



Moldova '99



The Chisinau Declaration



PAN-EUROPEAN ECO
CONFERENCE ON
PUBLIC
PARTICIPATION



PROGRAMME
OF PAN-EUROPEAN ECO
CONFERENCE ON PUBLIC
PARTICIPATION



ECO REPORT on FIRST
MEETING OF SIGNATORIES TO
THE ÅRHUS CONVENTION
Chisinau, 19-21 April 1999

We, members and representatives of Environmental Citizens' Organisations (ECOs) from thirty-three countries in the UNECE region, on the eve of the First Meeting of Signatories to the Convention on Access to Information, Public Participation in Decision Making and Access to Justice in Environmental Matters, have adopted in Chisinau, Moldova, 18 April 1999, the following Declaration:

General

We welcome this Convention as an important step towards environmental protection and sustainable development through access to information, public participation, and access to justice. However, the existence of the Convention is insufficient in itself and much work remains to be done by UNECE, by national governments, by parliaments, by international institutions - and by citizens and ECOs.

We also welcome the work plan prepared by the UN ECE Secretariat which shows the need to speed up the ratification process.

We regret that some countries have failed to sign the Convention; we urge those countries which have chosen not to sign, to accede to the Convention as soon as possible.

We urge early ratification and implementation of the Convention by all Signatories. The detail of the national legislation will be critical, and we urge all Signatories to work with ECOs during their respective ratification processes, to ensure that

their legislation complies with both the legal requirements and the spirit of the Convention.

We remind the Signatories that public participation is the foundation of democracy and the basis of the relationship between citizens and governments. While the Convention contains many critical provisions providing for citizens' rights, it is not a perfect document. Therefore, we view its provisions as a starting point, and we remind Governments that its ratification is an opportunity to begin a programme of progressive legislation, modification and implementation that further expands upon the rights granted in the Convention, and achieves a more secure base for public participation in environmental protection.

We call upon Signatories to extend the principles of the Convention to fields other than the environment, for example: health, worker safety, and consumer protection, and/ or to develop international instrument(s) for horizontal access to information, public participation, and access to justice.

Task Forces

We welcome the inclusion of the creation of task forces on non-compliance mechanisms, pollutant release and transfer registers, and release of genetically modified organisms as specified in the workplan presented by the UN ECE Secretariat in advance of the Meeting of Signatories. In addition, we strongly urge the Signatories to establish task forces on access to justice, electronic access to environmental information and public participation in plans, programmes, policies and legislation. For all task forces, sufficient resources must be provided to fund ECO involvement.

Further Measures

In addition, we call upon Signatories to take the following urgent measures, the contents of which are further elaborated in the Annex to this Declaration:

Non-Compliance Mechanism

* Commitment to the adoption of an effective and independent non-compliance review body, in which citizens and ECOs will have the unconditional right to submit complaints and participate in all aspects of proceedings, in which complaints and related information will be accepted and independent investigations concerning complaints conducted, and in which all proceedings, documentation and decisions will be publicised;

* Note that failure to establish such a mechanism will require that ECOs consider setting up an independent tribunal.

Pollutant Release and Transfer Registers (PRTRs)

* Commitment to a legally binding instrument, to be further elaborated by proposed Task Force.

Genetically Modified Organisms (GMOs)

* At a minimum, fully subject the deliberate release of GMOs to those public participation provisions contained in Article 6 of the Convention which are applicable to the decision making activities listed in Annex I;

* Interpretation of the "deliberate release" of GMOs as described in Article 6.11 to include the entry into the stream of commerce of products that contain genetically modified organisms or their derivatives.

Public Participation in Policies, Plans, Programmes and Legislation

* Involvement of ECOs in the development of specific provisions that guarantee citizens' unimpeded and complete ability to participate in the preparation of policies, plans, programmes and legislation, in order to implement Articles 7 and 8;

* Development of national systems of Strategic Environmental Assessment (SEA) that provide a means for public participation in programmes, policies and plans related to environment;

* Development of the provisions of Article 7 and 8 into a protocol to the Convention that stipulates principles of public participation in SEA, taking into consideration the principles elaborated in the Annex to this Declaration;

* Prompt adoption of the EU's SEA Directive and improvement of the use of SEA and public participation in the operation of EU structural funds.

Capacity Building

* Establishment of a system to provide for the exchange of information on good practices established in the different countries, as well as information on the steps to be followed to implement the Convention;

* Sufficient resources be made available for ECOs and less wealthy countries so that the Convention's potential may be realised in all Signatory countries and for all people.

Parliaments

* Incorporation of the Convention's principles into the Parliamentary rules in each Signatory country, including access to drafts of legislation for the purpose of public consultation and comment.

Electronic Access to Information

* Adoption of strategic approaches to the development of universal electronic access to information;

* Encouragement of the use of the Internet and Geographic Information Systems for recording and disseminating environmental data;

* Recognition that electronic access to information is a right, and adoption of laws and regulations to guarantee the effective exercise of this right.

Human Health

* Assignment of clear priority in the implementation process to health issues and their interrelationship with environmental degradation;

* Assurance of complete access to information pertaining to environmental threats to health;

* Punishment as a criminal offense of violations of the right to access to information and the obligation to actively disseminate information in the case of disasters;

* Full consideration of the outcome of the London Conference on Environment and Health at the second Meeting of Signatories to the Convention.

Quality of Information

* Provision by public authorities of information which is of high quality and in an understandable format; however, poor quality of information may not serve as an excuse for failure to provide any information in accordance with the Convention's terms.

Globalising the Aarhus Convention

* Expansion of the Convention's principles to other international legal instruments, and to international and multi-lateral institutions, particularly including the World Trade Organisation, the European Investment Bank, the European Bank for Reconstruction and Development, and the United Nations;

* Commitment to draft a global convention modeled on the Aarhus Convention, to be signed at the Earth Summit in 2002;

* Dissemination by the UN of the principles of the Convention to governments and regional organisations in other parts of the world.

Access to Justice

* Establishment by Signatories of a task force to analyse international practice on access to justice, to develop "best practices" guidelines, and to promote the complete removal of all barriers to access to justice;

* In accordance with internationally accepted legal principles, interpretation of the Convention by all executive, legislative, administrative and judicial bodies in light of the protection of the environmental rights and guarantees of the rights of participation, access to information, and access to justice stated in Article 1 of the Convention;

* Provision by Signatories of resources for NGOs to bring legal cases to test access to justice provisions, and for training of legal professionals.

The European Union

* Commencement of the ratification process of the Convention by the European Community before the end of 1999, with the aim to ratify it by the end of 2000, and without derogations;

- * Ensurance by the EU that all its institutions implement the Convention, even with respect to preparatory activities for legislation, and including access to justice;
- * Inclusion by the EU in its programmes (especially Phare and Tacis) of provisions for resources for capacity building;
- * Incorporation by the EU of the principles of the Convention into the EU enlargement process.

ANNEX

Electronic access to information

It is essential that Signatories develop strategies for enhancing both governmental and citizens' abilities to provide and receive information electronically. We urge the Signatories to develop necessary regulations to ensure collection, storage, publication and dissemination of information in electronic form, and to incorporate electronic publication and dissemination of information into their routine practices. We are firmly convinced that Signatories will quickly realise the benefits of increased efficiency and economy upon adopting such measures.

The Internet, Geographic Information Systems and other visual forms of representations are important in the use of electronic environmental information, and strategies should recognise the use of these elements. Introduction of any legislation which inhibits or controls the content of, or access to, the Internet and mapping information would be counter to the spirit of the Aarhus Convention and is not acceptable.

Pollutant Release and Transfer Registers

We note the great potential of, but weak commitment to, pollutant release and transfer registers (PRTRs). Private enterprises have a huge impact on the environment, and it is essential that governments require reporting by the private sector, and that systems are put into place for rapidly relaying this information to the public, including through the use of electronic networks.

A legally binding instrument should be developed which would require Parties to establish PRTRs, which are a proven tool for promoting pollution reduction.

A Task force is necessary for furthering the PRTR issue, which would:

- * Produce recommendations for a legally binding instrument;
- * Define an ideal approach based on a survey of best practices around the world;
- * Produce detailed recommendations for phasing in fully comprehensive pollution inventories;
- * In developing recommendations, take account of the need for international uses of PRTR data;
- * Consider how the "polluter pays" principle can be used at national levels to fund PRTR programmes;
- * Seek assistance, including technical expertise and financial resources, for Signatories seeking to take the initiative on PRTRs, to be provided by countries with existing systems and/or the financial means;
- * Promote PRTRs globally.

We are aware that the European Union is developing a limited PRTR, a Polluting Emissions Register (PER), under the Integrated Pollution Prevention and Control Directive. However, we do not consider that this would fulfill the potential of Article 5.9. The PRTR developed under this Convention must encompass and be compatible with the PER, but should not be constrained by the limited scope of the Polluting Emissions Register. Ultimately, the PRTR could be used to gather a wide range of information, including material inputs, the use of resources, energy and water, as well as reports on release of pollutants in waste streams, products and from diffuse sources.

Strategic Environmental Assessment

Principles of Participatory Strategic Environmental Assessment 1. Governmental authorities responsible for drafting and adoption of governmental strategies in the field of energy, transport, agriculture, waste management, mining and tourism should make these strategies subject to Strategic Environmental Assessment (SEA).

2. The term "concerned public" should refer to all persons and entities that consider themselves affected by the proposed policy and who wish to formulate comments on the proposed strategy. Public concerned may consist of non-governmental non-profit organisations, professional associations, labour unions and citizens.

3. The following principles should guide national SEA systems:

A. SEA should begin immediately after approval of the Terms of Reference for the respective strategy. SEA should be organised parallel with elaboration of the strategy; this arrangement enables governments to save time while effectively using SEA to optimise the strategy.

B. The SEA process must be transparent and based on thorough public participation. The agency responsible for the strategy should notify all known and potentially "concerned publics" and enable them to comment on all documents related to preparation of the strategy. Comments obtained can be effectively used in two ways - for further elaboration of the strategy and for its environmental assessment.

C. The SEA process itself should compare all reasonable strategic options that have been defined by its proponent and by the public concerned. SEA should, at a minimum, address the "do-nothing" alternative, the proposed alternative, and the "environmentally-friendly alternative" that corresponds with the national environmental protection strategy (or its equivalent).

D. SEA should address key impacts of the proposed strategy that have been identified through consultations with the public. Generally, SEA should focus on environmental and health impacts of the strategy as well as on its social and economic implications.

E. Impacts of the strategy should be determined for the entire life-cycle of the strategy. Such impacts should, at a minimum, be determined for a time-span beginning with the implementation of the strategy until such time when major changes in the strategy implementation are expected (for example, depletion of resources needed for implementation of the strategy - i.e. depletion of coal mines in the energy sector, etc.). Proper understanding of the environmental impacts occurring after these key time horizons is also crucial for a well-based decision about proposed strategic options.

F. Environmental and health impacts of the strategy should be compared with the desired state of environment and public health, as determined by official strategies in the field of environment and health.

G. SEA processes can substantially benefit from public hearings organised under the auspices of national parliamentary bodies.

H. Approval of the strategy based on SEA should have a limited duration since SEA often relies on incomplete data and inadequate prognostic models. It is beneficial for the SEA to clearly outline the duration of its conclusions. When new or unknown facts emerge, a new strategy should be developed on the basis of a new SEA process. Thorough monitoring and post-SEA analysis is thus a crucial factor for the overall effectiveness of SEA.

The European Union

The European Union plays a crucial role in Europe, and has a direct impact on national legislation and developments of 31 countries (15 Member States, 3 members of the European Economic Area, 13 Accession countries.) Thus, we call upon the European Community to begin the ratification process of the Convention before the end of 1999, and to strive to ratify it by the end of 2000. We are concerned about the intention of the European Community to demand derogations for specific elements of the Convention, and we urge the Union not to do so.

The European Union must proceed quickly with the ratification and implementation work in order to guarantee that environmental democratic rights are respected by institutions at the European Union level, both in the content of the Community legislation and in the procedures of the Commission and other European institutions.

We call upon the European Community to clearly resolve that preparatory activities of the European Commission for EU legislation fall under the Convention. Furthermore, we insist that the European Community introduce the right to access to justice for the public as described in the Convention, including in cases of infringements of EU legislation by governments or other actors.

We call upon the Commission to develop ratification and implementation measures in a transparent and participatory process, at a minimum involving ECOs of the EU, European Economic Area and accession countries.

With immediate effect we call upon the EU to provide mechanisms for transparency and public involvement (including in non-EU countries where the EU is active) in the implementation and evaluation of EU programmes and funding mechanisms.

Globalising the Aarhus Convention

In carrying out the early implementation of Article 3.7 of the Convention, each Signatory must immediately and carefully apply the principles and specific provisions of the Convention to interpret other international legal instruments to which they are a party.

Signatories must actively promote the adoption of the principles of the Convention by international and multi-lateral institutions in their organisations' charters, by-laws and rules of procedure.

As we believe that the Convention is an important tool for integrating environment and development and achieving sustainable development, the Commission for Sustainable Development and the National Councils for Sustainable Development must lobby governments to draft and adopt a global convention on access to information, public participation in decision-making and access to justice in environmental matters, in time for adoption at the Earth Summit 2002.

We encourage other regional economic integration organisations also to accede to the Convention.

Finally, the United Nations must integrate the Convention's principles into its initiatives, and work with ECOs to disseminate the principles of the Convention to governments and regional organisations in other parts of the world.

Access to Justice

Without effective access to justice, the Convention will be a meaningless document. However, we believe that the Signatories understand that access to justice is not a matter of discretion or grace on the part of government; rather, it is a matter of rights held by the public.

We are deeply concerned that certain language in Article 9 (such as parts of Article 9.5) is vague and, in some places, inadequate to the task of ensuring access to justice. On the other hand, we believe that other language in the Convention regarding access to justice is progressive and beneficial, compared to the legislation and practices in many countries. Therefore, it is essential that the Signatories establish a task force, with substantial participation by non-governmental organisations, to promote the complete removal of all barriers to access to justice in environmental matters. This task force must develop the means to monitor national and international implementation of the rights of access to justice, must analyse existing obstacles to obtaining justice in each Signatory country, and must develop guidelines for "best practices" in access to justice, including legislative, procedural and judicial aspects.

Signatories must also provide resources to ECOs so that they can bring environmental legal cases in courts and administrative tribunals that will uncover obstacles and lead to progress in development of access to justice.

Signatories must also provide funding for training of lawyers, prosecutors and judges in the interpretation of the Convention and in advocacy skills, with significant participation of non-governmental organizations.

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