“The continuing success of Irish society depends fundamentally on the preservation of the overall productivity, health and long term sustainability of the eco-systems and environmental services that underpin and supply many of the most basic components of human welfare - such as healthy soils, flourishing biodiversity, clean water and clean air.
The Aarhus Convention and Ireland

Where are we now?

An introduction by
Michael Ewing
Coordinator of the Environmental Pillar

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Background:

1992

178 governments including Ireland sign the **Rio Declaration**. **Principle 10** of the Declaration mandated

- access to information
- public participation
- and effective access to judicial proceedings.

These three rights are known as the **Access Principles**.
Principle 10 (P.10), of the ‘Rio Declaration on Environment and Development, 1992’, states:

“Environmental issues are best handled with the participation of all concerned citizens, at the relevant level. At the national level, each individual shall have appropriate access to information concerning the environment that is held by public authorities, including information on hazardous materials and activities in their communities, and the opportunity to participate in decision-making processes. States shall facilitate and encourage public awareness and participation by making information widely available. Effective access to judicial and administrative proceedings, including redress and remedy, shall be provided”.
Agenda 21

Chapter 8

Section 1,

calls on governments to seek broader public participation in policy making and decision making for sustainable development.
The Aarhus Convention

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

State of Ratification
THE RIGHT TO KNOW

In a democracy people have the right to know and should be provided with easy access to information. It is necessary to raise public awareness and to ensure the effective participation of the public in matters of concern to them.

For many years information on the state of the environment or the effects of certain activities on it were clouded in secrecy.

Today, the Convention calls on all the Parties to remove that veil and give clear information to the public.
THE RIGHT TO PARTICIPATE

Public participation helps make decision makers more accountable and environmental decision-making more transparent. In the past, it has often been denied or avoided in the interest of economic, political and sometimes social policies.

Today, the Convention calls on all the Parties to provide for public participation and thus better integrate environmental considerations in governmental decision-making leading to more sustainable outcomes.
THE RIGHT TO HAVE ACCESS TO JUSTICE

• For access to information and public participation in decision-making to be effective, it is necessary to ensure recourse to administrative or judicial proceedings.

• All Parties are therefore required to establish access to a review procedure before a court or another independent or impartial body.

• This should be easily accessible, timely and inexpensive. Adequate and effective remedies should be provided.
THE RIGHT TO HAVE ACCESS TO JUSTICE

The Convention also calls on the Parties to ensure that members of the public have access to administrative or judicial procedures to challenge acts and omissions by private individuals and public authorities that contravene provisions of their national law relating to the environment.
The Three Legged Convention
EU Directives

• Directive 2003/4/EC on access to information on the environment.
  (S.I. No 133 of 2007)

• Directive 2003/35/EC on participation in environmental decision-making.

• THE SEA Directive (Article 6)

• The Water Framework Directive (article 14)
Understanding

The

Convention
"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, which stresses the need for citizen's participation in environmental issues and for access to information on the environment held by public authorities."

"As such it is the most ambitious venture in the area of environmental democracy so far undertaken under the auspices of the United Nations."
"Involving the public and civil society organizations in formulating and implementing a response to climate change is not a choice but a necessity."

*Jan Kubis*, UNECE Executive Secretary, High-level segment of the Sixty-third Session of the Economic Commission for Europe (30 March — 1 April 2009)
Article 1. Objective

• In order to contribute to the protection of the right of every person of present and future generations to live in an environment adequate to his or her health and well-being, each Party shall guarantee the rights of access to information, public participation in decision-making, and access to justice in environmental matters in accordance with the provisions of this Convention.
Article 2. Definitions

“The public” means one or more natural or legal persons, and, in accordance with national legislation or practice, their associations, organizations or groups;

“The public concerned” means the public affected or likely to be affected by, or having an interest in, the environmental decision making; for the purposes of this definition, non-governmental organizations promoting environmental protection and meeting any requirements under national law shall be deemed to have an interest.
“Environmental information” means any information in written, visual, aural, electronic or any other material form on:

(a) The state of elements of the environment, such as air and atmosphere, water, soil, land, landscape and natural sites, biological diversity and its components, including genetically modified organisms, and the interaction among these elements;

(b) Factors, such as substances, energy, noise and radiation, and activities or measures, including administrative measures, environmental agreements, policies, legislation, plans and programmes, affecting or likely to affect the elements of the environment within the scope of subparagraph (a) above, and cost-benefit and other economic analyses and assumptions used in environmental decision-making;

(c) The state of human health and safety, conditions of human life, cultural sites and built structures, inasmuch as they are or may be affected by the state of the elements of the environment or, through these elements, by the factors, activities or measures referred to in subparagraph (b) above.
“Public authority” means:

(a) Government at national, regional and other level;
(b) Natural or legal persons performing public administrative functions under national law, including specific duties, activities or services in relation to the environment;
(c) Any other natural or legal persons having public responsibilities or functions, or providing public services, in relation to the environment, under the control of a body or person falling within subparagraphs (a) or (b)
Article 3
GENERAL PROVISIONS

1. Each Party shall take the necessary legislative, regulatory and other measures, including measures to achieve compatibility between the provisions implementing the information, public participation and access-to-justice provisions in this Convention, as well as proper enforcement measures, to establish and maintain a clear, transparent and consistent framework to implement the provisions of this Convention.
The bread has to be good, but the filling is what makes it a sandwich!
Article 4
ACCESS TO ENVIRONMENTAL INFORMATION

1. Each Party shall ensure that, subject to the following paragraphs of this article, public authorities, in response to a request for environmental information, make such information available to the public, within the framework of national legislation, including, where requested and subject to subparagraph (b) below, copies of the actual documentation containing or comprising such information:

   (a) Without an interest having to be stated;
   (b) In the form requested unless:
   (i) It is reasonable for the public authority to make it available in another form, in which case reasons shall be given for making it available in that form; or
   (ii) The information is already publicly available in another form.
Article 5  COLLECTION AND DISSEMINATION OF ENVIRONMENTAL INFORMATION

1. Each Party shall ensure that:

(a) Public authorities possess and update environmental information which is relevant to their functions;
(b) Mandatory systems are established so that there is an adequate flow of information to public authorities about proposed and existing activities which may significantly affect the environment;
(c) In the event of any imminent threat to human health or the environment, whether caused by human activities or due to natural causes, all information which could enable the public to take measures to prevent or mitigate harm arising from the threat and is held by a public authority is disseminated immediately and without delay to members of the public who may be affected.
A common understanding of the meaning of Public Participation
DAD or DEAD

• Studies indicate a serious gap in understanding and trust between stakeholders

• Existing decision-making structures are often based on either the traditional DAD (Decide, Announce and Defend) or DEAD (Decide, Educate, Announce and Defend) methods, and this can be seen as one source of this gap in trust.
Article 6  PUBLIC PARTICIPATION IN DECISIONS ON SPECIFIC ACTIVITIES

1. Each Party:

(a) Shall apply the provisions of this article with respect to decisions on whether to permit proposed activities listed in annex I;

(b) Shall, in accordance with its national law, also apply the provisions of this article to decisions on proposed activities not listed in annex I which may have a significant effect on the environment. To this end, Parties shall determine whether such a proposed activity is subject to these provisions; and

(c) May decide, on a case-by-case basis if so provided under national law, not to apply the provisions of this article to proposed activities serving national defence purposes, if that Party deems that such application would have an adverse effect on these purposes.
3. The public participation procedures shall include reasonable time-frames for the different phases, allowing sufficient time for informing the public in accordance with paragraph 2 above and for the public to prepare and participate effectively during the environmental decision-making.

4. Each Party shall provide for early public participation, when all options are open and effective public participation can take place.
Article 7  PUBLIC PARTICIPATION CONCERNING PLANS, PROGRAMMES AND POLICIES RELATING TO THE ENVIRONMENT

Each Party shall make appropriate practical and/or other provisions for the public to participate during the preparation of plans and programmes relating to the environment, within a transparent and fair framework, having provided the necessary information to the public. ....... The public which may participate shall be identified by the relevant public authority, taking into account the objectives of this Convention. To the extent appropriate, each Party shall endeavour to provide opportunities for public participation in the preparation of policies relating to the environment.
Article 8
PUBLIC PARTICIPATION DURING THE PREPARATION OF EXECUTIVE REGULATIONS AND/OR GENERALLY APPLICABLE LEGALLY BINDING NORMATIVE INSTRUMENTS

Each Party shall strive to promote effective public participation at an appropriate stage, and while options are still open, during the preparation by public authorities of executive regulations and other generally applicable legally binding rules that may have a significant effect on the environment.

To this end, the following steps should be taken:
(a) Time-frames sufficient for effective participation should be fixed;
(b) Draft rules should be published or otherwise made publicly available; and
(c) 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.
Article 9
ACCESS TO JUSTICE

1. Each Party shall.... Ensure that any person who considers that his or her request for information under article 4 has been ignored, wrongfully refused, whether in part or in full, inadequately answered, or otherwise not dealt with in accordance with the provisions of that article, has access to a review procedure before a court of law or another independent and impartial body established by law.

In the circumstances where a Party provides for such a review by a court of law, it shall ensure that such a person also has access to an expeditious procedure established by law that is free of charge or inexpensive for reconsideration by a public authority or review by an independent and impartial body other than a court of law.

Final decisions under this paragraph 1 shall be binding on the public authority holding the information. Reasons shall be stated in writing, at least where access to information is refused under this paragraph.
Article 9
ACCESS TO JUSTICE

2. Each Party shall, within the framework of its national legislation, ensure that members of the public concerned
(a) Having a sufficient interest or, alternatively,
(b) Maintaining impairment of a right, where the administrative procedural law of a Party requires this as a precondition, have access to a review procedure before a court of law and/or another independent and impartial body established by law, to challenge the substantive and procedural legality of any decision, act or omission subject to the provisions of article 6 and, where so provided for under national law and without prejudice to paragraph 3 below, of other relevant provisions of this Convention. What constitutes a sufficient interest and impairment of a right shall be determined in accordance with the requirements of national law and consistently with the objective of giving the public concerned wide access to justice within the scope of this Convention. To this end, the interest of any non-governmental organization meeting the requirements referred to in article 2, paragraph 5, shall be deemed sufficient for the purpose of subparagraph (a) above. Such organizations shall also be deemed to have rights capable of being impaired for the purpose of subparagraph (b) above. The provisions of this paragraph 2 shall not exclude the possibility of a preliminary review procedure before an administrative authority and shall not affect the requirement of exhaustion of administrative review procedures prior to recourse to judicial review procedures, where such a requirement exists under national law.
Article 9
ACCESS TO JUSTICE

3. In addition and without prejudice to the review procedures referred to in paragraphs 1 and 2 above, each Party shall ensure that, where they meet the criteria, if any, laid down in its national law, members of the public have 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.
Article 9
ACCESS TO JUSTICE

4. In addition and without prejudice to paragraph 1 above, the procedures referred to in paragraphs 1, 2 and 3 above shall provide adequate and effective remedies, including injunctive relief as appropriate, and be fair, equitable, timely and not prohibitively expensive. Decisions under this article shall be given or recorded in writing. Decisions of courts, and whenever possible of other bodies, shall be publicly accessible.

5. In order to further the effectiveness of the provisions of this article, each Party shall ensure that information is provided to the public on access to administrative and judicial review procedures and shall consider the establishment of appropriate assistance mechanisms to remove or reduce financial and other barriers to access to justice.
The compliance mechanism may be triggered in four ways:

1. a Party may make a submission about compliance by another Party;
2. a Party may make a submission concerning its own compliance;
3. the secretariat may make a referral to the Committee;
4. members of the public may make communications concerning a Party's compliance with the convention.

In addition, the Committee may examine compliance issues on its own initiative and make recommendations.

Submissions from the public can be considered by the committee following a 12 month period after the date on which the Convention comes into force in a country.
Article 20
ENTRY INTO FORCE

3. For each State or organization referred to in article 17 which ratifies, accepts or approves this Convention or accedes thereto after the deposit of the sixteenth instrument of ratification, acceptance, approval or accession, the Convention shall enter into force on the ninetieth day after the date of deposit by such State or organization of its instrument of ratification, acceptance, approval or accession.
Bodies connected with the Convention

The Meeting of the Parties
Working Group of the Parties to the Aarhus Convention
Bureau of the Meeting of the Parties
Compliance Committee
Working Group on Genetically Modified Organisms
Working Group on Pollutant Release and Transfer Registers
Task Force on Electronic Information Tools
Task Force on Access to Justice
Task Force on Financial Arrangements
Task Force on Public Participation in International Forums
Task Force on Public Participation
Important web addresses relating to the Aarhus Convention

Aarhus Convention website
•  http://www.unece.org/env/pp/

Aarhus Convention Text
•  http://www.unece.org/env/pp/treatytext.htm

The Aarhus Convention. An Implementation Guide
•  www.unece.org/env/pp/acig.pdf

Aarhus Clearinghouse for Environmental Democracy. Here you can read items relating to the Convention submitted by NGOs, individuals and governments. They are arranged by country, as well as under subjects. Anyone can submit articles.
•  http://aarhusclearinghouse.unece.org/

Aarhus Compliance Committee. What it is and how to access it.
•  http://www.unece.org/env/pp/compliance/Pubcom0205.doc

Aarhus GMO Amendment

PRTR Protocol Text (Pollutant Release and Transfer Register Protocol)
•  http://www.unece.org/env/pp/prtr.htm
Thank You

Go raibh maith agaibh

www.environmentalpillar.ie