

# WHAT IS THE AARHUS CONVENTION?

## Citizens' environmental rights Under the Aarhus Convention

Who is the public?



What does the Aarhus Convention give to the public?



What does "wide access to justice" mean?



What is the "right to know"?



What is the "right to participate"?



What is a "sufficient interest"?

The Aarhus Convention is a big step forward for both environment and democracy. It improves the public's rights in the making and implementation of environmental policy.

The Convention will also promote social stability since the people will know that the state consults with them. All citizens will consider themselves participants of democratic processes.

Effective use of the Convention is no luxury. The European environment is not improving. Governments need active public involvement to develop policies that show public support. They also need the public as an active "watchdog" so policies are implemented effectively.

Thirty five European and Central Asian countries signed the Convention at a Ministerial Conference in Aarhus, Denmark, in June 1998. Five more countries signed or join the Convention afterwards. These countries now have to take measures for its ratification (the process of incorporating the convention into laws) and implementation. Other countries have yet to decide to join the Convention.

The Aarhus convention is as important for governments as it is for citizens and environmental non-governmental organizations (NGOs).

This leaflet will explain how to use the Convention to protect your environment and help build democracy. It is written to encourage citizens and non-governmental organizations (NGOs) to assert their rights and to assist them in effectively implementing the Convention's requirements.

Important! People who exercise their rights under the Convention must not be penalized, persecuted or harassed in any way for their involvement. This is stated in the Convention itself.

**I**t is an international treaty. Its full name is the **Convention on Access to Information, Public Participation in Decision Making and Access to Justice in Environmental Matters**. It is a major result of European civil society building and an essential tool for environmental policy.

#### What is the Convention's main purpose?

It is an agreement by many countries of Europe to open up governments to the public regarding environmental matters.

In this agreement, the countries promise:

- to disclose government files containing environmental information,
- to let the public participate in governmental decision-making and to make it transparent,
- to allow people to take government or private enterprises to court when they fail to comply with their responsibilities.

#### Was there any public participation in the creation of the Aarhus Convention?

This was the first time an international convention was prepared with the broad and intensive involvement of environmental organizations. A coalition of such organizations, the European ECO Forum ( NGO Coalition), participated in the drafting and in all the negotiating sessions organized by the Economic Commission for Europe of the United Nations (UN ECE). The coalition also organized, inside the official Aarhus Conference, a roundtable with Environmental Ministers about the practical importance of the Convention. The roundtable also discussed good and bad

practices in countries and presented practical examples on how improvement can be achieved.

So, this is a Convention for the **people**, for **building Participatory Democracy!**

#### What about ratification?

By March 2000, Moldova, Ukraine, Azerbaijan, Belarus and Georgia had ratified the Convention. Turkmenistan and Macedonia had acceded to it. Some governments are working hard on it, but there is too much silence from several other governments. You can keep track of the ratification progress at:

<http://www.unece.org/env/europe/ppconven.htm>

Sixteen countries must ratify the Convention for it to have the force of law throughout Europe. This is the next important step. Environmental organizations in many countries are asking their governments to work hard for early ratification. But there is much more to do!

#### Must national legislation be changed?

National legislation must be changed in some countries before ratification of the Convention can occur. In others, legislative change can be done afterwards. In a third group of countries, the Convention itself becomes part of the national legal system. It falls on the public in every country to help their legislators identify the necessary changes.

#### Does the Convention set minimum or maximum standards?

The Convention is just a floor, not a ceiling for countries. Countries have a right to



provide broader access to information, more extensive public participation in decision making, and wider access to justice in environmental matters than required in the Convention.

### What does the Aarhus Convention give to the public?

The Convention recognises the right to a healthy environment. In order to contribute to protection of that right, it gives further rights concerning environmental matters to citizens:

- the right to know
- the right to participate in decision-making
- the right to access to justice.

### What does the right to a healthy environment mean?

Every person of present and future generations has the right to live in an environment adequate to his or her health and well being. This right is recognised in the Convention. It is also in several national constitutions.

### What about the other rights?

The other three rights are ways to implement the rights to a healthy environment. The Aarhus Convention consists of three main ideas or “pillars”, each of them dedicated to one of the rights: to know, to participate, and to go to court. Each pillar will be discussed separately.

### What is the “right to know”?

In a democratic society, people should have the right of access to information. The public right to know is fundamental to both democratic participation in government and to the individual’s right to a healthy environment. According to the Convention, people have the right to receive environmental information.

### What does “environmental information” include?

It is information about:

- the state of the environment and its elements, such as water, air, land, soil,

atmosphere, landscapes, natural sites;

- biological diversity, including genetically modified organisms;
- factors such as substances, noise, radiation, and activities. These activities include policies, legislation, plans and programmes as well as data used in economic analyses;
- the state of human health and safety, and the conditions of human life, cultural sites and buildings which might be affected by the state of environment.

This information may be in any form, such as written, electronic, visual, aural or other material form. It does not matter. The public still has a right to obtain it.



**Who can apply to get environmental information?**

Anyone can get the information without proving his or her own interest. You do not even need to be a citizen or a resident of the country concerned. "Anyone" really means each and every individual.

**To whom does a person apply for the government information?**

Public agencies that should possess, update, collect and disseminate environmental information exist in every country. These agencies will include Ministries with responsibility for Environmental Protection, but other agencies, such as Health or Economic Ministries may also have relevant information. People can apply to any official or body that has environmental information. Every governmental agency must answer the public's request. Also, provincial, regional, and local authorities must provide information upon request. Even private non-governmental bodies that serve public functions, such as supplying public drinking water, must provide information.

**Is it mandatory for public authorities to collect and disseminate environmental information?**

Public authorities must:

- collect and disseminate environmental information to the public,
- tell the public what kind of environmental information they have,
- promote public environmental awareness, including information on how to access information, how to participate in

environmental decision-making and how to get access to justice.

Each country should ensure that environmental information increasingly becomes available in electronic databases easily accessible to the public (which includes the Internet).

Each country must publish and disseminate a national report on the state of the environment every three or four years or less.

**How should a request be written?**

Written questions should be clear, concrete, and reasonable using ordinary language is fine. Questions should not be general, broad, or vague. This ensures that your request will not be refused on these grounds. It is not necessary to know the exact title of a document or its document number. But it is always helpful to be as precise as possible.

**How quick should a response be?**

As fast as possible! The government must respond at the latest within one month after the request is submitted. This term may be extended only because of volume and complexity of information. Even then, the government response may not exceed two months.

**What about urgent information on an imminent threat?**

All information that enables the public to prevent or mitigate harm arising from an environmental or health threat should be disseminated immediately.



**In what form should information be given?**

It should be given in the form requested. If a public authority has the information publicly available in another form, it can provide it in that form. However, the reason for a different form must be explained to the applicant.

**What if the authority does not have the required information?**

The Convention requires the authority to inform an applicant as promptly as possible which authority it believes has the information. Alternatively, it should forward the request to the appropriate authority and inform the applicant.

**Is it necessary to pay for the information?**

Access to information in publicly accessible lists, registers and files should be given free of charge. Agencies may charge for supplying certain information, but the amount should be reasonable.

The agency should also indicate in advance what charges may be levied or waived.

**When can a request be refused?**

A request can be refused if for several reasons, including if:

- it is manifestly unreasonable or too general;
- national law exempts material in the course of completion or internal communications (unless the public interest in disclosure of that material is more important);

— the disclosure of that information would adversely affect:

confidential proceedings of public authorities protected by national law;

international relations, national defense, or public security;

the course of justice and similar proceedings;

the confidentiality of certain commercial information, but not information on emissions;

the environment itself (e.g., information on breeding sites of rare species)

Grounds for refusal have to be balanced against the public interest served by disclosure. The Convention presumes that documents are publicly available except under certain narrow exceptions. If countries write the exceptions too broadly in their national laws, they defeat the Convention's purpose of transparency. People must examine the wording of exceptions in national laws very carefully to be sure it as narrow as possible.

**What if your request is refused?**

If a request for information is ignored, wrongfully refused, or inadequately answered, it is worth continuing to press for proper treatment of your request. Try quoting the Convention, or complaining to a higher level person. The Convention requires that an applicant can go to the court or other independent and impartial body. This includes application of the public interest test to override the claim of an exception. The procedure of going to court will be explained below.



**What is the “right to participate”?**

Democracy in the 21<sup>st</sup> century means more than just elections. It also means that governments should consult with the people on proposals for specific activities, plans, programmes and even policies and draft laws. This is called “public participation” or “participatory democracy.” The Convention has clear procedures for involving the public concerned in participation in decision-making on permits for a number of specific activities.

**What sort of activities are covered?**

Any activity which may have a significant effect on the environment should be covered. The Convention also specifically lists a number of activities, including major road-building schemes, industrial activities, oil and gas refineries, nuclear power stations, quarrying, intensive pig and poultry rearing units.

**Who is the “public concerned”?**

It is anybody who is affected or likely to be affected or who has an interest in decision-making. Non-governmental organizations which promote environmental protection and meet requirements of national legislation should also be treated as the “public concerned.”

**Why should the public be informed at an early stage of decision-making?**

If the public is informed early, it can help developers and the government avoid environmental mistakes. When all options are open for public participation, it is possible to influence a decision in a way that protects everybody’s interests. Early notification also gives the public enough time to prepare and to participate effectively.

**How will the public know about a proposed decision?**

The public concerned should be informed about a proposed decision which may have a significant effect on the environment in the early stage of the decision making process through mass media channels or individually. For instance, information about the construction of a cement plant should be published in the newspaper.

**What information about a proposed decision should be available to the public?**

It should include information :

- the proposed activity and its possible effects on the environment, including emissions;
- a description of measures envisaged to prevent or reduce negative impacts;
- the possible decision;
- an outline of main alternatives;
- the public authority responsible for decision making;
- opportunities for the public to participate;
- the time and place of public hearings;
- the public authority from which necessary information can be obtained;
- the public authority to which comments, questions and proposals can be submitted.

**What are public hearings?**

They are meetings with the public, developer, and decision-makers. The public may ask questions and give its opinion, information, analysis, comments, proposals and arguments to a decision-maker. The public also may submit written documents and proposals.



**Does the final decision have to be made public?**

Yes, the public should be promptly informed about any decision made by a public authority. The text of the decision, including all reasons and considerations on which the decision is based, should be open to the public.

**May the public participate in the preparation of plans, programs and policies?**

Each country has to make appropriate provisions for public participation in the preparation of programmes and plans related to the environment. Governments

must provide the necessary information to the public. Countries must also endeavour to provide opportunities for participation in environmental policy making.

**What about public participation in executive regulations?**

Drafts of executive regulations and other legally binding rules should be published or made publicly available at an appropriate stage. The public must have the opportunity to comment either directly or through a representative consultative body. **The results of public participation must be taken into account as much as possible.**

**A**s described earlier, the Aarhus Convention guarantees the right to information, the right to participate, and recognises the right to a safe environment. It also guarantees citizens that they will have a way to enforce these rights.

This can be done in a court or other independent body. This is called “access to justice.”

According to the Aarhus Convention, every country is obliged to give members of the public “wide access to justice.” If a country has excessively restricted the use of its courts in the past, it must now provide wider access.

**What does “wide access to justice” mean?**

All persons should be able to enforce their environmental rights.

**Who can bring a case to court?**

Anyone. Individual citizens and their organizations, government officials and commercial enterprises. Each has the right to bring a case to court (and similar institutions) for the protection of their environmental rights.

The Convention encourages a broad interpretation of who has the right to bring a case. For example:

- **Any person** who asked for **information** and did not receive it or received an inadequate response can sue.





- **Any person** who was **not allowed to participate** in an environmental decision can sue.
- Generally speaking, **any person** can sue another private person (including enterprises) or public authority (for example, government department or official) for **violating national environmental laws**.
- **Any person** may be able to sue for denial of the **“right to live in an environment adequate to his or her health and well-being.”**
- **A non-governmental organization** can also go to court in most countries if its purpose is to protect the environment.

#### **Is it necessary to have some special interest or injury?**

No. The Aarhus Convention obliges countries to abandon narrow restrictions on the availability of justice. Generally speaking, a person does *not* need an injury or special interest. The Aarhus Convention requires countries to replace such old concepts with the new one: having a “sufficient” interest.

#### **What is a “sufficient interest”?**

A “sufficient interest” will be determined by national law. This law must give “wide access to justice.” If it does not, the law must be changed. National restrictions that are contrary to the objectives of Aarhus Convention are not allowed.

If public participation procedures are violated, then obviously the public’s interests are harmed. To file an honest complaint

about such violations is to show “sufficient” interest in the problem.

#### **Can national law limit who is allowed to go to court to only those persons whose “rights” are impaired?**

Some countries define “sufficient interest” as only those with “impairment of a right”. They may continue to use that phrase. But it cannot be used in the old way. The legislation or courts of a country must now interpret that phrase more broadly. The Aarhus Convention requires that countries incorporate “wide access to justice” into their rights-based approach.

#### **Does the Aarhus Convention say anything about other barriers to justice?**

The Aarhus Convention addresses these barriers. Justice cannot be “prohibitively expensive.” In many countries the cost of justice has effectively excluded citizens or groups from going to court. Countries have now committed themselves to removing such high cost barriers.

Furthermore, countries must consider the establishing of other mechanisms “to remove or reduce financial and other barriers” to going to court.

#### **Is it necessary to have a preliminary review procedure before you go to court?**

This is left for each country to decide. Some countries provide such review procedures as alternatives, for the benefit of citizens. Other countries have a requirement to exhaust administrative review procedures before you can apply to court. This may continue.



### Who will decide about environmental rights?

An independent, neutral “third party.” Neither the government nor the citizen should decide whether someone’s environmental rights have been violated. This “third party” is generally the court system of a country.

### Can rights be defended only in a court?

The answer depends on the law of a country. The Convention requires that each country allow people the right to go to “a court of law

or another independent and impartial body established by law.” In this pamphlet, the term “court” is used for simplicity.

### What grounds can be used in a legal challenge?

In the case of a claim that participation rights have been violated, a person can of course challenge the “procedural legality” of the decision or act (or even a failure to act). But the Convention *also* allows persons to challenge the “substantive” legality of such decisions, i.e., the actual substance of the decision may be challenged.

#### A dispute over access to information

A team of scientists monitors the level of pollution of heavy metals in the drinking water in a small town. A citizen knows that this happened, but her requests to the government for a report go unanswered.

Finally, she files a formal request at the Environment Ministry for the scientific report (if there is one) and for copies of all the laboratory sheets from the monitoring. The Ministry says that the laboratory sheets contain only “preliminary” information, not “final” information, and refuses to provide them.

She asks a lawyer to file a lawsuit in a court to obtain all the information that she requested.

#### A dispute about environmental duties

A company 50 kilometres away is discharging its pollution into a river that flows through a small city. The mayor of the city becomes concerned about sickness in people who live in the village.

He uses the Access to Information provisions of their national law, supported by the Aarhus Convention, to obtain a copy of the company’s permit for pollution discharge. He discovers that the regional government knows that the company is violating its permit conditions, but has done nothing.

The mayor of the city files a suit in the regional court against the company for violating the permit, and therefore, for violating the national environmental laws.

#### A dispute over public participation

A city government issues a construction permit but does not prepare a proper environmental impact assessment (EIA) because the public was not shown a draft of the EIA and given the opportunity to comment.

An NGO from the capital city files a suit in court to revoke the construction permit until the public is allowed to participate in the EIA process.



**What are the remedies once a challenge is brought?**

The Convention requires national governments to provide effective remedies, including injunctions. An injunction means stopping an activity by means of a court decision. Some countries may not have had this court procedure in the past, but the Aarhus requires it.

**Can the public challenge only acts and omissions of public authority — or private persons as well??**

Each country has to ensure that members have access to administrative and judicial procedures to challenge acts and omissions of *both* private persons and public authorities who contravene provisions of its national law.

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**Can a country refuse to give the public the right to sue private persons or public authorities?**

No. If a country has established *criteria* that a person must meet before suing private persons or public authorities, such criteria can be used. But “criteria” are different from “prohibitions.” A country cannot completely prohibit such access to justice; it can only continue any fair “criteria” if they exist in its law.

Also, the Convention provides that “in addition” each country “shall” provide “adequate and effective remedies.” So it is obvious that a country cannot prohibit such access to justice completely.



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The European ECO Forum is an open coalition of ECOs (environmental citizens' organisations) acting in the UN-ECE region. The ECO Forum mostly focuses on the "Environment for Europe" (EFE) Ministerial process and some related processes, such as the WHO "Environment and Health" process. This coalition was established in preparation for the Lucerne Ministerial Conference (1993), under the name of the Pan-European NGO Coalition, in support of the "Environment for Europe" process. Since that time the ECO Forum continues to co-ordinate NGO participation and involvement to the EFE processes.

The ECO Forum has successfully co-ordinated and facilitated NGO participation in the official preparations and processes of EFE Ministerial Conferences, including in Task Forces, working groups and other inter-governmental meetings and negotiations. The Issue Groups (IG) have been established to co-ordinate NGO activities and involvement in specific issues and areas of the EFE process and they cover the following issues: \* energy and climate, \* transport, \* environment and health, \* National Environmental Action Plans (NEAPs) \* sustainable consumption and production patterns, \* human values, \* biodiversity and \* Public Participation (focusing on the Aarhus Convention). Each IG has a number of member organisations and a facilitator representing the group at the Co-ordination Board. IGs are currently planning their activities in the framework of preparation to the Ministerial Conference in Kiev, 2002.

Since the adoption of the Aarhus Convention in June 1998, the Public Participation Campaign (an issue group) has been strengthened and developed its own network. It has two part-time co-ordinators, and decisions on work programme and its activities are made by a steering committee (the Public Participation Campaign Committee) of nine different ECOs. A newsletter is published several times a year, "PARTICIPATE", email lists have been established on each issue related to the Task Forces and the campaign also maintains a web-site ([www.participate.org](http://www.participate.org)).

The First meeting of Signatories has been organised in Chisinau/Moldova in April 1999. The meeting agreed to establish three Task Forces to address: 1. Compliance mechanisms (lead country is UK); 2. Pollutant Release and Transfer Registers (lead country is Czech Republic) and 3. Public Participation in procedures relating to deliberate releases of Genetically Modified Organisms with Austria as the lead country. All three Task Forces had their first meetings where NGOs also were taking part. NGO Position papers have been prepared for each Task Force meeting and are available upon request. During the first meeting of Signatories NGOs have been urging Governments to establish three more Task Forces on: \* Access to Justice, \* Electronic Information and \* Public Participation in Policies, Plans, Programmes and Legislation and we hope that this issue will be taken up by the upcoming Second Meeting of Signatories in Dubrovnik/Cavtat, July 3 - 5, 2000.

**For more information on Public Participation Campaign, please contact:**

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