

PARTICIPATION IN THE UNFCCC PROCESS: SUBMISSIONS TO THE SBI BY FRIENDS OF THE EARTH INTERNATIONAL

1. Introduction

Friends of the Earth International (FOEI) is the world's largest grassroots environmental network, a long-established and widely respected environmental grouping comprising 77 national organisations from countries in both the global North and global South with a combined membership of over 2 million people. We are recognised as participants or observers in a wide range of international spheres, from UNEP and the UN Permanent Forum on Indigenous Peoples to the Aarhus Convention. FOEI has attended UNFCCC negotiations since their inception. We welcome the opportunity to make submissions to the SBI on this issue, which we believe to be of crucial importance to the progress of the negotiations.

In the recent past we have seen some heartening improvements to the participation of civil society in the negotiations, such as making draft documents available to civil society and not only Parties. However, we remain concerned that there is a tendency to treat civil society representatives as guests at the negotiations who are optional extras rather than an integral part of the process. This is contrary to the approach taken in core documents of key relevance to considering public participationⁱ which emphasise the integral nature of civil society participation to good decision-making at both the national and international level. As is evident from the unfortunate experience of Copenhagen, the absence or arbitrary restriction of civil society from the negotiations undermines the legitimacy of the entire negotiating process. The importance of civil society participation is recognised in Article 4.1(i) of the Convention. It is reinforced for Parties to the Aarhus Convention by their obligations to promote Aarhus principles, including public participation, in the UNFCCC, as acknowledged in the recent recommendations of the working group of the Conventionⁱⁱ.

FOEI has seen and supports the participation principles put forward by the Human Rights and Climate Change working group and the recommendations made by 6 civil society focal points at Bonn II on 3 June 2010 (copies of the latter are attached to this submission). We do not set out to repeat the points made in these documents, but would wish to make the following additional observations and recommendations.

2. General recommendations to improve public participation at all UNFCCC negotiations

In the view of FOEI, the following general approach would play an important part in changing the "culture" of the negotiations to ensure participation:

- Ensuring that participation in the negotiations by constituencies comprised of members of the public is given special protection.

As recognised in international legal instruments such as the Almaty Guidelines, participation of the public improves the quality of decision making. This applies equally to constituencies that represent groupings of members of the public.

- Participation of underrepresented groups, such as Southern civil society, should be encouraged, for example by setting up a participation fund.

In order to ensure that the full spectrum of civil society views on the negotiations is heard, inherent barriers to participation on the basis of economic or geographic circumstances need to be addressed. An earlier proposal to set up a participation fund to facilitate participation by such groups was not passed, we would urge Parties to reconsider this proposal. As a federation with a majority of groups from the global South, it is our experience that finances are an obstacle to effective participation and representation at the climate negotiations by such groups.

3. Revision of the participation guidelines

FOEI has particular concerns about the extremely vague nature of the current NGO participation guidelinesⁱⁱⁱ. The guidelines themselves recognise the importance of NGO participation but in our experience do not facilitate such participation. The introduction to the guidelines states that they are:

“not exhaustive but seek to provide information reflecting current practice regarding attendance of observers at sessions and meetings of the UNFCCC. They are in line with those governing NGO participation at sessions of other bodies in the UN system.”

However, participation processes at the UNFCCC are a long way away from current examples of good practice, such as those of the Human Rights Council or the Aarhus Convention. In the Human Rights Council, direct interventions are permitted. In the Aarhus process, NGOs have speaking rights in the same way as Parties and simply join the queue to speak, form part of drafting groups producing negotiating text during MOPs and generally have an extremely close involvement in the process. This has the positive benefit of eliminating the need for what are termed “media actions” in the UNFCCC guidelines- as NGOs are directly involved in the meetings they do not need to resort to actions outside the meetings to try to put across their views or influence the process.

FOEI recognises the value of guidelines on participation in setting a framework for civil society engagement in the UNFCCC process. Our key concern is that the current participation guidelines are overly vague in some places, and unnecessarily strict in others. This means that they are often interpreted in an arbitrary fashion and do not serve their purpose. Instead, hours of Secretariat and civil society time is wasted in negotiating over actions that could not reasonably be regarded as causing genuine threat, harassment or security concerns. The difficulties caused by this multiply a hundred-fold in a busy, pressurised environment, like that of COP 15 in Copenhagen. Indeed, these problems contributed directly to NGOs such as ourselves being excluded from the negotiating venue during the negotiations, increasing the negative publicity generated around COP 15.

3.1 Suggested amendments in relation to the participation guidelines

FOEI calls upon Parties to mandate the Secretariat to revise the guidelines in consultation with civil society^{iv}. FOEI believes that the key provisions of the guidelines that need clarification, elaboration or amendment are:

1. The provision in B2 that no participant shall harass or threaten any other participant
2. The UN Security guidelines relating to “media actions”.

In relation to the first point, FOEI accepts that there are certain kinds of behaviour that are unacceptable in the context of the negotiations, including behaviour that is offensive on cultural or religious grounds. However it is our view that the definition of “harass” or “threaten” adopted by the UNFCCC secretariat goes well beyond the interpretation of those words in many domestic legal systems and stifles legitimate campaigning.

For example, FOEI has been told that an action questioning the World Bank’s suitability for managing climate funds would be regarded as “threatening” or “harassing” the bank if the words “World Bank” were used in the course of the action. In our view this is an extremely (and unnecessarily) broad definition of “threaten” and “harass” that places no value on our legitimate concern as an environmental NGO to comment on the World Bank’s suitability for a key role in relation to climate finance. Interpretations such as this have a “chilling effect” on civil society participation, discouraging civil society groups such as ours from performing an important role in critically engaging with policy proposals for addressing climate change. We would make the following suggestion for changes to the guidelines.

- The guidelines should define “threaten” and “harass” in manner that makes clear that legitimate comment on or criticism of the policies and proposals of any institution (whether UN or otherwise) or member state (including its representatives) relating to the climate negotiations is permitted. Such an elaboration would maintain the ability for the Secretariat to act to prevent activities that could genuinely be regarded as threatening or harassing.

Similar comments can be made in relation to the guidelines concerning “media” actions. We are not clear on why this section is separated from the earlier section relating to general conduct. Many civil society groups would not necessarily realise that points under a section headed “media actions” relate to campaign actions planned in the negotiations venue. The vast majority of the actions carried out by FOEI within the negotiations are *not* aimed at the media but instead focus on influencing negotiators. In this regard we reiterate the point made earlier that improving civil society participation *within* the negotiating process would greatly reduce the need for actions on its periphery

- In our view the security guidelines should be integrated into the observer participation guidelines to form one document that sets the framework for civil society participation.

The approach taken in the implementation of the security guidelines is again unnecessarily strict. The guidelines state that concealing identity with masks is not allowed and that “no impersonated objects (ie satirical drawings of Heads of States, negotiators, individuals) are allowed”. We can understand that security concerns might arise if masks were being used to conceal identity. However, Friends of the Earth Europe’s youth group proposed a “classroom” action which involved giving various heads of state “marks” for their countries’ performance in the negotiations. For the purpose of this action, the group wore pictures of the various Heads of State over their faces, but these were removed as soon as the action was over and it was easy to identify the identities of the various participants. We were not permitted to carry out these actions within the confines of the UN. No regard was paid to the

fact that the masks were not being used to conceal identity, but simply to take on another identity for a short period for the purpose of a legitimate campaign aim.

Similarly the youth wing of our German group, Bund Jugend, was prevented from distributing postcards highlighting the problem of environmental displacement at the Bonn Intersessional in June 2009. These featured a cartoon of Angela Merkel because she was the national leader of the country in which the action was taking place. Again, this was judged to be a breach of the guidelines. However, the postcard clearly related to an important climate-related issue. In addition there was nothing to suggest that either Ms Merkel or the German delegation would have been offended by it. Indeed, as we pointed out to the Secretariat, there are likely to be many satirical cartoons that feature Ms Merkel due the fact that she is a politician.

We have also been informed verbally that we are not entitled to carry out actions “targeting” Heads of State. Targeting has been defined as including calling upon a Head of State to adopt a particular position or policy. We can see no basis for such a restriction in the participation guidelines.

- In our view, rather than a blanket ban on masks or satire, decisions should be made based on a) the purpose behind the action (ie.whether there is a legitimate campaign message that relates to the negotiations) b) the security threat (if any) proposed by the action and c) the likelihood of actual offence being caused. If the critique is not of an unduly harsh nature then there should be a presumption that offence will not be caused unless there is concrete evidence to the contrary.
- There should be no restrictions on the ability of civil society to call upon Heads of State, or other representatives of Parties or institutions, to take particular actions or adopt particular policies.

Finally, the guidelines state that “No activity derisory to the UN, any of their Member States, organisations or any individual or criticism that would go against basic rules of decorum is allowed.” Again, this provision is of extremely broad application. It applies to “any individual”, whether related to the negotiations or not, or “any UN organisation”. It would appear to prevent criticism of the international financial institutions such as the World Bank, regardless of how justified such criticism might be. The meaning of “activity derisory” is left undefined, with no guidance either to NGOs or Secretariat staff on how to apply it. The vague nature of this wording creates the same difficulties as set out in relation to “threaten” or “harass” above, which could be resolved through similar clarificatory guidance. Such guidance (and its interpretation) should strike an appropriate balance between the need to set parameters for behaviour within a negotiating context and the legitimate rights of civil society to comment on and try to influence the course of crucial negotiations.

3.2 Penalties

The introduction to the participation guidelines goes on to state “Any infringement of these guidelines would normally be resolved following consultations between the secretariat and the responsible organisations and individuals”. In relation to media actions it is stated that “UN Security reserves the right to revoke previously issued permissions for media actions any time if the security conditions so require.” The last page of the security guidelines lists a range of consequences for non-compliance, from confiscation of the “representative’s”

accreditation badge to removal of “the representative” from the UN premises or “any other measures deemed appropriate or necessary.”

The first point we wish to make in this regard is that there is no formal method of reviewing decisions. Following a meeting with FOEI in June 2009, the former Executive Secretary of the Convention offered to act as an appeal mechanism concerning interpretation of the guidelines, but they have not been amended to reflect this. It was FOEI’s experience in Copenhagen that when we attempted to appeal a decision relating to distribution of materials concerning the “Angry Mermaid” awards^v, several more layers of appeal were added within the Secretariat before we could approach Mr de Boer. In fact it took so long to get a decision that we were effectively prevented from going ahead with our proposal in any case.

Secondly, the sanctions applied for infringement of the guidelines appear to be completely arbitrary. For example, during our action relating to World Bank policies at COP 14 mentioned above, some participants joined the demonstration with banners containing the words “World Bank”^{vi}. As a result we were told that no further FOEI actions during Poznan would be authorised and that we might lose our stall and intervention rights during COP 15 in Copenhagen.

As an organisation that takes its role in the negotiations very seriously, it was extremely concerning for us to be told (after the event) that our future activities in the negotiations were at risk in this way. As a result we wrote to the Secretariat in February 2009 raising our concerns and making a number of recommendations, such as increased speaking rights during sessions and the revision of the participation guidelines in consultation with NGOs in order to make them clearer. This did not happen, compounding the problems faced by us and other civil society groups in Copenhagen.

During Copenhagen, there were a number of instances of arbitrary decisions. For example, during the first week of Copenhagen, civil society was prevented from entering negotiating rooms even though sessions were marked as “open”. We were told that this was because of an unauthorised civil society action that had taken place earlier, as a result of which it had been decided that no civil society groups should be able to enter the negotiating rooms, effectively a form of collective punishment. This problem was compounded by the fact that the meetings from which we were excluded were often not broadcast on CCTV.

The most serious incident of all from the point of view of FOEI occurred when our entire delegation (over 300 people) was suspended from the negotiations, 1-2 days before other members of civil society. We were given no clear information as to why this happened and such information has still not been provided to us. We were originally told it was because of an unauthorised action in support of developing countries, but later far more serious allegations were made that FOEI posed a security threat. This was extremely shocking and worrying to us, particularly as we found ourselves surrounded by UN Security officers just inside the entrance of the negotiating venue and did not know whether the entire delegation was about to be arrested by the Danish police.

The action of banning FOEI from the venue entirely undercut all of the resources, efforts and lobbying work we had put into the climate negotiations up til that point by removing us from them at their most critical juncture. As has been expressly stated on innumerable occasions during the negotiations, addressing climate change is a matter of the utmost urgency. It is also a key focus for the efforts of FOEI and many other members of civil society. We will never

know what impact the effective absence of civil society had on the outcome of those last vital days and hours in Copenhagen and whether and how it could have affected the outcome.

In addition to the extremely serious nature of the allegations against FOEI and their impact on our campaigning, we are also very concerned that we have been given no information about what kind of security threat our organisation was thought to pose nor any evidence to support the allegations. As a result we have had no opportunity to respond or correct any misinformation that may exist about us. We remain without information as to this matter and are deeply concerned that there may be long term consequences in relation to our participation in the negotiations as a result of these entirely unfounded allegations. Recent examples of interaction between civil society groups and the UNFCCC have further demonstrated the lack of transparency and arbitrary nature of decision making. We make the following suggestions in this regard:

- Sanctions for breach of the guidelines should be set out clearly in advance and should reflect the gravity of the breach.
- The guidelines should be applied uniformly and not in a fashion that appears to lead to arbitrary results. There should be a timely process for appealing decisions in relation to the guidelines.
- A process for appealing decisions concerning breach of the guidelines should be clearly set out within the guidelines.
- Collective punishment should not take place. In other words, an entire organisation should not be sanctioned for a breach of the guidelines if only a few of its members were involved, unless it is clear that they were acting on behalf of the organisation or the breach is exceptionally serious. Further, the whole of civil society should never be punished for the actions of individual groups. It is noteworthy that the sanctions mentioned in the guidelines refer to the removal of “representatives” in this regard, rather than entire delegations.
- Particularly serious allegations, such as informing an organisation that it is deemed to be a security threat, or particularly serious sanctions, such as suspending an organisation from the negotiations, should always be substantiated by clear information and evidence. In addition the organisation concerned should be given an opportunity to respond and have access to a transparent appeal process before the sanction is carried out.
- As set out in previous correspondence with the Secretariat on this issue, we request a process of revision of the UNFCCC guidelines on public participation, in consultation with all civil society groups. The comments of civil society, such as those made by us above, should be taken into account. The proposed revisions should be broadly disseminated and there should be adequate time for comments on them to be considered before the guidelines are finalised.
- The revised participation guidelines should contain clear information on the decision-making process in relation to “actions” within the UNFCCC secretariat, including timelines and appeal mechanisms. Appeals from decisions should be dealt with promptly so as to enable action to go ahead if they are successful. Appropriate

staffing and financial resources should be provided to the Secretariat in order to enable them to implement the revised guidelines. If the guidelines are clarified in the manner suggested above this should greatly reduce the burden on the Secretariat and ensure that they are able to concentrate staff and resources to where they are needed.

4. Participation in negotiating sessions

Civil society generally operates on the fringes of the UN negotiating process, relying primarily on indirect lobbying to put across our points of view. Many key discussions take place in closed sessions which civil society groups are not able to attend and interventions are generally limited to the opening and closing plenary sessions. This is contrary to the spirit of international guidelines which state that participation of the public should be allowed at all relevant stages of the decision-making process^{vii} including the high level segment of the COP.

- The default approach for all civil society engagement should be full participation and access, as was recently agreed with respect to timely access to all documents. The ordinary rule should be for all negotiating sessions to be held in open session (ie accessible to NGOs and not press), unless there are exceptional circumstances that require closed discussions to take place. This approach should apply to civil society participation within mechanisms and procedures set up under the climate negotiations, such as the CDM and the Adaptation Fund.
- A procedure should be agreed, in consultation with civil society, to ensure that civil society can make interventions during negotiating sessions, rather than simply at the end. Civil society interventions should be accorded the same weight and value as other interventions. The Aarhus Convention process provides a good model in this respect.
- All discussions relating to the participation of civil society should be held in open session, with members of civil society being given an opportunity to input and respond. In the same way, civil society should have full access to delegation pigeon holes.
- While important advances have been made in relation to access to documents, not all key documents are yet available in a timely manner and such access should be ensured.
- All negotiating sessions should be streamed live over the internet and shown on CCTV, but this should not be a substitute for maximum attendance by civil society groups at negotiating sessions.
- Participation by civil society should only be restricted in exceptional circumstances. Any such restriction should be implemented on the basis of transparent, clearly stated standards upon which civil society has been consulted. Civil society should be informed of restrictions well in advance, in order to avoid wasting resources on travel and accommodation costs. Participation should not be restricted at the last minute on the basis of opaque or unsubstantiated decision-making.

- Individual organisations should be given the power to allocate secondary badges within their delegation and appeal their allocation of secondary badges if necessary.
- In the exceptional circumstance that it becomes necessary to impose restrictions on access to the negotiating area for security reasons, these should relate only to access to meeting rooms and not to access to the venue itself.
- In the exceptional circumstance that it becomes necessary to impose restrictions on access to the negotiating area for capacity reasons, these should guarantee a minimum percentage of civil society participation.
- Civil society and party press conferences and side events should be held in the same venue.
- Dedicated spaces for actions, in a prominent location, should be allocated both inside and outside the main negotiations building, whilst recognising that some actions may require movement around the building.

5. **Decision-making processes and resources for the Secretariat**

- There should be a clear division of the roles and responsibilities of the UNFCCC Secretariat, Parties to the Convention and Protocol and countries hosting COPs in securing public participation. This should be set out in a public document.

6. **NGO representation on delegations**

- Parties should be able to invite civil society members on to their delegations if they so wish. Civil society serves as an extremely valuable technical and political resource for Parties, especially in developing countries. In some cases, Parties take civil society members on to their delegations as a mark of good practice. In such cases we would urge Parties to ensure that such representatives reflect the depth and value of the expertise that civil society can provide, rather than simply being “token” delegates.

FOEI welcomes the serious consideration being given by Parties, the SBI and the UNFCCC Secretariat to the issue of civil society participation in the negotiations. We hope that our observations and recommendations are of assistance and would be pleased to elaborate on the points made above if useful. We look forward to further engagement with all stakeholders on this issue.

Friends of the Earth International, 13 August 2010

ⁱ such as the Rio Declaration, Agenda 21, the Aarhus Convention, the International Covenant on Civil and Political Rights

ⁱⁱ These recommendations include the designation of 1-2 states as Aarhus “focal points” during climate negotiations. Though not directly relevant to this submission, it is worth noting that Aarhus parties are also required to ensure that the three pillars of the Aarhus Convention are promoted in negotiating text.

ⁱⁱⁱ Guidelines for the participation of representatives of non-governmental organisations at meetings of the bodies of the United Nations Framework Convention on Climate Change

^{iv} This is particularly the case for parties to the Aarhus Convention, for the reasons mentioned above

^v These awards, which were the subject of a public vote, were designed to highlight business groups and companies that, in the view of those voting, had done the most to sabotage the climate talks

^{vi} In fact the original direction to us was that the World Bank could not be named in the reference to the action in the daily programme. We were not told that it could not be referred to in the action itself, although it seems that this was the inference to be drawn.

^{vii} See for example principles 28,29 and 31 of the Almaty Guidelines