

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

Twenty-eighth meeting

Geneva, 2–4 July 2024

Item 4 (a) of the provisional agenda

Substantive issues: thematic session on access to justice

Note by the Chair of the Task Force on Access to Justice on possible future directions for the work¹

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 52th meeting (Geneva, 28 March 2024) and by the Working Group of the Parties at its 28th meeting (Geneva, 2-4 July 2024).

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 of present and future generations to live in an environment adequate to their health and well-being and to support two other pillars of the Aarhus Convention related to access to information and participation in decision-making.
2. Pressing environmental crisis of climate change, biodiversity loss and pollution prompted environmental NGOs and other members of public to recourse increasingly to judicial and administrative review mechanisms. There is a noticeable upward trend in the use of litigation to protect environmental public interests and human rights affected by decisions, acts and omissions by public authorities and private persons regarding climate, energy, land use, biodiversity and forestry, air and water quality, chemicals and wastes and greenwashing matters.
3. The legal frameworks of the Parties concerning these matters are also evolving rapidly, impacting the admissibility and resolution of such cases. It remained crucial to achieve compatibility between provisions implementing access to information, public participation and access to justice, in line with the Convention, particularly regarding the multistage decision-making procedures involving strategic environmental assessment, environmental impact assessment or other alike assessments.
4. There are still a number of challenges to be addressed by the Parties, as identified through the 2021 national implementation reports and the synthesis report², Parties' case-law related to the Convention, survey on measures to enable effective access to justice in environmental matters and other

¹ This document was not formally edited.

² See <https://aarhusclearinghouse.unece.org/national-reports/reports>

analytical work³ undertaken by the Task Force, the Parties to the Convention and stakeholders up to date.

5. Environmental NGOs and other members of the public seeking justice were facing challenges in several areas related to: (a) standing; (b) scope of review; (c) burden of proof, the use of scientific evidence and independent environmental expertise; (d) jurisdiction, (e) financial and other barriers; (f) lack of timeliness in review procedures; and (g) inadequate remedies, including injunctive relief, and their enforcement. Some challenges are persistent across different types of cases while others are specific to certain disputes. These challenges can disproportionately affect the ability of children, youth, women, and other people in vulnerable situations to seek justice.

6. 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 next 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) that undergoes in-depth review this year.

7. Although legal frameworks for judicial and administrative review in environmental matters vary among Parties, sharing experiences, raising awareness, learning from good practices and developing support material on issues of common interest can promote advanced implementation of this Convention pillar.

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

Key outcomes of the work done so far

9. During the current intersessional period, the activities in this work area are guided by decision VII/3⁴, adopted by the Meeting of the Parties at its seventh session (Geneva, 18–21 October 2021).

10. In the current intersessional period, the Task Force on Access to Justice held its fourteenth and fifteenth meetings in Geneva on 27-28 April 2022⁵ and 4-5 April 2023⁶ respectively. The next sixteenth meeting of the Task Force will be held in 2025.

11. Pursuant to decision VII/3, the Task Force identified good practices and possible measures to promote the possibilities for members of the public to challenge acts or omissions that contravene permit requirements or laws relating to the environment in relation to the following issues: climate change; projects, plans and policies related to energy matters; chemicals and waste management; air quality; biodiversity protection; and spatial planning (para. 14 (a) (iii)). The Task Force meeting in 2025 will focus on cases related to chemicals and waste management, water quality and noise pollution.

12. To facilitate the analysis of energy-related cases for improving implementation of the Convention, the Task Force discussed the scope and methodology of such analysis as finalised in document AC/TF.AJ-15/Inf.2/Rev.1.⁷

³ See <https://unece.org/env/pp/analytical-studies-and-surveys-on-access-to-justice>

⁴ See <https://unece.org/environment/documents/2022/02/pp-aarhus-convention-mop7-decision-vii3-access-justice>

⁵ See meeting webpage: <http://www.unece.org/index.php?id=47184>

⁶ See meeting webpage: <http://www.unece.org/index.php?id=50570>

⁷ See <https://unece.org/env/pp/analytical-studies-and-surveys-on-access-to-justice>

13. The Task Force also continued the exchange of information, experiences, challenges and good practices with focus on standing, scope of review, costs and access to assistance mechanisms, remedies and timeliness (para. 14 (a) (i)) and on promoting public interest litigation and collective redress, and removing obstacles public interest lawyers face (para. 14 (a) (ii)).

14. The Task Force carried out a survey on measures to enable effective access to justice in environmental matters. The survey aimed to collect good practices and challenges in implementing measures to overcome barriers related to costs, access to assistance mechanisms and timeliness. The outcomes of the survey will be presented at the upcoming thematic session on access to justice to be held at the Working Group of the Parties⁸.

15. Furthermore, the Task Force took stock of measures that could promote effective access to justice such as multi-stakeholder dialogues, e-justice initiatives, specialization of judiciary and other professionals in environmental law; access to independent environmental expertise; prevention of strategic lawsuits against public participation (SLAPPs) and capacity-building initiatives to increase awareness of the public and legal professionals about the Convention.

16. The Task Force has used a variety of formats to prepare for meetings and share its outputs such as background documents, analytical studies based on questionnaires, statements and presentations with good practices and challenges. The Task Force also continued updating the jurisprudence database⁹ and the relevant resources of the Aarhus Clearinghouse.

17. 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.

18. Pursuant to decision VII/3, the support to the network of the judiciary, judicial training institutions and other independent review bodies in the pan-European region has expanded in close cooperation with other relevant networks and initiatives. In particular, UNECE in cooperation with UNEP, UNDP, OSCE, the IUCN World Commission on Environmental Law, the Global Judicial Institute on the Environment and the European Union Forum of Judges for the Environment convened the following events:

- Judicial Colloquium “Adjudication of cases related to climate change and air quality” (Geneva, 27-28 April 2022)¹⁰;
- Judicial Colloquium "Judicial protection of human rights and public interests against environmental pollution from chemicals and wastes"(Geneva, 3-4 April 2023)¹¹.

19. Other significant events to support the network organized by partner organizations included the Stockholm +50 Symposium on Judges and the Environment (Stockholm (hybrid), 31 May–1 June 2022), annual meetings of the European Union Forum of Judges for the Environment, the High-level Judges Conference on Environmental Justice (Bishkek, 14-16 September 2023) and the Western Balkans Meeting on Environmental Justice (Sarajevo, 13-15 December 2023).

20. The progress in the implementation of the third pillar of the Convention and issues that deserve particular attention of the Convention’s national focal points will be considered by the Working Group of the Parties at its upcoming twenty-eighth meeting.

⁸ See document ECE/MP.PP/WG.1/2024/11 (forthcoming).

⁹ See <https://unece.org/env/pp/tfaj-case-law-related-convention> and <https://aarhusclearinghouse.unece.org/jurisprudence>

¹⁰ <https://unece.org/info/Environmental-Policy/Public-Participation/events/364942>

¹¹ <https://unece.org/info/Environmental-Policy/Public-Participation/events/374155>

Suggested priority issues for the next intersessional period

21. Having regarded the above-mentioned challenges and outcomes, the Task Force should continue to provide a platform for exchanging information, experiences and good practices with regard to key recent developments in the implementation of the Convention's pillar on access to justice and possible measures to remove systemic barriers hampering its implementation.

22. In the next intersessional period, the Task Force can focus on promoting possibilities for members of the public to challenge decisions, acts or omissions that contravene permit requirements or laws relating to the environment. Specifically, the Task Force can focus on access to justice in cases concerning activities subject to environmental impact assessments; plans and programmes relating to the environment; land use; forestry; environment-related product information; environmental damage and environmental crimes. Given the increasing number of litigation cases in certain areas, the Task Force can continue monitoring and assessing further developments concerning access to justice in cases related to climate change; air and water quality; chemicals and waste management; and biodiversity protection.

23. At the same time, it is important that the Task Force continue combining the theme chosen with a horizontal focus on the key elements on access to justice in environmental matters: standing, jurisdiction, scope of review, burden of proof, the use of scientific evidence and access to environmental expertise, costs, remedies, and timeliness. These matters will be considered under subjects already indicated above in the present Note or independently to address systemic barriers and trends in this area.

24. 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 artificial intelligence and other digital technologies, collective redress, specialization of judiciary and other legal professionals in environmental law, alternative dispute resolution methods, assistance mechanisms and the availability of relevant data and statistics.

25. The work on collection of data related to access to justice in environmental matters should be further advanced. This would support countries efforts to monitor Sustainable Development Goal indicator 16.3.3 that measures the proportion of the population who have experienced a dispute in the past two years and who accessed a formal or informal dispute resolution mechanism, by type of mechanism. The indicator covers environmental issues affecting individuals, their property and communities¹². This work could be coupled with the implementation of the Resolution 2015/24¹³ 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.

26. The work of the Task Force in the next intersessional period could be carried out through Task Force meetings, developing surveys 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.

¹² See the SDG Indicator 16.3.3 metadata available from <https://unstats.un.org/sdgs/metadata/files/Metadata-16-03-03.pdf> and the Manual to Support National Data Collection on SDG Indicator 16.3.3 developed by UNODC, OECD and UNDP available from https://www.undp.org/sites/g/files/zskgke326/files/2023-06/en_technical_guidance_-_indicator_16.3.3_-_undp_unodc_oecd.pdf.

¹³ 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>.

27. It remains crucial to promote cooperation and networking of the judiciary, judicial training institutions and other review bodies in the pan-European region. The organization of periodical Judicial Colloquia and subregional meetings with engagement of judiciary from all Parties and interested Member States, with a particular focus on the judiciaries of South and Eastern Europa, Caucasus and Central Asia, should continue due to the lack of structural co-operation in environmental matters in this part of the UNECE region. 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. The continuation of these activities depends on the availability of resources, and partner organizations will need to consider allocation of the required resources well in advance of the start of activities.

28. 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 next intersessional period.
