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

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(Item 8 (a) of the provisional agenda)

**RELEVANT OUTCOMES OF  
THE WORLD SUMMIT ON SUSTAINABLE DEVELOPMENT**

1. The World Summit on Sustainable Development took place in Johannesburg, South Africa, from 26 August to 4 September 2002. The purpose of the Summit, according to General Assembly resolution 55/199, was to hold a ten-year review of the 1992 Conference on Environment and Development at the summit level to reinvigorate the global commitment to sustainable development. More than 20,000 participants from 191 governments, intergovernmental and non-governmental organizations, the private sector, academia and the scientific community took part in the Summit.

2. The Summit negotiated and adopted two main documents: the Plan of Implementation and the Johannesburg Declaration on Sustainable Development. These constitute the main formal output of the Summit. In addition, four high-level round tables took place, about 50 official side events were held and a much larger number of parallel events were also held in and around Johannesburg. Finally, a number of "Type-II Partnerships" were launched at the Summit. This paper briefly assesses those aspects of these various formal and less formal outputs of the Summit that are relevant to the Aarhus Convention and principle 10 of the Rio Declaration on Environment and Development. Within the limited time available, it has not been possible to undertake a comprehensive or exhaustive analysis, so any conclusions should be considered to be preliminary.

## I. POLITICAL DECLARATION

3. The Johannesburg Declaration on Sustainable Development, in its paragraph 26, recognizes that “sustainable development requires ... broad-based participation in policy formulation, decision-making and implementation at all levels”<sup>1/</sup> and contains a commitment to “continue to work for stable partnerships with all major groups respecting the independent, important roles of each of these”. A commitment is also made to “strengthen and improve governance at all levels, for the effective implementation of Agenda 21, the Millennium Development Goals and the Johannesburg Plan of Implementation” (para. 30). In addition, the Declaration refers to the need for “more effective, democratic and accountable international and multilateral institutions” (para. 31). Finally, it is recognized that the pursuit of sustainable development must be “an inclusive process, involving all the major groups and governments that participated in the historic Johannesburg Summit” (para. 34).

## II. PLAN OF IMPLEMENTATION

4. The Plan of Implementation contains many references which are supportive in a general way of the issues addressed in principle 10 of the Rio Declaration. The most relevant and specific of these is in paragraph 119.ter, <sup>2/</sup> which states as follows:

“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.”

This text is broadly similar to, though if anything slightly weaker than, principle 10 of the Rio Declaration. The Rio principle is more detailed in various ways (e.g. in that it specifies that ‘each individual’ should have access to information, that environmental issues are best handled with the participation of ‘all concerned citizens’, and that appropriate access to information on hazardous materials and activities in communities should be provided), but since the objective set out in the new text is “to further principle 10 of the Rio Declaration”, it might be said that this detail is carried through in the new text even though it is not spelled out. However, the references to principles 5, 7 and 11 of the Declaration could be said to weaken the text.<sup>3/</sup> In any case, the new text can hardly be considered to be a step forward

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<sup>1/</sup> The reference to ‘all levels’ could be seen as embracing the international level and therefore extending the focus beyond the national level, which is the primary focus in principle 10 of the Rio Declaration. On the other hand, principle 10 refers in its opening line to participation being ‘at the relevant level’, which would also include the international level where that is relevant. Furthermore, principle 10 refers to ‘the participation of all concerned citizens’ which is arguably somewhat more inclusive and explicit than ‘broad-based participation’. Finally, whereas the Rio principle refers to the handling of environmental issues, paragraph 26 of the Johannesburg Declaration is framed within the language of sustainable development.

<sup>2/</sup> All references to paragraph numbers in the Plan of Implementation are to those in the advance unedited version of 5 September 2002.

<sup>3/</sup> For example, the obligation to provide access might be considered to be mitigated in the light of the “essential task of eradicating poverty” referred to in principle 5 and the need to provide for the possibility of different standards in developing countries because standards applied in other countries might be considered to be inappropriate or to carry unwarranted economic and social costs, as referred to in principle 11. It is not clear how

from principle 10 of the Rio Declaration. At best, it may be seen as a reiteration of that principle, which does nothing to indicate how it might be implemented more effectively.

5. There are many other relevant references in the Plan of Implementation which tend to reinforce a certain policy framework without actually mandating or requiring any specific action:

(a) There are number of general references to the importance of involving civil society and its major groups in implementing the goals of sustainable development, with transparency and broad public participation being listed among the key elements in developing the necessary institutional arrangements (e.g. paras. 3, 13, 121 (g), 138 (b), 150 and 153). Under the heading of strengthening institutional arrangements at national level, it is recommended that countries “promote public participation, including through measures that provide access to information regarding legislation, regulations, activities, policies and programmes” and that they “foster full public participation in sustainable development policy formulation and implementation”, with the full and equal participation of women in policy formulation and decision-making (para. 146.bis);

(b) The importance of participation of the public or certain stakeholders is highlighted in different contexts, such as decision-making on renewable energy (para. 19 (g)), water resources management (para. 24 (b)), sustainable agriculture and food security (para. 38 (f)), rural planning and development (para. 38 (h)), tourism development and heritage preservation (para. 41 (b)), use of traditional knowledge in the context of preventing biodiversity loss (para. 42 (l)), forests (para. 43, introductory sentences, (h) and (i)), mining (para. 44 (a) and (b)) and in mountain communities (para. 40 (e)). Multi-stakeholder participation in the context of establishing sustainable development councils is recommended (para. 147). The Plan recommends the provision of technical and financial assistance to developing countries in order to assist them to “develop the capacity of civil society ... to participate, as appropriate, in designing, implementing and reviewing sustainable development policies and strategies at all levels” (para. 119.bis (c));

(c) The need for the public, or particular groups such as women or the poor, to have access to information is also referred to in various contexts, such as housing (para. 10 (e)), consumer information (para. 14 (e)), water resources management (para. 24 (b)) and desertification (para. 39 (e)). The importance of education and/or awareness-raising is mentioned both in specific contexts, such as for consumers (para. 14 (d)) and in the area of disaster management (para. 35 (f)), and more generally as a means to achieve internationally agreed development goals (para. 75). The Plan recommends “open, transparent and inclusive workshops” on issues of global interest as a means to promote better public understanding of such issues (para. 108);

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or why principle 7 concerning the “common but differentiated responsibility” in the preservation of the Earth should be taken into account in furthering principle 10. The interpretation that developing countries might have lesser obligations to provide the public with access to information, opportunities for participation and access to justice simply because developed countries have polluted more does not seem particularly logical. Another interpretation might be that principle 10 should be applied in the context of efforts to achieve sustainable development based on common but differentiated responsibility (therefore taking into account issues such as poverty eradication and global equity) rather than in a narrowly environmental context.

(d) A number of provisions in the Plan relate to the collection and/or management of information (e.g. paras. 119. quater to 119. diciens). The development of pollutant release and transfer registers is encouraged as a tool for providing coherent and integrated information on chemicals (para. 22 (f)). There are various references to the need for strengthening the use of information and communications technology and bridging the digital divide (e.g. paras. 63 and 106), though without relating this to the goal of public accessibility of information, nor to the environment;

(e) Participation of major groups or stakeholders in the work of the Economic and Social Council, the Commission on Sustainable Development and the regional commissions is encouraged in the Plan (paras. 126 (c), 131 (b) and 143 (d));

(f) In a section on regional initiatives, participation of civil society is mentioned as one of the components in the Initiative of Latin America and the Caribbean on Sustainable Development (paras. 67 and 68), and the Aarhus Convention is mentioned as an example of efforts towards sustainable development in the ECE region (para. 74). The chapter on sustainable development for Africa refers to the importance of democracy and good governance, and to the need for broad-based participation in the context of the industrial sector's contribution to sustainable development (para. 56 (a) and (g));

(g) There is a modest acknowledgement of "the consideration being given to the possible relationship between environment and human rights" (para. 152), which builds upon the expert seminar on human rights and the environment jointly organized by the United Nations High Commissioner for Human Rights and the Executive Director of the United Nations Environment Programme (UNEP) in January 2002. Both the expert seminar and the discussions around paragraph 152 highlighted the central role of procedural human rights of access to information, participation and justice. While referring to the linkages, the Plan does not include any specific commitments to further work in this area.

6. A paragraph in the draft Plan of Implementation which emerged from PrepCom 4 contained square-bracketed text which would have entailed a commitment to "develop, with the participation of civil society, global multilateral guidelines on ... public access to information, public participation in decision-making and access to justice, drawing on existing experience, including [regional] initiatives designed to implement principle 10 of the Rio Declaration on Environment and Development" (A/CONF.199/L.1, para. 151). However, this paragraph was deleted during the final negotiations. Similarly, an earlier version of paragraph 152 (see para. 5 (g) above) referred to the importance of the interrelationship between human rights promotion and protection and environmental protection for sustainable development (rather than merely alluding to the possible existence of such an interrelationship) and went on to invite further consideration of these issues in the relevant forums, including by continued cooperation between UNEP and the Office of the United Nations High Commissioner for Human Rights. However, this stronger language did not survive the negotiations.

### III. ROUND TABLES, SIDE EVENTS AND PARALLEL EVENTS

7. Four high-level round tables were held as an integral part of the Summit under the theme 'Making It Happen', with the aim of providing participants from governments, United Nations bodies, intergovernmental organizations and major groups with an opportunity to address the main challenges for the Summit. During these, some participants highlighted the need for participatory decision-making including participation by women, youth, farmers and local authorities. At one, a recommendation was put forward to "promote broad-based participation, through coordination with United Nations bodies, with education as the top priority".

8. A number of official side events were held as part of the Summit. One of these was organized by ECE, in cooperation with the Regional Environmental Center for Central and Eastern Europe (REC) and the North-South Centre of the Council of Europe, under the theme "Participatory democracy and good governance as fundamental tools for a human rights approach to sustainable development".<sup>4/</sup> The event, which was chaired by Ms. Brigita Schmögnerová, UNECE Executive Secretary, addressed the need to strengthen environmental rights and provided an opportunity for ministers, parliamentarians and representatives of intergovernmental and non-governmental organizations from different regions to share information and perspectives on how the principles of environmental democracy, human rights and good governance in sustainable development might be put into practice. There was a common recognition of the importance of good governance, respect for human rights and involvement of civil society in the process of moving towards sustainable development.

9. Several other official side events and various parallel events also addressed themes relevant to the Aarhus Convention and principle 10 of the Rio Declaration. For example, there were events on the links between human rights, the environment and sustainable development; on environmental governance at the regional and global levels and on strengthening the voice of NGOs in international environmental governance; and on international law for sustainable development. A number of relevant publications were launched at the Summit, including the Access Initiative's 'Closing the Gap: Information, Participation and Justice in Decision-making for the Environment', the Environmental Law Institute's 'The New "Public": The Globalisation of Public Participation' and the Yale Center for Environmental Law and Policy's 'Global Environmental Governance'.

### IV. PARTNERSHIP INITIATIVES

10. The notion of partnerships between governments, the private sector and civil society was given a major boost by the Summit, with more than 220 partnerships, representing some US\$ 235 million in resources, identified in advance of the Summit and around 60 announced during it.<sup>5/</sup> Among these, the most relevant to the Aarhus Convention and principle 10 of the Rio Declaration are:

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<sup>4/</sup> A fuller description of the event may be found at <http://www.unece.org/press/pr2002/02env08e.htm>.

<sup>5/</sup> According to the official Summit web site.

(a) A partnership to develop guidelines for the countries of the Asia-Pacific region on access to information, public participation in decision-making and access to justice in environmental matters, to be led by the Economic and Social Commission for Asia and the Pacific (ESCAP) with the support of ECE;

(b) 'Partnership for Principle 10', an international multi-stakeholder project which aims to promote the implementation of principle 10 of the Rio Declaration at the national level, to be led by World Resources Institute; and

(c) An initiative on 'Capacity Building on the applications of information and communication technologies (ICT) for the establishment of environmental information systems for sustainable development in Africa', jointly led by the United Nations Institute for Training and Research (UNITAR) and the Observatory for Sahel and Sahara (OSS).

## V. PRELIMINARY CONCLUSIONS

11. In making even a very preliminary assessment of the outcome of the Johannesburg Summit with respect to the Aarhus Convention and principle 10 of the Rio Declaration, it is necessary to distinguish between the formal and the informal results of the Summit.

12. It is clear that the formal, high-level outcomes, namely the Declaration and the Plan of Implementation, do not establish any important new principles within the field of environmental democracy which could be said to represent an advance on principle 10 of the Rio Declaration. Neither does the Declaration or the Plan of Implementation make any commitment to further concrete work aimed at promoting the implementation of principle 10 at the regional or global level. The fact that a proposal to establish global multilateral guidelines on access to information, public participation in decision-making and access to justice was discussed at length and rejected (see para. 6 above) indicates that this was not merely an oversight but rather a reflection that the time for such an idea was not ripe at the global level in a consensus-oriented process. On the other hand, the reiteration throughout the Plan of Implementation of the importance of transparency, accountability and civil society involvement in many different decision-making contexts could be seen to reinforce certain policies which are expressed in more concrete terms in the Aarhus Convention and to establish an ethos which is generally supportive of access to information, public participation and access to justice.

13. The informal outcomes are more difficult to quantify, and yet may ultimately prove to be of greater value than quotable pieces of text from the Summit's Declaration. In the various side events, parallel events and informal discussions on the margins of the Summit, there were frequent discussions on the question of how to strengthen the role of civil society in promoting sustainable development, with the example of the Aarhus Convention regularly being cited. The informal dimension of the Summit provided a valuable forum for sharing information and views on plans for various regional initiatives promoting principle 10, for example in the Asia-Pacific region and in the Americas. In this respect, it is likely to have played a useful, albeit indirect, role in supporting such initiatives.