THE AARHUS CONVENTION AND THE CITIZEN
NGOs in New Member States

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THE AARHUS CONVENTION

UNECE Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters
GLOBAL RELEVANCE OF THE CONVENTION

"… 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...."

Kofi Annan, Secretary-General, United Nations
A MOST UNCONVENTIONAL CONVENTION

- Unique among MEAs in the extent to which it seeks to guarantee procedural rights of the public: addressing the environment/human rights interface
- A treaty less about Party-to-Party relations, more about the relations between governments and civil society
- Unprecedented involvement of NGOs both in the negotiation and implementation of the Convention
ORIGIN AND EVOLUTION OF THE CONVENTION

June 1992  Principle 10 of Rio Declaration
           → taken up within Environment for Europe process


1996 – 1998 Negotiation of the draft Convention


30 Oct 2001 Entry into force of the Convention

Oct 2002  1st meeting of the Parties (Lucca, Italy)

25-27 May 2005  2nd meeting of the Parties (Almaty, Kazakhstan)
### STATUS OF RATIFICATION

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TOTAL: 27 PARTIES
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
GENERAL FEATURES

• 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 wellbeing

• Broad definition of 'the public'
  Any natural or legal person, plus informal groups

• Broad definition of public authorities
  All sectors and levels of government, excluding bodies acting in legislative or judicial capacity
GENERAL FEATURES

• European Community to become a Party
  → EU institutions to be covered
• Anti-harassment, non-discrimination provisions
  Rights to be enjoyed irrespective of citizenship, nationality, domicile etc
• Compliance review arrangements
• Open to non-ECE countries
ACCESS TO INFORMATION

Passive (art. 4)

- Any person has access (no need to prove or even state an interest)
- Broad definition of environmental information (art. 2)
- Time limit: ‘as soon as possible’, max 1 month, plus 1 more month.
- Charges not to exceed reasonable amount
- Finite set of exemptions, with restrictive interpretation:
  - public interest to be taken into account
  - Potential effects of disclosure must be adverse
ACCESS TO INFORMATION (2)

Active (art. 5)

- Transparency and accessibility of information systems
- Immediate dissemination of information in cases of imminent threat to health or environment
- Dissemination of international agreements, laws, policies, strategies, programmes and action plans relating to the environment
- Sufficient product information to ensure informed environmental choices
- Pollutant release and transfer registers
- Increased access to information through Internet
- State of environment reports (max 4-year interval)
PUBLIC PARTICIPATION

Specific Projects or 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
PUBLIC PARTICIPATION (2)

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

- due outcome to be taken of the outcome of public participation
PUBLIC PARTICIPATION (3)

Policies (art. 7)

- General obligation to endeavour to provide 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
ACCESS TO JUSTICE (art. 9)

- Review procedures to challenge the handling of information requests (any person)

- Review procedures to challenge legality of project-level decisions requiring public participation (restricted to concerned public)

- Review procedures to challenge general violations of national law relating to the environment (standing may be established by Parties)
ACCESS TO JUSTICE (2)

• Procedures to be fair, equitable, timely and not prohibitively expensive

• Decisions in writing, court decisions publicly accessible

• Injunctive relief 'as appropriate'

• Mechanisms to remove financial barriers to be considered
MAIN AREAS OF ACTIVITY (1)

• **Protocol on pollutant release and transfer registers (PRTR):** adopted at EfE-5 (Kiev, May 2003), signed by 36 States and EC

• **Genetically modified organisms:** guidelines adopted at MOP-1, Working Group set up to work on legally binding approach

• **Access to justice:** task force set up to exchange of info on good practices, prepare recommendations

• **Electronic information tools:** task force set up to exchange information on good practices, prepare recommendations

• **Financial arrangements:** exploration of longer term financial mechanism under Convention
MAIN AREAS OF ACTIVITY (2)

- **Compliance mechanism:** Compliance Committee established, mandated to consider communications from the public
- **Public participation in international forums:** expert group set up to explore possible guidelines on implementation of article 3, paragraph 7
- **Capacity building:** diverse activities, loose co-operation framework for regional and international organizations, co-ordinated by secretariat
- **Clearinghouse mechanism:** launched July 2004 at http://aarhusclearinghouse.org
- **2nd meeting of the Parties:** Almaty, Kazakhstan, 25-27 May 2005
PRTR PROTOCOL

- Legal basis: article 5.9 and 10.2 (e) and (i) of the Convention
- Negotiated 2001-2003 in ad hoc Working Group
- Adopted May 2003 at Kiev Ministerial Conference, signed by 36 States and European Community
- Requires Parties to establish a publicly accessible national PRTR maintained through mandatory reporting of certain listed pollutants released or transferred from certain listed activities
- Open to all UN Member States to become Parties, including non-Parties to the Convention
CORE ELEMENTS OF PROTOCOL

Obligation on each Party to establish a PRTR which is:

- publicly accessible and user-friendly
- presents standardized, timely data on a structured, computerised database
- covers releases and transfers from certain major point sources
- begins to include some diffuse sources (e.g. transport, agriculture, small- and medium-sized enterprises)
- has limited confidentiality provisions
- allows public participation in its development and modification
CORE ELEMENTS OF PROTOCOL (2)

and is based on system of reporting which is:

• mandatory
• annual
• multimedia (air, water and land)
• facility-specific (point sources)
• pollutant-specific for releases
• pollutant-specific or waste-specific for transfers
FACILITIES COVERED

Facilities covered (annex I) include:

• Thermal power stations and refineries
• Mining and metallurgical industries
• Chemical plants
• Waste and waste-water management plants
• Paper and timber industries
• Intensive livestock production and aquaculture
• Food and beverage production
POLLUTANTS

Pollutants covered (annex II) include:

- Greenhouse gases
- Acid rain pollutants
- Ozone-depleting substances
- Heavy metals
- Certain carcinogens, such as dioxins

TOTAL: 86 pollutants

N.B. National registers may include additional facilities and substances.
PUBLIC ACCESSIBILITY

Public access is fundamental:

• Objective of Protocol: “… to enhance public access to information through the establishment of coherent, integrated, nationwide PRTRs …”

PRTRs should:
• Be accessible through the Internet free of charge
• Be searchable according to the separate parameters (facility, pollutant, location, medium etc)
• Provide links to other PRTRs and to other relevant registers
• Provide for limited confidentiality - similar to Convention
SOME GENERAL FEATURES

- Implies obligations for private sector
- Minimum instrument - ‘a floor but not a ceiling’
- Parties required to work towards convergence between PRTR systems (e.g. waste-specific vs pollutant-specific reporting of transfers, use-based vs release-based thresholds)
- Step-by-step approach
- Co-ordination with other international processes (e.g. IOMC/IFCS, OECD, UNEP, UNITAR, EU, NACEC etc)
- Open to non-Parties to Convention and non-ECE States
- Own governing body and compliance mechanism
NEXT STEPS FOR PROTOCOL

• New Working Group on PRTRs established in Kiev to prepare for entry into force
• Setting up the ‘institutional architecture’: rules of procedure, compliance mechanism, financial arrangements etc
• Preparation of technical guidance on implementation
• Next-step issues:
  * Storage
  * On-site transfers

Possible long-term future issues (discussed but not agreed upon):
  * Products
  * Water, energy and resource use
  * Radioactive substances
  * Radiation, noise, genetically modified organisms…
COMPLIANCE MECHANISM

• **Article 15:** ‘optional arrangements of a non-confrontational, non-judicial and consultative nature for review of compliance’, allowing for ‘appropriate public involvement’
  → Decision I/7 on Review of Compliance adopted at MoP-1.

• **Compliance Committee** of eight independent members elected to serve in personal capacity. Candidates to be nationals of Parties or Signatories, elected by MoP, nominated by Parties, Signatories or environmental NGOs.

• **Four triggers:**
  - Submission by Party about another Party
  - Submission by Party about itself
  - Referrals by secretariat
  - Communications by the public (opt-out option up to 4 years)
Committee also prepares reports at request of MoP, oversees reporting mechanism and may examine compliance issues on own initiative.
REPORTING ON IMPLEMENTATION

• Article 10, para.2: ‘.. the Parties shall keep under continuous review the implementation of this Convention on the basis of regular reporting by the Parties.’

→ Decision I/8 on reporting requirements

• Parties required to submit reports, Signatories and other States encouraged to do so

• Public consultation integral part of preparation of implementation reports

• Provision for IGO and NGO reports on programmes and activities; issue of ‘shadow reports’ under discussion.

• Approx. timetable for reporting agreed: draft reports by 22 Nov 2004, four weeks for comments. Secretariat preparing for web-based reporting option (including public commenting).
PUBLIC PARTICIPATION IN INTERNATIONAL FORUMS

Art. 3.7: Parties required to ‘promote the application of the principles of [the] Convention in international environmental decision-making processes and within the framework of international organizations in matters relating to the environment’

• MoP-1 recognized need for guidance on Art. 3.7, recommended that consideration be given to possible guidelines (Lucca Declaration, para. 31)

• Working Group of the Parties agreed to establish Expert Group to explore issue

• Expert Group held first meeting 3-4 June 2004, agreed on some elements for possible guidelines
HOW CAN CIVIL SOCIETY BECOME INVOLVED?

At national level:

- Through exercising the rights provided under the Convention: seeking information, participating in decision-making processes, challenging decisions

At international level:

- Through using the opportunities to participate in the reporting and compliance mechanisms
- Through participating in the international bodies and processes under the Convention, preferably through coalitions (e.g. the European ECO Forum)
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 and through entry into force, 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
- Environmental citizens’ organisations (ECOs) recognized as the most relevant class of NGOs in this context (NB: In PRTR protocol negotiations, chemical industry played equivalent role)
WHAT IS CIVIL SOCIETY?

Differentiated references to civil society actors:

- **Convention:**
  - Art. 2.4: ‘the public’ covers ‘one or more natural or legal persons, and, in accordance with national legislation or practice, their associations, organizations or groups’
  - Art. 2.5: ‘public concerned’ covers (inter alia) non-governmental organizations promoting environmental protection and meeting any requirements under national law
  - Art. 9.2: ‘public concerned’ with additional requirement to have ‘sufficient interest’ or maintain ‘impairment of a right’
  - Art. 3.4: appropriate recognition and support to be provided to organizations ‘promoting environmental protection’
  - Art. 10.5: any NGO qualified in fields to which Convention relates may participate as observer to MOP (subject to veto if one-third of Parties present object)
- **Rules of procedure:**
  - Rules 7 and 23: Meetings of MOP and subsidiary bodies generally open to public (non-participating observers). Audiovisual methods may be used for logistical purposes.
  - Rules 5.2(e), 6.2: Relevant NGOs ‘qualified or having an interest in the fields to which the Convention relates may attend and be notified of meetings (participating observers)
  - Rule 22.2: ECO representative in the Bureau as observer (‘a representative of non-governmental organizations established for the purpose of, and actively engaged in, promoting environmental protection and sustainable development’)
Compliance mechanism:
- Annex, para. 4: any AC 10.5 NGO promoting environmental protection may nominate candidate to Committee
- Annex, para. 18: any member of the public may trigger mechanism and participate in Committee’s discussion of the communication.
- Committee members may have links to NGOs (or governments) but requirement of impartiality
- Committee has considered various ways of co-operating with NGO community, e.g. NGOs may propose agenda items, be consulted over draft findings, etc.

Other MOP decisions:
- Reporting requirements (I/8, para. 7), designation of focal points (I/9, para. 2), clearing house mechanism and capacity building service (I/10, para. 5)
CIVIL SOCIETY ROLE IN CONVENTION PROCESSES

Some key features:

- generally open to public and all major groups but special focus on ECOs for some aspects
- no formal accreditation
- financial support for ECO participation (plus other experts)
- key role of European ECO Forum
MORE INFORMATION AVAILABLE ON THE AARHUS CONVENTION WEBSITE:

http://www.unece.org/env/pp