

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

Twentieth meeting

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Item 3 (c) of the provisional agenda

Note by the Chair of the Task Force on Access to Justice on possible future directions for the work ¹

This note was prepared by the Chair of the Task Force on Access to Justice to facilitate preparation of the draft elements of the future work programme by the Bureau at its 37th meeting (Geneva, 25-26 February 2016). The note is expected to assist the Bureau and the Working Group of the Parties in their deliberations on the future work in the area on access to justice.

Introduction

1. The effective implementation of the third pillar of the Convention on access to justice continues to be an important area of work for Parties. Although legal frameworks for judicial and administrative review in environmental matters vary among Parties, sharing experiences, learning from good practices and developing guidelines on issues of common interest could support implementation of this pillar.
2. There are a number of challenges identified through the 2014 national implementation reports, Compliance Committee findings, Parties' case-law related to the Convention and analytical work undertaken by the Task Force. Concerns identified relate to uncertainties of legal frameworks with regard to standing and the scope of review, financial barriers to access to justice, lack of timeliness in review procedures and effective remedies, insufficient awareness of the public and legal professionals about the Convention, as well as deficiencies in case statistics.
3. To further improve access to justice, the Convention's Strategic Plan 2015-2020 adopted through decision V/5 by the Meeting of the Parties to the Convention at its fifth session (30 June- 1 July 2014)² identifies the actions to be taken at the national and international level in respect of the following objectives: to ensure timely and effective access to administrative or judicial review procedures for members of the public, to enable them to challenge acts and omissions that contravene provisions of national environmental law, to undertake efforts to reduce and eliminate financial and other barriers that may prevent access to such review procedures and establish assistance mechanisms to that end. Furthermore, the Strategic Plan also highlights actions aimed at making judges, public prosecutors and other legal professionals familiar with the provisions of the Convention and to set the Convention as an internationally recognized standard, thereby putting

¹ This document was not formally edited.

² See document ECE/MP.PP/2014/2/Add.1 available from http://www.unece.org/env/pp/aarhus/mop5_docs.html#/

Principle 10 of the Rio Declaration into practice. Efforts should also be undertaken in order to achieve synergies between the Convention and other international environmental and human rights agreements.

4. Through decision V/3 adopted at the same session³, Governments were 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).

5. Advancing the implementation of the Convention's third pillar will contribute to the enforcement of the environmental rule of law⁴ and achieving the relevant goals and targets of the 2030 Agenda for Sustainable Development. In particular, target 16.3 of the Sustainable Development Goals calls for promoting the rule of law at the national and international levels and ensuring equal access to justice for all.

6. To address these challenges and share solutions, the Task Force provides 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.

Key outcomes of the Task Force's work done so far

7. Pursuant to decision V/3, the Task Force is working to address a number of issues and identify priorities and follow-up actions regarding the following subjects:

- (a) The scope of review;
- (b) Costs and legal aid;
- (c) Remedies, including in cases of environmental damage;
- (d) Timeliness and other elements which impact upon the effectiveness of review procedures;
- (e) Protection against persecution and harassment.

8. The Task Force has used a variety of formats to prepare and share its outputs such as background documents, reports, analytical studies, statements and presentations with good practices and challenges, as well as the jurisprudence database.

9. The Task Force has also taken stock of multi-stakeholder dialogues and capacity-building initiatives aiming to remove barriers to access to justice. It also has contributed to these initiatives through sharing experiences, analytical work and substantive input and participating in various meetings – e.g. subregional workshops for judges and judicial training institutions – arranged by partner organizations.

10. According to the evaluation of the Convention's bodies that was undertaken in preparation of the fifth Meeting of the Parties to the Convention, the work of the Task Force on Access to Justice is widely appreciated as being an important means for awareness raising, exchange of experiences and information dissemination among the Parties.⁵

³ See document ECE/MP.PP/2014/2/Add.1 available from http://www.unece.org/env/pp/aarhus/mop5_docs.html#/

⁴ Officially recognized by the UNEP Governing Council and Global Ministerial Environment Forum through decision 27/9 on Advancing Justice, Governance and Law for Environmental Sustainability available from <http://www.unep.org/delc/worldcongress/TheWorldCongress/tabid/55695/Default.aspx>

⁵ Evaluation of the current functioning and implementation of the Convention (Document ECE/MP.PP/WG.1/2013/8) available from <http://www.unece.org/env/pp/aarhus/wgp16.html#/> (under item 8 (b) i , paras 50-56).

Suggested priority issues for the next intersessional period

11. The Task Force is given a broad mandate covering key elements of access to justice. Such a mandate enables us to prioritize the work on those key issues that have been identified at the different meetings of the Convention. However, future work might benefit from even more focused discussions on overcoming barriers to access to justice. In order to make the procedure and the decision adopted by the Parties and stakeholders to the Convention transparent, such prioritization should preferably be suggested by the Task Force after an open discussion at its next meeting in June 2016.

12. For example, there are some specific issues that have gained attention in recent years, such as access to justice in information cases (Article 9.1 of the Convention) and lack of possibilities for the members of the public to challenge acts or omissions that contravene permit requirements or laws relating to the environment (Article 9.2 and 9.3 of the Convention).

13. Another focus area may be to continue working on sharing good practices and suggesting solutions for overcoming financial barriers to access to justice, including, for example, developing guidelines on access to legal aid in environmental cases and the establishment of financial assistance mechanisms.

14. Obviously, the Task Force may furthermore continue to promote multi-stakeholder dialogues, e-justice initiatives, dissemination of information on access to review procedures and relevant case-law and collection of relevant statistics.

15. 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.

16. In addition to this, the future work under the Convention on access to justice could be advanced through further strengthening the cooperation and networking of members of judiciary, judicial institutions and other review bodies across the pan-European region. The Task Force may continue to facilitate such cooperation and networking to support the exchange of knowledge and experiences in improving effectiveness of justice in environmental matters between countries from different subregions (e.g. Europe, the Caucasus and Central Asia). This initiative might be regarded as a regional contribution to the global judicial forum serviced by UNEP.

17. The networking modalities could include meetings (back-to-back to the Task Force/Working Group of the Parties); exchange of information through a digital platform; webinars and other capacity-building events supported by partner organizations at the regional, sub-regional and national levels. A number of partner organisations, e.g. UNEP, OSCE and REC/CEE, have expressed their support for this initiative and will play an important role in promoting such networking at subregional levels. Other relevant partner organizations are invited to cooperate on establishing the network. The cooperation with existing networks of other legal professionals should also be encouraged.

18. Finally, the Task Force may explore further possibilities to strengthen cooperation with relevant international forums dealing with access to justice, including UNEP, OHCHR, Council of Europe (including the Venice Commission and the European Commission for the Efficiency of Justice), as well as global and regional judiciary associations and forums.