

The UNECE Aarhus Convention: A unique treaty for environmental rights with a unique Compliance Committee

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The Aarhus Convention – what is the experience?

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Environmental rights as participatory rights

- Environmental **laws** and environmental **rights**
- Environmental **objectives**
- Environmental **standards**
- Balancing of **interests**
- → **Substantive rights??**
- ***Procedural and participatory rights:***
 - Access to information*
 - Public participation in decision-making*
 - Access to justice*
- ***Aarhus Convention → participatory rights***



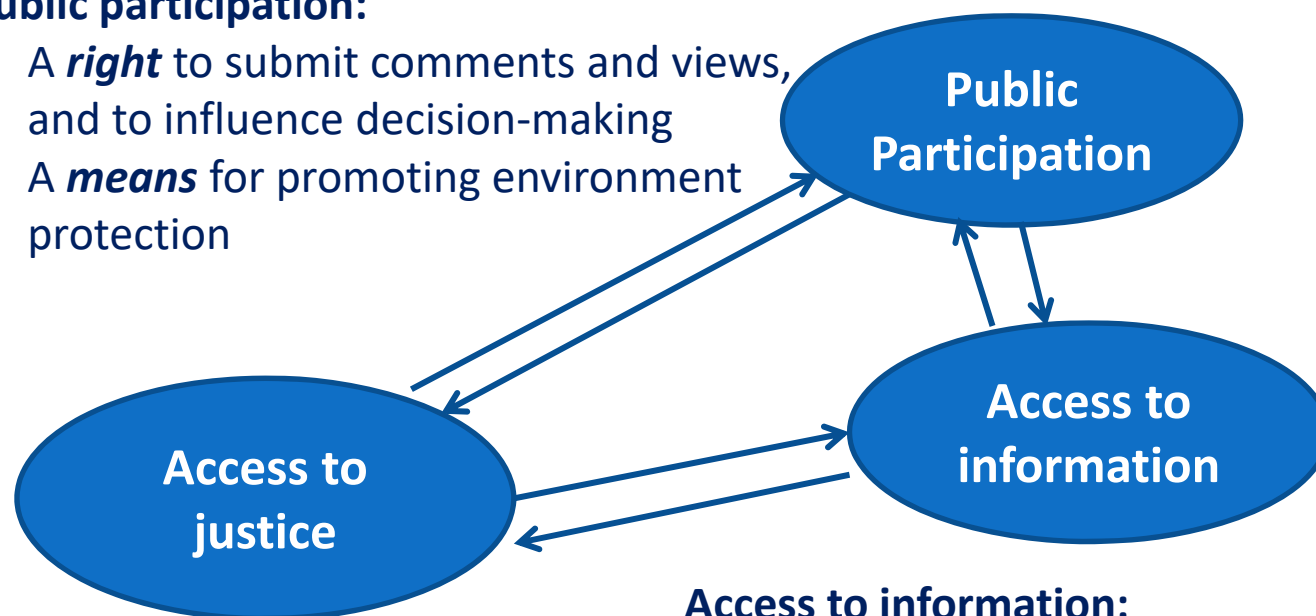
Why participatory rights in environmental matters?

- Promote **respect for rules** on environment protection
- Improve **implementation** of environmental laws
- Improve the **quality** of environmental **decision-making**
- Improve **control & transparency** of public administration
- Further and adapt established **human rights**
- Enhance **legitimacy, fairness and justice** in decision-making
- Promote **trust** in public authorities
- Promote **environmental democracy** and **rule of law**



Public participation:

- A **right** to submit comments and views, and to influence decision-making
- A **means** for promoting environment protection



Access to justice:

- A **right** to bring action before court or other independent and impartial body of law
- A **means** to have decision-making, decisions, acts and omissions corrected

Access to information:

- A **right** to request and receive environmental information
- A necessary **means** for effective public participation



Aarhus Convention is unique, yet: International law of *global* scope

- 1948 UN Universal Declaration on Human Rights
- 1966 International Covenant on Civil and Political Rights
- 1966 International Covenant Economic Social & Cultural Rights

- 1992 Rio Declaration de Rio, Principle 10

- 1992 UNFCCC + 1997 Kyoto Protocol + 2015 Paris Agreement
- 1992 Convention on Biological Diversity +
2000 Cartagena Protocol + 2010 Nagoya Protocol
- 1998 Rotterdam Convention (PIC)
- 2001 ILC, Draft Articles Prevention from Transboundary Harm
- 2002 Stockholm Convention (POP)
- 2010 UNEP, Bali Guidelines on Access to Justice etc
- 2012 Rio+20, The Future We Want
- 2013 Minamata Convention (Hg)



Aarhus Convention is unique, yet: International law of *regional* scope

- 1950 European Convention on Human Rights
- 1969 American Convention on Human Rights + 1988 Protocol
- 1981 African Charter on Human and Peoples' Rights

- 1974 Nordic Environment Protection Convention
- 1977 OECD Recommendation on Equal Access and Non-discrimination in Transboundary Environmental Contexts
- 1993 North-American Agreement on Environmental Cooperation
- 1991– Other UNECE Environmental Treaties than Aarhus Conv.
- 2003 African Nature Conservation Convention?
- 2018 ECLAC Escazù Agreement (Latin America, Caribbean)

- Still no regional treaty for Asia and the Pacific



Aarhus Convention: Objective

“In order to **contribute** to the protection of the **right of every person of present and future generations** to live in an environment adequate to his or her health and well-being, **each Party shall guarantee the rights** of access to information, public participation in decision-making, and access to justice in environmental matters in accordance with the provisions of this Convention.”



Aarhus Convention: General Features

- **Rights** for members of the public, including NGOs
- **Minimum** requirements
- Broad notions of “the public concerned”, “public authority” and “environmental information”
- **No** penalisation, persecution or harassment
- **No** discrimination
- State borders irrelevant for public participation
- Compliance Committee



Aarhus Convention: Access to Information

- Broad notion of “environmental information”
- Information available on request “as soon as possible”
- Refusal only on listed ground and interpreted restrictively
- Constant update of relevant environmental information
- System for adequate flow of information
- Electronic databases publicly accessible
- Pollution Release and Transfer Register Protocol



Aarhus Convention: Public Participation

PP for specific activities

- Early notification: effectively, adequately and timely
- Early and effective PP when all options are open
- Opportunities for comments & opinions
- Due account to be taken of PP outcome
- Publicly accessible decision w reasons & considerations

PP for plans, programmes & policies

- Comparable requirements for plans, programmes

PP for general normative instruments



Aarhus Convention: Access to Justice: *Info Requests*

- Access for any information requester
- Review procedure before court or court-like body of law
- Also access to expeditious procedure for reconsideration or review



Aarhus Convention:

Access to Justice: *Activities*

- Access for members of the public concerned
- Sufficient interest/impairment of a right
- Review procedure before court or court-like body of law
- Challenge substantive and procedural legality
- Any decision, act or omission under Article 6
- Objective: wide access to justice



Aarhus Convention:

Access to Justice: *Contraventions*

- Access for members of the public meeting the criteria, if any, laid down in national law
- Administrative or judicial procedures
- Challenge acts and omissions by private persons and public authorities
- Contravene provision of national law relating to the environment



Aarhus Convention: Access to Justice: *Remedies*

All procedures shall provide for:

- Adequate and effective remedies
- Including injunctive relief as appropriate

All procedures shall be:

- Fair, equitable and timely
- Not prohibitively expensive

Plus:

- Consider removing financial barriers



Aarhus Convention: Compliance

- So: This is what Iceland has to comply with
- Now: This is how we check compliance



Aarhus Convention Compliance Committee – 1

- Non-confrontational, non-judicial & consultative procedure – thus not a court
 - 9 Committee member – fully independent
 - **Considers and reviews:**
 - Communications* from members of the public (+150)
 - Submissions* by Parties (3), and
 - Referrals* by the secretariat (0)
 - Specific MOP requests*
- Provides advice and assistance**



Aarhus Convention Compliance Committee – 2

- **Processing communications:**
Admissibility determination
Open sessions, hearing and closed session
Draft findings to parties
- **Committee adopts** findings & recommendations
- **Committee reports** to MOP
- **MOP endorses** findings of non-compliance and make recommendations
Thus: **authoritative interpretation** under int'l law
- Compliance Committee **follows up** on cases of non-compliance and reports to MOP



Nature of non-compliance

- **General failure** by a Party to take the necessary legislative, regulatory and other measures to implement the Convention – systemic
- **Failure of legislation, regulations, other measures or jurisprudence** to meet specific Convention requirements – systemic
- **Specific events, acts, omissions or situations** demonstrating a failure by public authorities or courts to comply with or enforce the Convention



Parties found non-compliant – 1

Armenia: inadequate PP law; access to justice for NGOs

Austria: access to info; access to justice for NGOs + ind;

Belarus: inadequate PP law; penalisation, persecution and harassment

Bulgaria: access to justice re spatial plans

Croatia: PP re waste plans

Czech Rep: access to justice; PP in transboundary contexts

Denmark: access to justice: too costly procedures

EU: inadequate implementation; inadequate monitoring of MS implementation; access to justice

Germany: access to justice for NGOs + individuals



Parties found non-compliant – 2

Kazakhstan: inadequate PP law

Turkmenistan: inadequate and discriminatory PP law

Ukraine: inadequate PP law

Norway: access to justice re access to information

Romania: access to info; PP; access to justice

Spain: charges for copies; too costly procedures

UK: access to justice; too costly procedures; PP in transboundary contexts



Aarhus Convention

What is the experience?

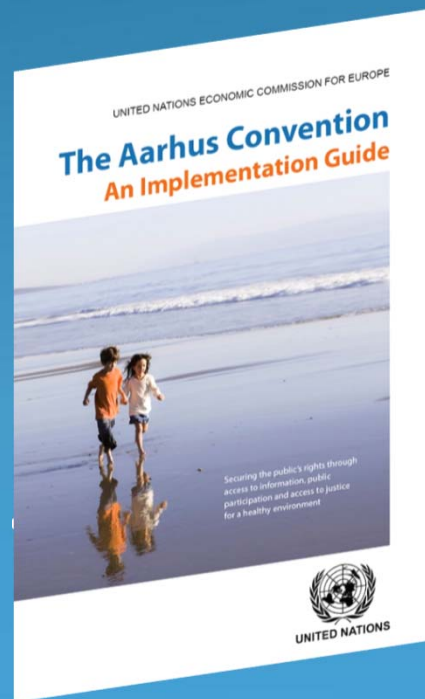
- Not only reporting and self-serving interpretations on compliance by Parties
- Thorough reviews
- Due process
- Follow-ups of non-compliance
- Many cases
- Limited resources
- Quoted by national courts
- Referred to in media
- Brings attention to Convention issues



Info: Aarhus Convention website

<http://www.unece.org/env/pp/welcome.html>

<http://www.unece.org/env/pp/cc.html>



The Aarhus Convention:
An Implementation Guide
2nd ed., 2014, as pdf



Aarhus Convention:
Quick Guide, as pdf



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