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Public Participation in Decision-making and
Access to Justice in Environmental Matters

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(Item 8 of the provisional agenda)

**GLOBAL AND REGIONAL DEVELOPMENTS ON ISSUES
RELATED TO PRINCIPLE 10 OF THE RIO DECLARATION
ON ENVIRONMENT AND DEVELOPMENT^{*/}**

Prepared by the secretariat with the assistance of a consultant

1. The Rio Declaration was adopted at the United Nations Conference on Environment and Development (UNCED) in Rio de Janeiro, Brazil, in September 1992. Its principle 10 stipulates that:

Environmental issues are best handled with the participation of all concerned citizens, at the relevant level. At the national level, each individual shall have appropriate access to information concerning the environment that is held by public authorities, including information on hazardous materials and activities in their communities, and the opportunity to participate in decision-making processes. States shall facilitate and encourage public awareness and participation by making information widely available. Effective access to judicial and administrative proceedings, including redress and remedy, shall be provided.

^{*/} This document was submitted late to allow for consultation with intergovernmental organizations on recent international developments.

2. The Johannesburg Declaration on Sustainable Development and the Plan of Implementation recognize that “sustainable development requires...broad-based participation in policy formulation, decision-making and implementation at all levels”¹ and that States are to:

Ensure access, at the national level, to environmental information and judicial and administrative proceedings in environmental matters, as well as public participation in decision-making, so as to further principle 10 of the Rio Declaration on Environment and Development, taking into full account principles 5, 7 and 11 of the Declaration.²

3. A significant recent development regarding principle 10 has been decision 22/17 II B of the Governing Council of the United Nations Environment Programme (UNEP), adopted in 2003. In the decision, the Governing Council requests the Executive Director to determine, inter alia, if there is value in initiating a process for the preparation of global guidelines on the application of principle 10.

4. The Working Group of the Parties to the Aarhus Convention agreed that global and regional developments related to principle 10 of the Rio Declaration on Environment and Development was an important subject. It considered that an information paper providing an overview of developments on this topic would be useful and agreed to forward a draft decision on accession of non-UNECE member States to the Convention and advancement of the principles of the Convention in other regions and at the global level (draft decision II/9) for consideration and possible adoption by the Meeting of the Parties at its second meeting in May 2005.³

5. The present information paper has been prepared pursuant to the request of the Working Group of the Parties and is intended to provide background information in connection with the consideration by the Meeting of the Parties of draft decision II/9. The paper provides a brief review of recent global and regional developments regarding principle 10, focusing on initiatives commenced after the first meeting of the Parties in October 2002. It does not attempt to address activities at the national level. It first considers developments at the global level before looking at regional developments in Africa, the Americas, and Asia and the Pacific. It concludes with a brief analysis of these developments and a comment on the prospects for the realization of principle 10.

I. GLOBAL DEVELOPMENTS

6. Global developments regarding principle 10 have taken place in a variety of bodies, including United Nations organs, multilateral environmental agreements, international financial institutions and civil society groups. Initiatives and events involving the United Nations Economic Commission for Europe and the Aarhus Convention itself, UNEP, the Office of the United Nations High Commissioner for Human Rights, the United Nations Institute for Training and Research (UNITAR), the Office of the Secretary-General to the United Nations, the Global Environment Facility (GEF), the World Bank, the World Water Forum, the Cartagena Protocol, the Rotterdam Convention, the Stockholm Convention on Persistent Organic Pollutants, the World Conservation Union (IUCN), the Organisation for Economic

Co-operation and Development (OECD), the Access Initiative and the Partnership for Principle 10 are discussed below.

**A. United Nations Economic Commission for Europe (UNECE)
activities impacting at global level**

7. In accordance with decision I/12 (in particular activity area IX) of the Meeting of the Parties to the Aarhus Convention,⁴ the secretariat has continued its efforts, within available resources, to promote awareness of the Convention throughout the UNECE region and beyond. While these efforts, which also encompassed the Protocol on Pollutant Release and Transfer Registers (PRTRs) following its adoption in May 2003, have mainly been focused on the UNECE region, some activities have been aimed at supporting the implementation of principle 10 in other regions and globally through sharing the experience acquired with the Aarhus Convention.

8. At the twenty-second session of the UNEP Governing Council and at the Global Civil Society Forum, held in Nairobi in February 2003, the Aarhus Convention's secretariat participated and contributed to a side event on principle 10.

9. The secretariat organized a side event on environmental democracy during the first phase of the World Summit on the Information Society held in Geneva in December 2003.⁵

10. The secretariat has also contributed to events which, while not of themselves global, aimed at promoting principle 10 in other parts of the world, e.g. presentations at the Lisbon Forum 2002 on Sustainable Development and Human Rights, organized by the Council of Europe's North-South Centre with the participation of African and European countries,⁶ and conferences of the United Nations Economic Commission for Latin America and the Caribbean (ECLAC), the Economic and Social Commission for Asia and the Pacific (ESCAP) and the Economic Commission for Africa (ECA), in 2003 and 2004.

11. The Aarhus Convention's secretariat took part in a training workshop for public administrators and NGOs on applications and provisions of the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES), the Aarhus and Espoo Conventions, organized under the auspices of the Caspian Environment Programme in Tehran, Islamic Republic of Iran, in May 2003.

12. To further PRTR capacity-building and awareness of the Protocol on PRTRs internationally, the secretariat participated in the Conference of the Americas on PRTRs, held in Mexico City in April 2004, and in a workshop on PRTRs for countries of the Association of South-East Asian Nations, held in Penang, Malaysia, in August 2004. Both events were organized within the framework of the UNEP Chemicals Programme. The Aarhus Convention's secretariat also participates in the international PRTR Co-ordinating Group, which until January 2005 operated under the Inter-Organization Programme for the Sound Management of Chemicals (IOMC).

13. The secretariat of the Aarhus Convention participated in the international Thematic Workshop on Synergies for Capacity Building under International Agreements Addressing Chemicals and Waste Management, organized by UNITAR in Geneva in March 2004, and called attention to potential synergies between implementation of the UNECE Protocol on PRTRs and the Stockholm Convention on Persistent Organic Pollutants (see para. 33 below).

14. The secretariat has also made efforts to establish links between the Convention and the Office of the United Nations High Commissioner on Human Rights, having met with both the present and previous Special Rapporteurs on toxic waste and participated in side events at the annual sessions of the Commission on Human Rights in 2003 and 2004.

15. In June 2004, the secretariat participated in an international expert meeting jointly organized by the United Nations University Institute of Advanced Studies (UNU-IAS) and the International Institute for Applied Systems Analysis (IIASA) on 'Engaging the Disenfranchised: Developing Countries and Civil Society in International Governance for Sustainable Development'. The meeting explored the obstacles faced by developing country delegates and a variety of non-State actors, including NGOs, transnational civil society coalitions, protesters, scientists, indigenous peoples and business groups, in governance for sustainable development.⁷

16. In accordance with decision I/10 of the Meeting of the Parties to develop a clearing-house mechanism aimed at assisting the effective implementation of the Convention,⁸ the secretariat launched the Aarhus Clearinghouse for Environmental Democracy in July 2004. The clearing house provides a forum for the collection, dissemination and exchange of information on laws, policies and good practices relevant to the rights of public access to information, public participation in environmental decision-making and public access to justice on environmental issues.⁹ In addition to information related to the Aarhus Convention, the clearing house also contains other information relevant to the implementation of principle 10 globally, including information on the development of pollutant release and transfer registers.

B. United Nations Environment Programme

17. The current ten-year work programme of UNEP in the area of environmental law, known as Montevideo Programme III, includes a programme area on public participation and access to information.¹⁰ Its objective is to improve the quality of decision-making in environmental matters through increased transparency, access to information and public participation. The activities related to the implementation of principle 10 for the period 2000-2005 are set out below.

1. Legal studies

18. UNEP completed a study of various models of national legislation, policies and guidelines on access to information, public participation in decision-making and access to justice in Africa, Asia and Pacific, and Latin America and the Caribbean. In February 2002,

UNEP presented a report on international legal instruments reflecting principle 10 to the Governing Council/Global Ministerial Environment Forum at its seventh special session.¹¹

2. Engaging civil society in UNEP activities

19. In February 2003, UNEP presented a “Strategy Paper on Enhancing Civil Society Engagement in UNEP” to the Governing Council at its twenty-second session.¹² UNEP organizes global civil society forums on various themes annually in conjunction with meetings of its Governing Council. In 2004, it also prepared a guidebook on engaging civil society and a booklet on women and the environment.¹³

3. Training

20. The global and regional training programmes on environmental law and policy of UNEP include training on procedures relating to access to environmental information, public participation in decision-making and access to justice in environmental matters. Its work programme has included building the capacity of environmental law civil society groups to pressure public administrations to enforce environmental law, to undertake public-interest litigation and to participate meaningfully in environmental management, including in environmental impact assessments.

4. Investigating the need and feasibility for new international instruments

21. UNEP is consulting Governments and civil society organizations in respect of Governing Council decision 22/17 (see para. 3 above). In June 2003, UNEP organized an African Experts Workshop on enhancing the application of principle 10.¹⁴ Twenty-two African countries and 10 NGOs provided input as to how UNEP might enhance principle 10’s application at the national level. Similar meetings were held in the Asia and Pacific, and Latin America and Caribbean regions. UNEP reports that those contacted so far are of the view that an international instrument in the form of global guidelines on principle 10 should be developed as a non-legally binding instrument (“soft law”). It notes, however, that resource mobilization for the consultations on the global guidelines has not been so successful.¹⁵

C. United Nations Commission on Human Rights

22. At its fifty-ninth session in 2003, the Commission on Human Rights adopted resolution 2003/71 on human rights and the environment as part of sustainable development.¹⁶ The resolution, amongst other things, reaffirms the Rio Declaration and encourages all efforts towards the implementation of its principles, in particular principle 10, in order to contribute, inter alia, to effective access to judicial and administrative proceedings, including redress and remedy. The resolution also requested the Secretary-General to submit to the Commission at its sixtieth session a report on the consideration being given by States to the possible relationship between the environment and human rights, taking into account the contributions that concerned

international organizations and bodies have made. This report was duly presented in 2004 at the sixtieth session.

23. Also at its sixtieth session, the Commission adopted decision 2004/119 on science and the environment.¹⁷ Recalling its resolution 2003/71, the Commission requested the High Commissioner for Human Rights, and invited UNEP, to continue to coordinate their efforts in capacity-building activities. It also requested the Secretary-General to update the report on the consideration being given to the relationship between the environment and human rights as part of sustainable development and decided to continue to consider this question at its sixty-first session.

D. United Nations Institute for Training and Research

24. UNITAR is an autonomous body set up to enhance United Nations effectiveness through appropriate training and research. Working with the Aarhus Convention's secretariat, UNITAR developed a guidance document entitled "Preparing a National Profile to Assess National Capacities to Implement the Aarhus Convention" aimed at assessing the infrastructure and the capacity needs of States in the areas covered by the Convention. In 2004, UNITAR initiated a new programme on environment and democracy to provide practical support to interested countries towards the implementation of principle 10.¹⁸ A training module and curriculum to strengthen the skills of public administrators in the development of public involvement plans are in the early stages of development.

E. United Nations Secretary-General's Panel of Eminent Persons on Civil Society

25. In February 2003, the Secretary-General appointed a panel of eminent persons to review the relationship between the United Nations and civil society. The Panel was chaired by Mr. Fernando Henrique Cardoso, former president of Brazil, with eleven other international experts. In June 2004, the Panel submitted its report, including 30 proposals for future action.¹⁹ In September 2004, the Secretary-General presented a report of his own of this topic.²⁰ The Secretary-General held that the Panel had made a compelling case for the United Nations to become a more outward-looking organization and for the need to "connect the global with the local." He selected a number of the Panel's recommendations for further comment and made some specific suggestions to the General Assembly regarding their implementation. These included actions to increase the participation of NGOs in intergovernmental bodies, amend the accreditation process, improve the involvement of NGOs from developing countries and strengthen the institutional capacity of the United Nations for NGO engagement.

F. Global Environment Facility

26. The Global Environment Facility (GEF), established in 1991, helps developing countries fund projects and programmes that protect the global environment. The Instrument for the Establishment of the Restructured Global Environment Facility was formally adopted by the

three implementing agencies of GEF: the United Nations Development Programme (UNDP), UNEP and the World Bank in 1994, and was readopted as amended at the Second GEF Assembly held in Beijing, in October 2002.²¹ At present, 176 countries participate in GEF under this Instrument.

27. The role of civil society organizations in the GEF implementation has evolved since its early years and is particularly strong in transboundary water projects. Fifteen regional NGO focal points serve as a voluntary network of NGOs that organize outreach to the NGO community, GEF-NGO consultations and the participation of NGOs at GEF Council meetings.²² More than 60 regional and global NGO networks are involved in the design and implementation of GEF-funded transboundary water projects. For example, NGOs from 13 countries and organized through the Danube Environmental Forum, with the support of the Regional Environmental Center for Central and Eastern Europe, participated in the negotiation of the Convention on Cooperation for the Protection and Sustainable Use of the Danube River and the development of its Strategic Action Plan 1995-2005, and continue to participate in the implementation of the GEF/UNDP Danube Regional Project.²³ The Project's central partnership is with the International Commission for the Protection of the Danube River, the first international river basin organization to undertake a public participation strategy, commencing with a workshop in Bratislava in April 2003.²⁴

G. The World Bank – Civil Society Joint Facilitation Committee

28. In October 2003, the first meeting of the Joint Facilitation Committee (JFC), a working group between the World Bank and civil society, was held. JFC is an expansion of the former World Bank NGO Working Group and aims to explore transparent and effective mechanisms for dialogue and engagement between civil society and the World Bank at the global level. At the meeting, the World Bank presented a paper entitled "Issues and Options for Improving Engagement Between the World Bank and Civil Society Organizations"²⁵ analysing the state of World Bank – civil society relations and an 18-month work plan was agreed. This included an independent study by civil society of World Bank – civil society relations and a global civil society policy forum to be held in Washington DC in April 2005.

H. World Water Forum

29. The third World Water Forum was held in Japan in March 2003 under the three principles of "open to all," "created through participation by all," and "translating visions into concrete actions and commitments."²⁶ The Forum brought together more than 24,000 stakeholders from all regions and sectors. The Ministerial Declaration adopted at the Forum points out the importance of good governance with a stronger focus on household and neighbourhood community-based approaches. It also calls for the promotion of participation of all stakeholders and ensuring transparency and accountability in all actions.²⁷

I. Multilateral environmental agreements

30. Among the most significant recent vehicles for the promotion of principle 10 are the multilateral environmental agreements (MEAs) dealing with biosafety and chemicals management. These MEAs incorporate significant public information, participation or consultation procedures.

1. The Cartagena Protocol

31. The Cartagena Protocol on Biosafety to the Convention on Biological Diversity entered into force in September 2003.²⁸ The Protocol seeks to protect biological diversity and human health from the potential risks posed by living modified organisms (LMOs) resulting from modern biotechnology. Its article 23 mandates Parties to promote and facilitate public awareness, education and access to information on LMOs, to consult the public in the LMO decision-making process and to make the results of such decisions available to the public. Article 22 requires Parties to cooperate in the development and/or strengthening of human resources and institutional capacities in biosafety. At its first meeting in February 2004, the Conference of the Parties adopted a decision setting out the role of different entities in supporting capacity-building, including, among the roles of intergovernmental organizations, “developing common principles for public participation and access to information: e.g. the work of the United Nations Economic Commission for Europe under the Aarhus Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters.”²⁹

2. The Rotterdam Convention

32. In February 2004, the Rotterdam Convention on the Prior Informed Consent Procedure for Certain Hazardous Chemicals and Pesticides in International Trade came into effect.³⁰ The Convention establishes a prior informed consent (PIC) procedure, which permits developing countries to prevent shipments of certain hazardous chemicals from entering their territory unless they have explicitly agreed to their import. Under article 15, paragraph 2, of the Convention, each Party is required to ensure, to the extent practicable, that the public has appropriate access to information on chemical handling and accident management and on alternatives that are safer for human health or the environment than the chemicals listed in the Convention’s annex III.

3. The Stockholm Convention

33. In May 2004, the Stockholm Convention on Persistent Organic Pollutants entered into force.³¹ The Stockholm Convention aims to protect human health and the environment from the harmful impact of persistent organic pollutants (POPs). Article 10 requires Parties to provide the public with all available information on POPs, to develop and implement educational and awareness programmes and promote and facilitate public participation in the implementation of the Convention. It further calls upon each Party to “give sympathetic consideration to developing mechanisms, such as pollutant release and transfer registers, for the collection and dissemination of information on estimates of the annual quantities of the chemicals” covered under that agreement (art. 10, para. 5).

J. World Conservation Union (IUCN)

34. The World Conservation Congress is the general assembly of IUCN members and takes place every three to four years. At the first World Conservation Congress, held in Montreal, Canada, in October 1996, a recommendation on public participation and right to know was adopted welcoming the decision to develop the Aarhus Convention and calling upon all States “to consider the need to develop a global Convention, within the framework of the United Nations, ensuring that democratic rights to information and participation are upheld throughout the world.”³² The third World Conservation Congress was held in Bangkok in November 2004.³³ Outputs from the 2004 Congress included several resolutions and recommendations relevant to furthering the implementation of principle 10.³⁴ One recommendation, inter alia, encouraged national governments to join the Partnership for Principle 10 (see paras. 37-38 below), asked countries to build comprehensive access systems and public participation systems, urged international institutions to internalize good-governance practices, appealed to Parties to the Aarhus Convention to accept independent assessments of access conducted by civil society organizations, and highlighted the importance of expert meetings and public participation processes at international forums in developing guidelines and building-up of a global consciousness towards the urgent implementation of principle 10.³⁵

K. Organisation for Economic Co-operation and Development

35. OECD has a public governance and management programme. Further to the OECD 1998 Recommendation on Environmental Information,³⁶ it includes the review of the availability of and access to environmental information, as well as the degree to which stakeholders and the public participate in environmental decision-making processes.³⁷ Until January 2005, OECD also served as secretariat of the IOMC PRTR Co-ordinating Group working to coordinate PRTR development and capacity building globally (see para. 12 above).

L. The Access Initiative

36. The Access Initiative was formed in 2000 as a global coalition of civil society groups dedicated to implementing principle 10.³⁸ It aims to close the gaps between international commitments to information and participation and national laws and practices. It has developed a toolkit for civil society organizations to assess their national laws and practices and to monitor government performance. To date, NGOs have used the toolkit to conduct pilot assessments in nine countries: Chile, Hungary, India, Indonesia, Mexico, South Africa, Thailand, Uganda and the United States. These assessments were published nationally and also compiled into a global report.³⁹ Civil society groups from a further 15 countries in Eastern Europe, Latin America, Central and Eastern Asia, and East Africa have since joined the Access Initiative and will also complete national assessments. Growth has been particularly strong in Latin America with groups from Bolivia, Brazil, Chile, Colombia, Costa Rica, Ecuador, El Salvador, Mexico, Peru and Venezuela. Europe now has 9 countries participating. They are Bulgaria, Estonia, Hungary, Kazakhstan, Latvia, Lithuania, Poland, Portugal and Ukraine. The Access Initiative hopes to add a further 20 countries in 2005 and reports that substantial interest has been expressed from civil

society groups in Cambodia, Cameroon, Malawi, Mozambique, Paraguay, Philippines, Viet Nam, Zambia and Zimbabwe, amongst others.

M. Partnership for Principle 10

37. The Partnership for Principle 10 (PP10) was launched by the Access Initiative at the World Summit on Sustainable Development in September 2002 as a “Type II” partnership.⁴⁰ PP10 is designed to further paragraph 128 of the World Summit’s Plan of Implementation⁴¹ and principle 10. Governments, international organizations and civil society organizations may become PP10 partners. Upon joining, PP10 partners agree to support the accelerated and enhanced implementation of principle 10 nationally and in their own policies and practice related to access to information, public participation and justice.

38. As of November 2004, the Governments of Chile, Hungary, Italy, Mexico, Sweden, Uganda, United Kingdom and the European Commission were PP10 partners. International organizations included IUCN, UNDP, UNEP and the World Bank. NGO partners came from Argentina, Chile, Hungary, Indonesia, Mexico, Portugal, South Africa, Thailand, Uganda, United Kingdom, United States of America and the European Union.

II. REGIONAL DEVELOPMENTS IN AFRICA

39. Developments in Africa regarding the implementation of principle 10 have occurred at both the pan-African level and in the subregions of North Africa, East Africa and Southern Africa. Pan-African activities include the African Convention on the Conservation of Nature and Natural Resources, the African Ministerial Conference on the Environment’s decision encouraging the development of a strategic approach to international chemicals management, and the New Partnership for Africa’s Development (NEPAD) Action Plan of the Environment Initiative. In North Africa, the Mediterranean Action Plan and the Convention for the Protection of the Mediterranean Sea against Pollution provide scope for the participation of civil society organizations in their proceedings and implementation. In both East Africa and Southern Africa, there have been civil society initiatives, led respectively by the African Centre for Technology Studies and the Calabash Project.

A. African Convention on the Conservation of Nature and Natural Resources

40. In July 2003, the African Convention on the Conservation of Nature and Natural Resources was adopted by the Assembly of the African Union. It is a thorough revision of the original 1968 African Convention on the Conservation of Nature and Natural Resources, known as the Algiers Convention. The preamble to the 2003 Convention states that the Parties are conscious of the need to contribute to the implementation of the Rio Declaration. Pursuant to its article XVI, the Parties are required to adopt legislative and regulatory measures necessary to ensure timely and appropriate dissemination of environmental information, access of the public to environmental information, participation of the public in decision-making with a potentially significant environmental impact, and access to justice in matters related to protection of environment and

natural resources. Under the Convention, persons affected by transboundary environmental harm have the same rights of access to administrative and judicial procedures as those where the incident occurred. The Convention will come into effect after the fifteenth instrument of ratification has been deposited. As of March 2005, 32 out of 53 countries had signed and 4 had ratified.⁴²

B. African Ministerial Conference on the Environment

41. At its tenth session in June 2004, the African Ministerial Conference on the Environment adopted a decision encouraging the development of a strategic approach to international chemicals management.⁴³ This decision reflects an earlier decision by the African Regional Meeting on the Development of a Strategic Approach to International Chemicals Management (SAICM) which encouraged multi-stakeholder participation in the development of the strategic approach and indicated their “full commitment to chemical safety by initiating the necessary process for effective implementation of key international chemical safety conventions, including [...] provisions of the Kiev Protocol to the Aarhus Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters dealing with pollutant release and transfer registers.”⁴⁴

C. NEPAD Action Plan of the Environment Initiative

42. In June 2003, the NEPAD Action Plan of the Environment Initiative was launched at a conference in Kampala, Uganda.⁴⁵ The Action Plan is to be implemented over ten years, requiring funding of over \$30 billion between 2004 and 2009.⁴⁶ During the development of the Action Plan, thematic workshops and a consultative meeting/workshop with civil society organizations were held. The Action Plan promotes the participation of civil society in the management of resources and the implementation of regional and global environmental conventions.

D. Mediterranean Action Plan

43. The Mediterranean Action Plan (MAP) is a regional cooperative effort involving 22 Contracting Parties to the Convention for the Protection of the Marine Environment and the Coastal Region of the Mediterranean (Barcelona Convention).⁴⁷ It strives to protect the environment and to foster sustainable development in the Mediterranean basin. It was adopted in Barcelona in 1975 under the auspices of UNEP and its legal framework comprises the Barcelona Convention, adopted in 1976, and six protocols covering specific aspects of environmental protection. At their thirteenth ordinary meeting, held in Catania, Italy, in November 2003, the Contracting Parties to the Barcelona Convention adopted a recommendation to promote public participation and access to information on environmental and sustainable development related issues in the region and in MAP activities. The recommendation included increasing media contact, updating MAP information tools, and commencing preparation of a strategic approach to information, public awareness and public participation. In 2004 MAP established a working group of Contracting Parties and NGO representatives to look at this issue and to prepare a

document or platform, including possibilities for a compliance mechanism, for consideration by the Parties.⁴⁸

E. African Centre for Technology Studies

44. The African Centre for Technology Studies, assisted by the United States Agency for International Development (USAID), has been working with the East African Community⁴⁹ to develop regional guidelines for environmental assessments of shared ecosystems in East Africa. The guidelines were approved by the East African Community in November 2004 and include an annex setting out public participation procedures and a methodology for the guidelines. The Centre is also working to support the East African Community to upgrade its current Memorandum of Understanding on environmental matters into a protocol, taking into account public participation issues.⁵⁰

F. Calabash Project

45. The Calabash Project “Improving Civil Society Participation in Environmental Assessment” was designed by the Southern African Institute for Environmental Assessment, based in Namibia, and is supported by the African Union and funded by the World Bank and the Canadian International Development Agency. Longer-term objectives include the development of a protocol or guidelines on public participation in the environmental assessment process for the Southern African Development Community.⁵¹

III. REGIONAL DEVELOPMENTS IN THE AMERICAS

46. The Economic Commission for Latin America and the Caribbean (ECLAC) has actively partnered with civil society organizations in their promotion of principle 10 in the Americas. Regional developments furthering the implementation of principle 10 have also occurred in the Organization of American States’s Office for Sustainable Development and Environment, Mercosur, various free trade agreements and civil society initiatives.

A. Economic Commission for Latin America and the Caribbean

47. In October 2002, following the World Summit on Sustainable Development, ECLAC promoted a dialogue between governments and civil society organizations on furthering the application of principle 10 regionally and nationally. One outcome of this dialogue was a recommendation for ECLAC to promote principle 10 in the region, taking advantage of its role as a regional intergovernmental organization. In October 2003, ECLAC held a workshop in Mexico City on principle 10 under its Environmental Management Learning Programme for Latin America and the Caribbean. The workshop was carried out jointly with the World Bank Institute and the Swedish International Development Agency. In June 2004, the mandate of ECLAC to promote sustainable development was reinforced and a sustainable development committee, which ECLAC hopes will assist the implementation of principle 10 in the region,

was created. A second workshop on principle 10 was held for Mercosur member States in October 2004.

B. Organization of American States

48. In April 2000, the Organization of American States (OAS) approved a non-binding regional instrument to promote environmental governance. The Inter-American Strategy for the Promotion of Public Participation in Decision-Making for Sustainable Development encourages Signatories to undertake legal and institutional reforms to promote public participation in sustainable development decision-making.⁵² The ISP consists of two documents, the policy framework and the recommendations for action. The policy framework contains the basic principles and objectives that States are encouraged to implement. It urges Signatories to improve communication mechanisms to share information; to establish legal and regulatory frameworks to ensure public access to information, decision-making and justice; to promote institutional structures, policies and procedures for expanding public participation; to advance education and training programmes; to dedicate funding for public participation in decision-making; and to promote forums for consultation. The recommendations for action build on the principles by providing specific actions that States may adopt to implement the policy framework. They include case studies, reports and programmes. The Strategy is considered to represent a landmark initiative in the Americas, not least for the inclusion by OAS of civil society in its development.⁵³

49. The OAS Office for Sustainable Development and Environment was created in the 1960s to support OAS member States in matters related to sustainable development and the environment.⁵⁴ Article 6 of the OAS Inter-American Democratic Charter declares that “it is the right and responsibility of all citizens to participate in decisions relating to their own development.”⁵⁵ The Office, in partnership with participating member States, UNEP, GEF and local representatives, is currently supporting the implementation of participatory and decentralized projects for the integrated management of water resources in transboundary river basins in the Americas.⁵⁶

C. Mercosur

50. In 1991, Mercosur was created by Argentina, Brazil, Paraguay and Uruguay as a common market and customs union. Bolivia and Chile became associate countries to Mercosur in 1996. In 1998, Mercosur commenced negotiation of a draft Mercosur environmental protocol, which was approved in 2001 as the Mercosur Framework Agreement on the Environment (Acuerdo Marco sobre Medio Ambiente del Mercosur). The Framework Agreement provides for upward harmonization of environmental management systems, increased cooperation over shared ecosystems and mechanisms for social participation. It entered into force in June 2004.⁵⁷ A round-table dialogue between governments and NGOs on building principle 10 into the Mercosur environmental agenda was organized by the Instituto de Derecho y Economía Ambiental of Paraguay and the Center for Human Rights and Environment of Argentina, both NGOs involved in Partnership for Principle 10, in October 2004.⁵⁸

D. Environmental side agreements to free trade agreements

51. Over the past decade, a number of free trade agreements in the Americas have been followed by environmental side agreements.⁵⁹ 2004 marked ten years since the North American Free Trade Agreement and its environmental side agreement, the North American Agreement on Environmental Cooperation, entered into force. The latter established the Commission for Environmental Cooperation to promote the enforcement of environmental law. Amongst other things, the Commission gives citizens and organizations the right to file a complaint if a Party is not enforcing its environmental laws. In 2004, Canada, the United States and Mexico commissioned a panel to undertake a ten-year review of the Commission.⁶⁰ The panel concluded that over the previous decade the Commission had added to environmental knowledge, strengthened the capacity of public institutions to enforce environmental law and promoted public participation and transparency.⁶¹

52. On 18 February 2005, an environmental side agreement to the Central America-Dominican Republic-United States Free Trade Agreement was signed. The side agreement provides for public participation and includes an independent citizen submission process.⁶²

E. Civil society initiatives

53. A regional network of NGOs, led by the Center for Human Rights and Environment, is working to promote the development of a binding hemispheric instrument on public participation in environmental matters. The network has called for OAS to establish a working group to identify and analyse the institutional structures and legal frameworks necessary to guarantee public participation and access to information in the region.⁶³ The next Summit of the Americas will be held in Argentina in November 2005.

54. In September 2003, a symposium of Latin American judges and prosecutors on environmental compliance and enforcement was organized by Fundación Ambiente y Recursos Naturales, an Argentinean NGO, with the supported of UNEP and the World Bank Institute. ECLAC participated in the workshop.

55. In September 2004, the Access Initiative for Latin America organized a workshop at ECLAC headquarters with participants from Argentina, Bolivia, Brazil, Costa Rica, Ecuador, El Salvador and Peru. In October 2004, a second workshop on principle 10 was held in Asuncion, in cooperation with the ECLAC Environmental Management Learning Programme. The workshop focused on countries of the Southern cone of America, and in particular Mercosur member States (see para. 50).⁶⁴

IV. REGIONAL DEVELOPMENTS IN ASIA AND THE PACIFIC

56. Over the past five years, the importance of public participation in environmental governance has been recognized in several Asian and Pacific forums. In 2000, the Ministerial

Conference on Environment and Development adopted the Regional Action Programme for Environmentally Sound and Sustainable Development, 2001-2005.⁶⁵ This called for appropriate mechanisms and guidelines to be developed to involve local communities and interest groups in decision-making processes and to share information with local people. In 2002, the Phnom Penh Regional Platform on Sustainable Development for Asia and the Pacific, adopted by the High-level Regional Meeting for the World Summit on Sustainable Development, recognized the vital roles of major groups in sustainable development and called on all governments in the region to recognize fully their crucial role and to promote their active participation in sustainable development.⁶⁶

57. Initiatives to implement principle 10 have been undertaken by the United Nations Economic and Social Commission for Asia and the Pacific (ESCAP), UNDP, the Association of Southeast Asian Nations (ASEAN) and the Asia-Europe Environmental Technology Centre.

A. United Nations Economic and Social Commission for Asia and the Pacific

58. In June 2002, ESCAP hosted the First International Conference on Public Participation of the Asia-Europe Meeting in Bangkok. The Conference was attended by participants from governmental agencies, local authorities, NGOs and the private sector around the Asia Pacific region. The Conference called upon ESCAP to prepare guidelines on access to information, public participation in decision-making and access to justice in environmental matters for governments and other public institutions in the region. The project was subsequently developed as a "Type II" partnership under the World Summit on Sustainable Development. The project envisaged that ESCAP, working closely with UNECE and regional governments and experts, would develop the guidelines and to submit them to the Ministerial Conference on Environment and Development in Asia and the Pacific in March 2005.⁶⁷ Although that does not appear to have happened, that Conference will consider a proposal in the draft regional implementation plan that advocates a participatory approach that fully involves civil society and NGOs in the planning and implementation, including decision-making processes.⁶⁸

B. United Nations Development Programme

59. In 2004, UNDP commenced the Regional Environmental Governance Programme for the Asia Pacific Region. The Programme aims to strengthen environmental governance in the region by promoting sustainable approaches to natural resources and environmental management at the local level and enhancing the opportunities for public participation in decision-making affecting natural resources use and livelihoods. The Programme is intended to finish in September 2005.⁶⁹

C. Association of Southeast Asian Nations

60. The Association of Southeast Asian Nations (ASEAN)⁷⁰ aims to ensure cooperative peace and shared prosperity amongst its members.⁷¹ Its 1999-2004 Plan of Action included enhancing public information and education in awareness of, and participation in, environmental and sustainable development issues.⁷²

D. Asia-Europe Meeting

61. The Asia-Europe Meeting (ASEM) is an interregional forum consisting of 10 Asian nations⁷³ and the EU member States, primarily focusing on political dialogue, security, economy, education and culture.⁷⁴ In 1998, ASEM set up the Asia-Europe Environmental Technology Centre to contribute to the protection and enhancement of environmental quality in its member countries, and the promotion of cooperation in environmental matters.⁷⁵ Between 2000 and 2003, the Centre coordinated a project on “Public Participation in Environmental Aspects in ASEM Countries” funded by the Finnish Government. The project was carried out by the Thailand Environmental Institute and the Finnish Environment Institute. Its outputs included the drafting of the “Good Practice Document,” a non-binding statement of principles intended to establish a foundation for advancing public participation in ASEM countries.

62. In October 2003, the “Good Practice Document” was presented to the second ASEM Environment Ministers Meeting in Italy. The Meeting stressed the importance of promoting principle 10 and agreed that exchanges of experience, dissemination of good practice and development of guidelines for public participation should be promoted. The Meeting considered that the “Good Practice Document” provided a good basis for further work on public participation, for example within the United Nations regional framework.⁷⁶

V. CONCLUSIONS

63. This overview leads to the conclusion that:

(a) Each major region has initiatives in place to further the implementation of principle 10;

(b) The major regions are at very different stages in their development of supranational instruments implementing principle 10. The Aarhus Convention is the only legally binding instrument in force that is designed to implement principle 10 in a comprehensive way. The OAS Inter-American Strategy for the Promotion of Public Participation in Decision-Making for Sustainable Development is a regional instrument to encourage the implementation of principle 10. Asia and the Pacific do not yet have a regional instrument, binding or non-binding. However, the ESCAP project to draft guidelines could mean that this situation will improve in the future. As yet it seems that there are no substantive initiatives under way to develop a pan-African instrument. At the subregional level, the project to support the East African Community to develop guidelines for environmental assessment of shared ecosystems and to upgrade the current Memorandum of Understanding into a protocol to the treaty establishing the East African Community shows promise. However, there are no initiatives from West Africa and only one involving the Middle East North African States.⁷⁷ Furthering the implementation of principle 10 may not have been as high a priority in these subregions;

(c) The majority of developments included in this paper enhance the public’s right to participate in environmental matters as a whole. However, there are also sectoral initiatives at the global level and in each of the major regions. Except for the African Ministerial Declaration on international chemicals management, the NEPAD Action Plan and the project on shared

ecosystems in East Africa, all sectoral activities featured in this paper involve the management of water resources.

64. In each region as well as globally, civil society is actively pursuing partnerships with governments to further the realization of principle 10. However, the results for the different regions show varying degrees of success. Understanding the specific challenges to the implementation of principle 10 may be a valuable tool to overcoming them. At the global level, UNEP reports that, although there is some support for the development of a global “soft instrument,” it is experiencing problems raising funds to continue its national consultations on the issue. Although a civil society campaign to develop a hemispheric instrument for the Americas is under way, it has yet to receive the widespread support of members of the Organization of American States. Similarly, in Asia and the Pacific, although the “Good Practice Document” was well received by ASEM ministers, there have as yet been no concrete steps to build upon it. It is not immediately clear whether the lack of progress at the pan-African level is due to a lack of resources, a lack of cohesion in the region, a lack of political will towards principle 10, a lack of capacity to build a campaign for furthering principle 10, or a combination of all of these. Further investigation of the challenges faced in each region may be warranted.

65. Draft decision II/9 envisages several ways to move forward towards the global realization of principle 10. One approach is to concentrate on developing instruments at the regional level. A variant of this approach would be to develop a regional instrument in a specific sector, building upon specific experiences with sector-specific participation strategies, such as those developed under the UNDP/GEF Danube Regional Project to support participatory river basin management. This may have the advantage that any resulting instrument would more accurately reflect regional needs and that resources and attention could be focused on the regions that most need it.

66. The second approach would be to commence the development of global guidelines as referred to in UNEP decision 22/17 II B. This should have the advantage of pulling regions not currently prioritizing principle 10, such as West Africa and the Middle East North African States, further towards its realization. Furthermore, although global provisions may often be weaker than those negotiated at a regional level, a global instrument would at least ensure that principle 10 applies to every individual, as the Rio Declaration intended it to do. A variant of this approach would be to explore the possibilities for a global instrument on a specific sector, water management being the most obvious candidate. Given the public participation initiatives regarding water already under way in the regions and the interest in participatory water management demonstrated at the 2003 World Water Forum, there may already be strong ground support for such a sectoral approach.

67. A final strategy would be to give encouragement to member States of the United Nations that are not already Parties to the Aarhus Convention to accede to the Convention. Promoting the accession of States pursuant to paragraph 3 of article 19 could increase the impact of the Convention and accelerate the implementation of principle 10 in countries outside the UNECE region, which might benefit from the experience already acquired under the Convention. While acceding States from outside the region would not have had the possibility to shape the Convention by participating in its negotiation, for some this disadvantage may be offset by the convenience of being able to accede to a ready-made instrument and to work together with a

group of countries that have collectively chosen to implement principle 10 in a legally binding manner.

¹ A/CONF.199/20.

² A/CONF.199/20.

³ ECE/MP.PP/WG.1/2005/15.

⁴ ECE/MP.PP/2/Add.13.

⁵ The second phase will be hosted by the Government of Tunisia in Tunis in November 2005.

⁶ http://www.coe.int/T/E/North-South_Centre/Resources_Centre/1_The_Interdependent/111.asp

⁷ <http://www.ias.unu.edu/research/iegdisenfranchise.cfm>. The UNU-IAS report of the meeting and its findings entitled "Promoting Enfranchisement: Toward inclusion and influence in sustainable development governance" is forthcoming.

⁸ ECE/MP.PP/2/Add. 11.

⁹ <http://aarhusclearinghouse.unece.org>.

¹⁰ From 1982, the environmental law activities of UNEP have been organized as a series of 10-year programmes for the development and periodic review of environmental law (Montevideo Programme I, Montevideo Programme II and since 2001 Montevideo Programme III). See http://www.unep.org/DPDL/Law/pdf/GC22_2_3_add2_Montevideo%20III.pdf. For implementation of the Montevideo Programme III for the period 2000-2005, UNEP/GC.23/INF/10.

¹¹ UNEP/GCSS.VII/4.

¹² <http://www.unep.org/Documents.Multilingual/Default.Print.asp?DocumentID=226&ArticleID=2955>.

¹³ Text of Women and the Environment available at

<http://www.unep.org/Documents.Multilingual/Default.asp?DocumentID=67&ArticleID=4488&l=en>.

¹⁴ The workshop was organized by the UNEP Division of Policy Development and Law (DPDL) in partnership with the Division of Early Warning and Assessment and the Division of Environmental Policy Implementation. The UNECE secretariat also participated.

¹⁵ UNEP/GC.23/INF/10, sect. G.

¹⁶ E/2003/23-E/CN.4/2003/135.

¹⁷ E/2004/23 – E/CN.4/2004/127.

¹⁸ The programme also provides support to countries implementing the Aarhus Convention. To this end, the secretariat and UNITAR have jointly launched pilot projects in Kyrgyzstan, Serbia and Montenegro, and Tajikistan to conduct national self-assessments of their implementation of the Aarhus Convention. See http://www.nicholas.duke.edu/duke_yale_fair/UNITAR.doc.

¹⁹ A/58/817 and Corr. 1.

²⁰ A/59/354.

²¹ The 2002 agreement went into effect in 2004. See http://thegef.org/GEF_Instrument3.pdf.

²² The Global Environment Facility as a Pioneering Institution. Global Environment Facility Working Paper No. 19 (October 2003). The GEF Council is the governing body of GEF.

²³ <http://www.de-forum.org/> and <http://www.rec.org/REC/Programs/PublicParticipation/DanubeRiverBasin/background.html>.

²⁴ <http://www.icpdr.org>.

²⁵ <http://sitesources.worldbank.org/CSO/Resources/CSPaper.pdf>.

²⁶ <http://www.world.water-forum3.com>.

²⁷ http://www.world.water-forum3.com/jp/mc/md_final.pdf.

²⁸ <http://www.biodiv.org/biosafety/protocol.asp>.

²⁹ UNEP/CBD/BS/COP-MOP/1/15, annex II.

³⁰ <http://www.pic.int>.

³¹ <http://www.pops.int>.

³² Resolution 1.43. See <http://www.iucn.org/wcc/resolutions/resrecen.pdf>.

³³ <http://www.iucn.org/congress/index.cfm>.

³⁴ For example, RESWCC3.012 Governance of Natural Resources for Conservation and Sustainable Development and RESWCC3.067 Strengthening stakeholder participation in fisheries management. Texts available at http://www.iucn.org/congress/members/submitted_motions.htm.

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- ³⁵ RECWCC3.081 Implementation of Principle 10 by building comprehensive good governance systems; text available at http://www.iucn.org/congress/members/submitted_motions.htm.
- ³⁶ Recommendation on Environmental Information 3 April 1998 - C(98)67/Final. The Recommendation pays regard to principle 10.
- ³⁷ http://www.oecd.org/about/0,2337,en_2649_34303_1_1_1_1_1,00.html.
- ³⁸ <http://www.accessinitiative.org>.
- ³⁹ Petkova, E. et al, Closing the Gap: Information, Participation, and Justice in Decision-making for the Environment, World Resources Institute, 2002, <http://www.accessinitiative.org/publications.html>.
- ⁴⁰ <http://www.pp10.org>.
- ⁴¹ Paragraph 128 seeks to ensure access, at the national level, to environmental information and judicial and administrative proceedings in environmental matters, as well as public participation in decision-making, so as to further principle 10 (A/CONF.199/20).
- ⁴² <http://www.africa-union.org/home/Welcome.htm>.
- ⁴³ "Abuja Statement on the Strategic Approach to International Chemicals Management," annex II of decision 5, Decisions of the 10th Regular Session of the African Ministerial Conference on the Environment. See and <http://www.chem.unep.ch/saicm/meeting/afreg/AbujareportE.doc> and <http://www.chem.unep.ch/saicm/meeting/afreg/meetingdocs/Decision5AMCEN10.pdf>.
- ⁴⁴ *ibid.*
- ⁴⁵ <http://www.environment-directory.org/nepad/content/about.asp>.
- ⁴⁶ http://www.unwire.org/UNWire/20031216/449_11346.asp.
- ⁴⁷ <http://www.unepmap.gr/home.asp>. The Contracting Parties to the Barcelona Convention are: Albania, Algeria, Bosnia and Herzegovina, Croatia, Cyprus, Egypt, France, Greece, Israel, Italy, Lebanon, Libyan Arab Jamahiriya, Malta, Monaco, Morocco, Serbia and Montenegro, Slovenia, Spain, Syrian Arab Republic, Tunisia, Turkey and the European Community.
- ⁴⁸ Communication from UNEP-MAP to the secretariat of the Aarhus Convention, 8 October 2004.
- ⁴⁹ Kenya, Uganda and the United Republic of Tanzania.
- ⁵⁰ Personal communication between the Centre and the Aarhus Convention's secretariat, 10 March 2005. See also http://www.acts.or.ke/BEG_TBNRM%20Project.htm.
- ⁵¹ <http://www.saiea.com>; Personal communications with Peter Croal and Peter Tarr, Southern African Institute for Environmental Assessment, 18 February 2005.
- ⁵² The Strategy was adopted by a resolution of the OAS Inter-American Council for Integral Development at its fifth regular meeting in April 2000 (CIDI/RES. 98 (V-O/00) Inter-American Strategy for the Promotion of Public Participation in Decision Making for Sustainable Development). See <http://www.oas.org/Assembly2001/assembly/eng/documents/3311.htm> and also <http://www.ispnet.org/ISPpubl/Publication.htm>.
- ⁵³ Carl E. Bruch and Roman Czebiniak, Globalizing Environmental Governance: Making the Leap From Regional Initiatives on Transparency, Participation, and Accountability in Environmental Matters (2002), http://www.inece.org/forumpublicaccess_pdf.pdf.
- ⁵⁴ <http://www.oas.org/usde/>.
- ⁵⁵ http://www.oas.org/charter/docs/resolution1_en_p4.htm.
- ⁵⁶ http://www.oas.org/usde/Working%20Documents/english/Consultations_in_basin_projects.pdf.
- ⁵⁷ http://www.ohchr.org/english/law/compliation_democracy/americas.htm. See also Cordonier Segger, M. and Borregaard, N., Sustainability and Hemispheric Integration: A look at the diversity of existing approaches, IISD and RIDES, 2001, <http://www.rides.cl/pdf/publicaciones/Comercio%20y%20DS/nbpublicacion9.pdf> and http://www.wto.org/english/tratop_e/tpr_e/s140-2_e.doc.
- ⁵⁸ Communication from ECLAC to the secretariat of Aarhus Convention, 20 January 2005.
- ⁵⁹ For example the Agreement on Environmental Cooperation Between the Government of Canada and the Government of the Republic of Costa Rica signed 23 April 2001, http://www.ec.gc.ca/international/costarica/agreement_e.htm#preamble.
- ⁶⁰ Ten Years of North American Environmental Cooperation: Report of the Ten-Year Review Committee to the Council of the Commission for Environmental Cooperation, 15 June 2004, <http://www.cec.org/trac/>.
- ⁶¹ *Ibid.*, page 48.
- ⁶² Personal communication from Jessica Troell, Environmental Law Institute, 18 February 2005.
- ⁶³ See Propuestas y recomendaciones de la sociedad civil para la OEA y sus Estados miembros, <http://www.cld.org.ec/asambleaoea/RECOMENDACIONES%20DEL%20FORO%20HEMISFERICO.doc>

⁶⁴ Communication from ECLAC to the secretariat of Aarhus Convention, 20 January 2005. The workshop was run back to back with the round-table dialogue between governments and NGOs on building principle 10 into the Mercosur environmental agenda. The round-table was organized by Instituto de Derecho y Economía Ambiental of Paraguay and Center for Human Rights and Environment of Argentina.

⁶⁵ <http://www.unescap.org/mced2000/rap2001-2005.pdf>, page 67.

⁶⁶ http://www.johannesburgsummit.org/html/prep_process/asiapacific.html.

⁶⁷ Fifth Ministerial Conference on Environment and Development in Asia and the Pacific, 24-29 March 2005 in Seoul, see <http://www.unescap.org/mced/>.

⁶⁸ Draft regional implementation plan for sustainable development in Asia and the Pacific, 2006-2010, paragraph 49, <http://www.unescap.org/mced/documents>.

⁶⁹ <http://www.capacity.undp.org/indexAction.cfm?module=Library&action=GetFile&DocumentID=4187>

⁷⁰ Brunei Darussalam, Cambodia, Indonesia, Lao People's Democratic Republic, Malaysia, Myanmar, Philippines, Singapore, Thailand and Viet Nam

⁷¹ <http://www.aseansec.org/64.htm>.

⁷² <http://www.aseansec.org/10382.htm>.

⁷³ Brunei Darussalam, China, Indonesia, Japan, Malaysia, Philippines, Republic of Korea, Singapore, Thailand and Viet Nam.

⁷⁴ <http://www.iias.nl/asem/index.html?http://www.iias.nl/asem/relatedm/aeetc.html>.

⁷⁵ <http://www.iias.nl/asem/index.html?http://www.iias.nl/asem/relatedm/aeetc.html>.

⁷⁶ http://www.iias.nl/asem/asem2003/ASEMEnMM2Chairmans_Summary.pdf.

⁷⁷ See the UNEP Mediterranean Action Plan discussed above.