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Policy issues: state of the environment

**Fourth Programme for the Development and Periodic Review of
Environmental Law**

Note by the Executive Director

Addendum

**Draft guidelines for the development of national legislation on access to
information, public participation and access to justice in environmental
matters**

Summary

The annex to the present note contains the report of the consultative meeting of government officials and experts to review and further develop the draft guidelines for the development of national legislation on access to information, public participation and access to justice in environmental matters, held in Nairobi on 20 and 21 June 2008 (originally issued as document UNEP/Env.Law/CM.Acc/1/2). The draft guidelines are set out in the annex to the report. A commentary on the guidelines prepared by the UNEP secretariat in consultation with the senior advisory group of selected high-level external experts and high-level judges is also provided. The annex is being circulated as submitted to the Governing Council for its consideration and has not been formally edited.

* UNEP/GC.25/1.

Annex

Report of the meeting

I. Introduction

1. The consultative meeting of government officials and experts on guidelines for the development of national legislation on access to information, public participation and access to justice in environmental matters was convened by the United Nations Environment Programme (UNEP) at its headquarters in Nairobi on 20 and 21 June 2008.

II. Opening of the meeting and organization of work

2. The meeting was opened at 10 a.m. on 20 June 2008 with welcoming remarks by Mr. Bakary Kante, Director, Division of Environmental Law and Conventions, UNEP. Mr. Kante underscored the significance of the meeting's subject matter for UNEP, Governments and their citizens and the environment. He emphasized that the environment did not belong to some, but to all, which was a basis and justification for having broad public participation in decision-making related to environmental issues. He went on to say that the principles of access to information, public participation and access to justice in environmental matters, as they were expressed in, for example, Principle 10 of the 1992 Rio Declaration on Environment and Development, constituted a trinity in which the three components were interdependent and mutually reinforcing. Effective implementation of that trinity would contribute to greater transparency in environmental governance and better management of natural resources, which, in turn, was key to sustainable development. He also drew particular attention to some of the problems that the agencies and authorities of many developing countries faced when it came to collecting environmental information. He stated that everyone had a responsibility to assist developing countries in that regard. A precondition for access to information was that the authorities had relevant information. He concluded by urging participants to review and further develop the draft guidelines with a view to agreeing on a set of guidelines that could be submitted to the UNEP Governing Council.

3. Discussions were facilitated by Ms. Iwona Rummel-Bulska, a representative of the UNEP secretariat. The following agenda was adopted based on document UNEP/Env.Law/CM/1/1/Add.1:

Friday, 20 June

09.30 – 10.00 Registration of participants.

10.00 – 10.30 Opening of the meeting and adoption of the agenda.

10.30 – 13.00 Review and further development of the draft guidelines.

13.00 – 14.30 Lunch.

14.30 – 17.30 Review and further development of the draft guidelines, continued.

Saturday, 21 June

09.30 – 12.30 Review and further development of the draft guidelines, continued.

12.30 – 14.00 Lunch.

14.00 – 16.30 Review and further development of the draft guidelines, continued.

16.30 – 17.00 Other matters.

III. Attendance

4. The meeting was attended by experts representing the following Governments: Argentina, Bangladesh, Bhutan, Burundi, Canada, China, Central African Republic, Colombia, Comoros, Côte d'Ivoire, Djibouti, Ghana, India, Indonesia, Kenya, Kuwait, Lesotho, Mali, Mauritius, Mexico, Mozambique, Nepal, Netherlands, Nicaragua, Russian Federation, Saudi Arabia, Samoa, Senegal, Serbia, Seychelles, Somalia, Sri Lanka, Sudan, Syria, Togo, Tonga, Uganda, United Republic of Tanzania, Yemen and Zambia.

5. The representatives of the following United Nations entities, organizations and specialized agencies were present: United Nations Economic Commission for Europe, United Nations Framework Convention on Climate Change, United Nations Industrial Development Organization and the World Bank.

6. The following non-governmental organizations were present: Central Organization of Trade Union (COTU), Cohort for Research on Environment, Urban Management and Human Settlements (CREUMHS), Emirates Environmental Group and Indigenous Information Network.

IV. Summary of main points discussed

7. The representative of the UNEP secretariat presented the document entitled "Draft guidelines for the development of national legislation on access to information, public participation and access to justice in environmental matters". She explained that the document had been prepared with the assistance of the UNEP senior advisors group, comprising environmental law professors, high-level judges and other experts, who had met twice for this purpose. In addition, she set out the background to the initiative, drawing attention to, among other things, the fact that judges had repeatedly underlined the importance of access to information, public participation and access to justice and were increasingly referring to those principles in their decisions. Furthermore, she said that access to justice was the most challenging issue and therefore also the main priority. In that context, she stressed that access to justice had clear links with the peaceful settlements of environmental disputes.

8. She then elaborated on the nature of the draft guidelines, which would be voluntary and intended for application at the national level when developing legislation and regulations on issues covered by the guidelines. Their purpose was primarily to provide guidance to developing countries and countries with economies in transition. They were to be regarded as minimum guidelines, on which national legislation could be based, and which would require tailoring according to specific national circumstances.

A. General observations

9. In the ensuing discussion, several experts expressed their support for the work of UNEP in that field and commended the organization on having taken the initiative to develop the draft guidelines.

10. Some experts also stated that, while appreciating the efforts of UNEP to develop the draft guidelines, owing to the large number of meetings in the environmental field and to the late arrival of the invitation to the meeting, there had not been enough time to review and consult on the draft document: accordingly, they reserved their right to submit comments at a later stage.

11. Some experts drew attention to national measures that had been taken or were to be taken pertaining to the issues under discussion. The representative of Nicaragua drew attention to recent developments in Nicaraguan legislation, where considerable steps had been taken towards the modernization of environmental legislation, including provisions that would secure access to information, public participation and access to justice in environmental matters. She drew attention to, among other things, the act governing access to public information and said that a public participation act was also envisaged.

12. The representative of Mauritius highlighted several existing provisions of the Environmental Protection Act, which related to access to information on environmental matters and public participation in decision-making processes. She added that actions had been initiated to examine the various provisions of the Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters (Aarhus Convention), with a possible view to ratifying it. She pointed out that the guidelines being developed on the initiative of UNEP would provide her country with a better understanding of expectations under the Aarhus Convention. She concluded by providing information on the finalization of legislation pertaining to environmental tribunals for access to environmental justice.

13. The representative of Zambia mentioned that the Environmental Protection and Pollution Control Act, Chapter 204 of the Laws of Zambia, was Zambia's principal overarching environmental law. Under the Environmental Protection and Pollution Control and Environmental Impact Assessment Regulations (statutory instrument No. 28 of 1997), all project briefs, environmental impact statements, terms of reference, public comments, reports of persons presiding at public meetings and any other information submitted during the environmental impact assessment process were public documents to which the public was permitted to have access unless specific information was declared proprietary by the developer of the project. The same regulations provided for public participation from and by all interested and affected parties to a development, in addition to consultations in writing, public meetings and public hearings. Where a project attracted significant attention or insufficient information was submitted, there was provision in law to extend the consultation period. She noted that further details could be found on the following website: <http://www.necz.org.zm>.

14. The representative of Côte d'Ivoire said that the principles of access to information, public participation and access to justice in environmental matters had already been integrated into Ivorian legislation. In fact, the Environmental Code gave any interested person the right at all times, including on Sundays and public holidays, to have access to a procedure before a judge to halt a nuisance or disturbance to the environment. Unfortunately, she said, the public, and even magistrates, were ignorant of such legislation. Against that background, she drew particular attention to the importance of sufficient information and wide dissemination of the legislation and regulations that would implement the guidelines at the national level to facilitate implementation of those provisions.

15. The representative of India mentioned that most of the environmental legislation in India, including the Environment Protection Act (1986), provided for collection and dissemination of information by the Government and statutory authorities on matters relating to environmental issues. Preparation of manuals, codes or guidelines relating to the protection and improvement of the environment was also one of the mandatory functions. Whenever the Government proposed rules and notifications under environmental legislation, comments, objections and suggestions were invariably invited from the public through newspapers and gazette publications. Regarding public participation, he said that, in the environmental impact assessment notification procedures, public participation and consultations had been made compulsory for various categories of projects. Clearance for projects was not given unless the public participation and consultation procedure had been followed. The Right to Information Act had been enacted in 2005. Under the Act, public authorities were required to provide the details of legislation, functions and activities on the website and do so within 30 days through (subject to specific limited exceptions) the Public Information Officer nominated by the department concerned. If the Public Information Officer were to fail to provide the information without sufficient reason, he or she would be liable to pay a fine at a specified rate per day to a maximum limit. The Public Information Officer would also be subject to disciplinary action in such cases.

16. The representative of Bhutan stated that access to information, public participation and access to justice were fundamental rights enshrined in the Constitution. Those principles had also been incorporated into the National Environmental Protection Act (2007).

17. The representative of Indonesia reported that freedom of information legislation had been enacted in 2007 and stressed that the current guidelines would give more direction in the environment field. There were also provisions in national legislation that required the Environmental Impact Assessments Commission to take into account the outcome of public participation. In relation to access to justice, a public complaints unit had recently been established within the Ministry of Environment.

18. The representative of Mali stated that a national legal database had been established and was available through the website of the Ministry of Environment and Sanitation. He explained that an annual national report on the state of the environment was prepared and disseminated widely, including via the website. He also highlighted national centres of access to justice (*centres d'accès au droit*) that had been set up, with the purpose of informing and orienting those involved in judicial procedures of the procedures themselves.

19. The representative of Serbia said that her country was not yet a Party to the Aarhus Convention, but that it had made some progress in legislation. Legislation on access to information of public interest had been adopted. In addition, public participation in decision-making was foreseen in specific provisions

relating to environmental impact assessments, strategic environmental assessment and integrated pollution prevention and control legislation. Public hearings on bills were obligatory.

20. The representative of Bangladesh reported on national developments. The right to information was one of the aspects of the fundamental rights enshrined in the Constitution. In addition, Bangladesh had prepared draft legislation regarding the right to information earlier in 2008, which had been made public for further development. The bill contained provisions on the right to information and the establishment of an information commission, among other things. She pointed out that experience acquired from the current meeting could help in further developing the legislation. She also mentioned that cases related to environmental issues had taken the form of public interest litigation in Bangladesh.

21. The representative of Senegal drew attention to the fact that access to information and public participation were principles enshrined in the Senegalese Constitution. Forthcoming environmental impact assessment legislation would contain provisions on public participation. He also mentioned that the Senegalese authorities produced a report on the state of the environment.

B. Discussion on the draft guidelines

22. The draft guidelines were reviewed, elaborated on and developed further in the course of the meeting. The text and content of some guidelines were revised and developed further.

V. Recommendations

23. The recommendations set out below were agreed.

24. The draft guidelines for the development of national legislation on access to information, public participation and access to justice in environmental matters, as annexed to the present report, were agreed upon. It was recommended that the Executive Director should submit them to the UNEP Governing Council at its twenty-fifth session in February 2009, for consideration with a view to their adoption.

25. The participants requested that, following adoption of the guidelines by the Governing Council, they should be disseminated to all countries, in particular developing countries and countries with economies in transition, with a view to assisting them to develop and/or update their national legislation in that field.

26. The participants requested that the commentaries to the guidelines should be finalized, taking into account the revision of the draft guidelines and their further development at the meeting, and that those updated commentaries should be annexed to the draft guidelines.

27. The participants further requested that the draft guidelines and the commentaries thereon, together with the report of the meeting, should be sent to all countries for information.

28. Lastly, the participants requested expeditious translation of the draft guidelines and the commentaries thereon into the six official United Nations languages, with particular emphasis on the proper translation of legal terms used in the draft guidelines.

VI. Adoption of the report

29. The report of the meeting was adopted at noon, on 21 June 2008.

VII. Closure of the meeting

30. Following the customary exchange of courtesies, the meeting was closed at 12.10 p.m.

Annex

Draft guidelines for the development of national legislation on access to information, public participation and access to justice in environmental matters

The purpose of these Guidelines is to provide general guidance to States who so wishes, primarily developing countries and countries with economies in transition, on promoting the effective implementation of their commitments to Rio Principle 10 within the framework of their national legislation and processes. In doing so, the Guidelines seeks to assist such countries in filling possible gaps in their respective relevant national legislation in order to facilitate broad access to information, public participation and access to justice in environmental matters. The Guidelines should not be perceived as recommendations to introduce changes in national legislation or practice in cases where it provides for broader access to information, more extensive public participation and wider access to justice in environmental matters than follows from these Guidelines.

I. Access to information

Guideline 1

Any natural or legal person should have free, effective and timely access to environmental information held by public authorities on request (subject to Guideline 3), without having to prove a legal or other interest.

Guideline 2

Environmental information in the public domain should, inter alia, include information about environmental quality, impacts on health, and factors that influence them, information about legislation and policy, and advice about how to get information.

Guideline 3

States should clearly define in law the specific grounds on which a request for environmental information can be refused. The grounds for refusal are to be interpreted narrowly, in order to take into account the public interest served by disclosure.

A. Collection and dissemination of environmental information

Guideline 4

States should ensure that their competent public authorities regularly collect and update relevant environmental information, including information on environmental performance and compliance by operators of activities potentially impacting the environment. To this end States should ensure an adequate flow of information about proposed and existing activities and require regular reporting of such information to the competent public authorities.

Guideline 5

States should periodically prepare and disseminate at reasonable intervals up-to-date information on the state of the environment, including, inter alia, information on its quality and information on pressures on the environment.

Guideline 6

In the event of an imminent threat of harm to human health or the environment, States should ensure that all information that would enable the public¹ to take measures to prevent such harm is disseminated immediately.

II. Public participation**Guideline 7**

States should ensure early and effective public participation in decision-making related to the environment. To that end the public concerned² should be informed of their opportunities to participate at an early stage in the decision-making process.

Guideline 8

States should, as far as possible, make efforts to proactively seek the participation of the public, in a transparent, consultative manner, including efforts to ensure that the public concerned are given an adequate opportunity to express their views.

Guideline 9

States should ensure that all information relevant for decision-making related to the environment is made available, in an understandable, timely and effective manner, to the public concerned.

Guideline 10

States should ensure that due account is taken of the comments of the public in the decision-making process and that the decisions are made public.

Guideline 11

In cases where previously unconsidered environmentally significant issues and/or circumstances arise, States should allow the public to initiate a review process whenever such issues and/or circumstances arise.

Guideline 12

States should consider appropriate ways of ensuring public input into the preparation of legally binding rules and the formulation of policies that may have a significant effect on the environment.

Guideline 13

States should provide means for capacity-building, including environmental education, in order to promote public participation in decision-making related to the environment.

1 “The public” may be defined as one or more natural or legal persons, and, in accordance with national legislation or practice, their associations, organizations or groups.

2 “The public concerned” may be defined as the public affected or likely to be affected by, or having an interest in, the environmental decision-making; for the purposes of this definition, non-governmental organizations promoting environmental protection and meeting any requirements under national law should be deemed to have an interest.

III. Access to justice

Guideline 14

States should ensure that any natural or legal person who considers that his or her request for environmental information has been unreasonably refused, inadequately answered or ignored, or in any other way not handled in accordance with applicable law, has access to review procedures before courts of law or other independent and impartial bodies to challenge such decisions or acts by a public authority.

Guideline 15

States should ensure that the public concerned has access to courts of law or other independent and impartial bodies to challenge the substantive and procedural legality of any decision, act or omission relating to public participation in decision-making in environmental matters.

Guideline 16

States should ensure that the public concerned has access to courts of law or other independent and impartial bodies to challenge any decision, act or omission by public authorities or private actors that affects the environment and/or violates the substantive or procedural legal norms of the state related to the environment.

Guideline 17

States should provide broad and inclusive interpretation of standing in proceedings concerned with environmental matters.

Guideline 18

States should provide effective procedures for timely review by courts of law or other independent and impartial bodies, of issues relating to implementation and enforcement of laws and decisions relating to the environment. States should ensure that proceedings are fair, open, transparent and equitable.

Guideline 19

States should ensure that the access of the public concerned to review procedures relating to the environment is not prohibitively expensive and that the participation in such procedures does not expose the public concerned to unreasonable financial risk.

Guideline 20

States should provide a framework for prompt, adequate and effective remedies in cases relating to the environment, such as provisional measures, interim and final injunctive relief, compensation, restitution and other appropriate measures.

Guideline 21

States should ensure timely and effective enforcement of decisions in environmental matters by courts of law, and by administrative and other relevant bodies.

Guideline 22

States should provide adequate information to the public about the procedures operated by courts of law and other relevant bodies in relation to environmental issues.

Guideline 23

States should promote appropriate capacity-building programmes, on a regular basis, in environmental law for judicial officers, prosecutors and other relevant stakeholders.

Guideline 24

States should encourage the development and utilization of alternative dispute resolution mechanisms.

Commentary to the guidelines***Commentary to Guideline 1**

Environmental information, such as that contained in public registers, should be available to the public for inspection free of charge. Any person requesting information should be provided with adequate facilities for obtaining copies of such information, on payment of cost of reproduction and dissemination, if appropriate and reasonable.

A response should be provided by public authorities to a person requesting information within a reasonable period of time which should be defined under national law.

Where information is held in various forms, including written, visual, aural or electronic, it should be provided in the form specified by the person requesting the information.

There might be situations where specific measures to facilitate access to information should be considered. For example when illiteracy is widespread or when minorities do not adequately understand the (official) language(s) used by the public authorities.

Grounds for refusal of a request for environmental information are addressed in Guideline 3.

Commentary to Guideline 2

To ensure the transparency of environmental information systems the type and scope of the environmental information available and the basic terms and conditions under which it can be obtained should be specified. Registers should be established and maintained and information officers should be designated within relevant public authorities.

Commentary to Guideline 3

The grounds expressed in law for refusing an information request ought to be clearly specified and limited to, but need not include, situations where its disclosure adversely affects:

- (a) The confidentiality of the proceedings of public authorities;
- (b) International relations, national defense, and public security;
- (c) The course of justice;
- (d) Commercial and industrial confidentiality, including intellectual property;
- (e) The confidentiality of personal data and/or files;

* This Commentary has been prepared by the UNEP Secretariat in consultations with the UNEP Senior Advisors Group and it is annexed to the Guidelines as an indicative reference material.

- (f) Interests of a third party which has supplied information without that party being under, or being capable of being put under, a legal obligation to do so, and where that party has not consented to the release of the material;
- (g) The environment to which the information relates.

Reasons for a refusal to comply with a request for information should be stated in writing. Where only part of the information requested falls within one of the exempt categories, the remainder of the information should be separated out and supplied to the person making the request.

Commentary to Guideline 4

In addition to the flow of environmental information addressed in Guideline 4, entities whose activities have a significant adverse impact on the environment should be encouraged to report regularly on the environmental impact of their activities directly to the public.

Commentary to Guideline 7

Public participation in decision-making processes having significant environmental implications should be facilitated by ensuring that members of the public concerned are informed in a timely and effective manner about the relevant decision-making procedure and the opportunities, procedures and criteria for their participation. The earlier in the decision-making process the public gets involved, the more effective its participation can be. Public participation should therefore commence at an early stage when options are still open and effective public influence can be exerted.

Public participation procedures should include reasonable time frames for the different phases, allowing sufficient time for informing the public and for the public concerned to prepare and participate effectively during the decision-making process. The timing of the opportunities to participate should be compatible with those pertaining to public access to the relevant information, in order to facilitate informed public participation.

The public concerned should be given opportunity to consult the information necessary to effectively participate in the process. Such information could be provided through web sites as well as, if possible, directly to members of the public concerned having requested to be so notified or having otherwise been identified as in need of direct communication. Where appropriate, the relevant authorities should give the public additional assistance and explanations.

Public participation in environmental administrative decision-making processes should be ensured preferably by means of explicit rules governing certain procedures such as, if applicable, environmental impact assessment (EIA) and the issuing of permits or licences, particularly where these may have significant effect on the environment. Such rules could include, inter alia, the right to be heard, procedures which include the right to submit comments and propose alternatives, a reasonable time-frame to comment, the right to a reasoned decision and the right of recourse to administrative and/or judicial proceedings in order to challenge failures to act and to appeal decisions. The provision of financial assistance to members of the public to enable effective participation in policy and other decisions related to the environment should also be considered.

Special efforts should be made to promote public participation in environmental policymaking (see also Guideline 12) and on decisions related to plans and programmes that are of particular interest to sub-national regional and local communities.

Irrespective of the characteristics of the decision-making process in question, it should be noted that special efforts may have to be undertaken to facilitate effective participation of some groups/members of the public concerned. This could for example be the case when illiteracy is widespread or when minorities do not have an adequate understanding of the (official) language(s) being used in the decision-making process. It is also important to ensure involvement and participation by both men and women. Specific measures should be considered to ensure equal participation in this regard since participation could be affected by

power imbalances within communities, inter and intra household family relations and different time use by women and men which could hamper effective participation.

Commentary to Guideline 8

To ensure an adequate opportunity for the public to express their views could, where appropriate, include taking account of literacy levels, minority languages and holding oral hearings. It could also, where relevant, include holding meetings and proceedings in a location close to the site that will be impacted and/or the activity whose environmental impacts are under consideration and/or in close proximity to where the majority of the public concerned resides.

Commentary to Guideline 10

To take due account of the comments of the public should be understood to mean, as a minimum, that the competent authority needs to respond to the main substantive arguments put forward in the comments. The public should be promptly informed when the decision has been taken, in accordance with appropriate procedures. The text of the decision, along with the reasons and considerations on which the decisions is based, should be made public.

Commentary to Guideline 14

It follows from the above Guidelines that any natural or legal person should have free, effective and timely access to environmental information. Consequently, any person whose right to access to environmental information has been denied should also have access to review procedures in order to enforce the right.

Commentary to Guidelines 15 and 16

The wording of Guidelines 15 and 16 is without prejudice to the right of States to require additional qualifications for the public concerned to have access to justice in the cases covered by these Guidelines. For example, members of the public concerned may be required to have a sufficient interest or maintain the impairment of a right in a specific case, see e.g. Article 9 paragraph 2 of the Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters (Aarhus Convention).

Commentary to Guideline 17

Giving a broad and inclusive standing in proceedings concerned with environmental matters should include to accord standing to appropriate public interest and community groups. This should include according standing to non-governmental organizations promoting environmental protection and who meets the criteria that may exist in national law.

Commentary to Guideline 18

It should be ensured that the obligations of courts of law and other bodies charged with resolving environmental issues are properly defined and that they are adequately resourced and staffed to perform the obligations required of them.

Commentary to Guideline 19

In order to facilitate access to review procedures relating to the environment the establishment of appropriate assistance mechanisms to remove or reduce financial barriers to access to justice should be considered. Such mechanisms may include the timely provision of financial and legal aid to poor litigants. The risk of the losing party having to cover the (litigation) costs of the winning party in the review procedure, may be an example of a situation where the public concerned is exposed to an unreasonably financial risk.

Commentary to Guideline 20

The ultimate objective of any review by courts of law or other independent or impartial bodies is to obtain a remedy for a transgression of law. It should be ensured that remedies are adequate and effective. Adequacy requires the relief to fully compensate past damage, prevent future damage, and may require it to provide for restoration. The requirement that the remedies should be effective means that they should be capable of efficient enforcement.

In environmental cases remedies such as compensation and restitution are often not enough to reverse the situation to *ex ante*, due to the irreversible impacts of many environmentally hazardous act and activities. Therefore, provisional measures, such as injunctive relief, are important remedies in order to avoid irreversible damage. When initial or additional damage may still happen and the violation is continuing, or where prior damage can be reversed or mitigated, courts and other review bodies may issue an order to stop or to undertake certain action. This order is called an “injunction” and the remedy achieved by it is thus injunctive relief. An injunction can be final (permanent) or interim (temporary). An interim injunction is granted to restrain activity, or to require somebody on a temporary basis until a final decision can be made.

Restitution is a remedy by which a defendant can be ordered to give up his or hers gains from an unlawful activity to the claimant. Restitution should be contrasted with compensation, which is an order to the defendant to compensate the claimant for his or her loss. It could thus be in the interest of the claimant to seek restitution if the profit that the defendant has made as a result of unlawful behaviour, i.e. by transgression of laws relating to the environment, is greater than the loss suffered by the claimant.

Commentary to Guideline 21

It should be ensured that the laws relating to enforcement or decisions in environmental matters are adequate and effective to remedy any harm done to the environment, to provide full compensation for such harm and to protect the environment from suffering similar harm in the future.

Commentary to Guideline 22

Education on the participation and environmental rights of individual and public interest groups should be actively promoted. Such education should, *inter alia*, explain to the public concerned how they can use the legal system to protect their rights to access to information and public participation.

Commentary to Guideline 24

Alternative Dispute Resolution (ADR) refers to any means of settling disputes outside of the judicial or administrative process. ADR includes, *inter alia*, negotiations, arbitration and mediation. The use of ADR should be encouraged as a potentially speedy and relatively inexpensive way to resolve disputes. In the sphere of environment one potential benefit associated with the use of ADR mechanisms is the possibility to arrive at broadly accepted and thereby long-lasting solutions to disputes. It is primarily mediation, but also arbitration, which has been used in the environmental field. In mediation, there is a third party, a mediator, who facilitates the resolution process (and may even suggest a resolution), but does not impose a resolution on the parties. In arbitration, participation is typically voluntary, and there is a third party, such as a private judge, who imposes a resolution. A prerequisite for mediation to be successful is that national law allows enough margin for negotiations to develop a win-win solution for all involved. The potential role of ADR can thus vary according to the nature of the decision-making process, the issues at stake, the margin for ADR that national law allows, etc.

Where appropriate, the relevance and use of traditional, community level ADR mechanisms and processes should be considered.
