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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

(Second meeting, Almaty, Kazakhstan, 25-27 May 2005)
(Item 5 (c) of the provisional agenda)

DRAFT DECISION I/2

PROMOTING EFFECTIVE ACCESS TO JUSTICE

The Meeting of the Parties,

Recalling the provisions of article 9 of the Convention,

Recalling also its decision I/5 on promoting effective access to justice,

Recalling further the eighth and the eighteenth preambular paragraphs of the Convention,

Taking note of the Johannesburg Principles on the Role of Law and Sustainable Development, adopted at the Global Judges Symposium held in South Africa prior to the World Summit on Sustainable Development, as well as of the outcomes of regional and subregional follow-up activities, in particular the London Bridge Statement, adopted at the Symposium on Environmental Law for European Judges, the Lviv Statement, adopted at the First Symposium on Environmental Law for Judges of Central/Eastern Europe, the Caucasus and Central Asia, and the Rome Statement, adopted at the Symposium on Environmental Law for Judges, and welcoming the establishment of the European Union Forum of Judges for the Environment,

Noting in particular that the Johannesburg Principles affirm that an independent judiciary and judicial process is vital for the implementation, development and enforcement of environmental law and that members of the judiciary, as well as those contributing to the judicial process at the national, regional and global levels, are crucial partners for promoting compliance with, and the implementation and enforcement of, international and national environmental law,

and call, inter alia, for the improvement of the capacity of those involved in promoting, implementing, developing and enforcing environmental law, to carry out their functions on a well-informed basis, as well as for the improvement in the level of public participation in environmental decision-making, access to justice for the settlement of environmental disputes and the defence and enforcement of environmental rights and public access to relevant information,

Welcoming the work undertaken by the task force on access to justice established pursuant to decision I/5 and having considered its report and recommendations, as well as the replies given by Parties, Signatories and other stakeholders to the questionnaires circulated by the lead country on non-legal obstacles to access to justice and criteria for standing,

I. EXAMINATION AND DISSEMINATION OF GOOD PRACTICE AND SHARING OF EXPERIENCE

1. Welcomes the publication of the Handbook on Access to Justice in English and Russian, as a practical tool for facilitating the implementation of article 9 of the Convention;
2. Recommends that it should continue to be widely distributed, translated and published in other languages, within available resources, and updated as necessary from time to time;
3. Invites Parties, Signatories and other stakeholders in a position to do so to make resources available for this purpose;
4. Calls attention to the Implementation Guide on the Convention published by UNECE, in particular its chapter on article 9 of the Convention, and recommends that it should continue to be widely distributed;
5. Welcomes other initiatives taken by Parties, Signatories, international organizations, independent research institutes and other stakeholders to study good and not-so-good practices, examine practical means of promoting effective access to environmental justice and share their findings and experience on these matters through appropriate means, and encourages further activities to this end;
6. Requests the secretariat, within available resources, to make information on such activities and their results as widely accessible as possible through the Convention's web site and clearing-house mechanism;

II. INFORMATION AND TRAINING NEEDS OF CIVIL SERVANTS, LEGAL PROFESSIONALS, THE JUDICIARY AND THE PUBLIC

7. Notes that, especially in countries in transition, there is a significant need for training in environmental law as well as basic aspects of environmental science and technology for the judiciary, other legal professionals and civil servants;

8. Recognizes that the public, including non-governmental organizations, has a significant need for information and assistance on how to seek access to justice in environmental matters, including to judicial and administrative review;

9. Stresses that training and information should be tailored to meet the specific needs of the judiciary, other legal professionals, such as prosecutors, enforcement officers and advocates, civil servants, academics and the public, and encourages initiatives to adequately assess those needs at the relevant national, subregional and regional levels, in consultation with their representative organizations and other stakeholders, while guaranteeing the basic principles of judicial independence and academic freedom;

10. Recommends that training activities to promote the implementation of article 9 of the Convention, or the application of national implementing legislation, should be fully integrated into the ongoing work of judicial training centres and academies, and specialized academic institutions, with appropriate support from environmental law organizations, at the national and other relevant levels, taking due account of the specificities of national legal cultures and systems and of the need to combine training in both domestic and international environmental law, and to guarantee the basic principles of judicial independence and academic freedom;

11. Also recommends that the Aarhus Convention and its implementation should receive full attention in the context of all activities designed to implement the Johannesburg Principles in the UNECE region and that the secretariat should explore possibilities for cooperating with the United Nations Environment Programme (UNEP) to this effect;

12. Invites the [Task Force][Working Group] referred to in paragraph 32 with the assistance of the secretariat, to develop information and training or analytical material in relation to the Convention in accordance with the specific needs identified, making full use of the information gathered in the context of the examination and dissemination of good practices, including through the Convention's web site and the clearing-house mechanism, and to organize, coordinate or support, within the framework of the Convention's overall capacity-building programme and within available resources, appropriate training at the relevant national, subregional and regional levels while avoiding duplication of efforts;

13. Invites Parties, Signatories and other stakeholders in a position to do so to make resources available for this purpose;

III. SUPPORT FOR THE IMPLEMENTATION OF ARTICLE 9 OF THE CONVENTION

14. Stresses that, according to article 9, paragraph 3, it is for each Party to determine the criteria, if any, which must be met by members of the public in order to have access to administrative or judicial procedures within the scope of that paragraph;

15. Notes, however, that the Convention puts no obligation on Parties to establish criteria for standing;

16. Invites those Parties which choose to apply criteria in the exercise of their discretion under article 9, paragraph 3, to take fully into account the objective of the Convention to guarantee access to justice;

17. Notes that Parties may choose to apply administrative or judicial procedures or both and that, whatever procedures are applied, these should be fair and equitable and provide adequate and effective remedies in accordance with article 9, paragraph 4;
18. Stresses the relevance of interim and permanent injunctive relief as referred to in article 9, paragraph 4, for access to justice and invites the Parties to exchange information on good practices in their countries;
19. Invites Parties to give special attention to the potentially irreversible nature of consequences of violations of provisions of national law relating to the environment in considering the adequacy and effectiveness of remedies as referred to in article 9, paragraph 4, and to take into account the possibility of introducing provisional court protection against possible irreversible consequences of administrative acts in accordance with the principles set out in Recommendation No. R (89) 8 of the Committee of Ministers of the Council of Europe on provisional court protection in administrative matters;
20. Invites Parties, Signatories and other stakeholders to share their experiences on the effective contribution of the remedies available under their legal system to the achievement of the Convention's objectives;
21. Recommends that Parties, Signatories and other stakeholders should explore the use of alternative dispute resolution mechanisms and share their experiences with such approaches, including through the Convention's clearing-house mechanism, and consider how their promotion might contribute to the achievement of the objectives of the Convention;
22. Recalls that the Convention requires that access to justice in environmental matters shall not be prohibitively expensive;
23. Notes that the task force identified that financial obstacles are a matter of public concern and a potential impediment to effective access to justice;
24. Notes also that the cost and the financial risk of initiating proceedings depend on many factors that vary from one jurisdiction to another such as lawyers' fees, court fees, cost of experts, bond payments and the possible practice that the loser of the proceedings bears the costs;
25. Recalls that the Convention requires that Parties shall consider the establishment of appropriate assistance mechanisms to remove or reduce financial and other barriers to access to justice;
26. Recommends that this issue should be further examined by Parties, Signatories and other stakeholders and further work should be carried out to identify best practices and discuss them, bearing in mind the objectives laid down in article 9, paragraph 5, of the Convention;
27. Invites Parties, Signatories and other stakeholders in a position to do so to consider giving financial and technical support to organizations, including non-governmental organizations, which provide free legal advice and representation to the public in matters related to the environment, especially in countries with economies in transition;
28. Agrees that, in complying with the requirements of article 9, paragraph 4, and

applying article 5, paragraph 3 (d), and having regard to article 5, paragraph 7 (b), Parties should give special consideration to the public accessibility of decisions of courts and other review bodies, which would facilitate the application of their national laws implementing the Convention and more generally their national laws relating to the environment and that Parties should, consequently, make every effort to ensure timely accessibility of such decisions by electronic and/or other means;

29. Invites Parties, Signatories and other stakeholders to make the most significant decisions of courts and other review bodies relating to the environment available internationally, including through the World Conservation Union (IUCN)-UNEP Judicial Portal;

IV. RECOMMENDATIONS FOR FURTHER WORK

30. Establishes the [Task Force][Working Group] on Access to Justice, under the authority of the Working Group of the Parties, to carry out further work with a practical focus in relation to the elements of this decision;

31. Invites representatives of ministries of justice and/or similar national bodies with responsibility for the administration of justice and judicial authorities themselves, as well as representative organizations of the legal professions to participate in this further work;

32. Invites the Council of Europe and other competent intergovernmental and non-governmental organizations, regional environmental centres, independent research institutes and other stakeholders to participate in this further work;

33. Requests the [Task Force][Working Group] to:

(a) Continue the analytical work initiated by the previous Task Force, based on the replies to the questionnaires on financial and other barriers to access to justice and on criteria for standing, making full use of the information gathered;

(b) Develop information and training or analytical material and activities, in accordance with specific identified user needs, at appropriate national, subregional and regional levels, and organize this work within the framework of the Convention's overall capacity building programme;

(c) Consider, based on the experiences of Parties, Signatories and other stakeholders, the effective contribution of remedies available under different legal systems to the achievement of the Convention's objectives, including the relevance of interim and permanent injunctive relief;

(d) Further examine the issue of the establishment of appropriate assistance mechanisms to remove or reduce financial and other barriers to access to justice with a view to identifying and discussing best practices, bearing in mind the objectives laid down in article 9, paragraph 5, of the Convention;

(e) Explore the use of alternative dispute resolution mechanisms and consider how these approaches might contribute towards the achievement of the objectives of the Convention;

(f) Consider and share relevant expertise, experience and examples of good practice, as a means of promoting more effective access to justice in environmental matters;

(g) Share and disseminate its findings through appropriate means, including the clearing-house mechanism;

(h) Take into consideration the work being undertaken by Parties, Signatories, international organizations, independent research institutes and other stakeholders, in order to benefit from this work and avoid duplication with it;

(i) Present the results of its work for consideration and appropriate action by the Working Group of the Parties.