

## **USE AARHUS CONVENTION TO PROMOTE REAL DEMOCRACY!**

### **European ECO-Forum Vienna Declaration to the Third Meeting of Parties of the Aarhus Convention.**

We, **xxx** non-governmental organizations and representatives of civil society from **xxxx** countries of Europe, Caucasus and Central Asia, agree on the following policy recommendations and priorities on effective implementation and further strengthening of the Aarhus Convention, as developed by the European ECO-Forum Aarhus Strategy meeting on the 17<sup>th</sup> and 18<sup>th</sup> December 2007 in Vienna.

We stress that the implementation of the Aarhus Convention and associated initiatives are critical for protecting the environment and people's rights and ensuring sustainable development, including the peace and well-being of present and future generations.

Full and correct information, meaningful public participation and full accountability of public authorities and businesses empower people and make democracy a reality. In addition, the right of citizens to proper application of substantive and procedural environmental law will lead to serious improvements of the rule of law.

In this declaration we call upon the Parties, and other pan-European governments, to take the following specific steps to strengthen the role of the Convention:

#### **A. Ratifications and Accessions**

1. We call upon the Parties to:

- a. If they have not done so yet, ensure, without further delay, ratification or accession of/to the Protocol on PRTRs.

*National pollutant release and transfer registers are important to increase corporate accountability, reduce pollution and enhance environmental protection. Communities can use these to assess impacts of installations in their neighbourhood, while governments can monitor and show pollution patterns and compliance with environmental law,*

- b. If they have not done so yet, ensure, without further delay, ratification or accession of/to the GMO Amendment to the Convention.

*The original Convention exempted public participation in GMO-related decisions. The amendment fixes this, though in a compromised way. The past three years have shown a slow rate of ratification; any further delay in the Amendment's entry into force is absolutely unacceptable. It does not require considerable legislative efforts on the part of EU Member states to ratify the Amendment, and for other countries it forms an essential element of national bio-safety frameworks.*

- c. If they have not done so yet, ensure, without further delay, ratification or accession of/to the SEA-Protocol of the Espoo Convention.

*This Protocol was initiated by the Aarhus Signatories to expand on a part of Article 7 of the Aarhus Convention. It regulates in more detail the public participation procedures regarding plans and programmes including on health impacts. Implementation of the Protocol solves shortcomings existing in many countries concerning effective, timely and fair public participation in decisions on plans and programmes regarding the environment.*

2. We call upon all countries of the pan-European region to apply the rules and provisions laid down in these three legally binding instruments from now on, pending their entry into force. All three are important outcomes of the Aarhus Convention process that contribute to environmental democracy and give an appropriate role for citizens in effective environmental policy making.
3. We call upon the Parties to provide assistance to potential Aarhus Parties which are facing specific implementation problems due to a challenging state of development in their countries.
4. Furthermore we specifically call upon Ireland and Switzerland to ratify the Aarhus Convention without further delay, and upon Bosnia/Herzegovina, Montenegro, Russia, Serbia, Uzbekistan and Turkey to accede to it as soon as possible.

*The Aarhus Convention was agreed upon within the framework of "Environment for Europe," a future-oriented process of cooperation for all countries of the pan-European region to jointly address the major environmental problems we are facing. Environmental democracy is an essential tool for lasting success, as it contributes to sustainable development. Countries denying their people the rights set forth in the Convention are undermining sustainable development in their region and distorting its common agenda.*

#### **B. Maintaining the Convention's open and participatory character**

5. We call upon the Parties to adopt Rules of Procedure and a Compliance Review Mechanism for the Protocol on PRTRs that follow the practice established by the Convention itself.

*Depriving NGOs of their observer status in the Bureau and of their right to directly nominate candidates for the Compliance Committee is a clear departure from Aarhus transparency and participatory principles.*

6. We call upon the EU Member States to end their undermining of the transparency of the Convention's work by refraining further, in Convention-related work, from holding EU-coordination meetings behind closed doors.

*Negotiations behind closed doors by a select portion of the Parties are a violation of the Aarhus principles and give a very bad signal to countries outside the EU and Europe who see the Convention as an example of democracy. This secrecy has no purpose in this non-confrontational process and it undermines the concepts of transparency and accountability of public authorities. It also creates an unacceptable inequality between those Parties that are EU members and those that are not.*

#### **C. Improve implementation and enforcement of the Convention.**

7. We are concerned about evidence of major flaws in implementation of the Convention by many Parties. We call upon the Parties to take critique from environmental NGOs seriously, as outlined in the EEB survey of the implementation of the Convention in 20 EU Member States (published in October 2007), Alternative Implementation Reports by environmental organisations (expected early 2008) and earlier studies by the Access Initiative and Justice & Environment.
8. We urge Parties to create a positive atmosphere for environmental democracy amongst civil servants and the judiciary as a requirement for creating better and more supported environmental protection and sustainable development.
9. In line with the Convention, we call upon Parties to setup or strengthen a public participation and access to justice fund for citizens groups to exercise their Aarhus rights, in particular regarding the mobilisation of technical and legal expertise for meaningful participation in environment related decision-making and in seeking rulings from courts in environment related issues. An international Aarhus fund, to assist governments with comparatively less financial means, should be set up to assist such national funds.

*A possible source for such funding could be, taking into account the "polluter pays" principle, levies on projects at a rate of 0,1 % of their costs that are subject to public participation procedures.*

10. With regards to access to environmental information we insist in particular on creating the infrastructure necessary to properly respond to requests from the public in a timely manner. We also call for strict application of article 2(c) of the Convention in case of privatisation of information services: any private body performing public responsibilities or providing public services under the control of a public body should fully respect the transparency guaranteed by the Convention.
11. We call for dramatic improvements in the implementation and enforcement of the second pillar of the Convention. NGOs are confronted with major obstacles in this area, in particular with regards to public participation in Environment Impact Assessment procedures. We call upon the Parties to initiate a Working Group to investigate and address such deficiencies. Parties are called upon to set up national monitoring committees, with a major role for NGOs, to review the enforcement of pillar two and advise on improvements.

*Problems with Environmental Impact Assessments include restricted use of the concept of "public concerned", for example by excluding informal groups. Participation in early phases of decision-making is often not possible, often due to insufficient announcements and time, and high costs are another problem. In addition, most of the time NGO comments are not taken into consideration. Public Authorities are often not even sufficiently equipped to facilitate meaningful public participation. Finally, when public participation is denied, the public often cannot find redress through judicial means.*

12. We call upon the parties to take the necessary legal and budgetary measures to guarantee that effective remedies are provided for access to justice and that access to procedures is indeed fair, equitable, timely and not prohibitively expensive. In particular, we insist on effective implementation of Article 9(3) of the Aarhus Convention that requires NGOs and members of the public to be able to initiate review procedures of acts and omissions that are in breach of national environmental law.

*The lack of effective access to justice, the third pillar of the Aarhus Convention, has been and remains our biggest concern. Information is sometimes provided, public participation is sometimes encouraged, and other rights are sometimes respected. But in countries or situations where the rights of environmental democracy are not respected, there is little that people can do about it unless they have access to justice, which is often effectively barred. In such situations, the Aarhus Convention may be seen as consisting of two pillars and a broken stick. We also strongly regret the roll back made by different countries regarding the legal standing of NGOs and members of the public concerned in access to justice.*

13. The Aarhus Task Force on Access to Justice should become a Working Group with an expanded mandate, focusing on practical agreements amongst Parties to remove barriers to justice, create a system of financial arrangements for NGOs seeking enforcement of the Convention and environmental laws, offering advice and litigation centres in countries where it is most difficult for the people and their organisations to go to court.

*If the Parties are not willing to take such actions, we ask that they stop pretending that there is really a third pillar.*

#### **D. Improve effectiveness of the Compliance Procedure**

14. We call for strong endorsement of the work of the Compliance Committee, which has so far been a crucial factor in bringing weaknesses in implementation in the picture and in seeking constructive solutions.
15. We call upon the governments of Kazakhstan, Turkmenistan and Ukraine to finally implement the recommendations from the Committee, approved by MOP2 in 2005, which address non-compliance.
16. We call upon the Parties to strengthen the compliance procedure by adding a monitoring mandate for the Committee or the Convention's Bureau to provide timely guidance and assistance to the parties concerned and to follow up approved recommendations, with the possibility of sanctions to Parties ignoring the conclusions of the compliance committee after they have been confirmed by the Meeting of Parties.

#### **E. Implementing the Almaty Guidelines**

17. We reiterate the obligation of Parties, set forth in article 3(7), to promote the application of the principles of the Aarhus Convention in other international forums.
18. We call for Parties to ensure that representatives in all international bodies working on issues related to the environment are fully aware of the Aarhus Convention and the Almaty Guidelines and are instructed to implement these where needed (on the basis of NGO assessments), seeking cooperation with other Parties.
19. We call upon the Parties to continue to follow and encourage this process through initiatives guided by a special Task Force.

20. We call upon parties to apply the Aarhus principles within the framework of the Espoo Convention and the SEA protocol and to set up an independent Compliance Committee, applying the Aarhus compliance procedure to these two legally binding instruments.
21. There are strong overlaps between the Espoo Convention, the SEA protocol and Article 6 and 7 of the Aarhus Convention. It is crucial that both Conventions work closer together. We acknowledge the efforts undertaken by some parties and the secretariats to host the fruitful workshop on the issue in Sofia in December 2007. We call upon Parties and the secretariats to continue coordinated activities by using the Aarhus principles and establishing a UN-ECE working group.
22. We urge all Parties to use their influence in International Financial Institutions that operate in the Aarhus area - such as the World Bank, EBRD, EIB and others - to design and implement banking practices and lending operations that fully comply with the Aarhus Convention and to cancel any credit facility which violates the spirit and letter of the Aarhus Convention.

#### F. Improve reporting practices for the 4<sup>th</sup> MOP

23. We call upon all Parties to take the agreed reporting requirements seriously, fully and in a timely manner, implementing them in time for the 4<sup>th</sup> Meeting of Parties (MOP).

*The European ECO-Forum found major flaws in the National Implementation Reporting process in advance of the 3<sup>rd</sup> Meeting of Parties. Some Parties did not prepare a report at all. Others only started after they were alerted by NGOs. In half the cases NGOs were not involved in early phases of the process and in half the cases NGOs did not see their comments taken into account at all. Therefore, we conclude that these reports are not reflecting reality.*

#### G. Do not weaken the Long Term Strategy Plan!

24. We support the draft Long Term Strategy Plan as it was presented to the Eighth Working Group of Parties on 31<sup>st</sup> October 2007. We strongly call upon the Parties to refrain from any weakening of this Plan.
25. We consider the implementation objectives in this draft to be right on target and call upon the Parties to ensure that related actions are implemented. In particular, we underline the need for permanent capacity building, awareness-raising and promotion of the Convention to public authorities and judiciary at all levels. The Aarhus Secretariat should continue to play a key role in coordinating and organising capacity building activities.
26. We support the objectives to offer the Convention for accession more countries, including from outside the UN-ECE, because if properly implemented, Aarhus could be of great importance for environmental democracy and sustainable development worldwide.
27. We particularly support the vision and proposed actions regarding the further development of the Convention. The Convention includes ambiguous and vague concepts and rules, which undermine effective implementation of environmental

democracy. We need instruments that clarify and strengthen the public participation requirements concerning plans, programmes and policies, as well as on access to justice.

28. Product-related policies should be incorporated into the Convention, including decision-making on standardisation.
29. We strongly support the proposal to seek a wider scope for the Convention so that sustainable development in all its dimensions will be covered by the same principles of transparency, participation and accountability.
30. We applaud the work done thus far by the current Secretary and his team, call upon the Parties to ensure the Convention will have a sufficiently equipped Secretariat in the future, able to implement the decisions taken by the Parties and the Bureau.