisms are in place, their use needs improving.

Better public co-ordination would, for example, allow us to increase the sphere of influence of initiatives which are sometimes highly targeted and specific, and in some cases, isolated<sup>5</sup>. Whilst in some negotiations, networks of associations represent all NGOs, like the Réseau Action Climat (RAC) in climate negotiation, for other conventions the NGOs are involved for very specific topics, which does not always foster good collaboration<sup>6</sup>, nor does it offer an effective information relay.

The representatives of civil society however, emphasise the importance of political will in fostering participation<sup>7</sup>.

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<sup>1</sup> The list of interviews carried out as part of the study is annexed to this document.

<sup>2</sup> Weakness of co-ordination also emphasised by WWF France.

<sup>3</sup> Helsinki Convention on the Protection and Use of Transboundary Watercourses and International Lakes, OSPAR Convention for the Protection of the Marine Environment of the North-East Atlantic.

<sup>4</sup> Les Amis de la Terre, Greenpeace France.

<sup>5</sup> The Bern Convention on the Conservation of European Wildlife and Natural Habitats.

<sup>6</sup> The Bern Convention on the Conservation of European Wildlife and Natural Habitats.

<sup>7</sup> Greenpeace France, 4D (Dossiers et Débats pour le Développement Durable).

6. Negotiators and representatives of civil society also agree that efforts are being made in the area of participation.

Of note are the initiatives taken as part of the Alpine Convention in favour of Alpine populations via local politicians who have a key role in representing them.

An association from the private sector also feels that in France participation mechanisms and information work well generally, and insists on the fact that the same conditions of participation should be required for all countries<sup>8</sup>.

### **Assessment of the quality of the choice open to representatives from civil society, at international and French levels**

7. In general terms, public participation is felt to be positive and constructive by the focal points as well as by civil society representatives, even though it is sometimes considered a “delaying factor” in the decision-making process according to the focal points. They also emphasise that the heterogeneous nature of the public implies various different forms of participation.

Hence, in certain cases, negotiators see participation as a “brake”, in the sense that time-lines are extended, negotiations made more complex, etc...<sup>9</sup>.

Conversely, participation can also allow “vigilance in respect of member states”<sup>10</sup> and imply a level of quality of national delegation positions, encouraging national delegations to go more deeply into the topic when considering their positions<sup>11</sup>. Not to be overlooked are the benefits of promoting public participation at the “right moment” because it leads to compromises that are acceptable to all and the use of effective instruments<sup>12</sup>.

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<sup>8</sup> Entreprises pour l’Environnement (EpE).

<sup>9</sup> It may also only be judged desirable where it supports the national position, and in this case, the French position (EpE).

<sup>10</sup> Réseau Action Climat France (RAC France).

<sup>11</sup> The United Nations Framework Convention on Climate Change.

<sup>12</sup> The International Convention Against Desertification, the Espoo Convention on Environmental Assessment of the Impact of Certain Transboundary Projects, the Barcelona Convention for the Protection of the Mediterranean Sea Against Pollution.

## **Major obstacles to effective public participation and the risks faced in international negotiations**

8. Whilst the choice open to representatives of civil society internationally and at French level is generally felt to be satisfactory, the cost linked to participation in international bodies is a factor which may limit public participation<sup>13</sup>.

9. The domination of English is massively considered by the focal points as a barrier to information and public participation. A large number of working documents are only in English, which poses the problem of accessibility<sup>14</sup>.

However, it is important to make a distinction between highly-specialised French associations whose objective is to protect the environment<sup>15</sup>, for whom the almost exclusive use of English can indeed represent a barrier to their participation, and national, European or international NGOs or large federations, for whom it is not a real obstacle. The focal points and representatives of civil society indeed noted a professionalisation of NGOs, in particular due to a highly qualified and specialised staff profile (in the scientific, economic and legal disciplines in particular), producing high-quality expertise and a good command of English.

10. The lack of human and financial resources is identified as a major obstacle to public participation, notably:

- a) In the make up of delegations and the capacity for corollary information (more delegates should be included in French delegations so as to go into greater depth on the topics addressed and thus provide better information to the public);
- b) In the quality of information communicated (insufficient internet forums, use of all-to-often neglected press conferences, limited use of reports on consultation processes);
- c) In the very nature of the participation process. Beyond straightforward public participation information, this would be about transforming the processes to encourage participation and information<sup>16</sup>.

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<sup>13</sup> Réseau Action Climat France. Representatives of French civil society do not always have the financial and human resources to cover the high cost of participating in negotiations.

<sup>14</sup> As part of the OSPAR Convention, a major effort is to be made in favour of multilingualism.

<sup>15</sup> The Bern Convention on the Conservation of European Wildlife and Natural Habitats.

<sup>16</sup> The London Convention on the Prevention of Marine Pollution resulting from the sinking of waste.

11. Internationally and in France, the focal points and representatives of civil society note that the information is made available to the public (in particular via convention websites), but regret the lack of effort in the communication process itself<sup>17</sup>, because the information targets primarily a well-informed public<sup>18</sup>. The organisation of public information in France is therefore ruled insufficient and difficult to access<sup>19</sup>, even though efforts are being made to rectify the situation<sup>20</sup>.

Whilst very real disparities exist between international forums in terms of access to information, involvement in the whole of the decision-making process seems to be a guarantee of comprehensive information.

12. The conditions of preparation of national positions do not always allow sufficient involvement of the public.

In this respect, representatives of civil society regret the absence of a formal process allowing an upstream debate on the preparation of a national or joint position. Consultation is primarily spontaneous and the involvement of civil society is often nothing more than a formality, although it would be wrong to neglect the diversity of practices in this area, as underlined by the focal points.

Furthermore, the conditions under which French positions are drawn up, their inter-ministerial nature and the brevity of deadlines is not always conducive to public information at this stage of the decision-making process.

Finally, the representatives of civil society in general terms report a certain lack of visibility on positions to be defended<sup>21</sup>. And so, whilst preparatory meetings are unanimously felt to be a key moment by the representatives of civil society, their existence and the way they are run remain insufficiently institutionalised in France.

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<sup>17</sup> Insufficient efforts because of lack of means (Alpine Convention, Bern Convention in particular).

<sup>18</sup> Particularly as part of conventions concerning highly technical subjects such as the Helsinki Convention on the Protection and Use of Transboundary Watercourses and International Lakes.

<sup>19</sup> RAC France, Greenpeace France in particular.

<sup>20</sup> Like the initiative taken by the 4D Association with its documentation centres supported by MEDAD, or other initiatives in the communications field, articles in the international press, symposia, press conferences and press releases, practical guides and brochures distributed by the NGOs as well as the long years dedicated to a particular theme which have a positive effect in the areas of communication and information.

<sup>21</sup> NB: the position of EpE which considers that the French delegation should not show any particular transparency since the representative of State in a representative democracy system do, by definition, have sufficient legitimacy in the association's view.

13. The “post-negotiation period” is considered a very important stage by civil society representatives, but one that is often neglected, reflecting weaknesses in the presentation of and follow-up to Conferences of the Parties (COPs) between the State and civil society<sup>22</sup>.

14. The possible risk of fragmentation of international law on account of the “pile-up” of (international, Community and national) texts which does not help their legal implementation, does not seem to be a major barrier to public participation in international bodies<sup>23</sup>.

Rather, we note a superposition of public participation levels. Whilst different initiatives – and European initiatives in particular – involve civil society in their decision-making processes (like Green Week, organised each year in Brussels) affording the European level somewhat more attention, this does not necessarily exclude public participation at French level. If there is a degree of disinterest, it could be a result of the complex functioning of conventions or international forums and the little or no account taken of public opinion, which could single out other, more effective levels of levers and change which have a greater impact<sup>24</sup>.

### **Role of France in international bodies**

15. France has a key role in the promotion of public participation in international bodies and should do more to encourage it. Its actions to promote public participation are contrasted. Indeed its position in favour of public participation could be described as strong in certain international bodies<sup>25</sup>, there is talk of a lack of resources<sup>26</sup>, whilst for civil society representatives, the French attitude towards the Aarhus Convention is an illustration of a commitment to participation (funding, presidency of the special team on public participation in international bodies).

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<sup>22</sup> WWF France, IUNC – French Committee.

<sup>23</sup> However to be noted that water policy is primarily established at European level and that the Helsinki Convention therefore has no real impact for member states who are also members of the European Union. It is intended more to improve cooperation between countries outside the EU.

As part of the climate negotiations, the professional federations tend to be more interested in the French or European level in the absence of any real exchange internationally, since UNFCCC issues are taken up at European level as well as at French level during the preparation of the national trading scheme.

<sup>24</sup> WWF France.

<sup>25</sup> The Convention on biological diversity (biodiversity group and the French committee of the IUNC), the International Convention against Desertification (whose delegation includes representatives of civil society via the CARI association), the sustainable development commission (grant to the 4D association for their participation in its annual sessions).

<sup>26</sup> Basle Convention on the Transborder Movement of Toxic Waste

16. There is a clear evolution in the role of civil society representatives internationally, now increasingly seen as legitimate participants. In this context, the representatives of civil society and focal points agreed on emphasising France's need to support this process. Whilst civil society representatives insist on the importance of promoting public participation, recognising its expertise role and integrating members of the public more frequently into national delegations, the focal points saw the guarantee of pluralism which results from a successful participative process as more important. Its influence at international level and the role of the European Union on the international scene are definite attributes and mechanisms which France can use to promote public participation in international bodies.

### **Possible enhancements to promote public participation and public information**

17. In general terms, the focal points and civil society representatives recognise that greater formalism is required in the State/civil society relationship. The relations with the public should be more closely followed and collaboration should become the rule rather than the exception. As things stand, public participation involves differentiated demands at each stage of the consultation and information process: upstream of international negotiations, during the preparation of the national position, once the position has been established and during the international meetings that follow.

18. Possible improvements during the preparation of the national position:

- a) Communicating a schedule to the public containing milestones and the different stages of international processes so as to propose a precise framework for dialogue<sup>27</sup>;
- b) Making public consultation processes systematic within appropriate time-lines so that public representation can better adopt a more constructive approach with fuller information on positions to be defended by the French delegation, in particular during Conferences / Meetings of the Parties. In this respect, the representatives of civil society agree on the importance of allocating more resources to MEDAD<sup>28</sup>;

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<sup>27</sup> WWF France, Les Amis de la Terre.

<sup>28</sup> Greenpeace France.

- c) Developing in-depth consultation between delegations and the public to enable a real force of proposal on new subjects which goes beyond simple reaction to documents drafted by the secretariats of the Conventions<sup>29</sup>;
- d) Guaranteeing that the results of consultation procedures are taken into account<sup>30</sup> allowing us to go beyond the barriers of formal consultation, often perceived as an “alibi to democracy”<sup>31</sup>;
- e) Carrying out consultations with a large number of public representatives and giving credit to alternative expert analyses proposed by the public during consultation<sup>32</sup>;
- f) Making it clearer to the public the distribution of prerogatives between the different ministries (in particular, the ecology ministry, MEDAD, and the foreign affairs ministry, MAEE) so as to improve working methods and resources. To this end, a “French inter-ministerial coordination secretariat” could be set up. This would allow relations with the public to be co-ordinated so as to prepare international milestones in a regular, properly-monitored manner<sup>33</sup>.

The representatives of the public expect improved visibility on the final national position after consultation, to ensure high-quality monitoring and participation during the later stages of the decision-making process.

Also, building participation during this upstream phase would, in the second phase, allow us to appropriate and implement orientations adopted within the framework of the convention or international forum concerned.

19. As a corollary of successful public participation, possible improvements to access to information and communication are as follows:

- a) Adopt a more “proactive” attitude to communication, in particular for conventions concerning relatively technical themes<sup>34</sup> or targeting the populations directly concerned<sup>35</sup>. National implementation of the global communications, education and

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<sup>29</sup> The Bern Convention on the Conservation of European Wildlife and Natural Habitats.

<sup>30</sup> Greenpeace France, RAC France.

<sup>31</sup> Expression used by Amis de la Terre.

<sup>32</sup> Amis de la Terre.

<sup>33</sup> The French committee of the IUNC.

<sup>34</sup> The Helsinki Convention on the Protection and Use of Transboundary Watercourses and International Lakes.

<sup>35</sup> Information to local populations needs to be developed on the existence and content of the Convention, in particular for regional conventions (in the case of the Alpine Convention, inhabitants of the Alps, and tourists).



public awareness-raising initiative, initiated as part of the various conventions<sup>36</sup>, could be envisaged;

- b) Build financial capacities (in order, for example, to promote transversal communication between the various conventions<sup>37</sup>), and human resources (with a view to establishing an active information relay, ensuring its quality and improving the clarity and accessibility of mechanisms used<sup>38</sup>);
- c) Highlight and promote the information role of NGOs before the general public on the themes and challenges of major international negotiations. In this respect, some representatives of civil society recommend more aid to NGOs, for example by continuing to support tax measures which promote NGO membership<sup>39</sup>.

20. So as to promote public participation during international meetings, the following improvements could be envisaged:

- a) Improve timing of receipt of preparatory documents sent by convention secretariats;
- b) Rethink forms of NGO funding and look into the possibility of creating a fund to finance French NGO work internationally, in particular to cover travel<sup>40</sup>;
- c) Get civil society representatives more involved in the follow up to international meetings<sup>41</sup>.

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<sup>36</sup> Ramsar Convention on Biological Diversity

<sup>37</sup> Basle Convention on the Transborder Movement of Toxic Waste.

<sup>38</sup> Cartagena Protocol, PRTR Protocol.

<sup>39</sup> WWF France, Greenpeace France.

<sup>40</sup> Association 4D, Greenpeace France

<sup>41</sup> Concerning possible forms of involvement, WWF France proposes the following: creating a platform for regular global dialogue, as part of a formalised process to monitor conventions in particular (similar to the NGO-MEDAD meetings on international issues), to discuss news from the international conventions and from other institutions in the environmental field. This would target joint, formalised analysis of a given situation. The NGOs' capacity for reaction (in terms of resources) would rely upon this approach.