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## Economic Commission for Europe

Meeting of the Parties to the Convention on  
Access to Information, Public Participation  
in Decision-making and Access to Justice  
in Environmental Matters

### Working Group of the Parties

#### Twenty seventh meeting

Geneva, 26-28 June 2023

Item 4 (c) of the provisional agenda

**Substantive issues: access to justice**

## Report of the Task Force on Access to Justice on its fifteenth meeting\*

### *Summary*

At its second session (Almaty, Kazakhstan, 25–27 May 2005), by its decision II/2, the Meeting of the Parties to the Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters established the Task Force on Access to Justice to undertake a number of tasks related to promoting access to justice in environmental matters.<sup>a</sup> By that same decision, the Task Force was requested to present the results of its work to the Working Group of the Parties for consideration and appropriate action. At its seventh session (Geneva, 18–21 October 2021), the Meeting of the Parties renewed the Task Force's mandate to carry out further work under the authority of the Working Group of the Parties.<sup>b</sup>

Pursuant to the above-mentioned mandates, the present report of the Task Force on its fifteenth meeting (Geneva, 4–5 April 2023) is being submitted for the consideration of the Working Group of the Parties at its twenty-seventh meeting.

<sup>a</sup> ECE/MP.PP/2005/2/Add.3, paras. 30–33.

<sup>b</sup> ECE/MP.PP/2021/2/Add.1, decision VII/3, para. 12.

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\* The present document was submitted late owing to the substantial time required for consultations and liaising with the many speakers concerned regarding its finalization.



## Introduction

1. The fifteenth meeting of the Task Force on Access to Justice under the Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters (Aarhus Convention) was held in Geneva, on 4 and 5 April 2023.
2. The meeting was attended by the representatives of the following Parties to the Convention:<sup>1</sup> Armenia, Austria, Belgium, Bosnia and Herzegovina, Cyprus, Czechia, Finland, France, Georgia, Germany, Ireland, Italy, Lithuania, Malta, Montenegro, Portugal, Romania, Serbia, Slovenia, Turkmenistan, Ukraine and United Kingdom of Great Britain and Northern Ireland. The representatives of Canada and Guinea-Bissau also participated in the meeting. Representatives of the European Commission attended the meeting on behalf of the European Union. Representatives of the European Investment Bank were also present.
3. Also attending the meeting were judges, representatives of judicial institutions and independent review bodies and experts from Albania, Armenia, Azerbaijan, Belgium, Brazil, Bosnia and Herzegovina, European Union, Greece, Guinea-Bissau, Iceland, Kazakhstan, Kyrgyzstan, Latvia, Montenegro, the Republic of Moldova, Romania, Serbia, Spain, Tajikistan and Ukraine. Some of those participants represented the European Union Forum of Judges for the Environment (EUFJE).
4. Representatives of the Office of the High Commissioner for Human Rights (OHCHR), United Nations Development Programme (UNDP) and UNEP Secretariat of the Convention on Biological Diversity were present. The meeting was also attended by representatives of other international organizations, such as the Organization for Security and Cooperation in Europe (OSCE) and the International Union for Conservation of Nature (IUCN) World Commission on Environmental Law and the European Court of Human Rights.
5. Representatives of Aarhus Centres, international financial institutions and business, professional, research and academic organizations were present, as were representatives of international, regional and local non-governmental organizations (NGOs), many of whom coordinated their input within the framework of the European ECO-Forum.

## I. Opening of the meeting and adoption of the agenda

6. The Task Force Chair, Mr. Luc Lavrysen (Belgium), opened the meeting.
7. The Task Force adopted its agenda as set out in informal document AC/TF.AJ-15/Inf.1.<sup>2</sup>
8. The Task Force took note of the statements by the Chair and a representative of the European ECO-Forum highlighting: the importance of access to justice for strengthening the rule of law and societal resilience; current challenges in access to justice aggravated by the current war against Ukraine; and, the need for a greater focus on persons in vulnerable situations and measures against strategic lawsuits against public participation.

## II. Thematic focus

### A. Access to justice in cases related to climate change

9. Opening the discussion on the item, the Chair highlighted the importance of climate action in accordance with Sustainable Development Goal 13. Insufficient progress in that area had triggered an increasing number of lawsuits before domestic courts brought by

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<sup>1</sup> The list of participants was made available on the meeting web page. Participants who attended online are indicated.

<sup>2</sup> All documents for the fifteenth meeting, including background documents, statements and presentations, are available at <https://unece.org/environmental-policy/events/fifteenth-meeting-task-force-access-justice-under-aarhus-convention>.

members of the public in various countries against the State or public authorities, corporations and other private bodies on climate-related matters.

10. The Chair further invited participants to consider recent developments and experiences of Parties and stakeholders in dealing with climate change cases and updating the legal framework to promote effective access to justice in that area.

11. The Chair of the IUCN World Commission on Environmental Law underscored the shift of climate litigation to the international level and its potential impact on existing international law and ongoing negotiations. In recent years, there had been increasing recourse to: (a) the relevant United Nations human rights treaty bodies, in the absence of legal protection by domestic courts; (b) supranational human rights courts, in the absence of success in protecting human rights from being negatively affected by climate change; and (c) international courts, to seek legal clarity of existing obligations for States and legal consequences where their acts or omissions could cause significant harm to the climate system and other parts of the environment. The respective cases brought at the international level drew attention to the need for the judicial protection of the rights of groups and individuals in most vulnerable situations, including “climate refugees”, children, future generations and Indigenous peoples.

12. The representative of the Office of the United Nations High Commissioner for Human Rights recalled the findings of the recent reports<sup>3</sup> of the Intergovernmental Panel on Climate Change, which recognized the importance of rights-based approaches for sustainable and effective climate action. He explained how climate litigation could draw on, inter alia, the advisory opinions of international courts, the work of the United Nations human rights treaty bodies, judgments in relevant cases, and the relevant reports and amicus curiae briefs by special procedures of the Human Rights Council.

13. The representative of Czechia presented an ongoing domestic case challenging the State’s failures to maintain a carbon budget and appropriately address climate change that violated citizens’ rights to life, health, environment, and other rights guaranteed by the Constitution, the European Union Charter of Fundamental Rights and the European Convention on Human Rights. The court of first instance had found that the case was admissible and ordered the Government to take the necessary measures to maintain a carbon budget and to adapt to climate change. The Supreme Administrative Court had overturned that decision and referred the case back to the same court for a new ruling due by the end of 2023. In that regard, the Supreme Administrative Court had underscored the collective character of the European Union obligation to reduce emissions. It had also noted that the legal and political framework in the European Union was still developing. Therefore, the Court argued that the role of courts in the legal system did not consist of taking premature actions.

14. The representative of Finland gave a presentation on the recent reform of the Climate Change Act that aimed to reach the target of carbon neutrality by 2035 and further clarified provisions on access to justice for members of the public. The new amendments specified that climate plans could be appealed against by interested parties whose right, obligation or interest might be affected in a special way by the effects of climate change, its mitigation or adaptation thereto. Municipal plans also could be appealed against in accordance with the Local Government Act. A new type of claim had also been brought by an environmental NGOs to the Supreme Administrative Court in November 2022 that challenged the Government’s decision on its annual climate report due to the alleged omission of additional measures to achieve the climate goals set out. The assessment of standing and appealability in that case would be based on general administrative procedural law.

15. The representative of France highlighted the growing trend in climate litigation that challenged acts or omissions by companies, individual administrative acts or the State’s climate policies. In French administrative proceedings, claimants must prove that the contested act affected their interests under sufficiently special, certain and direct conditions. For example, two notable cases of national scope included *the Grande-Synthe Commune v.*

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<sup>3</sup> See [www.ipcc.ch/reports/](http://www.ipcc.ch/reports/).

*France* case,<sup>4</sup> involving the challenging of the Government's refusal to take additional climate measures before the Council of State, and the *Notre affaire à tous v. France* case,<sup>5</sup> where environmental NGOs had requested the Administrative Court of Paris to recognize the State's failure to address climate change and compensate for moral and environmental damage. In both cases, the courts had issued interim measures requesting the State to take all necessary sectoral measures to reduce greenhouse gas emissions and had closely monitored the implementation of their judgments.

16. The representative of Ireland also provided an update on the further development of climate legislation that included carbon budgeting, local caps with mitigation and adaptation measures and sectoral emissions ceilings since the Supreme Court of Ireland had quashed the National Mitigation Plan<sup>6</sup> as it did not sufficiently specify the policy measures to be taken until 2050 to transition to a low carbon, environmentally sustainable economy.

17. The representative of the European Investment Bank highlighted the role and experiences of its complaint mechanism in handling climate-related complaints. Being widely accessible and free of charge, said mechanism consisted of an internal tier placed with the Bank's independent Inspectorate General, and the European Ombudsman as an external tier. The mandate focused on maladministration and concerns basis complaints. Several cases dealt with mostly related to technical assessments regarding climate impact, greenhouse gas emissions and the carbon footprint of projects financed by the Bank. Any effective compliance review procedure required: (a) effective access to in-house or external expertise to investigate technical allegations; (b) identification of the applicable regulatory framework, including European Investment Bank standards, at an early stage; and (c) constructive collaboration with internal and external stakeholders to remediate potential flaws.

18. The representative of the European ECO-Forum/the Independent Institute for Environmental Issues shared views on recent developments regarding the preliminary ruling of the Court of Justice of the European Union in the case *Mercedes-Benz Group (Responsabilité des constructeurs de véhicules munis de dispositifs d'invalidation)*<sup>7</sup> regarding damage claims against illegal thermal windows and Germany's efforts to speed up planning and approval procedure. In particular the Administrative Court Order amendment of 20 February 2023 introduced new procedural bars by limiting the scope of review, the court's interim protection powers and evidence rules, and by creating a lengthy and unfair proceeding for members of the public to challenge climate-damaging projects. As a result, those revisions could severely limit, on the one hand, the prospect for meaningful legal protection against climate-damaging projects and, on the other hand, could delay rather than facilitate energy- and infrastructure-related projects due to legal uncertainties.

19. In the subsequent discussion, the representative of the Aarhus Centre of Turkmenistan highlighted work on the recognition of the rights to a healthy environment and development of the recommendations to improve climate legislation in Turkmenistan.

20. Following the discussion, the Task Force:

(a) Thanked the speakers and welcomed the exchange of experiences, good practices and challenges regarding public access to justice related to climate change;

(b) Noted a continuous increase of cases brought by members of the public to challenge decisions, acts and omissions in climate-related matters before national and international courts and other independent review mechanisms;

(c) Took note of the initiatives and challenges reported by several Parties with regard to including in climate legislation provisions related to access to justice for members

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<sup>4</sup> France, Council of State, *Commune de Grande-Synthe v. France*, Judgment, 1 July 2020 and 19 November 2020.

<sup>5</sup> France, Administrative Court of Paris, *Notre affaire à tous and others v. France*, Judgment, 3 February 2021 and 14 October 2021.

<sup>6</sup> Ireland, Supreme Court, *Friends of the Irish Environment v. The Government of Ireland and others*, Judgement, 31 July 2020.

<sup>7</sup> Court of Justice of the European Union (CJEU), Case No. C-100/21, Judgment (Grand Chamber), 21 March 2023.

of the public to protect their rights and legitimate interests and to challenge climate action plans, and called on other Parties to develop similar initiatives in accordance with the Convention's requirements;

(d) Called on Parties to: (i) guarantee the effective implementation of the Convention with regard to access to information and public participation in decision-making relating to climate change matters, which would reduce the demand for seeking justice; (ii) ensure proper execution of the final decisions of courts and other independent review bodies in climate cases; and (iii) address the needs of and protect individuals and groups in vulnerable situations;

(e) Encouraged Parties to take the necessary legislative and other measures to address existing challenges and further promote effective public access to justice in cases related to climate change, especially with regard to standing, jurisdiction, timeliness and fairness of the existing procedures, scope of review, access to relevant expertise and adequate and effective remedies, including injunctive relief;

(f) Decided to continue the exchange of information regarding developments in legislation and case law concerning public access to justice in climate-related cases through the Aarhus Clearinghouse and the jurisprudence database, and called on Parties to report said developments through the Convention's reporting mechanism.

## **B. Access to justice in cases related to biodiversity protection**

21. Opening the discussion on the item, the Chair highlighted the importance of biodiversity as a crucial and integral part of a clean, healthy and sustainable environment that was indispensable to ensuring human well-being, health and sustainable development. There was growing case law on protection of biodiversity across different countries, in particular dealing with the lack of climate action, mistakes in spatial planning, especially regarding renewable energy installations, and environmental pollution.

22. The representative of the secretariat of the Convention on Biological Diversity introduced the Kunming-Montreal Global Biodiversity Framework, adopted at part II of the fifteenth meeting of the Conference of the Parties to the Convention on Biological Diversity (Montreal, Canada, 7–19 December 2022).<sup>8</sup> Target 22 of the Framework included elements relevant to the pillars of the Aarhus Convention and, inter alia, required States to ensure access to justice for Indigenous peoples and local communities, women and girls, children and youth, persons with disabilities, and the full protection of environmental human rights defenders. Granting right to access to justice for vulnerable groups in biodiversity protection matters was regarded as an effective tool for addressing environmental injustice and strengthening the safeguarding of the rights of vulnerable groups in biodiversity matters. National biodiversity strategies and action plans should integrate the human rights approach and be aligned with the Framework, its goals and targets. Such updated plans and strategies should be further submitted through the monitoring framework for the Kunming-Montreal Global Biodiversity Framework<sup>9</sup> to allow for review of collective progress. Cooperation with the Aarhus Convention and other multilateral processes would be instrumental for States in implementing target 22.

23. The representative of Austria highlighted the amendments to the Federal Environmental Liability Law that had widened access to justice in cases related to biodiversity protection and granted standing to: (a) persons affected or likely to be affected by environmental damage; (b) persons with a sufficient interest in environmental decision-making relating to the damage; and (c) persons alleging the impairment of a right should it be considered as a precondition. The amendments had been triggered by the *Gert Folk* case<sup>10</sup> before the Court of Justice of the European Union. The Court had ruled that an individual whose fishing rights had been affected by the operation of a hydroelectric power station

<sup>8</sup> CBD/COP/DEC/15/4.

<sup>9</sup> CBD/COP/DEC/15/5.

<sup>10</sup> CJEU, Case No. C-529/15, Judgment (First Chamber), 1 June 2017.

should not be deprived of the right to initiate a review procedure in relation to environmental damage.

24. The representative of Guinea-Bissau underscored the current challenges of environmental degradation of that biodiverse country and how environmental laws and established mechanisms for access to justice in environmental matters could address said challenges. While the right to a healthy environment was not explicitly enshrined in the Constitution, it was protected under the African Charter on Human and Peoples' Rights. The country aimed to strengthen both traditional and formal justice systems to preserve its natural resources and promote their sustainable use. In 2022, the country had seen its first conviction for an environmental crime, involving the poisoning of endangered vultures.

25. The representative of Finland reported on the recent update of the Nature Conservation Act, which had removed the exceptions to the right of members of the public to challenge decisions related to habitat types and species protection.

26. The representative of Armenia reported on several ongoing reforms that aimed to improve environmental governance, environmental impact assessment and biodiversity protection, as well as to expand access to justice for environmental NGOs.

27. The representative of the Centre for International and Community Studies and Research presented the findings of recent research on biodiversity litigation, focusing on emerging trends and challenges. The research highlighted several important issues, such as the interplay between local and global interests in biodiversity protection and determination of the sufficient interest of international environmental NGOs and other parties invested in biodiversity conservation to bring actions in cases related to the loss of local biodiversity or threats thereto (see case *Shark captures in La Réunion*).<sup>11</sup> Another trend explored in the research was the growing recognition of non-human rights and legal personalities. The study referenced 325 initiatives related to the rights of nature, raising questions about the standing and broader procedural implications associated with that legal approach.

28. The representative of EUFJE provided insights into several initiatives related to the rights of nature as a step forward to the recently recognized human right to a clean, healthy and sustainable environment. In this regard, the recent adoption of the Law on Recognition of the Legal Personality and Rights of the Mar Menor and its Basin in Spain. The Law established a governance and monitoring framework and widened the possibility of public participation. The Law also recognized that any natural or legal person could bring legal action to defend said ecosystem and could recover the full cost of the successful litigation. However, some implementation challenges should be further overcome by better integration of that new legal instrument into the overall Spanish legal system, improving the coordination of this new legal person with public administration and establishing effective powers to rehabilitate the area and repair the damages.

29. The representative of the European ECO-Forum/Dalma-Sona Foundation presented two case studies that underscored the irreversible character of environmental damage that could undermine the effectiveness of any available legal remedies if awarded too late. To avoid such damage in the future, the speaker called for the improvement of the legal framework, access to independent environmental expertise in decision-making and review procedures and increased awareness and training of legal professionals and other officials involved in decision-making in environmental law and environmental risks.

30. In the subsequent discussion, representatives of several environmental NGOs expressed concern at the situation regarding the potential destruction of natural habitats and other biodiversity threats due to flaws in territorial and urban planning, low quality environmental impact assessments and the use of pesticides. Some additional challenges were highlighted in a cross-border context regarding the island of Ireland that included cost barriers, differences in standard of review, evidential issues, access to legal aid and recognition and enforcement of civil judgments.

31. The Task Force then:

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<sup>11</sup> France, Administrative Appeal Court of Bordeaux, Case No. 21BX04291, Judgment, 31 January 2023.

(a) Expressed its appreciation to the representative of the secretariat of the Convention on Biological Diversity for the briefing on the Kunming-Montreal Global Biodiversity Framework and its targets;

(b) Thanked the speakers and welcomed the exchange of experiences, good practices and challenges regarding public access to justice in cases related to biodiversity protection;

(c) Acknowledged the growing movement for the recognition of the rights of nature as a mechanism to achieve environmental justice, which should integrate the public's rights to access to information and participation in decision-making as set out by the Aarhus Convention;

(d) Underscored that the effective implementation of the Convention's access to justice provisions could underpin the achievement of the relevant targets under the Kunming-Montreal Global Biodiversity Framework and called on Parties to the Aarhus Convention to liaise with the respective national focal points to the Convention on Biological Diversity in order to support the achievement of those targets;

(e) Took note of the initiatives launched by several Parties to update the national legal biodiversity framework, clarifying the respective provisions related to public access to justice and the legal personality of natural sites, and invited other Parties to implement similar initiatives;

(f) Called on Parties to take the necessary legislative and other measures to address existing barriers to access to justice in biodiversity protection matters with regard to court jurisdiction, the transboundary context of cases, costs, injunctive relief, timeliness, liability for poor quality environmental impact assessments and other issues highlighted by the speakers;

(g) Encouraged Parties, stakeholders and partner organizations to disseminate information to the members of the public, especially those in vulnerable situations, with regard to access to the related administrative and judicial review procedures, and to promote awareness-raising and capacity-building for public authorities, the judiciary and members of the public in that area;

(h) Decided to continue the exchange of information regarding developments in legislation and case law concerning public access to justice in cases related to biodiversity protection through the Aarhus Clearinghouse and the jurisprudence database, and called on Parties to report said developments through the Convention's reporting mechanism.

### III. Access to justice in energy-related cases

32. Opening the discussion on the item, the Chair highlighted the importance of the topic, given fast-developing decision-making in energy-related matters, especially with regard to the use of renewable energy, to address climate change concerns and also a war in Ukraine that threatened to further set back progress in environmental protection and sustainable development. Judicial and administrative reviews could be crucial in such cases to ensure that strategic environmental assessment, environmental impact assessment and public participation in decision-making were diligently and effectively implemented.

33. The representative of the European Commission highlighted the recent adoption of the framework<sup>12</sup> to accelerate the deployment of renewable energy and the progress with a proposal for a directive on the promotion of the use of energy from renewable sources. Other energy-related initiatives adopted by the Commission included the proposals for the European Critical Raw Materials Act and the Net Zero Industry Act. Furthermore, legislative proposals regarding industrial emissions, air quality and urban wastewater treatment broadened the definition of the public concerned, and enhanced access to justice and redress mechanisms, compensation for damages, collective action and causality. Other important proposals related to nature restoration and green claims. The Court of Justice of the European

<sup>12</sup> See Council Regulation (EU) 2022/2577 of 22 December 2022 laying down a framework to accelerate the deployment of renewable energy, *Official Journal of the European Union*, L 335 (2022), p. 36–44.

Union in recent judgments had also broadened legal standing for environmental NGOs and subject matters of legal actions, in particular regarding approval decisions for a specific vehicle model, illegal defeat devices and forest plans.

34. The representative of the European ECO-Forum/Youth and Environment Europe highlighted that the energy sector, primarily fuelled by fossil fuels, remained the leading source of greenhouse gas emissions in Europe, contributing to climate change and health issues. Transitioning to renewable energy had become necessary to mitigate those impacts. However, it should be done in a way that respected access to justice, protected Indigenous people's rights, and safeguarded biodiversity. The speaker noted that provisions for access to justice could support the implementation of national energy and climate plans, along with sharing best practices, which could guide more States to the most appropriate renewable energy solutions.

35. In the subsequent discussion, the participants raised a concern regarding the REPowerEU legislative package,<sup>13</sup> noting that the suggested simplification of permit procedures for renewable energy projects could compromise public participation and access to justice, and called on Parties to uphold their international obligations in accordance with the Aarhus Convention.

36. The Chair recalled that, at its previous meeting, the Task Force had also noted that a regular analysis of energy-related cases could help to address existing challenges and improve the procedures for public participation in decision-making and access to justice in that area. Furthermore, the Task Force had agreed to discuss the scope and methodology for such analysis.<sup>14</sup> In that regard, the Chair drew the attention of the participants to information document AC/TF.AJ-15/Inf.2, which outlined the possible scope and methodology of such analysis and invited them to provide comments from the floor and written comments by 15 May 2023.

37. In the subsequent discussion, the participants welcomed the initiative, agreed to provide comments, and encouraged Parties to participate in and carry out such assessment once document AC/TF.AJ-15/Inf.2 had been finalized.

38. The Task Force then:

(a) Thanked the speakers and welcomed the exchange of experiences, good practices and challenges with regard to access to justice in energy-related cases;

(b) Took note of the draft document (AC/TF.AJ-15/Inf.2)<sup>15</sup> outlining the scope and methodology of analysis of energy-related cases and of the comments provided at the meeting;

(c) Invited the Parties and stakeholders to provide written comments to the above-mentioned draft document by 15 May 2023;

(d) Requested the Chair, with the support of the secretariat, to finalize the document taking into account the comments received, and to make it available on the relevant Task Force web page;

(e) Decided to continue the exchange of information regarding developments in legislation, case law and carrying out analysis concerning public access to justice in energy-related cases through the Aarhus Clearinghouse and the jurisprudence database, and called on Parties to report said developments through Convention's reporting mechanism.

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<sup>13</sup> See [https://commission.europa.eu/strategy-and-policy/priorities-2019-2024/european-green-deal/repowereu-affordable-secure-and-sustainable-energy-europe\\_en](https://commission.europa.eu/strategy-and-policy/priorities-2019-2024/european-green-deal/repowereu-affordable-secure-and-sustainable-energy-europe_en).

<sup>14</sup> ECE/MP.PP/WG.1/2022/3, para. 27 (c).

<sup>15</sup> Available at <https://unece.org/environment/documents/2023/03/item-3-analysis-energy-related-cases-improving-implementation>.



## IV. Stocktaking of recent and upcoming developments

39. Opening the session, the Chair, supported by other participants, welcomed the recent accession of Guinea-Bissau to the Aarhus Convention as the first State from beyond the ECE region.

40. In a discussion on recent and upcoming developments, participants shared their experiences regarding implementation of the Convention's third pillar, in particular measures to remove persistent barriers regarding: (a) costs; (b) access to assistance mechanisms; and (c) timeliness of review procedures.

41. The Chair recalled that, at its previous meeting, the Task Force had highlighted the need for further work to remove persistent barriers related to costs, access to assistance mechanisms and timeliness, and had decided to undertake a survey to collect possible solutions and good practices to overcome those barriers. The Task Force had taken note of a draft questionnaire in that regard and agreed to provide comments by 16 May 2022.<sup>16</sup> Taking into account the comments received, the secretariat, in consultation with the Chair, had revised as necessary and circulated the questionnaire to collect the required information by 1 November 2022. To date, the secretariat had received 29 responses from 21 Parties, 16 of which had been received from Governments.

42. The Chair drew the participants' attention to information documents AC/TF.AJ-15/Inf.3 and AC/TF.AJ-15/Inf.3/Add.1, which provided a concise summary of key survey outcomes, an addendum with selected practices cited by respondents and all responses received that could be made publicly available.

43. The representative of the Aarhus Centre of the Republic of Moldova gave a presentation on the current situation regarding costs and access to legal aid and other assistance mechanisms in the country. The speaker noted that the upcoming introduction of a stamp fee could constitute a financial barrier to access to justice for members of the public. There were also alternative financial tools available for environmental NGOs such as crowdsourcing, a "2 per cent mechanism" awarding support from the taxpayers to NGOs and project activities. However, those tools were mainly used for socially oriented rather than environmental activities. The Aarhus Centre itself also provided free legal assistance to members of the public and other stakeholders to deal with environmental matters. The speaker concluded that the survey was a useful exercise to reflect on current challenges, share experiences and explore possible solutions to address current challenges in access to justice.

44. In the subsequent discussion, the participants welcomed the initiative and agreed to provide comments to the summary report and its addendum.

45. Furthermore, the Chair invited the participants to learn about recent developments to be shared by the Parties and stakeholders related to access to justice in environmental matters.

46. The representative of the European Commission shared the experience with reforming access to the justice system in the European Union. The revised Aarhus Regulation<sup>17</sup> had broadened the scope of review for environmental NGOs and expanded access to include other members of the public, resulting in increased internal review requests. Practical steps, including the development of a Commission decision on eligibility criteria, a mandatory digital tool for submissions and a legal support framework contract, were being implemented to manage the growing workload.

47. The representative of the European ECO-Forum/the Environmental Justice Network Ireland shared views on upcoming threats to and developments in access to justice at the level of the European Union and its member States. The speaker cautioned against potential reduction of access to justice by the draft Planning and Development Bill in Ireland, and lack of access to justice provisions in the European Union "Fit for 55" legislative proposals and the regulations related to climate governance and State aid. She welcomed the inclusion of access to justice provisions in the European Union laws related to nature restoration, ambient

<sup>16</sup> ECE/MP.PP/WG.1/2022/3, para. 37 (b)–(c).

<sup>17</sup> Regulation (EC) No 1367/2006 of the European Parliament and of the Council of 6 September 2006 on the application of the provisions of the Aarhus Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters to Community institutions and bodies, *Official Journal of the European Union*, L 264 (2006), pp. 13–19.

air quality and the Industrial Emissions Directive.<sup>18</sup> The speaker also highlighted the potentially adverse impact of the proposal by the United Kingdom of Great Britain and Northern Ireland to revoke certain European Union laws on environmental protection.

48. In the subsequent discussion, the representative of the European ECO-Forum emphasized the need for the European Union to accelerate work on access to justice in State aid cases to address the flaws identified by the Convention's Compliance Committee before the upcoming session of the Meeting of the Parties. Rather than focusing solely on evaluating opportunities at the member State level, the work should focus on either amending the Aarhus Regulation or adopting new legislation to provide public access to challenge decisions on State aid measures contravening European Union environmental laws.

49. The representative of the European ECO-Forum/Environment-People-Law highlighted the devastating impact of the aggression of the Russian Federation on the environmental situation in Ukraine and extensive environmental damage, including the destruction of protected areas and forests, pollution and the presence of explosive devices. Access to justice and compensation for environmental damage caused by the Russian Federation were essential at both the national and international levels. To address the issue of compensation, the speaker highlighted the important role of national courts, called for support for the creation of international ad hoc bodies and international tribunals, and advocated for the designation of ecocide as a crime under international law to be tried in the International Criminal Court.

50. In the subsequent discussion, many delegates supported the statement made by the representative of the NGO Environment-People-Law and expressed solidarity with the people of Ukraine.

51. The Chair informed the participants that the Task Force meeting had been preceded by the Judicial Colloquium "Judicial protection of human rights and public interests against environmental pollution from chemicals and wastes"<sup>19</sup> (Geneva, 3–4 April 2023), pursuant to decision VII/3 of the Meeting of the Parties to the Convention (ECE/MP.PP/2021/2/Add.1). The Chair thanked the partner organizations such as the United Nations Environment Programme (UNEP), UNDP, the IUCN World Commission on Environmental Law, the Global Judicial Institute on the Environment, EUFJE and OSCE for their valuable support in organizing the event together with ECE. The Judicial Colloquium had provided an opportunity to take stock of progress and challenges, exchange views on the effective handling of cases related to chemicals and wastes, and identify priorities for future work (for Chair's summary of Judicial Colloquium, see annex below).

52. The representative of the UNDP Regional Hub for Europe and Central Asia presented work on the environmental justice strategy and highlighted the importance of cooperation with the ECE Aarhus Convention secretariat and other partners in its implementation. She supported the need highlighted at the current meeting to improve capacities of judges, prosecutors, lawyers and other legal professionals and to address challenges related to standing, financial barriers, in particular for groups in vulnerable situations, and lack of environmental expertise as presented at the meeting. UNDP had collected some innovative case studies in those areas that could be instrumental to address those challenges and promote further work.

53. Furthermore, the Chair stated that the thematic session on access to justice would be held by the Working Group of the Parties in 2024. The following topics were worthy of the attention of the Working Group in accordance with decision VII/3: (a) access to justice to challenge violations of laws relating to the environment (para. 14 (a) (i)); and (b) promoting collective redress (para. 14 (a) (ii)). The representative of the European ECO-Forum/Earthjustice also suggested considering the issue of strategic lawsuits against public participation that remained of great concern across countries.

54. Following the discussion, the Task Force:

<sup>18</sup> Directive 2010/75/EU of the European Parliament and of the Council of 24 November 2010 on industrial emissions (integrated pollution prevention and control) (Recast), *Official Journal of the European Union*, L 334 (2010), pp. 17.

<sup>19</sup> See <https://unece.org/info/Environmental-Policy/Public-Participation/events/374155>.

- (a) Took note of the recent developments, challenges and lessons learned related to access to justice in environmental matters as presented by the speakers;
- (b) Welcomed the accession of Guinea-Bissau to the Aarhus Convention as the first state from beyond the ECE region;
- (c) Recalled that Sustainable Development Goal 16 linked justice and peace, and that the ongoing war in Ukraine had a devastating impact on people's lives, the environment and social and economic development in the region and beyond, thereby setting back the attainment of Goal 16 and of the objectives of the Aarhus Convention;
- (d) Recognized the devastating impact of the aggression of the Russian Federation on the environmental situation in Ukraine;
- (e) Acknowledged that the unjustified and unprovoked full-scale invasion of Ukraine by the Russian Federation undermined the recent progress of Ukraine in implementation of the Aarhus Convention and had become a significant challenge to the implementation of all three pillars of the Convention. The war had also brought about a need to identify forums for bringing justice in environmental matters to Ukraine and to consider the issue of compensation for its damaged environment;
- (f) Called on the Parties to the Aarhus Convention to support the creation of international ad hoc bodies and international tribunals dealing with the aggression of the Russian Federation against Ukraine to ensure that opportunities for compensation of environmental damage and responsibility for such environmental damage were foreseen;
- (g) Called on Parties and relevant international organizations and bodies to condemn the aggression of the Russian Federation against Ukraine and to provide any possible assistance to Ukraine in overcoming the above-mentioned challenges;
- (h) Took note of the draft report on the outcomes of the survey on measures to enable effective access to justice in environmental matters (AC/TF.AJ-15/Inf.3 and AC/TF.AJ-15/Inf.3/Add.1)<sup>20</sup> and the comments received at the current meeting;
- (i) Invited the Parties and stakeholders to provide written comments to the draft report by 15 May 2023;
- (j) Requested the Chair, in consultation with the secretariat, to finalize the document and make it available on the Task Force web page;
- (k) Welcomed the organization of the 2023 Judicial Colloquium and expressed appreciation to UNEP, UNDP, OSCE, the IUCN World Commission on Environmental Law, the Global Judicial Institute on the Environment, EUFJE and other partner organizations for their support;
- (l) Took note of the preparations for the thematic session on access to justice to be held at the meeting of the Working Group of the Parties in 2024.

## V. Tools to promote effective access to justice

55. In a discussion on tools to promote effective access to justice, participants shared experiences and lessons learned from initiatives related to: (a) access to independent environmental expertise; (b) dissemination of information on access to review procedures, collection of relevant data and statistics and access to relevant case law using e-justice initiatives, modern digital technologies and other tools; and (c) multi-stakeholder dialogues to remove existing barriers.

56. Opening the discussion on access to independent environmental expertise in judicial and administrative review procedures, the Chair noted the crucial importance of such expertise given the legal, scientific and technical complexity of environmental cases, and shared relevant findings from the survey on measures to enable effective access to justice in environmental matters.

<sup>20</sup> See documents AC/TF.AJ-15/Inf.3 and AC/TF.AJ-15/Inf.3/Add.1 available from <https://unece.org/environment/documents/2023/03/draft-report-outcomes-survey-measures-enable-effective-access-justice>.

57. The representative of the Registry of the European Court of Human Rights presented case law illustrating how expert evidence could be presented to and considered by the Court and also how expert evidence should be dealt by the national courts in the light of the right to a fair hearing. The findings in several cases confirmed that parties should have the right to have knowledge of and comment in an appropriate form and within an appropriate time on all evidence adduced (its existence, content and authenticity), or observations filed with a view to influencing the court's decision. There should be sufficient procedural safeguards in place to ensure the neutrality of experts, the reliability of information and the opportunity for parties to question experts. Emerging issues related to the control of property for technical assessment and the scope of review of environmental impact assessments and other studies.

58. The director of STAB (Netherlands) gave a presentation on how that independent and impartial Government-funded organization supported the judiciary with independent technical expertise in environmental and planning cases. STAB experts covered vast areas of environmental expertise and could provide both general information on the applied legal framework, technical issues and technical-legal context and case-specific information. To determine the related circumstances and facts, they could conduct site visits and interviews with all parties, in particular members of the public. Special measures were taken to ensure the quality and transparency of services.

59. The representative of Serbia shared experience in the use of forensic expertise in the detection and investigation of criminal environmental offences. Using two examples of abandoned hazardous wastes and copper river pollution, the speaker highlighted the importance of effective cooperation and coordination of all actors through the environmental law enforcement chain and the involvement of proper experts with environmental expertise. The representative then emphasized that only a few criminal environmental cases had been recorded in the country due to a lack of, and the financial burden of, environmental expertise and that acts against the environment were likely to be classified as economic offences or misdemeanours.

60. The representative of the European ECO-Forum/the GUTA Association underscored the need to improve access to independent expertise in administrative and judicial proceedings, especially in accelerated proceedings. The current situation imposed a disproportionate burden on members of the public compared to other parties. In that regard, further measures should address high expert costs, scope of expertise, definition of experts, division of administrative and expert functions of environmental authorities, the underused expert potential of environmental NGOs and the use of citizen science. Those measures could include using public funds and other measures to support expert expenses, establishing chambers of experts with clear rules on registration, functioning and transparency, allowing NGO experts to serve as officially recognized experts in court procedures, and developing guidance for citizen science.

61. Opening the discussion on the use of e-justice initiatives, modern digital technologies and other initiatives for access to justice, the Chair drew attention to the Updated recommendations on the more effective use of electronic information tools (ECE/MP.PP/2021/2/Add.2) recently adopted by the Meeting of the Parties to the Convention.

62. The representative of the National High Court of Brazil presented SireneJud,<sup>21</sup> an interactive digital tool harnessing judicial, environmental and geospatial data from the judiciary's national database and other sources. The tool made it possible to visualize and draw analytics from many layers, including deforestation, Indigenous people's territories, protected habitats, mining sites, roads and other locations and a new layer related to environmental class action and environmental damage that had occurred. Each attribute of the environmental case in the tool could be identified, filtered and processed individually. The tool had been developed based on free software, allowed for harnessing of data from different sources through web services and the enabling of the interoperability of data from different institutions, and provided intelligence about the judicial caseload. The platform was also used to enhance artificial intelligence models, machine learning and deep learning.

63. The representative of the European ECO-Forum/Environment-People-Law shared views on how the use of digital technologies and e-justice initiatives had revolutionized

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<sup>21</sup> See [www.cnj.jus.br/programas-e-acoos/sirenejud/](http://www.cnj.jus.br/programas-e-acoos/sirenejud/).

judicial procedures in Ukrainian courts. Launched in 2021, a single comprehensive judicial information-telecommunication system automated judicial processes by granting applicants access to electronic communication throughout judicial proceedings and electronic case files. An e-court mobile application made it possible to follow up case progress and access procedural documents. The proceeding also allowed for online hearings. Overall, those tools enhanced efficiency, accessibility and transparency of judicial review procedures for members of the public.

64. Opening the discussion on national multi-stakeholder dialogues, the Chair recalled that decision VII/3 (para. 2) encouraged Parties, signatories and other interested States to undertake further considerable efforts to improve the effectiveness of public access to justice in environmental matters, for example, by stimulating multi-stakeholder dialogues in that area.

65. The representative of Armenia shared experience on promoting multi-stakeholder dialogues in the constitutional reform that had paved the way for further judicial and legal reforms, implementing of e-justice initiative and developing e-court systems and public-private dialogues within the framework of the development of the fifth Open Government Programme National Action Plan. The speaker underscored the benefits of cooperation with academia, in particular the Environmental Law Research Center of the Yerevan State University, that could provide a knowledge-sharing platform for dialogue on the implementation of the Convention.

66. The representative of the European ECO-Forum/Youth and Environment Europe emphasized the importance of intergenerational equity and youth participation in multi-stakeholder dialogue that could help to empower youth to access justice and remove barriers specific to youth. The speaker highlighted the need for the permanent presence of a youth envoy to the Aarhus Convention processes and access to pro-bono legal services, especially for individuals and groups in vulnerable situations.

67. Following the discussion, the Task Force:

(a) Welcomed the initiatives of Parties and stakeholders as reported by the speakers aimed at promoting effective access to justice by:

(i) Improving access for members of the public to independent environmental expertise in judicial and administrative review procedures;

(ii) Introducing e-justice initiatives, modern digital technologies and other tools integrating judicial, environmental, geospatial and other relevant data and using citizen science, as appropriate;

(iii) Promoting multi-stakeholder dialogues to remove barriers related to access to justice and including youth organizations in such dialogues and thereby respecting, promoting and achieving intergenerational equity;

(b) Called on Parties to continue improving dissemination of information on access to administrative and judicial review procedures and access to decisions of courts and other review bodies in accordance with article 9 (4)–(5) of the Convention and the Updated recommendations on the more effective use of electronic information tools;

(c) Encouraged other Parties in cooperation with stakeholders and partner organizations to:

(i) Take into account the needs related to access to justice in environmental matters in general e-justice projects, including by adjusting the relevant case classifications;

(ii) Undertake additional e-justice initiatives to promote data integration and improve data mining for environmental cases;

(iii) Promote public participation in the design, testing and implementation of such projects.

## **VI. Approval of key outcomes and closing of the meeting**

68. The Task Force requested the secretariat, in consultation with the Chair, to finalize the report and incorporate the agreed key outcomes as presented by the Chair at the meeting (AC/TF.AJ-15/Inf.4). The Chair thanked the speakers, the participants, the secretariat and the interpreters, and closed the meeting.

## Annex

# Judicial Colloquium “Judicial protection of human rights and public interests against environmental pollution from chemicals and wastes”

## Chair’s summary

### Introduction

1. The Judicial Colloquium “Judicial protection of human rights and public interests against environmental pollution from chemicals and wastes” was held by the United Nations Economic Commission for Europe (ECE) in Geneva, on 3–4 April 2023, in cooperation with the United Nations Environment Programme, the United Nations Development Programme, the Organization for Security and Cooperation in Europe, the International Union for Conservation of Nature World Commission on Environmental Law, the Global Judicial Institute on the Environment, the European Union Forum of Judges for the Environment and other partner organizations. The event was organized pursuant to decision VII/3 of the Meeting of the Parties to the ECE Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters (Aarhus Convention) (ECE/MP.PP/2021/2/Add.1).

2. The Judicial Colloquium was attended by a number of participants, including, representatives of the judiciary, judicial training institutions and other review bodies from Albania, Armenia, Azerbaijan, Belgium, Bosnia and Herzegovina, Brazil, Croatia, European Union, Georgia, Greece, Guinea-Bissau, Iceland, Ireland, Kazakhstan, Kyrgyzstan, Latvia, Montenegro, the Republic of Moldova, Romania, Serbia, Slovenia, Spain, Switzerland, Tajikistan and Ukraine. Representatives of several multilateral environmental agreements, intergovernmental organizations and other partner organizations, which supported organisation of the Judicial Colloquium also attended the meeting. The Colloquium was chaired by Mr. Luc Lavrysen (Belgium), the Chair of the Task Force on Access to Justice.

3. The Colloquium provided an opportunity to take stock of progress and challenges and exchange views on the effective handling of cases related to chemicals and wastes and protection of human rights and the public interest against environmental pollution caused by chemicals and wastes. The meeting addressed the role of the Aarhus Convention and its Protocol on Pollutant Release and Transfer Registers in that context and their linkages with the Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and their Disposal, the Rotterdam Convention on the Prior Informed Consent Procedure for Certain Hazardous Chemicals and Pesticides in International Trade, the Stockholm Convention on Persistent Organic Pollutants, the Minamata Convention on Mercury and other international environmental and human rights law. Most countries Parties to the Aarhus Convention and the Protocol were also parties to the multilateral environmental agreements on chemicals and wastes.

## I. Setting the scene: developments in science, policy and law

4. On 28 July 2022, the General Assembly adopted resolution 76/300 on the human right to a clean, healthy and sustainable environment<sup>1</sup>. That right was essential to the full enjoyment of indivisible human rights, including the right to life, the right to respect for private and family life and the right to property; the protection of the environment itself relied on freedom of expression and assembly and other human rights.

5. The right to a non-toxic environment and the protection of people from exposure to toxic substances and contamination of blood had become one of the substantive elements of

<sup>1</sup> A/RES/76/300.

the right to a clean, healthy and sustainable environment. While such exposure could happen to any individual, the burden of contamination could fall disproportionately upon those already enduring poverty, discrimination and systemic marginalization and could be increasingly found in “sacrifice” zones. Women, children, minorities, migrants, Indigenous peoples, older persons and persons with disabilities were potentially vulnerable, for a variety of economic, social, cultural and biological reasons.<sup>2</sup>

6. The Aarhus Convention and its Protocol on Pollutant Release and Transfer Registers aimed to contribute to the right of every person of present and future generations to live in a healthy environment by empowering members of the public to access information, participate in decision-making and challenge decisions, acts and omissions of public authorities and private bodies.

7. The judiciary played a pivotal role in applying and interpreting provisions of domestic law in accordance with the Aarhus Convention and other multilateral environmental and human rights agreements and in achieving a wider objective of environmental protection and sustainable development.

8. Courts and other independent review bodies of the Parties to the Aarhus Convention had been increasingly confronted with cases where human health and well-being or the environment had been affected by environmental pollution from chemicals and wastes and measures taken by public authorities or private operators were not sufficient in this regard. There had been several cases brought by the members of the public to challenge flaws in decision-making, compliance with national environmental laws or even damage that had occurred. Such cases could occur throughout the life cycle of chemicals, from production to use and then to their disposal, recycling or reuse, with potential environmental and health impacts associated with each stage.

9. Environmental monitoring, assessment of the public health and environmental impact of chemicals and enforcement of environment law required further strengthening and open-source scientific knowledge exchange.

10. Some hazardous chemicals and wastes had, for a long time, been subject to national law and the Basel, Rotterdam, Stockholm and Minamata Conventions mentioned above, with chemicals being subject to registration, evaluation, authorization and special requirements such as labelling, packaging, export, import and other trade restrictions and control measures. For example, the amendment to the Basel Convention (entry into force 2019) prohibiting exports of hazardous wastes from developed Parties to the Convention included in annex VII to States not included in annex VII applies to movements for resource recovery and recycling operations, as well as to final disposal operations. The Minamata Convention (art. 3 (3)–(4)) required that each Party should not allow any new primary mercury mining and should only allow primary mercury mining that was being conducted within its territory at the date of entry into force of the Convention for it for a period up to fifteen years after that date.

11. However, the national and international legal and policy responses for other types of environmental pollution from plastic or per- and polyfluoroalkyl substances, endocrine disruptors, plastics and other chemicals of high concern were still developing.

12. The important source of evidence in such cases could provide the World Health Organization guidelines (e.g., clinical management of exposure to lead), harmonized risk assessment methodologies (e.g., assessment of prenatal exposure to mercury) and evidence-based scientific reviews (e.g., on microplastic in drinking water and endocrine-disrupting chemicals) that went through a vigorous development and quality assurance process. Nevertheless, only a fraction of disease outcomes could be traced back to particular chemicals.

13. Therefore, when a case involved threats of serious or irreversible environmental damage, courts and other review bodies should apply principle 15 of the Rio Declaration on Environment and Development,<sup>3</sup> ensuring that a lack of full scientific certainty should not be used as a reason for postponing cost-effective measures to prevent environmental

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<sup>2</sup> A/HRC/49/53, para. 21.

<sup>3</sup> A/CONF.151/26 (Vol. I).



degradation, and reassess the application of the burden of proof to ensure preventive anticipation and avoid environmental harm.

14. The interpretation of international law provided by the European Court of Human Rights, the Court of Justice of the European Union and other international adjudicative bodies was also of great importance.

15. The participants took stock of evolution, taxonomy and current trends in adjudication of cases related to chemicals and wastes.

## **II. Lessons learned from case law**

16. The session took stock of experiences in different jurisdictions on how to make judicial mechanisms accessible to the public, including organizations, so that legitimate interests affected by environmental pollution from chemicals and wastes were protected and the law was enforced.

17. Effective access to justice in such cases could be only ensured through a holistic approach, based on the following key interconnected elements: (a) standing for individuals, groups and non-governmental organizations (NGOs) promoting environmental protection; (b) effectiveness, including length of proceedings, scope of review, evidence and burden of proof, suspensive effect, injunction and enforcement of decisions; (c) costs, including court fees, lawyers' fees, experts' fees, bonds and legal aid; and (d) the possibility for members of the public to exercise their rights without persecution or harassment.

18. The European Court of Human Rights and the Court of Justice of the European Union continued to play a pivotal role for national courts in clarifying the definitions, legal norms and standards of judicial proceedings.

19. Further development of domestic legal frameworks related to management of chemicals and wastes should incorporate clear access to justice provisions, enabling members of the public to challenge decisions, acts and omissions of public authorities and private persons in order to ensure the protection of legitimate interests and compliance with respective laws.

20. Assessment of and compensation for environmental damage remained an important issue across civil, criminal and administrative proceedings in environmental cases.

21. Other issues requiring special attention include: (a) the status of victims of environmental pollution from chemicals and wastes, including damage to the environment and natural resources and future generations; (b) the statute of limitations, given that the consequences of environmental pollution from chemicals and wastes could take time to manifest; and (c) evidence and burden of proof, given the legal, technical and scientific complexity of such cases and asymmetry in access to information between the interested parties, for example, access to corporate studies on the impact of chemicals.

## **III. Perspectives on effective access to justice**

22. Awareness-raising, capacity-building and international cooperation among the judiciary remained an important element to strengthen countries' efforts to implement the 2030 Agenda for Sustainable Development and, in particular, target 16.3 of the Sustainable Development Goals (promote the rule of law at the national and international levels and ensure equal access to justice for all).

23. The participants shared different approaches to promoting the effective handling of environmental cases, such as: progress in establishing environmental courts and other specialized independent and impartial bodies; promoting judicial awareness and competence through the activities of judicial training institutions; establishing independent bodies providing technical expertise in environmental and planning laws; and the use of knowledge management, e-justice and e-learning initiatives.

24. In order to address the increasing demand for the delivery of effective access to justice in environmental matters, it was crucial to: further develop expert capacity; strengthen specialization in environmental law; use independent expert opinions in environmental matters; and allocate sufficient resources to the justice system.

25. The participants highlighted the crucial value of sharing experiences, good practices and peer learning in environmental adjudication, welcomed the possibility to organize judicial colloquiums and subregional meetings under the auspices of the next meeting of the Task Force on Access to Justice, and called for further support for and promotion of judicial cooperation in environmental matters at the national, regional, river basin and international levels.

26. The Chair thanked the United Nations Environment Programme, the International Union for Conservation of Nature World Commission on Environmental Law, the Global Judicial Institute on the Environment, the European Union Forum of Judges for the Environment and the Organization for Cooperation and Security in Europe for their crucial support to the event and concluded that the outcomes of the Judicial Colloquium would be summarized in the Chair's summary and reported to the Working Group of the Parties at its twenty-seventh meeting (Geneva, 26–28 June 2023).

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