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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**

#### **Twenty-fourth meeting**

Geneva, 1–3 July 2020

Item 3 (a) 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>**

This note was prepared by the Chair of the Task Force on Access to Justice to facilitate the discussion on the future work in this area and preparation of the draft elements of the future work programme by the Bureau at its 46<sup>th</sup> meeting (Geneva, 25-26 February 2020) and by the Working Group of the Parties at its 24<sup>th</sup> meeting (Geneva, 1-3 July 2020).

#### **I. Introduction**

1. Effective review mechanisms delivering access to justice to the public in accordance with the Aarhus Convention are indispensable to safeguard the right of every person to live in an environment adequate to their health and well-being and to support two other pillars of the Aarhus Convention. Such mechanisms also can serve to the Parties as enablers for sustainable development as well as safeguards for environment-relevant Sustainable Development Goals and targets.

2. At the same time, there are a number of challenges in this area to be addressed by Parties, as identified through the 2017 national implementation reports and the synthesis report, Compliance Committee findings, Parties' case-law related to the Convention and analytical work undertaken by the Task Force, the Parties to the Convention and stakeholders up to date. Concerns identified related to: (a) standing; (b) the scope of review; (c) burden of proof; (d) financial and other barriers for the members of the public to access to justice; (e) lack of timeliness in review procedures, especially with regard to information cases; (f) inadequate remedies, including injunctive relief; (g) abuse of the justice system by the strategic lawsuits against public participation (SLAPPs); and (h) insufficient awareness of the public and legal professionals about the Convention. Some challenges persist regardless the types of cases while others remained case-specific (e.g. information cases, climate change or air quality related cases).

3. Therefore, the effective implementation of the third pillar of the Convention on access to justice remains an important area of work for Parties in the current intersessional period. This work also contributes to the successful implementation of the environmental dimension of Sustainable Development Goal 16 (peace, justice and strong institutions) with its target 16.3 (promoting the rule of law and ensuring equal access to justice).

4. Although legal frameworks for judicial and administrative review in environmental matters vary among Parties, sharing experiences, learning from good practices and developing support material on issues of common interest raises implementation of this pillar to the high common standards.

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

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## II. Key outcomes of the work done so far

5. During the current intersessional period, the activities in this work area are guided by decision VI/3<sup>2</sup>, adopted by the Meeting of the Parties at its sixth session (Budva, Montenegro 11–14 September 2017).

6. To address these challenges and share solutions, the Task Force on Access to Justice provided a forum for experts from governments, civil society, members of the judiciary and review bodies and their associations, Aarhus centres, public litigation lawyers, other legal professionals, representatives of academia, international and regional organizations and other stakeholders.

7. In the current intersessional period, the Task Force on Access to Justice held its eleventh and twelfth meetings in Geneva on 27-28 February 2018<sup>3</sup> and 28 February – 1 March 2019<sup>4</sup> respectively. The next thirteenth meeting of the Task Force will be held in 2021.

8. Pursuant to decision VI/3, the Task Force addressed the following subjects in greater details:

- (a) Access to justice in information cases (para. 14 (a) (i));
- (b) Acts or omissions that contravene permit requirements or laws relating to the environment with focus on cases relating to air quality (para. 14 (a) (ii));

9. The Task Force also continued promoting the exchange of experience and taking stock of the further developments regarding (a) standing (para. 14 (a) (v)); (b) scope of review (para. 14 (a) (vi)); (c) financial barriers (para. 14 (a) (iii)), and (d) the protection of people exercising their rights in conformity with the provisions of the Convention (para. 14 (a) (iv)).

10. Through decision VI/3, Governments were also encouraged to stimulate a multi-stakeholder dialogue aiming to removing barriers to access to justice as well as the use of information and communication technologies to improve public access to justice and other types of activities involving the resolution of disputes (e-justice). The Task Force has taken stock of such supporting tools as multi-stakeholder dialogues, e-justice and capacity-building initiatives and also contributed to the relevant initiatives of Parties, partner organizations and stakeholders through sharing experiences, analytical work and substantive input and participating in various meetings.

11. To assess the effectiveness of the relevant national legislation and policies and strengthen monitoring of the implementation of the justice pillar of the Aarhus Convention and SDG Target 16.3, the Parties also continued developing specific arrangements in order to collect, coordinate, aggregate and process the quantitative and qualitative information from various review mechanisms and report through the national implementation reports about the available data.

12. The Task Force has used a variety of formats to prepare for meetings and share its outputs such as background documents using the 2017 synthesis report, relevant sections of the national

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<sup>2</sup> See:

[http://www.unece.org/fileadmin/DAM/env/pp/mop6/Decison\\_Excerpts\\_EN/AarhusConv\\_MoP6\\_Decision\\_VI\\_3\\_AJ\\_e.pdf](http://www.unece.org/fileadmin/DAM/env/pp/mop6/Decison_Excerpts_EN/AarhusConv_MoP6_Decision_VI_3_AJ_e.pdf)

<sup>3</sup> See meeting webpage: <http://www.unece.org/index.php?id=47184>

<sup>4</sup> See meeting webpage: <http://www.unece.org/index.php?id=50570>

implementation reports and of the findings of the Compliance Committee, reports, analytical studies based on questionnaires, statements and presentations with good practices and challenges, as well as the jurisprudence database<sup>5</sup> and the relevant resources of the Aarhus Clearinghouse.

13. Finally, the Task Force has continued exploring the existing possibilities to strengthen cooperation with relevant international forums dealing with access to justice, including UNEP, OHCHR, UNODC, UNDP, OSCE, IUCN and the Council of Europe.

14. Pursuant to decision VI/3, the support to the network of the judiciary, judicial training institutions and other review bodies in the pan-European region has continued in close cooperation with other relevant networks and initiatives. In particular, to contribute to in-depth review of SDG 16 in 2019, UNECE in cooperation with UNEP, Office of the UN Special Rapporteur on Human Rights and the Environment, OSCE, IUCN World Commission on Environmental Law, Global Judicial Institute on the Environment, European Union Forum of Judges for the Environment and Association of European Administrative Judges convened the Judicial Colloquium “SDG16: Role of Judiciary in Promoting the Rule of Law in Environmental Matters” on 27-28 February 2019<sup>6</sup>. The objective of the Colloquium was to strengthen capacity of judiciary to effectively handle cases related to environmental matters and to apply constitutionally-entrenched environmental rights and its outcomes further informed the 2019 Regional Forum on Sustainable Development for the UNECE Region<sup>7</sup>.

15. The progress in the implementation of the third pillar of the Convention and issues that deserve particular attention of the focal points will be considered by the Working Group of the Parties at its upcoming twenty-fourth meeting on 1-3 July 2020.

### **Suggested priority issues for the next intersessional period**

16. The Task Force needs to be given a broad mandate covering key elements of article 9 on access to justice. Such a mandate enables us to prioritize and further work on those key issues for each next meeting.

17. As for thematic focus, there are some specific issues which have raised general attention recent years. One which is already mentioned in the mandate for the intersessional period 2018-2021 covers the possibilities for the members of the public to challenge acts or omissions that contravene permit requirements or laws relating to the environment and collective redress (Article 9.2 and 9.3 in conjunction with article 9.4). There is also an increased case-law with regard to energy projects – including energy plans and policies – chemicals management and biodiversity protection. Also climate change litigation is a hot topic in many Parties to the Convention. Therefore, it is suggested that the Task Force will have the possibility to focus its thematic discussions on any of these new subjects not considered by the Task Force before.

18. At the same time, it is important that the Task Force combines the theme chosen with a horizontal focus on the key elements on access to justice in environmental matters: standing, scope of review, costs, remedies and timeliness. In this context, it would be interesting to study the results

<sup>5</sup> <https://www.unece.org/env/pp/tfaj/jurisprudenceplatform.html>

<sup>6</sup> See meeting webpage: <http://www.unece.org/index.php?id=50741>

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of successful litigation in different Parties to the Convention and what factors and conditions that were conducive to bringing public litigation and have an influence on this. This matter would be considered under subjects already indicated in the present Note. On this topic – as well as others mentioned above – there may be external studies to be relied upon in order to compile information.

19. Obviously, the Task Force may furthermore continue to promote tools supporting effective access to justice, including multi-stakeholder dialogues, e-justice initiatives and the use of digital technologies, collective redress, specialization of judiciary and other legal professionals in environmental law, access to technical expertise, measures to discourage strategic lawsuits against public participation, alternative dispute resolution methods, assistance mechanisms and the availability of relevant data and statistics.

20. The work on collection of quantitative and qualitative data should be further advanced and could be coupled with the implementation of the Resolution 2015/24<sup>8</sup> adopted by the United Nations Economic and Social Council on 21 July 2015 promoting the gradual adoption of the UNODC International Classification of Crime for Statistical Purposes with respect to data related to acts against the natural environment.

21. The work of the Task Force in the next intersessional period could be carried out through Task Force meetings, developing guidelines and analytical material, participation in relevant events, capacity-building initiatives and further population of the jurisprudence database and the Aarhus Clearinghouse. In order to be effective and to uphold the continuity of the work, it is strongly suggested that Task Force meetings will be held annually.

22. The activities of the network of the judiciary, judicial training institutions and other review bodies in the pan-European region could be further strengthened subject to the availability of resources. The networking modalities could include meetings and workshops (e.g. back-to-back to the Task Force/Working Group of the Parties); developing curricula on particular topics of common interest; exchange of information through a digital platform; developing video presentations and other supporting material; webinars, and other capacity-building events supported by partner organizations at the regional, sub-regional and national levels. The work will be undertaken in cooperation with the interested partner organizations and networks as appropriate.

23. It will be important for the Working Group of the Parties to continue its effective oversight of this work area. The Bureau is also invited to consider issues that deserve particular attention at the thematic sessions dedicated to access to justice on one of the meetings of the Working Group of the Parties in the intersessional period.

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<sup>8</sup> See Resolution 2015/24 adopted by the Economic and Social Council on 21 July 2015 on improving the quality and availability of statistics on crime and criminal justice for policy development Available from <https://documents-dds-ny.un.org/doc/UNDOC/GEN/N15/254/43/pdf/N1525443.pdf?OpenElement>