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**ACCESS TO INFORMATION, PUBLIC PARTICIPATION  
AND ACCESS TO JUSTICE IN ENVIRONMENT  
AND HEALTH MATTERS**

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## Executive summary

Public participation and access to information are increasingly recognized as essential elements in making the much needed transition towards environmentally sound, health-enhancing and sustainable forms of development. Significant progress has been made in recent years in establishing the preconditions for effectively involving the public in environmental and health matters, though much work remains to be done. This document attempts to identify areas where further steps are needed.

The Århus Convention, adopted in June 1998 and signed by 39 governments and the European Community, is currently the most significant regional framework for strengthening public rights of access to information, participation in decision-making and access to justice in the context of the environment and environment-related health. Governments are urged to expedite the entry into force of the Convention and, in the mean time, to apply its provisions to the maximum extent possible. It is recommended that health issues be given a strong emphasis in the course of implementing and further developing the Convention.

The question of rights to information, participation and justice in the sphere of health *per se* is also recognized as meriting further consideration. It is therefore proposed that a working group, involving representatives of both governmental and nongovernmental organizations, be established under the auspices of the Regional Office to explore options for strengthening such rights.

Electronic information technologies, and especially the Internet, are opening up new opportunities for providing the public with streamlined, low-cost and timely access to environmental and health information. To realize this potential, it is proposed that a task force be established including representatives of the World Health Organization, the United Nations Environment Programme, the United Nations Economic Commission for Europe, the Organisation for Economic Co-operation and Development and the European Environment Agency, as well as representatives of governmental and nongovernmental organizations. This task force would aim, *inter alia*, to establish and improve linkages between existing databases; to fill gaps in data and improve its comparability; to develop and apply state-of-the-art criteria for what constitutes user-friendly access; and to improve the extent of Internet access in the Region.

Effective communication with the public and active dissemination of information are essential elements in the development and implementation of environmental and health policies. Governments are urged to apply various measures to encourage use of the media to promote environmental and health objectives. It is proposed to establish a working group, led by the regional office and involving key partners, to assess and communicate risks and to elaborate guidelines on risk communication.

Other recommendations address the need to strengthen and extend the use of environmental and health impact assessment; the importance of strengthening public involvement in decision-making on environmental and health matters, including in the development and implementation of NEHAPs; and the need for a manual of good practice on public participation in environmental and health matters. Various measures to reduce barriers to access to justice are recommended. At international level, it is recommended that nongovernmental organizations be allowed to participate effectively in preparing instruments with significant environmental or health implications.



## Introduction

1. As we arrive on the threshold of a new millennium, it is increasingly recognized that governments working in isolation from the rest of society cannot solve the major environmental and health problems of our time.
2. The transition towards environmentally sound, health-enhancing and sustainable development requires not only tough action by governments but also a reorientation of behaviour throughout society. Changes in personal lifestyle are needed, as well as changes at all levels of political and corporate decision-making.
3. Only with the active engagement and support of civil society can this transition be effected. This implies a new, more participatory kind of democracy: both to encourage greater involvement of the public in bringing about the necessary changes, and to increase the transparency and accountability of the institutions of government and industry. Access to information, participation in decision-making and the right to challenge decisions through the courts are integral elements in that process.
4. Significant progress has been made in recent years in establishing the preconditions for effective involvement of the public in environment and health matters. But much work remains to be done. This paper points to further steps that should be taken to build on the progress achieved so far.

## The international framework for action

5. The value of public participation in decision-making by public bodies has gained increasing political recognition in recent years. At global level, Agenda 21 highlighted the need to involve the whole of society in the process of moving towards sustainable development, and the Rio Declaration stressed the need for information, public participation and access to justice in tackling environmental issues.
6. The European Charter on Environment and Health, adopted at the First European Ministerial Conference on Environment and Health in Frankfurt in 1989, recognized public participation to be an important element in the context of environment and health matters. At the Second European Ministerial Conference, held in Helsinki in 1994, this recognition was reflected in the emphasis given in the Environmental Health Action Plan for Europe to the goal of strengthening the involvement of the public and nongovernmental organizations (NGOs) in environmental health decision-making.
7. Public participation has also emerged as a priority issue in other fora, most notably in the “Environment for Europe” process. At the Third Ministerial “Environment for Europe” Conference, held in Sofia in October 1995, environment ministers from throughout the region covered by the United Nations Economic Commission for Europe (ECE) endorsed the ECE Guidelines on Access to Environmental Information and Public Participation in Environmental Decision-making.
8. However, the adoption one year ago of the ECE Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters has undoubtedly been the most significant international development in this area. This new law,

adopted in the Danish city of Århus at the Fourth Ministerial Conference “Environment for Europe” in June 1998, will very probably provide the main legal framework for strengthening citizens’ environmental rights in the region covered by ECE for the foreseeable future. To date, 39 countries and the European Community have signed the Convention.

## **Building on the Århus Convention**

9. While it is for the Meeting of the Parties to oversee the implementation of the Convention following its entry into force, the signatories in Århus resolved “to seek to apply the Convention to the maximum extent possible pending its entry into force”. The London Conference provides a timely opportunity to offer some direction on the application of the Convention, especially with respect to health issues, which could also be taken into account at a later stage by the Meeting of the Parties. The Århus Convention, a product of the “Environment for Europe” process, was developed as an environmental convention. Health issues as such were not central in its negotiation. As part of the process of strengthening international cooperation between the environment and health sectors, the London Conference can help to give increased emphasis to health issues in the Convention.

10. In fact, health is explicitly referred to in many parts of the text of the Convention. Article 1, which sets out the objective of the Convention, refers to “the right of every person of present and future generations to live in an environment adequate to his or her health and wellbeing”, and this statement is supported by similar phrases in the preamble.

11. More concretely, the Convention’s definition of environmental information contains a qualified but explicit reference to human health and safety, and the conditions of human life. While this most obviously relates to the Convention’s provisions concerning information, it is logical and consistent to interpret the scope of the terms “environment” and “environmental” accordingly where these terms are used in other provisions of the Convention. It is clearly desirable that the entire Convention – not just its information provisions – should be interpreted as applying, at least in this qualified way, to health issues.

12. As regards the scope of health issues covered, it is reasonable to assume a definition of health which at least encompasses the range of elements contained in the definition of “environmental health” used by WHO’s Regional Office for Europe (WHO/EURO). These include “both the direct pathological effects of chemicals, radiation and some biological agents, and the effects (often indirect) on health and wellbeing of the broad physical, psychological, social and aesthetic environment, which includes housing, urban development, land use and transport.”<sup>1</sup>

13. A further question which arises is whether the Convention should also establish rights to information and participation in connection with public health issues which do not have an environmental connection, or whether such rights should be protected in some other way. Activities with regard to food processing and pharmaceutical drugs are examples of areas where there are significant public health implications, where there is a strong case for including public participation and transparency requirements, and yet which would not necessarily fall within the scope of the Århus Convention. Philosophically, it is hard to see why rights of public access to

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<sup>1</sup> *Environment and health. The European Charter and commentary*. Copenhagen, WHO Regional Office for Europe, 1990 (WHO Regional Publications, European Series, No. 35), p. 18.

information in the sphere of public health should be weaker than rights of access to information on the environment – and similarly with respect to public participation in decision-making.

## **Access to information**

14. An effective information policy is fundamental to involving the public as partners in promoting better environmental health. Information is not only a prerequisite for effective participation in public decision-making processes; it is also necessary to enable individuals to make informed personal choices in their own lives which benefit their health and the environment.

15. Information policy should aim to ensure the accountability and transparency of public authorities and to create a more informed public through awareness-raising measures. Information held by public authorities is held on behalf of the public and should therefore be publicly accessible in all but a few clearly defined circumstances, taking into account the public interest; certain information should also be actively provided to the public.

16. The Århus Convention sets out the essential elements of a system of meeting public demands for access to information held by public authorities, namely: a general presumption in favour of access; definitions of “environmental information” and “public authorities” that delineate the scope of information covered and the range of bodies required to supply it; broadly defined terms of access (time limits, costs, form, etc); and provision for a limited number of exemptions.

17. Access to information on health is partly covered by the Convention to the extent that it is environment-related. Epidemiological and toxicological data should in principle be available to the public, albeit noting the possibility of exemptions under the Convention for personal data, commercially confidential information and information affecting intellectual property rights, among others. In order to provide the maximum degree of public access to epidemiological data without infringing on personal privacy, such data should be structured so that the minimum information which could lead to the identification of a particular individual can be separated out and the remainder supplied. In such cases, provision should also be made for privileged access to the exempt data to be granted to qualified researchers nominated by members of the concerned public, with this access being covered by confidentiality agreements.

18. It should not be possible for a public authority to use any of the exemptions to withhold information the disclosure of which could prevent a significant threat to human health. The possibility of expedited procedures for obtaining access to such information, or of fees being waived in such cases, should also be considered.

19. Individuals should always have a right of access to information on their own health, save in exceptional circumstances, provided for in law, where there is good reason to believe that providing such access would, without any expectation of positive effects, seriously harm the interests of that individual. Information on the former health of a deceased person should be available to close relatives.

20. The issue of information held by the private sector urgently needs to be addressed, given that much legislation on freedom of information applies only to information held by public

authorities. Mechanisms for ensuring an adequate flow of information from the private sector into the public domain are essential.

21. The information needs of workers, who may be exposed to particular hazards in the workplace, should be given special consideration to the extent that those needs are not met through general public access provisions. Collective agreements between workers and management have included clauses related to information, and a growing legislative and institutional framework has strengthened workers' rights in this area. However, further progress is needed, as reflected among other things in the relatively small number of countries which have ratified the ILO Occupational Safety and Health Convention, 1981 (No. 155).

### **Information-gathering mechanisms**

22. Both active and passive aspects of information policy depend upon adequate systems for generating, collating, organizing and presenting information. There are various tools for generating or gathering information:

- (a) Reports on the state of the environment and/or health provide a useful basis for periodic reviews of policy. The value of such reporting as a policy guidance tool is enhanced if, in addition to providing factual information on the present and projected state of the environment and health, it explicitly reviews trends in the light of indicators of sustainability.
- (b) Environmental impact assessment (EIA) is widely used for predicting the likely environmental and/or health impact of proposed projects or activities, and to a lesser extent of programmes, plans or policies. Health impact assessment and EIA are also emerging as useful academic disciplines.
- (c) Environmental auditing of activities and companies, through schemes such as the European Union's Environmental Management and Auditing Scheme, and full life-cycle analysis of products can help to raise awareness, among both producers and consumers, of the environmental implications of their actions. Such schemes should be made mandatory, so far as possible, to ensure comprehensive coverage and establish a "level playing field", and extended to cover health implications.
- (d) Pollutant release and transfer registers (PRTRs), maintained through periodic reporting on the releases and transfers of a specified range of substances from certain potentially polluting activities, have proven to be a highly effective and relatively low-cost means of gathering environmental information from the private sector and putting it into the public domain, thereby exerting a downward pressure on levels of pollution. However, very few countries in the Region have established such registers.
- (e) Health data reporting mechanisms are also necessary to provide a basis for research into possible causal links between health problems and environmental factors. Better surveillance of diseases and monitoring of environmental indicators that may be related to health, including occupational health, are needed. In addition to mortality data, which give only a crude and late warning of potential problems, cancer registers and sentinel surveys should be used and structured so as to maximize public access to relevant information without compromising personal privacy. Public registers on the health-threatening properties of substances, such as the International Register of Potentially Toxic Chemicals, are also of great importance.



23. A number of steps should be taken to improve the combined value of these various reporting mechanisms.
- (a) The mechanisms themselves should be established (where this has not already been done), strengthened and made more comprehensive. In the case of PRTRs, the legal framework offered by the Århus Convention, combined with the considerable experience accumulated in this area by bodies such as the Organisation for Economic Co-operation and Development (OECD) within the framework of the Inter-Organizational Programme for the Sound Management of Chemicals, should be used to give a new impetus to the use of PRTRs in the Region.
  - (b) The linkages between these different information systems should be strengthened, as this would significantly increase their usefulness.
  - (c) Third, measures to increase harmonization of data-gathering systems across the Region should be supported, to allow for greater comparability of data.
  - (d) The information should be made available to the public in an accessible and user-friendly manner. This will usually involve interpretation, structuring and analysis of information according to the needs and interests of the public, though always without prejudice to the right of access to the original data. State-of-the-art Internet web sites linking databases on emissions to environmental media (in the form of geographical information systems) with databases on the health implications of toxic chemicals have demonstrated that there is a dramatic increase in the public use of information when the information is presented in a user-friendly form through an electronic “one-stop-shop”. There is also a need to provide NGOs and the public with better information on how to interpret data on environmental and health issues.

## **Public communication**

24. Communicating with the public and active dissemination of information are essential elements in the development and implementation of environmental and health policies. A well informed public is more able to participate effectively in decision-making and more likely to support policies designed to create a healthier environment.

25. At the individual level, good communication can have direct environmental and health benefits, both by making members of the public aware of when and how to avoid exposure to hazards (e.g. ultraviolet radiation, tropospheric ozone, smog), and by dissuading them from environmentally destructive behaviour (e.g. driving cars in cities when cleaner public transport options are available).

## **Who communicates?**

26. Communication on environment and health is not simply a one-way process, whereby objective information is transmitted by the informed to the uninformed. It can and should involve debate, dialogue and feedback, especially in the context of a decision-making process.

27. Governments have a particular responsibility to consider how bodies under their direct control should communicate. The media have an especially important role to play in the communication of information and the development of “health literacy”. Free, independent and critical media are a key aspect of a healthy democracy. Therefore public bodies which want to

get their message across need to work with the media in a pro-active way, avoiding secrecy and encouraging openness. Both sides should be aware of their responsibilities and of the need to communicate openly and professionally with each other, particularly during disasters (where speed may be of the essence and pre-prepared protocols should be in place).

28. Other key actors in the communication of environment and health information include doctors, environmental health professionals, educational institutions, businesses, trade unions and NGOs. Communication of public health policies, ideas and developments relies also on their active involvement and understanding.

29. These players are being brought together, along with ministry information officers, in the WHO European Health Communications Network, recently established by WHO/EURO, which will support the development of skills, share information on good practice, and establish a code of ethics and professional guidelines.

### **Communication media**

30. Communication technologies are evolving rapidly. Governments need to adapt their policies to these changing technologies, recognizing that they bring new threats as well as new opportunities.

31. Television has become the main source of news and information in Europe, as in the rest of the world. It is a powerful medium for putting across both positive and negative messages about environment and health issues. The recent growth in investment in digital and other television channels means that viewers have access to a profusion of profit-making channels beyond the state-owned ones, some of them with a large satellite “footprint” which takes no account of national borders. This has inevitably reduced the extent to which governments have a say in what their population is exposed to. Conversely, the arrival of digital television may lead to a large number of low-budget community-based channels, bringing increased opportunities for citizens and NGOs to participate in the medium and for broadcasting socially useful messages, but increasing the difficulty of getting messages across to a whole population due to fragmentation of audiences.

32. Notwithstanding the limited influence that governments may have over the content of television broadcasting, it is important that expectations of broadcasters’ responsibilities are made clear by countries whose citizens make up their viewer audience. In the past, some governments have laid down the basic framework in which television stations should operate if they are to receive an operating licence. This may involve stipulating that a certain percentage of programming should be “socially purposive”, e.g. addressing health, social or environmental issues. This category can also include “access television” or programmes which encourage viewer response and participation. Public service announcements on social or health issues, typically made by government agencies or NGOs as part of a public health or other campaign and slotted in between programmes, can be a powerful means of raising awareness. There is every reason to encourage national broadcasters to broadcast these regularly, free of charge. There is also a strong moral case for restricting the advertising of products which are damaging to health or the environment.

33. Electronic information technologies, and especially the Internet, are revolutionizing the way in which society handles information. Putting information on web sites or homepages, in

addition to using conventional media, is an effective way of making it available to the growing numbers of the computer-using public, saving time and resources for both the public and public authorities and allowing the public to draw down information according to their needs and interests. The Århus Convention requires Parties to make environmental information progressively available in this form, with emphasis on certain categories of information. However, many members of the public do not currently have either direct or indirect access to the Internet, and there is clearly a need to increase the numbers of people who do, e.g. through computer terminals in public information centres.

34. Educational institutions are an essential source of information on environment and health matters, and they should be encouraged to include strong environmental health themes in their curricula. This will not only improve the quality of public input to decision-making in the short and medium terms, it will also have long-term benefits for environmental health in the future, through building up a population's "intelligence capital".

35. Product labelling is an important way of providing information to the public. This can be neutral (e.g. providing a factual list of the names of ingredients) or evaluative (e.g. warning that the product can endanger health or the environment). It is essential that the public are provided with sufficient information, in an appropriate form, to enable them to make informed choices which benefit health and the environment. Minimum criteria for labelling should be established on a mandatory basis, to ensure a level playing field, and can usefully be supplemented by voluntary labelling schemes. In both cases, the content of labelling should be consistent with the findings of full life-cycle analysis, so that the consumer is able to get a balanced picture of the environmental and health implications of consuming the product. Labelling criteria should also reflect public concerns, e.g. there should mandatory labelling of products containing or originating from genetically modified material.

### **Communicating about risks and hazards**

36. Communication about risks and hazards<sup>2</sup> to health and the environment is one of the most sensitive and controversial areas of public communication. Providing members of the public with insufficient or inaccurate information about a hazard may deprive them of the opportunity to take precautionary or preventive action and can have serious detrimental consequences – in some cases, literally costing lives. Where timely provision of information could reduce or eliminate a threat to health or the environment, it should be incumbent on those holding such information to make it available forthwith to the potentially affected public.<sup>3</sup>

37. Risk communication should aim to convey to the potentially affected public the most objective information on the real levels of risk to which they are or might be exposed. However, there are many obstacles to achieving this objective.

38. Communicating with the public about risks often involves relaying complex technical facts in lay terms without losing accuracy. Sometimes it involves bridging a gap between public perception and objective fact, in so far as the latter can be established. In some fields, it may involve communicating uncertainty or diversity of opinions. Ethical and political issues may be

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<sup>2</sup> The term "hazard" is used here to refer to the intrinsic potential of certain processes, activities, etc. to cause harm. The term "risk" refers to the probability and severity of harm arising from a hazard.

<sup>3</sup> The Århus Convention gives legal force to this principle, at least as far as public authorities are concerned (Article 5.1(c)).

at stake. But these are not reasons to avoid communication; on the contrary, there will be most public interest in those very areas.

39. If public authorities understate the risks or hazards from accidents, activities or products, or information is simply withheld, this can lead to a vicious circle of poor communication and a breakdown of trust. The public no longer trusts information from official sources – applying their own very pragmatic version of the precautionary principle. Public authorities are then reinforced in their view that the public is irrational, so are less inclined to share information on hazards for fear that there will be an overreaction.

40. If risks are overstated, this may cause unwarranted psychological stress, which itself may constitute or cause a significant and measurable health impact among the public. Effective hazard communication must therefore steer a course between causing complacency and causing alarm. On the other hand, the phenomenon of information-induced health problems should never be cited as grounds for withholding information from the public, where that information could enable appropriate precautionary action to be taken to mitigate a significant threat to health or the environment.

41. Perhaps the greatest challenge in risk communication is in situations where there is uncertainty about the level or nature of the risk. Although hazard assessment can often be undertaken with high levels of scientific certainty, risk assessment relies to a greater extent on model assumptions, and therefore the levels of uncertainty – and the scope for producing widely differing assessments of risk – is far greater. It is crucial that risk communication fully respects the precautionary principle in the light of any such uncertainties, and that any realistic doubts and gaps in knowledge are communicated to the public.

### **Assessment of risks**

42. Communication about risks often amounts to communicating the results of risk assessment. Therefore the question of how risks are assessed is of central relevance.

43. Risk assessment can be a powerful tool when dealing with well delineated systems, where the hazards are well defined (e.g. traffic). But it has also been applied all too frequently in the past to complex systems where the hazards are poorly defined and/or completely unpredictable (e.g. genetically modified organisms). This has contributed in some part to the increasing scepticism with which the public has treated health and safety information in recent decades.

44. Governments should encourage maximization of the identification and quantification of hazards within any given risk assessment, thus reducing as far as possible the number of assumptions related to modelling. As regards the assumptions that remain, it is important that these are clearly stated and that the precautionary principle is rigorously applied.

45. Aside from the difficulty of accurately and confidently quantifying risks, the question of their acceptability depends on a range of other issues which involve subjective value judgements. This implies a need for broad societal input into decision-making on risks. The role of value judgements and the treatment of scientific uncertainty in risk assessment are addressed further in Annex 1.

## **A preventive approach to risk**

46. Most risks and hazards in modern society are not inevitable but rather arise as the direct or indirect outcome of human activities. The backdrop to any policy on risk communication must be the goal of reducing and where possible eliminating avoidable hazards. Risk communication should not be a process whereby government or industry attempts to make avoidable hazards appear more acceptable to the public, with the hazard presented as a “given”.

47. Risk communication should be seen in the broader context of a preventive approach to risk. Effective risk communication should in many cases lead not just to individuals minimizing their exposure to the hazard but also to public pressure to eliminate the source of the hazard.

48. Similarly, risk assessment should be seen in the broader context of moving towards an environmentally sustainable society based on clean production. Standard risk assessments can provide information, with the aforementioned limitations, about the probability of certain events and their likely consequences. However, this should only be one element in a decision-making process on whether to proceed with the activity which gives rise to the risk. Over-emphasis on this aspect can detract from consideration of other issues such as social need, availability of alternatives or irreversibility of effects.

49. Ultimately, society needs to adopt an entirely new approach to risks and hazards – one which is preventive, pre-emptive and pro-active, rather than reactive and based on damage limitation after the event. Pervasive technologies which are reasonably suspected of having the potential for substantial, irreversible or uncontrollable effects should not be developed until it has been established beyond reasonable doubt that they will not produce such effects.

## **Involving the public and nongovernmental organizations**

50. Participation of the public and NGOs in decision-making by public bodies on environment and health matters is desirable because it tends both to improve the quality of the resulting decisions and to increase the level of public support for the outcome. Less tangibly but of no less importance, a society in which people feel that their voices can be heard and can make a difference might be expected to have a higher morale than one in which people feel powerless to influence the conditions in which they live and work. This morale factor has numerous and far-reaching implications which, even if hard to quantify, should not be ignored.

51. The Århus Convention sets out a broad legal framework for such participation, establishing minimum requirements for public participation in decisions on specific activities (Article 6), on plans, programmes and policies (Article 7) and on general rules and regulations (Article 8) relating to the environment.

52. Opportunities for public participation in making decisions that have significant health implications need to be further strengthened, either within the Convention or otherwise. For example, further steps should be taken to provide for public participation in the process of authorizing transportation of nuclear and hazardous wastes, an activity with obvious health implications. Similarly, the uncertainties inherent in the field of genetically modified organisms make it imperative to provide at least the same degree of public participation in decision-making in this area as on other activities (such as those listed in Annex I of the Convention).

53. Trade and investment decisions should not be allowed to limit public participation in any way but should rather encourage governments to maintain and expand upon existing mechanisms.

### **Environmental and health impact assessment**

54. Over the past few decades, environmental impact assessment (EIA) of projects has provided a particularly important mechanism for involving the public in a certain category of decision-making, in a growing number of countries. None the less, it must be acknowledged that in its present form EIA, like the related discipline of risk assessment, has not prevented the spread of environmentally hazardous technologies and practices.

55. There is potential to build on the experience with EIA and increase its effectiveness in three ways: first, by including health impacts to a greater degree than hitherto; second, by enabling the public to participate to a greater extent, especially in the phase of defining the scope of an EIA; and third, by broadening the types of decision-making covered to include those on policies, plans, programmes and legislation relating to the environment or environment-related health. Limiting EIA to the level of decision-making on projects is tantamount to relying on an “end-of-pipe” solution.

### **Good practices**

56. The precise conditions of participation are all-important in achieving genuine public involvement and avoiding tokenism. The main requirements for effective participation include:

- (a) opportunities for early and ongoing involvement of the public in the decision-making process;
- (b) adequate and timely notification of the concerned public;
- (c) public access to information relevant to the decision-making process, with active dissemination of certain key information to the concerned public;
- (d) due account taken of the public input;
- (e) reasoned decisions addressing all substantive arguments raised in the participation process;
- (f) transparency in the decision-making process, including a public record of all submissions made to or meetings held with decision-makers;
- (g) training of officials in ways of supporting public participation;
- (h) a supportive infrastructure for involvement of the public and NGOs, including measures to overcome financial obstacles to participation;
- (i) long-term capacity-building to strengthen NGOs.

57. Public participation should not be seen as purely a matter of fulfilling certain procedural formalities. As far as possible, the content of decisions should also reflect the public input, and especially the input from members of the public whose rights or interests are particularly affected by the decision-making process under consideration.

## Public participation in national and local environmental health action plans

58. Although decision-making on national and local environmental health action plans (NEHAPs and LEHAPs, respectively) relates to only one category of plans affecting health and the environment, it is clearly an important one in this context. The resolution which accompanied the adoption of the Århus Convention indirectly emphasizes the applicability of the Convention to the NEHAPs process.

59. The guidance given by the European Environment and Health Committee's NEHAP Task Force contains various recommendations and suggestions relating to public consultation and participation. In addition to pointing out the relevance of the Sofia Guidelines (see paragraph 7), the guidance refers to the need for a public participation strategy and describes it as "axiomatic" that the responses from the public be influential.

60. A WHO/EURO consultation on public information and participation in environmental health matters reviewed the situation in European countries and produced a set of recommendations on how to address public information and public participation problems.<sup>4</sup>

61. The background study carried out by the Regional Environmental Centre for Central and Eastern Europe (REC) shows that while some countries have given the public wide possibilities for participation in the NEHAP process, in others there is little or no public involvement. In the case of LEHAPs (or similar initiatives such as Local Agenda 21 or Healthy Cities), a greater degree of participation appears to have taken place. Although the REC survey covered a relatively small selection of countries and at a fairly early stage in the NEHAP/LEHAP process, its results indicate that there is much room for improvement.

## Forms of participation

62. With most types of public decision-making, the aim of public participation is to ensure that the public are fully consulted and that their views are genuinely taken into account. The actual decisions are generally taken by officials acting under the authority of an elected government.

63. In some cases, however, for example where referenda or the right of legislative initiative are used, the public or NGOs are actually the decision-makers or co-decision-makers. The successful use of these instruments of "direct democracy" in a small number of countries not only provides interesting models for other countries to follow; it also suggests that involving the public in decision-making need not be limited to building public consultation into an existing decision-making process. It can mean looking at the decision-making structures themselves and developing new structures (e.g. multiple-choice "preferenda") which empower the public.

64. Computers open up new possibilities for public involvement in decision-making. Just as the use of computer technology has transformed the way information is handled, so it could eventually have a similar impact on decision-making processes themselves.

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<sup>4</sup> *Strategies for public information and participation*: report on a WHO consultation, Michelstadt, Germany, 3–5 March 1997. Copenhagen, WHO Regional Office for Europe, 1997 (unpublished document EUR/ICP/NEAP 01 03 02).

## Who should be entitled to participate?

65. In principle, the goal of public participation is to give each and every member of society the opportunity to participate. Local decision-making processes should generally allow for direct participation by the public, and other decision-making processes should also do so as far as this is feasible.

66. In practice, citizens usually need to organize themselves into groups to participate effectively in larger-scale decision-making processes. Thus public participation frequently takes the form of NGO participation. This can lead to some ambiguity, because the concept of a “nongovernmental organization” embraces a wide range of bodies with differing interests, motivations and resources, some of which are genuine grassroots citizens’ organizations.

67. It is therefore crucial to distinguish between public participation and stakeholder participation, and between public-interest NGOs and other stakeholders. Involvement of all stakeholders is desirable in environment and health decision-making processes, with account being taken of their different needs and motivations. However, special attention should be paid to encouraging the participation of public-interest NGOs which are promoting environmental or health objectives, and to overcoming obstacles to their participation, including resource limitations. In view of the fact that women are the primary caretakers of children, the ill and the disabled, it is also important to ensure gender equity and that children’s rights are respected.

## Transparency and equity in decision-making

68. Good government requires the unequivocal independence of regulatory bodies from those whom they seek to regulate. Therefore, as a matter of policy, those being regulated or supervised by a body should have no representation upon, or financial connection with, that body.

69. It is also important that such influence as stakeholders do have is exercised in a transparent way. Diaries of all meetings of decision-makers in the field of environmental and health regulation with lobbyists of any persuasion should be kept and should be on the public register, as should records of any financial contributions received from whatever source and in whatever form.

70. The considerable sums of money spent by large multinational corporations in maintaining lobbying and research staff in all major centres of government far outweigh the funding that can be applied by public-interest NGOs. Whereas some stakeholders have well established channels of communication with government, public-interest NGOs often do not. Therefore, efforts should be made to compensate for the large imbalance in resources and influence available to different categories of stakeholder, so as to create a more level playing field.

71. Studies performed in connection with the licensing of environmental releases of potentially polluting substances should be designed and performed by independent bodies, and the costs should be budgeted for as part of development costs and be met by the developer.

## Access to justice

72. Rights to participation and to information, or indeed to a healthy environment, are of limited value if there is no mechanism to challenge breaches of such rights. Therefore access to



justice is a key element in affording the public a meaningful involvement in environment and health matters.

73. The Århus Convention provides a minimum legal framework for access to justice in environmental matters, and the implied definition of “environmental” in the Convention suggests that this should extend to environment-related health matters. The provision of access to justice in health matters in general, which currently falls outside the scope of the Convention, should be encouraged, and that in the field of workers’ health and safety should be strengthened.

74. Broad rights of standing should be granted where environmental and public health interests are at stake, to increase public involvement in enforcement of the law. Where interests (including non-human interests) of a generalized or dispersed nature may be affected, NGOs representing the potentially affected interests should be granted the right of standing.

75. Efforts should be made to overcome practical and financial barriers to access to justice, e.g. through the provision of legal aid mechanisms and waivers of costs where cases are taken in the public interest. Injunctive relief should be available to prevent actions which could result in serious or irreversible damage to health or the environment.

76. Given that the possibilities of being granted legal standing or obtaining injunctive relief are often dependent on establishing a certain probability of causation, it is desirable that clear legal rules be set out for establishing causation and for the admissibility of evidence before the courts in environmental and health cases, taking into account the need to apply the precautionary principle when faced with scientific uncertainty or divergent standards.

77. In order to lower the threshold to access to justice and ensure more specialized expertise in the adjudicating body, governments should consider establishing an ombudsperson’s office with competence to deal with environmental and health issues.

## **Recommendations for action**

- A. Governments should strive to expedite the entry into force of the ECE Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters (the Århus Convention) and to apply the provisions of the Convention to the maximum extent possible pending its entry into force. Non-signatory states should be encouraged to approve, accept or accede to the Convention at the earliest opportunity.
- B. Health issues should be given strong emphasis in the course of implementing and further developing the Århus Convention. The Executive Secretary of ECE should be invited to take into consideration relevant aspects of this paper, in preparation for the first Meeting of the Parties to the Convention. WHO/EURO should convene a small working group, including representatives of governments and NGOs from both the environment and health sectors, to explore options for strengthening public rights to information, participation and justice in the sphere of health, including the provision of assistance to the Meeting of the Parties to the Århus Convention where requested.
- C. Electronic information technology, including the Internet, should be used to maximize the public accessibility of environmental and health information. At national level,

governments should identify categories of environmental and health information to be made available through the Internet. At international level, a comprehensive, integrated, user-friendly network of databases on environmental and health issues should be established, with a view to providing the public throughout the Region with streamlined, low-cost and timely access to environmental and health information through the Internet. A task force including representatives of WHO, UNEP/Infoterra, ECE, OECD and the European Environment Agency, as well as governmental and NGO representatives, should be set up to accomplish this task, *inter alia* through:

- (a) establishing and improving linkages between existing databases;
  - (b) filling gaps in data and improving the comparability of data;
  - (c) developing and applying state-of-the-art criteria for deciding what constitutes user-friendly access;
  - (d) identifying and as far as possible implementing measures to increase the extent of public access to the Internet in the Region, including the provision of technical and financial assistance;
  - (e) coordination with similar initiatives aimed at meeting the requirements of scientific, regulatory and other bodies.
- D. While respecting the independence of the media, governments should use their influence to encourage use of the media to promote environmental and health objectives through measures such as televised public service announcements, licence conditions requiring a proportion of socially purposive programming, and restrictions on the advertising of products which are damaging to health or the environment.
- E. A working group led by WHO/EURO and involving representatives of the media, environmental health professionals, NGOs and other key partners in assessment or communication of risks should be established to elaborate guidelines on communication between these partners and with the general public regarding threats to environment or health, including during disasters, taking into account the need to:
- (a) coordinate with relevant work being undertaken within WHO's European Health Communications Network and in other fora such as the International Programme on Chemical Safety;
  - (b) apply the precautionary principle in assessing risks and adopt a more preventive, proactive approach to hazards, *inter alia* by shifting the burden of proof onto those promoting new potentially pervasive technologies, requiring it to be established beyond reasonable doubt and prior to their implementation that they will not result in substantial, irreversible or uncontainable adverse effects on health or the environment.
- F. Ministers of health and the environment should cooperate on developing national systems of strategic environmental and health impact assessment which incorporate the requirement for public participation. The Meeting of the Parties to the ECE Convention on Environmental Impact Assessment in a Transboundary Context should be invited to consider initiating negotiations on a Protocol on Strategic Environmental Impact Assessment in both transboundary and non-transboundary contexts, incorporating public participation provisions and fully addressing human health impacts.

- G. In order to stimulate better provisions for public participation across the Region, WHO/EURO should arrange for the production of a manual of good practices on public participation in environment and health matters, making use of work already carried out in this area.
- H. Governments should continue and strengthen their efforts to involve the public and NGOs in decision-making on environment and health matters. Special attention should be paid to encouraging the participation of public-interest NGOs which are promoting environmental or health objectives, and to overcoming obstacles to their participation, including resource limitations. In particular, public participation in the development and implementation of NEHAPs, LEHAPs and related initiatives under Agenda 21 should be provided for, taking into account the REC guidelines, the recommendations from the Michelstadt consultation and the NEHAP Task Force's guidance.
- I. Access to justice should be ensured so that the public can challenge breaches of rights to information and participation and of laws relating to health and the environment. A broad interpretation of the right of legal standing should be applied. Public-interest NGOs promoting health or environmental protection should be granted the right of standing where the interests they exist to protect may be threatened. Efforts should be made to overcome practical and financial barriers to access to justice, e.g. through legal aid mechanisms and cost-waiver provisions, and injunctive relief should be available where serious or irreversible damage to health or the environment could otherwise occur. Governments should consider establishing an ombudsperson to deal with environment and health matters.
- J. The principles of the Århus Convention should be applied in international decision-making processes dealing with the environment and health. In particular, NGOs should be allowed to participate effectively in the preparation by intergovernmental organizations of instruments having significant environmental or health implications.

## *Annex 1*

# SOME KEY CONSIDERATIONS CONCERNING RISK ASSESSMENT

### ***Introduction***

1. The methodology of risk assessment has developed rapidly in recent decades and is increasingly relied on as a tool in making decisions about activities that pose risks. Since various techniques of risk assessment are widely used by decision-makers, and as their findings often form the substance of what is communicated to the public, it is important that the limitations of risk assessment as currently practised are fully recognized and understood. Otherwise, its use can result in misplaced confidence in potentially hazardous activities, and risk communication based exclusively on it can prove to be misleading.

2. The practice of risk assessment as carried out over the past few decades has accompanied, and to some extent legitimized, many environmentally destructive practices, resulting for example in the introduction and build-up of toxic, bioaccumulative chemicals in the environment over the same period. It is therefore not surprising that the process is regarded by the public with some scepticism.

### ***Scientific uncertainty***

3. One of the key issues in assessing risks is the treatment of scientific uncertainty. As modern society becomes increasingly complex, there are major difficulties in making detailed, accurate assessments of risks and hazards. There may be uncertainty both in the probability of an event occurring and in the scale and nature of the consequences if it does occur. These uncertainties may arise from, or be compounded by, a number of factors:

- (a) lack of data: e.g. the sheer volume of new chemicals coming on to the market makes comprehensive testing a remote aspiration;
- (b) biased sources of data: sometimes the main information available on the risks posed by a technology comes from those with an interest in promoting it;
- (c) the sheer complexity of interactions between humans and the environment: too many possible causes for any given effect, too many parameters to monitor for any given cause;
- (d) the emergence of new technologies (e.g. genetic engineering) for which there is no accumulated body of experience or data;
- (e) separation of cause and effect over space (e.g. widely dispersed pollution) and time (e.g. intergenerational effects), making it difficult to prove causal connections;
- (f) synergistic, additive and cumulative effects (e.g. failure to take account of pre-existing body burdens of toxic substances);
- (g) unpredicted or unidentified sources of hazards;
- (h) varying susceptibilities among populations.

To the extent that risk assessment fails to explicitly acknowledge and address these uncertainties, it gives the illusion of a precision and objectivity which is not justified.

4. There are degrees of uncertainty in any risk assessment. This uncertainty makes it imperative to apply the precautionary principle, taking into account the needs of society as a whole. Historically, much damage to health and/or the environment could have been averted through more stringent application of the precautionary principle. This applies both to risks posed by unplanned non-routine events (e.g. chemical or nuclear accidents) and to risks posed by routine or ongoing exposure to factors in the environment (e.g. ultraviolet radiation, lead, organophosphates, tobacco smoke). The precautionary

principle should be the determining factor before introducing into the environment pollutants that can have a damaging effect on people's health.

5. The precautionary principle requires that decision-makers take into account not just the likelihood of a hypothesis being wrong (the degree of uncertainty) but also the nature and scale of the consequences if it is wrong. Some risks are unacceptable not because they have a high probability of occurring but because the consequences if they do occur are so severe. In view of this, the possibility of irreversible or persistent effects (as with persistent organic pollutants) calls for a different approach than in situations where transient effects are involved.

### ***Value judgements***

6. A second key factor which must be taken into account in respect of risk assessment is the role that value judgements play in decision-making on risks and hazards.

7. The scientific community has a particular responsibility in making the best assessments of risks and hazards and identifying the levels of uncertainty inherent in such assessments. However, even where purely quantitative assessments are involved, scientists may diverge considerably in their opinions. Scientific appraisal does not occur in a political vacuum. When qualitative words such as "unlikely", "significant", "appreciable" or "substantial" are used in describing a level of risk, an exercise of judgement which goes beyond full knowledge of the facts is involved. It is therefore necessary to ensure that, as far as possible, decision-making processes on risk benefit from scientific opinions which are independent from any commercial or political pressure.

8. While science provides the starting point for assessing risks, a decision on what constitutes an acceptable risk is essentially a value judgement. The acceptability of a risk may depend on many things besides the quantitative assessment of it, e.g. whether it is a chosen risk or an imposed risk; whether the risk could easily be avoided; whether the benefits of a proposed activity or product outweigh the risks arising from it; or whether the distribution of such risks through the population correlates with the distribution of benefits.

9. Even though part of the risk assessment is a scientific exercise, the fact that assessing risk involves value judgements makes it essential to involve those who will bear the risk in the overall decision-making process. Various models have been used for bringing together experts, regulators and the public to debate risk management, such as consensus conferences, citizens' juries and citizens' advisory committees. However, the use of such methods is the exception rather than the rule. They should be used more extensively, and experiences shared.

10. In order to ensure transparency in risk assessment, the details of studies submitted for use in risk assessment for licensing purposes should be in the public domain and available in full through the Internet.

The need for this document was identified in a questionnaire survey by WHO in 1996 of Member States in its European Region, and endorsed by the European Environment and Health Committee (EEHC). This document was prepared by Jeremy Wates, environmental consultant, with the Netherlands as lead country and a multisectoral expert group consisting of governmental and nongovernmental representatives of both disciplines of health and the environment from different parts of the European Region. Two meetings of the group were held. Drafts were made available over the Internet, and some comments were received from nongovernmental organizations through this medium; drafts were also reviewed by the EEHC.

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