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**WWF Submission to the Subsidiary Body for Implementation  
Regarding Views on Ways to Enhance Civil Society Participation**

*16 August 2010*

*WWF makes this submission in response to the invitation of the SBI to submit “views on ways to enhance the engagement of observer organizations” FCCC/SBI/2010/L.21. This submission is made on behalf of the WWF-International Climate team, The WWF International network has the following offices and Associates:*

*Australia, Argentina, Armenia, Azerbaijan Austria, Belgium, Europe/ Brussels, Bhutan, Bolivia, Brazil, Bulgaria, Cambodia, Canada, Central African Republic, Chile, China, Colombia, Cook Islands, Costa Rica, Democratic Republic of the Congo, Denmark, Ecuador, Fiji Finland, France, Gabon, Germany, Ghana, Greece, Hong Kong, Hungary, India, Indonesia, Italy, Japan, Kenya, Kiribati, Laos, Latvia, Madagascar, Malaysia, Mexico, Mongolia, Namibia, Nepal, Netherlands, New Zealand, Nigeria, Norway, Pakistan, Papua New Guinea, Paraguay, Peru, Philippines, Poland, Romania, Russian Federation, Senegal, Singapore, Solomon Islands, South Africa, Spain, Surinam, Sweden, Tanzania, Thailand, Tunisia, Turkey, UAE, UK, USA, Venezuela, Vietnam, Zambia, Zimbabwe,*

*WWF would be happy to support any further consideration of these issues and to participate in any process for taking them forward.*

***"Involving the public and civil society organizations in formulating and implementing a response to climate change is not a choice but a necessity."<sup>1</sup>***

Observers, including non-governmental organizations, play a vital and varied role in the climate negotiations, as in other multilateral processes, working towards the adoption of a fair, adequate and binding agreement to address the greatest collective challenge we face. In the UNFCCC, observers act to achieve this aim, through means including:

- Providing scientific and technical support and political insights to Parties, based on well-established and diverse experience, evidence, expertise and capacity in fields of particular importance to the design, implementation and review of an environmentally sound and sustainable climate change agreement
- representing interests that may not be fully covered or understood by governmental delegations
- bringing new ideas and suggested approaches to the table to help reach an adequate and equitable agreement
- Helping transparency on parties' positioning and strengthening accountability to the public and to other parties
- helping to increase public awareness of the issues being negotiated

The Convention itself commits Parties to "...encourage the widest participation in this process, including that of non-governmental organizations" These different roles help to promote transparency and accountability in what are highly complex negotiations, and in so doing give greater legitimacy to the UNFCCC process as a whole. The Convention itself commits Parties to "...encourage the widest participation in this process, including that of non-governmental organizations"<sup>2</sup>.

International law and norms further support the need for broad participation of non-governmental actors in intergovernmental processes, including in the UNFCCC. The Rio Declaration<sup>3</sup>, Agenda 21<sup>4</sup> and the Aarhus Convention<sup>5</sup>, among others, acknowledge that the best environmental decisions are made with the full and active participation of civil society in the process, and in practical terms, the CBD has set a more appropriate precedence for civil society engagement by providing civil society organizations with a more substantial role within the negotiation framework The UN Office of the High Commissioner on Human Rights has noted that the right to

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<sup>1</sup> Jan Kubis, UNECE Executive Secretary, High-level segment of the Sixty-third Session of the Economic Commission for Europe (30 March — 1 April 2009)

<sup>2</sup> UNFCCC Article 4.1i "Commitments"

<sup>3</sup> "Environmental issues are best handled with participation of all concerned citizens, at the relevant level." Rio Declaration, Prin. 10.

<http://www.unep.org/Documents/Multilingual/Default.asp?documentid=78&articleid=1163>

<sup>4</sup> "...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.

[http://www.un.org/esa/dsd/agenda21/res\\_agenda21\\_00.shtml](http://www.un.org/esa/dsd/agenda21/res_agenda21_00.shtml)

<sup>5</sup> <http://www.unece.org/env/pp/documents/cep43e.pdf>

participate is implied in article 25 of the International Covenant on Civil and Political Rights<sup>6</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’”*

WWF offers the following suggestions on enhancing civil society participation with the aim of supporting Government efforts to enhance the functioning of the UNFCCC overall, through the functions listed above and particularly through increased transparency and accountability to the people and peoples of this world, the lives and livelihoods of many of whom rely on a fair, ambitious and binding agreement being reached.

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### **Access of Observer Organizations to the UNFCCC process**

Given the above it is clear that the ability of observer organizations to work effectively within the UNFCCC process must be maximized and guaranteed, including through direct in-person access, unless there are good reasons not to, in individual and specific circumstances. In the interests of transparency, any limitation to access must be justified and notified in a timely manner.

The Secretariat should work with Parties to help to ensure that their obligation “to encourage the widest participation in this process, including that of non-governmental organizations” is being honored in the process. A recent Aarhus Convention workshop noted the “reluctance of government officials in some countries to engage with NGOs, to share information regarding the climate change negotiations with them and to take into account their input”<sup>7</sup> This is contrary to Parties’ obligations under the UNFCCC and needs to be addressed directly to bring about a change in the overall culture of the negotiations. The UNFCCC Secretariat should additionally work with the Secretariat of the Aarhus Convention (as they have previously worked with the Secretariats of other conventions whose membership does not correlate precisely with that of the UNFCCC) to work to improve the situation in this regard.

### **Accreditation and pre-session**

- Any venue chosen to host a session of the UNFCCC must be adequate in size and facilities to ensure the widest possible participation of observer organizations from all nine of the non-governmental constituencies.

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<sup>6</sup> *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>7</sup> “Promoting The Principles Of The Aarhus Convention In The Lead Up To, During And After The United Nations Climate Change Conference 2009, Copenhagen”: Excerpt from the Chair’s Summary of the Workshop on “Experiences of promoting the application of the principles of the Aarhus Convention in international forums”, Tuesday, 29 June 2010, Geneva

- WWF considers that Parties' capacity building obligations under the UNFCCC and KP include building capacity within civil society, particularly for members of civil society at the national level and wishing to be more active in the UNFCCC. The Aarhus Convention workshop noted in particular that the women and youth constituencies could benefit from additional capacity building, and that this was also an issue for NGOs coming from developing countries.
- An additional capacity building need includes enhancing national capacity to engage in mass media and TV broadcasts on climate change in advance of the conferences to increase public awareness about the issues at stake. While addressing this need would appear to be quite general, the Aarhus Convention workshop noted that some countries in Eastern Europe, Caucous and Central Asia should be included in consideration of addressing this issue
- At the venue of any UNFCCC meeting, the Secretariat, in collaboration with the hosting party, must ensure that there is well-organized and adequate capacity for registration and access: in Copenhagen, the queues for registration were at times in excess of 9 hours
- Any restrictions on numbers of NGOs allowed to register or participate in a UNFCCC session that do prove unavoidably necessary, and only when all other options have been exhausted, should be based on objective, fair, equitable and clear criteria, which should be communicated to all constituencies as far as possible in advance of the session to allow for alternative arrangements to be made, and to avoid unnecessary expense in canceling travel and other reservations. The secondary badge system that was operated in Copenhagen did not meet these criteria..
- As far as possible, access should only be restricted to meeting rooms, and not to the venue itself, so as not to unduly restrict the ability of civil society organizations to continue to meet with governments

### **In-session**

WWF understands that governments feel the need for transparent deliberation between government representatives in closed sessions. However, WWF is strongly of the opinion that greater access to the process by non-governmental organizations can enhance the rich flow of information that informs the negotiation process, while increasing transparency and legitimacy. This engagement improves the environmental and social qualities of the agreements reached. For example in some CBD COPs Civil Society has contributed to Contact Groups and Friends of the Chair with speaking rights from the floor. Given the magnitude and scope to the issues associated with climate change these practices should be built on in the UNFCCC. We hereby propose a number of measures that could help to increase positive and effective participation by NGOs.

- Time should be guaranteed for civil society interventions in each negotiating track in each session. It is especially important that civil society be able to input at the beginning of a session to help set expectations and provide timely inputs. Currently, NGO inputs are dropped from the list at the last minute, restricting effective participation and opportunities to introduce new ideas and views into the negotiations

- We think that the Secretariat should consider ways in which civil society could have enhanced rights to intervene in the negotiations, including through entering the queue of speakers. Rules and modalities for this would need to be developed, but it would again allow a greater richness of civil society expertise and experience to enter into the negotiations
- Reviewing the current ban on civil society disseminating information in the delegates ‘pigeon holes’ could again help to increase information flows and transparency, although clear rules would need to be drawn up, so that delegates are not overwhelmed with information and materials
- There should be an explicit presumption that any call for submissions could include inputs from members of civil society. While there are often opportunities, this is not guaranteed. All submissions should continue to be posted on the UNFCCC website, and the links to them should not be confined to the dark corners of the NGO section of the webpage, but also be linked alongside those of Parties collated in the formal .MISC documents.
- To provide timely and effective inputs to the fast-moving negotiations, NGOs require access to information and documents in real time, and therefore WWF encourages the Secretariat to publish papers online and to allow full access to negotiating texts at the document center during the negotiations.
- During textual negotiations, the Chair and Secretariat should ensure that the text is projected on a screen while changes are being made to the text. This will aid not just observers, but since observers sit (or stand) at the back of room where the sound may be less clear, and where documents have not been made available in a timely manner (eg in a contact group convened directly after an informal where lots of changes may have been made to the text), this will certainly aid observer participation.
- Greater use of webcasting would help to allow more civil society members to access the negotiations and build their own capacities through observation. It additionally would increase the transparency of the process and could reduce the carbon footprint of the talks by reducing some demand for physical access
- Peaceful actions are an important means by which civil society exercises free speech<sup>8</sup> and expresses views in ways accessible to both negotiators and to a wider public. While reasonable restrictions on time, place and manner are appropriate, any restrictions must be predicated on clear criteria. These should be reviewed through a transparent process involving stakeholder engagement and communicated to civil society actors well in advance of a session.
- Parties have the sovereign right to decide who to include on their delegations, including members of civil society. There should be no interference with this right. The Aarhus Convention workshop recommended positively on this point: “UNFCCC Parties should invite civil society to nominate representatives to participate as part of the official government delegation. Civil society serves as an extremely valuable technical and political resource for Parties, especially in developing countries”.

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<sup>8</sup> which the Universal Declaration of Human Rights recognizes, together with freedom of belief, and freedom from fear and want, “as the highest aspiration of the common people”  
<http://www.un.org/en/documents/udhr/index.shtml>

## **Implementation**

As well as working with Parties to help them fulfill their obligation “to encourage the widest participation in this process, including that of non-governmental organizations” within the process, the Secretariat should additionally work with Parties to ensure that this provision is being honored in the development and implementation of national climate plans, policies and measures. This will be of especial importance as long-term national low carbon and climate resilient action plans are developed: the South African example during their process of developing the Long Term Mitigation Scenarios (LTMS) of stakeholder participation and engagement should serve as a good example for other countries undertaking similar planning.

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## **Common understanding of process**

Issues arising between non-governmental observers, Parties or the Secretariat have been notable by their rarity. However, if and when such issues do arise, there is a need for clear and commonly-understood procedures to be followed.

WWF welcomes the Secretariat’s commitment to supporting Civil Society engagement. However it is evident that parties are not in agreement as to the specific powers and responsibilities for resolving and adjudicating disputes between the UNFCCC and observer organizations. WWF believes this situation could be resolved and suggests that the SBI establish an independent, temporary committee to develop procedures for the event of any dispute involving non-governmental actors, which would then be agreed by the Conference of Parties.

The mandate of such an independent committee should be to design and establish fair, just, clear, and unambiguous procedures that will be implemented by the UNFCCC Secretariat and Parties, according to their respective mandates and responsibilities, in the event of any dispute involving a non-governmental organization or an individual thereof. Any proposed procedures need to be transparent and impartial, and respect the spirit of the existing mandate of the relevant UNFCCC bodies, so that the Secretariat remains an enabling agency for the decisions of the Parties.

Any such procedures should conform to the principles of natural justice and due process, and be consistent with existing UN standards, especially the standards operated by ECOSOC.

Fundamentally, any procedures developed should incorporate the *audi alteram partem* principle covering the rights of individuals or organizations to an open and fair process, including the right to respond to allegations before any sanctions are imposed, that means all involved in the UNFCCC process can be assured that their contribution can be made with confidence within UNFCCC guidelines and any disputes resolved in an agreed manner.

The participation of the non-governmental constituencies – the Business and Industry NGOs, Environmental NGOs, Trade Union NGOs, Indigenous Peoples' Organizations, Local Government and Municipal Authorities, Research-oriented and Independent Organizations, Youth NGOs, Faith-based NGOs and Gender-based NGOs, is essential to the work of the United Nations in fulfilling its Purposes<sup>9</sup> through their expertise and ideas, and for their role in supporting transparency and accountability of governments to their peoples.

Within the UNFCCC, these nine constituencies work with governments and each other to find a robust, effective and fair solution to this collective international problem of climate change that requires not only the adoption, but also the implementation of an international agreement, while being standard bearers for the principles of equity and human rights, for justice and for respect. The participation of these representatives of civil society needs to be reaffirmed, and enhanced. WWF hopes the ideas proposed in this submission offer concrete ways forward to this end.

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<sup>9</sup> **The Purposes of the United Nations, as defined in its Charter, are:**

1. To maintain international peace and security, and to that end: to take effective collective measures for the prevention and removal of threats to the peace, and for the suppression of acts of aggression or other breaches of the peace, and to bring about by peaceful means, and in conformity with the principles of justice and international law, adjustment or settlement of international disputes or situations which might lead to a breach of the peace;
2. To develop friendly relations among nations based on respect for the principle of equal rights and self-determination of peoples, and to take other appropriate measures to strengthen universal peace;
3. To achieve international co-operation in solving international problems of an economic, social, cultural, or humanitarian character, and in promoting and encouraging respect for human rights and for fundamental freedoms for all without distinction as to race, sex, language, or religion; and
4. To be a centre for harmonizing the actions of nations in the attainment of these common ends.