

ECO 2012
New Thinking and International Developments
in Environmental Responsibility

The Aarhus Convention

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Transparency: 1992 Rio

- 1992 Rio Declaration
178 governments including NZ issue the Rio Declaration. Principle 10 mandated
- access to information (“making information widely available”)
- public participation (“opportunity to participate in decision-making processes”)
- and effective access to judicial proceedings
 - (“Effective access to judicial and administrative proceedings, including redress and remedy, shall be provided.”)

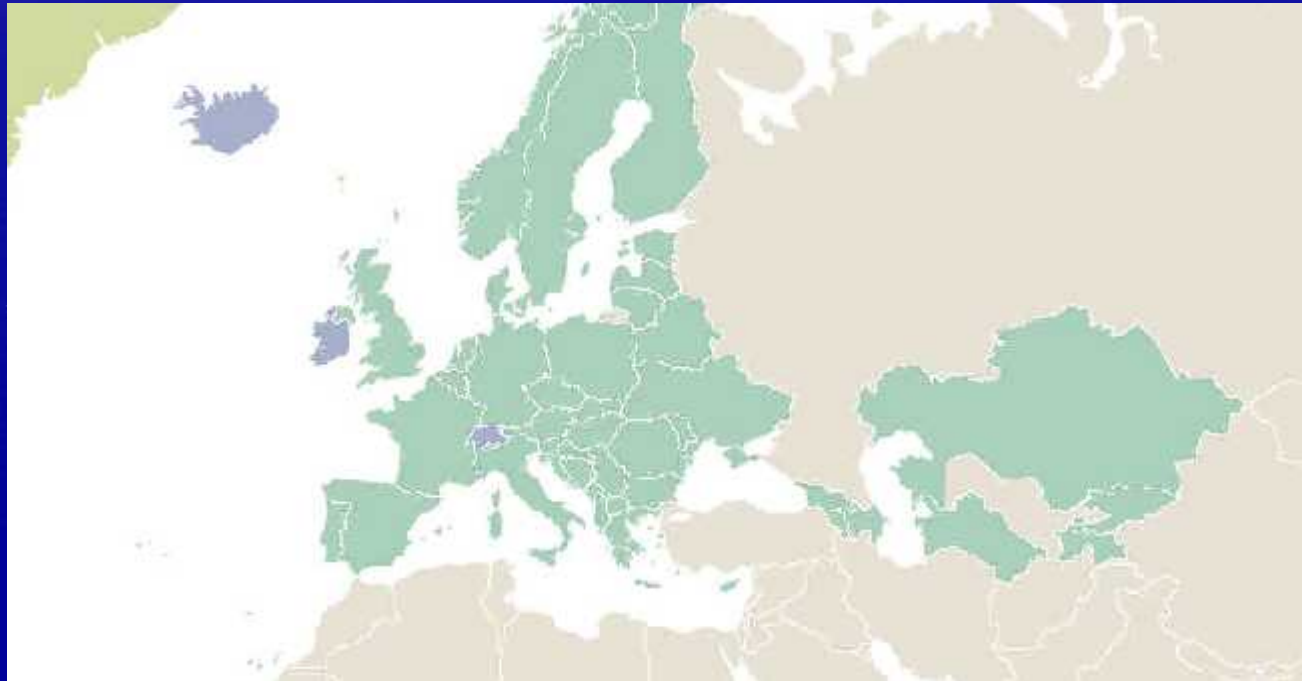
2012: Rio+20 the Future we Want (?)

43. We underscore that **broad public participation and access to information and judicial and administrative proceedings are essential** to the promotion of sustainable development. ...we agree to work more closely with Major Groups and other stakeholders **and encourage their active participation**, as appropriate, in processes that contribute to decision making, planning and implementation of policies and programmes for sustainable development at all levels.



Aarhus Convention

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



46 parties including all EU member States

Aarhus: A New Kind of Convention

- Joins people, governments and the environment.
- Enhances government accountability and transparency.
- Joins environment and human rights by linking access to information, public participation, and access justice with environmental protection.
- Allows members of the public who believe their rights under the Convention have been breached to bring complaints to the international level.
- Any State can join: Art 19
- The Parties have adopted decisions repeatedly encouraging States outside region to join; also in Chisinau Declaration

Aarhus 3 Pillars

- **Access to information**
 - Like the Official Information Act, gives the public the right to seek information from public authorities.
 - But it also requires authorities to collect and disseminate environmental information of public interest without the need for a specific request
- **Public participation**
 - public who may be affected /are interested in decision-making about an activity have right to be heard
 - and have their views taken into account
 - and in the development of plans, programmes and policies relating to the environment
 - ensures public participation in the preparation of legislation and regulations.
- **Access to justice**
 - “teeth” of the Convention,
 - ensures public has legal means to seek redress for their environmental concerns
 - Adequate and effective remedy; timely; fair and equitable and not prohibitively expensive.

General Principles

Art 3

- Requires parties to promote Aarhus principles in int'l environmental fora
- Clear and transparent national framework
- Appropriate recognition of and support to associations, organizations or groups promoting environmental protection
- Persons exercising their rights under the Convention shall not be penalized, persecuted or harassed
- No discrimination on basis of citizenship, nationality or domicile

Access to Information, Dissemination

Art 4

- Access to information – the document itself – in the form requested
- Max 1 month (or up to 2)
- Must redirect if don't hold information
- Reasonable charges, published
- Exceptions restrictively interpreted

Access to Information, Dissemination

Art 5

- Public authorities possess and update environmental information relevant to their functions
- Mandatory systems so adequate flow of information to public authorities about proposed and existing activities which may significantly affect the environment
- Databases, official help, period reports on state of environment
- Encourage private info on product and activities impacts – ecolabelling, eco-auditing
- Sufficient product information to enable environmental choices
- Inform of imminent threats e.g. Fukushima

Public Participation

Art 6

- List of specific activities in annex I
- And decisions on proposed activities not listed which may have a significant effect on the environment

Aarhus Step by Step

1. Adequate notice
2. Reasonable time frames- all options are open and effective public participation can take place
3. All relevant information
4. Public entitled to comment/be heard
5. Due notice taken of public participation
6. Prompt notice of decision
7. If updating permit etc, repeat as appropriate

Public Participation

Art 7

Participation of the public in the development of plans, programmes and policies relating to the environment: transparent and fair framework, having provided the necessary information to the public

Art 8

Participation of the public in the preparation of laws, rules and legally binding norms affecting environment

- Time-frames sufficient for effective participation
- Draft rules should be published or otherwise made publicly available;
- The public should be given the opportunity to comment, directly or through representative consultative bodies.
- The result of the public participation shall be taken into account as far as possible.

Access to Justice

Art 9

1. Review of refusal of information
2. Right to challenge substantive and procedural legality of any decision, act or omission subject to article 6
3. Challenge acts and omissions by private persons and public authorities alleged contravene provisions of national law relating to the environment
 - Interest of Evt NGO is sufficient
 - Must be “adequate and effective remedies, including injunctive relief as appropriate, and be fair, equitable, timely and not prohibitively expensive”

Compliance

- Art 15, Decision I/7
 - a Party may make a submission about compliance by another Party
 - a Party may make a submission concerning its own compliance
 - members of the public may make communications
 - Committee may examine compliance issues on its own initiative make recommendations
 - 69 cases so far
 - 9 Committee members serve in personal capacity; NGOs can nominate
 - Powerful tool to promote compliance
- Meeting of Parties can provide advice, make recommendations, request strategy from Party, declare non-compliance, issue cautions, suspend rights/privileges, other steps

Aarhus at the International Level:

Almaty Guidelines

Art 3: Parties must promote principles in int'l orgs re envt

19. **Each Party** should encourage international forums to make available...

- Agenda
- Drafts
- Agreed resolutions and reports – in timely manner
- *Only agenda normally – not even that at Pacific Islands Forum.*

FORUM EYES ONLY



PACIFIC ISLANDS FORUM SECRETARIAT

PROVISIONAL AGENDA

What it would mean for NZ

- The threat of mining in conservation land
- The revision of the Resource Management Act reducing the public's rights to be heard, access to justice
- Oil exploration, EEZ bill
- Rena
- Aarhus commits our government to be accountable and transparent regarding the environment long term, regardless of who is in power

Aarhus vs EEZ/CZ Bill

The Standard for Public Participation

- Art 6 “Procedures for public participation shall allow the public to submit, in writing or, as appropriate, at a public hearing or inquiry with the applicant, any comments, information, analyses or opinions that it considers relevant to the proposed activity.”
- Art 9 “access to administrative or judicial procedures to challenge acts and omissions by private persons and public authorities which contravene provisions of its national law relating to the environment.”

EEZ Bill: Limited public participation

Clause 46: Notification

“(c) any of the following that the EPA considers may be affected by the application:

(i) iwi authorities:

(ii) customary marine title groups: 5

(iii) protected customary rights groups:

(d) other persons that the EPA considers have existing interests that may be affected by the application:

EEZ Bill: Limited public participation, access to justice

Clause 53: Hearings to be public and without unnecessary formality

- (4) No person may question a party or witness unless the EPA gives permission.

Clause 103

- Only appeal to High Court on point of law

How Can NZ Get on Board?

- Accede to Aarhus
- Review legislation
- <http://www.unece.org/environmental-policy/treaties/public-participation/aarhus-convention.html>
- Contact the Secretariat –
public.participation@unece.org