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## Economic Commission for Europe

### Meeting of the Parties to the Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters

#### Working Group of the Parties

##### Sixteenth meeting

Geneva, 19–21 June 2013

Item 3 (c) of the provisional agenda

**Substantive issues: access to justice**

### Note by the Chair of the Task Force on Access to Justice on possible future directions for the work<sup>1</sup>

#### Introduction

This note was initially prepared by the Chair of the Task Force on Access Justice to facilitate preparation of the draft elements of the future work programme by the Bureau at its 30<sup>th</sup> meeting (Geneva, 26 February 2013). The note expects to assist the Working Group of the Parties in its deliberations on the future work in the area on access to justice.

#### The existing mandate

The 2005 and 2008 mandates and 2002 decision direct the TF to:

- Examine, consider and analyse materials on the implementation of the Convention, especially with regard to costs, remedies, criteria on standing, delay and other obstacles to access to justice, assistance mechanisms, scientific and technical expertise in the decision making and Alternative Dispute Resolutions (ADR);
- Develop training materials, training of trainers and
- Continue to perform strategic capacity-building activities – that is workshops – particularly for senior members of the judiciary on the sub-regional level.

#### Is there a need for a TF on Access to Justice?

The third pillar of the Convention is the weakest and also the one most in need of additional and expeditious study. The TF thus has a vital role to play in producing studies and training materials. The goal should be to deal with *systematic issues* concerning the implementation of the Convention *in all countries and regions that are Parties*. The systematic collection of information and discussion on the outcomes of such studies is, in my view, one of the main reasons to maintain this body.

In this context, I would also like to emphasize the great importance of the meetings of the TF. As the participants are experts who attend in their own capacity and as the ENGOs are allowed to participate on an

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<sup>1</sup> This document was not formally edited.

equal basis with the national experts, the discussions can be held more freely and concern a wider scope of issues than at the official meetings of delegates from the parties. Therefore, the TF is able to present its findings and good examples relating to crucial issues on access to justice for discussion at the MoPs. In a similar procedure, the TF is also able to develop training material on access to justice, which take into consideration the outcomes of the analytic studies and the materials that have been produced for different regional workshops.

### **At the international level**

In my view, the mandate of the TF is wide enough to facilitate the work expected of it. However, it might be more clearly stated that the TF also has a role to play at the international level in raising awareness of access to justice in environmental matters. Thus, the TF might contribute to the cooperation between the bodies under the Convention and the secretariat with other relevant international forums aiming to build synergies in the activities related to access to justice. Additionally, it could take capacity-building initiatives with partner organizations at the international and sub-regional level. Moreover, the TF might support dynamic networks for judicial training and associations of judges to facilitate the exchange of information and capacity building.

### **Substantive scope of the work of the Task Force**

As the mandate is rather vague, we need to prioritize our efforts. As of today, we have undertaken analytic studies on standing for individuals and ENGOs, costs and effectiveness (remedies and timeliness) in the environmental procedure. ENGOs and regional bodies, such as REC and the European Commission have also studied these issues. However, there are still more aspects of those subjects that need to be further considered and followed up in greater detail, e.g. the definition of legal interest, criteria for injunction and the possibilities for the public concerned to stop planned or ongoing activities that may produce irreparable damage to the environment. Furthermore, with regard to costs, we may focus on possible alternatives to the loser pays principle, mechanisms of legal aid and support of public interest lawyers.

Additional issues that can be taken up by the TF are harassment of whistleblowers, practices of mediation and other alternative dispute resolution methods (ADR) in environmental disputes, and access to administrative or judicial procedures to challenge acts or omissions by private persons that contravene provisions of the national law relating to the environment. We may also address cross-cutting issues, such as problems in accessing national jurisprudence, and the potential of electronic information tools to facilitate access to justice (e-justice) and relevant Compliance Committee findings.

### **Capacity Building**

I think it would be fruitful to discuss frankly the value of having workshops for members of the judiciary and other actors. In my opinion, such workshops are important, but there is a need for a thorough evaluation of the previous events, as the experiences have been mixed. The three regional workshops that have been undertaken have been successful, but they also highlighted the need for cooperation and cost sharing with other partner organisations. In my opinion, the value of a workshop must be carefully balanced against the cost in money and staff resources. Perhaps there may be advantages in having a TF meeting in back to back with such a regional event. We should also consider how best to “train the trainers”, including possibly holding training events.

**The need for administrative support**

The work of every TF is dependent on consistent administrative support from the secretariat, something which from time to time is impossible to give due to the lack of proper funding of the Convention. The idea of the TF, driven by a competent person who is externally funded and who is able to focus on the assignment is very good, but administrative support is necessary for the success of the project. This is also a fundamental requirement to keep up the network of people who are engaged in the assignment, as well as maintaining the TF meetings as dynamic platforms for sharing experiences and discussing key issues on access to justice. In fact, if afforded with suitable administrative support, it is my firm belief that the TF can be a fruitful contributor to the effort to strengthen the third pillar of the Convention.

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