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Procedural Environmental Rights: An Examination of Procedural Rights in International Environmental Law.

Dr. Richard Scriven

This paper articulates an overview of the emergence and impact of procedural environmental rights in international law. International and regional instruments are providing mechanisms for individuals and civil society actors to participate in environmental decision-making, access related information, and to hold states and public bodies accountable. These developments represent a larger trajectory concerning the intersection of human rights and environmental law against the backdrop of the climate emergency and the biodiversity crisis. The paper discusses the conceptual function and limitations of procedural environmental rights, before considering the evolution of these rights in international environmental law. It also examines the Aarhus Convention, as one of the key treaties in this area, with a focus on its implementation structures aimed at fostering compliance by state parties. This point is elaborated by considering how the Aarhus Convention is affecting environmental procedural processes in Ireland. An analysis contributes to on-going discussions regarding the overlap of procedural environmental rights and human rights more broadly, the centrality and challenges of compliance with international environmental law, and progress in strengthening environmental democratic mechanisms.

Introduction

International environmental law (IEL) has a particular role to play in response to pressing transnational and global environmental issues, most prominently the climate emergency and the biodiversity crisis.¹ International and regional instruments have established regulatory frameworks and strengthened human rights with the intended purpose of protecting the natural world and people's right to a healthy environment.² Within this area, commentators have identified a 'proceduralization of environmental rights'³ whereby individuals and civil society actors have been empowered to influence decision-making on environmental matters and hold state parties and others to account. These rights have been significantly developed in international law (IL) over the past fifty years through entitlements to access to information, participation in deliberative processes, and access to justice.⁴ This paper offers an overview of the evolution and dissemination of procedural environmental rights (PERs) through IEL instruments and their effect on regional and national scales. This is a dynamic topic that will have an increasingly important function in empowering people to improve environmental policies and pursue environmental litigation.

The article will first provide a conceptual overview of PERs outlining their conceptual role and shortcomings. Next, the development of these participatory approaches in IEL will be traced from the Stockholm Declaration⁵ to recent developments such as the Escazú Agreement⁶ which have solidified these rights. Then, the Aarhus Convention,⁷ given its significance and formal compliance structures, is examined separately with a focus on how it encourages and fosters adherence by state parties. This analytical theme continues by considering the strengths and weaknesses of the Aarhus Convention implementation in Ireland. Finally, a discussion section considers how PERs overlap with international human

¹ Duncan Weaver, 'The Aarhus convention and process cosmopolitanism' (2018) 18 Int Environ Agreements 199.

² For example, Rio Declaration on Environment and Development UN Doc, (13 June 1992) A/CONF.151/26. Rev.1 (Rio Declaration), Principle 1.

³ Francesco Francioni, 'International Human Rights in an Environmental Horizon' (2010) 21 EJIL 42.

⁴ Joshua C. Gellers and Chris Jeffords 'Toward Environmental Democracy? Procedural Environmental Rights and Environmental Justice' (2018) 18 Glob Envir Pol 99.

⁵ Declaration of the United Nations Conference on the Human Environment (16 June 1972) UN Doc. A/CONF/48/14/REV.1 (Stockholm Declaration).

⁶ Regional Agreement on Access to Information, Public Participation and Justice in Environmental Matters in Latin America and the Caribbean (Adopted 4 March 2018, entered into force 22 April 2021) 3397 UNTS C.N.195.2018.TREATIES-XXVII.18 (Escazú Agreement).

⁷ Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters (Adopted 25 June 1998, entered into force 30 October 2001) 2161 UNTS 447 (Aarhus Convention); Gyula Bándi, 'The Three Pillars of Environmental Democracy in a European Perspective' in Gyula Bándi (ed) Environmental democracy and law: public participation in Europe (Europa Law Publishing 2014) 39

rights, the role of compliance, and advancements in environmental democratic mechanisms, before a concluding summary that highlights areas of further research.

Procedural Environmental Rights

PERs enable public participation in deliberative processes concerning environmental matters. These rights are manifest in tools such as access to information, consultations, and the option for administrative and judicial reviews.⁸ More broadly, activists and theorists argue that members of a society should be able to impact public policy with the benefits of strengthening democratic structures, enriching decision-making by incorporating different perspectives, and improving accountability of public officials and politicians.⁹ This principle has a clear resonance in environmental matters with the emergence of environmental democracy as a concept and practice.¹⁰ Diverse inputs facilitate the inclusion of situated knowledge, can enable more robust results, and help resolve contentious issues.¹¹ Public participation can also lead to a more informed citizenry who buttress the implementation of strategies and projects.¹² Moreover, procedural rights are important mechanisms to build up trust and enhance engagements with marginalised groups and indigenous peoples.¹³ PERs have numerous conceptual and practical values that underline their function in helping involve people in better environmental decision-making.

There is growing appreciation for the role of PERs in achieving progressive outcomes. There have been strong arguments illustrating how properly applied procedural rights facilitate the

⁸ Escazú Agreement (n 6) Preamble.

⁹ Benjamin W Cramer 'The human right to information, the environment and information about the environment: from the Universal Declaration to the Aarhus Convention' (209) 14 CLP 79; James R May and Erin Daly, 'The Future We Want and Constitutionally Enshrined Procedural Rights in Environmental Matters' in Robert V. Percival, Jolene Lin, and William Piermattei (eds) *Global Environmental Law at a Cross-roads* (Edward Elgar Publishing 2014) 31.

¹⁰ Gyula Bándi, 'Introduction into the Concept of 'Environmental Democracy' in Gyula Bándi (ed) *Environmental democracy and law: public participation in Europe* (Europa Law Publishing 2014) 3.

¹¹ Jenny Steele, 'Participation and Deliberation in Environmental Law: Exploring a Problem-solving Approach' (2001) 21 OJLS 415; Ken Conca, *An Unfinished Foundation: The United Nations and Global Environmental Governance* (Oxford University Press 2015) 108; Marianne Dellinger, 'Ten Years of the Aarhus Convention: How Procedural Democracy Is Paving the Way for Substantive Change in National and International Environmental Law' (2012) 23 Col. J I Env. L & Pol. 314; Sofía López-Cubillos *et al.* 'The landmark Escazú Agreement: An opportunity to integrate democracy, human rights, and transboundary conservation' (2022) 15 Cons. Letters 7.

¹² Escazú Agreement (n 6) Preamble; Dellinger (n 11) 314; López-Cubillos *et al.* (n 11) 7.

¹³ Gellers and Jeffords (n 4) 104; Jona Razzaque, 'Information, Public Participation and Access to Justice in Environmental Matters' in Erika Techera, Jade Lindley, Karen N. Scott, and Anastasia Telesetsky (eds) *Routledge Handbook on International Environmental Law* (2nd ed Routledge 2020) 59.

realisation of substantive environmental rights.¹⁴ As well as being an approach to empower communities and civil society, they offer precise and measurable obligations for states and public actors. Enforcement then is a ‘narrower or more objectively bounded than what substantive rights demand’.¹⁵ PERs offer a more tangible and effective means for groups to impact issues that affect the environment through participatory guarantees and *locus standi* before different courts.¹⁶ This becomes even more significant in cases where governments or states are indisposed or uninterested in substantive environmental rights.¹⁷ Procedural approaches are being valued as having a clear role in advancing issues which would otherwise go unchallenged.

Despite the inherent potential of procedural approaches there are numerous reasons to be cautious about their capacity to impact change. Firstly, PERs, like other human rights, rest on effective implementation. This area is dependent on a resourced and cooperative state administration. Too often this is most lacking in the areas where environmental threats are most acute.¹⁸ For example, activists warn that in a Latin American context public involvement is limited as many environmental decisions ‘lack transparency and the accessibility of information is not guaranteed’.¹⁹ Next, there are no guarantees that these approaches will lead to better environmental outcomes.²⁰ There are a wide range of actors who can influence decisions positively or negatively reflecting their priorities.²¹ In addition, people may not avail of these rights. Advocates for greater public involvement highlight the need for accompanying awareness raising and capacity building programmes.²² Thirdly, more critical interpretations emphasise the inherent weakness of these mechanisms to effectively confront and influence institutional political structures.²³ Participatory methods can be deployed as tokenistic exercises which can undermine attempts for better environmental

¹⁴ Micheal Mason, ‘Information Disclosure and Environmental Rights: The Aarhus Convention’ (2010) 10 G Env. Pol. 10; Belén Olmos Giupponi ‘Fostering environmental democracy in Latin America and the Caribbean: An analysis of the Regional Agreement on Environmental Access Rights’ (2019) 28 RECIEL 138.

¹⁵ May and Daly (n 9) 44.

¹⁶ Malgosia Fitzmaurice, ‘The Right of the Child to a Clean Environment’ (1999) 23 S III U L J 614.

¹⁷ Jutta Brunnée ‘International Environmental Law and Community Interests: Procedural Aspects’, in Eyal Benvenisti and Georg Nolte (eds) *Community Interests Across International Law* (Oxford UP 2018) 168.

¹⁸ Marcos Orellana ‘Human Rights and International Environmental Law’ in Erika Techera, Jade Lindley, Karen N. Scott and Anastasia Telesetsky (eds) *Routledge Handbook on International Environmental Law* (2nd ed, Routledge 2020) 341.

¹⁹ López-Cubillos *et al.* (n 11) 7.

²⁰ Suzanne Kingston, ‘Regulating Ireland’s Environment In 2016: Hierarchy, Networks and Values’ (2016) 56 IJ 48.

²¹ Dellinger (n 11) 327.

²² Alison Hough, Peter Doran and Ciara Brennan, *Report on Aarhus Implementation – IRELAND* (Technological University of the Shannon 2022) 6.

²³ Razzaque (n 13) 59.

outcomes.²⁴ Therefore, it is key that procedural rights are implemented effectively to enable the public and communities to contribute to environmental policies and projects. PERs are increasingly valued as tools to improve decision-making and foster greater transparency. They are being discussed and deployed as instruments in response to major climatic challenges and other environmental concerns. IEL has been one of the main arenas in which these rights have been articulated, furthered, and enforced.

International Law and Procedural Environmental Rights

PERs have been recognised and developed in recent decades at an international level to inform national policies and actions. Since the 1970s, there has been considerable progress in strengthening and expanding their role. This has been a gradual process with international agreements informing subsequent treaties and protocols, against the backdrop of increasing urgency to protect the natural world and respond to climate change. With treaties forming the core source of IEL,²⁵ it is noteworthy that these rights have been incorporated into major declarations and have regional instruments solely focused on their function.

Examinations of IEL reveal the evolution of procedural rights through different instruments. 1972's Stockholm Declaration²⁶ is considered the main starting point as it marked a distinct confluence of human rights and environmental law, including nascent procedural aspects.²⁷ Subsequent agreements also contain participatory measures for environmental protection, such as the Basel Convention,²⁸ the Madrid Protocol,²⁹ and the World Charter³⁰ illustrating a growing appreciation for this dimension.³¹ These threads reached fruition in Principle 10 of the Rio Declaration which firmly established the 'three pillars' of participatory rights in this area: individual rights to access public held environmental information, mechanisms for

²⁴ Lorenzo Squintani and Goda Perlaviciute, 'Access to Public Participation: Unveiling the Mismatch between what Law Prescribes and what the Public Wants' in Marjan Peeters and Mariolina Eliantonio (eds) *Research Handbook on EU Environmental Law* (Edward Elgar Publishing 2020) 135.

²⁵ Mark Poustie, 'Environment' in Niall Whitty (ed) *The Laws of Scotland: Stair Memorial Encyclopaedia* (Re-issue, Butterworths Lexis-Nexis 2007) para. 13.

²⁶ Stockholm Declaration (n 5); see also UN General Assembly, United Nations Conference on the Human Environment, 15 December 1972, A/RES/2994.

²⁷ Orellana (n 18) 341.

²⁸ Convention on the Control of Transboundary Movement of Hazardous Wastes and Their Disposal of (22 March 1989) 1673 UNTS 126.

²⁹ Protocol on Environmental Protection to the Antarctic Treaty (Adopted 4 Oct 1991, entered into force 14 January 1998) UNTS 2941.

³⁰ United Nations General Assembly, World Charter for Nature (28 October 1982) A/RES/37/7.

³¹ Razzaque (n 13) 60; Jerzy Jendrośka, 'The substantive right to environment and the procedural environmental rights under the Aarhus Convention – Part II' (2024) 22 Op. St. Adm. 47.

direct participation, and access to justice.³² Additionally, the document directly linked these mechanisms with substantial rights, such as being ‘entitled to a healthy and productive life in harmony with nature.’³³ It is significant that aspects of environmental democracy were distinctly articulated as being crucial in responding to environmental harm and protecting the natural world.³⁴ This initial phase of development involved the progression from early implied rights to becoming strong legally and politically foregrounded in IEL.

This new standard for procedural obligations proliferated and solidified through elaboration in a range of instruments. For example, participatory elements are incorporated into the Convention to Combat Desertification,³⁵ the Cartagena Protocol,³⁶ and the Paris Agreement.³⁷ These instances demonstrate a broader propagation of PERs as an international legal norm. Moreover, there are several agreements that foreground procedural matters which was key to buttressing these nascent rights, most prominently the Aarhus Convention (which is discussed in the next section). The Bali Guidelines,³⁸ on developing national legislation for procedural rights, utilised implementation recommendations to expand the Rio Declaration.³⁹ Although it is soft IL, the guidelines were drawn on in the Inter-American Court of Human Rights Advisory Opinion on the Environment and Human Rights⁴⁰ which itself provided a strong clarification of procedural obligations,⁴¹ including a broadening of what constitutes environmental information⁴² and removal of the need to prove a personal or direct interest.⁴³ These interplays illustrate how advances in this area are achieved through an iterative and reinforcing process with different mechanisms enabling a gradual expansion and

³² Rio Declaration (n 2) Principle 10.

³³ *Ibid.* Art. 1.

³⁴ Jerry Z. Li, 'Introduction to and Comments on the Aarhus Convention' (2004) 3 Hum Rts 32; May and Daly (n 9) 33; Uzuazo Etemire, 'Insights on the UNEP Bali Guidelines and the Development of Environmental Democratic Rights' (2016) 28 JEL 395.

³⁵ United Nations Convention to Combat Desertification in those Countries Experiencing Serious Drought and/or Desertification, Particularly in Africa (Adopted 14 October 1994, entered into force 26 December 1996) 1954 UNTS 3 Arts. 5 (d), 10 (2)(f), and 19.

³⁶ Cartagena Protocol on Biosafety to the Convention on Biological Diversity (adopted 29 January 2000, entered into force 11 September 2013) 2226 UNTS 208 Art. 23; Etemire (n 34) 395.

³⁷ UN Framework Convention on Climate Change, Paris Agreement (12 December 2015) UN Doc FCCC/CP/2015/L.9/Rev1, (Paris Agreement), Preamble, Art. 12.

³⁸ United Nations Environment Programme, Guidelines for the development of national legislation on access to information, public participation and access to justice in environmental matters UN Doc UNEP/GCSS.XI/11 (3 March 2010) (Bali Guidelines).

³⁹ Etemire (n 34) 396; Olmos Giupponi (n 14) 138.

⁴⁰ Inter-American Court of Human Rights (IACtHR), Advisory Opinion Oc-23/17 (15 November 2017) Requested by the Republic of Colombia, The Environment and Human Rights, para. 220.

⁴¹ *Ibid.* paras. 211-241.

⁴² *Ibid.* para. 214.

⁴³ *Ibid.* paras. 54, 59, 219; Ricardo Abello and Walter Arevalo, 'Inter-American Court of Human Rights Advisory Opinion OC-23/17: Jurisdictional, Procedural and Substantive Implications of Human Rights Duties in the Context of Environmental Protection' (2019) 28 RECIEL 221.

consolidation of these rights. More recently, the Escazú Agreement, a landmark regional treaty to solidify PERs in Latin America and the Caribbean,⁴⁴ includes the principle of maximum disclosure, elaboration on what constitutes environmental information,⁴⁵ and clear standards for open environmental decision-making.⁴⁶ These types of agreements show how IEL can be used to provide new rights or enhance existing rights at a regional and national level.⁴⁷ The recognition that major international agreements give procedural mechanisms is noteworthy. There is a discernible pattern to further and enhance these rights illustrating a sustained appreciation for the role an empowered public can play in protecting the environment.

This genealogy of PERs illustrates a broader ‘greening’ of human rights⁴⁸ reflecting the interconnection of justice and equality with the climate emergency.⁴⁹ There is recognition that a rights-based model is important for robust environmental/climate justice.⁵⁰ Within this space, procedural rights are valued as having a distinct role. For example, the IACtHR Advisory Opinion, which examines ‘the human rights affected by environmental degradation’,⁵¹ highlights the three participatory pillars and connected them with several articles of the American Convention on Human Rights.⁵² Similarly, researchers have discussed a ‘rights turn’ in climate litigation that is using human rights as a key argument in pursuing climate emergency cases⁵³ and the increasing use of procedural approaches.⁵⁴ The overlap of human and environmental rights underpins their united role in addressing

⁴⁴ It currently has been ratified by 15 parties and signed by a further 10, UN Economic Commission for Latin America (ECLA), ‘Regional Agreement on Access to Information, Public Participation and Justice in Environmental Matters in Latin America and the Caribbean’ (ECLA, 2023) <<https://observatoriop10.cepal.org/en/treaty/regional-agreement-access-information-public-participation-and-justice-environmental-matters>> accessed 1 December 2023.

⁴⁵ Escazú Agreement (n 6) Art. 5.

⁴⁶ *Ibid.* Art. 7; Olmos Giupponi (n 14) 142.

⁴⁷ John H Knox, ‘Constructing the Human Right to a Healthy Environment’ (2020) 16 *Annu. Rev. Law Soc. Sci.* 90.

⁴⁸ *Ibid.* 84.

⁴⁹ See Stephen Humphreys, ‘Introduction: human rights and climate change’ in Stephen Humphreys (ed) *Human Rights and Climate Change* (Cambridge UP 2009) 1; Susan Mapp and Shirley Gatenio Gabel, ‘The Climate Crisis is a Human Rights Emergency’ (2019) 4 *J H R Soc. Work* 227.

⁵⁰ Mary Robinson and Tara Shine, ‘Achieving a climate justice pathway to 1.5 °C’ (2018) 8 *Nat. Clim. Change* 564.

⁵¹ IACtHR, Advisory Opinion (n 40) at para. 46.

⁵² For example, public participation in environmental decision-making is linked with the right of the public to take part in the management of public affairs as established in Article 23(1)(a) of the American Convention, Organization of American States (OAS), American Convention on Human Rights (22 November 1969) (Pact of San Jose; IACtHR, Advisory Opinion (n 40) para. 22; Abello and Arevalo (n 43) 221.

⁵³ Jacqueline Peel and Hari M Osofsky, ‘A Rights Turn in Climate Change Litigation?’ (2018) 7 *Trans. Env't. L* 37; Annalisa Savaresi and Joana Setzer, ‘Rights-Based Litigation in the Climate Emergency: Mapping the Landscape and New Knowledge Frontiers’ (2022) 13 *JHRE* 7.

⁵⁴ Geert van Calster, ‘Significant EU Environmental Cases: 2021–2022’ (2023) 35 *JEL* 252.

significant challenges facing communities and the natural world. PERs have a particular function in achieving these larger environmental goals.

The Stockholm Declaration is seen as the genesis of modern IEL.⁵⁵ Since then there has been a growing place for procedural rights to a point where state's obligations have been firmly articulated in various forms. There is an interlinked basis for these rights across global and regional instruments that are providing tools to assist individuals and groups seeking greater environmental democracy in confronting some of humanity's greatest challenges. Despite the enhancement of these rights major implementation gaps remain. A discussion of the Aarhus Convention and its compliance functions helps indicate the impact of IL in this area.

Aarhus Convention

The Aarhus Convention (Aarhus) embodies many of the points from the previous section as a prominent treaty which guaranteed the three pillars of environmental democracy. It has 47 parties, 46 countries in Europe and Central Asia and the EU, and has been in place for over twenty years. Several direct and indirect mechanisms encourage and enforce assent. It is a good example of how greater compliance can be achieved through different instruments.

Aarhus focuses on PERs as means of contributing to 'the right of every person of present and future generations to live in an environment adequate to his or her health and well-being'.⁵⁶ This emphasis has enabled a wide definition of obligations and proactive mechanisms that empower both individuals and NGOs to participate in deliberative systems, albeit with defined restrictions.⁵⁷ It created new processes for involvement through aspects such as no requirement to demonstrate a violation to exercise the rights.⁵⁸ Moreover, this progressive orientation has positioned it as a model for enabling public participation in national and international law.⁵⁹ Aarhus champions PERs establishing a new standard for the European and Central Asian area and beyond.

⁵⁵ Poustie (n 24) para. 7.

⁵⁶ Aarhus Convention (n 7) Art. 1.

⁵⁷ Poustie (n 24) para. 140; Mason (n 14) 10; Dellinger (n 11) 338; Sean Whittaker, *The Right of Access to Environmental Information* (Cambridge UP 2021) 37.

⁵⁸ Stephen Davies 'In Name or Nature? Implementing International Environmental Procedural Rights in the Post-Aarhus Environment: A Finnish Example' (2007) 9 ELR 190; Birgit Peters, 'Unpacking the Diversity of Procedural Environmental Rights: The European Convention on Human Rights and the Aarhus Convention' (2018) 30 JEL 16.

⁵⁹ Susan Rose-Ackerman and Achim A. Halpaap, 'The Aarhus Convention and the Politics of Process: The Political Economy of Procedural Environmental Rights' (2002) 20 Rsch in L & Econ. 28; Marc Pallemmaerts, 'The Aarhus Convention: Engaging the disenfranchised through the institutionalisation of procedural rights?' in JF Green and WB Chambers (eds) 2007, *Politics of Participation in Sustainable Development Governance* (United Nations UP 2007) 179; Whittaker (n 57) 33.

Aarhus has a range of enforcement mechanisms that help implement its obligations and advance environmental justice. These illustrate the effect that an international law instrument can have on national policies and practices. Firstly, the Aarhus Convention Compliance Committee (ACCC) examines submissions made by the public, by parties, and by the Secretariat.⁶⁰ The facility for individuals and or organisations to bring communications is a distinct aspect of Aarhus.⁶¹ It is also the primary means by which the ACCC receives submission – as of December 2024, there have been 211 communications from the public,⁶² three submissions from parties,⁶³ and no referrals from the Secretariat.⁶⁴ It conducts formal hearings and makes recommendations which need to be endorsed by the Meeting of Parties (MoP), with the Committee monitoring the implementation process by engaging with the party concerned.⁶⁵ Studies of the ACCC's findings show that in the vast majority of cases there was acceptance of obligations and evidence of improvement in national practices.⁶⁶ Moreover, they also have an interpretive position to enable examination of the principles and their application, such as considering what it means for access to justice to be not prohibitively expensive.⁶⁷ They argue for a contextual reading of this principle; for example, a proposed automatic cap of £25,000 on Aarhus related cases in the UK for individuals⁶⁸ was rejected as the average annual salary £25,543⁶⁹ and in ACCC/C/2011/57 Denmark, a cost of DKK 3,000 (€400) for a NGO to appeal administrative decisions was found to be in breach of Article 9.⁷⁰ While the recommendations are soft law, these present a clear and evolving jurisprudence concerning the application of the Convention. The ACCC is valued as a key

⁶⁰ United Nations Economic Commission for Europe (UNECE), Decision I/7 on the Review of Compliance (2 April 2004) ECE/MP.PP/2/Add.8, IV-VI; UNECE, Guide to the Aarhus Convention Compliance Committee (UNECE 2018), 2-5.

⁶¹ Marjan Peeters and Sandra Nóbrega, 'Climate Change-related Aarhus Conflicts: How Successful are Procedural Rights in EU Climate Law?' (2014) 23 RECIEL 362.

⁶² UNECE, 'Communications from the public' (UNECE 2023) <

<https://unece.org/env/pp/cc/communications-from-the-public>> accessed 12 January 2025.

⁶³ Including a submission by Albania concerning its own compliance, UNECE, 'Submissions by Parties' (UNECE 2023) <<https://unece.org/env/pp/cc/submissions-parties>> accessed 12 January 2025.

⁶⁴ UNECE, 'Referrals by the Secretariat' (UNECE 2023) < <https://unece.org/env/pp/cc/referrals-secretariat>> accessed 12 January 2025.

⁶⁵ UNECE, Guide (n 60) 7-8.

⁶⁶ Gor Samvel 'Non-Judicial, Advisory, Yet Impactful? The Aarhus Convention Compliance Committee as a Gateway to Environmental Justice' (2020) 9 Trans. E L 229.

⁶⁷ Aarhus Convention (n 7) Art. 9(4).

⁶⁸ Department of Environment, Food and Rural Affairs (UK), Follow-up on communications ACCC/C/2008/23, ACCC/C/2008/27 and ACCC/C/2008/33 (15 February 2010).

⁶⁹ UNECE, MoP Compliance Committee Thirty-first meeting, ACCC/C/2008/27 United Kingdom, Report of the Compliance Committee on its thirty-first meeting Addendum Compliance by the United Kingdom of Great Britain and Northern Ireland with its obligations under the Convention (24 August 2011) ECE/MP.PP/C.1/2011/2/Add.9, IV. 26(b).

⁷⁰ UNECE, MoP Compliance Committee Thirty-eight meeting, ACCC/C/2011/57 Denmark, Findings and recommendations with regard to communication ACCC/C/2011/57 concerning compliance by Denmark (16 July 2012) ECE/MP.PP/C.1/2012/7, 55-57.

mechanism that fosters compliance through findings endorsed by the parties and dialogic monitoring.

Next, the Convention's role as a regional agreement means that individuals and groups can progress cases to arenas such as the Court of Justice of the European Communities, and that these Courts can draw on it in interpreting PERs. There are numerous instances where Aarhus added to the European Court of Human Rights' (ECtHR) environmental jurisprudence.⁷¹ For example, in *Taşkin v Turkey*, it recognised the Convention as providing an international standard for these rights and their interpretation;⁷² and *Demir and Baykara v Turkey*⁷³ established environmental participatory principles as a right under European Convention on Human Rights Article 8.⁷⁴ However, there are equally instances of others judgments with divergent interpretations which can undermine coherent and effective environmental rights.⁷⁵ The ECtHR and other courts have narrower remits compared to Aarhus only accepting cases where there is a direct threat to a right.⁷⁶ Overall, access to justice, itself a procedural right, has clarified and strengthened the application of Aarhus. It has also enabled the establishment of new international standards.

Thirdly, having the EU as a party has significantly improved its implementation capacity. Aarhus is a mixed agreement as both the EU and all member states are parties⁷⁷ making it 'an integral part of the legal order of the European Union.'⁷⁸ Procedural aspects have become part of primary EU Law which means they have legal effect in all member states.⁷⁹ This provides a robust framework to reinforce the enactment of the Aarhus across the Union. Nonetheless,

⁷¹ Orla Kelleher, 'Systemic Climate Change Litigation, Standing Rules and the Aarhus Convention: A Purposive Approach' (2022) 34 JEL 110.

⁷² This finding was also significant as Turkey is not a party to the Convention; *Taşkin and others v Turkey*, App No 46117/99 (ECtHR, 10 November 2004), para. 99.

⁷³ *Demir and Baykara v Turkey*, App No 34503/97 (ECtHR, 12 November 2008), para. 83; Alan Boyle, 'Human Rights and the Environment: Where Next?' (2012) 23 EJIL 624.

⁷⁴ *European Convention for the Protection of Human Rights and Fundamental Freedoms, as amended by Protocols Nos. 11 and 14*, 4 November 1950, ETS 5, Art. 8.

⁷⁵ Áine Ryall, 'The Aarhus Convention: Standards for access to justice in environmental matters' in SJ Turner, DL Shelton, J Razzaque, O McIntyre and JR May (eds) *Environmental Rights: The Development of Standards* (Cambridge UP 2019) 125; Leslie-Anne Duvic-Paoli 'The Status of the Right to Public Participation in International Environmental Law: An Analysis of the Jurisprudence' (2012) 23 Yb Int. Env. L 80.

⁷⁶ Peters (n 58) 9.

⁷⁷ Áine Ryall 'Access to Environmental Information in Ireland: Implementation Challenges' (2011) 23 JEL 45. Áine Ryall 'The Relationship between Irish Law and International Environmental Law: A Study of the Aarhus Convention' (2018) 41 Dublin U LJ 163; Peeters and Nóbrega (n 61) 356; Ryall (n 75) 125.

⁷⁸ *Lesoochránárske zoskupenie VLK v Ministerstvo životného prostredia Slovenskej republiky* C-240/09, ILEC 016 (CJEU 2011); Kelleher (n 71) 115.

⁷⁹ For example: Directive 2003/35/EC of the European Parliament and of the Council of 26 May 2003 providing for public participation in respect of the drawing up of certain plans and programmes relating to the environment and amending with regard to public participation and access to justice Council Directives 85/337/EEC and 96/61/EC, [2003] OJ L156/17; Peters (n 58) 7; Squintani and Perlaviciute (n 23) 138.

there still are shortcomings. The principle of access to justice is within each member states purview to implement ‘resulting in great disparities from one legal order to another.’⁸⁰ While the integration of a regional treaty into the binding legal architecture of a regional body cannot be applied to all circumstances, it nonetheless shows how a commitment to applying intentional environmental law can be achieved.

Aarhus is seen as one of the strongest manifestations of PERs in IL. Its purpose and impact are underpinned by a range of compliance mechanisms that have helped develop the meaning and employment of these rights across and beyond the 47 parties. This feature highlights the significant duty of treaty bodies and courts to locate participatory approaches within both evolving legal standards and the rapidly changing environmental and climate contexts.⁸¹ An examination of how the Convention has been applied in Ireland will help illustrate the role of IEL in effecting national policy and administration.

Ireland and the Aarhus Convention

This section elaborates on how Aarhus, as an IEL instrument, has affected environmental deliberative systems in Ireland. The Irish example encapsulates many of the issues concerning international human rights law with the gap between obligations and delivery by state bodies and public authorities.⁸² While the commitments and systems appear suitable on paper, in practice there are multiple issues around the capacity of public bodies to adhere to these standards, cultures of non- and lacklustre compliance, and poor public awareness.⁸³ This section charts a selection of the ways in which these matters have been considered by civil society, courts, and the ACCC to provide a clear picture of how IEL can be appreciated and deployed to improve environmental outcomes.

Ireland has a varied record in implementing Aarhus. The situation started poorly with the state taking fourteen years to ratify the agreement - making it one of the last countries to do so. Successive governments attributed the delay to making the necessary legislative changes

⁸⁰ Jan Darpo, 'Effective Justice - Synthesis Report on the Study on the Implementation of Articles 9.3 and 9.4 of the Aarhus Convention in the Member States of the European Union' (2014) 59 Scand. Stud L 351; see also Suzanne Kingston *et al.* 'Europe's nature governance revolution: harnessing the shadow of heterarchy' (2022) 22 Int. Env. Agreements 796.

⁸¹ Peters (n 58) 8.

⁸² For a discussion of the implementation gap see: Xinyuan Dai, "The 'Compliance Gap' and the Efficacy of International Human Rights Institutions" in Thomas Risse, Stephen C Ropp and Kathryn Sikkink (eds) *The Persistent Power of Human Rights: From Commitment to Compliance* (Cambridge UP 2013) 86.

⁸³ Hough, Doran and Brennan (n 22) 21.

before ratifying.⁸⁴ Although the hold-up was repeatedly criticised by environmental NGOs.⁸⁵ Additionally, Ireland has a dualist legal system, as under the Irish Constitution IL does not become domestic law until it is legislated for,⁸⁶ making implementation more complex.⁸⁷ Several court cases have elaborated on this point showing how Aarhus must be provided for in national law or has to be incorporate into EU law to be enforceable in Ireland.⁸⁸ This situation illustrates the different structural hurdles that impact individuals and groups being able to exercise their rights under Aarhus.

Ratification is just the initial step. Only then does the state become a duty bearer. Evaluation of its performance in this regard demonstrates differing assessments. Unsurprisingly, the state argues that it is making comprehensive efforts, as outlined in the National Implementation Report.⁸⁹ Also, the government continually expresses that it is operating within the Convention's requirements.⁹⁰ In contrast NGOs and researchers have highlight numerous issues including, the failure of public bodies to appreciate their obligations and to properly instil cultures of transparency and cooperation,⁹¹ numerous barriers to participation specifically by marginalised communities,⁹² and shortcomings in the implementation plan.⁹³ The complexity and lack of transparency around planning law is one of the most prominent obstacles.⁹⁴ Different evaluations are inevitable with governments defending their actions and civil society actors calling for more progressive measures. However, NGOs and others are pointing out the practical implications for people which ultimately is where the treaty is aimed. Irish case law in this area varies with instances of planning legislation not complying

⁸⁴ For example, Dáil Éireann debate - Tuesday, 14 Feb 2006, Vol. 614 No. 4 Written Answer Question 164; Dáil Éireann debate - Wednesday, 6 Apr 2011 Vol. 729 No. 3 Other Questions 14.

⁸⁵ For example, Environmental Pillar, 'After 14 years of campaigning, the people of Ireland finally have the same environmental human rights as the rest of Europe' (environmental Pillar 21 June 2012) <<http://newsite.environmentalpillar.ie/2012/06/21/after-14-years-of-campaigning-the-people-of-ireland-finally-have-the-same-environmental-human-rights-as-the-rest-of-europe/>> accessed 5 December 2023; Ryall (n 77) 166.

⁸⁶ Constitution of Ireland, Art. 29.6.

⁸⁷ Ryall (n 77) 173.

⁸⁸ *McCoy & anor v Shillelagh Quarries Ltd & ors* [2015] IECA 28, paras. 11-15; *Byrne (a minor) -v- Ó Conbhui & Anor* [2018] IECA 57, paras. 29-32; Ryall (n 77) 178.

⁸⁹ Department of the Environment, Climate and Communications (Ireland), Implementation report (25 May 2021) Format for the Aarhus Convention implementation report in accordance with Decision IV/4 (ECE/MP.PP/2011/2/Add.1).

⁹⁰ For example: Dáil Éireann Debate, Thursday - 1 December 2022 (Planning Issues) Questions 85; Dáil Éireann Debate, Tuesday - 28 February 2023 (Departmental Legal Cases) Questions 151.

⁹¹ Hough, Doran and Brennan (n 22) 4.

⁹² Sadhbh O'Neill *et al.*, *Environmental Justice in Ireland: Key dimensions of environmental and climate injustice experienced by vulnerable and marginalised communities* (DCU 2022) 5.

⁹³ *Attracta Uí Bhroin, Consultation response to ACCC on Ireland's Proposed Action Plan to comply with MoP Decision VII/8i* (Irish Environmental Network 2022) 3.

⁹⁴ Yvonne Scannell 'The Catastrophic Failure of the Planning System' (2011) 33 Dublin ULJ 393.

with the EIA Directive,⁹⁵ or with matters being referred to the Court of Justice of the European Union.⁹⁶ Additionally, the influenced Aarhus can be seen in the Irish courts with 255 judgments in the superior courts including some reference to the convention.⁹⁷ Litigation in this area is analytically double-sided as it shows potential breaches of the Convention, while also demonstrating how it can be deployed in cases to seek justice or remedy. While implementation is a complicated area, it is seen that Aarhus is having a ‘significant impact on Irish environmental law, albeit primarily in an indirect way, through EU law’.⁹⁸ This overview of different assessments of Ireland’s engagement with it indicates how the state has a mixture of success and deficiencies which are common in applications of IL.

The ACCC is another barometer of the state’s performance. There have been several communications to the Committee regarding Ireland: seven are still open, three were deemed non-admissible, and there are three findings of non-compliance.⁹⁹ In terms of the latter, the findings concluded that: the state failed to ensure public participation to extend the duration of a quarry,¹⁰⁰ the public was not provide with all relevant environmental information concerning the National Renewable Energy Action Plan,¹⁰¹ and issues were identified with access to environmental information and the review mechanisms.¹⁰² The third finding is particularly important as it identifies systemic issues around obtaining information and a timely appeals process. Right to Know, an NGO focused on transparency, took the case to highlight these issues,¹⁰³ although they had raised numerous other points in their

⁹⁵ *An Taisce v An Bord Pleanála, An Taisce v An Bord Pleanála & Ors, Sweetman v An Bord Pleanála & Ors* [2020] IESC 39, para. 166.

⁹⁶ *Save Roscam Peninsula CLG, Sophie Cacciaguidi-Fahy, Martin Fahy and Philip Harkin Applicants v An Bord Pleanála, Galway City Council, The Minister for Housing, Local Government and Heritage, Ireland and The Attorney General, and Alber Developments Limited Notice Party* [2022] IEHC 426 para. 64; *Friends of the Irish Environment CLG Applicants v The Government of Ireland, Ireland and the Attorney General* [2020] IESC 49, para. 13.

⁹⁷ A search on the Courts Service judgments page showed 255 cases from the High Court, Court of Appeal, or Supreme Court that featured the Aarhus Convention: Courts Service, ‘Judgments’ (Courts Service 2023) <<https://www.courts.ie/judgments>> accessed 12 January 2025.

⁹⁸ Ryall (n 77) 166.

⁹⁹ UNECE, Communications (n 62).

¹⁰⁰ UNECE MoP Compliance Committee Sixty-fifth meeting, Findings and recommendations with regard to communication ACCC/C/2013/107 concerning compliance by Ireland (8 November 2019) 94.

¹⁰¹ UNECE MoP Compliance Committee Seventy-second meeting, Findings and recommendations with regard to communication ACCC/C/2014/112 concerning compliance by Ireland (21 October 2021) 166.

¹⁰² UNECE MoP Compliance Committee Seventieth meeting, Findings and recommendations with regard to communication ACCC/C/2016/141 concerning compliance by Ireland (16 April 2021) 133.

¹⁰³ Right To Know, ‘Draft conclusions from Right To Know complaint over systematic delays in access to information on the environment requests are published’ (Right to Know 12 August 2020) <<https://www.righttoknow.ie/2020/08/12/draft-conclusions-from-right-to-know-complaint-over-systematic-delays-in-access-to-information-on-the-environment-requests-are-published/>> accessed 3 December 2023; the NGO has also brought cases against the Government and Commissioner for Environmental Information on similar issues, for example: *Right To Know CLG v An Taoiseach and Minister For Communications, Climate Action*

communication which the Committee rejected.¹⁰⁴ In their report on the state's compliance, the ACCC welcomed the 'swift efforts taken to date' but expressed concerns that the requirements 'not yet fulfilled'.¹⁰⁵ The interactions between Ireland and the Committee illustrate a range of compliance issues but also show how the state is meeting many requirements and making efforts to address deficiencies, albeit not as speedily as the ACCC or civil society would prefer.¹⁰⁶ This system also demonstrates the capacity of individuals and NGOs to hold the state to account and to push for greater environmental democracy. This is a nuanced situation, with political considerations as well as legal dimensions.

A brief focus on Ireland and Aarhus helps unpack the ways in which IEL can affect a national context. Comparably to other parties, the Irish state both adheres to and deviates from Aarhus. The same point can be made for other IEL procedural obligations. The compliance mechanisms have a clear role in pushing Ireland and other parties towards greater conformity. The empowerment of the public to make communications is a key strength of Aarhus which becomes a self-reinforcing participatory process. The juncture of IL and national structures is complex but in the case of Ireland it exhibits how procedural rights can be advanced. This matter and other key points will now be examined.

Discussion

PERs are increasing in significance as tools available to individuals and communities to advance greater transparency and accountability around environmental decision-making. This section adds to the discussion of these rights through an examination of three points which crosscut the items already considered: procedural rights in IL as international human rights, the importance of a focus on compliance, and the impact of IEL through environmental democratic mechanisms. Firstly, IEL has been central to the articulation and advancement of procedural environmental rights. Since the Stockholm and Rio Declarations, these tools have been elaborated and strengthened to enable individuals and groups to participate in deliberative processes and pursue justice concerning environmental themes. These are not just stand-alone aspects of IL but have been coupled to international human rights. There is a

and Environment [2018] IEHC 372; *Right to Know CLG v Commissioner for Environmental Information* [2021] IEHC 46.

¹⁰⁴ UNECE MoP Compliance Committee Seventieth meeting (n 102) paras. 87, 92, 97, 123, 129, 130, 131.

¹⁰⁵ UNECE MoP Seventh session, Report of the Compliance Committee on compliance by Ireland Part II: Progress by the Party concerned to implement the Committee's findings and recommendations on communication ACCC/C/2016/141 concerning the compliance of Ireland (20 October 2021) para. 28.

¹⁰⁶ See Irish Environmental Network, Re. Communication ACCC/C/2016/141 and further comment on the Party Concerned's progress toward compliance (19 July 2021).

foundational recognition that environmental and human rights can and should work hand-in-hand helping to reinforce and advance each other.¹⁰⁷ Moreover, there is the inescapable reality that a stable environment is a necessity for human rights more broadly.¹⁰⁸ Although this point reinforces the reality that PERs are procuratorial rights which remain anthropocentric, a criticism that is raised in this context.¹⁰⁹ Environmental democracy welds long-established civil and political rights, including the rights to life, health, and family life, with a new focus on the climate and biodiversity crisis.¹¹⁰ This new set of legal tools helps people exercise and assert their pre-existing human rights in the context of larger and worsening environmental issues. However, it is important to understand that PERs, rather than being a uniform process, are articulated in diverse ways across global and regional agreements.¹¹¹ This patchwork of entitlements is an evolving arena. Nonetheless, they have become established and proliferated through successive international agreements that blend human and environmental rights. IEL has been a key arena in these developments. Implementation, however, primarily remains a national matter.

This leads to the second point: the role of compliance and engagement. While commitments from state parties are key to adherence, mechanisms, such as the ACCC and regional courts, remain central to ensure that the text of IEL agreements are translated into policy and practices benefiting individuals and communities. Environmental democratic advancements have facilitated the involvement of diverse actors, the IL system still retains its ‘Westphalian’ focus on the nation-state as the primary duty bearer.¹¹² Strong and clear systems are required to highlight and address human rights implementation gaps, alongside the practical application in terms of state planning, developments, and operating cultures. Aarhus shows how a committee of experts supported by an endorsement of the parties offers a robust framework to secure greater observance of international obligations. The role for parties in these decisions and the ACCC’s dialogic approach helps foster assent. Additionally, international courts are reinforcing and interpreting PERs as a strand of environmental/climate litigation.¹¹³ For example, the ECtHR judgement in *Öneryildiz v*

¹⁰⁷ See *Claude Reyes et al. v Chile* (Judgment: Merits, Reparations and Costs) Inter-American Court of Human Rights Series C No 151 (19 September 2006) paras. 80–86; Abello and Arevalo (n 43) 221; Knox (n 47) 90

¹⁰⁸ Davies (n 58) 190; Philippe Sands, Jacqueline Peel, with Adriana Fabra and Ruth MacKenzie, *Principles of International Environmental Law* (Cambridge UP 2018) 817.

¹⁰⁹ Margaret DeMerieux, ‘Deriving Environmental Rights from the European Convention for the Protection of Human Rights and Fundamental Freedoms’ (2001) 21 OJLS 523; Peters (n 58) 14.

¹¹⁰ Boyle (n 73) 622.

¹¹¹ Peters (n 58) 6; Olmos Giupponi (n 15) 138.

¹¹² Brunnée (n 17) 151.

¹¹³ Savaresi and Setzer (n 53) 13; van Calster (n 54) 251.

Turkey established a duty on the state to provide information about large environmental risks¹¹⁴ and the IACtHR case *Saramaka People v Suriname* strengthened the entitlement for the indigenous community to have effective participation in deliberative processes.¹¹⁵ This dimension will become more relevant with climate litigation increasingly becoming a feature of the public's response to inadequate national and international actions.¹¹⁶ There is an overlapping field of compliance mechanisms in this area. While Aarhus is a distinct example with strong accountability embedded in the convention, international courts are illustrating their role in response to pressing environmental matters. Adherence to IEL varies in this area and many others, it is necessary to have strong engagement and compliance measures to help ensure states fulfil their obligations.

Thirdly, procedural rights have a distinct impact by empowering people to take these cases and employ other tools to push for greater accountability and improved environmental programmes. They create a new capacity for NGOs, groups, and citizens to push for environmental protection and improvement.¹¹⁷ This approach values people as custodians of their local settings, sources of situated knowledge and solutions that can work with public bodies and others to help address massive collective environmental challenges.¹¹⁸ For example, in Ireland this facilitates forms of public enforcement where communities can support under-resourced local authorities.¹¹⁹ Furthermore, there are new opportunities to build on and enhance existing transnational solidarities.¹²⁰ PERs enable new types of involvement by civil society actors that already have demonstrated their value in leading to better environment outcomes. These rights are facilities for participation and the capacity to influence environmental decision-making, but there is no guarantee that people will avail of them. It is important that states also enact their commitments to inform and educate communities about their rights and capacities to deploy them.¹²¹ Although substantial rights can overshadow procedural rights, PERs have a clear and strong function in pursuing environmental justice. These instruments offer a range of processes and tools for people,

¹¹⁴ *Öneryildiz v Turkey* App No 48939/99 (ECtHR 30 November 2004), paras. 90, 108.

¹¹⁵ *Case of the Saramaka People v Suriname*, IACtHR Series C No 172 (28 November 2007), paras. 129, 133; Lisa Mardikian, 'The Right to a Healthy Environment Before the Inter-American Court of Human Rights' (2023) 72 Int. & Comp. LQ 954.

¹¹⁶ See Pau de Vilchez and Annalisa Savaresi, 'The Right to a Healthy Environment and Climate Litigation: A Game Changer?' (2021) 32 Yearb. IEL 3.

¹¹⁷ Whittaker (n 57) 36.

¹¹⁸ Steele (n 11) 441.

¹¹⁹ Yvonne Scannell, 'Public Participation in Environmental Decision-Making in Ireland' in Gyula Bándi (ed) *Environmental democracy and law: public participation in Europe* (Europa Law Publishing 2014) 216

¹²⁰ Weaver (n 1) 209.

¹²¹ Li (n 34) 32; López-Cubillos *et al.* (n 11) 7.

organisations, and transnational networks to achieve greater transparency and better decision-making.

IEL is generating new modes of deliberative environmental democracy. Multiple types of evidence indicate the positive effects of procedural rights, albeit with potential for people to engage with these processes more. There has been a gradual solidification of these entitlements and accompanying compliance structures which assists people and organisations to pursue better environmental plans and practices.

Conclusion

This paper has examined the role of PERs in IL and their impact in different settings. Environmental democracy has developed over the past fifty years through codification in international agreements that have emphasised the importance of publicly available environmental information, opportunities for public participation, and access to reviews and justice. These rights are significant in themselves while also being important to supporting substantive environmental rights and improving policies and decisions with environmental impacts. A strong commitment from state parties to fulfil their obligations and robust compliance architectures are necessary to address specific failures and systemic implementation gaps. The case of Ireland demonstrates how a state has simultaneous improvements and shortcomings in meeting its duty. Overall, the procedural rights provided for in IEL are being solidified as structures to improve environmental decision-making and, subsequently, they are having significant impacts across different jurisdictions.

Procedural rights have been an aspect of IEL since the Stockholm Declaration, but through instruments, such as the Aarhus Convention and the Escazú Agreement, they have gained a distinct robust position. This speaks to a larger movement that values environmental democracy as bringing a public focus and international solidarity to enhance environmental solutions. This is apt given the significant impact environmental damages and harms have on the public. This highlights areas for further research and consideration. There is scope for legal and environmental scholars to continually assess the impact of these evolving rights. This is developing and shifting space in which groups are using these tools to combat environmental harmful activities and to push for greater action on local and global scales, most obviously the climate crisis. Accompanying studies can help catalogue and connect movements, legislation, and court judgments at national and international levels. Also, more socially oriented research should look at how people understand and are using or, indeed, not

using, these rights. PERs are intended to empower and protect communities and natural environments, but this rests on groups having the awareness and capabilities to exercise these instruments. More work in examining this will help increase appreciation for these rights and their potential to shape decision-making. The climate emergency will be one of the defining features of the coming decades and procedural environmental rights will very likely play a significant role in deliberative processes and environmental litigation.

References

Primary Sources

An Taisce v An Bord Pleanála, An Taisce v An Bord Pleanála & Ors, Sweetman v An Bord Pleanála & Ors [2020] IESC 39

Byrne (a minor) v Ó Conbhuí & Anor [2018] IECA 57

Cartagena Protocol on Biosafety to the Convention on Biological Diversity (adopted 29 January 2000, entered into force 11 September 2013) 2226 UNTS 208

Case of the Saramaka People v Suriname, IACtHR Series C No 172 (28 November 2007)

Claude Reyes et al. v Chile (Judgment: Merits, Reparations and Costs) Inter-American Court of Human Rights Series C No 151 (19 September 2006) paras. 80–86

Constitution of Ireland, Art. 29.6

Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters (Adopted 25 June 1998, entered into force 30 October 2001) 2161 UNTS 447 (Aarhus Convention)

Convention on the Control of Transboundary Movement of Hazardous Wastes and Their Disposal of (22 March 1989) 1673 UNTS 126

Declaration of the United Nations Conference on the Human Environment (16 June 1972) UN Doc. A/CONF/48/14/REV.1 (Stockholm Declaration)

Demir and Baykara v Turkey App No 34503/97 (ECtHR, 12 November 2008)

Directive 2003/35/EC of the European Parliament and of the Council of 26 May 2003 providing for public participation in respect of the drawing up of certain plans and programmes relating to the environment and amending with regard to public participation and access to justice Council Directives 85/337/EEC and 96/61/EC, [2003] OJ L156/17

European Convention for the Protection of Human Rights and Fundamental Freedoms, as amended by Protocols Nos. 11 and 14, 4 November 1950, ETS 5

Friends of the Irish Environment CLG Applicants v The Government of Ireland, Ireland and the Attorney General [2020] IESC 49

Inter-American Court of Human Rights, Advisory Opinion Oc-23/17 (15 November 2017)
Requested by the Republic of Colombia, The Environment and Human Rights

Lesoochránárske zoskupenie VLK v Ministerstvo životného prostredia Slovenskej republiky
C-240/09, ILEC 016 (CJEU 2011)

McCoy & anor -v- Shillelagh Quarries Ltd & ors [2015] IECA 28

Öneryildiz v Turkey App No 48939/99 (ECtHR 30 November 2004)

Organization of American States (OAS), American Convention on Human Rights (22
November 1969) (Pact of San Jose)

Protocol on Environmental Protection to the Antarctic Treaty (Adopted 4 Oct 1991, entered
into force 14 January 1998) UNTS 2941 (Madrid Protocol)

Regional Agreement on Access to Information, Public Participation and Justice in
Environmental Matters in Latin America and the Caribbean (Adopted 4 March 2018, entered
into force 22 April 2021) 3397 UNTS C.N.195.2018.TREATIES-XXVII.18 (Escazú
Agreement)

Right to Know CLG v Commissioner for Environmental Information [2021] IEHC 46

Right To Know CLG v An Taoiseach and Minister For Communications, Climate Action and
Environment [2018] IEHC 372

Rio Declaration on Environment and Development UN Doc, (13 June 1992)
A/CONF.151/26. Rev.1 (Rio Declaration)

Save Roscam Peninsula CLG, Sophie Cacciaguidi-Fahy, Martin Fahy and Philip Harkin
Applicants v An Bord Pleanála, Galway City Council, The Minister for Housing, Local
Government and Heritage, Ireland and The Attorney General, Respondents Alber
Developments Limited Notice Party [2022] IEHC 426

Taşkin and others v Turkey, App No 46117/99 (ECtHR, 10 November 2004)

United Nations Convention to Combat Desertification in those Countries Experiencing
Serious Drought and/or Desertification, Particularly in Africa (Adopted 14 October 1994,
entered into force 26 December 1996) 1954 UNTS 3

United Nations Environment Programme, Guidelines for the development of national legislation on access to information, public participation and access to justice in environmental matters UN Doc UNEP/GCSS.XI/11 (3 March 2010)

UN Framework Convention on Climate Change, (12 December 2015) UN Doc FCCC/CP/2015/L.9/Rev1 (Paris Agreement)

United Nations General Assembly, United Nations Conference on the Human Environment (15 December 1972) A/RES/2994

United Nations General Assembly, World Charter for Nature (28 October 1982) A/RES/37/7

Secondary Sources

Abello R and Arevalo W, 'Inter-American Court of Human Rights Advisory Opinion OC-23/17: Jurisdictional, Procedural and Substantive Implications of Human Rights Duties in the Context of Environmental Protection' (2019) 28 RECIEL 221

Bándi, G 'Introduction into the Concept of 'Environmental Democracy' in Gyula Bándi (ed) Environmental democracy and law: public participation in Europe (Europa Law Publishing 2014) 3

Bándi, G 'The Three Pillars of Environmental Democracy in a European Perspective' in Gyula Bándi (ed) Environmental democracy and law: public participation in Europe (Europa Law Publishing 2014) 39

Boyle A, 'Human Rights and the Environment: Where Next?' (2012) 23 EJIL 624

Brunnée J 'International Environmental Law and Community Interests: Procedural Aspects', in Eyal Benvenisti and Georg Nolte (eds) Community Interests Across International Law (Oxford University Press 2018) 168

Conca K, *An Unfinished Foundation: The United Nations and Global Environmental Governance* (Oxford University Press 2015)

Courts Service, 'Judgments' (Courts Service 2023) < <https://www.courts.ie/judgments> > accessed 7 December 2023

Cramer BW 'The human right to information, the environment and information about the environment: from the Universal Declaration to the Aarhus Convention' (2009) 14 CLP 73

Dai X, 'The 'Compliance Gap' and the Efficacy of International Human Rights Institutions' in T Risse, S C Ropp and K Sikkink (eds), *The Persistent Power of Human Rights: From Commitment to Compliance* (Cambridge UP 2013) 86

Dáil Éireann debate - Tuesday, 14 Feb 2006, Vol. 614 No. 4 Written Answer Question 164

Dáil Éireann debate - Wednesday, 6 Apr 2011 Vol. 729 No. 3 Other Questions 14

Dáil Éireann Debate, Thursday - 1 December 2022 (Planning Issues) Questions 85

Dáil Éireann Debate, Tuesday - 28 February 2023 (Departmental Legal Cases) Questions 151

Darpo J, 'Effective Justice - Synthesis Report on the Study on the Implementation of Articles 9.3 and 9.4 of the Aarhus Convention in the Member States of the European Union' (2014) 59 Scand. Stud L 351

Davies S, 'In Name or Nature? Implementing International Environmental Procedural Rights in the Post-Aarhus Environment: A Finnish Example' (2007) 9 ELR 190

Dellinger M, 'Ten Years of the Aarhus Convention: How Procedural Democracy Is Paving the Way for Substantive Change in National and International Environmental Law' (2012) 23 Colo J I Env L & Pol. 309

DeMerieux M, 'Deriving Environmental Rights from the European Convention for the Protection of Human Rights and Fundamental Freedoms' (2001) 21 OJLS 521

Department of the Environment, Climate and Communications (Ireland), Implementation report (25 May 2021) Format for the Aarhus Convention implementation report in accordance with Decision IV/4 (ECE/MP.PP/2011/2/Add.1)

Department of Environment, Food and Rural Affairs (UK), Follow-up on communications ACCC/C/2008/23, ACCC/C/2008/27 and ACCC/C/2008/33 (15 February 2010)

de Vilchez P and Savaresi A, 'The Right to a Healthy Environment and Climate Litigation: A Game Changer?' (2021) 32 Yb Int. Env. L 3

Duvic-Paoli LA, 'The Status of the Right to Public Participation in International Environmental Law: An Analysis of the Jurisprudence' (2012) 23 Yb Int. Env. L 80

Etemire U, 'Insights on the UNEP Bali Guidelines and the Development of Environmental Democratic Rights' (2016) 28 JEL 395

Fitzmaurice M, 'The Right of the Child to a Clean Environment' (1999) 23 S Ill U L J 614

Francioni F, 'International Human Rights in an Environmental Horizon' (2010) 21 EJIL 42

Gellers J C, Jeffords C 'Toward Environmental Democracy? Procedural Environmental Rights and Environmental Justice' (2018) 18 G. Envir. Pol. 99

Hough A, Doran P and Brennan C, *Report on Aarhus Implementation – IRELAND* (Technological University of the Shannon 2022)

Humphreys S, 'Introduction: human rights and climate change' in S Humphreys (ed) *Human Rights and Climate Change* (Cambridge UP 2009)

Irish Environmental Network, Re. Communication ACCC/C/2016/141 and further comment on the Party Concerned's progress toward compliance (19 July 2021)

Jendrośka, J. 'The substantive right to environment and the procedural environmental rights under the Aarhus Convention – Part II' (2024) 22 Op. St. Adm. 43

Kelleher O, 'Systemic Climate Change Litigation, Standing Rules and the Aarhus Convention: A Purposive Approach' (2022) 34 JEL 110

Kingston S 'Regulating Ireland's Environment In 2016: Hierarchy, Networks and Values' (2016) 56 IJ 42

Kingston S, Wang Z, Alblas E, Callaghan M, Foulon J, Daly C, and Norris D, 'Europe's nature governance revolution: harnessing the shadow of heterarchy' (2022) 22 Int. Env. Agreements 793

Knox JH, 'Constructing the Human Right to a Healthy Environment' (2020) 16 Annu. Rev. Law Soc. Sci. 79

Li JZ 'Introduction to and Comments on the Aarhus Convention' (2004) 3 Hum Rts 32

López-Cubillos S, Muñoz-Ávila L, Roberson LA, Suárez-Castro AF, Ochoa-Quintero J M, Crouzeilles R, Gallo-Cajiao E, Rhodes J, Dressler W, Martinez-Harms M J and Runting R K 'The landmark Escazú Agreement: An opportunity to integrate democracy, human rights, and transboundary conservation' (2022) 15 Cons. Letters 1

Mapp S and Gatenio Gabel S, 'The Climate Crisis is a Human Rights Emergency' (2019) 4 J H R Soc. Work 227

Mardikian L, 'The Right to a Healthy Environment Before The Inter-American Court of Human Rights' (2023) 72 Int. & Comp. LQ 945

Mason M, 'Information Disclosure and Environmental Rights: The Aarhus Convention' (2010) 10 G Env. Pol. 10

May J R and Daly E, 'The Future We Want and Constitutionally Enshrined Procedural Rights in Environmental Matters' in R V Percival, J Lin and W Piermattei (eds) *Global Environmental Law at a Cross-roads* (Edward Elgar Publishing 2014) 30

Olmos Giupponi B 'Fostering environmental democracy in Latin America and the Caribbean: An analysis of the Regional Agreement on Environmental Access Rights' (2019) 28 RECIEL 136

O'Neill S, Gleeson C, Torney D, Mercier S, Daly C, and Wall R, *Environmental Justice in Ireland: Key dimensions of environmental and climate injustice experienced by vulnerable and marginalised communities* (DCU 2022)

Orellana M 'Human Rights and International Environmental Law' in Erika Techera, Jade Lindley, Karen N. Scott, Anastasia Telesetsky (eds) *Routledge Handbook on International Environmental Law* (2nd ed Routledge 2020) 341

Pallemmaerts M, 'The Aarhus Convention: Engaging the disenfranchised through the institutionalisation of procedural rights?' in Green JF and Chambers WB (eds) 2007, *Politics of Participation in Sustainable Development Governance* (United Nations UP 2007) 179

Peel J and Osofsky HM, 'A Rights Turn in Climate Change Litigation?' (2018) 7 Trans. Env't. L 37

Peeters M and Nóbrega S, 'Climate Change-related Aarhus Conflicts: How Successful are Procedural Rights in EU Climate Law?' (2014) 23 RECIEL 362

Peters B 'Unpacking the Diversity of Procedural Environmental Rights: The European Convention on Human Rights and the Aarhus Convention' (2018) 30 JEL 1

Poustie M, 'Environment' in Niall Whitty (ed) *The Laws of Scotland: Stair Memorial Encyclopaedia* (Re-issue, Butterworths Lexis-Nexis, 2007) para. 7

Razzaque J 'Information, Public Participation and Access to Justice in Environmental Matters' in Erika Techera, Jade Lindley, Karen N. Scott, and Anastasia Telesetsky (eds) *Routledge Handbook on International Environmental Law* (2nd ed Routledge 2020) 58

Right To Know, 'Draft conclusions from Right To Know complaint over systematic delays in access to information on the environment requests are published' (Right to Know 12 August 2020) <

<https://www.righttoknow.ie/2020/08/12/draft-conclusions-from-right-to-know-complaint-over-systematic-delays-in-access-to-information-on-the-environment-requests-are-published/>> accessed 3 December 2023

Robinson M and Shine T, 'Achieving a climate justice pathway to 1.5 °C' (2018) 8 Nat. Clim. Change 564

Rose-Ackerman S and Halpaap AA, 'The Aarhus Convention and the Politics of Process: The Political Economy of Procedural Environmental Rights' (2002) 20 *Rsch in L & Econ.* 28

Ryall Á 'Access to Environmental Information in Ireland: Implementation Challenges' (2011) 23 *JEL* 45

Ryall Á 'The Relationship between Irish Law and International Environmental Law: A Study of the Aarhus Convention' (2018) 41 *Dublin U LJ* 163

Ryall Á, 'The Aarhus Convention: Standards for access to justice in environmental matters' in Turner S J, Shelton DL, Razzaque J, McIntyre O and May JR (eds) *Environmental Rights: The Development of Standards* (Cambridge UP 2019) 116

Samvel G, 'Non-Judicial, Advisory, Yet Impactful? The Aarhus Convention Compliance Committee as a Gateway to Environmental Justice' (2020) 9 *Trans. E L* 229

Sands P, Peel J, with Fabra A and MacKenzie R, *Principles of International Environmental Law* (Cambridge UP 2018)

Savaresi A and Setzer J, 'Rights-Based Litigation in the Climate Emergency: Mapping the Landscape and New Knowledge Frontiers' (2022) 13 *JHRE* 7

Scannell Y, 'The Catastrophic Failure of the Planning System' (2011) 33 *Dublin ULJ* 393

Scannell Y, 'Public Participation in Environmental Decision-Making in Ireland' in Gyula Bándi (ed) *Environmental democracy and law: public participation in Europe* (Europa Law Publishing 2014) 193

Squintani L and Perlaviciute G, 'Access to Public Participation: Unveiling the Mismatch between what Law Prescribes and what the Public Wants' in Marjan Peeters and Mariolina Eliantonio (eds) *Research Handbook on EU Environmental Law* (Edward Elgar Publishing 2020)

Steele J, 'Participation and Deliberation in Environmental Law: Exploring a Problem-solving Approach' (2001) 21 O.J.L.S. 415

Uí Bhroin A, *Consultation response to ACCC on Ireland's Proposed Action Plan to comply with MoP Decision VII/8i* (Irish Environmental Network 2022)

UNECE, Decision I/7 on the Review of Compliance (2 April 2004) ECE/MP.PP/2/Add.8

UNECE MoP Compliance Committee Thirty-first meeting, ACCC/C/2008/27 United Kingdom, Report of the Compliance Committee on its thirty-first meeting Addendum Compliance by the United Kingdom of Great Britain and Northern Ireland with its obligations under the Convention (24 August 2011) ECE/MP.PP/C.1/2011/2/Add.9

UNECE MoP Compliance Committee Thirty-eight meeting, ACCC/C/2011/57 Denmark, Findings and recommendations with regard to communication ACCC/C/2011/57 concerning compliance by Denmark (16 July 2012) ECE/MP.PP/C.1/2012/7

UNECE, Guide to the Aarhus Convention Compliance Committee (UNECE 2018)

UNECE MoP Compliance Committee Sixty-fifth meeting, Findings and recommendations with regard to communication ACCC/C/2013/107 concerning compliance by Ireland (8 November 2019)

UNECE MoP Compliance Committee Seventieth meeting, Findings and recommendations with regard to communication ACCC/C/2016/141 concerning compliance by Ireland (16 April 2021)

UNECE MoP Seventh session, Report of the Compliance Committee on compliance by Ireland Part II: Progress by the Party concerned to implement the Committee's findings and recommendations on communication ACCC/C/2016/141 concerning the compliance of Ireland (20 October 2021)

UNECE MoP Compliance Committee Seventy-second meeting, Findings and recommendations with regard to communication ACCC/C/2014/112 concerning compliance by Ireland (21 October 2021)

United Nations Economic Commission for Europe (UNECE), 'Communications from the public' (UNECE 2023) < <https://unece.org/env/pp/cc/communications-from-the-public>> accessed 12 January 2025

UNECE, 'Referrals by the Secretariat' (UNECE 2023) < <https://unece.org/env/pp/cc/referrals-secretariat>> accessed 12 January 2025

UNECE, 'Submissions by Parties' (UNECE 2023) <<https://unece.org/env/pp/cc/submissions-parties>> accessed 12 January 2025

United Nations Economic Commission for Latin America (ECLA), 'Regional Agreement on Access to Information, Public Participation and Justice in Environmental Matters in Latin America and the Caribbean' (ECLA, 2023) < <https://observatoriop10.cepal.org/en/treaty/regional-agreement-access-information-public-participation-and-justice-environmental-matters>> accessed 1 December 2023

van Calster G, 'Significant EU Environmental Cases: 2021–2022' (2023) 35 JEL 251

Weaver D, 'The Aarhus convention and process cosmopolitanism' (2018) 18 Int Environ Agreements 199

Whittaker S, *The Right of Access to Environmental Information* (Cambridge UP 2021)