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**MEETING OF THE PARTIES TO THE CONVENTION
ON THE PROTECTION AND USE OF TRANSBOUNDARY
WATERCOURSES AND INTERNATIONAL LAKES**

Second meeting,
The Hague, Netherlands, 23-25 March 2000
Item 5 (c) of the provisional agenda

**DRAFT GUIDELINES ON PUBLIC PARTICIPATION
IN WATER MANAGEMENT */**

Outcome of the joint UN/ECE-UNEP project with the Netherlands
as lead country

1. These draft guidelines are intended to assist Governments and joint bodies in the UN/ECE region and in other regions in the world in developing and implementing procedures to enhance public participation in water management. They are particularly intended to assist Governments and joint bodies in the UN/ECE region. The draft guidelines draw on the experience of experts from Governments, joint bodies and NGOs from the pan-European region.

*/ This document has not been formally edited.

2. Under the overall guidance by Mr. W. Kakebeeke (project leader, Netherlands), these guidelines were drafted by Ms. N. Bouman (consultant, Delft University of Technology, Netherlands) in consultation with a group of invited experts. Staff of the UN/ECE and UNEP/ROE secretariats assisted in the drafting of this document and provided secretariat services (see document MP.WAT/2000/5, annex II).

3. The views expressed in this document are those of the consultant and the other experts and do not necessarily reflect those of their organizations and institutions.

Draft decisions

4. In addition to the draft decisions set out in document MP.WAT/2000/4, the Meeting may wish:

(a) To examine the draft guidelines on public participation in water management (annex) together with the examples of involving the public into water management activities contained in document MP.WAT/2000/5/Add.1;

(b) Invite the delegation of ...[country] ... to take - under the auspices of the Working Group on Water Management - the lead in the finalization of the guidelines.

Annex

**DRAFT GUIDELINES ON PUBLIC PARTICIPATION
IN WATER MANAGEMENT**

Prepared by Ms. N. Bouman (consultant, Delft University of Technology)
in consultation with the group of invited experts
and with the assistance of the UN/ECE and UNEP/ROE secretariat

Introduction

1. Policy- and decision-making in water management on the basis of catchment areas 1/ are a matter of concern to both public authorities and the public 2/ at large. Public participation involves the rights of persons to take part in decision-making that affects them, and gives concrete benefits to decision-making. It does so through the guarantee of rights on access to information, public participation in decision-making and access to justice in environmental matters. This improves decision-making through greater information and enhances respect for decisions, and assists in the development of democracy, civil society, and the rule of law. Public participation contributes to the endeavours of public authorities to protect the environment, to learn about the concerns of the public, including the various users of the water resources, and to take due account of such concerns. Public participation in the field of water management should lead to an improvement in the quality and implementation of, and commitment to, decisions, as well as increased accountability, transparency and public awareness of water management issues. This in turn will help to achieve water management goals and improve the environment.

2. Principle 10 of the Rio Declaration on Environment and Development (United Nations Conference on Environment and Development, Rio de Janeiro, 1992) emphasizes that "[e]nvironmental issues are best handled with the participation of all concerned citizens, at the relevant level [...]".

3. Other widely recognized international policy documents emphasize the need for an adequate role of the public, including non-governmental organizations (NGOs), in environmental and water management. Examples are the Dublin Statement on Water and Sustainable Development (International Conference on Water and the Environment, Dublin, 1992), Agenda 21 (United Nations Conference on Environment and Development, Rio de Janeiro, 1992), the Noordwijk Political Statement and Action Plan (Ministerial Conference on Drinking-Water and Environmental Sanitation, Noordwijk, 1994) and the Guidelines on Access to Environmental Information and Public Participation in Environmental Decision-Making (Environment for Europe Conference, Sofia, 1995).

4. In the pan-European region, there are a number of international legal documents 3/ which are important for public participation in water management. The Convention on Access to Information, Public Participation in

Decision-Making and Access to Justice in Environmental Matters (Aarhus, 25 June 1998; Aarhus Convention) guarantees the rights of access to information, public participation in decision-making, and access to justice in environmental matters. The Convention on the Protection and Use of Transboundary Watercourses and International Lakes (Helsinki, 17 March 1992; UN/ECE Water Convention) and the Protocol on Water and Health to the 1992 Convention on the Protection and Use of Transboundary Watercourses and International Lakes (London, 17 June 1999; Protocol on Water and Health) form a legal framework for the pan-European region in the field of water management and the protection of human health and safety. The UN/ECE Water Convention covers, among other things, public information, while the Protocol stipulates broader rights on public information and public participation. In addition, the Convention on Environmental Impact Assessment in a Transboundary Context (Espoo, 25 February 1991; Espoo Convention) and the Convention on the Transboundary Effects of Industrial Accidents (Helsinki, 17 March 1992) are relevant for the management of transboundary watercourses and international lakes in the pan-European region as both Conventions include provisions on public information and public participation.

5. As concerns transboundary waters, article 3, paragraph 7 of the Aarhus Convention is relevant which provides that "[e]ach Party shall promote the application of the principles of this Convention in international environmental decision-making processes and within the framework of international organizations in matters relating to the environment". In addition, article 6, paragraph 5(b), of the Protocol on Water and Health is relevant. It stipulates that in the development of water management plans - including plans to be drawn up in a transboundary context - the Parties to the Protocol "shall make appropriate practical and/or other provisions for public participation, within a transparent and fair framework, and shall ensure that due account is taken of the outcome of the public participation".

6. Furthermore, the Espoo Convention provides that "[t]he Party of origin shall provide [...] an opportunity to the public in the areas likely to be affected to participate in relevant environmental impact assessment procedures regarding proposed activities and shall ensure that the opportunity provided to the public of the affected Party is equivalent to that provided to the public of the Party of origin" (article 2, paragraph 6). It also provides that "[t]he concerned Parties shall ensure that the public of the affected Party in the areas likely to be affected be informed of, and be provided with possibilities for making comments or objections on, the proposed activity, and for the transmittal of these comments or objections to the competent authority of the Party of origin, either directly to this authority or, where appropriate, through the Party of origin" (article 3, paragraph 1 (8)).

7. It follows from the above, that these draft guidelines are intended to assist Governments and joint bodies 4/ throughout the world in developing and implementing procedures to enhance public participation in water management. They are particularly intended to assist Governments and joint bodies in the UN/ECE region. The draft guidelines draw on the experience of experts from Governments, joint bodies and NGOs from the pan-European region.

I. GENERAL RECOMMENDATIONS

8. Public participation in the field of water management should take place in a manner that takes full account of the rights and responsibilities of the public and the public authorities.

9. At the national level, States are encouraged to guarantee legal rights for the public on access to information, public participation in decision-making and access to justice in environmental matters, so that the public may enjoy these rights during decision-making processes relating to water management. For that purpose, States should adapt their national legal systems, as necessary.

10. At the international level, States should further cooperate, as appropriate, with a view to adapting international instruments accordingly.

11. It is important that the public has access, at an early stage, to all relevant information, and that the public becomes involved in decision-making on water management as early as possible, while all options are still open, in order to provide for effective public participation.

12. Access to information is a prerequisite for public participation. States and joint bodies are encouraged to ensure that access to information on transboundary water management and other environmental information is provided to all members of the public, within and beyond international borders, without having to state an interest.

13. To provide for effective access to information, it is important that States guarantee the right to information through adequate legislation. States are encouraged to provide that public authorities should make information available to the public.

14. Public participation is important for the protection and sustainable use of catchment areas. It may contribute to resolving problems of water pollution and problems of water sharing and distribution among riparian States and interested sectors of water use.

15. When taking decisions regarding water management, States should ensure that the outcomes of public participation are properly taken into account by public authorities and joint bodies.

II. THE PAN-EUROPEAN REGION

16. The secretariat of the UN/ECE Water Convention should play an important role in the dissemination of information and relevant agreements about rivers and lakes in the pan-European region. For that purpose, use should be made of electronic means of information dissemination.

III. THE CONTEXT OF TRANSBOUNDARY WATERS

If not specifically stated, the following recommendations are addressed to riparian States bordering the same transboundary waters.

Access to information

17. Where the public interest is served by the disclosure of information contained in working documents (documents in the course of completion) and comments thereon, riparian States and joint bodies should consider granting the public access to these documents.

18. Riparian States and joint bodies are encouraged to publish specific information or documents on transboundary waters. The following information should be actively disseminated:

- (a) Treaties, protocols, and rules of procedure;
- (b) Plans and programmes.

19. Riparian States and joint bodies should grant access to the following information covering a wide spectrum:

- (a) Conditions of the transboundary waters and results of monitoring thereof, including floods and ice drifts, as well as transboundary impact;
- (b) Measures taken to prevent, control or reduce transboundary impact, including water saving measures, and assessment of the effectiveness of these measures;
- (c) Ecological restoration projects;
- (d) Measures taken in the field of water-quantity management, including flood management, and the effectiveness of those measures;
- (e) Water-quality objectives, and results of checking compliance with the water-quality objectives;
- (f) Permits issued and the conditions to be met;
- (g) Results of water effluent sampling;
- (h) Results of checking compliance with permit conditions;
- (i) Drafts of plans and programmes, including comments by NGOs;
- (j) Lay-persons' guides to these documents.

20. Riparian States and joint bodies should consider granting access to meeting documents, including:

(a) Agendas of meetings of the joint body and its subsidiary organs, if any;

(b) Minutes of such meetings;

(c) Drafts of treaties, protocols, rules of procedure - including comments from NGOs - relevant for the area of application of the UN/ECE Water Convention or for specific transboundary waters;

(d) Other documents to be discussed.

21. Wherever practicable, the information should be available and effectively accessible for inspection free of charge. This could be done among others through the establishment of documentation centres, libraries, databases and Web-sites of, for example, the secretariat of the joint body.

22. As one of the means to inform the public, electronic forms of communication should be used. This is a valuable tool, especially in an international context, to make information accessible.

Public participation

23. States and joint bodies should promote public participation in decision making on environmental matters at all levels of decision making, including the level of transboundary catchment areas. Therefore, riparian States should develop - through joint bodies - ways and means to enhance public participation at the transboundary level. This should include public participation in environmental impact assessment procedures in a transboundary context following the principles and approaches of the Espoo Convention.

24. Riparian States and joint bodies should provide for the participation of NGOs as non-voting participants in meetings of joint bodies. They should also consider NGO participation in meetings of subsidiary organs of joint bodies. They should encourage NGOs to organize themselves for effective participation in such meetings.

25. Conditions for inviting NGOs to participate as observers in meetings of a joint body and its subsidiary organs must be based on transparent and reasonable criteria, which should be clear to the public.

26. Riparian States and joint bodies should establish procedures so that the public can have an oversight role in the conduct of transboundary cooperation to protect and use transboundary waters and their catchment areas including the fulfilment of obligations arising from bilateral and multilateral agreements.

27. The development of international documents, plans and programmes for specific catchment areas should be open to public participation, including programmes for monitoring the conditions of transboundary waters.

28. Riparian States are encouraged to provide for public participation, including NGOs, in the preparation and development of international water agreements. NGOs could be invited to participate in intergovernmental negotiation meetings. They could be requested to comment on draft texts. Due account could be taken of such comments.

29. Joint bodies should open up their work for the public, including NGOs, so that the public and the joint bodies can work as partners in decision making and implementation.

30. Therefore, the joint bodies should have the opportunity to receive and consider information from the public. To this end, the secretariat of a joint body should play a crucial role in receiving and handling information and transmitting it to the plenary or an appropriate subsidiary organ of the joint body. In addition, the public should be given the opportunity to submit inquiries in writing to the joint body, in order to oversee the work of the joint body and to establish an open dialogue.

31. Joint bodies - or riparian States jointly - should develop a public communication strategy and establish a focal point for liaison with non-governmental entities regarding specific transboundary catchment areas. Such a communication strategy should include the access to information systems, allow to compare data from different riparian countries, and pay attention to multimedia use.

32. Riparian States should jointly provide for public participation in the preparation and implementation of decisions on the protection and use of their transboundary waters particularly on such issues as:

(a) Development of harmonized policies, programmes and strategies covering the relevant catchment areas;

(b) Measures to prevent, control and reduce transboundary impact, including water saving measures;

(c) Ecological rehabilitation projects;

(d) Water-quantity management;

(e) Flood protection;

(f) Policies to reduce inputs of nutrients and hazardous substances from industrial and municipal sources;

(g) Policies to reduce inputs of nutrients and hazardous substances from non-point sources, including those in agriculture;

- (h) Emission standards for discharges from point sources into surface waters;
- (i) Developing water-quality objectives;
- (j) Environmental impact assessment and other means of assessment;
- (k) Specific measures to prevent the pollution of groundwaters;
- (l) Licensing of waste-water discharges, and monitoring and control of authorized discharges;
- (m) Contingency planning.

33. Riparian States and joint bodies should consider the role which the public should have in the process of monitoring compliance with obligations under international water agreements.

IV. THE NATIONAL CONTEXT

In as far as Governments have not yet ratified, accepted, approved or acceded to the Aarhus Convention, the following is recommended:

Access to information

34. To provide for effective access to information, it is important that States guarantee the right to information through adequate legislation. States should ensure that public authorities make information available to the public. Thus, all information relevant to the protection and sustainable use of waters, and other environmental information, should be made available to the public, unless it falls within a finite list of exempt categories.

35. As far as national legislation contains restrictions on access to environmental information, such exemptions should be clearly defined and construed narrowly, taking into account the public interest served by the disclosure and taking into account whether the information relates to emissions into the environment.

36. It is important that States guarantee the right of any natural or legal person to request information on water management issues without having to show an interest, and on a non-discriminatory basis. A request for information on water management issues should not be refused.

37. The public should be actively informed on specific occasions, such as (threat of) flooding, water pollution due to accidents, water scarcity, groundwater depletion, if there is a danger to human health and safety.

38. Environmental impact assessment is an important tool to be considered in the management of catchment areas. Adequate procedures for public information and public participation should be drawn up.

39. When informing the public, use can be made of the media, including electronic forms of communication.

Public participation in decision-making

40. States should provide for effective public participation rights in their national legal systems.

41. Public participation in the preparation of plans, programmes and policies relating to water management at different levels of Government should be ensured through the national legal system.

42. The public should be informed about, and involved in, standard setting (e.g. minimum quality standards for waste water, emission standards).

43. The procedures for the granting of permits (e.g. groundwater withdrawal, discharge of waste water) should provide for significant public information and public participation.

44. States should provide for public participation procedures concerning decisions on specific activities (e.g. the construction of a dam) on a non-discriminatory basis.

45. States should consult the public when preparing their national positions to negotiate international agreements of relevance to transboundary waters.

46. It is vital to inform the public about the procedures for public participation. Education and training programmes for officials involved in managing public participation procedures should be organized to promote public awareness, and to teach the members of the public how to use public participation procedures.

47. States should carry out capacity building measures to improve public participation for water management.

Access to justice

48. States should guarantee the right of the public, including NGOs, to seek judicial or administrative review, to challenge the acts and omissions of public authorities and private persons in water management and the protection of waters, and to invoke the right to compensation for damage caused by an unlawful act. Such legislation should include rules on liability in appropriate cases.

49. It is important to make the public aware of the possibilities to invoke their rights in court.

50. To minimize barriers to access to justice, the adoption of mechanisms on legal and financial assistance for citizens can be considered.

51. The capacity should be built to make the right of access to justice effective, including the training of judges and attorneys.

52. Effective public access to justice in the field covered by these draft guidelines will contribute to improved compliance with the relevant legislation. States should ensure effective access to justice in the field covered by these draft guidelines to improve compliance with the relevant legislation.

Notes

1/ In the draft guidelines, the terminology of the Protocol on Water and Health is used. Article 5 on principles and approaches states: "Water resources should, as far as possible, be managed in an integrated manner on the basis of catchment areas, with the aims of linking social and economic development to the protection of natural ecosystems, and of relating water resource management to regulatory measures relating to other environmental mediums. Such an integrated approach should apply across the whole of a catchment area, whether transboundary or not, including its associated coastal waters, the whole of a groundwater aquifer or the relevant parts of such a catchment area or groundwater aquifer.

2/ "The public" means one or more natural or legal persons, and, in accordance with national legislation or practice, their associations, organizations or groups (Aarhus Convention, art. 2 par. 4).

3/ Access to information and public participation is, for example, a topic of directives already drawn up and/or adopted by the European Union.

4/ "Joint body" means any bilateral or multilateral commission or other appropriate institutional arrangement for cooperation between the Riparian Parties (UN/ECE Water Convention, article 1, paragraph 5).