
6.

Sharing Responsibility in Shaping the Future: An Environmental Perspective

Participatory Democracy - The Story of a Trojan Horse

Michael Ewing

1. The Gestation and Birth of the Aarhus Convention

2012 sees the 20th anniversary of Ireland's commitment to environmental participatory democracy in signing the "Rio Declaration on Environment and Development"²⁴ of 1992. Principle 10 of the Declaration reads:

Environmental issues are best handled with 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.

This tenth Principle was to be the beginning of a quiet human rights revolution and, as will be seen, its offspring are still evolving across the globe. The first major step in its propagation was made in Europe, where

²⁴ <http://www.unep.org/Documents.Multilingual/Default.asp?documentid=78&articleid=1163> [Accessed 10/08/2011]

European environmental NGOs, realising the significance of this aspirational statement, worked together with the governments of the UNECE²⁵ to produce an international convention in Aarhus in 2008. This raised Principle 10 from an inspirational aspiration to the status of a legally binding treaty known as the Aarhus Convention²⁶. The objective of the Convention is made absolutely clear in Article 1:

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.

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 citizens' 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.

Kofi Annan, United Nations Secretary-General (1997-2008)

Ireland was one of the 40 signatories to the Convention. At the time of writing, some 13 years later, Ireland remains the only one of the EU 27 not to ratify the Convention, denying the public on this part of the island of Ireland protection regarding the following three fundamental rights contained therein.

²⁵ United Nations Economic Commission for Europe.

<http://www.unece.org/Welcome.html> [Accessed 10/08/2011]

²⁶ The UNECE "Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters" was adopted on 25th June 1998 in the Danish city of Aarhus at the Fourth Ministerial Conference in the 'Environment for Europe' process.

<http://live.unece.org/env/pp/welcome.html> [Accessed 10/08/2011]

- The right of access to information on the environment
- The right to participate in decision-making affecting their health or the environment
- The right to have access to justice when these rights are denied or when acts and omissions by private individuals and public authorities contravene provisions of national law relating to the environment

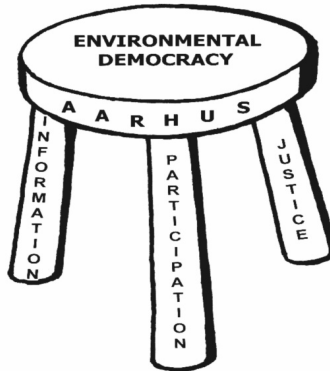
2. Participatory Democracy and the Convention

This relatively short international legal instrument places clear obligations on the Parties to ensure greater public participation in environmental issues and easy access to justice if these rights are denied. It calls for effective dissemination of environmental information as well as greater transparency in decision-making procedures. This will lead to more information being made available, which in turn will make for better decision-making and a healthier environment. This Convention marked a new chapter in preserving the environment but also in further strengthening democracy.

One simple way of visualising the convention is as a three-legged stool. All three legs need to be well-crafted and of solid construction for the stool to be of any use. Without a right to have access to information it is impossible to participate effectively in decision-making. Without easily accessible, timely, effective and inexpensive access to justice it is not possible for the public to uphold the other two rights. Without proactive dissemination of information regarding these rights, the public will not even know they exist.

Principle 10 and its daughter Convention provide a foundation for building a sustainable future for humanity. Without a well-informed and engaged public, the many serious and difficult decisions that need to be made, for example to avoid cataclysmic climate change, will never be made until it is too late. The Convention also: clearly links environmental rights and human rights; acknowledges that we owe an obligation to future

generations; establishes that sustainable development can be achieved only through the involvement of all stakeholders; links government accountability and environmental protection; and focuses on interactions between the public and public authorities in a democratic context.



The Three Legged Convention

3. The European Union, the Aarhus Convention and Ireland

The European Union ratified the Convention in 2005, and this had its knock on effect in Ireland, because in order to ratify, the EU had to put its own legislative house in order. This meant ensuring that all environmental Directives to the Member States were in line with the Convention and that it issued new Directives to prescribe for the three pillars of the Convention. Three new directives were developed: one on access to information²⁷; one on public participation²⁸, amending a

²⁷ 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
<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2003:041:0026:0032:EN:PDF> [Accessed 10/08/2011]

number of existing important environmental directives; and one providing for access to justice.²⁹ The first two Directives came into effect in 2003, the last one remains at the level of a proposal due to an apparent reluctance to complete the realisation of the Convention's potential.

It seems that although all the EU Member States and the EU itself, signed and, with the exception of Ireland, ratified the Convention, it was only later that they understood the "Trojan Horse" that they had created. Whatever about giving people on-paper rights to participate in decision-making, the idea of enabling them to enforce those rights was a step too far, and the Member States left this elegant blueprint for participatory democracy parked at front of the gates of the European Union.

However all is not lost regarding access to justice, in that the Convention itself provides a unique mechanism where any person, anywhere on the planet can approach the Aarhus Convention Compliance Committee (ACCC)³⁰, even regarding another country (i.e. not the country of residence/citizenship) as long as that country is a Party to the Convention. A "communication" is submitted to the ACCC explaining why it is thought that a specific country is in non-compliance with the Convention. This is called a "public trigger", and leads to a problem solving process where the

²⁸ 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

<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2003:156:0017:0024:EN:PDF> [Accessed 10/08/2011]

²⁹ This proposed directive grants citizens the right to initiate administrative or judicial procedures against acts or omissions that do not comply with environmental law. It is also intended to implement at the level of the Community and the Member States the third pillar of the Convention The ultimate aim is to improve the application of environmental law.

http://europa.eu/legislation_summaries/environment/general_provisions/l28141_en.htm [Accessed 10/08/2011]

³⁰ http://www.participate.org/index.php?option=com_content&view=article&id=162&Itemid=223 [Accessed 10/08/2011]

communicant and the Party in question are treated as equal voices and a resolution is sought through an exchange initially by letter and then in a public hearing or hearings where the communicant and the Party sit with the ACCC and try to get a resolution that will ensure that the Party concerned moves to become compliant. Anyone can participate in the meetings of the Committee (as observer) and even speak. The only exception is the very last stage of developing findings and recommendations when the meeting is closed to all except the Committee. The use of the “public trigger” enables advocacy on behalf of the public in Parties where local civil society is under duress. That said recent several recent cases focus on both access to the European Court of Justice and, perhaps of particular interest to Ireland considering our closely related legal systems, access to justice in the UK³¹.

4. Ireland and the Convention

So bearing in mind our membership of the EU, the Treaty of Rome and the Vienna Convention on the Law of Treaties³² how do we fare in Ireland in terms of the aspirations of the Convention and Principle 10³³? The following three sections try to answer this question.

i Access to information – the foundation for building participatory democracy

Directive 2003/4/EC was finally transposed into Irish law in 2007 as the Access to Information on the Environment Regulations SI. No 133 of 2007³⁴. These AIE Regulations provide: a mechanism more far-reaching than the Freedom of Information Acts as it includes all “public authorities”

³¹ http://doku.cac.at/accc2011_rel.pdf [Accessed 10/08/2011]

³² http://untreaty.un.org/ilc/texts/instruments/english/conventions/1_1_1969.pdf [Accessed 10/08/2011]

³³ The Treaty of Rome states that Member States are subject to EU law and to any international treaties entered into by the EU. The Vienna Convention states that signatories to Conventions must have regard to the provisions of the convention and at least not do anything to diminish its provisions.

³⁴ <http://www.attorneygeneral.ie/esi/2007/B25144.pdf> [Accessed 10/08/2011]

including semi-state bodies; access to information at little or no cost within one month of the request; a two stage administrative appeals mechanism, the first stage being at no cost the second costing €150; and the establishment of the office of the Commissioner for Environmental Information³⁵. Apart from the appeal fee, which the Commissioner herself recommends should be removed, the normative and organisational aspects of the transposition phase for implementing the Directive still require some tweaking to be in line with the spirit of the Convention. However, as is so often the case in the implementation of EU Environmental Directives, the operational phase³⁶ of implementation is very poor. Very few people, even those working in the environmental area, have been trained in their operation, or in many cases even know that these regulations and the concomitant rights exist. Such is the priority given to the proactive dissemination of information on the environment!

A number of requests for information have been denied by public authorities under these AIE regulations and some of these have been appealed to the Commissioner. One in particular is deserving of a mention here. This relates to a request for information from the Department of the Taoiseach in 2007.³⁷ Mr Gary Fitzgerald BL made a request for copies of Cabinet papers relating to a discussion in Cabinet regarding greenhouse gas emissions on the basis that Directive 2003/4/EC does not allow for exemptions when it comes to information regarding the release of emissions to the environment. This request was refused on internal appeal by the Department. The Commissioner then made a decision that the relevant information should be handed over. This was appealed by the Department to the High Court who upheld the decision of the Commissioner. The Department has now appealed this to the Supreme Court.

³⁵ <http://www.ocei.gov.ie/en/> [Accessed 10/08/2011]

³⁶ Treaty of Rome, *Article 10 EC*. *Member States shall take all appropriate measures, whether general or particular, to ensure fulfilment of the obligations arising out of this Treaty or resulting from action taken by the institutions of the Community. They shall facilitate the achievement of the Community's tasks.*

³⁷ <http://www.ocei.gov.ie/en/DecisionsoftheCommissioner/Name,8962,en.htm> [Accessed 10/08/2011]

The other worrying aspect regarding the implementation of this pillar of the Convention is the manner in which information is stored and made available. Whilst there are examples of good practice there are also sadly many poor ones. The Public are entitled to know what is happening to the environment and should be able to rely on the various public authorities to proactively, and as appropriate reactively, provide them with the timely information that they need to protect their health and the environment and in a manner that they can easily access and digest it. It is not an overly complex process to convert emissions data into easily understood live online information.

ii. Public Participation – The Heart of the Convention

At the heart of the Convention is the involvement of the public in environmental decision-making (EDM). Traditionally in Ireland, in EDM as in a lot of other areas of decision-making, the norm was either “Decide, Announce and Defend” (DAD) or perhaps the more cynical “Decide Educate, Announce and Defend” (DEAD). Here the problem holder/decision-making authority just informs the public of a previously made decision and asking for comments, which may or may not be heeded. The Convention goes well beyond this, requiring real participation at the earliest possible moment.

Article 5.4. Each Party shall provide for early public participation, when all options are open and effective public participation can take place.

The Convention provides that public participation should be timely, effective, adequate and formal, and contain information, notification, dialogue, consideration, and response.

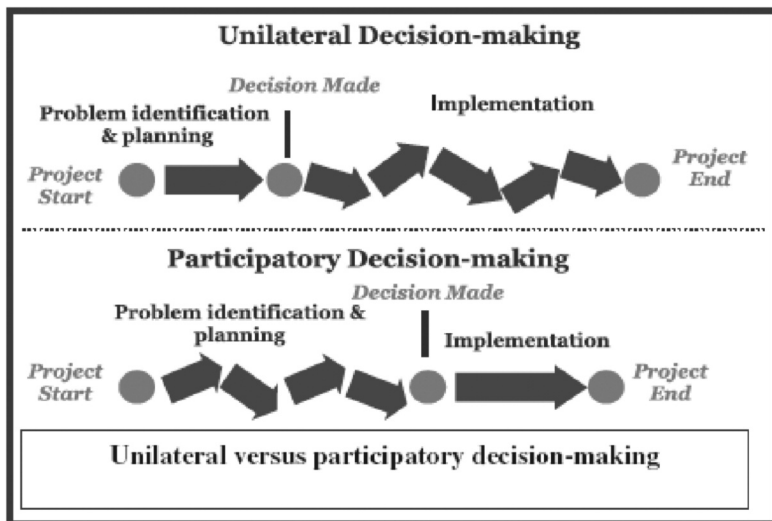
When talking about public participation in EDM it is important to understand to what we refer. Who are the ‘public’? What is ‘participation’? What are the ‘decisions’ to which it refers?

Starting with the last and working backwards, EDM refers to any process of decision-making where consequent significant environmental impacts are a possibility. This includes law making, policy making, land use

planning, strategic planning, resource management planning, licensing of industry, environmental assessment, spatial planning, budgetary decisions etc. These are all provided for in the Convention.

It should also be noted that EDM can be even more complex than decision-making on other public issues. First, environmental impacts do not respect property, jurisdiction or boundaries. Second, EDM can involve government agencies as both manager and regulator. Thirdly, environmental issues can provide especially heated value conflicts that require value trade-offs.³⁸

Given the need to overcome these complexities it is clear that participatory decision-making leads to better outputs that are more widely accepted and owned and that the process will generally be shorter and less costly as illustrated below.



³⁸ Dale M, H. English M, R. (1999). *Tools to Aid Environmental Decision-Making*. Springer. P.9.

“Participatory decision-making processes usually take much more time than unilateral decision-making. However, as illustrated in this figure, this is usually more than offset by time gains (and, by implication, effectiveness) in the implementation phase.”³⁹

Participation for sustainability is also important in recognising the value and relevance of local knowledge.⁴⁰ If properly undertaken this means that local knowledge is part of the decision making process, and weighed up with knowledge from other sources, solutions are developed relevant to that community, rather than being imposed by external experts. We have only to look at the chaos in Rosspport, Co Mayo resulting from the use of a DEAD process to see how important this is.

Simply stated then, to participate is to take part, to share and act together. But clearly, as practiced, public participation means different things to different people. In this context it is useful to look at “Arnstein’s ladder” (illustrated below). Arnstein represents the levels of public participation as the 8 rungs of a ladder and groups the rungs into three groups. The continuum stretches from going through the empty ritual of non-participation, to having the real power needed to affect the outcome of the process. Arnstein describes this first category non-participation as tactics whose real objective is “to enable power holders to educate, or cure the participants”. In the degrees of tokenism Arnstein argues that when these are “proffered by power holders as the total extent of participation, citizens may indeed hear and be heard. But they lack the power to ensure that they are heeded”.

So when the Convention requires public participation it is a process that enables the public to know that its voice has been heard and heeded, even when dealing with national as opposed to local issues. This requires the development of new and more inclusive ways of having conversations.

³⁹ Ridder, Mostert, Wolters, (2005) *Harmonising Collaborative Planning (HarmoniCOP); Learning Together to Manage Together/Improving Participation in Water Management*

⁴⁰ Fien, J., Scott, W. & Tilbury, D. (2002) *Exploring Principles of Good Practice: Learning from a metaanalysis of case studies on education within conservation across the WWF network*. Applied Environmental Education and Communication, 1: p. 153-162.

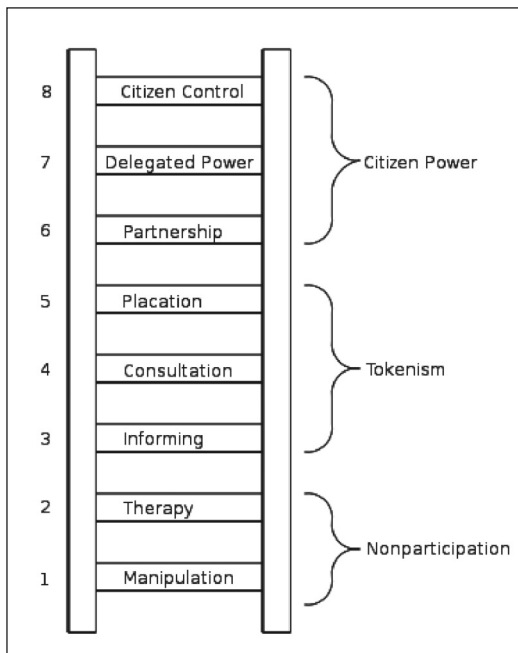


Diagram Arnstein's Ladder⁴¹

What then is 'the public'? The public is often treated as a unitary body, whereas in reality it is a collection of numerous continually shifting interests and alliances⁴², which may be in conflict with each other. The term is used as a "catch-all to describe those with an interest in a decision, other than a proponent, operator, or responsible authority".⁴³ The individuals making up a public may be involved as individuals or as members of organisations. They may become involved due to their proximity, economics, social or environmental issues, values, etc.

⁴¹ Arnstein, Sherry R. "A Ladder of Citizen Participation," JAIP, Vol. 35, No. 4, July 1969, pp. 216-224.

⁴² Ortolano, L. (1997) *Environmental Regulations And Impact Assessment*. John Wiley & Sons 402-422.

⁴³ Petts, J. and Leach, B. (2000) *Evaluating Methods for Public Participation: Literature Review*. R & D Technical Report E135. Environment Agency. UK.

By contrast, stakeholders, of which the public is one, are literally those with a stake in an issue and may include non-governmental organizations (NGO's), government or its agents, industry, individuals, communities etc. Stakeholders do not always want to be involved in an EDM process, but they have the right to know, if their interests are affected. They may want to become involved at a different stage of the EDM process.

Research by Ewing⁴⁴ and more recently by Kelly⁴⁵ and others would indicate a serious gap in understanding and trust between stakeholders. The question then must be asked as to the cause of this mistrust, and what methods can we use to diminish it. Laurian⁴⁶ finds that this lack of trust is greater in low income communities and consequently they are less likely to participate in decision-making processes. Sudulich⁴⁷ supports this assertion, and continues:

From a brief overview of the concept of democracy, it should be clear that democracy and effective public participation have not been always a natural pair. Some forms and concepts of democracy are devoid of considerations for participative elements, and participation reduced to voting has been dominant for a long time. At present, however, we are witnessing a fundamental change, both in the theoretical conceptualisation of democracy and in its practical exercise. If democracy and participation have not always gone together, it seems that today both want to be united again.

⁴⁴ Ewing, M.K. (2003). *Public Participation in Environmental Decision-making*. 80-112 <http://gdrc.org/decision/participation-edm.html> [Accessed 10/08/2011]

⁴⁵ Kelly, M. (2007). *Environmental Debates and the Public in Ireland*. IPA. 209-215

⁴⁶ Laurian, L (2004) *Public participation in environmental decision making - Findings from communities facing toxic waste cleanup*, JOURNAL OF THE AMERICAN PLANNING ASSOCIATION, 70 (1): 53-65 WIN 2004 ISSN: 0194-4363

⁴⁷ Sudulich, M,L, *Participatory Democracy. An Evolving Concept and its Potential for Youth Involvement* http://www.google.com/search?q=cache:qjmMNxevxG4J:www.tcd.ie/Political_Science/Postgrads/Laura_Sudulich/YouthPoliticalParticipation.doc+Constitution+of+NGO&hl=en&gl=ie&ct=clnk&cd=12 [Accessed 10/08/2011]

In a similar vein, following its researches, the Taskforce on Active Citizenship highlighted the following issues⁴⁸:

- A perceived democratic deficit especially but not exclusively at the local level where some communities and citizens feel powerless to influence decisions about planning, public services and other areas;
- A low level of participation in politics, community organisations, volunteering or neighbourhood activities driven by personal choice or forced economic circumstances;
- A risk of social fragmentation or rift where the better-off can buy out of the public sphere and into private health, education, leisure and gated communities etc.; and
- A lack of appropriate structures in which citizens – all citizens – can debate with others on matters of common concern; listen to other points of view; come to agreements and take appropriate action.

To be part of the decision-making process, to feel part of the establishment increases the level of people's identification with political institutions. In fact, the other main benefit generated by the participatory method in civil and political life is an increase in people's trust in institutions. A good example is the case of Porto Alegre, the first and most advanced experience of participation at local level, which resulted in a significant increase in people's confidence in the establishment. Porto Alegre's experience started in 1989, when the "Administracao Popular" implanted a form of Participative Budget; every year, an average of 45,000 people meet in several types of assemblies in order to discuss it.

Groups and organisations working together towards a decision/outcome, like relationships, go through recognisable stages⁴⁹. The early stages have been described as:

⁴⁸ The Concept of Active Citizenship.(2007)

<http://www.aughty.org/pdf/activecitizen.pdf> [Accessed 10/8/2011]

⁴⁹ Bruce Tuckman's 1965 Forming Storming Norming Performing team-development model

<http://www.businessballs.com/tuckmanformingstormingnormingperforming.htm> [Accessed 10/8/2011]

- Forming: coming together as a group, getting to know each other, deciding what the group's concerns and emphases should be.
- Storming: coming to terms with differences within the group.
- Norming: agreeing objectives, priorities, procedures, and ways of relating to each other.
- Performing: getting on with the work, without having to spend a lot of time and energy deciding what needs doing and how it should be done.

All of this is difficult enough in a group which meets frequently, or in a formal organisation. It should be no surprise that it is even more complex in a participation process when so many different interests have to find a common vision. The involvement of skilled well trained facilitators/dialogue planners can create the right circumstances for creative dialogue in most situations. However, extensive research is also needed to develop new tools that enable creative and honest conversations that lead to widely owned and effective outcomes from decision-making processes, including appropriate alternative dispute resolution (ADR) techniques. The need for these skills and for a wider societal understanding of new ways of dialogue will become increasingly more important as the demand for diminishing natural resources meets the rapidly growing needs of a burgeoning world population.

In the meantime the following should be adopted as the fundamentals of public participation processes at all levels of governance.⁵⁰

1. The public participation process seeks out and facilitates the participation of those potentially affected
2. The public is involved in how they will participate
3. There are multiple methods for participation

⁵⁰ Ridder, Mostert, Wolters, "Harmonising Collaborative Planning (HarmoniCOP); Learning Together to Manage Together/Improving Participation in Water Management"; 2005 (From "Public Involvement Needs Assessment, Appendix H, Centre for Collaborative Study, 2005)

4. The venues for public participation are accessible to the diverse public
5. The PP process provides participants with the information they need to participate in a meaningful way.
6. Methods for participation are user-friendly and perceived as fair, just and respectful
7. Public's role in decision-making is clear from the outset
8. The public's contribution has the potential to meaningfully influence the decision or outcomes
9. The PP process communicates to participants how their input affected the decision or outcomes
10. The public has the opportunity to be involved and/or monitor the implementation of the decision or outcomes

iii. Access to Justice –

“The law, in its majestic equality, forbids the rich, as well as the poor, to sleep under the bridges, to beg in the streets, and to steal bread”.

Anatole France⁵¹

Of all the three legs of the three-legged stool illustrated above, this is by far the most broken, though not necessarily the most difficult to fix. Like the legendary Ritz Hotel anyone can enter the Irish Judicial system but only those with deep pockets can afford to stay there. This is clearly not unique to matters environmental, and the potential for change created by the provisions of the Convention could create precedence for the public trying to assert other rights within this republic. But it is not just in the judicial system where the public seek justice. Administrative processes such as the planning appeals process also need an overhaul to enable equal access.

Under the Convention access-to-justice procedures must be fair, equitable, timely and not prohibitively expensive. They must also provide adequate and effective remedies and be carried out by independent and

⁵¹ http://www.aphorismsgalore.com/author/Anatole_France.html.

[Accessed 10/8/2011] Anatole France (1844-1924) won the Nobel Prize in 1921.

impartial bodies. The Convention also requires information on access-to-justice procedures to be disseminated and encourages the development of assistance mechanisms to remove or reduce financial and other barriers.

Comparing the effectiveness, humanity and equitable nature of the Aarhus Convention Compliance Committee with the experiences of many in engaging with administrative bodies in Ireland, allows us to see what might be possible. The Irish planning process for example is so complex that in many cases participants feel that they cannot represent themselves and find it necessary to obtain legal and expert advice from the very beginning at earliest stages. The equality of arms implied in Article 6 of the European Charter of Human Rights is largely absent here as it often is in the judicial system, even where legal aid is provided. Legal aid is not available to those fighting what are often public interest environmental cases, neither is support available under the Voluntary Assistance Scheme of the Bar Council.

The broad range of legal remedies available in cases of environmental issues are undermined by the cost of taking cases through the courts system, and reform in the area of cost shifting measures and the encouragement of Public Interest Law in Ireland are vital to counteracting this.

Apart from the complexities of the costs issues that would discourage everyone but the very rich or the very determined pauper from engaging with the judicial system, delay is also a fact of life in the Irish Courts system, with cases taking years to process. A striking example of which is the fourteen year legal battle that occurred in the case of *Rooney v An Bord Pleanála*⁵² concerning the attempts by one Declan Rooney to prosecute Galway County Council for opening and keeping an illegal dump at Carrowbrowne, Galway, County Galway, near his home.

⁵² *Rooney v An Bord Pleanála* [2003] IEHC 100 (20 March 2003)

Many barriers were encountered and even though Galway County Council were found to be manifestly in breach of planning conditions on several occasions during this fourteen year legal battle, they fought the case strongly to avoid liability. Mr Rooney faced financial ruin at many points during this lengthy process. This is not an enabling atmosphere in which members of the public are encouraged to enforce the law of the state through “active citizenship”. In any democracy the citizens should be able to call those in power to task if they exceed their powers or contravene the laws of the state, and in cases which involve environmental harm, delay can be fatal, as once environmental damage occurs it is often difficult, if not impossible to reverse. The establishment of an “Environment List” in the courts would like the “Commercial Court List” enable a faster access to justice where the precautionary principle⁵³ makes this essential. It is a measure of the perverse value system embraced by this society that decisions to protect the resources that provide the fundamentals of life are considered to be so much less important than money.

The right of individuals and NGOs to bring cases (the right to standing) is also a very problematic area and one that needs serious attention by Government as required under the Convention.

One other important issue which needs to be addressed is the issue of capacity building of members of the public with regard to their rights and how to exercise them. Individual members of the public are at the frontline when it comes to environmental issues, but unless they know what their rights are and understand how to use the various channels available to exercise them, these rights are rendered meaningless. NGOs and grassroots environmental organisations have an important role to play in developing awareness of rights and their infringements and in assisting

⁵³ Principle 15 of the Rio Declaration: “In order to protect the environment, the precautionary approach shall be widely applied by States according to their capabilities. Where there are threats of serious or irreversible damage, lack of full scientific certainty shall not be used as a reason for postponing cost-effective measures to prevent environmental degradation.” As applied to environmental policy, the precautionary principle stipulates that for practices such as the release of radiation or toxins or massive deforestation the burden of proof lies with the advocates.

people in asserting their rights. NGOs should be given support in this role as required under the Convention as they can often be more effective in this than public authorities.

Article 3.4. Each Party shall provide for appropriate recognition of and support to associations, organizations or groups promoting environmental protection and ensure that its national legal system is consistent with this obligation.

There are clearly serious issues regarding Access to Justice in Ireland which require urgent attention if the goal of achieving sustainable development and providing a clean and healthy environment for all citizens is to be a realistic one.

5. The Current Situation Regarding Ratification

Ratification of the Aarhus Convention was a part of the Programme for Government (PFG) under the previous Fianna Fail/Green Party Government and is also part of the current PFG. The recently passed Environment (Miscellaneous Provisions) Act 2011 provides the final necessary legislative changes in Part 2 to enable ratification of the Convention. Following the commencement of Part 2 the technical process of ratification can proceed. Hopefully this will be before the end of 2011.

90 days after ratification the Convention will come into effect in Ireland and one year after that it will be open to anyone to make a “communication” to the ACCC.

Apart from ratification of the Convention, an important first step in its implementation is to amend the Irish Constitution in order *recognise the right of every person of present and future generations to live in an environment adequate to his or her health and well-being*, as set out in Article 1, the objective of the Convention.

6. The Trojan Horse and Participatory Democracy

Hopefully the last few pages have given some indication of the potential of the Convention as a change-making treaty, as well as how much this change is needed in Ireland as elsewhere. Internationally it has already created waves in the governance of both the Western Europe Parties and the Aarhus Parties from the former Soviet Union. On an even wider scale, the United Nations Environment Programme (UNEP) is following up on the success of the Aarhus Convention by leading a move to develop either a new treaty designed to bring about the implementation of Principle 10 globally, or a series of regional treaties, with South America poised to be the first to go down this road.

The Convention has another dimension in that it requires the Parties to promote the principles of the Convention in all international fora. This has great potential for change in the sometimes chaotic UNFCCC processes and other conventions and treaties that are less than embracing of civil society input.

Its potential for changing the way we do business here in Ireland at local, regional and national levels is enormous, but it will require champions for participatory democracy to open the gates and allow the Trojan Horse into the citadel that is our decaying representative democracy. The ratification of the Convention is only the beginning of a journey to bring the participatory democratic processes that are essential if we are to respond to the environmental challenges that we have created for ourselves. The need to focus on reversing the decline in the well-being of the planet alongside that of the human race will require the active involvement of all. The Aarhus Convention is a valuable tool to be used in starting that conversation.