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Report from the Task Force on Access to Justice to MoP5

The mandate

Summarizing the mandates from 2005, 2008 and 2011, also recalling the decision from 2002:

- Examine, consider and analyse materials on the implementation of the Convention, especially with regard to costs, remedies, criteria on standing, delay and other obstacles to access to justice, assistance mechanisms, scientific and technical expertise in the decision-making and Alternative Dispute Resolutions (ADR),
- Develop training materials, training of trainers,
- Continue to perform strategic capacity-building activities – that is workshops – particularly for senior members of the judiciary on sub-regional level,

What we have done in inter-sessional period 2011-2014

Meetings

The **fifth meeting** of the Task Force took place on 13-14 June 2012 in Geneva. The meeting featured a mini-conference “Access to courts for individuals and groups” and discussed several other issues related to access to justice, including costs, financial arrangements and remedies. Furthermore, the meeting had a following-up discussion about the analytic studies that were concluded during 2011 and was informed about the upcoming study on access to justice that was initiated by the European Commission. The participants were informed about the Aarhus conference that was held in Almaty in May 2012. Other capacity building efforts and jurisprudence database were also discussed. The meeting welcomed the studies carried out in the European Union on the issue of standing in relation to the Convention. It also decided to launch a comprehensive study on standing in the selected countries in the EECCA region and explore the possibility of launching a comprehensive study on standing, remedies and costs in South-Eastern European countries (SEE).

The **sixth meeting** of the Task Force took place on 17-18 June 2013 in Geneva, back to back with WGP16. The meeting followed up on substantive issues, such as standing for individuals and non-governmental organizations, costs and remedies. The European Commission’s study on the implementation of Articles 9.3 and 9.4 of the Aarhus Convention in 17 of the Member States of the EU was presented and discussed. Participants also discussed parts of the study on standing in six countries in the EECCA region (Armenia, Azerbaijan, Belarus, Kazakhstan, the Republic of Moldova and Tajikistan), that were based on the outcomes of the expert meeting held prior to the Task Force meeting. Recent developments that have taken place in the respective Parties with regard to these issues were also highlighted. Furthermore, the meeting was informed about the recent relevant findings of the Compliance Committee. In addition, the participants were briefed on the electronic tools for sharing information and shared

experience in carrying out multi-stakeholders dialogue on access to justice in their respective countries. Finally, the meeting discussed the possible future directions for the work in the area of access to justice under the Aarhus Convention.

The **seventh meeting** of the Task Force took place on 24-25 February 2014 in Geneva, back to back with WGP17. The meeting continued considering such substantive issues as standing, remedies and costs. The participants were informed about the recent development of case-law on standing in environmental matters and the issue of costs in some of the countries that are Parties to the Convention. The preliminary findings of the ECCA study were discussed. The progress of the work and some findings of the study on access to justice in the SEE region – based on the discussion on a workshop with experts from those countries that preceded the Task Force meeting – were presented. Furthermore, the meeting continued to share experience on multi-stakeholders dialogues on access to justice in their respective countries and exchanged information on capacity-building needs and initiatives as well as on existing tools for providing information on access to justice.

Outreach activities

In cooperation with OSCE, we organized a **workshop** for senior members of the judiciary, which took place in May 2012 in Almaty, Kazakhstan. The meeting attracted members of the judiciary from all five countries in the subregion and Mongolia. It was structured in two parallel workshops, with several joint sessions, all of which encouraged interactive participation. The first workshop, “Greening justice and the role of the judiciary in this process”, brought together senior judges and representatives from judicial training institutions, as well as environmental law experts, to discuss the legal aspects of access to justice and the role of the judiciary in implementing and enforcing the Convention. The second workshop, “How to implement the Aarhus Convention: learning practical experiences”, provided a platform for dialogue between representatives from Aarhus Centres and governmental, non-governmental and international organizations to discuss challenges in the practical implementation of the three pillars of the Aarhus Convention and to learn from good practices.

Beside the workshop in Almaty, the Chair of the Task Force has participated and made presentations of the Aarhus Convention on international conferences in Guangzhou (China) in 2012, Osaka (Japan), Beijing and Wuhan (China) and Wien (Austria) in 2013 and Kunming (China) and Gent (Belgium) in 2014.

Studies

As noted above, we have initiated **two analytic studies** during the intersessional period. They have been widely distributed and comments have been submitted from NFPs, NGOs and other stakeholders. The studies have been discussed on the meetings of the Task Force and the conclusions are reflected in the reports to the Working Group of the Parties. In addition to this, the Chair of the Task Force was leading the above mentioned study for the European Commission’s study on the implementation of Articles 9.3 and 9.4 of the Aarhus Convention in the Member States of the EU. The first part of that study was discussed on the sixth meeting of the Task Force.

Case-law data base

The development of the **jurisprudence data base** is progressing, although the inflow of cases could be higher. The ambition to have at least a couple of cases from each Party still remains to be fulfilled. Still, the data base today contains 73 cases from different national and regional courts on issues related to the third pillar of the Convention. The case law data base is included in the Clearing House for Environmental Democracy website.

What we are planning

Under the condition that the MOP5 decides to continue the assignment for the Task Force on Access to Justice, I would like to – recognizing the drafts for the decision on promoting effective access to justice, the decision V/5 on the Strategic Plan for 2015–2020 and the decision V/6 on the work programme for 2015–2017 and also recalling the need for prioritizing the activities of our work – high-light the following issues during the intersessional period 2014-2017:

- Continue to undertake analytic studies on barriers to access to justice and ways to overcome them. Several subjects have been proposed for the intersessional period 2014-2017. It is therefore very satisfactory that the mandate in the Draft decision on promoting effective access to justice is kept open, thus enabling for the Task Force meeting to prioritize the subjects to be dealt with within those frames. As I stated in my address to the WGP16, it is vital for the dynamic work of the Task Force that the more detailed discussions on the tasks to be undertaken is allowed to be held at our meetings.
- Perform one work-shop on sub-regional level, learning from the experiences we made from the ones held in Kiev 2007, Tirana 2008 and Almaty 2012. In addition to that, the ambition should be to actively take part in other outreach activities for the promotion of access to justice, such as national or regional public interest lawyers' conferences or similar events.
- Develop and improve the training material for workshops and education on national and regional basis. Develop and improve the training material from the workshops and make it available for others to use.
- Improve the accessibility of the case law data base and to include more cases.

Some closing remarks

The third pillar of the Convention is the weakest and also the one most in need of additional and expeditious study. The Task Force on Access to Justice thus has a vital role to play in producing studies and training materials. The goal should be to deal with *systematic issues* concerning the implementation of the Convention *in all countries and regions that are Parties*. The systematic collection of information and discussion on the outcomes of such studies is, in my view, one of the main reasons to maintain this body. Analytical studies also have a crucial role in facilitating national dialogues on access to justice, capacity-building activities and development of national policies in this area.

In this context, I would also like to emphasize the great importance of the meetings of the Task Force. As the participants are experts who attend in their own capacity and as the ENGOs are allowed to participate on an equal basis with the national experts, the discussions can be held more freely and concern a wider scope of issues than at the official meetings of delegates from the Parties. This procedure assures the quality of the analytic studies. In a similar procedure, the Task Force is also able to develop material on access to justice, taking into consideration the outcomes of the studies and the documents that have been produced for dif-

ferent regional workshops. In addition, the meeting can be used to strengthen networking among different key actors on access to justice among the participants, such as the judiciary.

Finally, the work of every task force is dependent on consistent administrative support from the secretariat. The idea of a Task Force, driven by a competent person who is externally funded and who is able to focus on the assignment is very good, but administrative support is necessary for the success of the project. This is also a fundamental requirement to keep up the network of people who are engaged in the assignment, as well as maintaining the Task Force meetings as dynamic platforms for sharing experiences and discussing key issues on access to justice. Despite the great support we get from secretariat, their ability to fulfil the task from time to time is hampered by the lack of proper funding of the Convention. In my view, this is one of the main challenges for the Parties to deal with in the years to come.

With kind regards,

Jan Darpö