

1.43 Public Participation and Right to Know

WHEREAS the public, including Environmental Citizens' Organizations (ECOs), have a crucial role to play in promoting environmental protection and bringing about more environmentally sustainable forms of development;

WHEREAS the Rio Declaration on Environment and Development (1992) states that (Principle 10): "Environmental issues are best handled with the participation of all concerned citizens, at the relevant level. At the national level, each individual shall have appropriate access to information concerning the environment that is held by public authorities, including information on hazardous materials and activities in their communities, and the opportunity to participate in decision-making processes. States shall facilitate and encourage public awareness and participation by making information widely available. Effective access to judicial and administrative proceedings, including redress and remedy, shall be provided";

WHEREAS providing individuals and organizations with effective access to the courts and administrative complaints processes will enable them to supplement the role of regulatory authorities and contribute to the enforcement of environmental law;

BELIEVING that the rights to information and participation need to be guaranteed through legally binding measures in combination with effective mechanisms ensuring public participation, access to information and access to justice;

EMPHASIZING its commitment to strengthening public participation in environmental decision-making and access to information at a global level, underlining the need for providing such information speedily, and noting, as an example, the existence of 10 working day deadlines in some countries;

UNDERLINING the rights of citizens to access to information about the environment, in the absence of a compelling reason for keeping such information from public scrutiny;

STRESSING the active obligation of governments to keep the public informed on environmental matters in addition to responding to public requests for information;

NOTING the UN/ECE Guidelines on Access to Environmental Information and Public Participation in Environmental Decision-making endorsed at the 1995 Ministerial Conference, Environment for Europe in Sofia, Bulgaria;

WELCOMING the decision to develop a UN/ECE Convention on Access to Environmental Information and Public Participation in Environmental Decision-making, for adoption at the fourth Pan-European Conference of Environment Ministers, to be held in Aarhus, Denmark, June 1998;

The World Conservation Congress at its 1st Session in Montreal, Canada, 14–23 October 1996:

1. CALLS UPON all States to consider the need to develop a global Convention, within the framework of the United Nations, ensuring that the democratic rights to information and participation are upheld throughout the world;
2. CALLS ON all States to adopt and implement national legislation to secure public access to environmental information and to facilitate and encourage public participation;
3. SUGGESTS the following guidelines for national legislation, as well as for a global Convention:
 - a) Provisions related to public access to environmental information should aim at, *inter alia*:
 - i) the right of access to any person, without them having to prove an interest;
 - ii) requiring all public authorities holding environmentally relevant information and private bodies holding relevant public responsibilities to provide such information following a request;
 - iii) the definition of information covered be sufficiently broad to ensure that all environmentally significant information is covered;
 - iv) the exemption of information only be permitted when the information falls within exempted categories defined by law; the grounds for refusal to be interpreted in a restrictive way with the public interest served

by disclosure weighed against the interests of non-disclosure in each case; reasons for a refusal to comply with a request for information be stated in writing;

- v) the supply of information in the shortest time possible and within a period of time as defined by law; information, in principle, to be supplied in the form specified by the person making the request, provided it is held in that form;
 - vi) charges levied for providing information not exceed the cost of reproduction and dissemination, if appropriate; fee waiver provisions for small amounts of easily accessible information also to be considered;
 - vii) a person refused information be able to contest the decision through an appeals process which is timely, transparent and binding;
- b) Measures are introduced to ensure that public authorities are themselves in possession of adequate environmental information; such measures should include the supply of information to public authorities through mechanisms such as toxic release reporting and mandatory general environmental auditing;
- c) Provisions relating to public participation should aim at, *inter alia*:
- i) extending the right to participate in principle to any natural or legal person as well as environmental organizations;
 - ii) sufficiently broadening the range of decisions in which public participation occurs to encompass all decisions having significant environmental implications;
 - iii) financial barriers to not prevent meaningful participation or lead to imbalances in participation;
 - iv) the early commencement of public consultation in a given decision-making process with due public notice given and a reasonable time allowed for public comment;
 - v) the publication of a reasoned decision, addressing the substantive arguments raised in the decision-making process;
 - vi) the public having the right to appeal a decision, or the manner in which it was arrived at, through an appeals process which precedes implementation of the decision;
- d) All States provide individuals and organizations with effective access to the courts and administrative appeals processes to contest any action considered to be in breach of environmental law, at a reasonable cost;
- i) rights of access to judicial or administrative proceedings should include, for any person;
 - a) the right of access to administrative review of an administrative decision or proposal, where the possibility of such a review exists within the national legal system;
 - b) the right to seek a judicial review of a decision or an act of a public body (including a failure to act);
 - c) the right to have legal redress directly against those considered to be in breach of environmental law;
 - ii) where judicial remedies are sought, States should provide for the possibility of effective interim relief;
4. CALLS ON governments and other decision-makers to develop, alongside the introduction of legislation, necessary infrastructure supportive of public participation and transparency;
5. CALLS for undertaking capacity-building to stimulate effective public participation, both in relation to the bodies responsible for facilitating public involvement and in relation to those seeking to participate, notably ECOs, including:
- a) provision of the necessary education, training and resources to officials responsible for facilitating public participation in order to maximize their effectiveness in this role;

- b) the creation, by governments, of a favourable climate for growth of an environmental movement, while recognizing that the driving force for the growth of such a movement should come from the public.

Note. This Recommendation was adopted by consensus. The delegation of the State member Switzerland indicated support for public participation but for international legal reasons had there been a vote the delegation would have abstained, referring to Operative Paragraph 3 (d) chapeau and 3 (d)(i). The delegation of the State member Germany indicated that had there been a vote the delegation would have abstained. The delegation of the State member United Kingdom supported the aim of the Recommendation but for reasons outlined in the Proceedings volume indicated that had there been a vote the delegation would have abstained.