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The Aarhus Convention: An Overview

“Implementation of the Aarhus Convention in Serbia”

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Aarhus Convention: A New Kind of Convention



- **Rights based approach**
 - Link with human rights
- **Public and civil society empowerment**



Stockholm to Rio



- **Principle 1 of Stockholm Declaration (1972) spoke of a right to a decent environment and the duty to protect the environment**
- **Principle 10 of the Rio Declaration (1992) showed the way for individuals and groups to reach the goal of a healthy environment is to participate in decisionmaking**
- **Prin. 10 set framework for 3 pillars of Aarhus Convention**



Kofi Annan, former
Secretary-
General of the United
Nations



"... The adoption of the Aarhus Convention was a giant step forward in the development of international law in this field. ... Although regional in scope, the significance of the Aarhus Convention is global. It is by far the most impressive elaboration of principle 10 of the Rio Declaration .. As such, it is the most ambitious venture in the area of 'environmental democracy' so far undertaken under the auspices of the United Nations...."

Why a treaty on environmental democracy?



Pragmatic (environmental) motivation:

- Environmental sustainability needs involvement of all actors
- More participation leads to better decision-making: criticism strengthens quality of proposals
- More participation leads to better implementation of decisions: greater ownership, involvement

Idealistic (democratic) motivation:

- an issue of democratic rights: the right to have a say in issues affecting one's life
- representative democracy vs. participatory democracy
- an ongoing relationship between government and civil society



Origin and evolution of the Convention



- June 1992** Principle 10 of Rio Declaration
→ taken up within Environment for Europe process
- Oct 1995** Adoption of UNECE Guidelines on Access to Environmental Information and Public Participation in Decision-making (Sofia Guidelines)
- 1996–1998** Negotiation of the draft Convention
- June 1998** Adoption of the Convention at the 4th Ministerial “Environment for Europe” Conference, Aarhus Denmark. Signed by 39 countries and the EC
- Oct 2001** Entry into force of the Convention
- Oct 2002** 1st meeting of the Parties (Lucca, Italy)
- May 2003** Extraordinary meeting of the Parties (Kiev, Ukraine) to adopt Protocol on Pollutant Release and Transfer Registers
- May 2005** 2nd meeting of the Parties (Almaty, Kazakhstan), adoption of amendment on genetically modified organisms (GMOs)
- June 2008** 3rd meeting of the Parties (Riga, Latvia)

Status of Ratification



Albania	Lithuania
Armenia	Luxembourg
Austria	Malta
Azerbaijan	Moldova
Belarus	Netherlands
Belgium	Norway
Bosnia & Herzegovina	Poland
Bulgaria	Portugal
Croatia	Romania
Cyprus	Serbia
Czech Republic	Slovakia
Denmark	Slovenia
Estonia	Spain
Finland	Sweden
France	Tajikistan
Georgia	The former Yugoslav Republic of Macedonia
Germany	Turkmenistan
Greece	Ukraine
Hungary	United Kingdom
Italy	European Community
Kazakhstan	
Kyrgyzstan	
Latvia	

Total: 43 Parties



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Aarhus Convention has influenced EU legislation



EIA Directive

Information Directive

SEA Directive

Information held by Community institutions

PRTR (EPER, IPC)

GMOs

Standards reflected in many sectoral directives



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Content of the Convention



- Objective, definitions, general features (arts. 1-3)
- ACCESS TO INFORMATION (arts. 4-5)
- PUBLIC PARTICIPATION (arts. 6-8)
- ACCESS TO JUSTICE (art. 9)
- Final clauses (art. 10-22)
- Annexes

The Framework



Recognition of citizens' rights

- Procedural rights to information, participation, justice
- → substantive rights of present and future generations to live in an environment adequate to health and well-being (art. 1)

Broad definitions of 'the public', 'public authorities' and 'environmental information'

- Any natural or legal person, plus informal groups (art. 2.4)
- All sectors and levels of government, excluding bodies acting in legislative or judicial capacity (art. 2.2)
- State of environment, factors affecting environment, environment-related human health

Art. 3 general provisions



- **Public authorities should assist and guide the public**
- **NGOs should be recognized and supported within the framework**
 - Legal system should be adjusted if necessary
- **Convention is a “floor” not a ceiling**
 - Establishes minimum standards that can be exceeded
- **State must protect against public being penalized, persecuted or harassed for making use of rights**
- **Non-discrimination on the basis of citizenship, nationality, domicile or seat**

Arts. 4-5 Information Pillar



(to be discussed in detail in next presentation)

- **Article 4 – “passive” information obligations: that is, the obligation of authorities to provide environmental information held by authorities upon request of a member of the public**
- **Article 5 – “active” information obligations: that is, the obligation of authorities to actively produce and compile environmental information and to disseminate this information to the public.**

Arts. 6, 7, 8 Participation Pillar



Projects, specific activities (art. 6)

- list of types of activity covered (Annex I)
- timely and effective notification
- reasonable timeframes
- free inspection of relevant information by public concerned
- comments in writing or public hearing
- due account to be taken of outcome of public participation
- decision notified and publicly accessible

Who is responsible for public participation procedure



- Primary responsibility
 - „competent public authorities”
- Practical arrangements
 - special officers (commissaires enqueteurs)
 - specialised private consultants (sometimes NGOs)
 - local authorities
- Role of applicants (project proponents)

Necessary features of public participation procedure



- Reasonable time-frames allowing sufficient time for
 - Informing the public
 - For public to prepare and participate effectively
- Early in decision-making
 - When all options are open
 - When public participation can be effective



Notification – art 6.2



- Public notice or individually
- Early in decision-making
- Manner:
 - Adequate
 - Timely
 - Effective





Elements of notification



- Proposed activity
- Nature of possible decisions or draft decision
- Responsible public authority
- Envisaged procedure
 - How to participate
 - Where and which information is available
- Transboundary EIA – if applicable

Art.6.6 - making available relevant information



- Free of charge
- As soon as available
- Exemption from general rules on access to information under art.4
- Relation to art 6.2

Art 6.6 - content of relevant information



- All information relevant to decision-making
 - Description of site, effects and measures
 - Non-technical summary
 - Outline of main alternatives
 - Reports and advice

Due account– art.6.8



- Due account must be taken of public comments
 - obligation to read and consider seriously
 - but not always to accept all comments
- Any comments vs reasoned comments
- Safeguards

Publicising the decision

Art. 6.9

- Decision taken must be
 - notified
 - accessible to the public
- together with a statement on:
 - reasons
 - considerations



Arts. 6, 7, 8 Participation Pillar



Programmes and plans (art. 7)

- “appropriate practical and/or other provisions for the public to participate during the preparation of plans and programmes relating to the environment”
- reasonable timeframes, early participation when all options open
- due account to be taken of outcome of public participation

Policies (art. 7)

- obligation to endeavour to provide participation opportunities in the preparation of policies relating to the environment “to the extent appropriate”

Rules and regulations (art. 8)

- obligation to strive to promote effective public participation in rules/regulations and other legally binding instruments that may have a significant effect on the environment

The Access to Justice Pillar



(To be discussed in detail later)

Access to Justice (Art. 9)

– Mechanisms for enforcing the legal regime

- 9.1 – Access to Information
- 9.2 – Participation in Decisionmaking
- 9.3 – Public “Defense” of environmental law



Activities under the Convention



Protocol on PRTR: adopted at EfE-5 (Kiev, May 2003), signed by 36 States and EC, 12 Parties as of Nov 2008

Genetically modified organisms: guidelines adopted at MoP-1, amendment adopted at MoP-2 establishing public participation procedure for GMO decision-making (art. 6 bis and annex I bis)

Access to justice: task force set up to exchange information on and promote good practices

Electronic information tools: task force set up to exchange information on and promote good practices

Public participation: Expert Group set up at MoP-3, to evolve into Task Force

Activities under the Convention



Compliance mechanism: Compliance Committee established, mandated to consider communications from the public

Reporting mechanism: national implementation reports submitted to each MoP, prepared in consultation with public

Capacity building: diverse activities, co-operation framework for regional and international organizations, coordinated by secretariat

Applying Aarhus in international forums: Almaty guidelines adopted at MoP-2 on implementation of article 3.7

Aarhus Clearinghouse for Environmental Democracy: launched July 2004 at <http://aarhusclearinghouse.org>



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An open, transparent and inclusive process



- Convention negotiated with full and active participation of NGOs, to an extent unprecedented in the development of international law
- Since adoption, NGOs involved as observers in the MOP and all subsidiary bodies, including the Bureau
- NGO role partly formalised through rules of procedure but procedures remain largely informal

Thank you



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