

## **Questions to be considered for discussion at the workshop**

These questions relate to mechanisms for providing access to justice in environmental matters. It will greatly facilitate discussion at the workshop if you could give some consideration to these questions in advance.

The 'examples' sought, are examples of the underlying legal requirements or provisions as laid down in your national law (Article 42 of X Act provides that 'xxxxxxxxxxxxxxxx'). The question 'How do these work in practice' refers to how attempts to use that provision have fared in practice.

It is not expected that you send in responses to these questions, nor that you provide answers in writing. Nevertheless it would be helpful if you could bring along to the workshop the text of any national provisions you think are particularly worth noting - as that would facilitate incorporating 'real' options into the draft handbook. Indeed it could also be helpful if everyone tried to pinpoint at least one example of access to justice in environmental matters from their existing or proposed national legislation, that they are particularly 'proud' of and that could be adapted for use elsewhere.'

### **Standing: Article 9(1) review in relation to requests for access to environmental information:**

- What examples can you provide of binding judicial or other independent and impartial review procedures?
- What examples can you provide of additional expeditious and inexpensive reconsideration or review procedures that can be available? How is this funded?
- What examples can you provide showing how review is ensured to any person, regardless of interest?
- How do these work in practice?
- What can be learned from these examples for improving existing, or implementing new systems?

### **Standing: Article 9(2) review in relation to public participation and other relevant provisions of the convention**

- What examples can you provide of ways to determine whether a person has 'sufficient interest' to bring an action to challenge in relation to Article 6?
- What might be examples of 'impairment of a right' as required by some administrative systems to bring an action to challenge in relation to Article 6?
- According to Article 9(2) an NGO meeting the requirements in Article 2(5) (i.e. 'NGOs promoting environmental protection and meeting any requirements under national law') shall be deemed to have sufficient interest. What requirements under national law, if any, might an NGO be expected to meet?
- What examples can you provide of mechanisms to avoid abuse of the justice system?
- What examples can you provide of judicial or other independent and impartial review procedures to challenge the substantive and procedural legality of any decision, act or omission subject to the provisions of Article 6?
- What examples can you provide of preliminary review procedures before administrative authorities?

- How do these work in practice?
- What can be learned from these examples for improving existing, or implementing new systems?
- How might the above apply to challenges to the substantive and procedural legality of any decision, act or omission subject to other relevant provisions of the Convention?

**Standing: Article 9(3) public challenge to acts and omissions by private persons and public authorities which contravene provisions of its national law relating to the environment**

- What examples can you provide of *judicial* procedures available to the public to challenge contraventions of national environmental law by private persons and public authorities?
- What examples can you provide of *administrative* procedures available to the public to challenge contraventions of national environmental law by private persons and public authorities?
- What criteria under national law, if any, might members of the public be expected to meet?
- How do these work in practice?
- What can be learned from these examples for improving existing, or implementing new systems?

**Review bodies**

- What are the main bodies providing review in relation to Article 9(1)?
- What are the main bodies providing review in relation to Article 9(2)?
- What ways are there to ensure the independence and impartiality of these bodies?
- What other bodies are used? What is the role of these bodies and what are their competencies?
- How do these work in practice?
- What can be learned from these examples for improving existing, or implementing new systems?

**Adequate and effective remedies**

- What examples can you provide of provisions to ensure *adequate* remedies?
- What examples can you provide of provisions to ensure *effective* remedies?
- What examples can you provide of when and how injunctive relief might be used to assist with providing effective remedies?
- What examples can you provide of an expeditious procedure? What examples can you provide of a timely procedure?
- What examples can you provide of systems to ensure decisions are ultimately enforced (i.e. carried out)?
- How do these work in practice?
- What can be learned from these examples for improving existing, or implementing new systems?

**Overcoming financial barriers**

- What examples can you provide of ways to reduce financial barriers to citizens with environmental problems? For example in relation to
  - Initial investigation fees
  - Attorneys fees?

- Court fees?
- Expert fees?

Who bears the costs of reducing the financial cost to the citizen?

- What examples can you provide for addressing the risk of having to pay the other side's costs in the event of losing an action?
- What are examples of ways of addressing requirements, if any, for financial guarantees in relation to interim injunctions?
- How do these work in practice?
- What can be learned from these examples for improving existing, or implementing new systems?

**Overcoming other barriers and further assistance mechanisms**

- What examples can you provide of methods for addressing other barriers to access to justice in environmental matters?
- What are examples of the use of Alternative Dispute Resolution (including mediation) in this context?
- What publicity mechanisms can be put in place to ensure that the public is informed of the administrative and judicial review procedures available to them?
- How do these work in practice?
- What can be learned from these examples for improving existing, or implementing new systems?