

Joint Aarhus Convention/Cartagena Protocol on Biosafety  
workshop on public awareness, access to information and  
public participation regarding living modified  
organisms/genetically modified organisms

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**“Implementation and enforcement  
of LMO/GMO-related laws:  
main challenges and the role of  
the public”**

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“Implementation” refers to, inter alia, all relevant laws, regulations, policies, and other measures and initiatives, that contracting parties adopt and/or take to meet their obligations under a multilateral environmental agreement and its amendments, if any.

“Enforcement” means the range of procedures and actions employed by a State, its competent authorities and agencies to ensure that organizations or persons, potentially failing to comply with environmental laws or regulations implementing multilateral environmental agreements, can be brought or returned into compliance and/or punished through civil, administrative or criminal action.

\* UNEP Guidelines on Compliance with and Enforcement of Multilateral Environmental Agreements (points 9 (b) & 38 (d) respectively)

# Challenges

The principles of the Convention have been broadly transposed into law in the EU and to some extent in EECCA region, even in countries which have not fully ratified the Convention.

NGOs are significantly less satisfied with the outcomes and impact of legislation than they are with the actual legal provisions themselves. In general within the EECCA region, the level of satisfaction with the law is somewhat less than that in the EU, as is satisfaction with PP in practice.

PP procedures are incomplete, undeveloped or poorly elaborated.

# Challenges

Divergence is emerging between the Aarhus model of active participation based on minimum rights and their own national models which are typified by consultation where opportunities for engagement are significantly constrained.

Notification of the public varies among the regions. Early participation remains a significant problem. Public is not involved in the participation process at a sufficiently early stage. Information is largely only available after an application has been made, and from decision-making bodies.

NGOs are generally not satisfied with the provisions for or implementation of requirements for the relevant public authority to identify the participating public. This has been used in some cases to exclude the public from participation and to create barriers to involvement.

Timeframes are generally insufficient.

# Challenges

Practicalities of accessing information leaves a lot to be desired. Material is often not easily accessible or available at times convenient for the public.

It is often the case that information obtained is incomplete or of poor quality.

Where material is available on the Internet, access is somewhat easier, but not all relevant information is accessible through this medium.

Exceptions as regards access to information can be extensively or arbitrarily interpreted, particularly with sensitive topics, like GMO issue is.

The intellectual property exception has been abused, denying access to reports prepared by third party consultants for public authorities.

# Challenges

In relation to notifying the public of decisions, there have been regional variations.

NGOs have little confidence that due account is taken of PP.

Public opinion is marginalised and given low priority; focus is narrowly on scientific evidence of impacts on health and the environment.

Public participation is not valued and certainly not encouraged. There is no feedback on how public comments have been considered, and any reasons for not incorporating them.

Provisions for PP if activities are reconsidered or changed vary significantly. In practice it is not always clear for the public or the undertaker what change introduced to the activity has to be preceded by PP.

# Challenges

In many countries NGOs feel that the MoE makes significant efforts to involve NGOs and/or the general public in drafting of legislation but the interdepartmental efforts are poor and when drafting falls outside the remit of the MoE, PP is generally non-existent.

PP in development of plans, programmes and policies is not clearly, transparently and consistently elaborated in the UNECE region.

The Aarhus Convention is not very detailed in relation to PP in plans, programmes and policies and in many countries public authorities consider this to be an excuse not to properly implement it.

# Challenges

PP in the preparation of regulations and generally applicable legally binding normative instruments under Article 8 varies from country to country and largely depends on pre-existing (pre-Aarhus Convention) structures and relations between government and the public.

There are many examples of projects throughout the UNECE region which can be considered successes in terms of PP.

However, not one country displays consistent implementation of the second pillar of the Aarhus Convention. Worryingly there are even cases where PP practices are worsening.

# Recommendations

- Government and state bodies need to become more proactive in encouraging PP.
- There is a need for further commitment to and investment in education and capacity building in order to improve both the public and officials understanding of and engagement with PP in environmental decisions.
- Timeframes ought to be revised in order to establish sufficient timeframes for participation and to give the public ample time to get informed and to prepare and participate effectively. Current deadlines are largely inadequate, particularly when combined with poor access to information.
- Internet should complement other systems of access to information and not replace them.

# Recommendations

- Legislation/amendments should be made at national level (and also at EU level) to allow for public participation early in the process.
- It is necessary in many cases to include a general definition of the “public concerned” so that the range of participants is not narrowed to environmental NGOs only (which often happens).
- Significant emphasis should be placed on the practicalities of public participation. Relevant information (assessments, reports and other relevant documentation) should be available and accessible at times which are suitable for the general public (both during and outside office/general working hours).
- Notices must be made more practical and citizen friendly.

# Recommendations

- The public should be notified of the relevant environmental aspects of projects when being notified of final decisions.
- Efforts must be made by the relevant parties to synchronise public consultation periods effectively with notification of the public particularly in relation to Article 7.
- Establish safeguards to ensure public authorities take due account of public comments when making decisions.
- Create public participation monitoring committees in all countries and at EU level.
- Courts and administrative authorities should directly apply the Aarhus Convention where national law conflicts with or does not fully implement them.