

**Asia & Pacific Regional Workshop on Article 6 of the
United Nations Framework Convention on Climate Change**

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**The Aarhus Convention as a tool for
enhancing the role of the public in
tackling climate change**

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Why is the role of civil society in climate-related decision-making so important?

Some pragmatic (environmental) reasons:

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

and some idealistic (democratic) ones:

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

AARHUS CONVENTION

1998 Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters

→ Addressing the relationship between people and government

→ A bridge between environmental protection and human rights

"The Aarhus Convention .. 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, Former UN Secretary-General

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

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

Some 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 well-being (art. 1)

Broad definitions of:

- **'the public'**: any natural or legal person, plus informal groups (art. 2.4)
- **'public authorities'**: all sectors and levels of government, excluding bodies acting in legislative or judicial capacity (art. 2.2)
- **'environmental information'**: state of environment, factors affecting environment, environment-related human health

Anti-harassment, non-discrimination provisions

Rights to be enjoyed irrespective of citizenship, nationality, domicile

Open to non-ECE countries

Access to information

Passive or reactive aspect (information requests – 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 where justifiable
- 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

Proactive aspect: collection, management, dissemination (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

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

Public participation

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

Access to justice

Appeals in relation to information requests (art. 9.1)

- Review procedures to challenge the handling of information requests open to any requester
- Review by 'court of law or another independent and impartial body established by law'
- Where court of law, access to expeditious procedure which is free of charge or inexpensive
- Final decisions binding, reasons in writing where access refused

Appeals in relation to decisions involving public participation (art. 9.2)

- Review procedures to challenge 'substantive or procedural legality' of project-level decisions requiring public participation
- Review by 'court of law or another independent and impartial body established by law'
- Public concerned having sufficient interest or whose rights impaired have access (objective: 'wide access to justice', including NGOs)

Access to justice

Appeals in relation to general violations of environmental law (art. 9.3)

- Administrative or judicial review procedures to challenge general violations of national law relating to the environment
- Acts and omissions by private persons and public authorities may be challenged
- Party has broad discretion to establish standing

General features of all review procedures (art. 9.4, 9.5):

- 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

Climate-related decisions covered by Aarhus

- Permits/licences for certain specific projects involving GHG emissions (in jurisdiction of Parties)
- national, provincial or local plans, programmes and policies on climate change or on energy, transport, agriculture, industry etc
- on climate change or on energy, transport, agriculture, industry etc

Climate-related decisions possibly not covered by Aarhus:

- Emission trading
- CDM projects outside jurisdiction of Party
- Joint implementation
- Carbon taxation
- Eco-labelling
- Auditing
- Liability schemes

Kiev Protocol on Pollutant Release and Transfer Registers

- Adopted at Fifth Ministerial 'Environment for Europe' Conference in May 2003
- First legally binding international instrument on pollutant release and transfer registers. Objective: "to enhance public access to information through the establishment of coherent, integrated, nationwide pollutant release and transfer registers (PRTRs)."
- Requires each Party to establish a PRTR which is publicly accessible through the Internet and is maintained through mandatory annual reporting of emissions to air, water and soil, and transfers, of certain listed pollutants from certain listed activities
- Facility-specific reporting of all major greenhouse gases
- Expected to enter into force by end 2009, EC implementing legislation already in place
- Open to accession by all UN Member States

Linkages between UNFCCC art. 6 and Aarhus Convention/Kiev Protocol (1)

UNFCCC Article 6 requires Parties inter alia to

"Promote and facilitate .. in accordance with national laws and regulations, within their respective capacities

(i) The development and implementation of **educational and public awareness programmes** on climate change and its effects;"

→ **Aarhus art. 3.3:** "Each Party shall promote environmental education and environmental awareness among the public ..."

→ **Aarhus art. 5** on collection and dissemination of information

Plus:

→ **UNECE Strategy on Education for Sustainable Development**

Linkages between UNFCCC art. 6 and Aarhus Convention/Kiev Protocol (2)

UNFCCC Article 6 requires Parties inter alia to

"Promote and facilitate .. in accordance with national laws and regulations, within their respective capacities ...

(ii) **public access to information** on climate change and its effects;"

→ **Aarhus art. 4** on public right of access to information upon request

→ **Aarhus art. 5** on collection and dissemination of information

→ **Kiev Protocol on Pollutant Release and Transfer Registers**

Linkages between UNFCCC art. 6 and Aarhus Convention/Kiev Protocol (3)

UNFCCC Article 6 requires Parties inter alia to

"Promote and facilitate .. in accordance with national laws and regulations, within their respective capacities ...

(iii) **public participation** in addressing climate change and its effects and developing adequate responses..."

→ **Aarhus art. 6** on public participation in decision-making on specific activities

→ **Aarhus art. 7** on public participation in decision-making on plans, programmes and policies

→ **Aarhus art. 8** on public participation in decision-making on regulations and other legally binding instruments

Key points

- International legal instruments can make an enormous difference in strengthening the role of the public in tackling climate change
- The Aarhus Convention and Kiev Protocol on PRTR can contribute to implementation of UNFCCC article 6
- Both the Aarhus Convention and the Kiev Protocol are open to accession by any UN Member State and may also serve as a model for development of other regional instruments or national legislation
- The involvement of NGOs enriches the process and helps to ensure more effective implementation

**More information on the Aarhus
Convention, Kiev Protocol on PRTR and
Principle 10 of the Rio Declaration:**

www.unece.org/env/pp

and

aarhusclearinghouse.org