

Side event “Implementation of Principle 10 and the Aarhus Convention”

Meeting of Parties of the Aarhus Convention
Maastricht, July 2, 2014

Report

The side event “*Implementation of Principle 10 and the Aarhus Convention*” was held on July 2, 2014 in the form of the second forum of exchange of experience within the project “*Building Bridges between Regions - Improving Public Access to Environmental Information, Public Participation and Access to Justice*”¹. The side event enjoyed the participation of more than 50 people – including the representatives of UNECE and UN ECLAC officials, governmental and NGOs from the ECE and LAC region. The renowned speakers both from UNECE and UNECLAC regions offered excellent contribution to the subject of the side event.

The side event aimed at:

- introducing to the wider audience the key issues of developing a Principle 10 instrument in the ECLAC region;
- exchanging experiences from the negotiation, ratification and implementation of the Aarhus Convention in the light of the future ECLAC process;
- highlighting the impact, success and challenges of the Aarhus Convention, and
- mapping the future steps and cooperation between the two regions.

The event was opened by **Ms. Marta Szigeti Bonifert, REC Executive Director** who gave a short background to the event outlining the recent P10 process in LAC region, the Aarhus Convention development and implementation process and the role of REC and the key partners. She also referred to the Eye on Earth process as well as to the objectives and activities of the “Building Bridges” project and its donor EAD within which the side event was organised. She introduced the facilitator **Mr. Jeremy Wates, EEB**, and the speakers.

Mr. Wates emphasized that there is now a momentum and a great opportunity for the LAC region to develop a P10 instrument and it is important to build a community,- as it was in the case of Aarhus- which makes an instrument work.

Mr Zaal Lomtadze, Chief, Environment for Europe and Sustainable Development Section, Environment Division, United Nations Economic Commission for Europe (UNECE) underlined that there is global spirit on implementing P10 and it is very welcome that the two continents are in a dialogue on exchanging experiences. The Aarhus Parties and the UNECE had conferences with the representatives of UNECLAC and some leading LAC countries. The Aarhus Parties and stakeholders have offered assistance to their LAC counterparts.

¹ The project implemented by the Regional Environmental Center and funded by The Environmental Agency of Abu Dhabi (EAD).

Mr. Carlos de Miguel, *Head of Policies for Sustainable Development Unit, Sustainable Development & Human Settlements Division, Economic Commission for Latin America and the Caribbean (ECLAC)* underscored that the Aarhus Convention and the experiences of its negotiation and implementation is fundamental for the LAC region. The LAC region is a diverse one where there are OECD member states and counties with high level of debt and with people living under the poverty line. ECLAC is committed to support the process of sustainable development, not only in the environmental but also in social and economic field, and on the development of a regional instrument on P10.

Panel 1 - experiences of Aarhus Convention implementation in the light of the future ECLAC process

Mr. Jerzy Jendroska, *Aarhus Convention Compliance Committee member* in his intervention highlighted the impact, the success and challenges of the Aarhus Convention. In Europe, and especially in EU, legal requirements already existed before Aarhus on the first and second pillar of the convention. Regarding access to environmental information he mentioned that in Europe two legal systems were created: one of Freedom of Information Acts (FoIA) and others on access to environmental information. One lesson is that it is better not to create two different legal systems if FoIA already exists. In addition, it is better to avoid too much reliance on modern information technologies and to consider that active information provision is not enough.

Regarding public participation, Aarhus Convention gave details on how the formerly existing general legal requirements should be implemented. One lesson however is that public participation (PP) is more than what is related to procedures in EIA or SEA; PP provisions helped progress of implementation, and even that EU tied funding to the requirement of public participation in the development schemes. It is worth to bring the donors/financial institutions also onboard during the negotiations of the instrument. The model of PP was using the Western model where the government is responsible for ensuring public participation, with involvement of the public at large. This has caused a problem in the implementation for the Eastern Europe, Caucasus and Central Asia (EECCA) countries where the developer takes care of the PP process. On access to justice, Article 9.3 was made broad enough to be applied in different legal systems, nevertheless especially regarding legal standing, the definition of the scope of the decision-making and costs are still problematic, along with the weak judiciary and corruption in some countries.

Mr. Csaba Kiss, *Coordinator of Justice and Environment, Executive Director of EMLA, Hungary* dealt with the “Impacts of access rights on the ground: The real functioning of the Aarhus Convention”. The Aarhus Convention has made an impact giving legal tools to the CSO for more effective environmental protection in practice. It is a procedural convention therefore it complements other legal instruments which have no mechanism for public participation. He shared a few successful court cases his NGO had regarding information on building nuclear power plants or protecting the world heritage site. He also emphasized that while CSOs can go against polluters directly under Art. 9.3, it is difficult to use this option in practice, especially due to the heavy financial barriers. In addition, the convention gave voice to the NGOs and helped them to be partners in the governmental decision-making procedures.

Panel 2 - development of the Principle 10 instrument in the ECLAC region

Ms. Constance Nalegach, Focal Point, Ministry for Environment, Chile and **Ms. Mariamalia Jimenez Coto, Focal Point, Ministry of Foreign Affairs, Costa Rica**, representing the most active governments in the P10 process, introduced the audience to the key issues of developing a Principle 10 instrument in the LAC region. Ms. Constance Nalegach outlined the process starting at the high level summit of Rio+20 where the initiative was launched, which raised the interest of the LAC countries and led to the signing of the Declaration by 10 LAC countries. Since then, a huge step forward was made, more countries joined, and the participating countries have accepted to aim for an ambitious instrument following a right-based approach, including the full implementation of access rights, with special attention to the most vulnerable. It will be developed with NGO participation and ensuring country ownership. Ms. Mariamalia Jimenez Coto described the work of the two working groups on capacity building and on the nature of the instrument. Capacity building will be incorporated into the instrument, as the fourth pillar, in addition to rights on public participation, and access to justice. It is a priority to deepen the knowledge on access rights and provide capacity building for governmental and NGO stakeholders on the best practices of their implementation. The working group on the nature of the instrument will need to make a proposal for the content of the instrument and what kind of instrument it should be. The greatest challenge in the coming period is to ensure political support among the LAC countries for a legally binding instrument.

Ms. Danielle Andrade, Legal Director, Jamaica Environment Trust, Jamaica and **Ms. Andrea Sanhueza, Coordinator, The Access Initiative, Global Secretariat, Chile** - NGO representatives gave their reflections on the future instrument and on the exchange of experiences on the Aarhus negotiations in the light of the ECLAC process. Ms. Danielle Andrade illustrated with concrete examples from Jamaica the situation of the most vulnerable citizens and how they could protect their rights if an Aarhus Convention type of instrument existed in the LAC region. In this region there has been an unprecedented increase in large scale infrastructure development, resulting in increase in large scale natural resource conflicts. There have been many examples when there was no consultation, information was denied, and CSOs had to go to court as a last resort. The LAC stakeholders require particular assistance in meeting the minimum standards of access rights. Although many LAC countries developed and have implemented legislation, Principle 10 is not implemented in practice, still many gaps exist. Public participation is especially limited in policy-making and development planning, and is often left to the discretion of authorities. It is necessary to build up the capacities of those historically underrepresented in those consultations, and especially of those depending on natural resource use and affected by the conflicts. She has concluded mentioning that some progress also has been made on access rights. 14 LAC countries have special legislation on access to information and 8 others are on the way to adopt such legislation. PRTRs are being developed and operated in some countries. Special environmental courts exist in Chile and Trinidad and Tobago, creating environmental jurisprudence which is also beneficial across the region. With the words of a Bob Marley song she gave voice to her confidence that with the regional convention they can achieve further meaningful advancement of P10 in the LAC region.

Andrea Sanhueza discussed why the LAC region needs a P10 convention and why Europe should support their process. Public involvement, openness and opportunities for dialogue with government are new in the LAC region, and therefore the full participation of the public is still much needed. A regional instrument is a necessity, because while the sub-regions have their differences, also many common features exist among them in the cultural, political traditions. They face common challenges in the economic and social field and also the ways how they could achieve a balance of economic growth and sustainable development. A regional convention could also bring the smaller countries along with the bigger ones to the table and they could voice their problems. The LAC region has a long tradition of cooperation, trade and investment with Europe. For Europe it is also an opportunity to

strengthen political ties, support the development of legislation and practices, integration and harmonization of laws and practices. This could make the LAC countries more attractive and competitive for investors. Europe should help to address the vulnerabilities of the LAC countries, including the abilities to protect the natural resources. The EU-LAC summit embraced the LAC Declaration, and the Aarhus Strategic Plan has called for support for the development of similar instruments in other regions. Civil society and the LAC region need technical assistance, political and financial support in order to reach out to and involve the public at large and to achieve better standards and social peace.

After the panels, in the discussion facilitated by Mr. Jeremy Wates, numerous questions and comments were made among others on the importance of capacity building on public participation, access to justice for the public to know their rights, and also for officials and the judiciary. The Recommendations on PP recently endorsed by the MoP was offered for use. It was also suggested to consider the funding for public interest lawyers in the new instrument. The panelists in their reply underlined the need for exchange of experience on good practices on public participation as well as on other pillars, and mentioned some ongoing activities in these fields. It was emphasized that the plan is to have a compliance mechanism in the regional instrument but the details will need to be developed and discussed later. The participants also thanked REC and EEB for the valuable initiative.

Ms. Marta Szigeti Bonifert closed the meeting on the note of announcing a new beginning through the project, for strengthening the cooperation between Europe and LAC region.

See more information at <http://www.building-bridges.rec.org/second-forum.html>