



**Climate Action Network - International**  
Submission To The Subsidiary Body For Implementation  
Concerning Views On Ways To Enhance The  
Engagement Of Observer Organizations

August 13, 2010

*CAN-International is a coalition of more than 500 environmental and development non-governmental organisations worldwide, committed to limiting human-induced climate change to ecologically sustainable levels.*

The Climate Action Network makes this submission in response to the Subsidiary Body for Implementation's invitation to submit "views on ways to enhance the engagement of observer organizations."<sup>i</sup>

Respectful, relevant and effective participation by observers plays a critical role in climate negotiations. The SBI has recently "affirmed the value of the engagement of observer organizations ... and acknowledged the important role of civil society representation in the intergovernmental process."<sup>ii</sup> As the Secretariat has explained, vibrant public participation

allows vital experience, expertise, information and perspectives from civil society to be brought into the process to generate new insights and approaches. Furthermore, the access and participation of observers to the process promotes transparency in this increasingly complex universal problem. Such participation flourishes in an atmosphere of mutual trust which acknowledges respect for others and their opinions, and takes into account the nature of intergovernmental sessions.<sup>iii</sup>

Broad public participation in the UNFCCC processes is consistent with international law and norms. For example, the Rio Declaration,<sup>iv</sup> Agenda 21,<sup>v</sup> and the Aarhus Convention<sup>vi</sup> all affirm that the best environmental decisions are made when civil society participates. The UN Office of the High Commissioner on Human Rights has noted that the right to participate is implied in article 25 of the International Covenant on Civil and Political Rights.<sup>vii</sup> The Framework Convention itself provides that Parties "shall ... encourage the widest participation in this process, including that of non-governmental organizations,"<sup>viii</sup> and requires the COP to "[s]eek and utilize, where appropriate, the services and cooperation of, and information provided by, competent international organizations and intergovernmental and non-governmental bodies."<sup>ix</sup>

Meaningful public participation also helps ensure the legitimacy of negotiation outcomes, promoting a wide measure of public support for the products of the Parties' deliberations. That public support, in turn, is often crucial to the durability of these negotiation products. Civil society not only plays a fundamental role in shaping policy, but also is critical in ensuring those policies are effectively implemented.

Because public participation is fundamental to the success of the Convention, as well as to its subsidiary bodies and any instruments adopted under it, the Parties must ensure broad public participation in all aspects of negotiations conducted under the auspices of the UNFCCC and its subsidiary bodies and instruments. To that end, we make the following recommendations for

ensuring meaningful and effective public participation and the legitimacy of UNFCCC negotiations. We respectfully request that the SBI, the Parties and the Secretariat incorporate them into existing or amended guidelines for participation of representatives of non-governmental organizations, and ensure their immediate implementation in all UNFCCC sessions.<sup>x</sup>

### **Timing and Process for Establishing Guidelines for Public Participation**

1. The SBI, the Parties and the Secretariat should establish a process that results in final guidelines on public participation as soon as possible, and before the end of COP-16 at the latest. If final guidelines are not possible before COP-16, the SBI and Secretariat should make their best efforts to develop and implement interim guidelines on public participation, incorporating as many of the points raised here as possible, as far in advance of COP-16 as possible. The processes for establishing final guidelines and, if necessary, interim guidelines, should include meaningful participation by civil society, and should draw on the experience and expertise of the Secretariat of the Aarhus Convention and others with experience in facilitating public participation in environmental and international matters. The proposed revisions should be broadly disseminated and comments solicited sufficiently in advance of their implementation to allow the SBI, the Parties and the Secretariat to revise the guidelines in light of comments received.

### **Access and Forms of Participation**

2. Public participation in meetings of the bodies of the UNFCCC should be as broad as possible, including in plenary sessions, subsidiary bodies and all other groups established to contribute to decisionmaking in the UNFCCC and related processes, and should occur at all relevant stages of the decisionmaking process.<sup>xi</sup> Closed negotiating sessions have historically been the exception rather than the rule in the UNFCCC. There should be a presumption that all meetings during negotiating sessions are open to attendance by civil society unless there are clear, published reasons for holding them as closed meetings.

3. The new guidelines should clarify the roles of the Secretariat, Parties and host countries in determining public participation policies and arrangements. To ensure transparency in rules and arrangements relating to public participation, the Parties should require the Secretary to publish agreements with host countries concerning negotiating venues and related arrangements well in advance of the relevant negotiating sessions (redacting only sensitive information related to security if necessary). The Parties should also require the Secretariat and the host country to report publicly on their efforts to ensure full public participation, including how they will divide relevant responsibilities, well in advance of the session in question.

4. The Parties should require host country governments to ensure that venues proposed for the negotiations are of a size and capacity that will enable them to host the anticipated number of participants. Where that is impossible, venues should be chosen that allow for a strong representation of civil society constituencies.

5. Direct access to and interaction with negotiators is an important element of meaningful public participation. NGO observers must not be excluded from venues where formal negotiations are taking place. Restricting NGO observers to alternative venues dedicated to side events and exhibits would unacceptably limit important opportunities to interact with negotiators and other decisionmakers.

6. Accreditation, nomination or other procedures for selecting or limiting participants should be based on clear and objective criteria, established in consultation with observer organizations and published well in advance of their application.

7. While participation in the UNFCCC should be as broad and inclusive as possible, in exceptional circumstances it may be necessary to limit public participation. Any necessary limitations on public participation – whether on the number of participants, the form of participation, or any other limits – should be established through consultation with observer organizations and implemented in a manner that ensures equitable and effective participation by all constituencies and other major categories of civil society, with particular focus on groups traditionally underrepresented due to factors such as geographical location, poverty, gender, indigenous or minority status, and disability. Such limits, and rules for applying them, should be made readily available to NGOs, with changes in such criteria being published well in advance. To the greatest extent possible, limitations and measures to address them should be determined and communicated to participants sufficiently far in advance to minimize the waste of time and resources (*e.g.*, the purchase of airline tickets and hotel reservations).

8. The Parties should reaffirm that observers are to be permitted access to delegations' "mailboxes" or "pigeonholes," which are an efficient mechanism for communication. The Parties may empower the Secretary to develop reasonable restrictions to ensure the appropriateness of the distributed information.

9. Because of the importance of public participation in providing valuable expertise and information, and in ensuring transparency and legitimacy, steps must be taken to preserve and enhance opportunities and support for routine civil society input through official interventions, submissions and consultations. The Parties should guarantee time for one intervention by each constituency at each public or formal negotiating session. Constituency interventions should not be relegated to the end of sessions, when they cannot realistically be part of the conversation. Instead, constituency representatives should be permitted to enter the queue for their intervention in the same manner as Parties. Additional observers should be given an opportunity to intervene if time permits.

10. There should be opportunities for peaceful and respectful actions in venues used for UNFCCC negotiations. Parties and the Secretariat may establish reasonable restrictions on the time, place or manner of such actions, but such restrictions should be based on clearly defined criteria that are published well in advance and that balance the needs of negotiators and the rights of civil society to express their views. Such criteria should not prevent demonstrators from being able to peacefully express their opinions directly to negotiators, observers and other participants. Such restrictions should be established well in advance of meetings through a transparent process

subject to impartial review.<sup>xii</sup> Any process for approving actions should be flexible and quick enough to allow for timely responses by civil society to the events of fast-paced negotiations.

11. Access to information is an essential component of effective public participation in environmental matters, and greater public access to information results in better input and better decisions.<sup>xiii</sup> We appreciate the Secretariat's efforts to make key documents available and, particularly, more recent efforts to publish some documents electronically. We are concerned, however, that important documents remain difficult to obtain in a timely manner. To the greatest extent possible, the Secretariat should publish all documents relevant to the decisionmaking process as soon as they become available. In addition to other forms of distribution, documents should be posted to the UNFCCC website no later than the time they are made available for hard-copy distribution.

12. We also appreciate the substantial effort the Secretariat has devoted to webcasting UNFCCC sessions. While the use of real-time broadcasting has great value and may serve to reduce some demand for physical access to meetings, such broadcasting cannot substitute for in-person attendance and participation, and the availability of such technologies should not be a justification for limiting public participation or failing to fulfill the principles set forth in this document. However, in the event that circumstances necessitate restricted access to the official negotiating venue, the Secretariat must ensure that meetings are broadcast in real time, and must communicate conference developments to NGO observers who are excluded from the venue. The Secretariat should also explore new technologies for providing real-time information to observers and concerning changes in the negotiations, such as when a closed session has been re-opened. For example, a text message-based system akin to those used by airlines to inform travelers of last-minute flight changes should be considered.

13. Civil society also serves as an extremely valuable technical and political resource for Parties, especially in developing countries. Parties should always be enabled to use these resources in whatever means they choose. Parties retain the sovereign right to determine the composition of their delegations, which may include civil society members should the Party so choose.

14. Access to and engagement with the media is a crucial element of civil society participation and must be both accommodated and facilitated. The media depends on civil society to provide perspective on the proceedings and to judge the outcome as informed participants and observers. Civil society's ability to brief the press must be guaranteed. Facilities available to parties for press briefings should also be made available to observers. Any alternative venues for civil society to brief the press should be of equivalent convenience (including the convenience of the location), technological capability (*e.g.*, webcasting), and size as those available to Parties. Further, civil society representatives should always have access to the media center, particularly when invited by members of the media in order to conduct interviews or have other engagement.

### **Capacity Building**

15. The Parties should provide increased financial resources to ensure that the Secretariat is able to facilitate meaningful, effective, and equitable access for NGO observers at all stages of the

UNFCCC process. This must include adequate staffing in the Observer Organization Liaison Office, both prior to and during all UNFCCC meetings, to ensure compliance with these principles and address problems that may arise.

16. The Parties should require the Secretariat to work directly with host country governments to ensure implementation of the principles set forth here. To the greatest extent possible, these principles should be incorporated into the host country agreements entered into between the Executive Secretary and host countries. Host country agreements should be made public, recognizing the right of the host country to redact specific information that, if released, could jeopardize security.

### **Dispute Resolution**

17. The SBI should mandate the Secretary to establish and implement procedures, consistent with existing UN standards, especially the standards operated by ECOSOC and in particular by the ECOSOC Committee on NGOs which considers complaints against accredited organizations and decides on withdrawal or suspension of recognition, for transparent and impartial review of decisions excluding or limiting the access or participation of any individual or organization, whether before or during meetings. Such review should be carried out as quickly as possible, so as to maximize opportunities for the individual or group to continue participating in the remainder of the session in question. The procedures established and implemented should respect the principles of natural justice and due process, including *inter alia*:

- the right to be made aware of the case against an individual or organization in written form, including the specific charges being leveled, and the opportunity to respond to it, before any decision is made, including on punitive sanctions;
- the right of an organization or individual to have access to the evidence being invoked against them;
- that any interested party in any dispute shall have no role in decisionmaking processes regarding judgment or sanctions against an organization or individual.

18. The SBI should clarify that only the COP has the authority to make final decisions concerning disciplinary action aimed at any individual or organization participating in or observing the UNFCCC negotiations.

### **Public Participation in the Substantive Outcomes of the Negotiations**

19. For the same reasons that public participation is valuable during the negotiations, it is valuable in the implementation of the substantive outcomes of negotiations. Public participation in the implementation of international commitments helps ensure the environmental integrity, legitimacy and public acceptance of implementation measures. The Parties should ensure that there are mechanisms for guaranteeing robust public participation and full access to information with respect to substantive negotiation outcomes, including dispute settlement, MRV and compliance processes, market mechanisms, grievance mechanisms, *etc.* Provisions to this effect should be explicitly included in the final texts resulting from the current UNFCCC negotiations.

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<sup>i</sup> FCCC/SBI/2010/L.21, 9 June 2010, para. 19.

<sup>ii</sup> FCCC/SBI/2010/L.21, 9 June 2010, para. 18.

<sup>iii</sup> Guidelines for the participation of representatives of NGOs at meetings of the bodies of the United Nations Framework Convention on Climate Change.

<sup>iv</sup> “Environmental issues are best handled with participation of all concerned citizens, at the relevant level.” Rio Declaration, Prin. 10.

<sup>v</sup> For example, “Non-governmental organizations, including those non-profit organizations representing groups addressed in the present section of Agenda 21, possess well-established and diverse experience, expertise and capacity in fields which will be of particular importance to the implementation and review of environmentally sound and socially responsible sustainable development, as envisaged throughout Agenda 21. The community of non-governmental organizations, therefore, offers a global network that should be tapped, enabled and strengthened in support of efforts to achieve these common goals. ... To ensure that the full potential contribution of non-governmental organizations is realized, the fullest possible communication and cooperation between international organizations, national and local governments and non-governmental organizations should be promoted in institutions mandated, and programmes designed to carry out Agenda 21.” Agenda 21, Arts. 27.3 – 27.4.

<sup>vi</sup> “In order to contribute to the protection of the right of every person of present and future generations to live in an environment adequate to his or her health and well-being, each Party shall guarantee the rights of access to information, public participation in decision-making, and access to justice in environmental matters in accordance with the provisions of this Convention.” In the words of Kofi Annan, “Although regional in scope, the significance of the Aarhus Convention is global. It is by far the most impressive elaboration of principle 10 of the Rio Declaration, which stresses the need for citizen’s participation in environmental issues and for access to information on the environment held by public authorities.” Kofi A. Annan, former Secretary-General of the United Nations. UNECE, “Introducing the Aarhus Convention,” <http://www.unece.org/env/pp/>.

While good practice and international norms generally support the obligation of the Parties to promote the application of these principles in the UNFCCC context, that obligation is explicit for the 44 parties to the Aarhus Convention, all of which are also party to the UNFCCC. Parties to the Aarhus Convention are obligated to promote public participation “in international environmental decision-making processes and within the framework of international organizations in matters relating to the environment.” Aarhus Convention, Article 3.7. *See also* UNFCCC Art. Article 6(a)(iii) requiring the Parties to “promote and facilitate” public participation in addressing climate change and its effects and developing adequate responses “at the national and, as appropriate, subregional and regional levels.”

<sup>vii</sup> “[Public p]articipation in decision-making is of key importance in efforts to tackle climate change. ... The right to participation in decision-making is implied in article 25 of the International Covenant on Civil and Political Rights which guarantees the right to ‘take part in the conduct of public affairs’”. *Report of the Office of the United Nations High Commissioner for Human Rights on the relationship between climate change and human rights* (Jan. 15, 2009), U.N. Doc. A/HRC/10/61, at para. 79, available at <http://www.ohchr.org/Documents/Press/AnalyticalStudy.pdf>.

<sup>viii</sup> UNFCCC Art. 4.1(i).

<sup>ix</sup> UNFCCC, Art. 7, para. 2(l).

<sup>x</sup> *Guidelines for the participation of representatives of non-governmental organizations at meetings of the bodies of the United Nations Framework Convention on Climate Change* (Mar. 2003), available at [http://unfccc.int/files/parties\\_and\\_observers/ngo/application/pdf/coc\\_guide.pdf](http://unfccc.int/files/parties_and_observers/ngo/application/pdf/coc_guide.pdf).

<sup>xi</sup> *See* Decision II/4, Promoting the Application of the Principles of the Aarhus Convention in International Forums (Almaty Guidelines), paras. 29, 30, ECE/MP.PP/2005/2/Add.5 (20 June 2005), <http://www.unece.org/env/documents/2005/pp/ece/ece.mp.pp.2005.2.add.5.e.pdf> (“Participation of the public concerned should be as broad as possible” and should be allowed “in all meetings of international forums, including their subsidiary bodies and other groups established by the forums to contribute to the decisionmaking [and] at all relevant stages of the decisionmaking process.”).

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<sup>xii</sup> Articles 19 and 20 of the Universal Declaration of Human Rights protect the rights to impart information and assemble peacefully. Article 19 of the International Covenant on Civil and Political Rights (ICCPR) also protects the right to “impart information,” and provides that restrictions on such right must be “provided by law” and limited to those necessary “[f]or respect of the rights or reputations of others; [or f]or the protection of national security or of public order (*ordre public*), or of public health or morals.”

Similarly, Article 21 of the ICCPR protects the right of peaceful assembly, and provides that “[n]o restrictions may be placed on the exercise of this right other than those imposed in conformity with law and which are necessary in a democratic society in the interests of national security or public safety, public order (*ordre public*), the protection of public health or morals or the protection of the rights and freedoms of others.”

<sup>xiii</sup> See Aarhus Convention, preamble (“*Recognizing* that, in the field of the environment, improved access to information and public participation in decision-making enhance the quality and the implementation of decisions, contribute to public awareness of environmental issues, give the public the opportunity to express its concerns and enable public authorities to take due account of such concerns”); Almaty Guidelines, para. 34 (public participation “should include, at meetings in international forums, the entitlement to have access to all documents relevant to the decision-making process produced for the meetings”).