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ACCESS TO JUSTICE IN ENVIRONMENTAL MATTERS

Working Group of the Parties

Seventh meeting
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Item 5 of the provisional agenda
Public participation in international forums

**SYNTHESIS OF RESPONSES RECEIVED FROM INTERNATIONAL FORUMS TO
THE WRITTEN QUESTIONNAIRE IN THE CONSULTATION PROCESS ON
THE ALMATY GUIDELINES**

Prepared by the Task Force on Public Participation in International Forums
with the assistance of the secretariat

Background

1. In furtherance of article 3, paragraph 7, of the Convention, the Meeting of the Parties, through decision II/4, adopted the Almaty Guidelines on Promoting the Application of the Principles of the Aarhus Convention in International Forums. Through the decision, the Meeting of the Parties also established a Task Force to enter into consultations regarding the Guidelines with relevant international forums and, inter alia, to prepare a report on the outcome of the consultations for consideration by the Working Group.

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2. At its sixth meeting on 5-7 April 2006, the Working Group of the Parties approved the work plan of the Task Force, the list of forums to be consulted and the consultation package to be sent to the selected international forums. The plan of consultation is set out in ECE/MP.PP/WG.1/2006/2/Add.1. The list of international forums, which prioritizes the international forums to be invited to take part in the consultation process according to four criteria, is contained in ECE/MP.PP/WG.1/2006/2/Add.2.

3. The four criteria used to prioritize the international forums were:

- (a) The number of members, including both Parties and Signatories, in the forum;
- (b) The presence of Aarhus members, including both Aarhus Parties and Signatories, in the forum;
- (c) The proportion of the forum's decisions or actions affecting the environment; and
- (d) Whether the forum's decisions or actions are considered to have the potential for particularly significant environmental impacts.

4. In mid-June 2006, the consultation package was sent by email and regular post to ninety-seven international forums provisionally identified as being of higher priority to invite to take part in the consultation process.¹ The consultation package included the Guidelines, a covering letter and a written questionnaire. The covering letter indicated that the questionnaire was the initial focus of the consultation process.

5. On the same date, a shorter letter enclosing the Guidelines without the questionnaire was sent to thirty-nine international forums provisionally identified as being of lower priority for consultation.² The letter informed the international forums of the existence of the consultation process but did not expressly invite them to take part.

6. The written questionnaire sent to the international forums identified as being of higher priority for consultation contained five broad, open-ended questions designed to allow representatives of the forums to share such of their experience as they considered relevant. The questions were:

- (a) Please provide any comments on the Guidelines, in view of your forum's own processes, activities and particular characteristics.
- (b) Does your forum have any formalized rules or procedures concerning access to information, public participation in decision-making and access to justice in environmental matters? If yes, please provide an overview.
- (c) Does your forum have any non-formalized practices concerning access to information, public participation in decision-making and access to justice in environmental matters? If yes, please provide an overview.

¹ Those forums classified as categories 1 & 2 forums in the list of international forums, ECE/MP.PP/WG.1/2006/2/Add.2.

² Those forums classified as category 3 forums in the list of international forums, ECE/MP.PP/WG.1/2006/2/Add.2.

(d) Are there any current or future workplans of your forum that may affect the extent of or modalities for access to information, public participation in decision-making and access to justice in environmental matters? If yes, please provide an overview.

(e) In particular, what kind of challenges, if any, has your forum encountered with regard to access to information, public participation in decision-making and access to justice in environmental matters (for example, low involvement of civil society, or practical difficulties in managing public participation)? If appropriate, please provide a description underlining those experiences you think could be most useful to consider when reviewing the relevance and practicality of the Guidelines.

7. The original deadline for international forums to provide their responses to the written questionnaire was 17 September 2006. As a result of requests by a number of international forums for further time to complete their responses, the deadline was extended to 23 October 2006. At its meeting on 9-10 November 2006, the Task Force agreed that late responses should be incorporated into the synthesis paper as far as practicable.

8. As of 23 January 2007, responses had been received from sixty-five of the ninety-seven international forums provisionally identified as higher priority for consultation. Of these, fifty-two forums advised that they were interested to take part in the consultation process, nine forums stated that they were not interested to take part, and four forums did not provide a clear indication as to whether or not they intended to participate.

9. Of the nine international forums that indicated that they did not wish to take part in the consultation process, three forums did not provide reasons for this. The other six forums variously indicated that the Guidelines were not directly applicable to their work as they did not organize or conduct international forums of the type listed in paragraph 4 of the Guidelines; that they were not involved in practices that related to information sharing or decision-making on environmental matters; that the convention concerned had not entered into force; that they were unable to do so due to other commitments; or that they had not been able to reach agreement on engaging in the consultation exercise, implying that there were mixed views within the forum.

10. For the thirty-two forums from which no response was received, it is not possible to know the reasons for this. Within some of the forums addressed, some UNECE member States that are not party to the Aarhus Convention voiced opposition to any active involvement by the forums in question in the consultation process, indicating inter alia that they did not consider it to be an appropriate use of the forum's resources.

11. Although the shorter letter sent to the thirty-nine international forums provisionally identified as lower priority for consultation did not ask for a response, seven forums did reply. Two forums advised that they were interested to take part in the consultation process, four forums stated that they were not interested to take part, and one forum did not provide a clear indication as to whether or not it intended to take part.

12. As of 23 January 2007, completed responses to the written questionnaire had been received from forty-eight international forums provisionally identified as higher priority for consultation and one international forum provisionally identified as lower priority for consultation. A list of the international forums that provided responses, together with their acronyms, is contained in

the annex to this paper. The responses received are available online at <http://www.unece.org/env/pp/ppif.htm>.

13. The purpose of this paper and its five addenda is to synthesize the international forums' responses to the written questionnaire, initially for the consideration of the Working Group of the Parties at its seventh meeting on 2-4 May 2007. The first addendum provides an overview of the international forums' responses regarding their formalized rules and procedures and non-formalized practices concerning access to information and access to justice in environmental matters. The second addendum provides an overview of the international forums' responses regarding their formalized rules and procedures and non-formalized practices concerning public participation in decision-making. The third addendum reviews the current or future workplans that the international forums report may affect the extent of or modalities for access to information, public participation in decision-making and access to justice in environmental matters. The fourth addendum reviews the challenges identified by the international forums with regard to access to information, public participation in decision-making and access to justice in environmental matters. The fifth addendum summarises the comments made by the international forums on the Guidelines themselves. The present paper provides a summary of the responses reviewed in more detail in the addenda.³

14. Given its purpose to synthesize the international forums' responses, the scope of this paper and its addenda is limited to the information contained in those responses, including any policy documents or rules of procedure enclosed, referenced or hyperlinked in the response. This is notwithstanding the fact that in some cases international forums may have further rules, procedures or practices relevant to the issues at hand. In other words, it is not intended to be a comprehensive, in-depth or analytical review of the way in which the Aarhus principles are applied within the forums that are referred to in the paper.

15. As might be expected given the short time frame under which responses to the questionnaire were requested, all but six of the responses received were prepared and submitted in the name of the secretariats of the international forums, and in the case of those international forums that are institutions, the relevant department.⁴ Of the other six, one was prepared on behalf of the forum's governing body⁵ and five were approved by their respective Bureaux.⁶

³ The order in which forums' names or acronyms are listed and in which their responses are discussed in this paper and its addenda generally follows the order in which the forums are listed in the list of international forums adopted by the Working Group (ECE/MP.PP/WG.1/2006/2/Add.2).

⁴ The response received from the European Bank for Reconstruction and Development was provided by individuals from EBRD's Environment and Communications Department and does not necessarily reflect EBRD's institutional opinion.

⁵ The Committee on Sustainable Energy mandated its secretariat to respond to the factual parts of the questionnaire on its behalf.

⁶ LRTAP, Industrial Accidents Convention, Water Convention, Committee on Housing and Land Management, CEP.

Formalized rules and procedures and non-formalized practices

Access to information

16. Twenty-four forums report formalized rules and procedures regarding access to information.⁷ UNFF, UNFCCC, UNCCD, LRTAP, the Espoo Convention, the EEHC, the Helsinki Commission, and the Sava Commission consider all reports communicated to them as well as institutional information in the public domain and all official documents are available through their websites. ITTO and IWC disclose all documents except for financial and certain administrative documents. IWC has different rules depending on whether the information is required under its convention, requested or provided voluntarily. ITTO notes that limited translation budgets mean that despite policies of openness, not all documents are accessible to all. IMO reports that, while all documents are posted on its website, access to the website is restricted. The MAP secretariat indicates that an information unit has been set up at the secretariat and a regional activity centre established specifically to address information and communication.

17. Twenty-five forums report non-formalized practices in respect of access to information.⁸ About one third of these forums have non-formalized practices in addition to their formalized procedures.⁹ Examples of non-formalized practices to disseminate environmental information include environmental publications, media interviews, workshops, roundtables, and via the forum's website. Of the remaining two-thirds of forums, SAICM, the Water Convention, the Committee on Housing and Land Management, the CEP, the Committee on Sustainable Energy, the Bern Convention, and UNESCAP report that although they do not have formalized rules on the point, their non-formalized practice is to make official documents and reports available on their website, and for some forums, in print form also. NAFO makes most of its documents available through its website, although Working Papers circulated during meetings and vessel monitoring system data are not disclosed. UNEP provides environmental information proactively on its website and UNEP and IFAD webcast some events. In addition to technical means, IFAD works at the country/project level through targeted training and awareness raising. The EEHC has a web-based user-friendly country-driven implementation map.

Public participation in decision-making

18. Forty-one forums report formalized rules and procedures regarding public participation in decision-making. Thirty of these discuss formalized rules and procedures in relation to who may

⁷ UNFF, IWC, IMO, World Bank, UNFCCC, UNCCD, CBD, CMS, ITTO, ICAO, IAEA, MAP, Tehran Convention, LRTAP, Industrial Accidents Convention, Espoo Convention, EEHC, EBRD, Helsinki Commission, Sava Commission, NEFCO, AfDB, IADB, ADB.

⁸ IWC, World Bank, CMS, LRTAP, Industrial Accidents Convention, Espoo Convention, EBRD, Sava Commission, UNEP, UNESCO Man and the Biosphere Programme, IFAD, SAICM, NAFO, Cotonou Agreement, Water Convention, Committee on Housing and Land Management, CEP, Committee on Sustainable Energy, "Environment for Europe", EEHC, Bern Convention, ICWC, Alpine Convention, ICPR, UNESCAP.

⁹ IWC, World Bank, CMS, LRTAP, Industrial Accidents Convention, Espoo Convention, EBRD, Sava Commission.

participate in their processes.¹⁰ The CBD reports that any governmental or non-governmental body or agency may be represented at forum sessions unless one third of the Parties present at the session object. Examples of restrictions imposed by other forums include that observers be qualified in matters covered by the Convention,¹¹ support the forum's objectives,¹² have a wide membership, or have a well-organized internal structure,¹³ and may or may not provide for the possibility for one third of the Parties to veto participation. The UNFCCC reports on its constituency system whereby admitted civil society organizations are grouped into five constituencies: business and industry, environmental, local government and municipal authorities, research and independent, and indigenous peoples organizations. EEHC reports that, as well as NGO observers, three of its members represent NGOs.

19. Twenty-eight forums describe formalized rules and procedures with respect to how the public may participate.¹⁴ UNEP reports that accredited NGOs may submit written comments on unedited working documents prior to forum sessions. ADB staff instructions require stakeholder consultation during the processing of its safeguard policies, such as its Environment Policy. The majority of forums advise that accredited NGOs have the right to attend their meetings as observers without the right to vote, although the ICPDR and the Helsinki Commission note that institutional issues and for the Helsinki Commission, also financial issues, may be dealt with in a closed session. Other than the IWC and the IMO, all forums that refer in their responses to allowing observers to be present, also grant observers the right to speak. All but the IMO allow observers to submit written statements. The IMO and NAFO allow media representatives to observe meetings, and media may attend the IWC in plenary but not its sub-groups. The OAS' initiatives to promote participation include regional civil society forums and the presentation of proposals and recommendations arising therefrom, institutionalised discussions between civil society organizations and high-ranking national officials, and cooperation agreements with civil society organizations on the development and implementation of its work. UNCCD holds two special open dialogue sessions during each meeting of its Conference of the Parties on the activities of NGOs.

20. Twenty-three forums describe non-formalized practices concerning how the public may participate in decision-making.¹⁵ UNEP and UNFCCC allow NGO side events at forum sessions

¹⁰ UNEP, IWC, UNFCCC, CBD, UNCCD, CMS, ITTO, ICAO, UNCSTD, UNESCO World Heritage Centre, UNESCO Man and the Biosphere Programme, SAICM, NAFO, LRTAP, Industrial Accidents Convention, Water Convention, Espoo Convention, Committee on Housing and Land Management, CEP, Committee on Sustainable Energy, "Environment for Europe", EEHC, Bern Convention, Helsinki Convention, Carpathian Convention, ICPR, Sava Commission, ICPDR, Baltic 21, UNESCAP.

¹¹ UNCCD, Industrial Accidents Convention, Bern Convention, Helsinki Commission, Carpathian Convention, ICPR, ICPDR.

¹² NAFO, ICPR, ICPDR.

¹³ Helsinki Commission, ICPR, ICPDR.

¹⁴ UNEP, IWC, IMO, CSD, UNFCCC, CBD, UNCCD, ITTO, IAEA, UNESCO World Heritage Centre, UNESCO Man and the Biosphere Programme, SAICM, MAP, Tehran Convention, Industrial Accidents Convention, Water Convention, Espoo Convention, Bern Convention, NAFO, Alpine Convention, ICPDR, Helsinki Commission, Carpathian Convention, NEFCO, AfDB, IADB, OAS, ADB.

¹⁵ UNEP, UNFF, World Bank, International Monetary Fund, UNFCCC, UNCCD, UNESCO World Heritage Centre, UNESCO Man and the Biosphere Programme, SAICM, Tehran Convention, Water Convention, Espoo Convention, Committee on Housing and Land Management, CEP, Committee on Sustainable Energy, EBRD, Carpathian Convention, NEFCO, AfDB, IADB, OAS, UNESCAP, ADB.

and UNEP encourages NGOs to be involved in the delivery of its programme of work. UNFF and the Water Convention provide travel assistance for civil society representatives to attend forum meetings. UNCCD offers virtual consultation and discussion forums whilst the UNFCCC, AfDB and ADB holds regular, and the International Monetary Fund, occasional, stakeholder dialogues. The Carpathian Convention similarly organizes stakeholder consultations, workshops, roundtables, and festivals. EBRD seeks public comments in the development of its policies and strategies, and in the scoping stage of projects.

Access to justice

21. Eight forums indicate that they have rules, procedures or practices regarding access to justice in environmental matters.¹⁶ The Bern Convention and Alpine Convention secretariats and the Bureau of the Water Convention describe formalized compliance mechanisms that allow NGOs to present issues of compliance. The secretariat of the Espoo Convention reports that the draft operating rules currently being drawn up by the Convention's Implementation Committee, if adopted, would not prevent the Committee considering information from the public. IADB, AfDB and the EBRD response each refer to formalized independent recourse mechanisms for members of the public who consider that there has been non-compliance with the Bank's policies. The IFAD secretariat notes some non-formalized practices in its project work relating to access to justice issues.

Current and future workplans

22. Thirty-one forums report current or future workplans that may affect the extent of or modalities for access to information, public participation in decision-making and access to justice in environmental matters. Fourteen forums report that they are currently drafting new or revising existing policy instruments relevant to the issues addressed by the Guidelines.¹⁷ Thirteen forums describe current or future workplans regarding access to information,¹⁸ twelve report plans regarding public participation in decision-making¹⁹ and one forum reports plans regarding access to justice.²⁰

Current or future plans regarding access to information

23. Nine forums have current or future workplans to improve their websites and/or to increase the use of electronic tools.²¹ The CBD has an initiative to increase dissemination of its implementation tools in national languages. The secretariats of the MAP, the Tehran Convention

¹⁶ Water Convention, Espoo Convention, Bern Convention, EBRD, Alpine Convention, AfDB, IADB, IFAD.

¹⁷ UNEP, UNFF, CMS, IFAD, SAICM, MAP, Tehran Convention, NAFO, Cotonou Agreement EBRD, Helsinki Commission, LRTAP, AfDB, ADB.

¹⁸ ITTO, UNFCCC, UNESCO Man and the Biosphere Programme, SAICM, MAP, Water Convention, Bern Convention, Sava Commission, UNESCAP, CBD, Caribbean Environment Programme, Tehran Convention, CEP.

¹⁹ CBD, UNCCD, CMS, UNCSTD, Carpathian Convention, OAS, World Heritage Centre, IWC, LRTAP, Committee on Housing and Land Management, UNFCCC, UNESCO Man and the Biosphere Programme.

²⁰ MAP.

²¹ ITTO, UNFCCC, UNESCO Man and the Biosphere Programme, SAICM, MAP, Water Convention, Bern Convention, Sava Commission, UNESCAP.

and the Caribbean Environment Programme have current or future plans to improve the generation and/or management and sharing of environmental information. The CEP has a draft communication strategy to raise awareness of the Ministerial Conferences “Environment for Europe” and the issues they address.

Current and future workplans regarding public participation

24. The secretariats of the CBD, UNCCD, CMS, UNCSTD, the interim secretariat of the Carpathian Convention and the OAS’ Department of Sustainable Development each report current or future plans to increase stakeholder involvement in general. Conversely, the UNESCO World Heritage Centre reports that the increasing interest in participating in World Heritage Committee sessions may lead to the restriction of access. The IWC and LRTAP report that their rules for accreditation of NGOs are currently under review and may be revised. The UNCCD, OAS, CBD and the Committee on Housing and Land Management are working to increase the focus on particular stakeholder groups, namely women, youth, indigenous peoples, business and those in multifamily housing. The UNFCCC reports on recent developments regarding involving the public in implementation, including with respect to its Clean Development Mechanism, the Joint Supervisory Implementation Committee and the Subsidiary Body for Implementation. The UNESCO Man and the Biosphere Programme is currently undertaking several projects that evaluate public participation processes in biosphere reserves.

Current and future workplans regarding access to justice

25. The MAP secretariat reports that there are attempts to negotiate an article on access to justice on environmental matters under the new Draft Protocol on Integrated Coastal Zone Management.

Challenges

26. Thirty-two forums identify challenges with regard to access to information, public participation in decision-making or access to justice in environmental matters. Of these, eight forums comment on general challenges regarding the issues covered by the Guidelines,²² ten forums report challenges in respect of access to information²³ and twenty-seven forums report challenges regarding public participation in decision-making.²⁴

²² UNFF, NEFCO, UNESCAP, Caribbean Environment Programme, UNFCCC, UNCCD, MAP, Sava Commission.

²³ SAICM, MAP, Sava Commission, UNESCAP, UNCCD, Espoo Convention, Baltic 21, OAS, Caribbean Environment Programme, ICWC.

²⁴ CBD, UNEP, CSD, SAICM, MAP, Tehran Convention, Water Convention, Espoo Convention, “Environment for Europe”, Baltic 21, ICWC, Sava Commission, UNESCAP, ITTO, EBRD, World Heritage Centre, EEHC, UNESCO Man and the Biosphere Programme, UNCSTD, CEP, Committee on Housing and Land Management, Committee on Sustainable Energy, AfDB, UNFCCC, IWC, Cotonou Agreement, NAFO.

General challenges

27. The UNFF secretariat notes that the rules of ECOSOC can be interpreted in a broad or restrictive manner depending on the Member States.

28. UNESCAP's Environment and Sustainable Development Division remarks that access to information and public participation must be fully supported by governments. NEFCO and the secretariat of the Caribbean Environment Programme note that decision-makers may have other economic and social priorities, where linkages to environmental issues are not made. NEFCO reports that corruption, weakly developed institutional routines, legislation and enforcement present a challenge in some of its target countries. The secretariat of the Caribbean Environment Programme remarks that dealing with information that governments consider too sensitive for public release will continue to be a challenge and that there is need for capacity building to demonstrate the value of using environmental information for improved decision-making.

29. The UNFCCC secretariat notes that newcomers to intergovernmental processes need guidance on how to interact. The UNCCD and the Sava Commission stress the importance of capacity-building to achieve education, public awareness and results-oriented solutions. The secretariats of the MAP and the Caribbean Environment Programme also report a strong need for capacity-building.

Challenges regarding access to information

30. Limited financial resources for maximising access to environmental information is reported by the secretariats of the SAICM, MAP, the Espoo Convention, the Sava Commission and UNESCAP's Environment and Sustainable Development Division.

31. The secretariats of the UNCCD, the Espoo Convention, Baltic 21, and OAS' Department of Sustainable Development note that there is a gap between developed countries and developing countries and countries with economies in transition concerning access to information and public participation through new technological means. Internet is still not an everyday tool in many countries.

32. The secretariats of the Espoo Convention and Baltic 21 note that language barriers are a challenge to dissemination of environmental information.

33. The secretariat of the Caribbean Environment Programme identifies a lack of appropriate infrastructure for data generation, analysis and dissemination and a need for improved mechanisms to effectively disseminate environmental information in a form appropriate and relevant to needs of general public.

34. The Caribbean Environment Programme also notes that environmental laws and regulations in its region are inadequate, the frameworks for enforcement are poor and many governments do not have access to information legislation.

Challenges regarding public participation

35. Limited financial resources for funding public participation in forum processes is identified as a challenge by thirteen forums.²⁵

36. UNEP's Division of Early Warning and Assessment, the ITTO secretariat, the EBRD response and UNESCAP's Environment and Sustainable Development Division each discuss the issue of representativeness. UNEP notes that when there are numerous environmental NGOs with competing interests, it is difficult to implement a nomination process that is representative of the various interests. ITTO remarks that it is important to verify that groups or individuals actually represent an indicated interest group. The EBRD response observes that it is often unclear whom NGOs represent and NGOs may focus on a few issues rather than the larger context. It also notes that it is a challenge to identify the stakeholders actually affected, and not just NGOs that choose to participate. UNESCAP remarks that it is critical to ensure that issues brought to the table benefit from the viewpoints of a wide range of stakeholders so that the practical limitations of participation at the international stage are mitigated.

37. The UNESCO World Heritage Centre, the Bureau of the Water Convention and the EEHC secretariat each describe challenges in respect of facilitating the participation of special interest groups. The UNESCO World Heritage Centre states that the biggest challenge is for access to decision-making at the local, i.e. site, level. The Bureau of the Water Convention refers to the specific challenges regarding public participation in transboundary water cooperation in the countries of Eastern Europe, Caucasus and Central Asia (EECCA). The EEHC secretariat indicates that establishing mechanisms to facilitate the participation of special interest groups and identifying funding for the same presents a challenge.

38. Eleven forums identify fluctuating or low civil society interest and awareness either in their work or their processes as a challenge.²⁶ The ITTO secretariat reports that the level of general public interest in its work fluctuates. The secretariat of the UNESCO Man and the Biosphere Programme states that its challenge for the next decade is for biosphere reserves to become truly-knowledge sharing sites. The secretariats of the UNCSTD, MAP, Committee on Housing and Land Management, Committee on Sustainable Energy, the Bureaux of the CEP and the Water Convention, ICWC's Scientific Information Center and the Sava Commission each report low civil society interest, the last two also noting poor capacities of civil society and a lack of knowledge about the problems at issue. AfDB's Sustainable Development Division reports that in a number of countries NGOs and civil societies are either non-existent or have limited influence with respect to the participatory dimensions of sustainable development.

39. The UNFCCC secretariat indicates that its process attracts large numbers of organizations and participants and it faces challenges channelling this interest to provide useful inputs into an intergovernmental meeting.

²⁵ CBD, UNEP, CSD, SAICM, MAP, Tehran Convention, Water Convention, Espoo Convention, "Environment for Europe", Baltic 21, ICWC, Sava Commission, UNESCAP.

²⁶ ITTO, UNESCO Man and the Biosphere Programme, UNCSTD, MAP, Water Convention, CEP, Committee on Housing and Land Management, Committee on Sustainable Energy, ICWC, Sava Commission, AfDB.

40. The IWC secretariat remarks that it has recently encountered disruptive behaviour from a small number of NGOs, which has led it to develop a code of conduct for NGOs.

41. Assessing the effectiveness of public participation is a challenge for the UNESCO Man and the Biosphere Programme and the MAP secretariat. The European Commission in its capacity as a Party to the Cotonou Agreement notes a challenge regarding how to keep track of the recommendations of Environmental Impact Assessments that have been carried out. AfDB's Sustainable Development Division remarks that it is a challenge to expand the consultation process beyond the preparation of projects to the implementation and evaluation phases.

42. Timeframes are considered a challenge by two forums. The European Commission in its capacity as a Party to the Cotonou Agreement notes that there is usually limited time available for consultations with civil society. AfDB's Sustainable Development Division indicates that the timely provision of environmental information to beneficiaries at the national and local levels is a challenge.

43. The UNFCCC secretariat observes that as a treaty among Parties, there are limitations to the involvement of the public in decision-making and the challenge is to enrich the negotiating process with input from civil society. The CSD secretariat refers to the need to enhance coordination between its global and regional processes and between stakeholders at the national level.

44. The challenge of coordinating divergent interests is noted by the interim secretariat of the Tehran Convention and the secretariats of NAFO and the Sava Commission. The Sava Commission also observes that participants may have different knowledge or expertise and that integration of skills is essential.

45. Finally, the interim secretariat of the Tehran Convention states that the absence of clear, transparent and regionally agreed rules on the participation and status of observers has been an obstacle to participation during the negotiations for the Convention and its Protocols. EBRD's response notes that even if its policies allow for participation in its projects, appropriate legislation to secure stakeholder input may be lacking at the country level.

Comments on the Guidelines

46. Thirty forums provide general comments on the Guidelines.²⁷ The CBD, UNCCD and ITTO secretariats, the interim secretariat of the Carpathian Convention, ICWC's Scientific Information Center, UNESCAP's Environment and Sustainable Development Division and the MAP secretariat comment to the effect that the Guidelines are a good starting point, a step forward and a useful tool to implementing public participation in international processes. The MAP secretariat states that it intends to make full use of the Guidelines. The secretariats of

²⁷ CBD, UNCCD, ITTO, Carpathian Convention, ICWC, UNESCAP, UNCSTD, CMS, MAP, UNFF, UNESCO World Heritage Centre, LRTAP, IFAD, Espoo Convention, Bern Convention, ICPDR, UNEP, IWC, UNESCO Man and the Biosphere Programme, SAICM, Cotonou Agreement, Industrial Accidents Convention, Water Convention, Alpine Convention, OAS, Caribbean Environment Programme, ADB, EBRD, Sava Commission, AfDB.

UNCTSD and the CMS remark that the Guidelines are generic and mainly a matter of common sense and that more should be done to develop practical guidance, including clear examples and procedures.

47. The UNFF and ICPDR secretariats, IFAD and the LRTAP Bureau note that they are not subject to the Guidelines. The LRTAP Bureau adds that it is for its own Parties to decide how such principles as those in the Guidelines might be applied in its work. IFAD remarks that because it is an institution working mainly through a programme/project approach, the Guidelines do not fully apply to its mandate. UNFF comments that Aarhus Parties who are also members of its forum, can introduce proposals in accordance with the Guidelines in other forums. The UNESCO World Heritage Centre indicates that the Guidelines have not been provided to the World Heritage Committee, its governing body, so there has been no formal process of taking them into account. However, the Aarhus Convention itself has been noted in the recommendations of selected World Heritage field missions. The secretariat of the Bern Convention observes that the Guidelines are relevant to its processes, because it falls within the Guidelines' definition of "international forums" and there is also a large overlap of its membership with the Aarhus Convention.

48. The secretariats of the CBD and Alpine Convention, ADB and OAS' Department of Sustainable Development report that their practices generally accord with the Guidelines. The SAICM secretariat remarks that the Guidelines' purpose is closely aligned with approaches taken by SAICM. The secretariat of the Caribbean Environment Programme states that the Guidelines reflect many of the elements used in the development of the Cartagena Convention.²⁸ The secretariats of the Industrial Accidents Convention and the Espoo Convention and the Bureau of the Water Convention advise that the three pillars of the Guidelines are addressed by their Conventions. The secretariat of the Espoo Convention and the Bureau of the Water Convention add that there is strong awareness of these issues among their Parties. The European Commission in its capacity as a Party to the Cotonou Agreement and the ADB state that their practices are consistent with the spirit of the Guidelines. UNEP's Division of Early Warning and Assessment and the IWC secretariat remark that their practices regarding with access to information would seem to conform, although the IWC remarks that the Guidelines' provisions on public participation in decision-making would be more controversial in that forum's context. The secretariat of the UNESCO Man and the Biosphere Programme comments that the definition of "the public" as applied in its biosphere reserves is as broad as its definition in the Almaty Guidelines.

49. The EBRD response comments that the Guidelines could make greater recognition of how institutions work in practice as they do not focus on the opportunities associated with organizations and institutions, but rather put them in the Parties' format.

50. The UNCCD secretariat comments that the Guidelines rightly state that participation of the public should be as broad as possible, having in view the nature and level of the particular meeting. The Sava Commission secretariat suggests that it would be useful for the Guidelines to define the main stakeholders to avoid any significant stakeholders being missed. The ICPDR

²⁸ Cartagena Convention on the Protection of the Marine Environment of the Wider Caribbean Region.

secretariat indicates that it has found it difficult to involve individuals in its process and has therefore decided to target only the organized public (organizations, unions etc.) It also comments that because public participation processes are expensive, it should be the responsibility of institutions to set up the legislative and practical frameworks for public participation, but the costs of capacity building for stakeholder groups should not be the sole responsibility of international organizations.

51. The UNCCD secretariat and ICWC's Scientific Information Center comment that the direct link that the Guidelines make between international access and investment of resources should be stressed more. UNCCD observes that experience shows that active participation of NGOs in its sessions depends on funds being made available.

52. With respect to access to information, the ICPDR secretariat remarks that it is not sure whether documents it distributes through the internet reach their target audience. It says that general information can be easily shared via the internet, but it is less convinced that distributing specialised and targeted information via the internet makes sense.

53. Regarding public participation in decision-making, the EBRD response considers that the Guidelines should encourage institutions to engage in public *consultation*, not public *participation* as institutions do not have the ability to provide the public with a decision-making role. EBRD also comments that if access to information and public participation in decision-making is provided with respect to environmental matters but not other in areas, this can create a difference of expectations and also lead to the public attempting to turn their non-environmental concerns about a proposed project into environmental concerns because to do so will be their only opportunity to voice their concerns about a project generally. The ICPDR secretariat reports on its own lessons learnt, including that well-informed stakeholders are the basis of meaningful participation, thus information must be provided in time and for free; that public participation is a process and takes time, thus must be started early and planned carefully; that public participation is a cooperative effort and that stakeholders as well as institutions must be willing to sit at the table to develop solutions and/or compromises; that stakeholders are diverse and a mixture of tools is necessary to ensure the right approach for each stakeholder group; and that it is important to make the best use of people's time.

54. In the context of access to justice, the UNCCD secretariat remarks that legal mechanisms for dispute settlement, such as arbitration or conciliation, remain valid and useful ways of resolving questions of implementation within multilateral environmental agreements. AfDB's Sustainable Development Division states that the paragraph with respect to the access to justice pillar of the Convention is somewhat short. AfDB suggests that this section be expanded on the basis of the international experiences involving compliance and review procedures.

55. The majority of the comments received from international forums are of a general nature, and not expressly directed to particular provisions of the Guidelines. However, seven forums provide comments on specific provisions of the Guidelines. In this regard, the IWC secretariat, the EBRD response and UNESCAP's Environment and Sustainable Development Division comment on the purpose and scope of the Guidelines; EBRD, ICWC's Scientific Information Center, the Sava Commission and UNEP's Division of Early Warning and Assessment comment

on general considerations; ICWC and EBRD comment on access to information; and UNEP, ICWC, EBRD and the CMS secretariat comment on public participation in decision-making.

Conclusion

56. The broad, open-ended nature of the five questions in the written questionnaire has, as intended, allowed the representatives of the selected international forums to share such of their experience as they consider relevant. Such an approach accords with paragraph 1 of the Guidelines, which stresses the need to take into consideration the institutional integrity and particular characteristics of each international forum concerned. In keeping with this, the responses received from the international forums show considerable diversity, both in the depth of information shared and comments made and in the range of rules, procedures and practices touched upon.

57. In relation to the formalized rules and procedures and non-formalized practices, there seem to be areas where some forums' processes differ quite significantly from those recommended in the Guidelines. However, at the same time, some practices of certain forums seem to go further to realise the principles of the Aarhus Convention than the Guidelines envisage.

58. In relation to the challenges identified by the forums, there was strong recognition of the issues of representativeness and the availability of funding for civil society involvement. Some of the challenges, such as language barriers and facilitating the involvement of special interest groups, are picked up in the current and future workplans. Other noted challenges, such as the ECOSOC Rules being open to wide interpretation, remain unaddressed.

59. With respect to the comments made by international forums on the Guidelines themselves, these range from general comments about their usefulness and applicability to subtle drafting points.

Annex

As of 23 January 2007, responses to the written questionnaire had been received from:²⁹

United Nations Environment Programme (UNEP)
United Nations Forum on Forests (UNFF)
International Whaling Commission (IWC)
International Maritime Organization (IMO)
United Nations Commission on Sustainable Development (CSD)
World Bank Group
International Monetary Fund
United Nations Framework Convention on Climate Change (UNFCCC)
Convention on Biological Diversity (CBD)
United Nations Convention to Combat Desertification (UNCCD)
Convention on the Conservation of Migratory Species of Wild Animals (CMS)
International Tropical Timber Organization (ITTO)
International Civil Aviation Organization (ICAO)
International Atomic Energy Agency (IAEA)
United Nations Commission on Science and Technology for Development (UNCSTD)
United Nations Educational Scientific and Cultural Organization Programme on Man and the Biosphere (UNESCO Man and the Biosphere Programme)
Convention concerning the Protection of the World Cultural and Natural Heritage (UNESCO World Heritage Convention)³⁰
International Fund for Agricultural Development (IFAD)
Preparatory Committee for Development of a Strategic Approach to Chemicals Management (SAICM)
United Nations Environment Programme Mediterranean Action Plan (MAP)³¹
Framework Convention for the Protection of the Environment of the Caspian Sea (Tehran Convention)
Convention on Future Multilateral Cooperation in the Northwest Atlantic Fisheries (NAFO)
Cotonou Agreement between the European Communities and the African Caribbean and Pacific States (Cotonou Agreement)³²
Convention on Long-range Transboundary Air Pollution (LRTAP)
Convention on the Transboundary Effects of Industrial Accidents (Industrial Accidents Convention)
Convention on the Protection and Use of Transboundary Watercourses and International Lakes (Water Convention)

²⁹ The order in which forums are listed follows the order in which the forums are listed in the list of international forums adopted by the Working Group (ECE/MP.PP/WG.1/2006/2/Add.2).

³⁰ The UNESCO World Heritage Convention receives secretariat support from the UNESCO World Heritage Centre.

³¹ The MAP secretariat also acts as the secretariat of the Convention for the Protection of the Mediterranean Sea against Pollution, usually known as the Barcelona Convention.

³² The Cotonou Agreement does not have a secretariat as such and is administered by the Parties themselves. The response referred to in this paper was prepared by the European Commission's Directorate-General Development and Relations with African, Caribbean and Pacific States in its capacity as a Party to the Cotonou Agreement.

Convention on Environmental Impact Assessment in a Transboundary Context (Espoo Convention)

United Nations Economic Commission for Europe Committee on Housing and Land Management (Committee on Housing and Land Management)

United Nations Economic Commission for Europe Committee on Environment Policy (CEP)

United Nations Economic Commission for Europe Committee on Sustainable Energy (Committee on Sustainable Energy)

“Environment for Europe” Ministerial Process (“Environment for Europe”)

European Environment and Health Committee (EEHC)

Convention on the Conservation of European Wildlife and Natural Habitats (Bern Convention)

European Bank for Reconstruction and Development (EBRD)

Baltic Marine Environment Protection Commission (Helsinki Commission)

Inter-State Coordination Water Commission of Central Asia (ICWC)

Convention on the Protection of the Alps (Alpine Convention)

Framework Convention on the Protection and Sustainable Development of the Carpathians (Carpathian Convention)

International Commission for the Protection of the Rhine (ICPR)

Sava River Basin Commission (Sava Commission)

International Commission for the Protection of the Danube (ICPDR)

Baltic 21

Nordic Environment Finance Corporation (NEFCO)

African Development Bank (AfDB)

Inter-American Development Bank (IADB)

Organization of American States (OAS)

United Nations Economic and Social Commission for Asia and the Pacific (UNESCAP)

Asian Development Bank (ADB)

Caribbean Environment Programme (Caribbean Environment Programme)