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

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**of the Aarhus Convention in international forums**

**NOTE ON THE RULES OF PROCEDURE AND PRACTICES OF THE**  
**BASEL, STOCKHOLM AND ROTTERDAM CONVENTIONS<sup>1</sup>**

Prepared by the secretariat of the Aarhus Convention in consultation with the  
 Joint secretariat of the Basel, Rotterdam and Stockholm Conventions<sup>2</sup>

Contents

	<i>Page</i>
<b>I. Introduction .....</b>	<b>2</b>
<b>II. Access to information (paras. 19-27 Almaty Guidelines).....</b>	<b>3</b>
Description .....	3
Assessment .....	4
<b>III. Public Participation.....</b>	<b>5</b>
A. Broad public participation (paras. 14 & 30-31 of the Almaty Guidelines) .....	5
Description .....	5
Assessment .....	6
B. Modalities of public participation (paras. 29 and 32-37 of the Almaty Guidelines).....	6
Description .....	6
Assessment .....	11
C. Capacity-building and financial assistance (paras. 17-18 and 38-39 Almaty Guidelines).....	12
D. Review Procedures (para. 40 of the Almaty Guidelines) .....	13
<b>IV. Conclusions .....</b>	<b>13</b>

<sup>1</sup> This document was not formally edited.

<sup>2</sup> The Joint secretariat of the Basel, Rotterdam and Stockholm Conventions provided factual input and details on existing rules.

## I. Introduction

1. This note aims at providing a non-exhaustive commentary on compatibility of the rules of procedures and practices under the Basel, Rotterdam and Stockholm Conventions<sup>3</sup> with the Almaty Guidelines on promoting the application of the principles of the Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters (Aarhus Convention) in international forums.<sup>4</sup> The Joint secretariat of the Basel, Rotterdam and Stockholm Conventions was consulted on factual information included in the note.

2. The Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and their Disposal was adopted on 22 March 1989 and entered into force on 5 May 1992; the Rotterdam Convention on the Prior Informed Consent (PIC) Procedure for Certain Hazardous Chemicals and Pesticides in International Trade was adopted on 10 September 1998 and entered into force on 24 February 2004; and the Stockholm Convention on Persistent Organic Pollutants (POPs) was adopted on 22 May 2001 and entered into force on 17 May 2004. Following a synergy process initiated in 2009,<sup>5</sup> the Secretariat of the Basel Convention, of the Stockholm Convention and of the part of the Rotterdam Convention administered by the United Nations Environment Programme (UNEP) are now under the joint management of an Executive Secretary located in Geneva. The part of the Rotterdam Convention, which is administered by the United Nations Food and Agriculture Organization (FAO), is under the co-management of an Executive Secretary based in Rome. Since 2013, biennial meetings of Conferences of the Parties (COPs) of the three Conventions have been held back-to-back in Geneva, with joint sessions on issues of common interest to two or three of the Conventions, and Convention-specific sessions on issues specific to one Convention. The next meetings will take place in May 2019, also in Geneva.

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<sup>3</sup> For more information, see: <http://www.brsmeas.org/>.

<sup>4</sup> Available from: <https://www.unece.org/index.php?id=21464>.

<sup>5</sup> See: <http://www.brsmeas.org/Secretariat/Overview/History/tabid/2690/language/en-US/Default.aspx>.

## II. Access to information (paras. 19-27 Almaty Guidelines)

### *Description*

3. In accordance with the set of Rules of Procedures specific to and respectively pertaining to each of the Conferences of the Parties under the three respective Conventions, which contain similar provisions in many instances, the Secretariats distribute documents of the meetings (rule 28(b) of the Basel Convention COP Rules of Procedure, rule 33(b) of the Rotterdam and Stockholm Conventions COPs Rules of Procedures), and publishes and circulates official documents of the meetings (rule 28(c) Basel Convention COP Rules of Procedure, and rule 33(c) Rotterdam and Stockholm Conventions COPs Rules of Procedures).

4. In addition to making official meeting documents publicly available, the four websites of the Conventions, namely one website specific to each Convention and one website containing information pertaining to the synergies between the Conventions, contain a considerable amount of proactive information disclosure in line with paragraph 22 of the Almaty Guidelines. Each of the three Conventions' specific websites also display communications and letters from the Secretariat(s), including invitations to comment on drafts and proposals (see further below).<sup>6</sup>

5. The Conventions' websites include information central to the implementation and further development of each Convention, such as information on all designated country contacts responsible for operationalizing the Conventions. For the Basel Convention, this includes information on legislation implementing the Convention, any import or export restrictions, any national definitions of hazardous wastes and information on other agreements. The Export and Import Control Tool facilitates access to such information for the public.<sup>7</sup> Information reported annually by the Parties on the amounts of hazardous and other wastes generated, as well as on the export and import of such wastes, is also available.<sup>8</sup> For the Rotterdam Convention, published documents include Decision Guidance Documents,<sup>9</sup> Import Responses (under article 10 of the Rotterdam Convention) and information on failure to submit these reports,<sup>10</sup> Severely Hazardous Pesticide Formulations (SHPFs)<sup>11</sup> (under article 6 of the Rotterdam Convention) and Final Regulatory Actions undertaken (under article 5 of the Rotterdam Convention).<sup>12</sup> PIC Circulars facilitate access to such information by the public.<sup>13</sup> Under the Stockholm Convention, all listed POPs and all registered exemptions are made available online.<sup>14</sup>

6. Under the Basel and Stockholm Conventions, Parties have reporting obligations and these reports are also made available online. The Basel Convention individual annual reports (as required under article 13 of the Basel Convention) are disclosed on the website<sup>15</sup> and a tool has been created to query the database of national reports submitted by Parties, which is however only updated until 2011.<sup>16</sup> Under the Stockholm Convention, both the National Implementation Plans (pursuant to article 7 of the

<sup>6</sup> See: <http://www.basel.int/TheConvention/Communications/tabid/1596/Default.aspx>; <http://www.pic.int/TheConvention/Communications/tabid/3464/language/en-US/Default.aspx>; and <http://chm.pops.int/TheConvention/Communications/tabid/3391/Default.aspx>.

<sup>7</sup> See: [http://ers.basel.int/BC\\_ControlSystem/BC-ControlTool.htm](http://ers.basel.int/BC_ControlSystem/BC-ControlTool.htm).

<sup>8</sup> See the national reports available at: <http://www.basel.int/Countries/NationalReporting/NationalReports/tabid/4250/Default.aspx>, in particular answers to tables 6 to 8 for the reports for 2015 and prior years.

<sup>9</sup> See: <http://www.pic.int/TheConvention/Chemicals/DecisionGuidanceDocuments/tabid/2413/language/en-US/Default.aspx>

<sup>10</sup> See: <http://www.pic.int/Procedures/ImportResponses/Database/tabid/1370/language/en-US/Default.aspx>.

<sup>11</sup> See: <http://www.pic.int/Procedures/SeverelyHazardousPesticideFormulations/Database/tabid/1369/language/en-US/Default.aspx>.

<sup>12</sup> See: <http://www.pic.int/Procedures/NotificationsofFinalRegulatoryActions/tabid/1172/language/en-US/Default.aspx>.

<sup>13</sup> See: <http://www.pic.int/Implementation/PICCircular/tabid/1168/language/en-US/Default.aspx>.

<sup>14</sup> See: <http://chm.pops.int/Implementation/Exemptions/Overview/tabid/789/Default.aspx>.

<sup>15</sup> See: <http://www.basel.int/Countries/NationalReporting/BaselConventionNationalReports/tabid/6145/Default.aspx>.

<sup>16</sup> See: <http://archive.basel.int/natreporting/questables/dnn-frBody.html>.

Convention)<sup>17</sup> and four-year-cycle reports (pursuant to article 15 of the Convention) are made available online.<sup>18</sup>

7. With regard to the designation of information officers (para. 22 of the Almaty Guidelines), there are two general contact points for the Secretariats which are used on a routine basis to address any queries to the Secretariat,<sup>19</sup> as well as contact information for the staff of each of the Secretariats available online, including that of the public information officer.<sup>20</sup> It has been the Secretariat's practice to answer all queries addressed to it within a couple of days. In addition, the designated country contacts can be directly contacted by the public when information specific to a Party is sought.<sup>21</sup> Neither the websites nor other available documents further specify a set of policies or procedures on how to obtain access to environmental information (para. 19 of the Almaty Guidelines), nor indicate time limits (para. 24 of the Almaty Guidelines) or grounds for refusal (para. 25 of the Almaty Guidelines).

8. Pursuant to the provisions of the Conventions and decisions of their governing bodies, the Secretariat operates a joint clearing-house mechanism. The joint clearing-house mechanism is defined as a global multi-stakeholder mechanism, which is set up and operated by the Secretariat, to facilitate the exchange and dissemination of information and expertise relevant to the three Conventions. It promotes, facilitates and undertakes the identification, generation, collection, management, distribution and exchange of quality information and expertise to support Parties and other stakeholders in the implementation of the Conventions. A dedicated section of the Conventions' website outlines in more detail principles of the Conventions, an information tool catalogue, information exchange standards and resources for development of information tools.<sup>22</sup> In line with relevant mandates, the Secretariat further develops and operates the Conventions' clearing-house mechanism on the basis of a strategy prepared in consultation with Parties and stakeholders.<sup>23</sup> The Secretariat keeps this strategy under regular review in order to take into account lessons learned and relevant developments in the area of information exchange.

9. Information on the meetings of the COPs and subsidiary bodies is also shared with a global audience through the Secretariat's social media channels, websites, and through engagement with the media, including both print and TV.

### ***Assessment***

10. The active dissemination of information under all three Conventions is laudable as all central documents provided by the Parties and created by the bodies to the Conventions appear to be published. All Conventions have also started using electronic information tools such as clearing-houses, databases and registers, which is a positive development in the sense of paragraph 21 of the Almaty Guidelines. With regard to the database of individual annual reports under the Basel Convention which are currently only updated until 2011, attention should be paid that such databases are also kept up to date. However, information has been provided that the secretariat is currently in the process of updating this database which would alleviate this problem.

11. In view of paragraph 22 of the Almaty Guidelines, which refers to the benefit of designation of information officers or contact persons in international forums, it is furthermore positive that the contact information of the secretariat, both general and for individual members, as well as designated country contacts is available online. While it may be useful to provide instructions on websites about the procedure for requesting information, in line with the requirements in paragraphs 19, 24 and 25, of the Almaty Guidelines, there is no indication that in practice there are any difficulties with obtaining

<sup>17</sup> See: <http://chm.pops.int/Implementation/NIPs/NIPTransmission/tabid/253/Default.aspx>.

<sup>18</sup> See: <http://chm.pops.int/Countries/NationalReports/ThirdRoundPartyReports/tabid/4470/Default.aspx>.

<sup>19</sup> See: <http://www.brsmeas.org/Secretariat/ContactUs/tabid/2642/language/en-US/Default.aspx>.

<sup>20</sup> See: <http://www.brsmeas.org/Secretariat/Structure/OurTeam/tabid/2641/language/en-US/Default.aspx>.

<sup>21</sup> See: <http://www.pic.int/Countries/CountryContacts/tabid/3282/language/en-US/Default.aspx>.

<sup>22</sup> See: <http://www.brsmeas.org/?tabid=5382>.

<sup>23</sup> See: <http://www.brsmeas.org/?tabid=4648>.

information on request in a timely fashion, or indication that any information requests have been refused; nor are there any reasons why access to information should be refused in the context of the three Conventions. The overall assessment is that in view of the vast amount of proactive information disclosure outlined above, access to environmental information under the three Conventions does not appear to constitute a pressing concern at this time.

### III. Public Participation

#### A. Broad public participation (paras. 14 & 30-31 of the Almaty Guidelines)

##### *Description*

12. Under the Basel Convention, the Secretariat shall notify “any body or agency, whether national or international, governmental or non-governmental qualified in fields relating to the transboundary movement of hazardous wastes as well as their management and disposal, which has informed the Secretariat of its wish to be represented, of any meeting so that they may be represented by observers, subject to the condition that their admission to the meeting is not objected to by at least one third of the Parties present at the meeting.”<sup>24</sup> Under the Rotterdam and Stockholm Conventions, the same rule applies, except that bodies or agencies must not be qualified in fields relating to the transboundary movement of hazardous wastes but be qualified “in matters covered by” the respective Convention.<sup>25</sup>

13. New observers need to submit an application form one month before commencement of the meeting they wish to attend.<sup>26</sup> On that basis, the Secretariat checks whether the candidate observer meets the criteria as set out in the previous paragraph.<sup>27</sup> Applications that meet the criteria are submitted for consideration to the next meeting of the COP but an applicant may already attend the meetings of subsidiary bodies prior to the meeting of the COP as an observer on a provisional basis.<sup>28</sup>

14. “Upon invitation of the President” and unless there is an objection from one third of the Parties present, these observers may participate in any meetings “in matters of direct concern” to them without the right to vote.<sup>29</sup> Observers that have previously participated need only to register with the Secretariat and are permitted to participate again unless one third of the Parties object. Observers shall also be informed of the date and venue of the next meeting.<sup>30</sup>

15. There is a difference in practice in the admission of observers between the Rotterdam and Stockholm Conventions, on the one hand, and the Basel Convention, on the other hand. Under the Rotterdam and Stockholm Conventions, “body” or “agency” for the purpose of the observer definition is understood to refer only to not-for-profit or non-governmental organizations and associations. Under

<sup>24</sup> Article 15, paragraph 6, of the Basel Convention and rule 7 of the Basel Rules of Procedure.

<sup>25</sup> Article 18, paragraph 7, of the Rotterdam Convention and rule 7 of the Rotterdam Convention COP Rules of Procedure as well as Article 19, paragraph 8, of the Stockholm Convention and rule 7 of the Stockholm COP Rules of Procedure.

<sup>26</sup> The form was approved by MOP decision BC-11/22 and is available online at:

<http://www.basel.int/Portals/4/download.aspx?d=UNEP-CHW-FORM-admissionforobserver.English.doc>.

The form requires applicants to provide: (i) Information describing the body or agency; (ii) Information on the affiliation of the body or agency with non-governmental organizations or institutions; (iii) Information on the programmes and activities undertaken by the body or agency, or qualifications in fields relating to the transboundary movement, management or disposal of hazardous wastes; (iv) Description of any network and/or membership system.

<sup>27</sup> Meaning that the Secretariat checks whether: (a) The request is made by a body or agency; (b) The requesting body or agency is national or international, governmental or nongovernmental; (c) The requesting body or agency is qualified in fields relating to the transboundary movement of hazardous wastes as well as their management and disposal (for requests relating to the Basel Convention);<sup>27</sup> or the requesting body or agency is qualified in matters covered by the Convention (for requests relating to the Rotterdam and/or Stockholm Convention(s)).

<sup>28</sup> See document available online at: <http://www.basel.int/Portals/4/download.aspx?d=UNEP-CHW-FORM-admissionforobserver.English.doc>, p. 1.

<sup>29</sup> Rule 7, paragraph 2, of Basel Convention COP Rules of Procedure, Rotterdam Convention COP Rules of Procedure and Stockholm Convention COP Rules of Procedure.

<sup>30</sup> Rule 7, paragraph 1, of Basel and Rotterdam Conventions COPs Rules of Procedure and rule 8, of Stockholm Convention COP Rules of Procedure.

the practice of the Basel Convention, industry, including individual companies, and academia are considered to fall under the definitions of “body” or “agency”.<sup>31</sup> That means that under the Rotterdam and Stockholm Conventions, representatives of academia or industry must organize themselves as an association to be able to seek admission as observers. Otherwise, members of individual companies, universities and so forth are registered in the category of “Others” and accordingly have different badges, may be present but not participate, and do not appear on the list of participants.<sup>32</sup>

16. In the margins of the meetings of the COPs, side events, fairs and informal events provide opportunities for Parties, UN agencies and observers to exchange information and present their work and experience concerning the implementation of the Conventions. Observers may use this opportunity to present their views and foster discussions on issues included in the agendas of the meetings of the COPs. Participation in those events is open to the public. Side event organizers may invite panelists or members of the public for that specific event who are not necessarily registered to attend the COP meetings.

### ***Assessment***

17. Based on the provisions contained in the Basel, Rotterdam and Stockholm Conventions, the observers are limited to certain members of the public, specifically to bodies and agencies that are qualified in relevant fields. While paragraph 31 of the Almaty Guidelines allows restriction of access to certain members of the public concerned where “this is necessary and unavoidable for practical reasons”, efforts should be undertaken to ensure that “agencies” and “bodies” representing the members of the public who are, or are likely to be, most directly affected (see para. 30(a) of the Almaty Guidelines) have a chance to participate. It will therefore be important to interpret the admission criteria, which appear to be aimed at qualified observer organizations, in such a way as to not effectively prevent those most affected from participating. The fact that so far, no observer organizations have been refused accreditation appears to confirm that such a practice exists.

18. Moreover, other measures should be explored to allow for the participation of members of the public that do not fulfil the observer criteria. While good proactive information disclosure is an important step to that end (see para. 10 above), further potential measures include forums and dialogues open to members of the public, webcasting of events and general calls for comments, including on selected issues (see para. 33 of the Almaty Guidelines).

19. Concerning the accreditation procedures applied, the applicable criteria are described on the Joint Secretariat website and are based on clear and objective criteria in line with paragraph 31 of the Almaty Guidelines.<sup>33</sup> With regard to the difference in treatment of observers (see para. 15 above), it would certainly be beneficial if a common solution could be found. In order to promote wide participation in line with the Almaty Guidelines, the solution under the Basel Convention appears to be the best option. In any event, if participants are permitted to attend as “Others”, they should still be reflected in the list of participants or a similar document in order to ensure transparency.

## **B. Modalities of public participation (paras. 29 and 32-37 of the Almaty Guidelines)**

### ***Description***

#### ***Conferences of the Parties (COPs)***

20. In accordance with the rules of procedures under the three Conventions, the meetings of the COPs are held in public unless the COPs decide otherwise.<sup>34</sup> In practice all meetings of the COPs have

<sup>31</sup> Note by the Secretariat “Admission of observers: report on experiences with using the application forms and practices followed”, UNEP/CHW.12/INF/46, UNEP/FAO/RC/COP.7/INF/32, UNEP/POPS/COP.7/INF/53, paragraph 10.

<sup>32</sup> Ibid, paragraphs 11-12.

<sup>33</sup> Ibid.

<sup>34</sup> Rule 29.1 Basel Rules of Procedure and rule 34 of Stockholm and Rotterdam Rules of Procedures.

been held in public so far. During the meetings of the COPs, observers are able to take the floor upon invitation by the President. It should be noted that “Others” are not considered observers and may therefore not take the floor (see para. 15 above).

21. The provisional agenda of each COP meeting is prepared by the Secretariat in agreement with the respective COP President and uploaded on the relevant website well in advance of the respective meeting of the COP.<sup>35</sup> At the same place, relevant working and information documents for the respective COPs are made available.<sup>36</sup> After each COP, a call for information is issued for all three Conventions.<sup>37</sup>

22. The Conferences of the Parties have also taken note of joint Guidelines on rules of conduct of meeting participants, the first pertaining to the use of camera and audio/video recording devices by participants at meetings of the COPs and their subsidiary bodies, including for observers, and the second related to the participation of representatives of observers at the COPs and their subsidiary bodies.<sup>38</sup>

### Bureaux

23. The Bureaux of the COP of each Convention only consists of Party representatives. Bureaux members are elected with equitable geographical representation of the five regions of the United Nations<sup>39</sup>. The Bureaux usually meet each morning during the meetings of the COPs. The Bureaux also meet in the intersessional period to guide the preparations for the next meetings of the COPs: they meet once separately and once jointly. Meetings of the Bureaux are closed, but working documents and the meeting report are made publicly available.<sup>40</sup>

### Subsidiary bodies

24. In accordance with the Basel Convention COP Rules of Procedure, meetings of committees and working groups established by the COP, other than drafting and informal working groups, shall be held in public unless the committee or working group decides otherwise.<sup>41</sup> The Rotterdam and Stockholm Conventions COPs Rules of Procedures state that meetings of subsidiary bodies shall be held in public unless the COP or the subsidiary body concerned decides otherwise.<sup>42</sup> In practice, differences exist between the different subsidiary bodies under the Conventions, as set out below.

#### i. Basel Convention: “Open-Ended Working Group” (OEWG)

25. The Open-Ended Working Group of the Basel Convention is composed of representatives of all the Parties and open to participation by observers (e.g., non-governmental organizations (NGOs), business, industry and academia). Practice shows that working group meetings are attended by these

<sup>35</sup> See for instance: <http://www.basel.int/TheConvention/ConferenceoftheParties/Meetings/COP13/tabid/5310/Default.aspx>; <http://www.pic.int/TheConvention/ConferenceoftheParties/Meetings/COP8/Overview/tabid/5311/language/en-US/Default.aspx>; and <http://chm.pops.int/TheConvention/ConferenceoftheParties/Meetings/COP8/tabid/5309/Default.aspx>.

<sup>36</sup> Ibid.

<sup>37</sup> See:

<http://www.basel.int/TheConvention/ConferenceoftheParties/Callforinformation/FollowuptoCOP13/tabid/5962/Default.aspx>;  
<http://www.pic.int/TheConvention/ConferenceoftheParties/CallforInformation/FollowuptoCOP8/tabid/5959/language/en-US/Default.aspx>; and  
<http://chm.pops.int/TheConvention/ConferenceoftheParties/Meetings/COP7/FollowuptoCOP8/tabid/5958/Default.aspx>.

<sup>38</sup> UNEP/CHW.13/INF/58-UNEP/FAO/RC/COP.8/INF/47-UNEP/POPS/COP.8/INF/24.

<sup>39</sup> The Bureaux are respectively elected by the COPs, in accordance with rule 21 of the Basel Convention COP Rules of Procedure, and with rule 22 of the Rotterdam and Stockholm Conventions COPs Rules of Procedures.

<sup>40</sup> See: <http://synergies.pops.int/Decisionmaking/JointBureaux/Overview/tabid/3331/language/en-US/Default.aspx>.

<sup>41</sup> Rule 29.2 Basel Convention COP Rules of Procedure.

<sup>42</sup> Rule 27.2 Rotterdam and Stockholm COPs Rules of Procedures.

observers.<sup>43</sup> Relevant working and information documents are made available on the relevant website.<sup>44</sup> It is furthermore noteworthy that, at its twelfth meeting, the Basel Convention COP (COP-12) invited comments on the arrangements that were made for the tenth meeting of the Open-ended Working Group<sup>45</sup> and the Secretariat accordingly compiled comments received from Parties and observers for consideration at the thirteenth meeting of the COP (COP-13).<sup>46</sup> A majority of participants (93.33 per cent) commented that the meeting organization facilitated effective participation and enabled transparent, participatory and sound decision-making.<sup>47</sup>

ii. Basel Convention: “Committee for Administering the Mechanism for Promoting Implementation and Compliance”

26. To date, an Implementation and Compliance Committee has only been established under the Basel Convention. Members of the Basel Convention Implementation Committee are nominated by Parties and elected by the COP.<sup>48</sup> Submissions can be made by Parties and the Secretariat.<sup>49</sup> Moreover, “a Party may also consider and use relevant and appropriate information provided by civil society on compliance difficulties.”<sup>50</sup> The meetings of the Committee dealing with general issues of implementation and compliance are open, while meetings dealing with specific submissions relating to compliance of an individual party are not open to the public, unless the Committee and the Party concerned agree otherwise.<sup>51</sup> So far, few representatives of Parties or observers have expressed interest to participate in the open sessions of the meetings. In one instance, a university student participated in the consideration of a submission.<sup>52</sup> No request for participation as observers have so far been declined.

27. In accordance with paragraph 26 of decision VI/12 of the Basel Convention Implementation and Compliance Committee, information “received in confidence” is to be protected. All individual submissions and associated decisions, information on general issues and activities, as well as working documents, information documents and reports of the meetings are all published on the website.<sup>53</sup> When working on “general issues”, the Committee also invites Parties to provide information on their experiences, and at times issues calls for comments to Parties and others.<sup>54</sup>

iii. Other Basel Convention subsidiary bodies

28. The Basel Convention routinely establishes ad hoc subsidiary bodies<sup>55</sup> to conduct specific tasks. Most of these bodies will report back to the OEWG and then to the COP. The composition (membership

<sup>43</sup> See list of participants, for instance for the tenth meeting of the OEWG (OEWG-10) at: [http://www.basel.int/TheConvention/OpenedWorkingGroup\(OEWG\)/Meetings/OEWG10/Overview/tabid/4626/mctl/ViewDetails/EventModID/8295/EventID/560/xmid/14062/Default.aspx](http://www.basel.int/TheConvention/OpenedWorkingGroup(OEWG)/Meetings/OEWG10/Overview/tabid/4626/mctl/ViewDetails/EventModID/8295/EventID/560/xmid/14062/Default.aspx).

<sup>44</sup> See for instance, [http://www.basel.int/TheConvention/OpenedWorkingGroup\(OEWG\)/Meetings/OEWG10/Overview/tabid/4626/mctl/ViewDetails/EventModID/8295/EventID/560/xmid/14062/Default.aspx](http://www.basel.int/TheConvention/OpenedWorkingGroup(OEWG)/Meetings/OEWG10/Overview/tabid/4626/mctl/ViewDetails/EventModID/8295/EventID/560/xmid/14062/Default.aspx).

<sup>45</sup> Decision BC-12/19.

<sup>46</sup> See UNEP/CHW.13/INF/42 available online at: <http://www.basel.int/TheConvention/ConferenceoftheParties/Meetings/COP13/tabid/5310/Default.aspx>.

<sup>47</sup> Ibid.

<sup>48</sup> Paragraph 3 of decision BC-VI/12.

<sup>49</sup> Paragraph 9 of decision BC-VI/12.

<sup>50</sup> Paragraph 17 of decision BC-VI/12.

<sup>51</sup> Paragraph 16 of decision BC-VI/12.

<sup>52</sup> See the list of participants to the tenth meeting of the ICC, available at: <http://www.basel.int/TheConvention/ImplementationComplianceCommittee/Meetings/ICC10/MeetingDocuments/tabid/3396/Default.aspx>.

<sup>53</sup> See: <http://www.basel.int/TheConvention/ImplementationComplianceCommittee/Reports/tabid/2289/Default.aspx>.

<sup>54</sup> See for instance: <http://www.basel.int/Implementation/LegalMatters/Compliance/GeneralIssuesActivities/Activities201617/IllegalTraffic/tabid/4581/Default.aspx>.

<sup>55</sup> Under the 2018-2019 work programme, ad hoc subsidiary bodies include the following: expert working group on environmentally sound management, expert working group on the review of the Annexes, expert working group on the e-waste technical guidelines, working group of the household waste partnership, small intersessional working group on the strategic framework, small intersessional working group on technical guidelines on persistent organic pollutants.



limited to Party representatives or also open to representatives of observers), size and mandate of each body is decided by the COP. It is standard practice for the COP to confirm that the meetings of these bodies operate on the basis of the rules of procedure of the respective COP, including that their meetings are public.

29. Under the Rotterdam and Stockholm Conventions, a Compliance Committee is envisaged in article 17 of each of the Conventions, and negotiations are still ongoing. In the previous intersessional period, a call for comments was issued to Parties. At the latest meetings of the COPs, consideration of this issue has been deferred to the next meetings.<sup>56</sup>

iv. Rotterdam Convention Chemical Review Committee (CRC)

30. The Rotterdam Convention Chemical Review Committee (CRC)<sup>57</sup> consists of government-designated experts.<sup>58</sup> The CVs of members and other information about them are published online.<sup>59</sup> Meetings are open to observers in accordance with the relevant COPs decisions,<sup>60</sup> and in practice observers do attend them.<sup>61</sup>

31. The Chemical Review Committee prepares draft Decision Guidance Documents (DGDs). The intersessional drafting groups are not open to observers but DGDs are circulated for observers for their comments.

32. The Chemical Review Committee also establishes Task Groups for specific assessments. Reports are finalized at Task Group pre-meetings open to observers, and observers can also comment on the draft reports, which are published online.<sup>62</sup> The applicable procedure and contact persons are also made available online.<sup>63</sup>

33. Declarations of conflicts of interest are held by the Secretariat and only made available to the COP, Bureau and subsidiary bodies “as deemed appropriate”.<sup>64</sup>

v. Other Rotterdam Convention subsidiary bodies

34. Similar to the Basel and Stockholm Conventions, the Rotterdam Convention routinely establishes ad hoc subsidiary bodies to conduct specific tasks. Most of these bodies will report back to the COP. The composition (membership limited to Party representatives or open to representatives of observers), size and mandate of each body is decided by the COP. It is standard practice for the COP to confirm that the meetings of these bodies operate on the basis of the rules of procedure established by the COP, including that their meetings are public. Examples of two of those intersessional subsidiary bodies are described below.

<sup>56</sup> See: <http://www.pic.int/TheConvention/Compliance/tabid/3606/language/en-US/Default.aspx> and <http://chm.pops.int/TheConvention/Compliance/tabid/61/Default.aspx>.

<sup>57</sup> Established under article 18, paragraph 6, of the Rotterdam Convention.

<sup>58</sup> Decision RC-1/6: Establishment of the Chemical Review Committee, paras. 1 and 3 and Decision SC-1/7: Establishment of the Persistent Organic Pollutants Review Committee, paragraph 4.

<sup>59</sup> See: <http://www.pic.int/TheConvention/ChemicalReviewCommittee/Membership/tabid/2897/language/en-US/Default.aspx> and <http://chm.pops.int/TheConvention/POPsReviewCommittee/Membership/tabid/2808/Default.aspx>.

<sup>60</sup> RC-1/6: Establishment of the Chemical Review Committee, paragraph 12 and SC-1/7: Establishment of the Persistent Organic Pollutants Review Committee, paragraph 13(b).

<sup>61</sup> See for instance list of participants of the 13th meeting, UNEP/FAO/RC/CRC.13/INF/38 – 7 NGOs attended the meeting.

<sup>62</sup> See: <http://www.pic.int/TheConvention/ChemicalReviewCommittee/Meetings/CRC13/CRC13TaskGroupReports/tabid/6078/language/en-US/Default.aspx>.

<sup>63</sup> See: <http://www.pic.int/TheConvention/ChemicalReviewCommittee/Meetings/CRC13/AdmissionofObservers/tabid/6058/language/en-US/Default.aspx>; and <http://chm.pops.int/TheConvention/POPsReviewCommittee/Meetings/POPRC13/AdmissionofObserver/tabid/6056/Default.aspx>.

<sup>64</sup> Decision RC-1/7, paragraph 7 (g). See also: <http://www.pic.int/Procedures/DeclarationofConflictsOfInterest/tabid/3467/language/en-US/Default.aspx>. For Stockholm Convention, this appears only on: <http://chm.pops.int/Procedures/Declarationofconflictsofinterest/tabid/3471/Default.aspx>.

- Rotterdam Convention: Intersessional working group on the process of listing chemicals in Annex III<sup>65</sup>

35. For the intersessional working group on the listing of chemicals, Parties and observers were invited to nominate experts, and the working group finally consisted of 80 members including 35 Parties and 14 NGOs representatives.<sup>66</sup> A workshop was also held to facilitate the work of the Working Group, which was attended by 23 Parties and 11 NGOs.<sup>67</sup>

- Rotterdam Convention: Intersessional working group on enhancing the effectiveness of the Convention

36. This Rotterdam intersessional working group only consists of Parties (and one non-Party State).<sup>68</sup> A survey on priority actions was only issued to Parties;<sup>69</sup> but the resulting report was open to consultation with observers.<sup>70</sup> This report was then considered by the intersessional working group.

vi. Stockholm Convention Persistent Organic Pollutants Review Committee

37. Similar to the Rotterdam Convention's CRC (see section iv above), the Persistent Organic Pollutants Review Committee (POPRC)<sup>71</sup> consists of government-designated experts.<sup>72</sup> Information on the members, including their CVs, is published online.<sup>73</sup> Meetings are open to observers in accordance with the relevant COPs decisions<sup>74</sup>, and observers do in practice attend the meetings.<sup>75</sup>

38. The POPRC also establishes ad hoc working groups, such as chemical-specific groups, to work during meetings and intersessionally. Such groups are chaired by at least one member of the Committee, and may consist of members of the Committee as well as invited experts and observers.

39. Declarations of conflicts of interest are held by the Secretariat and only made available to the COP, Bureau and subsidiary bodies "as deemed appropriate".<sup>76</sup>

vii. Other Stockholm Convention subsidiary bodies

<sup>65</sup> Established by decision RC-7/5 on intersessional work on the process of listing chemicals in Annex III to the Rotterdam Convention, see <http://www.pic.int/Implementation/ProcessforListingChemicals/IntersessionalWorkingGroup/tabid/5253/language/en-US/Default.aspx>.

<sup>66</sup> See: <http://www.pic.int/Implementation/EnhancingtheeffectivenessoftheConvention/Previousintersessionalwork/Membership/tabid/5256/language/en-US/Default.aspx>.

<sup>67</sup> See: <http://www.pic.int/Implementation/TechnicalAssistance/Workshops/WorkshopRiga.Latvia2016/tabid/5213/language/en-US/Default.aspx>.

<sup>68</sup> Decision RC-8/8: Enhancing the effectiveness of the Rotterdam Convention, paragraph 7 and "Members and observers of the intersessional working group on enhancing the effectiveness of the Rotterdam Convention (as of 15 February 2018)", available online at: <http://www.pic.int/Implementation/EnhancingtheeffectivenessoftheConvention/Workinggroup/tabid/6218/language/en-US/Default.aspx>.

<sup>69</sup> See: <http://www.pic.int/Implementation/EnhancingtheeffectivenessoftheConvention/Onlinesurvey/tabid/6215/language/en-US/Default.aspx>.

<sup>70</sup> See: <http://www.pic.int/Implementation/EnhancingtheeffectivenessoftheConvention/Reportonpriorityactions/tabid/6234/language/en-US/Default.aspx>.

<sup>71</sup> Established under article 19, paragraph 6, of the Stockholm Convention.

<sup>72</sup> Decision RC-1/6: Establishment of the Chemical Review Committee, paragraphs 1 and 3 and Decision SC-1/7: Establishment of the Persistent Organic Pollutants Review Committee, paragraph 4.

<sup>73</sup> See: <http://www.pic.int/TheConvention/ChemicalReviewCommittee/Membership/tabid/2897/language/en-US/Default.aspx>; and <http://chm.pops.int/TheConvention/POPsReviewCommittee/Membership/tabid/2808/Default.aspx>.

<sup>74</sup> RC-1/6: Establishment of the Chemical Review Committee, para. 12 and SC-1/7: Establishment of the Persistent Organic Pollutants Review Committee, paragraph 13(b).

<sup>75</sup> See: <http://chm.pops.int/Procedures/Declarationofconflictsofinterest/tabid/3471/Default.aspx>.

40. Similar to the Basel and Rotterdam Conventions, the Stockholm Convention routinely establishes ad hoc subsidiary bodies to conduct specific tasks. Most of these bodies will report back to the COP. The composition (membership limited to Party representatives or also open to representatives of observers), size and mandate of each body is decided by the COP. It is standard practice for the COP to confirm that the meetings of these bodies operate on the basis of the rules of procedure stipulated by the COP, including that their meetings are public. At its eighth meeting, the Conference of the Parties established a number of intersessional working groups. For instance, pursuant to its decision SC-8/17, it established a small intersessional working group on reporting, consisting of members of Parties and open to observers. The working group will work by means of electronic meetings between 2017 and 2019.

### ***Assessment***

41. According to paragraph 29 of the Almaty Guidelines, public access may only be restricted if there is a reasonable basis to exclude participation according to transparent and clearly stated standards that are made available, if possible, in advance. In that regard, the openness to observers of the COPs, and meetings of the Basel Convention “Open-Ended Working Group” (see sub-para. i above), meetings of the Basel Convention Implementation and Compliance Committee dealing with general issues (see sub-para. ii above), and the Rotterdam and Stockholm Conventions Review Committees (see sub-para. iv and vi above), Rotterdam Convention Intersessional working group on the process of listing chemicals in Annex III (v), the Stockholm Convention: small intersessional working group on reporting (see sub-para. vii above), are positive examples in this regard. Attention should be paid that, going forward, meetings of all subsidiary bodies remain or become open to representatives of observers (at least for (a) representative(s) of non-governmental organizations qualified in matters related to the Conventions) as far as possible and in all relevant stages of their decision-making procedures. As a good practice, this would include all modalities of the meetings, such as relevant contact, drafting or expert groups etc.

42. With regard to the meetings of the Basel Convention Implementation Committee, as mentioned above, two regimes apply. Consideration should be given to whether sessions dealing with submissions should follow the usual regime, and be public unless otherwise decided by the Committee. For instance, only sessions where the Committee is drafting its decisions could be confidential while meetings with the Parties would be kept open. Moreover, attention should be paid to the transparency of the appointment of members of the Implementation Committee, including by providing information on the expertise and professional history of proposed candidates.

43. While there may be reasons to hold meetings of the Bureaux without wider participation of the public, it could be explored whether a representative of a non-governmental organization qualified in matters related to the Conventions could become an observer representative at the Bureaux. Such a representative could be chosen from among registered observers for the meetings COPs.

44. Concerning paragraphs 32 and 36 of the Almaty Guidelines, agenda-setting is principally a prerogative of the Parties which adopt the agenda of meetings of the COPs, work plans and relevant decisions. A positive point is the early online disclosure of the provisional agenda and that additional items can be added at a time when observers also have the right to speak during the meetings of the COP. Furthermore, as regards the Basel Convention, observers can participate in the Open-ended Working Group to influence the development of the work programme. Under the Rotterdam Convention, observers were not able to partake in the Intersessional Working Group on enhancing effectiveness, but were at least able to comment on the resulting report. Currently, no similar mechanism appears to exist under the Stockholm Convention.

45. As regards disclosure of “documents relevant to the decision-making process” (para. 34 of the Almaty Guidelines), website disclosure of information and working documents of all processes is done

proactively and broadly, which is very positive. Moreover, observers appear to also be allowed to speak at all meetings in which they are permitted to participate (see para. 15 above).

46. As regards paragraph 37 of the Almaty Guidelines, observers do not have a right to participate in the decision-making, as this is the prerogative of each governing body; but certain documents are made available for written comments. It is also positive that these are put in one place on the website to allow observers to get a quick overview. Associated timeframes for various participation modalities outlined in the Almaty Guidelines also appear to be adequate (para. 36 of the Almaty Guidelines). In order to ensure participation of the public concerned at all relevant stages of the decision-making process (para. 29 of the Almaty Guidelines), further ways should be explored to collect and take into account input from members of the public, including on priority actions under the Convention and important decisions.

### **C. Capacity-building and financial assistance (paras. 17-18 and 38-39 Almaty Guidelines)**

#### *Description*

47. Under all three Conventions, recognizable efforts have been undertaken in public awareness raising and in building capacities. Each of the Conventions has a part of its website dedicated to public awareness.<sup>77</sup> As regards capacity-building, the Rotterdam Convention website includes an online database “Resource Kit” with information on the Convention, which includes an evaluation form to give feedback suggesting improvements<sup>78</sup> as well as an e-learning tool.<sup>79</sup> On the Stockholm Convention website, specific toolkits on certain elements of the implementation of the Convention are available.<sup>80</sup> A series of online short modules on key processes under the Conventions serve as self-learning tools. Two online courses are available for customs and enforcement officers, focusing on combating illegal traffic of hazardous chemicals and wastes under the three Conventions, and the “Massive Open Online Course” (MOOC) on e-waste. The Secretariat further organizes webinars to inform the public on the implementation of all three Conventions.<sup>81</sup> An additional tool to build capacities is the BRS Social (<http://social.brsmeas.org>) social networking portal, which provides an online medium for exchange of information with and between the wider public. Moreover, workshops are organized under all three Conventions, some being directed only at national authorities while others include all stakeholders.<sup>82</sup>

48. The Basel and the Stockholm Conventions have established 23 regional centres in the five UN regions to provide training and technology transfer at national and regional levels. The centres are independent bodies, reviewed and endorsed by the Conferences of the Parties to the Basel and Stockholm Conventions. The Basel and Stockholm Conventions Regional Centres serve a region or a group of countries sharing the same language. Stockholm Convention Regional Centres are selected based on key expertise that they can offer to all Parties to the Stockholm Convention. Basel and Stockholm Conventions Regional Centres implement projects, deliver training and transfer technologies in multiple languages (the six UN languages and national languages of the Centres are covered). They

<sup>77</sup> See: <http://www.basel.int/Implementation/PublicAwareness/NewsFeatures/tabid/3000/Default.aspx>; <http://www.pic.int/Implementation/PublicAwareness/Overview/tabid/4123/language/en-US/Default.aspx>; and <http://chm.pops.int/Implementation/PublicAwareness/NewsFeatures/tabid/3204/Default.aspx>.

<sup>78</sup> See: <http://www.pic.int/Implementation/ResourceKit/tabid/1064/language/en-US/Default.aspx>.

<sup>79</sup> See: <http://www.pic.int/Implementation/ELearningTool/tabid/1065/language/en-US/Default.aspx>.

<sup>80</sup> See: <http://toolkit.pops.int/>.

<sup>81</sup> See: <http://www.basel.int/Implementation/TechnicalAssistance/WebinarsLibrary/tabid/4211/Default.aspx>; <http://www.pic.int/Implementation/TechnicalAssistance/WebinarsLibrary/tabid/4212/language/en-US/Default.aspx>; and <http://chm.pops.int/Implementation/TechnicalAssistance/WebinarsLibrary/tabid/4218/Default.aspx>.

<sup>82</sup> See: <http://www.brsmeas.org/Implementation/TechnicalAssistance/Workshops/WSDjiboutiOct2017/tabid/6126/language/en-GB/Default.aspx>.

also publish information on the Conventions that is relevant for their respective regions and act as regional platforms to inform, train and involve all stakeholders at national and regional levels.

49. It appears that there are currently no arrangements for financial assistance to support the travel and subsistence costs of observers to facilitate their participation in meetings of the COPs and of subsidiary bodies, in conformity with paragraph 39 of the Almaty Guidelines.

### ***Assessment***

50. All three Conventions provide for a good range of capacity-building activities consistent with paragraph 38 of the Almaty Guidelines. The regional centres under the Basel and Stockholm Conventions and the development of online e-learning tools and toolkits, as well as webinars, are to be recognized as good practices. A good element in this regard is also a call for feedback from users, as done for the Rotterdam Convention “Resource Kit”. The organization of webinars and workshops open to all members of the public interested in the implementation of the Convention is a further example of good practice and should continue to be organized by the Secretariat.

51. There is currently no information available on the websites of the Conventions on how to obtain funds for observers wishing to participate in meetings of the COPs and subsidiary bodies of the Conventions but lacking the financial means to do so. Possibilities for funding should be explored, in particular from the side of Parties to the Conventions, and relevant information made available.

## **D. Review Procedures (para. 40 of the Almaty Guidelines)**

### ***Description***

52. No specific review procedure relating to any application of the rules of procedures under the Basel, Rotterdam and Stockholm Conventions regarding access to information and public participation appears to have been established.<sup>83</sup>

### ***Assessment***

53. Some situations in which review procedures could be of use in the work of the three Conventions are (a) denial by the Secretariat of access to environmental information, and (b) application by the Secretariat of a measure against an observer on the basis of the guidelines for participation (see para. 22 above). In such instances where an individual or an entity wishes to complain about the actions of the Secretariat, a complaint letter could be sent to the Executive Director of UNEP or the Director General of the FAO. Whether or not any or all of these situations in fact require a review mechanism will depend on the practice under the Conventions and should be ascertained in a participatory process, which is inclusive with respect to observers.

## **IV. Conclusions**

54. Overall, there appears to be good information disclosure under the provisions of each of the Conventions, their respective applicable rules of procedures, and in the practices related thereto. The capacity-building activities, for example e-learning tools, webinars and workshops, and the use of regional centres, can be highlighted as good practices that should be continued. The admission system for observers is transparent and objective; however, it only provides access to members of the public organized as a body or agency. A central area for further improvement is to ensure that members of the public are able to express their views on key questions that are subject to decision-making under the Conventions, and that their comments are adequately taken into account in practice. To overcome

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<sup>83</sup> For relevant policy documents see <http://www.euro.who.int/en/health-topics/environment-and-health/pages/european-environment-and-health-process-ehp/policy-documents>.

current limitations and further improve the overall practice, several measures, such as the following, could be considered:

- Consider designating contact points at the Secretariat(s) to receive environmental information related to certain subject areas;
- Continue to explore the creation of forums and dialogues open to members of the public, webcasting of events and general calls for comments, including on selected issues (see para. 33 of the Almaty Guidelines) which are not open to registered observers;
- Harmonize the interpretation of “agencies” and “bodies” in the context of the accreditation of observers between the Basel Convention, on one hand, and the Stockholm and Rotterdam Conventions, on the other hand; and ensure that all participants present at a meeting are reflected in one way or another in a list of participants;
- Ensure that meetings of working groups, task forces, review committees, informal groups and other current or future subsidiary bodies of the Conventions remain or become open to observer participation;
- Consider whether arrangements can be made so that observers can take part in those aspects of the meetings of the Basel Implementation Committee pertaining to submissions but not to the drafting of decisions;
- Explore the possibility of an observer representative on the Bureaux, chosen by the observers;
- Arrange for further participation procedures for observers, including by inviting written comments on important topics under the Conventions, such as priority actions and decisions to implement the Conventions;
- Promote greater transparency in the procedures for the election of members of the Committee for Administering the Mechanism for Promoting Implementation and Compliance of the Basel Convention, for instance by requesting members to submit their CVs;
- Encourage provision of financial support by Parties for observers lacking the financial means to attend meetings of the bodies of the Conventions;
- Consider whether the creation of specific review procedures in cases of refusals of access to information requests, admission of observers and enforcement of observer guidelines would be useful.

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