



Public participation in environmental matters: Compendium, challenges and chances globally



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ABSTRACT

This paper aims to provide a global and comparative overview of Public Participation in Environmental Matters in the sense of the Aarhus convention. The method applied is an in-depth literature review in particular of research papers, legal documents, policy papers, which was implemented by means of electronic databases (Web of Science, Scopus) as well as by internet research using terms such as public participation, access to information, participation in decision-making and access to justice in combination with continent names. The results were then analysed according to the five continents. They were then divided as well as discussed regarding general aspects, access to information, access to decision-making and access to justice. The results for the five continents show regionally and nationally within the three pillars, access to information, participation in decision-making and access to justice large differences. While access to information is widely legally established within all regions on all continents, access to justice is the one sector of the three mentioned in Principle 10 of the Rio Declaration which has obtained the least reflection in legislation and implementation so far.

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Introduction: the global foundations of public participation

Public Participation in Environmental Matters covers the public participation in environmental decision-making procedures as well as the access to environmental information, and to justice. In the particular context of this paper, it stands for the legally binding institutionalisation of rights for individuals and non-governmental organisations. The call for Public Participation in Environmental Matters was prominently expressed for the first time at the global level in Principle 10 of the Rio Declaration on Environment and Development (short ‘Rio Declaration’) in 1992¹ and further reiterated in Chapter 23 of the Earth Summit Agenda 21 (short

‘Agenda 21’).² Also, the United Nations Convention to Combat Desertification (UNCCD) drew a similar conclusion two years later and emphasised the need for Public Participation in degradation assessment and rehabilitation of land.³

Since then, Public Participation in Environmental Matters has been increasingly discussed and implemented worldwide. It culminated since then with the conclusion of the Convention on Access to Information, public participation in Decision-making and Access to Justice in Environmental Matters (the ‘Aarhus Convention’) in 1998 under the auspices of the United Nations Economic Commission for Europe – UNECE,⁴ the so-called Bali Guidelines

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¹ Principle 10 of the Rio Declaration states as follows “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” (Full

text at <http://www.unep.org/Documents/Multilingual/Default.asp?documentid=78&articleid=1163>, accessed 29.04.14).

² According to Agenda 21 – and therein especially 23.1 and 23.2. – there is a need for “new forms of participation” and the “. . . need of individuals, groups and organisations to participate in environmental impact assessment procedures and to know about and participate in decisions” (<http://sustainabledevelopment.un.org/content/documents/Agenda21.pdf>, accessed 29.04.14).

³ See e.g. Articles 1 (b) i, 3 (a), 6 (d), 10 (2) f, 17 (1) f, 18 (2) a, 19 (1) a United Nations Convention to Combat Desertification in Countries Experiencing Serious Drought and/or Desertification, Particularly in Africa (<http://www.unccd.int/Lists/SiteDocumentLibrary/conventionText/conv-eng.pdf>, accessed 29.04.14).

⁴ For the text see <http://www.uncece.org/environmental-policy/treaties/public-participation/aarhus-convention.html> (accessed 29.04.14).

from 2011⁵ as well as in paragraphs 43–44 of the 2012 concluded Rio + 20 outcome document titled “The Future We Want”.⁶

Today, many regions in the world still look in particular towards a more effective implementation of these legal and political documents on the ground (see e.g. Bruch and Czerbiniak, 2002; Pallemarts, 2006). This is especially valid for East Asia due to its huge environmental pressures and the vast number of people. The progressive implementation and enforcement of the above-mentioned political and legal instruments through and within the European Union (EU) since 2005 can serve as an example on behalf of many other countries for the stronger binding inclusion of Public Participation in Environmental Matters (see the last chapter of this Special Issue).

Similarly, the further use of the Aarhus Convention for an initial input for the development of general accountability principles in international organisations such as the World Bank has been proposed by Dalle (2006). A significant contribution to Public Participation in terms of substantial as well as procedural rights also emerges from the relationship of Human Rights and the environment (see recently e.g. United Nations Compound, 2013).

In the following, a global and comparative overview of public participation in environmental matters in the sense of the Aarhus convention is provided. It is based upon an in-depth literature review, in particular of research papers, legal documents, policy papers, and implemented by means of electronic databases (Web of Science, Scopus) as well as by Internet research using terms such as public participation, access to information, access to participation in decision-making and access to justice in combination with continent names. The results are analysed according to the five continents and regarding general aspects, access to information, access to decision-making and access to justice. Finally, overall conclusions are presented.

Regional developments in Europe

Amongst different attempts on several continents, Europe shows the most progressed approach regarding the regional implementation of Public Participation in the sense of Principle 10 of the Rio Declaration.

General

Principle 10 of the Rio Declaration from 1992 constitutes one of the origins of the Aarhus Convention.⁷ The Convention has currently 47 Parties (46 States and the EU)⁸ and contains a provision for further accessions of any state that is member to the UN, upon approval by the Meeting of the Parties.⁹ The Aarhus Convention launched a new environmental contract between public authorities and the public in general. It obliged public authorities to provide and foster access to environmental information to the general

⁵ Guidelines for the development of national legislation on access to information, public participation and access to justice in environmental matters, Eleventh Special Session of the Governing Council/Global Ministerial Environment Forum, Bali (Indonesia) 24–26 February 2010, Governing Council of the United Nations Environment Programme, UNEP/GCSS.XI/11, 3 March 2010, Annex to decision SS.XI/5 A, which were based on Principle 10 and the Aarhus Convention, globally applicable and structured in terms of the three pillars such as the Aarhus Convention (http://www.unep.org/delc/Portals/119/Proceedings_K1060433_final%2011SSGCGMEF.pdf, accessed 29.04.14).

⁶ Available at <http://www.un.org/en/sustainablefuture/> (accessed 29.04.14).

⁷ For the text see <http://www.unece.org/environmental-policy/treaties/public-participation/aarhus-convention.html> (accessed 29.04.14).

⁸ For the full list of Parties see <http://www.unece.org/environmental-policy/treaties/public-participation/aarhus-convention.html> (accessed 29.04.14).

⁹ See Article 19 (3) Aarhus Convention and also Decision IV/5, adopted at MOP4 of the Aarhus Convention (ECE/MP.PP/2011/CRP.3).

public, to involve the general public in decision-making processes on environmental issues, and to ensure access and opportunity to justice for individuals and NGOs to challenge decisions made on such issues. The European Union signed the Aarhus Convention together with several countries especially from Eastern Europe already in 1998 and the Convention formally entered into force in 2001 (Wates, 2005). In order to ratify this Convention, the legislation of the European Union had to be compatible with it. Thus, the EU began adapting its legislation to the Aarhus Convention in the late 90s (Donald, 2002; Lee and Abbot, 2003).

Horizontally, concrete implementations steps followed for several aspects such as access to information with regards to EU-member states¹⁰ and the application of the provisions of the Aarhus Convention on Access to information, public participation in Decision-making and Access to Justice in Environmental Matters to EC institutions and bodies.¹¹ The Aarhus Convention does not only address the national authorities of its Parties but also assigns responsibility to the main organisations of the European integration procedures such as the European Commission and the European Parliament (Rodenhoff, 2003; ECOSPHERE, 2006).

Thematically, the EU has also introduced rights based on the Aarhus Conventions into several sectorial Directives such as the ones related to Water Policy,¹² Environmental Impact Assessment¹³ (for the national implementation see e.g. Hartley and Wood (2005) regarding the UK) and the so-called IPPC-Directive.¹⁴

Worm (1997) showed by using the example of Denmark, that also prior to the conclusion of the Aarhus Convention a decentralised, legally prescribed system for horizontal and vertical integration of decision-making processes had existed for a long time and balanced – by means of negotiations – the different interests of users, environmental assessments and Public Participation with solutions that are not always optimal but are pragmatic compromises. Earlier than the Aarhus Convention, also the Convention on Environmental Impact Assessment in a Transboundary Context was adopted under the auspices of UNECE in 1991 in Espoo/Finland and provided also already for certain participatory rights reciprocally among countries (Knox, 2002). A Strategic Environmental Assessment Protocol (short “SEA Protocol”) augments that Convention by ensuring that individual Parties integrate environmental assessment into their plans and programmes at the earliest stages.¹⁵ Furthermore, Public Participation can also be found in scientific literature from other sectors, increasing attention on the European level including landscape protection (Conrad et al., 2011), forests (Elands, 2004; Higuero, 2005; Blicharska et al., 2011), land use- and energy policy regarding

¹⁰ Directive 2003/4/EC of the European Parliament and of the Council of 28 January 2003 on public access to environmental information and repealing Council Directive 90/313/EEC (OJ 2003 L 41, p. 26).

¹¹ Regulation (EC) No 1367/2006 of the European Parliament and of the Council of 6 September 2006 on the application of the provisions of the Aarhus Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters to Community institutions and bodies (OJ L 264, 25/09/2006, p. 13–19).

¹² Directive 2000/60/EC of the European Parliament and the Council of 23 October 2000 establishing a framework for Community action in the field of water policy (Water Framework Directive (WFD)) (OJ L 327, 22/12/2000, p. 1–73).

¹³ Directive 2011/92/EU of the European Parliament and of the Council of 13 December 2011 on the assessment of the effects of certain public and private projects on the environment (OJ L 26, 28/01/2012, p. 1–21).

¹⁴ Council Directive 96/61/EC of 24 September 1996 concerning integrated pollution prevention and control (OJ 1996 L 257, p. 26), as amended by Regulation (EC) No 166/2006 of the European Parliament and of the Council of 18 January 2006 (OJ 2006 L 33, p. 1) and afterwards replaced by Directive 2008/1/EC of the European Parliament and of the Council of 15 January 2008 concerning integrated pollution prevention and control (OJ 2008 L 24, p. 8).

¹⁵ Entered into force on 11 July 2010 (http://www.unece.org/env/eia/sea_protocol.html, accessed 29.04.14).

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