

Environmental Procedural Rights: a Tool to Combat Climate Change

**Dr. Svitlana
Kravchenko,
School of Law,
University of Oregon**



Why Human Rights?

- Climate change is not only about polar bears anymore
- Implications on the enjoyment of human rights
- Maldives petition and UN Human Rights Council's Resolution 7/23 "Human Rights and Climate Change"



Freedom of Opinion and Expression in Human Rights treaties

- The Universal Declaration of Human Rights (UDHR), art.19
- The International Covenant on Civil and Political Rights (ICCPR), art.19
- The European Convention for the Protection of Human Rights and Fundamental Freedoms, art.10
- The American Convention on Human Rights, art.13
- The African Charter of Human and Peoples' Rights, art.9

Case law: Inter-American Court, *Claude Reyes v. Chile (2006)*

- Broad interpretation of art.13 of the American Convention: *right to seek and receive information*
- Without the need to prove direct interest
- Right of individuals *to receive information* is *positive obligation of the State to provide it*
- Except in cases in which a legitimate restriction applies
- Court ordered the government *to provide information* and take measures

European Court of Human Rights

- *Guerra v. Italy* (1998): Right to Information in Art.10 *is not a duty* of the government
- Resolution 1087 of Parliamentary Assembly on the Consequences of the Chernobyl disaster: “public access to clear and full information ...must be viewed as a *basic human right*.”
- *Öneryildiz v. Turkey* (2004): “public access to clear and full information is viewed as a *basic human right*”

Access to Environmental Information in MEAs

- **United Nations Framework Convention on Climate Change and the Kyoto Protocol**
- **The Rotterdam Convention on the Prior Informed Consent Procedure for Certain Hazardous Chemicals and Pesticides in International Trade**
- **Cartagena Protocol on Biosafety**
- **The Convention on Persistent Organic Pollutants , etc.**

Regional MEAs

- **Espoo Convention on EIA in Transboundary Context**
- **The Convention on the Protection and Use of Transboundary Watercourses and International Lakes**
- **Convention on Transboundary Effects of Industrial Accidents**
- **The Aarhus Convention on Access to Information...**

The Aarhus Convention

- “The best regional development of Principle 10 of Rio Declaration” (Kofi Annan)
- Right of access to *environmental* information: active and passive
- *Duty of the government* to disseminate environmental information or provide it upon request

Wide access to environmental information

- *All information is accessible, subject only to a limited exceptions that shall be interpreted in a restrictive way (the Aarhus Convention, art.4)*
- **The Constitution of Ukraine: “free access to information about the environmental situation...No one shall make such information secret.”**

Environment-People-Law (EPL): case 1

- Request to the Ministry of the Environment to provide information on climate change policy and measures
- Request is denied
- EPL alleged that the Ministry did not fulfill the requirements of the UNFCCC and filed a court case (pending)

EPL - Case 2

- A cooperation Agreement was signed between governments of Ukraine and Japan, beneficial for both sides
- Under the Kyoto Protocol, Ukraine sold to Japan 30 million units of emission credits (AAU) for GHG emission. The value of the deal was not disclosed
- EPL sent a request to the National Agency for Ecological Investment asking about amount of money and how they will be spent
- Response: information is *confidential*



Climate science information is being kept confidential

- Kivalina, a village of 400, accusing two dozen fuel and utility companies of causing climate change and accelerating the island's erosion
- They asked to pay \$400 million for relocating to the mainland
- One of the legal theories is *conspiracy*
- The plaintiffs allege that the companies had scientific information about how their activities impact climate 15 years ago but they kept information confidential
- The plaintiffs' lawyers will embark wide-ranging civil discovery

The right of consumers/investors to climate risk information

- In November 2009 investors representing about \$1 trillion in assets filed a petition asking the SEC to require disclosure of climate-related risks
- On January 27, 2010, the Securities and Exchange Commission (SEC) approved guidance on existing SEC disclosure requirements as they apply to business or legal developments relating to climate change

Open and Transparent Systems of Reporting

- **Monitoring, verification, and reporting (MRV) was very contentious issue at the COP-15 in Copenhagen**
- **US delegation for strong provisions**
- **China argued that this would be an intrusion on their state sovereignty**
- **Copenhagen Accord: “Delivery of reductions and financing by developed countries will be measured, reported and verified in accordance with existing and any further guidelines adopted by the Conference of the Parties...” (para.4)**

Public participation: global legal framework

- Agenda 21
- Principle 10 of the Rio Declaration
- UNFCCC
 - Art. 4(1)(i) obliges Parties "encourage the widest participation in this process including" ... NGOs
 - Art.6: parties "shall promote and facilitate at the national ... sub-regional and regional levels... public participation."
- National constitutions and laws

Public participation: regional level

- The Espoo Convention on EIA in a Transboundary Context: the public in areas likely to be affected to participate in relevant EIA procedures
- The Aarhus Convention: PP in all decisions that may have a significant impact on the environment (art.6) - clear procedure
- The Convention promotes public participation in the preparation of environmental plans, programs, policies, and regulations (art.7&8)

PP in EIA: Maptapud case

- **Government of Thailand promoted heavy and petrochemical industries in Maptapud**
- **Article 67 of Thailand's 2007 Constitution: the right of a person to participate in projects that may seriously affect communities and the quality of the environment**
- **27 Maptapud residents successfully used the right of PP in EIA to stop the construction of 65 industrial projects emitting GHG**
- **The Supreme Administrative Court in December 2009 declared these projects unconstitutional and granted an injunction**

Gray v. Minister for Planning

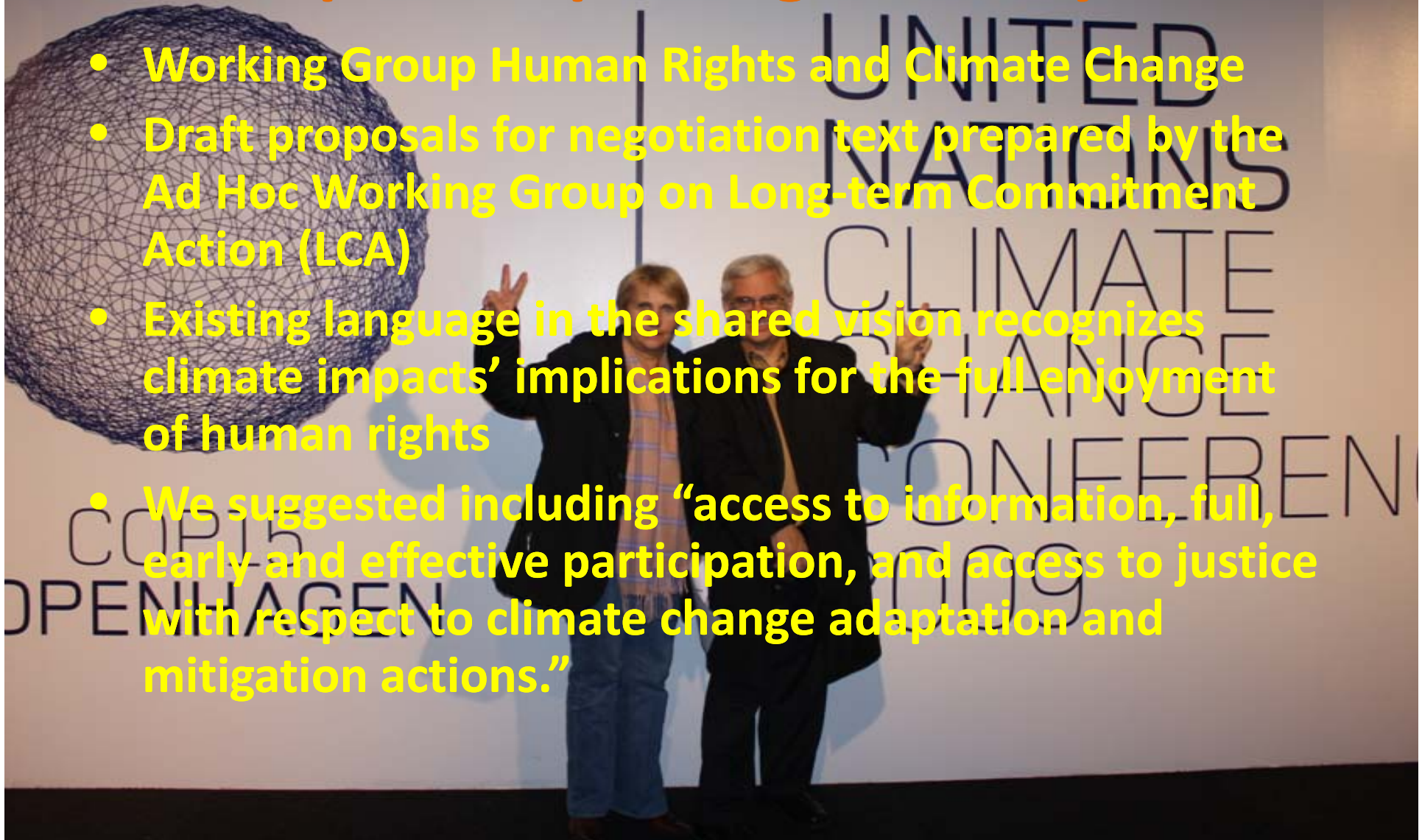
- Landmark decision by the Land and Environment Court in New South Wales
- The court ruled that an EIA for a large coal mine *must address global warming*
- The public must be properly informed in order to determine if they wish to make submissions

PP in Transboundary EIA

- **The Czech Environment Ministry will delay a reconstruction of Prunerov, the country's biggest coal power plant and largest producer of GHG**
- **A petition by Micronesia to be included in the transboundary EIA**
- **A precedent-setting way for vulnerable countries to challenge projects that contribute to climate change**
- **Micronesia argues that EIA failed to assess all potential impacts and alternatives to minimize adverse impacts; PP opportunity remains to be seen**

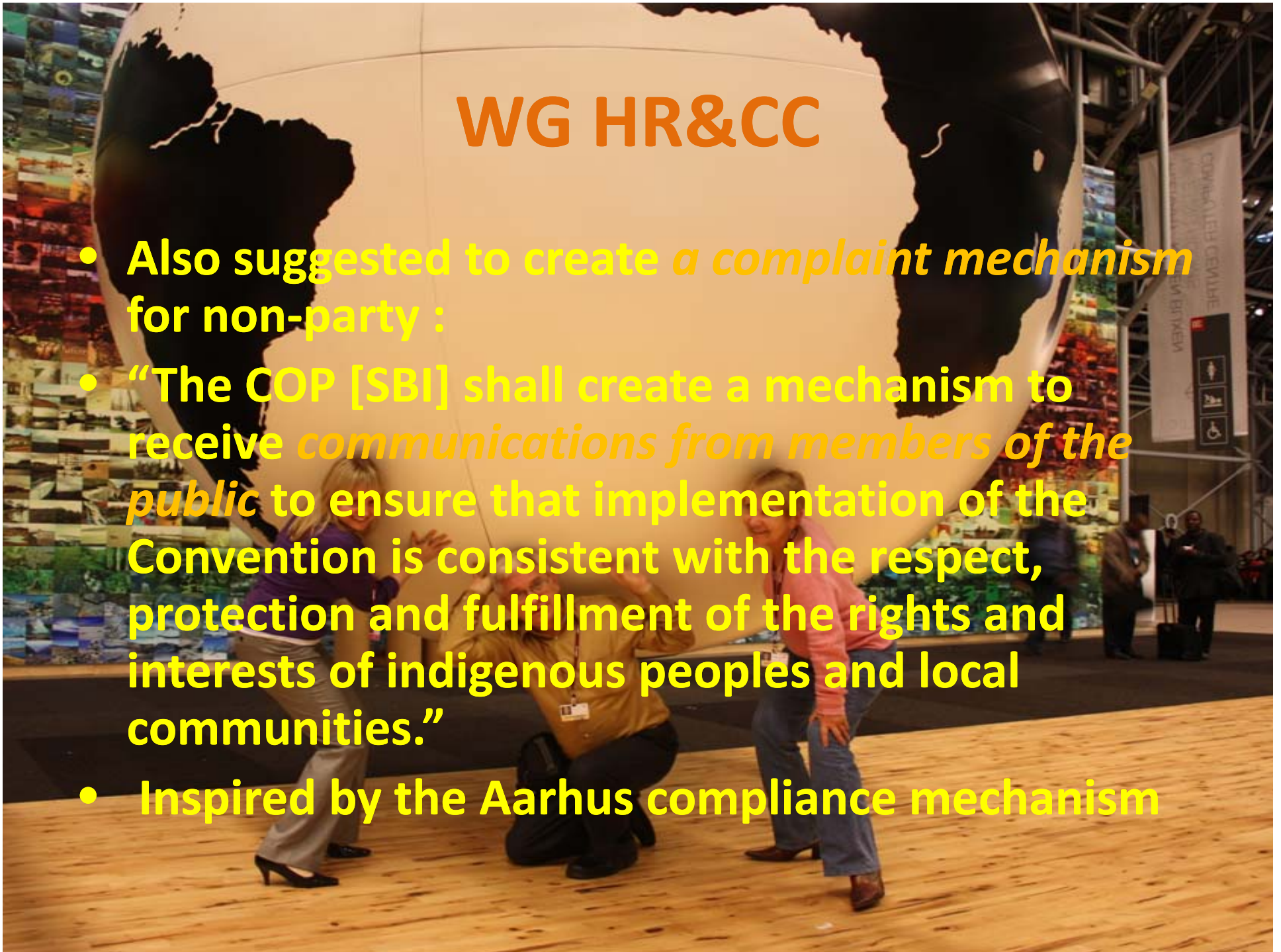
Procedural rights in post-Copenhagen treaty

- Working Group Human Rights and Climate Change
- Draft proposals for negotiation text prepared by the Ad Hoc Working Group on Long-term Commitment Action (LCA)
- Existing language in the shared vision recognizes climate impacts' implications for the full enjoyment of human rights
- We suggested including “access to information, full, early and effective participation, and access to justice with respect to climate change adaptation and mitigation actions.”



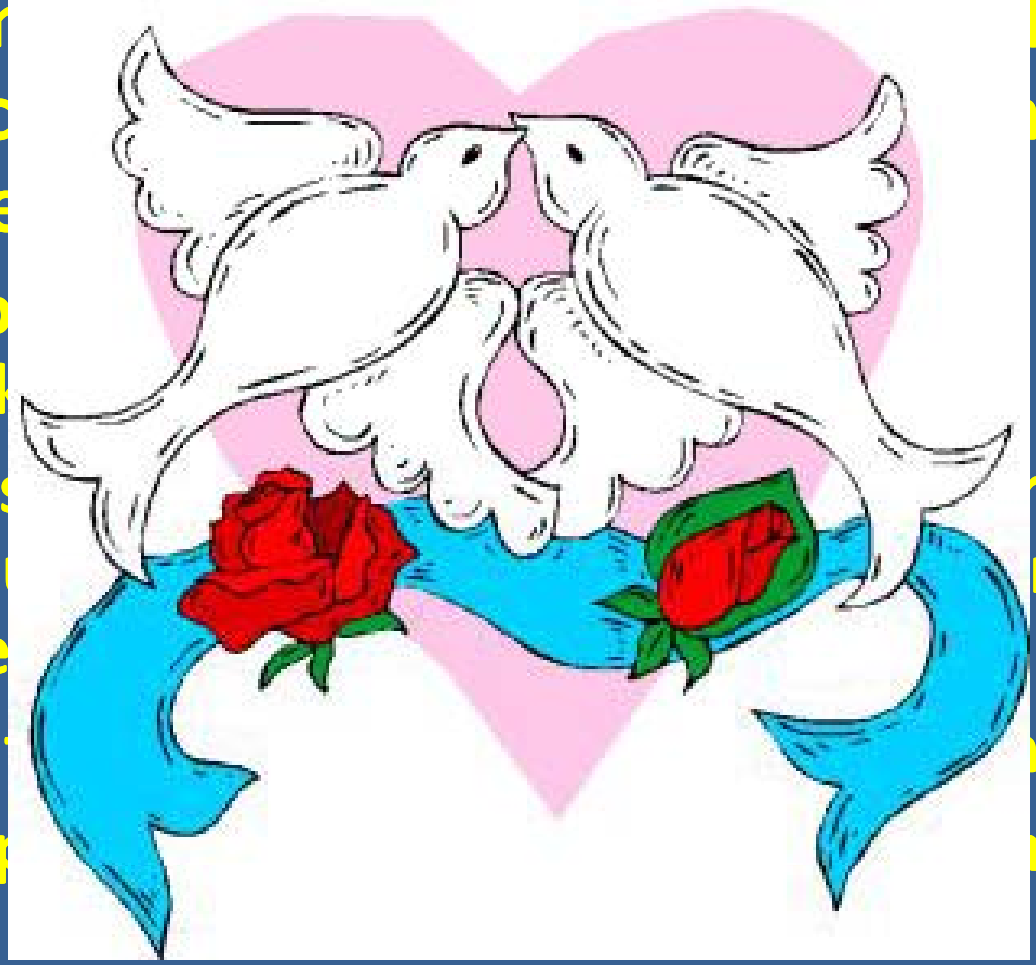
WG HR&CC

- Also suggested to create *a complaint mechanism* for non-party :
- “The COP [SBI] shall create a mechanism to receive *communications from members of the public* to ensure that implementation of the Convention is consistent with the respect, protection and fulfillment of the rights and interests of indigenous peoples and local communities.”
- Inspired by the Aarhus compliance mechanism



A "marriage" of art.6 of the UNFCCC and art. 9 of the Aarhus Convention! **Happy Valentines Day!**

- A complete list of the Aarhus Convention's public participation provisions:
 - Public access to information
 - Public participation in decision-making
 - Must include written procedures, including alternative dispute resolution
 - Written procedures
 - All parties to the Convention



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- Public participation in decision-making
- Must include written procedures, including alternative dispute resolution
- Written procedures
- All parties to the Convention