

Abstract

This is a research paper that reviews the application of pillar 2 of Aarhus Convention in International Arena. In reviewing the application, this paper addresses the principle of public participation in environmental decision making in Aarhus. There is also some background information of the topic of research. This paper also addresses the application of pillar 2 in countries that have ratified AC. This paper reviews the influence the 2 pillar has on non-ratified countries as well as in international forums. The paper ends by concluding the major findings of this research.

Introduction

The practice and concept of participatory democracy has in recent decades gained increasing recognition and support. The quality of the resulting decisions and strengthening of the public belief in the decision-making process credibility as well as its outcome has been believed widely to be achieved by involving the public in decision-making process. Public involvement has been seen to result into practical benefits besides which there is an increase in support for the notion that the public has a right to see its views reflected in the public authorities decisions on a continuous basis. These rights are not greater anywhere else than in the upcoming international regime concerned with climate change issues. Participatory democracy is a concept that has emerged to enhance as well as complement representative democracy. In a modest extent, it is reflected in global as well as regional declarations and instruments. The UNECE Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters (Aarhus Convention) is perhaps the most far-reaching example of participatory democracy. These are the three pillars of Aarhus convention namely, pillar 1, 2, and 3 respectively. The issues addressed by the three pillars represent the participatory democracy addressed in this paper (Bruch & Czebiniak, 2002).

Aarhus Convention can be defined as a new kind of environmental agreement linking environmental rights and human rights. It admits that we owe a commitment to future generations. It establishes that the achievement of sustainable development via involving all stakeholders. It lays down key features of public participation and its provisions have become accepted widely as a benchmark for environmental democracy. The environmental democracy include involvement in decision making, participation, and access to environmental information among others as addressed in this paper (Stanley-Jones, 2008).

Principle of Public Participation in Environmental Decision- Making

The public is informed as well as educated by public procedural rights. Strong institutes may be viewed as a luxury by a public that is concerned predominantly with making ends meet at least until environmental disasters reach a level of crisis. However, public exposure and access to environmental information as well as vocal independent groups with proper knowledge as well as expertise in environmental issues can be instrumental in bringing issues to the public discourse forefront. An informed public has the capability of identifying and addressing problems early on prior a crisis point is attained (Brunch, 2000). The scarce resources for inspection, monitoring, and enforcement of environmental law may thus be supplemented by public input. Weaknesses or issues with draft legislation may be identified by the use of public input. Releasing relevant information to

the public where environmental risks are small can assist to alleviate unfolded fears as well as stave off political risk associated. Relevant technical and statistical knowledge together with a way of approaching environmental hazards via the courts create accountability mechanisms. Important environmental decisions can be brought to the day's light by absence of adequate resources for oversight due to the empowered public.

This may also challenge the questionable environmental practices successfully. Participation of the public in environmental impact assessments also results to more informed decision making because local community is often situated in a better position to provide comments regarding environmental degradation. There are other parties to the collateral democratic benefits of increased public participation that include greater supervision on decision-making. These include increased judicial, government, and private-sector accountability, increased familiarity with informal and formal democratic practices, and lastly, a stronger civic engagement sense. Better informed decision-making should result ultimately from the discourse. The multi-directional mechanism of getting feedback among government, NGOs, private, and public sector should also result. The confidence of the public is bolstered by the knowledge that one's government is actively involved with assessment of environmental risk. Therefore, the accountability and legitimacy of the government is improved by public participation in environmental decision-making. The aim of procedural rights in the context of environment is to ensure protection of the right of every individual of current and future generations to live in an environment adequate to his/her well-being and health (Rodenhoff, 2002).

Background Information of Aarhus Convention

To begin with, the adoption of UNECE Convention on Access to information, Access to justice in Environmental Matters, and Public Participation in Decision making occurred on the twenty-fifth of June in the year 1998 in the Danish city of Aarhus. The three were adopted in 1998 and came into force in the year 2001 (UNEP, n.d). The adoption occurred during the 4th Ministerial Conference in the process of 'Environment for Europe'. The Aarhus Convention is a new form of agreement for environmental matters. The Convention is responsible for linking environmental rights as well as human rights. It as well acknowledges that we owe the future generation a commitment. It establishes that it is only through the involvement of all stakeholders that sustainable development can be attained. The convention has a responsibility of linking environmental protection and government accountability. In addition the Convention focus is on the public and public authorities interactions in a democratic context (Carl & Roman, 2002).

The Aarhus convention is innovative for the NGO unprecedented level of participation in its negotiating, drafting, implementation, signing, and ratification in addition to being a Rio Principle 10 advanced articulation that operationalizes participation of the public in a region. The Environment for Europe process that grew out in 1991 seeks to pursue a coherent strategy for dealing with environmental problems in Europe, emphasizing specifically on restoration of the environment of nations with economies transiting from Communism. A substantial part of this international attempt has been to define the duty of public participation in sustainable development implementation. Officials in majority of the countries undergoing transition had been in NGOs formerly and hence supported attempts to improve participation, accountability, and transparency. The NGOs participation throughout the conventional process has meant improved personnel and technical resources in the process of negotiation in addition to building a stronger Convention, a broad-spectrum of advocates who help in Convention implementation and increased support for the outcome from the public. The NGOs representatives acted as official national delegates in addition

to taking part in drafting the Convention. Therefore, NGOs played a major role in ensuring the success of the Convention (Carl & Roman, 2002).

The heart of the relationship between people and governments bears the subject of the convention. The Convention concerns government accountability, responsiveness, and transparency in addition to being an environmental agreement. The Aarhus Convention ensures that public rights are granted in addition to imposing obligations on Parties and public authorities concerning access to public participation, access to justice, and access to information. The Convention also forges a new process for participation of the public in the implementation and negotiation of international agreements. Signatories held two meetings after the adoption of the Convention in 1999 as well as in 2000. In 2000 and 2002, a meeting was held by a Preparatory Working group to the first meeting of the parties. The meetings were held in preparation for entry into the force which occurred on 30th of October in the year 2001. The entry was made post making the relatively rapid progress in obtaining ratifications by 16 of the signatories.

The party held its first meeting between the 21st and 23rd of October in the year 2002 in Lucca, Italy. Lucca declaration was adopted by the meeting in addition to numerous decisions of inter alia concerning PRTRS and GMOS, electronic information tools, rules of procedure for the parties' meeting, access to justice, work program, compliance, and capacity-building. The protocol on Pollutant Release and transfer register was adopted after which was opened subsequently for signature. The protocol in Kiev was signed by 36 States as well as European Community.

The parties held their second meeting in 2005. An amendment to the Convention was adopted. The amendment set out provisions on public participation more precisely in making decision on deliberate release of GMOs. As a result, a long-standing debate on the topic was brought close. Ratification of the amendment by at least three-quarters of the Parties will allow it to enter into force. The status of implementation was reviewed by the meeting as well as compliance with the Convention based on the reports of the national implementation and compliance committee report. The meeting made recommendations to non-complying parties. The Almaty Guidelines on promoting the Application of the Principles of the Aarhus Convention in International Forums was adopted by the Meeting. At the same time, numerous decisions regarding both procedural and substantive issues were made. The second meeting also adopted the Almaty Declaration that sets out the priorities and aspirations of the Parties as well as other stakeholders (Toth, 2010).

The Parties held their third meeting in Riga, Latvia, between the 11th and 13th of June in the year 2008. The Riga Declaration as well as a strategic plan for the Convention was adopted during this 3rd meeting. They resolved the issue of calculating the ratifications of amendments. Mandates of task forces dealing with access to justice were renewed during this meeting. Electronic information tools as well as public participation in international forums were also renewed (UNECE, n.d).[3]

Application of Pillar 2 in Countries who have Ratified AC[4]

Pillar 2 of the convention offers a framework for improved participation by the public in decision-making. A list of activities known as Annex 1 must consider public participation while making decisions. Pillar 2 also applies to participation so the public in issues concerned with planning and programs associated with the environment. The conditions for public participation during the preparation of executive regulations are outlined by article 8. A framework for public participation is provided by article 6 which states that the public is entitled to early information concerning a

procedure for decision making in order to participate effectively. Due account should be taken of the outcome of public participation while making decisions.

Similarly to most international treaties, the adoption of Aarhus Convention occurred to the national legislations of ratifying states. Some countries like Sweden and Norway had a head start in this area but despite this, eastern and central European States made a great legislative attempt. The adoption has concretely led to creation of an information centre in some cases like in France where the IFEN mainly fulfils this role. There has been strengthening as well as implementation of access procedures for administrative documents. For instance, in France, the implementation is performed by the CADA, which is the commission for access to administrative documents. Every citizen who is denied an information request may appeal to this commission, which can order providence of the requested information from the administrative authority in question.

The expansion or implementation of public debate like the one organized in France by the national commission for public debate resulted from the Convention activities. This means in practice that the public is entitled to taking part and expressing its opinion on large projects publicly. Countries are required by the Convention to take due account of the results of public participation. Access to justice is the area where certainly the least progress has been achieved. Financial barriers in UK and legal barriers in Germany remain. Citizens should be allowed to defend their case at a cost that is not expensive prohibitively by full application of the Convention (Finemore et al, 2004).

The conference of the Parties acts as the main implementing body which meets at least every two year. It plays the role of organizing the financiers of Convention activities as well as organizing the Convention's competence to adopt amendments. It in addition creates protocols to the convention for instance the protocol on Pollutant Release and Transfer Registers which was adopted in 2003. The Conference of Parties has one major feature which is that it logically leaves a large place for NGOs. They enjoy voting privileges in the final statement of the conference of the parties besides the very generous freedom of expression that they enjoy. During all the Conference of the parties meetings, examinations of the national reports from each country are done as for the implementation of the Convention. A Compliance Review Mechanism is used by the [5]Aarhus Convention to evaluate the monitoring of its application. Its' nine member committee that examines appeals made to it concerning national law non-compliance. The committee is widely excessive provided that no specific formal conditions are attached to it, hence being open to States, individuals, and NGOs (Bertrand, n.d).

The implementation of the second pillar has been faced by numerous problems which are the barriers to its application. The competence for public participation has been divided between different legal instruments and thus different departments of the government given the many discrete policy areas involved as well as the need to meet EU time limits. Pillar 2 provides insufficient coverage for other affected areas with public participation legislation focusing mainly on EIA, IPPC, and planning. For instance, breaches of the Birds or Habitat Directives that are not victims of EIA or IPPC project are not provided for under current legislation (de Sadeleer N. et al, 2002). The public participation area lacks a central point of reference. The Aarhus provisions awareness is very patchy because of these barriers. There are few practitioners in the biodiversity as well as in the conservation field, and even in planning, are aware of its existence. A lack of guidance in this matter has been declared by practitioners who have requested for government guidelines. For instance, what would make up a good process of decision-making? Facilitators as well as consultants themselves are defining good practice in the current situation. Another barrier to implementation of pillar 2 is the failure of Directive 2003/35/EC to achieve any real transformations to this established

practice. This failure makes FoE to view it as a low level interpretation of the Aarhus principles as well as having failed to translate ideas into legislation (Lucas K. et al, 2004).

Another barrier to implementation is resistance faced by some Member States concerning various issues. GMOs were argued to be already covered by other better international agreements like the Cartagena Protocol on Biosafety. However, these agreements failed to make adequate provisions for public participation according to several EEC/A2 and SEE2 countries. As a result new amendments under Aarhus should thus focus on helping such countries to upgrade their standards to a level that can be compared with the EU (Kadner, 2006).

Influence of Pillar 2 on Non-Ratified Countries and in International Forums

Pillar 2 is a pillar of empowerment that woe non-ratified parties to become part and parcel of its undertakings. Pillar 2 has promoted democracy via involving non-governmental organizations and representatives thereby wooing non-ratified nations to become ratified. The pillar has influenced non-ratified forums because of stressing on its implementation and undertaking initiatives for protecting the environment as well as rights of the people and ensuring development is sustained. These declarations of meaningful participation of the public are urging these parties to take particular steps in order to strengthen the Convention's role. Among the steps are ratifications and accessions of the Protocol on PRTRs (Rose, 1996).

Calls to ratify GMO amendment to the Convention have as well been made although a lot of compromise is associated with fixing of this amendment. Non-ratified parties have been called to ratify the SEA-Protocol without further delay. Barriers of this protocol are ineffective, untimely, and unfair public participation. Hence ramification [6] would help these forums to be overcome these shortcomings. The second pillar is influential because it maintains the Convention's open and participatory character. Aarhus departs from the culture of depriving NGOs of their observer status in the Bureau as well as their right to nominate candidates directly for the Compliance committee as a way of ensuring transparency and participatory principles. Undermining of the transparency of the Convention's work is a barrier to its successful ramification and thus forums should refrain further from holding EU-coordination meetings behind closed doors. Negotiations behind closed doors are a barrier to ramification as well as a violation of the principles of Aarhus. This secrecy is not beneficial and lacks purpose since the Aarhus Convention is an example of democracy. The secrecy undermines the concepts of accountability and of transparency of public authorities in addition to creating an unacceptable inequality between those parties that are EU members and the EU non-members.

A major influence results from the positive atmosphere created for environmental democracy among the judiciary as well as the civil servants as a prerequisite for providing better and more supported sustainable development and environmental protection. Funding for groups to exercise their Aarhus is also a major concern in influencing ratification. Issues that affect implementation of pillar 2 also affect the process of ratification. Hence, improvement of this area of implementation as well as its enforcement would woe more forums and participants. Particular attention should be paid to the major obstacle which is the public participation in Environment impact Assessment procedures. These barriers include restriction on the use of the public concerned concept for instance by including informal groups. Another barrier is lack of taking into consideration the NGO comments thereby portraying lack of meaningful participation. Therefore pillar 2 plays a central role in the ratification of the Aarhus Convention membership (Veinla, 2005).

Conclusion

This research paper has found that Aarhus Convention is a big step towards providing more rights to NGOs as well as citizens in matters pertaining to the environment. There are problems associated with the actual implementation of the ambitious aims of the Aarhus Convention. There has been successful transposition of the first pillar of the Aarhus Convention into UK and EU legislation. The second pillar implementation was critiqued mainly on the splitting of the legal provisions on public participation into different areas affected. To overcome this problem, the UK government should provide practical guidance. The implementation of the third pillar has divergent views. This paper has also reviewed the participation of ratified nations as well as Aarhus no-ratified nations. In addition, this paper has addressed the influence that pillar 2 has had on the non-ratified nations. The result of the influence is great since pillar 2 is an empowerment pillar thereby wooing non-ratified nations to become interested. Hence, all nations should become ratified in order to achieve maximum environmental protection as well as ensuring maximum attainment of environmental benefits.

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