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ECONOMIC COMMISSION FOR EUROPE

MEETING OF THE PARTIES TO THE
CONVENTION ON ACCESS TO INFORMATION,
PUBLIC PARTICIPATION IN DECISION-MAKING AND
ACCESS TO JUSTICE IN ENVIRONMENTAL MATTERS

Working Group of the Parties

Seventh meeting
Geneva, 2–4 May 2007
Item 5 of the provisional agenda
Public participation in international forums

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

Addendum

CHALLENGES

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

1. The purpose of this addendum is to synthesize the international forums' responses to the written questionnaire in respect of the following question:

What kind of challenges, if any, has your forum encountered with regard to access to information, public participation in decision-making and access to justice in environmental matters (for example, low involvement of civil society, or practical

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difficulties in managing public participation)? If appropriate, please provide a description underlining those experiences you think could be most useful to consider when reviewing the relevance and practicality of the Guidelines.

2. The addendum first reports on the general challenges identified by international forums. It next looks at the challenges identified regarding access to information, before noting the challenges identified in respect of public participation in decision-making. No challenges regarding access to justice were identified.

General challenges

Rules open to different interpretations

3. The UNFF secretariat, whose rules of procedure are governed by ECOSOC, notes that the rules and regulations of the United Nations regarding the participation of non-governmental actors can be interpreted in a broader or more restrictive manner depending on the individual member State's point of view on the matter. It comments that this has the potential either to enhance or to curtail the participation of major groups in official meetings.

Political will

4. NEFCO reports that low governmental interest in environmental issues, corruption, weakly developed institutional routines, legislation and enforcement present a challenge in some of its target countries.

5. UNESCAP's Environment and Sustainable Development Division remarks that access to information and public participation must be fully supported by governments. In its case, it will be necessary to consult with UNESCAP member governments (which, with the exception of the Central Asian and Caucasus states, have not acceded to the Aarhus Convention) to ensure the acceptability of expanded access.

6. The Caribbean Environment Programme's secretariat reports that there is a lack of a culture of using environmental data and information for decision-making in the Wider Caribbean Region. Decision-makers may have other economic and social priorities where linkages to environmental issues are not made. Also, the tourism-based economies of Small Island Developing States (SIDS) are extremely dependent on the state of the natural environment. The secretariat remarks that environmental information is thus often quite sensitive and dealing with data that governments consider too sensitive for public release or sharing at the regional level will continue to be a challenge.

Capacity-building

7. The UNFCCC secretariat remarks that climate change is an issue of such global significance that new organizations continue to join the process. The majority of these are newcomers to intergovernmental processes and need guidance on how to interact. The secretariat encourages capacity building for new organizations joining the process. It remarks that this task is best carried out by civil society organizations with the secretariat providing support and expert information on the process. The UNCCD secretariat remarks that the importance of capacity-building – institution-building, training and development of relevant local and national capacities – should not be underestimated in efforts to achieve education, public awareness and thus results-oriented solutions. The UNCCD secretariat adds that multilateral environmental agreements have a history of introducing innovative means and mechanisms, whether financial mechanisms or the transfer of resources or technology, to achieve their goals. The MAP secretariat remarks that there is a strong need for capacity building amongst different MAP partners, in particular those representing the Southern and Eastern part of the Mediterranean and that this needs to be addressed on a priority basis. The Sava Commission similarly considers capacity-building to be a significant challenge. The Caribbean Environment Programme's secretariat remarks that there is a need for capacity building activities that enable more effective demonstration of the value of the use of environmental data and information for improved decision-making.

Challenges regarding access to information

Funding

8. The SAICM secretariat remarks that budgetary constraints are a challenge for the further development of information clearing house services, which would facilitate access to information by all stakeholders. The MAP secretariat states that although MAP's publications have achieved a great deal regarding public access to information on the regional level there are still many challenges. Providing the necessary infrastructure and access to information takes time and requires important human and financial resources. The secretariat of the Espoo Convention reports that lack of funds means that the Russian version of its website is less extensive than the English version. The Sava Commission reports a lack of resources for the development of information and communication tools, such as its website and newsletters. UNESCAP's Environment and Sustainable Development Division remarks that funding is the chief constraint to maximising access to information, particularly because of high translation costs due to the multilingual nature of its region.

Technology

9. The UNCCD secretariat remarks that the gap between developed and developing countries concerning access to information and participation through new technological means and know-how constitutes a major stumbling block to allowing full participation of civil society in environmental matters. The secretariat of the Espoo Convention indicates that distribution of materials by email in Eastern Europe, Caucasus and Central Asia is sometimes restricted by

technical problems. If webcasting were easily available, the secretariat would propose to the Parties the webcasting of meetings of the Parties, the Working Group on EIA and, as appropriate, the Implementation Committee. The Baltic 21 secretariat notes that technology and limited human resources present a challenge to actively seeking out new information and disseminating it to the Baltic 21 network. OAS' Department of Sustainable Development notes that internet use is still not an everyday tool in many countries in the Latin American and Caribbean Region, particularly in small rural towns and indigenous communities and virtual consultation forums have not yet reached the level of participation expected.

Language

10. The Espoo Convention secretariat remarks that the Convention's website in English is more extensive than in Russian, partly because of limited funds. The Baltic 21 secretariat comments that language barriers are a challenge to the dissemination of environmental information.

Infrastructure

11. The Caribbean Environment Programme's secretariat notes that there is a lack of an appropriate infrastructure for data generation, analysis and dissemination in the Wider Caribbean Region. The Wider Caribbean Region is challenged by an overall lack of adequate baseline environmental data and information and inadequate mechanisms for data compilation, analysis, interpretation and dissemination. The secretariat comments that too often, environmental data is presented in a scientific format that does not generate much general interest unless presented in a sensational style and that it may be subject to misinterpretation if it is not presented in a scientifically accurate and objective manner. It considers that there is a need for improved mechanisms to effectively disseminate environmental information in a form that is appropriate and relevant to the needs of the general public.

Legislation

12. The Caribbean Environment Programme's secretariat also observes that environmental laws and regulations in its region are inadequate and there are poor enforcement frameworks. It adds that decisions on the sharing of information lie with governments, many of whom do not have freedom of access to information legislation. The ICWC similarly notes that improved legislation is required, although it does not specify in which area.

Challenges regarding public participation

Funding

13. Limited financial resources for funding public participation in forum processes are identified as a major challenge by a number of forums. The CBD secretariat notes that this is

particularly the case with NGOs and indigenous and local communities from developing countries and countries with economies in transition. This has led to the under-representation of NGOs from developing countries and countries with economies in transition in some meetings. At COP-7, the CBD decided to establish a voluntary funding mechanism to facilitate the participation of indigenous and local communities in meetings under the Convention, giving special priority to those from developing countries and countries with economies in transition and small island developing states. Funding for civil society involvement was also identified as a challenge by UNEP's Division of Early Warning and Assessment, the secretariats of the CSD, SAICM and MAP, the interim secretariat of the Tehran Convention, the Bureau of the Water Convention, the secretariats of the Espoo Convention, the "Environment for Europe" process, the Baltic 21, the Sava Commission, the ICWC's Scientific Information Center and UNESCAP.

14. The MAP secretariat comments that better consultations need to be carried out in order to have all MAP partners and other stakeholders involved. Since it is difficult to invite and financially support all partners to MAP meetings and events, cost effective means, such as consultation through the website and electronic tools has to be further investigated and better organised. The secretariat expects improvements in this direction once the MAP's new website is operational. The Bureau of the Water Convention remarks that the limited availability of funds means that only a limited number of NGOs can participate and many requests for financial support have to be rejected because of lack of funds. The Espoo Convention secretariat remarks that NGOs that are not provided with financial support may be unable to participate and that visa assistance is only provided to NGO representatives receiving financial assistance. The secretariat of the Sava Commission indicates that there is a lack of financial resources for technical and secretariat support of conferences, meetings and workshops; for building the capacity of the different organizations involved in the process; and for exchanges and field visits of experts and stakeholders. UNESCAP's Environment and Sustainable Development Division states that funding to ensure wide participation of civil society is the chief constraint to maximising public participation in its work as it relates to environmental issues. Due to the multilingual nature of the Asian and Pacific region, maximising participation incurs high interpretation and translation costs.

Representativeness

15. UNEP's Division of Early Warning and Assessment notes that there are a large number of non-governmental and civil society organizations operating in the broad area of environmental protection and sustainable development. It comments that large countries may have numerous environmental organizations with competing interests with the result that it is difficult to implement a formal nomination process that is representative of the various stakeholder interests.

16. The ITTO secretariat remarks that it is important to try to verify that groups or individuals invited to participate in forum processes actually represent an indicated interest group. It is also useful to rotate support for participation in meetings rather than to always support the same entities. The EBRD response remarks that it is often unclear whom NGOs "represent", and they are often focused on a few issues instead of the larger context. In the event that a country or sector strategy is revised, only a handful of people generally provide comments. Furthermore, while some NGOs prepare detailed reports on their expectations, there is not

significant input from a larger stakeholder group. The EBRD response notes that the general focus of NGOs on its work is with regard to environment, and more recently, a growing list of social issues, such as worker protection, human rights, and indigenous peoples. It considers that a wider range of NGOs is needed to balance the comments coming in from “the public” when these are often in fact comments from one group and focused solely on the environment.

17. The EBRD response reports that the majority of input it receives is from the international non-governmental community, and not from local groups. It comments that it is a challenge to identify the stakeholders actually affected by a project, and not just NGOs that put themselves forward to participate. Affected stakeholders may be reticent to participate, and may not be aware of processes, and so it is critical that adequate resources are spent on identifying them and agreeing a communication process by which they can provide comments.

18. UNESCAP’s Environment and Sustainable Development Division remarks that it is critical to ensure that issues brought to the table benefit from, and reflect the viewpoints of, a wide range of stakeholders, so that the practical limitations of participation at the international stage are mitigated.

Facilitating the participation of special interest groups

19. The UNESCO World Heritage Centre states that the biggest challenge is for access to decision making at the local, i.e. site, level. It states that transparency of processes is absolutely necessary to make people feel partners in site management. It observes that this principle may not be applied equally in all States party to the World Heritage Convention and some NGOs and civil society may feel excluded from decision-making processes in and around World Heritage properties.

20. The Bureau of the Water Convention indicates that the background paper prepared for the workshop on information management and public participation in transboundary water cooperation, held in St Petersburg on 8-10 June 2005, discusses specific challenges regarding public participation in transboundary water cooperation in EECCA countries, (available at http://www.unece.org/env/water/cwc/Info-pp/Backdoc_pp_e.pdf). Specific challenges identified include a lack of knowledge regarding participative practices for water management; inadequate or inconsistent legislation; limited public access to environmental information regarding water management; lack of public awareness of water management issues, programmes and legislation; insufficient capacity amongst NGOs and civil society, especially a lack of human and financial resources and specialised knowledge; documents only made accessible at the end of the decision-making process and failure to publish the results of public consultations; and barriers to access to justice, including high court costs, slow judicial procedures and the lack of positive established practice regarding access to justice in natural resource management.

21. The EEHC secretariat indicates that facilitating the participation of a special interest group, in its case the involvement of youth, can present challenges. It mentions that these challenges lie in establishing mechanisms to facilitate such participation and identifying the necessary funding at national and international levels.

Fluctuating or low civil society interest and awareness

22. Eleven forums identify fluctuating or low civil society interest and awareness either in their work or their processes as a challenge. The ITTO secretariat observes that the level of general public interest in its work and in tropical forests in general has fluctuated over the life of the organization, leading to quite different desires for and levels of public participation. The UNESCO Man and the Biosphere Programme states that biosphere reserves are increasingly recognized as sustainable development laboratories, and one of the main challenges for the World Network of Biosphere Reserves over the next decade, especially in Europe, is for biosphere reserves to become truly knowledge-sharing sites, so that scientific and practical knowledge and insights on sustainable development practice may be shared with a wider national and regional audience and with other regional networks.

23. The UNCTSD secretariat remarks on low involvement of civil society and private sector in the work of the Commission. The MAP secretariat reports that participation in MAP events, activities and processes is somewhat low and based mainly on funding by the secretariat. The Committee on Sustainable Energy and the Bureau of the Water Convention, the CEP and the Committee on Housing and Land Management each observe that it is a challenge to continue attracting the interest of civil society in their activities in order to benefit from their active participation. The ICWC's Scientific Information Center reports that a low activity level and poor capacities of civil society including NGOs have presented a challenge to a certain degree, and maintains that special training should be held in this respect. The Sava Commission's secretariat also refers to the capacity of stakeholders and actors involved in the process, remarking that there is a lack of knowledge about the problem and that stakeholders are not prepared to accept arguments from the other side to solve the problem.

24. AfDB's Sustainable Development Division reports that there is wide variation across countries regarding cooperation and consultation with stakeholders. For instance, in a number of countries, NGOs and civil societies are either non-existent or have limited influence with respect to the participatory dimensions of sustainable development.

High civil society interest

25. The UNFCCC secretariat indicates that its process attracts large numbers of organizations and participations. For example, COP 12 and CMP 2 (Nairobi, 2006) had 6000 participants while COP 11 and CMP 1 (Nairobi, 2005) had 10,000. The secretariat faces challenges channelling this interest to provide useful inputs to an intergovernmental meeting. The development of the constituency system has helped in managing large numbers to allow a representation of the different perspectives to provide input in a fair, transparent manner. The secretariat of the "Environment for Europe" process indicates that the major challenges it faces are mostly related to practical difficulties, such as the limited capacity of meeting rooms.

Disruptive civil society involvement

26. The IWC's secretariat states that the behaviour of a small number of NGOs in the margins of recent meetings has led the Commission to develop an NGO Code of Conduct, which was adopted by consensus at the 58th Annual Meeting in June 2006. Disruptive behaviour and/or failure to conform to the Code may result in suspension or withdrawal of accreditation. The secretariat goes on to say that while a number of NGOs have expressed an interest in being more involved in the work of the Commission (e.g. having speaking rights, taking part in working groups, preparing documents etc.), there is certainly no consensus support for this among member governments at present. No other forums report experiences of disruptive civil society involvement.

Implementation and evaluation

27. The secretariat of the UNESCO Man and the Biosphere Programme indicates that a key issue that it is currently looking at is how to assess the effectiveness and efficiency of participation and concertation approaches in biosphere reserves with regard to the conservation and sustainable use of biodiversity. It observes that biosphere reserves, some of which were created thirty years ago, are rich demonstration and study sites for monitoring changes over time and for understanding and predicting under which economic and socio-cultural conditions dialogue, communication and sharing information between various stakeholders will be sound bases for sustainable development and for biodiversity conservation. It has undertaken comparative studies on the costs of concertation (e.g. costs of information, communication, conflicts with some stakeholders, 'blocking' stakeholders, transaction costs) versus benefits on short and long-term scales.

28. The MAP secretariat reports that the efficiency of public participation on the regional level is difficult to assess.

29. The response from the European Commission in its capacity as a Party to the Cotonou Agreement notes a challenge regarding how to keep track of the recommendations of EIAs that have been carried out. The European Court of Auditors, in their recent report on the integration of the environment in development cooperation, made a number of observations in this respect (www.eca.europa.eu/audit_reports/special_reports/docs/2006/rs_06en.pdf)

30. AfDB's Sustainable Development Division remarks that expanding the consultation process beyond the preparation of projects to include the implementation and evaluation phases presents a challenge.

Time frames

31. The response from the European Commission in its capacity as a Party to the Cotonou Agreement remarks that there is usually limited time available for the preparation of Country Environmental Profiles (usually 4-6 weeks fieldwork), which limits the possibilities for constructively engaging with civil society on environmental issues.

32. AfDB's Sustainable Development Division notes that the timely provision of environmental information to beneficiaries at the national and local levels is a challenge.

Forum processes

33. The UNFCCC secretariat observes that as the Convention and its Kyoto Protocol are treaties among Parties, there are limitations to the involvement of the public in decision-making. The challenge is to enrich the negotiating process with input from civil society and to provide civil society with information to help create public momentum for action on climate change. The CSD secretariat refers to the need to enhance the connection between national major groups' implementing actors and national sustainable development focal points, including in the development of National Strategies for Sustainable Development. It also observes that the regional processes related to the CSD need to be aligned with the participatory nature of the CSD itself.

Coordination

(a) Divergent interests

34. The challenge of reconciling divergent interests is remarked upon by three forums. The NAFO secretariat observes that the Convention has to strike a balance in accommodating the conflicting interests of the different stakeholders in the fisheries sector and that it can be a challenge for the secretariat to serve the interests of the Contracting Parties, NGOs and the general public in the conservation of fishery resources. The Sava Commission's secretariat notes that its membership is four independent States with different political systems and legislation. It considers that this could potentially constrain public participation in the decision-making process, especially where trans-boundary cooperation between different Parties is essential for a successful resolution of a particular environmental problem. The interim secretariat of the Tehran Convention reports that regional NGOs showed considerable interest during negotiation of the Convention and its Protocols but their lack of internal coordination was a weak point.

(b) Differing expertise

35. The Sava Commission's secretariat also observes that participants in a process may have differing knowledge or expertise, for example technical matters, economics or social issues, and that the integration of skills is essential.

Legislation

36. The interim secretariat of the Tehran Convention states that, during the negotiations on the Convention and its Protocols, the absence of clear, transparent and regionally agreed rules on the participation and status of observers very often obstructed the aim of allowing the participation of relevant NGOs to the maximum extent possible. The EBRD response remarks

that even though its own policies might allow for participation on its projects, this does not provide capacity building in the country for appropriate legislation to secure stakeholder input.