

# Building Bridges between Regions

## Webinar on Capacity Building to Support the Implementation of the Aarhus Convention

### Report of the Meeting

**Date:** May 20, 2014, 15.00-16.30 CET

**Participants:** Aarhus and ECLAC stakeholders (See list of participants attached.)

#### *Introduction*

The background of the project and the goal and agenda of the webinar are presented by the moderator of the call, Ms. Tsvetelina Borissova Filipova, Senior Expert, REC. Participants of the forum present themselves. (See agenda attached.)

#### *Exchange of experience between Aarhus Parties and stakeholders, and ECLAC stakeholders*

##### **1<sup>st</sup> presentation**

Capacity building reflected in the text of the Convention and its implications for practical implementation

Speaker: Sándor Fülöp, President, Environmental and Management Organization (EMLA), Hungary; former Aarhus Compliance Committee member, and former Ombudsman of Future Generations, Hungary

**Sándor Fülöp:** Capacity building is included in one paragraph of Article 3 of the Aarhus Convention, however, it is linked to all of the other key articles and there are various other provisions throughout three pillars which are relevant for capacity building. In order to implement the Convention capacity building measures are needed. As an illustration, look at the table which shows how the individual provisions of the Convention should be supported by capacity building. (See table attached)

Taking the example of access to information, generally or in individual cases environmental, institutional or procedural aspects should be addressed. For example, environmental education or awareness raising is needed, values need to be formulated. The media and creative solutions should be used, such as arts, churches, opinion leaders (e.g. local teachers, labor unions etc.). The legal-institutional-procedural capacity building could include development of environmental laws but also the creation of meta-information, home pages, establishment or of contact points, assistance by environmental officers, etc.

Organizational, procedural help includes providing support to have strong NGOs, NGO friendly laws, assistance programs. On the individual level, this means ensuring strong NGO standing, free of charge or inexpensive procedures and remedies, including litigation fee, expenses as well as legal

assistance. The capacity of NGOs should not be destroyed by discrimination of NGOs or SLAPP cases.

Whether it is worthwhile to strive for strong text in a legal instrument? The practice shows that even if there is not so strong text, it could be supplemented by other mechanisms. For example, there have been many compliance cases related to SLAPP cases (in UK, Ukraine and Belarus).

## **2<sup>nd</sup> presentation**

Mechanisms for capacity building under the Aarhus Convention (Strategic plan and work programme, regional workshops, capacity building cooperation, guidance documents: Implementation Guide, clearinghouse mechanism, etc.)

Speaker: Theodore Koukis, Aarhus Convention Secretariat, Associate Environmental Affairs Officer, Environment Division

**Theodore Koukis:** As the Aarhus Convention is a regional instrument, capacity building activities are also mainly focused on regional cooperation with fellow partners. These are reflected both in the Strategic Plan and the Work Programme that are currently expiring and the new ones will be adopted for the forthcoming period at the next MoP. The focus areas for capacity building include: access to justice, access to information and electronic tools, public participation in decision-making, GMOs, and public participation in international fora. The capacity building activities are carried out through support offered to multi-stakeholder national partners through roundtables, training sessions. For example, a training was carried out in Central Asia for judges and legal professionals on access to justice, and recently had a roundtable on GMOs in Geneva, the first global roundtable in collaboration with the Biodiversity Convention. We try to adapt the activities to the needs in the different fields. Legal assistance is provided on building legislation with the help of the Compliance Committee recommendations and through analytical studies in the framework of some Task Forces. All the links with these materials can be provided. They are all available on the web site.

On Access to information and the use of electronic information tools, several workshops and events were organized and certain set of recommendations were provided on the use of electronic tools. Also a lot of information can be accessed in the Implementation Guide which is available on the web site in electronic form. With regard to public participation in decision-making, in addition to assistance on improving legislation and workshops, draft recommendations have been prepared which have received 1700 comments. It was commented in a very inclusive procedure and will be very valuable tool. Another tool which will be soon also available is the Good Practice database on public participation, an online interactive tool where countries and organizations can upload good practice cases, for which almost 30 cases have been received. On public participation in international forums, a compendium of case studies has been compiled together with a list of international fora, several guiding tools were prepared including the Almaty Guidelines, the Implementation Guide, and good practice database also was collected. Finally, a lot of information can be accessed through the Clearinghouse managed by the secretariat.

**Tsvetelina Borissova Filipova:** It will be really useful to provide direct links to the mentioned resources. Now the floor is open for questions or issues to be raised.

## **Questions/answers**

**Carmen Capriles, Reaccion Climatica, Bolivia:** As you mentioned that we need to strengthen more the capacity of NGOs in the region. I want to know how can we engage the major groups in these activities, how is it going in the UN?

**Theodore Koukis:** The Aarhus Convention is not focused on the major groups, it is completely open process, so all NGOs may participate in many activities and in many different capacity building activities. However, the Secretariat we have some privileged partners with whom we work. We work with the EEB, who are acting as coordinators of the NGOs and participate at our meetings, and provide valuable comments and input. We have also international partners with whom we collaborate in the field as we don't have a capacity, neither the human nor the financial resources to carry out a lot of capacity building activities in the field. So we work with OSCE, Aarhus Centres, UNEP, UNITAR, etc. I suppose that within the framework of UNEP there can be several efforts made to engage major groups.

**Sándor Fülöp:** There was a UN expert group on the new mechanisms of stakeholder engagement in UNEP and their final report is available at the UNEP home page. This has some good information on best practices and possibilities for NGOs to take part through major groups at regional and global level.

**Constance Nalegach Romero, Focal Point, Chile:** Just to share with Carmen that in our Latin American process we have a wide definition of „public”, so anyone can participate in this process. Also to ask Theodore, do you have one site where you have all this information on capacity building or you have to navigate through all pages of the Aarhus Convention? Also the core issue, how do you finance all these activities?

**Theodore Koukis:** There is a web page on Capacity Building. It does not include all information that is available but with a set of links a better guidance can be provided on how to reach them all. Regarding the financing, first of all we rely on the voluntary contribution of the parties so according to the available budget we try to use the resources for capacity building covering all fields of the convention, if possible. Then we cooperate, as mentioned, with several partners which is also more cost effective. Apart from OSCE and EEB, the REC has been particularly useful and helpful. They have provided financial support to participants, have facilitated the participation of experts at our meetings, and have provided input in writing for various consultation processes. We are grateful to all these organizations and also other UN agencies. They have been all very active.

**Carole Excell, WRI/TAI Secretariat:** How have priorities been defined over time? So at beginning at the adoption of Aarhus, was there practice setting on changing legislation, how was that supported versus now, and has the practice changed over time? What are the issues countries are asking for help on capacity building? What are the roles of the different organizations? The Aarhus Secretariat seems to have a role in capacity building. Does it coordinate the capacity building, does it speak with countries to define needs vs. other organizations or do countries do it themselves? What are the pivotal materials used for capacity building? The Implementation Guide was mentioned as the core document. Are there other key documents which help in building capacities?

**Theodore Koukis:** As heard in different presentations, at the beginning, after the negotiations, there was a lot of emphasis on access to information and public participation. Now these pillars have become more advanced, there is more attention needed on access to justice. This has been admittedly the weakest of the three pillars, as the implementation is much more difficult, more implementation

of legislation or more development are needed. As the convention expands and new countries ratify or accede, there is new demand for capacity building activities. The focus is quite varied from country to another, so there are different requests. As I have mentioned, in Central Asia, for example, there was a great demand by the countries there for capacity building on access to justice and this is why the Secretariat coordinated the organization of a sub-regional workshop. In other areas, in the Balkans, there was a workshop on the use of electronic information tools in Skopje. So the focus can be diversified, and this is why we try to have these sub-regional workshops to create more homogenous groups and provide more focused and targeted assistance. So it is a combination: we receive requests from countries but we try to be as active as we can. And this is reflected in the Work Programme and the Strategic Plan but in very general terms. With regard to key documents, apart from the Implementation Guide, one very useful source used by the national implementation reports available online, and submitted by the parties every three years, and also the Compliance Committee's findings and recommendations. Cases addressed by the Committee can be found online and countries can use them for guidance.

**Tsvetelina Borissova Filippova:** I ask also other speakers to address this issue from historic perspective.

**Tomas Severino, I/A Mexico:** How can a follow up be done from time to time? Where do we find the strategic plans or programs for capacity building? Is there one for all entities or separate ones? If countries would request capacity building, is it the governments or a group of NGOs? Who from the countries can request capacity building at the national level?

**Sándor Fülöp:** The very first draft of the convention (the draft of the Friends of the Secretariat group) had a whole article on capacity building but this seemed to be too burdensome for the governments. The chair's strategy was to keep the elements and scatter through the text and as a result, much stronger elements appeared in different places, especially in Articles 3, but also in 4, 5, 6, 9 and 12. If these are added up, we end up with a quite strong system, which has worked. As Theo has mentioned, plenty of good capacity building solutions can be found in the national implementation reports as the administrations have also found it important. The NGO community itself also has enormous capacity building potential (EEB/EcoForum, ELAW, etc.), not only international organizations and donors.

**Theodore Koukis:** It is obvious that countries are changing priorities and we have different requests from time to time. These are discussed and are constantly under review. They can be proposed during the annual meetings of Working Group of Parties and also to the Task Forces. We get the sense of what are the priorities, what are the future needs, and try to accommodate them. The main responsibility of the Secretariat is towards the governments. In the workshops organized under the Convention, there is always NGO participation and we try to be as inclusive as possible, so everyone can profit from these. The main contributors are the countries and we have responsibility primarily towards them so they could improve the capacity on government level.

### **3<sup>rd</sup> presentation**

Capacity building to prepare for the ratification of the Aarhus Convention: Example of Estonia

Speaker: Kaidi Tingas, Public Participation Expert, REC (formerly responsible for a project in Estonia to support ratification)

See attached presentation.

#### **4<sup>th</sup> presentation**

Capacity building for CSOs to be able to use their rights under the Convention (including on compliance mechanism)

Speaker: Mara Silina, European Environmental Bureau

**Mara Silina:** The European Environmental Bureau (EEB) has always been one of the main organization for coordinating NGO work and input on Aarhus Convention and has been acting as the driving force in EcoForum, in the all-European NGO network. We participated in the negotiations of the Convention with their best legal experts. In 1998 we tried to educate ourselves and other NGOs on issues related to the Convention and also prepared an NGO brochure explaining in human language what is Aarhus Convention about. This was translated to Russian, French, German and Spanish and also to local languages. Capacity building workshops were organized in the countries using experts, first of general character then on specific issues regarding all three pillars, combined with practical issues. The EEB/EcoForum actively participated in all Aarhus Convention related meetings, and funding for their attendance was provided by the UNECE and some donors. We provided expert input for the different Task Forces e.g. on product policy for the Access to Information Task Force.

E-mail lists as communication channels and a web site are operated and publications are prepared, although currently our web site is being changed. In 2010 the Aarhus brochure for NGOs was updated and published again. On PRTR an NGO pilot project was carried out in Kazakhstan.

The capacity of the NGOs was built and assistance was also provided on using the compliance mechanism in the EU, SEE and EECCA region. Four trainings and training for trainers were also organized on these issues. A major 3-day training was held in Ireland for 90 participants on access to justice for NGOs, representatives of governments, judges and prosecutors. We plan to have a seminar on Compliance Committee case law after the Meeting of Parties.

#### **5<sup>th</sup> presentation**

Capacity building to prepare for implementation of the Convention (Different forms of capacity building carried out in projects in South and Eastern Europe (SEE) and East Europe, Caucasus and Central Asia (EECCA), e.g. supporting development of implementation strategies, workshops, trainings for governmental officials, CSOs and the judiciary, guidance materials, grants for pilot projects)

Speaker: Magda Tóth Nagy, Project Consultant, REC

**Magda Tóth Nagy:** REC has been working primarily in the South Eastern Europe (SEE) and former Soviet Union countries in projects, supporting the convention implementation and ratification through capacity building. We have matched the regional approach with the national and local activities. One example for this is the project “Supporting Development of Implementation Strategies for the Aarhus Convention” which was running in 6 SEE countries. Someone has asked how to define the priorities for capacity building. At the national level, it is important to have a participatory

and transparent process and involve the government and the NGO sector, as well as independent experts. In the project initiated by us a needs assessment was prepared in every country on what is needed for the implementation, and for the signatories for the ratification of the convention, the legal, institutional, framework needed for implementation were analysed, as well as the practical problems and gaps, and how they can be overcome. After a multi-stakeholder discussion, strategies and action plans for the convention implementation were adopted, including a specific part on capacity building. Project funds were available to support some of the proposed capacity building measures. The countries endorsed or adopted the strategies and action plans and later on some of them updated, renewed these, and in many cases still use them as a basic document (Albania, Macedonia and Serbia).

Various tools were used for capacity building. First of all we provided trainings, at the beginning in more general sense on all pillars, later on focused more on the 2<sup>nd</sup> and 3<sup>rd</sup> pillar. On access to justice, the judges and prosecutors were targeted in a series of two-day trainings in each SEE country in cooperation with the judicial training centers. Recently, we have managed to raise the centers' interest to include the Aarhus Convention in their curricula for the future. For NGOs we also had a series of one- or two-day trainings. In the trainings, both for judges and for NGOs, in addition to discuss how to understand the Convention's 3<sup>rd</sup> pillar we also tried to identify examples through which we could demonstrate the implementation of 3<sup>rd</sup> pillar, either from the country or from other regions. We used also methods like small group discussions, mock trial, role play.

Other activities included the development of guides, in some countries on all pillars, or on the public participation or access to justice pillars. Two approaches were followed. One approach in the EECCA countries, for example, a model guide was prepared and discussed in English together with the national teams including government and NGO experts, and this was adapted to the country legislation and needs, and published in local languages. Another approach was followed in the Balkans where in each country independent or NGO experts developed their own local language guide and our role was more to comment and support to ensure that the manuals are of good quality, user-friendly and easily understandable. Grants and pilot projects were awarded to NGOs on a competitive basis, which came up with proposals on how they would support the implementation of the access to information or public participation pillars. These grants or pilot projects were implemented in cooperation with other NGOs and with the local or national governments. The lesson is that we should be involved in evaluating continuously the capacity building needs and then address these in a transparent and participatory process. Our activities were serving the implementation of the Convention's Work Programme and Strategic Plan too, and provided input into the work of the different task forces. For example, REC now prepares a study on the access to justice situation in SEE, under the Access to Justice Task Force.

### **Questions/answers**

**Valeria Torres, ECLAC:** Thanks to the panellists, very interesting discussion. As a region we are working on how to include capacity building in text of the instrument, so would like to ask the panellists based on your experience, what should be key to include in the instrument. Also, if you were to start again with negotiations, what would you do differently? In case of the Aarhus Convention is it necessary to comply with the Convention before signature? Or is there space for the countries to join and work on compliance with the support of the secretariat?

**Theodore Koukis:** Regarding compliance, there is no obligation to comply with the convention upon signature, only after ratification or full accession to the convention. There is also a period of grace, so for one year after ratification no NGO or member of the public can bring to the Compliance Committee because it is considered as a transition phase, they are still adapting to the new provisions. Currently there are about 100 compliance cases brought to Committee which means that these countries are not in compliance. It is a constant effort for the countries to adapt the legislation and improve implementation and compliance by all parties and civil society.

**Magda Tóth Nagy:** It was mentioned also in the previous forum for exchange of experience, that there are two approaches for compliance for the countries. One approach is that they first work on compliance to make sure that the country can implement the convention and afterwards they ratify it. The other approach is that first they ratify it and then work to be in full compliance. Both approaches are accepted. Regarding how to include capacity building in the text: One strategy could be that the text is not so strong, generally applicable, like in case of the Aarhus Convention's general provisions, but it is linked with specific smaller but significant issues in other articles. As mentioned by Sandor it could create a whole system. It can be followed up and can be supported through the Work Programme and the Strategic Plan, as countries should implement these documents. If we could be again in the negotiations, probably we would try to be as specific as possible in the articles on the different aspects. Many governments brought up arguments against being too specific that maybe they would not be able to implement the provisions but in the end it turned out that it was not the case (e.g. on access to justice or on access to information).

**Mara Silina:** It may not be in a strong language but as much as you can get into the text is better now, because afterwards it will be very difficult to change some things. This is what we as NGOs were facing with, because in case of the Aarhus Convention the text was finally adopted in a compromise language on all issues, and now to get clarification also on the third pillar, on Art. 9.2, 9.3 and 9.4, it is very difficult. If there is a possibility, capacity building should be part of the regional instrument. Afterwards it can be used in a different ways.

**Theodore Koukis:** The convention itself does not have a very strong a language and detailed description on capacity building. You can have it in vague terms and then provide details in decisions of Parties or how to proceed or specific actions or activities in the Work Programs and in the Strategic Plan.

**Tomas Severino:** Everyone spoke of national assessments but I could not find such assessments on the different pillars. What was the methodology to assess where were the countries on access to information, public participation and access to justice at the beginning? What was the methodology and where can we find it?

**Magda Tóth Nagy:** If you refer to national assessment of capacity building needs, this kind of assessment did not happen under the convention in organized way but it happened in some countries. Theo was already referring to the national implementation reports which have to be submitted before every MoP by the parties, and these should contain under the general Article 3 and under other articles some report on how capacity building is done. Our assessments to which I have referred to were prepared in different projects. In some countries it was only a capacity building needs assessment for the convention implementation, e.g. in Albania, 2-3 years ago, in a project funded by the World Bank and the Ministry of Environment. Other assessments mentioned in my presentation evaluated what actions and measures should be taken for the implementation of the three pillars, and

these included a chapter on capacity building. These assessments were based on a methodology developed by us in cooperation with the country partners. We can share these methodologies with you.

**Mara Silina:** I understood the question from Tomas in two ways and one was on national implementation reports. That is an official requirement under the Aarhus convention. The working group of parties in cooperation with the Bureau have prepared a format which can be found on the web site. The countries have to use this template for reporting on each pillar and provision. The report is prepared for each MoP and there is an indication on what and how you have to do. Recently it all happens online.

**Magda Tóth Nagy:** Based on the national implementation reports a synthesis report is prepared for the MoP, so you can see the trends. This also gives information on the priority needs for the next period and this can be taken into account in the Work Programme and the Strategic Plan. We also have the capacity building cooperation and coordination among those organizations, institutions and NGOs who do such work. For example a few months ago we have reviewed the Strategic Plan from capacity building point of view to see what has been addressed and what needs are still there. The Strategic Plan could be used also as tool for evaluating the capacity building needs. There is difference though between the needs at the Aarhus Convention level and the country level and both should be addressed.

**Theodore Koukis:** Tomas maybe was also referring to a possible assessment before the entering into force or before the signature of the convention, like a study on the current state of affairs. In the last meeting Jerzy Jendroska, member of the Compliance Committee, mentioned that it would be a very useful tool to have some analytical study on the current state of affairs in the different LAC countries, before the signature of the future instrument. I am not aware if similar study has been prepared on Aarhus.

## Conclusions, next steps and closure

**Tsvetelina Borissova Filipova:** Thank you for the contributions and the useful discussion. A report will be prepared and circulated together with the list of participants and the taped material, and we will provide you some useful links. For the next event, a forum of exchange of experience will be organized during the Maastricht MoP on July 2<sup>nd</sup> in the high level segment, in the lunch break. Magdi will follow up with those of you who will participate in the side event and MoP on operational issues. If you are interested in some topics please make sure that you send these to us. We will organize another webinar after the MoP, in autumn, on compliance issues. We will provide more detailed information about these events.