



**Governing Council
of the United Nations
Environment Programme**

Distr.: General
29 October 2008

Original: English



**Twenty-fifth session of the Governing Council/
Global Ministerial Environment Forum**
Nairobi, 16–20 February 2009
Item 4 (a) of the provisional agenda*
Policy issues: state of the environment

**Fourth Programme for the Development and Periodic Review of
Environmental Law**

Report by the Executive Director

Addendum

**Draft guidelines for the development of national legislation on access
to information, public participation and access to justice in
environmental matters**

Summary

The present report is submitted to the Governing Council/Global Ministerial Environment Forum at its twenty-fifth session in accordance with the recommendations of the consultative meeting of government officials and experts to review and further develop draft guidelines for the development of national legislation on access to information, public participation and access to justice in environmental matters, held in Nairobi on 20 and 21 June 2008. The draft guidelines are submitted to the Council/Forum for its consideration with a view to their adoption.

* UNEP/GC.25/1.

I. Suggested action by the Council

1. The Governing Council may wish to consider the adoption of a decision along the following lines:

The Governing Council,

Recalling principle 10 of the Rio Declaration on Environment and Development,¹ the Malmö Ministerial Declaration,² and its decisions 20/4 of 4 February 1999, 20/6 of 5 February 1999, 21/24 of 9 February 2001 and 22/17 of 7 February 2003,

Recalling also the report of the Executive Director prepared in pursuance of decision 20/4 on the law and practice relating to access to information on the environment, public participation in processes leading to decision-making and access to judicial and administrative procedures relating to environmental matters, and the report on international instruments reflecting principle 10 of the Rio Declaration on Environment and Development, prepared in pursuance of decision 21/24, as presented to the Governing Council/Global Ministerial Environment Forum at its seventh special session,³

Taking note of the Plan of Implementation of the World Summit on Sustainable Development in particular paragraphs 162–167,⁴

Recognizing that access to environmental information enhances the transparency of environmental governance and that it is a prerequisite for effective public participation in environmental decision-making, that public participation in environmental decision-making generally improves decision-making and enhances its legitimacy, and that access to justice in environmental matters provides a means to permit affected parties to gain redress and to assist in the implementation and enforcement of legislation related to the environment,

Noting recent developments at the national, regional and international levels, including the tenth anniversary of the adoption of the United Nations Economic Commission for Europe Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters, in the application of principle 10 of the Rio Declaration on Environment and Development,

Noting with appreciation the outcomes of the high-level advisory meeting on environmental dispute avoidance and settlement, organized in partnership with the Permanent Court of Arbitration, in The Hague on 2 and 3 November 2006 and the work of, among others, the senior high-level experts and high-level judges involved in the development of the draft guidelines for the development of national legislation on access to information, public participation and access to justice in environmental matters,

Also noting with appreciation the outcomes of the consultative meeting of government officials and experts to review and further develop draft guidelines for the development of national legislation on access to information, public participation and access to justice in environmental matters, held in Nairobi on 20 and 21 June 2008,⁵

1 Principle 10 of the Declaration reads as follows: “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”.

2 Governing Council decision SS.VI/I, annex, para. 16, reads as follows: “The role of civil society at all levels should be strengthened through freedom of access to environmental information to all, broad participation in environmental decision-making, as well as access to justice on environmental issues. Governments should promote conditions to facilitate the ability of all parts of society to have a voice and to play an active role in creating a sustainable future”.

3 UNEP/GCSS.VII/INF/7.

4 *Report of the World Summit on Sustainable Development, Johannesburg, South Africa, 26 August–4 September 2002* (United Nations publication Sales No. E.03.II.A.1) chap. I resolution 2, annex.

5 UNEP/Env.Law/CM.Acc/1/2.

1. *Decides* to adopt the guidelines for the development of national legislation on access to information, public participation and access to justice in environmental matters;⁶
2. *Requests* the Executive Director of the United Nations Environment Programme to disseminate the guidelines and the commentaries thereon to all countries, particularly developing countries and countries with economies in transition;
3. *Urges* developed countries and financial institutions to assist developing countries and countries with economies in transition to develop further national legislation and procedures for effective public access to environmental information, public participation and access to justice in environmental matters, including building relevant capacity for these purposes, taking account of the guidelines;
4. *Requests* the Executive Director to assess how the United Nations Environment Programme could, in the context of its programme of work, assist interested countries, particularly developing countries and economies in transition, to further the implementation of the guidelines at the national level, including through assisting them to develop and update their national legislation in this field.

II. Background and rationale

2. Principle 10 of the Rio Declaration on Environment and Development, which was adopted at the United Nations Conference on Environment and Development in June 1992, states:

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.

3. Since its adoption, its elements (access to information, public participation and access to justice) have progressively gained momentum and have increasingly been implemented globally. As a result the public is becoming an important stakeholder in environmental decision-, law- and policy-making and in compliance and enforcement actions, both at the national and international levels. Many countries, including in Africa, Asia and Latin America and the Caribbean, have enacted legislation on the matter, though in many cases not adequately covering all three elements of principle 10.⁷ At the regional level, principle 10 has been codified and elaborated in the 1998 United Nations Economic Commission for Europe Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters (Aarhus Convention). There is no comparable instrument at the global level or in other regions.⁸ Principle 10 elements can also be found in global multilateral environmental agreements.

4. The issue of access to information, public participation and access to justice has been on the agenda of UNEP on a number of occasions. One such occasion was at the sixth special session of the Governing Council/Global Ministerial Environment Forum in May 2000 at which the Malmö Ministerial Declaration was adopted. It states, in its paragraph 16:

The role of civil society at all levels should be strengthened through freedom of access to environmental information to all, broad participation in environmental decision-making, as well as access to justice on environmental issues. Governments should promote conditions to facilitate the ability of all parts of society to have a voice and to play an active role in creating a sustainable future.

5. Subsequently, the Council/Forum at its twenty-first session urged “Governments to take steps to enhance access to environmental information held by public authorities and to encourage participation by all relevant sectors of society in the decision-making process in environmental matters, in

⁶ Document UNEP/GC.25/INF/15/Add.2, annex.

⁷ *A Report on Models of National Legislation, Policy and Guidelines in the Africa Region, Asia and Pacific Region, and the Latin America and Caribbean Region*, UNEP, 2002.

⁸ It should be noted that the Aarhus Convention is open for accession by any State Member of the United Nations upon approval by the meeting of the Parties.

accordance with relevant legislation or arrangements, bearing in mind the crucial role which it plays in institution-building for environmental protection and sustainable development". The Governing Council continued to urge "Governments to take measures to establish, where appropriate, at the national and regional levels, judicial and/or administrative procedures for legal redress and remedy for actions effecting the environment that may be unlawful or infringe on rights under the law".⁹

6. At the request of the Council/Forum, the UNEP secretariat has conducted two studies relating to the implementation of the three elements in principle 10. The first, a report on models of national legislation, policy and guidelines in the Africa, Asia and Pacific and Latin American and Caribbean regions, produced pursuant to decision 20/4, covered mainly legal instruments at the national level. The second study, produced pursuant to decision 21/24, covered international legal instruments reflecting provisions contained in principle 10 and analyzed their actual coverage of the principle. The study was presented at the seventh special session of Council/Forum, in 2002.¹⁰

7. The third Programme for the Development and Periodic Review of Environmental Law for the First Decade of the Twenty-First Century (Montevideo Programme III), adopted at the twenty-first session of the Council/Forum, incorporated work to promote access to information, public participation and access to justice in programme area 3 – prevention and mitigation of environmental damage – and in programme area 7 – public participation and access to information.

8. Reporting on the implementation of Montevideo Programme III to the Council/Forum at its twenty-second session in the light of the organization's experience with undertaking activities aimed at promoting principle 10, the Executive Director stated:

It is clear that it must now press forward in developing further ways and means of enhancing the application of principle 10 as a tool for improving and strengthening environmental governance. As envisaged in the Montevideo Programme III, a process might be initiated to investigate the need for and the feasibility of a new international instrument on access to information, public participation in processes leading to decision-making and access to judicial and administrative proceedings relating to environmental matters. The immediate results of such a process could be a set of non-binding global guidelines on access to information, public participation in decision-making and access to justice in environmental matters to further strengthen the institutional framework for environmental management. This process might require intergovernmental consultations convened under the auspices of UNEP.¹¹

9. The Governing Council requested the Executive Director "to assess the possibility of promoting, at the national and international levels, the application of principle 10 of the Rio Declaration on Environment and Development and determine, inter alia, if there is value in initiating an intergovernmental process for the preparation of global guidelines on the application of principle 10". The Governing Council also invited Governments and relevant intergovernmental and civil society organizations to participate actively in the process, and requested the Executive Director to submit a report to the Governing Council at its twenty-third session on the progress made in the preparation of the guidelines.¹²

10. The Executive Director reported concisely to the Council/Forum at its twenty-third session that UNEP had carried out consultations on this matter with Governments and relevant civil society organizations. Those that had responded to date had expressed the view that what was termed a "soft law" international instrument, in the form of global guidelines, should be developed.¹³

11. An additional impetus for UNEP to develop guidelines in this field was the recommendations from the advisory group of high-level experts that worked on the matter of avoidance and settlement of environmental disputes. The group recommended that UNEP should take the lead in the development of guidelines on increasing access to justice in environmental matters, as it was perceived as an extremely important component of, and as a starting point for, the discussion on settlement of environmental disputes. UNEP subsequently convened two meetings with the participation of selected senior high-level experts and high-level judges, held in September 2007 and October 2007 respectively, at

9 UNEP Governing Council decision 21/24.

10 UNEP/GCSS.VII/INF/7.

11 UNEP/GC.22/3/Add.2.

12 UNEP Governing Council decision 22/17, section IIB.

13 UNEP/GC.23/3/Add.3.

which participants, in close cooperation with representatives of the secretariat of the Aarhus Convention, developed draft guidelines in this field.

12. Participants at the UNEP consultative meeting of government officials and experts, held in Nairobi on 20 and 21 June 2008, reviewed and further developed the draft guidelines.¹⁴ The meeting was attended by experts representing the following Governments: Argentina, Bangladesh, Bhutan, Burundi, Canada, China, Central African Republic, Colombia, Comoros, Côte d'Ivoire, Djibouti, Ghana, India, Indonesia, Kenya, Kuwait, Lesotho, Mali, Mauritius, Mexico, Mozambique, Nepal, Netherlands, Nicaragua, Russian Federation, Saudi Arabia, Samoa, Senegal, Serbia, Seychelles, Somalia, Sri Lanka, Sudan, Syrian Arab Republic, Togo, Tonga, Uganda, United Republic of Tanzania, Yemen and Zambia.

13. Representatives of the following United Nations entities, organizations and specialized agencies and other organizations also attended: United Nations Economic Commission for Europe, United Nations Framework Convention on Climate Change, United Nations Industrial Development Organization, World Bank, Central Organization of Trade Unions, Cohort for Research on Environment, Urban Management and Human Settlements, Emirates Environmental Group and Indigenous Information Network.

14. The draft guidelines were reviewed, elaborated on and developed further in the course of the meeting, in terms of text and content. The draft guidelines for the development of national legislation on access to information, public participation and access to justice in environmental matters, as contained in annex I to document UNEP/GC.25/INF/15/Add.2, were agreed upon. Participants also agreed upon the following recommendations:

(a) That the Executive Director should submit the guidelines to the UNEP Governing Council at its twenty-fifth session, in February 2009, for consideration with a view to their adoption;

(b) That, following their adoption by the Governing Council, the guidelines should be disseminated to all countries, in particular developing countries and countries with economies in transition, with a view to assisting them to develop or update their national legislation in that field;

(c) That the commentaries to the guidelines should be finalized, taking into account the revision of the draft guidelines and their further development at the meeting, and that those updated commentaries should be annexed to the draft guidelines;

(d) That the draft guidelines and the commentaries thereon, together with the report of the meeting, should be sent to all countries for information;

(e) That the draft guidelines and the commentaries thereon should be translated expeditiously into the six official United Nations languages, with particular emphasis on the proper translation of legal terms used in the draft guidelines.

15. The report of the meeting (document UNEP/Env.Law/CM.Acc/1/2) is reproduced in document UNEP/GC.25/INF/15/Add.2 and submitted to the Council/Forum. The agreed text of the draft guidelines, including a commentary prepared by the UNEP secretariat in consultation with the senior advisory group of selected high-level external experts and high-level judges, annexed to the guidelines as an indicative reference material, is contained in the annex to the report of the meeting.

14 See the report of the meeting, UNEP/Env.Law/CM.Acc/1/2.