

Your **Right** to a healthy environment

A simplified guide to the
Aarhus Convention on Access to
Information, Public Participation in
Decision-making and Access to
Justice in Environmental Matters



UNITED NATIONS

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For more information, please contact:

Secretariat of the Aarhus Convention
United Nations Economic Commission for Europe
Environment, Housing and Land Management Division
Palais des Nations, 8-14 avenue de la Paix
1211 Geneva 10
Switzerland
+41 22 917 1502
public.participation@unece.org
Official convention website: www.unece.org/env/pp
Information on national laws and practices: aarhusclearinghouse.unece.org

UNEP/DEC/Information Unit for Conventions
International Environment House
13-15 chemin des Anémones
1219 Châtelaine (Geneva)
Switzerland
+41 22 917 8244
iuc@unep.ch
www.unep.org/dec/

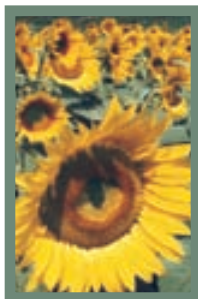
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Environmental Matters

United Nations Economic Commission for Europe



UNEP

United Nations Environment Programme



UNITED NATIONS

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Foreword

The Aarhus Convention is widely recognized as the world's foremost international instrument promoting access to information, public participation in decision-making and access to justice in environmental matters.

Following its adoption, United Nations Secretary-General Kofi Annan called the Convention a giant step forward in international law and an instrument of global significance, albeit negotiated in the UNECE region. Since then, the Convention has entered into force with impressive speed and been ratified by most of the countries of Europe and Central Asia. Increasingly, it is empowering members of the public to hold governments accountable and to play a greater role in promoting more sustainable forms of development.

Open to accession by States throughout the world, the Convention has established a new benchmark in environmental democracy. It is unique among multilateral environmental agreements in the extent to which it seeks to enable ordinary people, irrespective of their citizenship, nationality or domicile, to have a say in decisions that affect their environment.

However, the rights guaranteed by the Convention are only meaningful if they are exercised. Raising public awareness of the Convention is therefore crucial for its effective implementation.

This is why UNECE and UNEP have collaborated to produce this Guide. By presenting the rights and obligations under the Convention in plain, easy-to-understand language, we hope to bring this important treaty closer to people from all walks of life, so that they can directly benefit from its provisions.



Marek Belka
Executive Secretary
United Nations Economic
Commission for Europe



Achim Steiner
Executive Director
United Nations Environment Programme

June 2006

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Parties to the Aarhus Convention

(as of June 2006)

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

The birth of environmental rights

A government ministry supports a project to fill in an abandoned copper mine with sewage sludge from a wastewater treatment plant. The ministry classifies the waste as non-hazardous, but other authorities and experts point out that the wastewater includes industrial discharge from several factories.

Citizens from a nearby village form a committee to oppose the plan. They sue the project contractor, but the court rejects their claim. The citizens are convinced that the court is ignoring applicable laws as well as strong evidence that the industrial wastes could be dangerous for their community. But, without full access to scientific information about the case, and with no further legal remedies available, their case stalls.

Not so long ago, this would have been the end of the campaign. But today, a growing number of citizens are benefiting from a new emphasis on environmental



The Aarhus Convention recognizes every person's right to a healthy environment – as well as his or her duty to protect it.



Environment Ministers from Europe and Central Asia exchange views with representatives of non-governmental organizations, the judiciary and parliaments.

rights. Governments increasingly recognize that environmental legislation will only be effective if individuals have a formal right to obtain environmental information, are empowered to participate fully in environmental decision-making and have redress to the courts when necessary.

Today's environmental rights derive from a wide range of environmental laws and principles adopted over the past several decades. By the 1970s, international declarations and resolutions began to link environmental concerns explicitly to human rights. At the 1992 "Earth Summit", governments adopted the landmark Rio Declaration; its Principle 10 stresses that "environmental issues are best handled with participation of all concerned citizens".

To put this principle into practice, in 1995 the member States of the United Nations Economic Commission for Europe (UNECE) adopted the Sofia Guidelines. This document further elaborates the importance of public information, public participation, and access to justice on environmental issues.

Then, in 1998, governments took the further step of adopting the Aarhus Convention on Access to Information, Public Participation in Decision-making

RESPONSIBILITY

and Access to Justice in Environmental Matters. Named after the city in Denmark where the final talks were held, the Convention entered into force in 2001 and as of June 2006 has 39 members (see box, page vi).

In 2003, the Parties adopted a Protocol on Pollutant Release and Transfer Registers (PRTRs), which will enter into force after it has been ratified by 16 countries.

Established under the auspices of the UNECE, the Aarhus Convention creates a unified legal framework that guarantees a powerful set of rights to the citizens of Europe and Central Asia. This simplified guide briefly explains the Convention and the tools it offers to individuals and communities concerned about their environment.

How the Convention works

The Aarhus Convention recognizes every person's right to a healthy environment – as well as his or her duty to protect it. It seeks to ensure that every individual lives in an environment adequate for his or her health and well-being. This applies not only to those of us living today, but to future generations as well.

To promote this objective, the Convention embraces governmental accountability, transparency and responsiveness. It sets minimum standards – a floor, not a ceiling – for citizens' rights in the field of environmental decision-making. UN Secretary-General Kofi Annan described this as an ambitious venture in "environmental democracy".

The Convention is legally binding on those States that have chosen to become Parties to it. Because the European Community is a Party, the Convention applies to EU institutions. A "Meeting of the Parties" is organized at least once every two to three years to review progress and share information on national actions. These conferences are open to observers, including the public and representatives of organizations and other countries.

The Convention was drafted by governments but with the intensive involvement of environmental non-governmental organizations (NGOs). These organizations continue to play a vital role in promoting its ambitions. In addition, the Convention's member governments have pledged to promote its principles on the



Experts meet in Geneva to discuss challenges in delivering access to justice under the Convention.

global stage. This means that the Convention is open not only to the UNECE's 55 member States but to any member of the United Nations.

The environmental rights protected under the Convention are to be respected by “public authorities”. These include governmental bodies from all sectors, and from the local to the national level (excluding judicial and legislative bodies); public and private bodies performing public administrative functions or providing public services, such as providers of natural gas, electricity and sewage services; and the institutions of regional economic integration organizations that become Parties. The authorities must not penalize, persecute or harass in any way any individual who exercises his or her rights under the Convention.

The Convention pursues its objective of a healthy environment for all by upholding the right of every person to have access to information about the environment. It places clear obligations on States to ensure greater public participation in environmental decision-making. And it promotes easy and effective access to justice if those rights are denied, thus enabling the public to challenge more general violations of environmental law.

These three rights – the right to know, the right to participate, and the right of access to justice – form the three pillars of the Convention.

The right to know

In a democracy, the people have the right to gain access to information, including environmental information. The government has the responsibility of supporting the public interest by making it easy to access that information.

To ensure that this fundamental democratic right is fully realized in practice, the Convention elaborates on the specific rights of individuals. Some key questions people ask about the right to know are:

What information can I ask for? Anyone can ask for any environmental information possessed by any governmental agency or any private body that serves a public function. The person making the request does not have to be a citizen or resident of that State and does not even have to provide an interest or a reason. NGOs can request information regardless of where they are legally registered.



The Chernobyl nuclear disaster of 1986, which released a radioactive cloud across Europe, led to calls for greater transparency and was referred to by delegates several times during the Aarhus Convention negotiations.

The Convention's definition of "environmental information" is deliberately broad, including information on any element of the environment, such as air, water, soil or biological diversity (including genetically modified organisms). Also included are all activities and programmes affecting these elements, as well as the effects that the state of the environment may have on human health and safety.

What information must officials provide in response? Public authorities should generally supply the information in the form requested, including copies of the actual documentation if asked to do so. They may impose a charge for supplying the information, provided it does not exceed a "reasonable amount".

The authorities must make the requested information available as soon as possible, generally within one month after receiving the request. If the information is very unwieldy or complex, they may take a maximum of one more month to compile it, provided that they notify the requesting individual or organization and provide the reasons for the delay.

If the request is too general or "manifestly unreasonable", it may be rejected on those grounds. In that case, the source of the request must still be notified.



The Convention's broad definition of "environmental information" includes air, water, soil, and biological diversity.

Can officials refuse to release the information? In general, the public's right to information should be interpreted as broadly as possible. However, the Convention lists some exemptions: the authorities can refuse to disclose information where the disclosure would adversely affect international relations, national defence, public security, the course of justice, commercial confidentiality or the confidentiality of personal data.

They may also withhold information whose release could harm the environment, such as the breeding sites of rare species. But these exemptions may only be applied when the public interest served by disclosure has been taken into account.

If the request for information is refused on the basis of these exceptions, the requesting person or organization should generally be notified of the refusal in writing within one month, or at most within two months, including the reason for refusal. This decision can then be challenged through an appeals process.

What if officials do not have the information? They should direct the person or organization to the appropriate public authority or transfer the request to that authority and notify the requesting person.

Is the appropriate authority required to have the information? All public authorities must collect and update environmental information related to their function and make that information publicly accessible, ultimately in electronic databases. They must also tell the public what kind of environmental information they have and how to access it. This is part of authorities' active responsibility to produce, compile and maintain public information.

Each State must also produce a publicly accessible "State of the Environment Report" at regular intervals, at least once every four years.

Does the Convention require States to track the release and transfer of pollutants? States must progressively establish pollutant release and transfer registers (PRTRs), which are inventories of pollution from industrial sites and other sources. The Convention's 2003 Protocol regulates the establishment of the registers in more detail.

Although the Protocol regulates information on pollution, rather than the pollution itself, it is expected to reduce pollution because companies will not want to be identified as major polluters.

The PRTRs must be publicly accessible through the Internet free of charge, and must be searchable, user-friendly and timely. They must have limited confidentiality provisions and allow for public participation in their development and modification.

What information must the authorities provide in an emergency? In any "emergency situation", ranging from a potential nuclear disaster to a day of unusually bad air pollution, authorities must immediately distribute all information in their possession that could help the public take preventive measures or reduce harm.

CASE STUDY

Information is power – if you can get it

In a small town on the fringes of Europe, the local people have become increasingly concerned about the quality of their drinking water. Several young women in the neighbourhood have contracted a rare and fatal form of cancer. Rumours are circulating that their deaths might be connected with discharges from a timber processing plant in the catchment area that supplies the town's drinking water.

The locals form a residents' group to look into the situation. As a first step, they ask the local authority for copies of the monitoring data on discharges from the timber processing plant, which the company is required to monitor on a daily basis under the terms of its operating licence, and for copies of the publicly funded drinking water monitoring data. They also ask the health board for epidemiological data on the incidence of that type of cancer in the province, to determine whether or not the situation in their town is unusual.

The local authority fails to respond for three months, despite several reminders. It finally replies that the information about the plant's discharges is confidential, but without giving any reasons. The residents' group may come and inspect the drinking water data at the local authority offices during opening hours but may not take copies of the information, even for a fee. The health board refuses to provide the statistical information requested on the grounds that it could jeopardize the right to personal privacy, even though the residents insist that they are interested only in the statistics, not in data on any individual.

As no other appeals process is available, the residents' group tries to go to court to force both of the public authorities to disclose the information. However, since it is an *ad hoc* group formed in

response to an immediate concern and lacks legal status, the court rules that the group does not have standing (the right to bring a case to court). Meanwhile, two more cases of cancer are diagnosed in the town ...

It was to address situations like this that the Aarhus Convention came into being. While the overall example is fictitious, the elements that compose it are all too real and commonplace.



The Aarhus Convention responds to people's concerns about the quality of their environment, including drinking water.

The right to participate

Public participation renders decision-makers more accountable and environmental decision-making more transparent, thereby improving the quality of decision-making. Individuals should be given the opportunity to express their concerns and opinions, and public authorities should take due account of these. The Convention sets minimum standards for public participation when authorities make general plans or license specific projects that could affect the environment.

How much public participation is guaranteed before the licensing of a specific project or activity? “The public concerned” must be informed of the proposed activity early in the process, while options are still open. They can inspect relevant information free of charge, including the project’s possible effects on the environment and an outline of the main alternatives. Information should also be available about the authority responsible for decision-making, the method for submitting comments, and dates and times of opportunities for public participation.

Authorities must consider the outcome of the public participation in their decision, which must be promptly and publicly accessible, in writing, with its reasoning.



The Aarhus Convention requires authorities to consider the public’s views when taking decisions.

PARTICIPATION



The public has a role to play in decisions about activities – such as road construction – that could potentially affect the environment.

Who are “the public concerned”? The Convention defines this term as “the public affected or likely to be affected by, or having an interest in, the environmental decision-making”. It explicitly includes NGOs promoting environmental protection if they are recognized under national law.

What kinds of specific projects require public participation? The Convention lists in an annex the types of activities for which decisions to approve projects should always be subject to public participation. They include any activity that might have a significant impact on the environment, such as the licensing of a nuclear power station, smelter, chemical plant, waste-treatment plant or road-construction project.

The public should have input into decisions about the deliberate release of genetically modified organisms (GMOs) into the environment “to the extent feasible and appropriate”. An amendment to the Convention adopted by the Parties at their second meeting aims to strengthen the rights of the public to participate in decision-making on GMOs. The amendment will enter into force once it has been ratified by three fourths of the Parties.



Authorities must make “appropriate provisions” for public participation in the preparation of plans and programmes “related to the environment”.

How much public participation is guaranteed in the development of programmes and plans related to the environment? Authorities must make “appropriate provisions” for public participation in the preparation of plans and programmes “related to the environment”. This phrase covers plans or programmes prepared by ministries (for example, of transport, energy or tourism) when they have significant environmental implications. The Convention does not specify exactly what provisions for public participation are necessary in this case, but several rules still apply: authorities must provide reasonable time frames for participation and opportunities for early participation, and they must take “due account” of the outcomes of participation in their decision.

Parties must also try to involve the public in the executive phase of law-making that may have a significant effect on the environment. Executive regulations, which may include decrees, rules or norms, should be prepared with public participation until the rules are passed to the legislature. This article of the Convention is a comparatively soft, “best efforts” obligation, but it is still an important goal.

CASE STUDY

Listening to the public – a success story

A small village featured a hazardous waste site containing 62,000 corroded barrels of chlorine. The owner proposed building a modern incinerator at the same location. The local residents approved, but surrounding towns opposed the plan, stating that their products – based on a spa, vineyards and farms – would suffer when consumers realized they were produced near a hazardous-waste incinerator.



The environmental inspectorate notified the public about the plan as soon as the request for a permit was filed. It issued a one-page summary of the plan and sent it together with a copy of the environmental impact statement to the neighbouring communities. Town clerks posted notifications on municipal notice boards.

Public hearings were held, and a large coalition of NGOs, community groups, economic and tourism interests and political parties commented. The owner of the proposed plant provided detailed replies and a non-technical summary about environmental effects and public health and social consequences.

Based on the negative response to the plan from the neighbouring towns, administrative bodies denied the permit. A court approved their decision. Negotiations have started with an already-existing incinerator to burn the waste instead.

The right of access to justice

For access to information and public participation in decision-making to be effective, the public must have recourse to a court of law or administrative proceeding. Such a review mechanism provides a means of challenging the authorities' decisions and ensuring the effective implementation of the Convention.

What does access to justice include? Breaches of the rights to information and to public participation can be appealed to a court of law (or another independent and impartial body, such as an ombudsman). Members of the public can sue if the law has been violated or if the authority has failed to follow the proper procedures. There must be access to a review process that is fair, equitable, timely, and free or inexpensive. Final decisions must be in writing and must be binding on the public authority.

Is access to justice limited to cases about the right to information and public participation? No. Under the Convention, members of the public should in principle be able to challenge any violation of national law relating to the environment. If public authorities or private persons have broken such a law, citizens should be able to challenge the acts or omissions in court, even if they have not suffered personal harm. This is known as public enforcement of the law, which has proven to be of major help to understaffed environmental enforcement agencies in some countries.

Who has access to justice under the Convention? Anyone – including individual citizens, NGOs, government officials and companies – can bring a case to court to enforce their right of access to information. For example, anyone who requested information and did not receive an adequate response can sue. Any member of the public with a “sufficient interest” or legal standing can seek a review regarding the right to participate in environmental decision-making if he or she was barred from participating earlier. Finally, governments must provide access to administrative or judicial procedures to challenge breaches of national law relating to the environment. Here the definition of legal standing is determined by national law.

What if court costs are extremely high? Access to justice must not be “prohibitively expensive”. States must provide an inexpensive, accessible forum. Parties have also agreed to work on reducing the financial barriers to going to court.

JUSTICE



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Citizens have the right to challenge the authorities when they take decisions related to the implementation of the Aarhus Convention.

CASE STUDY

Going to court in the public interest

In the year 2000, a citizen filed a request for access to data about noise and air pollution from a metal-waste reprocessing plant. The public authorities at first refused to provide the data on the grounds that the citizen had no right to participate in government decisions relating to the enterprise and lacked legal standing in any of the ongoing legal cases related to the plant's emissions.



The individual responded by filing a lawsuit in the local city court. He based his claim on a legislative provision allowing any person acting in the public interest to seek a court order for information. Importantly, the legislation placed the burden on the holder of information to prove why a refusal would be lawful or well founded.

At the heart of the case was the argument that information should not be accessible only to those with legal standing on a specific matter, but to all those promoting the public interest. Moreover, the decision to provide information should not turn on whether the information relates to a private company. In addition, it should not be relevant who paid for the collection and processing of the information in question.

While the final court decision was still pending, the public authority voluntarily released part of the air-emission data. The defendant later released the rest of the requested information to the plaintiff.

Environmental rights in the 21st century

Now that the Aarhus Convention has entered into force and is fully operational, governments will focus on making it work at the national level. National laws will increasingly be written or adjusted to reflect the Convention's principles and objectives. In each country a track record of case law and precedents will develop. And new countries will join, thus expanding the Convention's geographic reach.

To ensure the Convention's effectiveness, its member States will continue to promote capacity-building activities, particularly in the countries of Eastern Europe, the Caucasus and Central Asia that are in transition to a market economy, as well as those of South-Eastern Europe. These activities will include support to environmental NGOs and efforts to strengthen national institutions. Several international and regional organizations are also actively engaged in capacity-building activities to support the implementation of the Convention.



Top: children attempt to force open the Doors to Democracy during a ceremony held to mark the entry into force of the Convention (October 2001). Bottom: Finally the doors open.



The Convention's secretariat continues to support and coordinate such international and regional initiatives for promoting environmental rights. It convenes regular meetings of the main organizations engaged in capacity building, with a view to ensuring that efforts are effective and targeted to address the most pressing needs.

Various mechanisms under the Convention will provide further support to governments as they seek to comply with their treaty commitments. The Compliance Committee, whose members are nominated by governments and environmental NGOs, is mandated to investigate complaints against any Party by another Party, by NGOs or by members of the public. Indeed, any member of the public, or an environmental, human rights or other non-governmental organization, may submit information to the Committee if they believe that a Party has failed to meet its obligations under the Convention. The Convention's secretariat may also bring evidence of possible non-compliance to the Committee's attention. Finally, if a Party recognizes that it has a problem with compliance, it may approach the Committee itself to seek assistance. The Committee will then recommend a response to the next Meeting of the Parties.



UNEP/P-CHRISTER PALSSON

The Aarhus Convention promises to protect the environment for many decades to come.

Yet another tool available to the Parties to the Convention is the Aarhus Clearinghouse for Environmental Democracy (<http://aarhusclearinghouse.unece.org>).

Even with the support of these various instruments, efforts to fully integrate the Convention into national law and practice will take time. But the impact of stronger environmental rights is already being felt in many countries. The Aarhus Convention promises to improve the lives of individuals and communities and to protect the environment for many decades to come.

Aarhus Centres

Aarhus Centres have been set up in several countries in Eastern Europe and Central Asia, including Armenia, Azerbaijan, Kyrgyzstan, Tajikistan, Ukraine and Uzbekistan. These Centres, some of which have received support from the Organization for Security and Co-operation in Europe (OSCE), are designed to provide a bridge between governments and civil society. They are meant to complement existing official information sources while being closer to and more easily accessible for “real users”.

The Centres primarily facilitate access to information and provide a venue for meetings. In some countries their activities have also included assisting citizens to participate in environmental decision-making and, to a lesser extent, gain access to justice.



Other useful publications available at the Convention website:

The Aarhus Convention Implementation Guide

Public Participation in Making Local Environmental Decisions – Good Practice Handbook

Handbook on Access to Justice under the Aarhus Convention

Kiev Protocol on Pollutant Release and Transfer Registers

www.unece.org/env/pp