



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".

The Aarhus Convention

1998

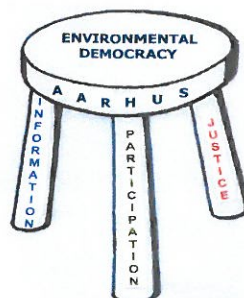
UNECE Convention on
Access to Information,
Public Participation in Decision-making
and Access to Justice
in Environmental Matters

A Healthy Environment as a Human Right

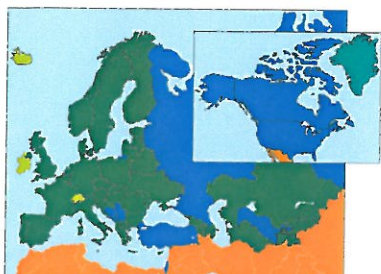
Article 1 Objective

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.

The Three Legged Convention



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.
- Members of the public can challenge the substantive and procedural legality of any decision. There must be access to a review process that is fair, equitable and timely. Final decisions must be in writing and must be binding on the public authority.



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.



EU Ratification

- Directive 2003/4/EC on access to information on the environment (transposed into Irish law as S.I. No 133 of 2007)
- Directive 2003/35/EC on participation in environmental decision-making.
- THE SEA Directive
- The Water Framework Directive

ACCESS TO JUSTICE Supporting Access to Information

- S.I. No 133 of 2007
- Appeal on refusal of information
- Appeal to the Commissioner for Environmental Information. €150
 - Require the information – 3 weeks
 - Examine, take copies and hold information
 - Enter any premises occupied by a public body and take information
- Commissioner may apply for a High Court order
- Any person affected may appeal on a point of law



Barriers to Access to Justice The Courts

- Delay – fourteen year legal battle that occurred in the case of Rooney v An Bord Pleanála.

Master of the High Court Edmund Honohan - July 2010

“Intelligent procedural changes” could make a significant difference, and securing cost-effective and speedy trials could only be regarded as contributing to the perception and reality of justice”

- Substantive review - process only

Barriers to Access to Justice The Courts

- Standing - (a) Having a sufficient interest or, alternatively, (b) Maintaining impairment of a right Planning Acts “Substantial Interest”
- Costs equality of arms international human rights law
- Articles 10(a) and 15(a) of 2003/35/EC
 - provisions must not be prohibitively expensive - ECJ Case C-427/07
- New Section 50B (2) Planning and Development Act 2000 changes the rule that costs follow the event in relation to EIA cases
- UK non-compliant with ATJ provisions of the Convention – Compliance Committee

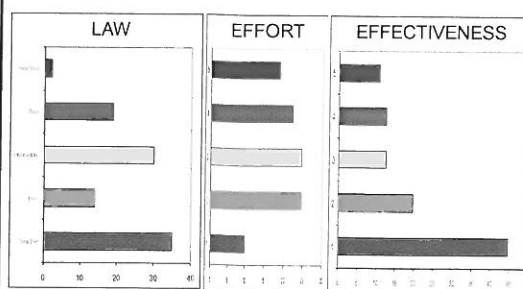
Barriers to Access to Justice Administrative Review

- Appeals to the Commissioner for Environmental Information €150
- An Bord Pleanála – Oral Hearings
 - nature of the hearings
 - legal and scientific expertise
 - day-time hearings for long periods
- Strategic Infrastructure Act – No substantive appeals process

Nine ATJ Case Studies

1. Access to justice in the denial of rights to information
2. Access to justice in the denial of rights of participation
3. Access to justice in cases of environmental harm

Access To Justice Findings % of indicators with each value



Recommendations

- Establishment of an Environmental Courts List,
- The introduction of a system of administrative appeals boards based on the Dutch system, where applicants pay a fee of €65 which is refundable if their appeal is successful. The decisions of the boards would be subject to further review in the courts.
- www.environmentaldemocracy.ie

Go Raibh Maith Agat

Thanks for your attention!

Michael Ewing
Coordinator of the Environmental Pillar
www.environmentalpillar.ie