National Development Plan 2007 - 2013

Environmental Protection Agency
An Ghníomhaireacht um Chaomhnú Comhshaoil

STRIVE
Report Series No.86

Environmental Democracy in Ireland

STRIVE

Environmental Protection Agency Programme

2007-2013

SSTI
Strategy for Science, Technology and Innovation

Comhshaol, Pobal agus Rialtas Áitiúil
Environment, Community and Local Government

Environmental Protection Agency

The Environmental Protection Agency (EPA) is a statutory body responsible for protecting the environment in Ireland. We regulate and police activities that might otherwise cause pollution. We ensure there is solid information on environmental trends so that necessary actions are taken. Our priorities are protecting the Irish environment and ensuring that development is sustainable.

The EPA is an independent public body established in July 1993 under the Environmental Protection Agency Act, 1992. Its sponsor in Government is the Department of the Environment, Community and Local Government.

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We license the following to ensure that their emissions do not endanger human health or harm the environment:

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- large scale industrial activities (e.g., pharmaceutical manufacturing, cement manufacturing, power plants);
- intensive agriculture;
- the contained use and controlled release of Genetically Modified Organisms (GMOs);
- large petrol storage facilities;
- waste water discharges.

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- Developing a National Hazardous Waste Management Plan to prevent and manage hazardous waste.

MANAGEMENT AND STRUCTURE OF THE EPA

The organisation is managed by a full time Board, consisting of a Director General and four Directors.

The work of the EPA is carried out across four offices:

- Office of Climate, Licensing and Resource Use
- Office of Environmental Enforcement
- Office of Environmental Assessment
- Office of Communications and Corporate Services

The EPA is assisted by an Advisory Committee of twelve members who meet several times a year to discuss issues of concern and offer advice to the Board.

EPA STRIVE Programme 2007–2013

Environmental Democracy in Ireland

Assessing Access To Information, Participation, and Justice in Environmental Decision Making in Ireland

(2005-SD-MS-47)

STRIVE Report

End of Project Report available for download on http://erc.epa.ie/safer/reports

Prepared for the Environmental Protection Agency

by

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DISCLAIMER

The EPA STRIVE Programme addresses the need for research in Ireland to inform policymakers and other stakeholders on a range of questions in relation to environmental protection. These reports are intended as contributions to the necessary debate on the protection of the environment.

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Executive Summary

Public participation in environmental decision making is essential if the necessary hard decisions that are needed if humanity is to have a sustainable future are to be supported by the wider community. This research looked at the three factors that make participation possible:

1. Access to information;
2. Ability to participate in decision making that affects the environment; and
3. Access to justice.

These three 'pillars' were originally established by Principle 10 of the Rio Declaration of 1992 and then incorporated as human rights into the Aarhus Convention of 1998, to which Ireland is a signatory. It is Ireland's implementation of the Aarhus Convention that was examined in detail in this research.

The research looked at individual situations (case studies) under each of the pillars. Each case study was examined using a series of indicators (research questions) to measure the quality of the relevant legislation, the effort made to implement it, and the effectiveness of the effort. The findings under each indicator were then rated by the researcher using a five-point hierarchy ranging from very bad to very good. These rankings were illustrated using colours from red (very bad) to dark green (very good). This methodology was developed by an international coalition of non-government organisations (NGOs), known as The Access Initiative (TAI).

The report structure is based initially on the Aarhus Convention. Consequently, there are four main sections:

1. General provisions;
2. Access to information;
3. Public participation; and
4. Access to justice.

The Access Initiative research tool provided the underlying methodology, but ancillary methods, such as surveys, interviews, stakeholder workshops and an online review forum, were used to enable public participation in the research and to get a broader understanding of Aarhus implementation. Some 36 case studies were assessed using TAI methodology, 17 for access to information, 10 for public participation, and 9 for access to justice. The research tool also provides indicators to review the general legal background, and the need for capacity building.

The case study findings were accumulated and then presented as bar charts in order to show the trends under each of the three pillars. The results were then analysed to show the level of implementation of each of the Articles of the Convention. The results of this analysis are displayed in tabular format.

Recommendations for change to fill gaps in provision are given under each of the three pillars of Aarhus, as well as under its general provisions.

The need for changes in legislation and in its implementation becomes clear when reviewing the case studies and ancillary research. Belated legislation implementing the provisions of Article 4 of the Convention on access to information has been put in place (SI No. 133 of 2007). Article 5 on proactive provision of environmental information has yet to be clearly legislated for. Provisions for participation in decision making are still inconsistent. Access to justice is blocked for many by the barriers of cost and standing. Even in administrative reviews, the costs associated with representation by 'experts' can be a huge barrier. In all the access to justice procedures, inequality of arms is likely when individuals take on bodies with much greater financial resources. Long delays in judicial processes can mean that the environmental damage is already done and that remedies are then meaningless.

The absence of guidance for the public in accessing the rights provided for under the Convention is

particularly noticeable regarding access to information and access to justice.

The need to promote awareness of the access principles and associated mechanisms, as well as the training of the relevant personnel and the public in the operation of same, has yet to begin to be addressed. Training in dialogue and facilitation skills is almost unheard of.

The absence of legal protection for 'whistle-blowers' acting in the public interest is a serious barrier for those wanting to alert the relevant authorities about environmental harm being caused by their employers.

The removal of a layer of administrative review in the planning process by the Planning and Development (Strategic Infrastructure) Act 2006 is a step back from the principles of the Convention.

In the absence of ratification of either the Aarhus Convention, the Protocol on Pollutant Release and Transfer Registers (PRTR Protocol) or the Protocol on Strategic Environmental Assessment (SEA Protocol), Ireland cannot reasonably be said to be promoting the Convention's principles in the international arena. However, this is balanced to some degree by the funding given to environmental non-governmental organisations (ENGOs) to attend inter-governmental conferences.

On the plus side, the ENGOs are at last getting some government support in their various roles as watchdogs/consultees/educators/innovators. The involvement of the ENGOs in Comhar, the national Sustainable Development Council, provides a process for them to input into the development of national policies in the broad sustainability arena.

Recommendations for change are wide ranging and include:

- An amendment to the Constitution to include the right to a clean and healthy environment, and the rights of access to information, public participation and justice in environmental decision making;
- The creation of an Ombudsman for the Future;
- Online publication of data with translations into easily understood graphics;
- A whistle-blowers' charter;
- Involvement of the public in all environmental decision making from the earliest possible moment, including any decision as to whether a decision is necessary;
- The removal of costs, standing and other barriers for environmental court cases; and
- The establishment of an environmental court list.

1 Introduction

1.1 Purpose of the Report

Public participation in environmental decision making is an essential part of sustainable development, and this report, based on research conducted, attempts to give a clear picture of the extent to which Principle 10 of the Rio Declaration, 1992, as transposed into the Aarhus Convention, 1998, has been incorporated into environmental governance in Ireland, with a view to enabling informed debate and effective targeted capacity-building measures to be initiated, in order to enable fulfilment of the National Development Plan and international commitments.

The objectives of the project, as reflected in this report, were:

- To assess and stimulate progress in implementing the three pillars of Principle 10, as incorporated into the Aarhus Convention[1], by looking at the status of:
  - The legal framework for access;
  - The dissemination of information;
  - The practice of participation;
  - The accessibility of justice; and
  - The efforts to build the capacity of the public to gain access to information, decision making and justice.
- To provide the Government with the information it needs in order to fulfil its international obligations under the Aarhus Convention, its resultant European Directives and other relevant international commitments.
- To highlight the strengths and weaknesses in environmental governance in Ireland, in order to recommend capacity-building measures that lead to participatory sustainable development.

1. UN/ECE Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters.

This report brings together the findings of the in-depth study of the application of the 'access principles' in Ireland, provides a detailed analysis of them and summarises the outcomes. A list of recommendations is made under each 'pillar' to respond to the gaps that are identified in environmental governance.

1.2 The Aarhus Convention

The Aarhus Convention[2] is the underlying yardstick against which the findings of this research will be measured. Providing a benchmark for Irish implementation of the Convention is one of the objectives of this research, so what follows is a brief introduction to Aarhus.

The Aarhus Convention stands on three 'pillars':

1. Access to information;
2. Public participation; and
3. Access to justice.

The three pillars depend on each other for full implementation of the Convention's objectives.

The image is often used of the three-legged stool that can only support the weight of effective environmental democracy when all three legs are well made, and properly attached to the seat.

The preamble to the Aarhus Convention sets out the aspirations and goals that show its origins as well as guiding its future path. In particular, the preamble emphasises two main concepts (Stec and Casey-Lefkowitz, 2000):

1. Environmental rights as human rights; and
2. The importance of access to information, public participation and access to justice for sustainable and environmentally sound development.

Contained within the preamble are the following statements:

2. http://www.unece.org/env/pp/documents/cep43e.pdf [Accessed 10 March 2008]

- "*Every person has the right to live in an environment adequate to his or her health and well-being*"; and
- "*Every person has the duty, both individually and in association with others, to protect and improve the environment for the benefit of present and future generations*".

The first three articles of the Convention include the objective, the definitions and the general provisions. These articles lay the groundwork for the rest of the Convention, setting goals, defining terms and establishing the overarching requirements that will guide the interpretation and implementation of the rest of the Convention.

1.3 Overview of this Report

The report structure is based initially on the Aarhus Convention. Consequently, there are four main sections:

1. General provisions;
2. Access-to-information provisions;
3. Public-participation provisions; and
4. Access-to-justice provisions.

The Access Initiative (TAI) research tool provides the underlying methodology, but ancillary methods such as surveys, interviews, stakeholder workshops and an online review forum were used to enable public participation in the research and to get a broader understanding of Aarhus implementation. Some 36 case studies were assessed using TAI methodology, 17 for access to information, 10 for public participation, and 9 for access to justice. The research tool also provides indicators to review the general legal background, and the need for capacity building. The outcomes can all be reviewed on the research website at: http://www.environmental democracy.ie/.

The case study findings were agglomerated in order to show the trends under each of the three pillars and presented as bar charts. The results were then analysed to show the level of implementation of each of the Articles of the Convention. The results of this analysis are displayed in Tables 1.1–1.4.

Recommendations for change to fill gaps in provision are given under each of the three pillars of Aarhus, as well as under its general provisions.

1.4 Overview of the Main Findings and Conclusions

The findings of the project are based on the case studies and ancillary research. Bearing in mind the need to understand the findings in the context of the Aarhus Convention, what follows is an interpretation highlighting each paragraph of the Articles of the Convention. Each paragraph is given a value based on the quality of the implementing legislation, the effort made to implement it, and the effectiveness of that effort. This is represented in tabular format for ease of reading. The detailed background explanations are given in each of the relevant chapters.

The findings are grouped here under the section headings listed in Section 1.3.

1.4.1 General provisions (Table 1.1)

The need for legislative and institutional change in order to fully implement the Aarhus Convention becomes clear when reviewing the case studies and ancillary research. Belated legislation implementing the provisions of Article 4 of the Convention has been put in place (SI No. 133 of 2007). Article 5 has yet to be clearly legislated for and provisions for participation in decision making are still inconsistent. Access to justice is blocked for many by the barriers of cost and standing. Even in administrative reviews, the costs associated with representation by 'experts' can be a huge barrier. In all the access-to-justice review procedures, inequality of arms is likely when individuals take on bodies with deep pockets. Long delays in judicial processes can mean that the environmental damage is already done and that remedies are then meaningless.

The absence of guidance for the public in accessing the rights provided for under the Convention is particularly noticeable regarding access to information and to justice.

The need to promote awareness of the access principles and associated mechanisms as well as the training of the relevant personnel and the public in the

Table 1.1. An evaluation of the implementation of the general provisions of the Convention.

Article	Obligations by paragraph	Law	Effort	Effect
Article 3 ***General Provisions***	1 Take necessary legislative, regulatory and other measures to establish a framework for implementation of the Convention	INTERMEDIATE	POOR	POOR
	2 Endeavour to ensure that public authorities assist and guide the public	INTERMEDIATE	POOR	POOR
	3 Promote environmental education and awareness	INTERMEDIATE	INTERMEDIATE	INTERMEDIATE
	4 Recognise and support environmental non-government organisations within the legal context	POOR	INTERMEDIATE	INTERMEDIATE
	5 The Convention is a 'floor' not a 'ceiling'	INTERMEDIATE		
	6 Discourage backsliding	POOR	INTERMEDIATE	INTERMEDIATE
	7 Promote the Convention's principles in the international arena	POOR	INTERMEDIATE	INTERMEDIATE
	8 Anti-harassment	POOR	POOR	POOR

Key to ascribed values:

VERY BAD	POOR	INTERMEDIATE	GOOD	VERY GOOD

operation of same has yet to be addressed. Training in dialogue and facilitation skills is almost unheard of.

The absence of legal protection for 'whistle-blowers' acting in the public interest is a serious barrier for those wanting to alert the relevant authorities about environmental harm being caused by their employers.

The removal of a layer of administrative review in the planning process by the Planning and Development (Strategic Infrastructure) Act 2006 is a step back from the principles of the Convention.

In the absence of ratification of either the Aarhus Convention, the Protocol on Pollutant Release and Transfer Registers (PRTR Protocol) or the Protocol on Strategic Environmental Assessment (SEA Protocol), Ireland cannot reasonably be said to be promoting the Convention's principles in the international arena. However, this is balanced to some degree by the funding given to environmental non-governmental organisations (ENGOs) to attend inter-governmental conferences.

On the plus side, the ENGOs are at last getting some government support in their various roles as watchdogs/consultees/educators/innovators. The involvement of the ENGOs in Comhar, the national Sustainable Development Council, provides a process for them to input into the development of national policies in the broad sustainability arena.

1.4.2 Access-to-information provisions (Table 1.2)

1.4.2.1 Information on request

Good-quality regulations implementing Article 4 are in place since 2007[3], but their implementation has been patchy and very little in the way of capacity building has occurred in relation to them. The absence of a consistent and appropriate schedule of charges together with a high level of ignorance within the relevant bodies regarding the existence of the provisions has led to denial of the rights provided for here. The need for capacity building becomes quite

3. European Communities (Access to Information on the Environment) Regulations 2007 SI No. 133 of 2007.

Table 1.2. An evaluation of the implementation of the provisions regarding access to information.

Article		Obligations by paragraph	Law	Effort	Effect
Article 4 ***A system to allow the public to request and receive environmental information from public authorities***	1	Requires public authorities to make information available upon request	VERY GOOD	POOR	POOR
	2	Sets time limits for public authorities to respond and supply information	GOOD	POOR	POOR
	3	Optional exceptions	GOOD	POOR	POOR
	4	Optional exceptions and if they adversely affect certain interests	GOOD	POOR	POOR
	5	Ensures that the information request will reach the appropriate public authority	GOOD	POOR	POOR
	6	Ensures that even if some of the information requested falls under the exceptions, the remaining information will be made available	VERY BAD	POOR	POOR
	7	Procedures for refusals	GOOD	POOR	POOR
	8	Optional charges for information	POOR	POOR	POOR
Article 5 ***A system under which public authorities collect environmental information and actively disseminate it to the public without request***	1	General obligations for Parties to ensure that public authorities collect, possess and disseminate environmental information	INTERMEDIATE	INTERMEDIATE	INTERMEDIATE
	2	Practical arrangements for making information accessible	INTERMEDIATE	INTERMEDIATE	INTERMEDIATE
	3	Aims to ensure that information will eventually become available electronically	INTERMEDIATE	INTERMEDIATE	POOR
	4	Requires national state-of-the-environment reports	VERY GOOD	GOOD	GOOD
	5	Requires the government to disseminate legislation and policy documents	INTERMEDIATE		POOR
	6	Applies to the public dissemination of privately held information	INTERMEDIATE	INTERMEDIATE	POOR
	7	Requires the government to publish information concerning environmental decision making and policy making	INTERMEDIATE	INTERMEDIATE	POOR
	8	Requires mechanisms for disseminating environment-related product information to consumers	INTERMEDIATE	INTERMEDIATE	INTERMEDIATE
	9	Concerns the development of national systems for maintaining information on pollution releases and transfers	POOR	INTERMEDIATE	POOR
	10	Incorporates the optional exceptions from disclosure listed in Article 4	GOOD	POOR	POOR

Key to ascribed values:

VERY BAD	POOR	INTERMEDIATE	GOOD	VERY GOOD

clear in the context of the first Decision of the Commissioner for Environmental Information[4]. In this case, the public authority wanted to charge €285 for making information available and, when an internal appeal was requested, this was not conducted within the statutory timescale. The Commissioner directed the authority to provide the information free of charge.

There has been very little capacity building of the public with regard to the provisions, and even the website of the Department of the Environment, Heritage and Local Government (DoEHLG)[5] only advertised the existence of the Regulations in 2008. The guidelines issued with the Regulations are generally clear, but would appear to need revision following criticism in the Commissioner's Decision outlined above.

In general, the legislation is good but the implementation is not, hence the intermediate scores in Table 1.2. The otherwise excellent provisions for appeal regarding information requests not dealt with are marred by the fee of €150 to be paid in order to appeal to the Commissioner for Environmental Information. The Commissioner herself has called for the removal of the fee.[6]

In many of the public authorities, the systems for information collection were still largely paper based, with a lack of integration and consequent limited access. In others, data collection was well organised but remained as data with no effort to disseminate them as easily understood information.

Information regarding emissions from Integrated Pollution Prevention Control (IPPC)-licensed facilities can often be 6 months or more old when it becomes available to the public, and then it is usually in the form of raw data which may only be available in paper format at an office of the Environmental Protection Agency (EPA) some considerable distance from the facility itself.

4. Decision on Appeal to Commissioner for Environmental Information: Case CEI/07/0006.
5. Now the Department of the Environment, Community and Local Government.
6. Address by Emily O'Reilly, Commissioner for Environmental Information, at Irish Environmental Law Association, 15 January 2008.

1.4.2.2 Collection and dissemination of environmental information

As can be seen above, the quality of data collection varied from paper-based systems available at specific locations to integrated electronic systems. The translation of environmental data into information and its active dissemination is beginning to happen in some public bodies, with the EPA ENVision interactive maps leading the way. We are, however, a long way still from having live feed information on emissions from both public and private bodies. The State of the Environment (SOE) Reports are of an excellent quality. The development of an interactive web-based version linked to ENVision would enable a greater use of this rich source of information, and a connection ultimately to the sources of the data. In this context the absence of a national PRTR is noted. The introductions of energy ratings for homes, electrical goods and the rating of carbon dioxide emissions from cars are clear messages regarding how the public can act to protect the environment and represent the beginning of the dissemination of environment-related product information to consumers.

1.4.3 Public-participation provisions (Table 1.3)

The public need more clarity regarding the limitations attached to their engagement in decision-making processes:

- Just how much can they influence the outcome?
- Are they just going through the hoops so that boxes can be ticked, or
- Will their input be valued and taken notice of?

Uncertainty about these questions leads in many cases to disillusionment, frustration and anger. Similarly, the personnel engaging with the public in these processes need support and training in how to fulfil their responsibilities under the Convention.

1.4.3.1 Activities with a possible significant environmental impact

The history of public participation based on the traditional Decide, Announce, and Defend (DAD) method, and the ongoing transformation to more inclusive and effective participatory practice has left behind a legacy of distrust between stakeholders. The

Table 1.3. An evaluation of the implementation of the provisions regarding public participation.

Article	Obligations by paragraph	Law	Effort	Effect
Article 6 ***Conduct public participation early in decisions on activities with a possible significant environmental impact***	1 Requires Parties to guarantee public participation in decision making with a potentially significant environmental impact	**INTERMEDIATE**	**POOR**	**POOR**
	2 Sets requirements for notifying the public concerned about the decision making	**INTERMEDIATE**	**INTERMEDIATE**	**POOR**
	3 Sets time frames for public-participation procedures within a decision-making process	**INTERMEDIATE**	**INTERMEDIATE**	**POOR**
	4 Requires that public participation takes place early in decision making	**POOR**	**POOR**	**POOR**
	5 Encourages exchange of information between permit applicants and the public	**POOR**	**POOR**	**POOR**
	6 Requires public authorities to provide the public concerned with access to all information relevant to the decision making	**GOOD**	**INTERMEDIATE**	**INTERMEDIATE**
	7 Procedures for public participation	**GOOD**	**GOOD**	**GOOD**
	8 Parties must ensure that decision making takes due account of public participation	**INTERMEDIATE**	**INTERMEDIATE**	**INTERMEDIATE**
	9 Public must be informed of final decision	**INTERMEDIATE**	**INTERMEDIATE**	**INTERMEDIATE**
	10 Public participation if activities are reconsidered or changed	**GOOD**	**GOOD**	**INTERMEDIATE**
	11 Decisions on genetically modified organisms	**INTERMEDIATE**	**INTERMEDIATE**	**INTERMEDIATE**
Article 7 ***Establish a transparent and fair framework for public participation in plans, programmes and policies relating to the environment***	*First sentence* Requires parties to provide public participation during preparation of plans and programmes relating to the environment	**GOOD**	**INTERMEDIATE**	**INTERMEDIATE**
	Second sentence Incorporates Article 6, Paragraphs 3, 4 and 8 (see below)			
	Article 6, Paragraph 3 Sets time frames for public-participation procedures	**INTERMEDIATE**	**INTERMEDIATE**	**INTERMEDIATE**
	Article 6, Paragraph 4 Requires public participation to take place early in process	**INTERMEDIATE**	**INTERMEDIATE**	**INTERMEDIATE**

Table 1.3 *contd*

Article	Obligations by paragraph	Law	Effort	Effect
	Article 6, Paragraph 8 Parties must ensure that the plan or programme takes due account of public participation	INTERMEDIATE	INTERMEDIATE	INTERMEDIATE
	Third sentence Requires the relevant public authority to identify the participating public	INTERMEDIATE	INTERMEDIATE	INTERMEDIATE
	Fourth sentence Public participation in preparation of policies relating to the environment	POOR	POOR	POOR
Article 8 ***Public participation in the preparation of laws and rules by public authorities***	*First sentence* Requires Parties to promote public participation in the preparation of laws and rules by public authorities	GOOD	INTERMEDIATE	INTERMEDIATE
	Second sentence Sets elements of public participation procedures	INTERMEDIATE	INTERMEDIATE	INTERMEDIATE
	Parties must ensure that public participation is taken into account	GOOD	GOOD	GOOD

Key to ascribed values:

VERY BAD	POOR	INTERMEDIATE	GOOD	VERY GOOD

need to involve the public at the earliest possible time in the process is accepted and legislated for in some decision-making processes, for example road planning, but not in others, for example the Environmental Impact Assessment (EIA) process, where the public are often only included in a review capacity when the report resulting from the EIA, known as the Environmental Impact Statement (EIS), is completed. Whilst some developers seek engagement with the public early on in a project, it is often only to disseminate information about same rather than the beginning of a dialogue.

There is a need to improve the participation procedures and methodology used and this involves a good deal of capacity building within public authorities, NGOs and the public. Constructive dialogue requires the development of a new skill set for all participants. Time frames for participation are generally too short, and don't take into account the timescales provided for under Article 4 of the Convention, where the public need to access information from public authorities in order to participate. In one of the case studies, a citizens' group was denied access to the EIS for a proposed development by the planning authority and, consequently, was handicapped in its attempts to engage with the planning process. In practice, it is not always made clear as to whether the inputs of the public are taken into account, and if so how.

1.4.3.2 Plans and programmes

Strategic Environmental Assessment is in its infancy in Ireland, and an SEA Process Checklist[7] has been developed by the EPA. This checklist clearly advises public consultation from the scoping phase onwards. There is a growing body of best practice in this area,[8] and a very steep learning curve ahead for most of the bodies required to conduct these assessments,

7. http://www.epa.ie/downloads/advice/ea/SEA%20Pack_web.pdf [Accessed 8 December 2011]
8. http://www.unece.org/env/pp/ppsd.htm [Sourced 28 May 2008]

including many organisations seeking funding under the EU Structural Funds.

1.4.3.3 Preparation of laws and rules by public authorities

The development of a Regulatory Impact Analysis (RIA) regime in 2005, which includes an assessment of the potential impact of proposed regulations, has been a positive development under Article 8 of the Convention. The early operation of the RIA regime was reviewed in a report published in July 2008[9]. There is, however, no training of personnel in how to conduct the RIA.

1.4.4 Access-to-justice provisions (Table 1.4)

The introduction of the Access to Information on the Environment Regulations (SI No. 133 of 2007) and the consequent setting up of the office of the Commissioner for Environmental Information have established a clear and transparent set of procedures for information requests and a two-step appeals process ultimately to the Commissioner. The absence of the necessary capacity building in public administrative bodies and in the public however has so far resulted in a lack of proper implementation of the provisions of Directive 2003/4/EC that the Regulations are supposed to transpose.

Administrative review of planning and development decisions is now only available for projects that don't qualify as being of strategic significance. Under the Planning and Development (Strategic Infrastructure) Act 2006, the Appeals Board becomes the Planning Authority and, with regard to the decisions it makes, the only review available is in the High Court, where in general only the procedures are open to challenge, and not the substance of the decision. The Planning and Development Act 2000 raised the bar by making it more difficult to be able to get through the door of the court. This was done by giving standing only to those with substantial interest in the decision making, though the legislation has been criticised for lack of clarity by the Supreme Court, in Harding 2008. In his judgment, Mr Justice Murray said that the test laid down by the Oireachtas in Section 50 of the Act as to what constituted 'substantial interest' was "*vague and*

9. http://www.betterregulation.ie/eng/Publications/Report_on_the_Review_of_the_operation_of_Regulatory_Impact_Analysis.pdf
[Accessed 8 December 2011]

Table 1.4. An evaluation of the implementation of the provisions regarding access to justice.

Article	Obligations by paragraph	Law	Effort	Effect
Article 9 ***A system to provide review of public authority decisions based on Articles 4 and 6 and other relevant provisions***	1 Provides review procedures relating to information requests under Article 4	GOOD	GOOD	GOOD
	2 Provides review procedures relating to public participation under Article 6 and other relevant provisions of the Convention	INTERMEDIATE	GOOD	POOR
A system to provide citizen access to review so as to challenge violations of domestic environmental law	3 Provides review procedures for public review of acts and omissions of private persons or public authorities concerning national law relating to the environment	POOR	INTERMEDIATE	POOR
	4 Minimum standards applicable to access-to-justice procedures, decisions and remedies	POOR	INTERMEDIATE	POOR
	5 Requires Parties to facilitate effective access to justice	POOR	POOR	POOR

Key to ascribed values:

VERY BAD	POOR	INTERMEDIATE	GOOD	VERY GOOD

lacking in precision". Previously the threshold for standing was set at the level of sufficient interest. Both of these Acts are then significant in the light of Ireland's intention to ratify the Convention.

The issue of costs in relation to administrative review can be a substantial barrier when participants try to present their 'case' on an equal footing with those that have deep pockets. These costs are seen to multiply when seeking injunctive relief or judicial review. Measures to ameliorate the situation regarding court procedures are effectively blocked with no legal aid and Protective Cost Orders (PCOs) being totally restricted by the 'Corner House Rules', which require no personal interest in the case. To gain standing, one needs at least sufficient interest and then, to protect oneself against possible unbearable financial consequences of taking a public interest case, one must have no interest – heads you lose, tails you lose.

The Convention expressly recognises that the public may need assistance in order to secure their rights to environmental justice. In the absence of access to PCOs or legal aid, Ireland is a long way from compliance in this regard.

1.5 General Conclusions

As can be seen, whilst there is much that is good in the provisions currently in place for Aarhus Convention implementation, there are still many gaps.

Much needs to be done to improve the capacity of all sectors of society to play their part in developing and maintaining a sustainable society. This involves a major effort to implant into the Constitution, legislation, education and practice concerning the fundamental concept of the human right to a clean and healthy environment, as well as the concomitant duty to protect this right for present and future generations. Those that act to support this right need to be supported and, where necessary, protected by whistle-blower legislation.

The legal position with regard to access to information has improved considerably following the transposition of Directive 2003/4/EC into the Regulations (SI No. 133 of 2007). However, as is shown, the organisational phase of transposition is far from complete and the operational phase reflects this. The gathering of data by public bodies and their distribution in the form of useful information ranges in quality from poor to very good. Many public bodies lack the necessary effective systems for integrated data and information management. The transfer of emissions data from IPPC-licensed premises is slow and on paper, so that it can be as much as 6 months old before the public can access it. This is particularly problematic where relations with an IPPC-licensed facility's neighbours are poor.

Public participation in decision making in many situations is still based on the DAD principle, in particular relating to the EIA process. The ability of public authorities to effectively conduct participatory processes is very much limited by their lack of capacity, both in personnel resources and skill sets. Whilst there are examples of good practice, there appears to be a lack of corporate learning within and between authorities. The fact that Directive 2003/35/EC has yet to be fully transposed even in the normative sense would appear to be a major factor in this. Regulatory Impact Analysis, as practised in the Department of the Taoiseach, and stakeholder involvement in the development of policies within Comhar are positive developments.

Access to justice regarding refusal to provide environmental information is on a sound footing, though the final phase of judicial review suffers from the same limitations as all the judicial processes. Barriers to justice are not unique to the courts. Administrative reviews by An Bord Pleanála have huge cost and time resource implications for ordinary citizens. However, it is the judicial system that has built into it the most barriers to justice. Whilst in theory all are equal in front of the law, it is clear that those with the deepest pockets can hire greater resources both legal and technical to argue their case. Limits on standing and on protective cost orders, the slowness of the legal process, the lack of legal aid, and the enormous costs that can be charged to the losers are all huge barriers to justice.

This report is intended as the starting point in Ireland's journey towards providing for the rights asserted in the Aarhus Convention and at the bottom line enabling Ireland to be in compliance with it.

2 Methodology

2.1 Description of the Methodology used for the Assessment

The core analytical tool used in this research, The Access Initiative research tool, was designed by a coalition of NGOs from five continents led by the World Resources Institute, Washington. The tool is designed to assess the implementation of Principle 10 of the Rio Declaration, 1992. This is a web-based tool that provides an array of analytical devices (see http://www.accessinitiative.org/).

The methodology requires the selection and application of a set of indicators to a series of case studies. The selection of the case studies is described here.

In order to place the outcomes from TAI analysis in context, a number of complementary studies and research activities were carried out.

The findings and reports can be seen at http://www.environmentaldemocracy.ie/.

2.1.1 TAI online research tool

The Access Initiative methodology is a set of instructions and research questions that generates over 140 indicators to which values are ascribed. In this study, the indicators are applied to 36 case studies. A hierarchical structure is used to divide the indicators into three logical topic areas:

1. Categories;
2. Topics; and
3. Sub-topics.

2.1.1.1 Categories

The five categories are general law, the three main access principles, and capacity building.

- **Category 1: General Law**
  There are 23 general law indicators that seek to measure the extent to which the access principles are built into the legal structure.
- **Category 2: Access to Information**
  Information is the cornerstone of decision making, providing the public with knowledge and evidence to make choices and monitor the state of the environment.
- **Category 3: Participation**
  Participation allows citizens to express opinions, challenge decisions, and shape policies that could affect their communities and environment.
- **Category 4: Access to Justice**
  Mechanisms for justice enable the public to seek remedy if they do not have full access to information and participation, or if government decisions do not take the environment into account.
- **Category 5: Capacity Building**
  Capacity-building efforts by the government ensure that individuals and groups have the necessary knowledge, skills, and support to obtain environmental information, participate in decision-making processes, and readily access justice when their rights to access have been denied or reduced.

Each of the categories is assessed through both law and practice indicators. Law indicators evaluate the general legislative and judicial framework for guaranteeing access, while practice indicators are applied to selected case studies to examine real-world conditions. Practice indicators are further subdivided into those addressing the effort made to implement the access principles and those addressing the effectiveness of that effort. This spread of indicators is intended to identify the gaps that may exist between policy and practice. Values are ascribed to each indicator following a set of research actions.

A variety of tools is used to enable the responses to the research questions. They include:

- Interviews;
- Site visits;

- Requests for information;
- Legislative reviews;
- Document reviews; and
- Media reviews.

2.1.2 Selection of case studies

The decision on which cases or sectors of the economy, government or industry to focus on with regard to each category was made at the outset in consultation with the members of the Review Panel. Clearly it would have been impossible to look at the governance of every decision-making entity in the State. Choosing as representative a sample as possible was then critical to the validity of any conclusions and recommendations that came out of this research. In selecting case studies for the project, the following criteria were taken into account. The subject of case studies should:

- Be from sectors with major economic significance and with the potential for causing significant environmental impacts;
- Represent different scales of decision making; and
- Be typical of the relevant sector or decision-making process and not necessarily be those showing best or worst practice.

It was accepted at the outset that assessment becomes deeper and more credible the more cases/sectors studied. Initially a long list of 80 case studies was drawn up, and then the members of the Review Panel were asked to prioritise the list based on the above criteria. Following this, the list was reduced to 40. This then became the project case study list.

2.1.3 The comhra online reporting and review tool

At the outset of the project, it was decided to enhance TAI research process by including a review panel that looked at each case study as it was completed. Following that, individual reviewed reports were then to be made available in draft format for public review. The Access Initiative online tool was only launched just before the commencement of this project, prior to which it had been available only as a CDROM, and so its capacities and limitations were not known when this project was initially planned. The Access Initiative online tool did not allow access for anyone other than the researchers. Consequently, a website[10] was developed that enabled controlled access to the case study reports and which provided a public forum for comments to be made. The structure of the review process required access to the findings and reports relating to individual case studies for the review panel and the public. The findings and reports can be accessed at http://www. environmentaldemocracy.ie/.

2.1.4 Stakeholder workshops

During the course of the research, presentations were made at a number of public events and the research team was invited to run stakeholder workshops at two NGO-organised public events.

Both workshops used the world café technique to promote discussion and to ascertain the barriers experienced by the participants in accessing information, taking part in decision making and getting access to justice on the environment, as well as potential ways of overcoming these barriers.

2.1.5 Surveys

Two surveys were carried out during the course of the project.

1. **Public awareness relating to air pollution in Dublin**
   This was carried out as part of the case study on access to information on air pollution in Dublin. It was a street survey designed to gain some indication of public awareness of sources of information and also their awareness of what constituted air pollution and what were its sources. This was not a statistically significant sample, but nonetheless provided some indication of the lack of public awareness of what constituted pollution, its sources and where to access information on air quality.

2. **Local authority provisions for implementing SI No. 133 of 2007**

10. There were on average 21 requests per day during the research period, with the busiest week beginning 7 January 2008 (610 requests). The total number of successful requests for the period 25 June 2007 to 12 March 2008 was 5,652.

The second was a telephone and email survey of local authorities to measure the level of awareness of the existence of the new Regulations on Access to Information on the Environment (SI No. 133 of 2007). Where there was awareness, the officials were asked had they developed a scale of charges in relation to requests. The results of this survey showed a widespread lack of knowledge amongst local authority officials of the existence of the Regulations. In those local authorities where they were known of, there was a lack of consistency in their application.

3 General Law

3.1 Introduction

There are 23 general law indicators which seek to measure the extent to which the access principles are built into the legal structure (Table 3.1). As the legal system plays a major role in building capacity in the areas of access to justice and access to information, and to a certain extent public participation, this is also measured. The indicator scores are shown in Table 3.1.

3.2 Recommendations for Changes in General Law

- An amendment to the Constitution to include the right to a clean and healthy environment, and the rights of access to information, public participation and justice in environmental decision making.
- Encourage the generation of precedent through public interest cases.
- Greater clarity in the drafting of laws.
- The removal of the costs barrier in environmental justice cases.
- The removal of financial barriers to participation.
- Shifting the burden of proof.
- The establishment of a legal framework for NGOs.
- Broader financial support for NGOs at all levels.
- Reform of the structures of legislation.

Table 3.1. General law indicators and their ascribed values.

No.	Indicator	Value
1	How clear and inclusive are constitutional guarantees to the right to a clean and/or safe environment?	VERY BAD
2	How clear and inclusive are constitutional guarantees to the right of access to information held at public bodies?	VERY BAD
3	How clear and inclusive are constitutional guarantees to the right to direct public participation in government decision making?	VERY BAD
4	How clear and inclusive are constitutional guarantees to the right of access to justice, including redress and remedy?	INTERMEDIATE
5	How clear and inclusive are constitutional guarantees to the right of freedom of expression?	INTERMEDIATE
6	How clear and inclusive are constitutional guarantees to the right to freedom of association?	VERY GOOD
7	How clear and inclusive is a framework law supporting broad access to government information?	POOR
8	To what extent does the law protect government employees who release information to the public in an effort to expose corruption in government conduct or to protect the public interest?	VERY BAD
9	How limited and clearly defined is the scope of confidential information?	INTERMEDIATE
47	How well does the law support broad public and civil society organisation participation in decision making by administrative and executive bodies?	INTERMEDIATE
48	How limited and clearly defined is the scope of ‘closed door’ decisions that affect the environment?	INTERMEDIATE

Table 3.1 *contd*

No.	Indicator	Value
49	To what extent is 'the public' that can participate in decision making defined to include any interested individual and civil society organisations?	**VERY GOOD**
91	How well does the law support broad public and civil society organisation access to redress and remedy?	**GOOD**
92	To what extent does the legal system recognise liability for environmental harm?	**INTERMEDIATE**
93	How limited in number and clearly defined is the scope of government bodies that are immune to claims?	**GOOD**
94	To what extent is standing or the ability to bring a claim defined to include any interested individual and civil society organisations?	**VERY GOOD**
137	How well do laws and rules for registration and operation of civil society organisations promote an enabling environment for civil society organisations?	**VERY BAD**
138	To what extent does the law create diverse legal and regulatory incentives supporting financial independence of civil society organisations?	**VERY BAD**
139	How well do laws and rules for registration and operation of media organisations support press freedom?	**INTERMEDIATE**
140	How well do laws and regulations enable media organisations to have diverse sources of funding?	**VERY GOOD**
141	To what extent does the law require the public school system to provide civic education?	**VERY BAD**
142	To what extent does the law require the public school system to provide environmental education?	**VERY BAD**
143	To what extent does the law require the Government to provide free legal aid?	**INTERMEDIATE**

Key to ascribed values:

VERY BAD	POOR	INTERMEDIATE	GOOD	VERY GOOD

4 Capacity Building

4.1 Introduction

There are capacity-building indicators incorporated into each of the indictor sets for access to information, participation and justice and these are reported on in Chapters 5–7, respectively. There are only five general capacity-building indicators (Table 4.1). The imperative to build capacity is clearly laid out both in the Aarhus Convention and in the European Treaty.

4.2 Recommendations for General Capacity Building

- Wide promotion of the Aarhus Convention provisions.
- The Government should join the Partnership for Principle 10[11].
- The creation of an Ombudsman for the Future. Sustainable decision making requires an advocate for the generations to come and not just for the human species.
- Access rights should be made an integral part of the Civics, Social and Political Education (CSPE) curriculum.
- All curricula at first to third levels of education should be sustainability proofed.
- Teachers and lecturers should be provided with the necessary training for effective curriculum delivery in this area.
- More opportunities and incentives, such as orientation workshops and seminars geared towards continuous professional development, should be put in place for teachers of environmental education.
- In-house training regarding the concepts underlying sustainable development should be provided for all staff of public authorities.
- In-house training should be provided for all staff of public authorities to ensure that they have a good grasp of the access principles and that they have the dialogue and facilitation skills necessary for decision-making processes that are conducted by the authority.
- All licensing decisions made by the Broadcasting Commission of Ireland should be publicly reasoned.
- Free legal aid should be provided for groups and individuals acting in the public interest in both

11. The Partnership for Principle 10 (PP10) is committed to translating Principle 10 into action by promoting transparent, inclusive, and accountable decision making at the national level (http://www.pp10.org/).

Table 4.1. General capacity-building indicators and their ascribed values.

No.	Indicator	Value
144	How well does the Government provide training or curriculum resources on access rights to public school teachers?	VERY BAD
145	How well does the Government provide opportunities and incentives for public school teachers' professional development in environmental education?	INTERMEDIATE
146	How equitably does the Government implement rules and regulations for registration and operation of civil society organisations?	GOOD
147	How equitably does the Government implement rules and regulations for registration and operation of media organisations?	GOOD
148	To what extent does the Government provide free legal aid?	POOR

Key to ascribed values:

VERY BAD	POOR	INTERMEDIATE	GOOD	VERY GOOD

judicial and administrative tribunals involved in environmental issues.

- The earnings threshold for access to legal aid in environmental public interest cases should be raised to the index-linked level of the average industrial wage.

- Core funding for the Irish Environmental Network[12] (IEN) should be multi-annual and confirmed at least 6 months in advance of the beginning of the funding period.

- Increase core funding of ENGOs to a level that will enable them to fulfil their important role in informing the public, monitoring the activities of both public authorities and private bodies, and challenging them where they fail to protect the environment or human health.

- The removal of the financial barriers to the use of Ordinance Survey maps by ENGOs for public interest purposes.

12. Formerly the Environmental (Ecological) NGO (EENGO) Secretariat.

5 Access to Information

5.1 Introduction

The need for the provision of environmental information is seen throughout the Aarhus Convention. It was noted above that the Convention gives 'environmental information' a broad definition, including not only environmental quality and emissions data, but also information from decision-making processes and analyses that inform the decision making. It also gives a very broad definition of what constitutes a public authority, including those that are carrying out administrative functions on behalf of the State.

Access to information is the first of the three pillars of the Convention. Effective public participation in decision making depends on full, accurate, up-to-date information. However, the public may seek access to information for any number of purposes, and not just to participate. Dissemination of information regarding the existence of and mechanisms for gaining access to justice is also essential.

There are two parts to this information pillar:

1. The first 'passive' part is covered by Article 4 and concerns the right of the public to seek information from public authorities and the obligation of public authorities to provide information in response to a request; and
2. The second 'active' part, covered by Article 5, concerns the right of the public to receive information and the obligation of authorities to collect and disseminate information of public interest without the need for a specific request.

These two articles were given effect in Ireland by Directive 2003/4/EC[13], which in turn was transposed into Irish Law in April 2007 as the European Communities (Access to Information on the Environment) Regulations 2007 (SI No. 133 of 2007).

13. 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.

5.1.1 Case studies[14]

- **Emergency**
  - *A major fire at Protim Abrasives, Dublin. An IPPC-licensed premises*
  - Drinking water pollution. Cryptosporidium in Galway's drinking water
- **Monitoring**
  - Ambient air quality, Dublin
  - Drinking water quality, Dublin
  - Drinking water quality, Limerick County
  - Drinking water quality, Banagher, Co. Offaly
  - Surface waters, Western Regional Fisheries Board (WRFB)
  - Groundwaters, Donegal County Council
- **Facilities, all IPPC-licensed facilities**
  - Power plant, ESB Loch Ree Power
  - *Chemical plant, Roche Pharmaceutical*
  - *Timber processing, Standish Sawmills*
  - *Food processing, Bailieboro Foods*
  - *Large pig farm, Ballyglassin Piggery, Co. Longford*
  - *Cement plant, Lagan Cement*
  - *Mining/Metal refining, Aughinish Alumina*
- **Other**
  - Forestry, Coillte Teoranta
  - State of the Environment Reporting

All the case studies are available in detail at http://www.environmentaldemocracy.ie/index.php?group=page&pages_id=5.

14. Bodies not covered by SI No. 133 of 2007 are shown in italics.

5.2 Summary – Access to Information

Figure 5.1 allows comparison of the provisions of the law with the effort made to implement it, and the effectiveness of that effort. It can be seen that 71.4% of indicators applied to the legislation are rated as either good or very good. By contrast, only 48% of the indicators measuring effort and 43.3% of those measuring effectiveness were given these values. In other words, without the necessary effort being put in, the legislation has only a limited effect on providing access to information

5.3 Recommendations Regarding Access to Information

5.3.1 General

- That SI No. 133 of 2007 should be amended to list all the public bodies covered by it, whilst providing for omissions by leaving the definition as it is.

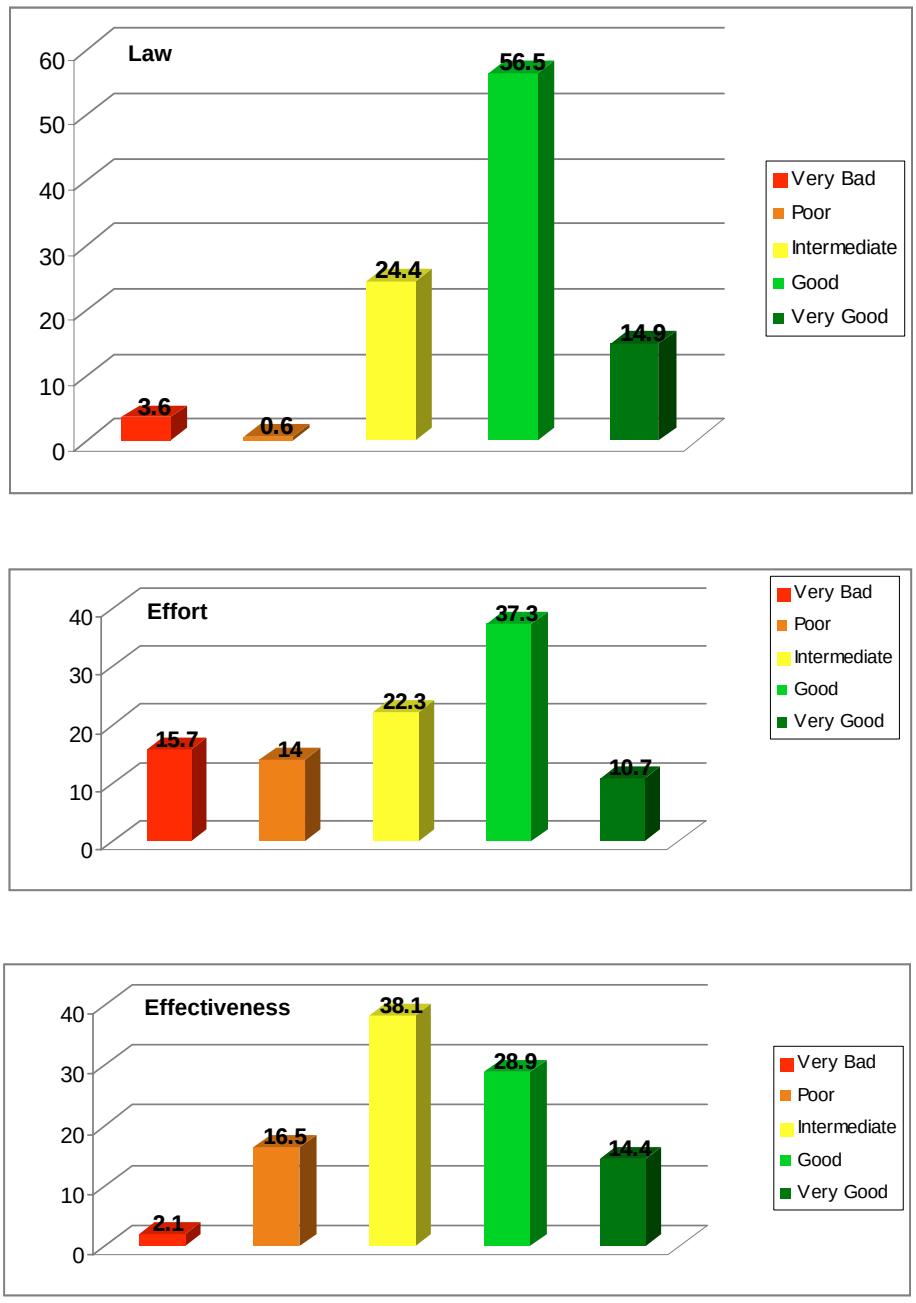

Figure 5.1. The percentage of access-to-information indicators with each value.

- That SI No. 133 of 2007 is amended to:
  - Remove the need to make applications in writing;
  - Require public bodies to inform applicants of the status of their request for information within 10 days of the receipt of the request;
  - Require public authorities, where they don't hold the relevant information, to forward the request to the authority that does, within 5 days of the receipt of the request, without extending the 1-month deadline for responding to the request: this would include the deletion of Article 7(6)(b);
  - The establishment of an online log that enables the applicant to track the processing of the request for information;
  - Insert a definitive requirement on authorities to extract from confidential sources, when requested, what non-confidential information can be obtained without compromising the confidentiality of the source documents;
  - Insert a definitive requirement on authorities to organise and disseminate environmental information;
  - Incorporate a list of the public authorities;
  - Require public bodies to compile and publish lists of the environmental information held by them and ensure that ENFO is enabled to make them centrally available in such a manner that they are easily searchable; and
  - Remove the €150 fee for appealing decisions regarding requests for information.
- That the guidelines for SI No. 133 of 2007 are reviewed and amended to reflect the Decision of the Commissioner for Information on the Environment[15] in relation to the charges made for accessing information.
- That the Commissioner for Information on the Environment should be given the capacity to undertake a wide range of activities aimed at improving the public's understanding of the rights of access to information.
- That the Commissioner for Information on the Environment should be given the possibility of submitting amicus curiae briefs and appearing as an expert in other court processes where questions of government transparency and the right to information are being discussed.
- That the Commissioner for Information on the Environment should be given free reign to co-ordinate with other state bodies to ensure that administrative procedures and structures maximise compliance with the right to information.
- That both the transposition and operative phases of Directive 2003/4/EC are implemented.
- That the Minister for the Environment ensures that all the bodies carrying out administrative functions on behalf of the State are fully informed about the European Communities' (Access to Information on the Environment) Regulations, 2007 (SI No. 133 of 2007), including all the other Ministries.
- That the Minister establishes structures for monitoring the implementation of the Directive:
  - Making available in each public authority a register of requests for information and appeals made under the Regulations;
  - Making available a national register of requests for information and appeals made under the Regulations; and
  - Making these available in a searchable format through ENFO.
- That the Minister, together with the Minister of Justice, establishes inexpensive, timely and effective court procedures for dealing with appeals under Articles 12 and 13 of SI No. 133 of 2007.
- A clear national schedule of charges under SI No. 133 of 2007 should be established.

15. Decision on Appeal to Commissioner for Environmental Information (2008): Case CEI/07/0006.

- Research is needed into the exceptions in the Freedom of Information Act 1997–2003 and the EC Access to Information on the Environment Regulations 2007 (SI No. 133 of 2007).

- Record keeping and reporting in public authorities should be improved through the systematic establishment of integrated electronic systems across all public authorities. In this regard, the establishment of EMAS[16] in all public authorities would have a very positive effect.

- Lists, registers and files to be publicly accessible free of charge.

- Public libraries should be developed as resources for access to environmental information.

- Use the print guidelines produced by the NCBI[17].

- Consult with the Dyslexia Association of Ireland.

- Implement and ratify the PRTR Protocol.

- Introduce a national online PRTR Register.

- That the role of community fora as an information broker for the local communities be given priority and financial support.

5.3.2 Local government

- That the Government provides the necessary legislation, guidelines and funding to enable capacity building of the local authorities' capacity to implement Directive 2003/4/EC.

- To this end, a protocol needs to be established to ensure that local government is made aware of changes in the laws that affect its functions.

- That the Government provides the necessary guidelines and funding to enable capacity building of ENGOs and the public.

- That local and national Government work with particularly vulnerable members of society and their representatives.

- That the agencies involved provide a variety of channels to access information.

- That local authorities designate specific people to whom requests for information are directed.

- That local authorities provide the public with guidance on how to access information regarding drinking water quality.

- That a software system is developed by central government to enable environmental data entries to be automatically converted to information formats that allow the public to grasp the significance of monitoring results.

5.3.3 IPPC-licensed facilities

- That the Government amends the EPA Act, 1992 to include a provision that all IPPC licensees are required to provide:

  - Public access to the environmental records held by them as required under the license;

  - A clearly visible notice at the main entrance to the facility announcing the availability of this information, as well as the times when and location where the information can be viewed. The notice should also carry the names and contact details of the person within the organisation responsible for the provision, and the relevant Office of Environmental Enforcement (OEE) Inspectorate;

  - A public communication programme to the EPA. This programme is to be advertised at the time of its inception in the relevant newspapers, and displayed at the main entrance to the facility;

  - An appropriate place where the public can view the information;

  - Training for the appropriate staff on the provision of environmental information; and

16. Regulation (EC) No. 761/2001 of the European Parliament and of the Council of 19 March 2001 allowing voluntary participation by organisations in a Community eco-management and audit scheme (EMAS) and Commission Recommendation (2003/532/EC).
17. NCBI, National Council for the Blind of Ireland.

- Training for the staff responsible for this provision to enable them to assist the public in understanding the information.

- That, where there is controversy regarding environmental monitoring at a particular facility, the EPA should be empowered through an amendment to the EPA Act to carry out the full range of the necessary environmental monitoring required under the licence, employing the appropriate contractors to perform the monitoring, and charging the licence holder accordingly.

- That the Government amends the EPA Act, 1992 and other relevant legislation to include a provision that all IPPC licensees and other operators that carry substantial stocks of flammable chemicals, but where the quantities are below the threshold for Section 17 of SI No. 74 of 2006 (Seveso Sites), are required to:
  - Provide a regularly updated inventory of same to the EPA and to the relevant local fire service;
  - Have a fire safety certificate; and
  - Consult with the fire services, the Environmental Health Office (EHO) and the EPA in the creation of a periodically reviewed pre-fire plan, to include a public information programme.

- That the requirements contained in IPPC licences for the preparation of environmental emergency procedures should include consultation with the public, fire services and EHOs.

- That the EPA meets with the fire services to jointly address the general issues of safety and the environment relating to sub-Seveso Sites.

- That fire reports should be made available electronically by the fire services free of charge and in paper format for the cost of a photocopy. This is environmental information and comes under SI No. 133 of 2007.

- That the EPA ensures that the relevant EHO is immediately informed in the case of a fire at an IPPC-licensed premises.

- That the EPA provides a variety of channels to access environmental information held by it.

- That universal environmental software is developed to enable the direct online feed of data to the EPA from the IPPC-licensed facilities. Further, that this software converts these data in real time into user-friendly information available through the ENVision environmental mapping system, as well as on-site at the IPPC facility.

- That the new ENVision interactive geographic information system (GIS) environmental map facility on the EPA website be extended to show real-time environmental information, in particular on IPPC-licensed premises.

- That the EPA provides a basic training package for the staff of the IPPC-licensed facilities regarding their public information requirements.

- That the licensee is required to periodically publish non-technical information regarding environmental performance of the facility in the local newspaper(s).

- That the public information programme is prioritised as an important condition of the licence as it provides the opportunity to enhance the activities of the OEE through community monitoring of a facility.

- That the EPA makes public the internal guidance document for inspectors in relation to assessment of the public information programmes in operation at licensed premises.

- That the licensee should be required to engage with the communities that surround its facilities in a constructive way, to share information and develop good practice.

5.3.4 The fisheries boards

- That the Central Fisheries Board develops and implements a training scheme with regard to SI No. 133 of 2007 throughout all the regional boards.

- That the fisheries boards make the provisions of SI No. 133 of 2007 well known to all the members of the catchment management groups.

- That the fisheries boards make the provisions of SI No. 133 of 2007 well known through the local media, printed and electronic.
- That the Central Fisheries Board develops a universal information management system
- That the fisheries boards provide a variety of channels to access information
- That the fisheries boards keep their websites up to date and provide a front page link to the EPA ENVision water quality maps.

5.3.5 Coillte Teoranta

- That the Minister under Section 38(1) of the Forestry Act, 1988, with the consent of the Minister for Finance, issues directions in writing to the Coillte Teoranta that underline the provisions of SI No. 133 of 2007 and require Coillte to provide:
  - A structured system for the generation and public reporting of environmental information relating to all its activities that are likely to have significant environmental impacts, including those being carried by subcontractors; and
  - The necessary infrastructure and capacity building to make access to information effective. To include training for the appropriate staff on the provision of environmental information and training for the staff responsible for this provision to enable them to assist the public in understanding the information.
- That the proposed new Forestry Act includes the above provisions, but that these are broadened to include all forestry companies and not just Coillte.
- That Coillte provides a variety of channels to access information.
- That an integrated electronic reporting infrastructure is established to enable central access to all environmental data relating to each activity and location managed or owned by Coillte.
- That interactive GIS environmental maps be extended to show real-time environmental information.
- That Coillte is required to periodically publish non-technical information regarding environmental performance of individual forests or activities in the local newspaper(s).
- That easily visible notices are placed at the entrances to forests and sites of forestry activities describing the activity or forest and announcing where and when the reader can obtain information regarding the environmental aspects of the particular location.
- That all subcontractors are informed of their responsibilities under SI No. 133 of 2007.
- That the ongoing internal public information training programme is prioritised as an important activity within Coillte.
- That Coillte should be required to engage with the communities that surround its activities in a constructive way, to share information and develop good practice.
- That the FSC[18] multi-stakeholder processes for establishing sustainable forestry development be used as a vehicle to enable the development of best practice in the generation, integrated management and dissemination of environmental information.

5.3.6 The State of the Environment reporting

- **Public participation**
  The contents of an SOE should depend upon the reader's interests, in other words upon environmental priorities in our society.
- **Frequency of reports**
  Whilst it is recognised that the 4-yearly SOE report requires the commitment of major resources, the indicators developed for the *Environment in Focus 2006* report should be used as the basis of an annual report with regular online updates in-between of key data.

18. The Forest Stewardship Council is an international multi-stakeholder body (http://www.fsc.org/).

- **Availability of sources and data**
  The intelligence behind information presented in SOE reports can only be easily made available through interactive web-based reporting.

- **A clearing-house function**
  The SOE should also provide links to all sectoral (e.g. surface water, waste, etc.) SEAs and EIAs.

6 Public Participation in Environmental Decision Making

6.1 Introduction

6.1.1 Participation and the Aarhus Convention

What does the Convention have to say regarding participation? The first thing to note is that it refers only to participation and not to consultation, the former being an active process, the latter a more passive one.

Article 6 deals with public participation in decisions on specific activities, for example on the proposed location, construction and operation of large facilities.

Article 6 can apply to spatial planning decisions, development consents, operating permits, discharge permits, or any particular proposed activity where the decision making may have a potentially significant impact on the environment. *Article 6 is not limited then to activities where an EIA is required* or to those activities listed in Annex 1 of the Convention. The EU Directive that provides the main vehicle for implementing Article 6 is 2003/35/EC, which provides 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 (on EIA) and 96/61/EEC (on IPPC), and six other specific Directives[19]. It also includes provisions for access to justice under Article 9 of the Convention. These latter provisions are discussed in Chapter 7.

19. (a) Article 7(1) of Council Directive 75/442/EEC of 15 July 1975 on waste (1).
    (b) Article 6 of Council Directive 91/157/EEC of 18 March 1991 on batteries and accumulators containing certain dangerous substances (2).
    (c) Article 5(1) of Council Directive 91/676/EEC of 12 December 1991 concerning the protection of waters against pollution caused by nitrates from agricultural sources (3).
    (d) Article 6(1) of Council Directive 91/689/EEC of 12 December 1991 on hazardous waste (4).
    (e) Article 14 of Directive 94/62/EC of the European Parliament and of the Council of 20 December 1994 on packaging and packaging waste (5).
    (f) Article 8(3) of Council Directive 96/62/EC of 27 September 1996 on ambient air quality assessment and management.

Article 7 deals with public participation in the development of plans, programmes and policies relating to the environment, which includes sectional or land-use plans, environmental action plans, and environmental policies at all levels.

The general provisions of Article 7 regarding plans and programmes, but not policies, were given effect in the EU by Directive 2001/42/EC (SEA Directive) on the assessment of the effects of certain plans and programmes on the environment. This is the main implementing EU legislation regarding this Article, though the provisions of the Article are also included in Directive 2000/60/EC establishing a framework for Community action in the field of water policy. The provisions for public participation in the River Basin Management Plans under the Water Framework Directive (WFD) (Directive 2000/60/EC) were transposed into Irish Law by SI No. 413 of 2005, the European Communities (Water Policy) (Amendment) Regulations 2005. The SEA Directive[20] was transposed into Irish Law by SI No. 435 of 2004[21] and SI No. 436 of 2004.

Article 7 then is not restricted to the plans and programmes provided for under the SEA Directive. The SEA Directive does not provide for public participation in policy making, the third strand of Article 7 of the Convention.

To be in compliance with the Convention, transposition of the Directive is not enough, and revised guidelines are needed for public authorities to this effect. Participation of the public must begin at the screening stage.

Article 8 concerns public involvement in the preparation by public authorities of laws and regulations. There is no EU Directive to provide for this Article. However, the SEA Protocol Article 1(b) does apply to the consideration of environmental, including

20. Directive 2001/42/EC on the assessment of the effects of certain plans and programmes on the environment.
21. European Communities (Environmental Assessment of Certain Plans and Programmes) Regulations 2004.

health, concerns in the preparation of policies and legislation and provides for public participation from the screening phase onwards.

In each of Articles 6, 7 and 8, early involvement of the public is encouraged. Articles 7 and 8 are less precise than Article 6, which provides for a high level of early involvement adequately guaranteed by law (Stec and Casey-Lefkowitz, 2000).

6.1.2 Case study list

Case studies were selected under four categories:

1. Project-level decisions
   - (i) License for field trial with genetically modified potatoes
   - (ii) Monkstown Ring Road
   - (iii) Review of a waste permit
2. Regulatory decisions
   - (iv) Coolaney Rockfield Mini-Plan Variation
   - (v) Midlands Waste Management Plan
   - (vi) Shannon International River Basin District Advisory Council, SIRBDAC (appointment of members)
   - (vii) Sligo County Development Plan
3. Policy making
   - (viii) Regional Planning Guidelines (Border Regional Authority)
4. Other decision making
   - (ix) Strategic Environmental Assessment of Midlands Waste Management Plan
   - (x) Greener Homes Scheme

The original list included case studies on the EIA, IPPC and hazardous waste licensing process, as well as the planning permission process, and involvement of community fora in strategic policy committees (SPCs). These areas of public participation will be discussed alongside the case studies.

6.2 The Legislative Context

In order to discuss the findings described in Appendix 8 of the End of Project Report, it is necessary to put them in the context of the provisions of Articles 6, 7 and 8 of the Aarhus Convention. The first of these three articles was given effect in Europe by Directive 2003/35/EC, which has yet to be transposed into Irish Law. Although EU Directives have direct effect in the Member States, a recent High Court Judgement[22] (Friends of the Curragh Environment Ltd) ruled that the provisions of this Directive are too vague to be operable in the Irish Courts. The European Commission is currently pursuing a case against Ireland for non-implementation of this Directive[23,24]. Directives 2001/42/EC (SEA Directive) and 2000/60/EC (WFD), which incorporate public participation into their provisions, have both been transposed into Irish law and give effect to most of Article 7.

6.3 The Implementation of Article 6 of the Convention

6.3.1 Public participation in decisions on specific activities

- **Conduct public participation early in decisions on activities with a possible significant environmental impact**

  Article 6(1) requires Parties to guarantee public participation in decision making regarding any proposed activity[25] that may have a potentially significant environmental impact, and in particular for activities listed in Annex I of the Convention.

  Article 6(10) extends this to include amendments and updates of decisions relating to operating conditions for an activity included above.

  Article 6(11) places an obligation on Parties to apply Article 6 to decisions on whether to permit the deliberate release of genetically modified organisms (GMOs) into the environment, "*to the extent feasible and appropriate*".

22. http://www.courts.ie/Judgments.nsf/bce24a8184816f1580256ef30048ca50/ce48ca2dce14c1c5802571da00353e4f?OpenDocument&Click=
23. Commission of the European Communities v Ireland (Case C-427/07).
24. Ryall (2007).
25. While not defined in the Aarhus Convention the term 'proposed activity' is used in the Espoo Convention which defines it as "*any activity or any major change to an activity subject to a decision of a competent authority in accordance with an applicable national procedure*" (Article 1(v)).

A decision was made[26] at the second Meeting of the Parties in 2005 to amend the Convention removing GMOs from the provisions of Article 6 and inserting a new 'Article 6 bis' which laid down specific requirements for "*early and effective information and public participation prior to making decisions on whether to permit the deliberate release into the environment and placing on the market of genetically modified organisms*".

If the cases studied in this context are examined, it can be seen that, both in the case of the Monkstown Ring Road and the genetically modified potato licensing, notice was given early enough in the process for the public to be able to engage with it.

Conversely, the EIA process, as practised, excludes the public from the process until the EIS is completed. This is wholly inadequate given the provisions of the Convention and represents the classic DAD approach to environmental decision making.

With regard to waste permits, whilst the Regulations[27] require the publishing of a notice and a site notice, neither are required to inform the reader of the right to comment on the application, merely that they can view the documents at a particular location. The Regulations provide for public comment, but don't specify the duration of the comment period. Similarly, the period of public comment on IPPC and waste license applications can end any time up to a maximum of 8 weeks. If the EPA Board makes a determination before that time, the comment period ends. This means that the public has no idea how to structure the process of developing a submission. The period for objections to the proposed determination is the shorter period of 28 days, during which time an objector must also decide whether to ask for an oral hearing.

- **Give notice to the public concerned**
  With regard to land-use planning, under the Planning and Development Acts 2000–2006, and indeed many other permitting processes, there is a requirement on the person seeking the permission/licence, etc., to publish a notice of intent in a paper circulating in the area concerned. This is generally a notice with a prescribed wording and layout. Taking the example of the notice required under the Planning and Development Acts 2000–2006, the notice has a substantial legally prescribed text and the layout in the paper is standardised. However, the three pieces of information that a member of the public wants to be able to see when scanning through the paper are almost invisible. These are:

  (i) What is proposed;

  (ii) The proposed location of the project; and

  (iii) The name of the proposer.

  The design and layout should be altered, placing these three items in larger bold text at the top of the notice, with the location and the type of development at the top. The typeface should be prescribed as per the guidelines of the NCBI. The fact that there is a requirement for only one notice in one newspaper circulating in the area is also an issue, as it is very easy to reduce the impact of this requirement by judicious choice of the paper. Examples of this are the publishing of the notice in a Dublin evening daily newspaper that sells very few copies and is available at only one shop in the relevant rural town, where all the copies are bought up by the developer or the publishing of the notice in Irish only.

  As noted above, 'the public concerned' *can* include NGOs, but, with the exception of An Taisce (in relation to projects likely to have significant environmental effects), NGOs are not informed about development proposals. Non-government organisations and the public at large are the repositories of a wealth of information and a valuable resource for monitoring both breaches in the law and implementation of permit conditions. A standing list of relevant NGOs, established by the Department of the Environment, Community and Local Government

26. Decision II/1 on Genetically Modified Organisms (ECE/MP.PP/2005/2/Add.2).
27. Waste Management (Permit) Regulations, 1998.

(DoECLG) in co-operation with the Irish Environmental Network, should be notified by each planning authority regarding developments likely to have significant impacts on the environment even when they are below the threshold of the EIA legislation.

In the case of the general practice of the EIA process, clearly there is a huge deficit with regard to public participation. Individual door-by-door notification of the public living within the zone of impact of a development would be appropriate with most developments.

The comments regarding notification above apply equally to the genetically modified licensing process, IPPC and waste licensing. Regarding the Monkstown Bypass, the notices given were considered timely.

There is no requirement in the Regulations (SI No. 165 of 1998), providing for waste permitting, to notify people of their rights to submit comments, merely that they can view documents, even though Article 14 states "*Any person may make a written submission to a local authority in relation to an application*".

Under the Planning and Development (Strategic Infrastructure) Act 2006, for major infrastructural projects, pre-application consultations shall take place between the developer and An Bord Pleanála. The Bord *may* involve others in the process. Where a request for consultations is received by the Bord, the Bord will include the request in its weekly list of 'cases received' published in accordance with Planning Regulations. It will also be posted on its website. When the pre-application consultations have been concluded, the Bord will publish that fact in its weekly list of 'cases determined' and post it on its website. In addition, the Bord's records of any meetings held with prospective applicants during this phase will be available for inspection and purchase when the consultations have concluded. However, involvement of the general public is not a part of this pre-application consultation process, and there is no requirement to publish a notice regarding same.

- **Establish reasonable time frames for phases of public participation**
  The classic example of a process with a series of distinct phases is the EIA process. In each relevant phase, the Convention requires that Parties provide sufficient time for the public to:
  - Digest the information provided in the notification;
  - Seek additional information from the public authorities identified in the notification;
  - Examine information available to the public;
  - Prepare for participation in a hearing or commenting opportunity; and
  - Participate effectively in those proceedings.

  The reasonable time frames here must take into account the interaction between Article 6 and other parts of the Convention. For example, following notification of a process, it may be necessary, as part of preparation to participate effectively, for a member of the public to request information under Article 4, with the consequent time delay. Parties are required to build flexibility into the participatory process to prevent the time limits provided for in Article 4 from undermining the participatory process.

  Whilst the planning process relating to the Monkstown Bypass gave sufficient time for the above activities, the 28 days allowed for comments on the GMO licence must be considered to be far less than adequate, taking the above considerations into account as well as the technical complexity of the subject matter. Similarly the times allowed for comment regarding planning applications, waste and IPPC licences are inadequate. The period for appeals to An Bord Pleanála is also too short.

  Whilst for projects that are applied for under the Planning and Development (Strategic Infrastructure) Act 2006, the period for members of the public to make submissions is slightly improved at 6 weeks, the complexity of the projects may require more research by those submitting.

The time period for commenting on a waste permit application is within 21 days, or until a decision is made. This leaves some degree of uncertainty and, depending on the efficiency of individual local authorities, could lead to wide variations in this time period. The minimum period is too short to comply with the Convention. There is similar uncertainty in the waste and IPPC licensing processes, where theoretically the period for comment on the initial application can vary from 4 weeks to 8 weeks, depending on when the Board of the EPA decides on the application. This is clearly an unsatisfactory situation, as is the fixed but much shorter period for objections to the proposed determination.

- **Provide all relevant information to the public concerned**
  This refers to the proponent, and is an exhortation rather than a requirement, the purpose being to get the proponent to identify the public concerned and to engage in dialogue with them in order to deal with as many issues as possible before applying for a permit to the relevant public authority. In most instances, this will create a better situation, reducing potential tensions between proponent and the public, making for a more focused application and reducing the time spent by the authority concerned. With regard to Article 6(5), there is no such requirement under Irish law.

  Article 6(6) requires public authorities to provide the public concerned with access to all information relevant to the decision making, free of charge and as soon as it becomes available. The provision on request of information in Article 6(6) is largely catered for by SI No. 133 of 2007, but the proactive provision of information regarding the processes involved in any particular decision-making process is not. In the three cases studied, the provision of information regarding the relevant processes was considered good.

  The EPA publishes all documents relating to IPPC and waste licences on its website, as well as clear guidelines on how to participate in them.

- **Provide opportunities for the public to make comments**
  Convention Article 6(4) "*Each Party shall provide for early public participation, when all options are open and effective public participation can take place*".

  The key phrase here is "*when all options are open*". Whilst this doesn't preclude a public authority from taking a position prior to the public-participation process, as in the case of the periodic review of an existing plan or policy, it must still remain open to persuasion that a different position may be better. Ideally though, all possibilities should be open when the public become engaged.

  In complex decision making, public participation, to be effective, should take place at each stage where a (primary or secondary) decision by a public authority may potentially have a significant effect on the environment.

  Clearly, it is also a long way from being adequate when a completed EIS is presented to the public for the first time as part of a permit or licence application. The correct procedure under the Convention would be the notification of an intention to carry out an EIA together with an invitation to the public to participate. This should take place prior to the EIA screening process[28] and then again before both the scoping and impact assessment phases, with sufficient time allowed during each phase for information gathering, etc. This sequence is clearly laid out in the SEA Protocol in order to take into account the Convention.

  In the three case studies, there were opportunities to make submissions early in the process. This is also the case with waste and IPPC licensing.

  Convention Article 6(7) "*Procedures for public participation shall allow the public to submit, in writing or, as appropriate, at a public hearing or inquiry with the applicant, any comments,*

28. See Ewing (2007).

information, analyses or opinions that it considers relevant to the proposed activity".

This provides for any members of the public to make a submission, not just the public concerned. In so doing, they then become a member of the public concerned, and receive rights of access to justice under Article 9(2).

Should a public hearing take place it should be held after a sufficient time period from the time of notification to allow the public to study the materials and other information relevant to the proposed activity, and to come up with opinions, suggestions, comments, alternatives or questions.

In general, the requirements of Article 6(7) are provided for in Irish law and, in practice, as evidenced by the three case studies. The requirement by An Bord Pleanála that persons wishing to make oral submissions at an oral hearing should have to pay a fee of €50[29] would certainly act as a barrier to participation for some. It was also noted in the genetically modified potatoes licensing case study that 25 of the 121 submissions were rejected because they were either too late, or had not enclosed the fee of €10.

Submissions may be made following the receipt of the application for waste and IPPC licensing, and objections after the proposed decision is made by the EPA.

- **Take due account of the outcome**
  It should be noted here that this doesn't just refer to environmental aspects, but to all the outcomes from the public participation. Best practice here would require a public register of all submissions made listing the authors of same, or in the case of a public hearing a detailed record of the meeting, including all oral and written submissions. Following from this a clear record should be kept of the consideration given to each submission showing how this input was included in the thinking behind the final decision. Again the SEA Protocol in Article 11 spells out this requirement.

  This paragraph applies equally to Article 7 with respect to plans and programmes relating to the environment, while Article 8 uses a slightly different formulation.

  The participants interviewed in the two case studies accepted that their submissions had been noted but felt that they had not been heeded. Even the An Bord Pleanála Inspector's Report recommendation to his own board was rejected, in the Monkstown case study.

  The Waste Permit Regulations make no provision for the taking into account of submissions. Following the final decision, the waste and IPPC licensing processes involve publication on the EPA website of the Inspector's Report and this includes a list of the issues raised in the submissions and how they were taken into account.

  Similarly this is the case with all An Bord Pleanála decisions.

- **Inform the public of the final decision with reasons**
  The issue of timeliness here relates to the right to appeal the decision made. Whilst it is normally the rule that the time limit for appeal would not begin to run until the notification that a decision has been made, delays in making this notification may mean that the environmental degradation may in certain situations continue unabated, or that the decision does not come to the notice of the public.

  In each of the three case studies, the decision was given to the persons concerned and made available to the public. However, the Waste Permit Regulations make no provision for the authority to give reasons for its decision.

  In the case of waste and IPPC licenses, the interested persons and statutory bodies are notified of the proposed determination and it is published in a newspaper. Later in the process, the interested persons and statutory bodies are

29. http://www.pleanala.ie/guide/fees_guide.htm

also notified of the final decision and the decision is published in a newspaper and made available for inspection on the EPA website and at the EPA headquarters in Wexford. Bord Pleanála decisions are communicated to all the stakeholders that engage with a process as well as lodging the documents, including, in the case of decisions under the Planning and Development (Strategic Infrastructure) Act 2006, records of the pre-application meetings with the project proposers.

6.4 Implementation of Article 7 of the Convention

6.4.1 Public participation concerning plans, programmes and policies

Of the case studies carried out, it should be noted that two offered no possibility for public participation, and the decisions were made behind closed doors. The bodies concerned acted entirely according to the national legislation, but not according to the provisions of the Convention.

The first of these related to the decisions made regarding the Greener Homes Scheme of Sustainable Energy Ireland. There is no suggestion here of malpractice, and the scheme for subsidising the purchase and installation of green energy systems was well oversubscribed. However, the decision as to the type of systems on offer and the subsidies involved would arguably be of a better quality if it was opened up to public consultation; it might, for example, have been decided to issue interest-free loans on a means-tested basis rather than grants. The Convention would require that the questions as to which systems were the most friendly to the environment, which particular designs would give the best return on capital invested, what subsidies should be applied to any particular technologies to achieve the best balance of choices, was the market able to deliver the equipment and service it, etc., should have been posed and the vast array of knowledge and experience that was already available within the community could have been tapped.

The second case study related to the decision-making process setting up the SIRBDAC under the provisions of the WFD. The findings would apply to any of the River Basin Districts (RBDs) as they all operate under the same legislation.

Under SI No. 413 of the 2005 European Communities (Water Policy) (Amendment) Regulations 2005, the Department of the Environment, Heritage and Local Government (DoEHLG)[30] initiated the setting up of Advisory Councils (ACs) in each RBD, which comprise elected members (county/city councillors) and representatives from various 'interest groups'. The competent authorities "*shall have regard to the advice and recommendations*" of the AC. Under the Regulations, it was a matter for the members of the SIRBDAC, who were appointed by the 18 participating local authorities, to co-opt additional members. The number of members co-opted to the SIRBDAC shall not exceed 36. It was this co-option decision-making process that the case study looked at. Advertisements were published looking for nominations to the AC, but once the nominations were in, the selection took place behind closed doors. There is nothing in the Regulations that suggests that this should not be done this way. Once again, however, the Convention would call for at least the publication of a reasoned decision outlining who was chosen and why, but preferably a public system of selection with a previously agreed scoring system for the selection of the co-optees. The selection system used varied from one RBD to another, but was always behind closed doors, with no reasons given to the public for the choices made.

It should be said here that in most other aspects the implementation of the WFD has been open and inclusive, largely following the guidelines developed by the DoEHLG in 2003.

The other case studies to which this Article applies are:

- Coolaney Rockfield Mini-Plan Variation;
- Midlands Waste Management Plan;
- Sligo County Development Plan;
- Regional Planning Guidelines – Border Regional Authority; and
- Strategic Environmental Assessment of Midlands Waste Management Plan.

30. Now the DoECLG.

6.4.2 The main provisions of Article 7 of the Convention

- **Establish a transparent and fair framework for public participation in plans and programmes relating to the environment**

  As mentioned above, the SEA Directive is the EU provision that implements two of the three strands of Article 7. The Directive is transposed into Irish law as SI No. 435[31] and SI No. 436[32] of 2004. The Directive and the transposing regulations represent a very narrow interpretation of Article 7 of the Convention and also do not include the assessment of the impact of policies. However, within this context, there are generally good provisions for public participation.

  Unlike Article 6(7), there is no definition in this Article as to how participation should take place, leaving greater flexibility for the Parties to the Convention.

  In order that the public are able to participate, they need to know that it is possible to do so, how to take part, how their participation will be recorded, the deadlines for each phase of the process, and how they can uphold the standards of decision-making processes by challenging procedures and decisions. These aspects are provided for within the somewhat limited scope of the legislation.

  Community fora have the potential to be a vehicle for participation, consultation and two-way information transfers regarding policy. In each local authority area, the forum has representation on each of the SPCs whose recommendations feed into the decision making of the county/city council. Community forum members of SPCs interviewed have expressed frustration at the way in which they are not taken seriously by some of the elected representatives on the SPCs. In the SPCs, the community and voluntary sector is disadvantaged as the other social partners are largely represented by paid staff, many of whom are operating under policy agendas set nationally, rather than locally. Funding for community fora varies dramatically from county to county and central government funding is annual and often to some degree retrospective.

- **Identify participating public**

  As well as the notification of 'any person' as defined in Article 2, the Convention places a responsibility on the public authority to make efforts to identify interested members of the public and, while not bound to accept every expression of interest, should be as inclusive as possible. The development of stakeholder lists at local authority level and for particular areas of interest can help in this. In most of the case studies, there was no particular effort to identify specific stakeholders – a general notification being the legal requirement, this is what was done.

- **Conduct public participation early in development of plans and programmes relating to the environment (Article 6(4))**

  As the SEA process follows the same stages as the EIA process in assessing potential impacts, so should its public-participation programme follow those outlined for the EIA process in Ewing (2007). This, however, is not the case as participation only occurs once the draft plan or programme and accompanying environmental report have been published, rather than at the scoping stage as described later regarding RIA. In the other case studies, the public participation began early in the decision-making process. The SEA Protocol is clear in providing public participation in both the screening and scoping phases of an SEA.

- **Give necessary information to the public**

  This provision requires that public authorities ensure that the necessary information is provided to the public. In this respect, the provision is linked to Article 5, Paragraph 3(c), providing for

31. The European Communities (Environmental Assessment of Certain Plans and Programmes) Regulations 2004. These Regulations cover plans and programmes in all of the sectors listed in Article 3(2) of the Directive except land-use planning.
32. The Planning and Development (Strategic Environmental Assessment) Regulations 2004. The Regulations relate to consideration of the likely significant effects on the environment of a development plan, a variation of a development plan, a local area plan (or an amendment thereto), regional planning guidelines or a planning scheme in respect of a strategic development zone.

the progressive availability in electronic databases of policies, plans and programmes relating to the environment, and Article 5, Paragraph 7(a), which obliges public authorities to publish the facts and analyses contributing to major environmental policy proposals. This includes the obligation to notify the general public, and can also involve specifically notifying interested individuals and organisations, for example through a standing list.

The public authorities in these case studies generally provided the background information necessary for the public to play an informed part in the various processes.

- **Establish reasonable time frames for public participation (Article 6(3))**
  The legally prescribed period for submissions on SEAs is 4 weeks, for Local Area Plans a minimum of 6 weeks, and for the Regional Waste Management Plan, the County Development Plan and the Regional Planning Guidelines a minimum of 8 weeks. Given the provisions of the Convention for access to information, 6 weeks would be the absolute minimum reasonable time for submissions, with a prior lead-in notification time of 2 weeks to enable 'the word to get out'. If a person needs to get information from a public authority in order to participate effectively, and that authority has up to 4 weeks from the date of the request to either provide the information or notify that it does not hold it, then it is clear that a person's ability to participate is severely limited by a consultation period of 4 weeks.

- **Take due account of the outcome (Article 6(8))**
  In the *Guidelines for Regional Authorities and Planning Authorities*, the summary of how submissions/consultations were taken into account reads: "*In the case of SEA of a development plan for example, the Manager's report under section 12(4) or (8) of the 2000 Planning Act should provide the basis for this part of the SEA statement, which should indicate what action (if any) was taken in response to the submissions/consultations*". However, the final decision may totally ignore the Manager's report, and there is no requirement for the elected representatives to take submissions into account or to show if and how they have done so in either Local Area or County Development Plans.

6.5 The Implementation of Article 8 of the Convention

There were no case studies carried out in relation to Article 8. However, the role of RIA is examined here. This is a well-structured approach involving the public early on in the scoping of potentially significant impacts of primary and secondary legislation. The first part of this two-stage process, however, does not include the public, and this is contrary to the SEA Protocol. The general principles on how to conduct a consultation are given in the companion booklet *Reaching Out – Guidelines on Consultation for Public Sector Bodies*[33].

6.5.1 The main provisions of Article 8 of the Convention

- **Promote public participation in the preparation of laws and rules with potential environmental impact**
  The introduction of the RIA Guidelines and the guidelines on public consultation (*Reaching Out*[33]*)* in 2005, coupled with a training unit in the Department of the Taoiseach, has meant that all primary and most secondary legislation is now given a structured assessment before seeing the light of day.

  In the White Paper on RIA, six principles were laid out, the fourth of which asks: "*Transparency – have we consulted with stakeholders prior to regulating? Is the regulation in this area clear and accessible to all? Is it supported by good explanatory material?*".

- **Establish sufficient time frames for public participation**
  The Guidelines also require that potential respondents should be given sufficient time to respond to the consultation process. For example, the EU Commission has set a period of

33. *Reaching Out – Guidelines on Consultation for Public Sector Bodies, 2005*. Department of the Taoiseach, Dublin, Ireland. http://www.betterregulation.ie/eng/Publications/RIA_Guidelines_-_How_to_conduct_a_Regulatory_Impact_Analysis.html [Accessed on 8 December 2011]

8 weeks for a written consultation, while, in the United Kingdom, consultation periods must be 12 weeks at minimum. In the light of previous comments on accessing information, the 12-week minimum would seem the most appropriate.

- **Publish or publicise drafts**
  The screening RIA identifies the potential impacts and this is the basis for the full RIA process prior to the drafting of legislation. There is a general consultation commencing at the beginning of the full RIA. At each stage, the findings are made available.

- **Provide opportunities for the public to make comments**
  As the screening RIA sets the scope for the full RIA, it should be opened up to the public to enable their commentary before the field of discussion is narrowed.

6.6 Summary of Case Study Findings

Due to the two case studies that effectively had no public participation, the findings appear somewhat skewed as represented in Fig. 6.1. Whereas in the findings for 'access to information' and 'access to justice' a clear trend is visible from legislation to effectiveness, there doesn't appear to be any such trend here. Approximately 60% of the indicators are valued as good or very good in all three charts. Nearly 20% of the indicators regarding effort were rated as very bad, and yet, despite this, only 1% received this rating regarding effectiveness, the reason being that 16% of the effectiveness indicators were not applicable. In other words, whilst it was possible to give values to all but 2% and 3% of the indicators measuring law and effort, respectively, it was not possible to give values to the effectiveness of processes that did not take place. This does not reflect the experiences of those that participated in the two stakeholder workshops (see Appendix 4 of the End of Project Report) nor does it reflect the anger and frustration expressed to the author in interviews and at meetings and by so many, with regard to EIA, IPPC and hazardous waste licensing processes, the planning permission process, as well as the involvement of community fora in SPCs.

In all of these, there is much room for improvement regarding capacity building for the relevant public authorities and the public, and, whilst some public officials have developed good practice, there doesn't appear to be a corporate learning process in this regard. The failure to implement the introduction of EMAS[34] into local authorities was in this regard a missed opportunity.

Frustration is also apparent amongst officials consulted, both during this and previous research, regarding the resources available to them, as well as the way in which they are treated by some members of the public.

It seems that there is a need for a cross-sectoral look at how we should conduct dialogues on all matters but, in particular, on environmental decisions that impact so strongly on the sustainability of our life-support systems. If the public were included at the screening stage, the mechanisms and guidelines contained in the RIA processes are models that could be adapted and taken as a starting point in such a dialogue.

The introduction of effective public participation into all levels of environmental governance will require a focussed effort on behalf of all sides, including all levels of government, ENGOs, and the public.

6.7 Recommendations for Public Participation in Environmental Decision Making

6.7.1 General

- Education of all public authorities as to the implications of the Convention in terms of their decision-making processes.

- Criteria for excellence in public participation should be set (Ridder et al., 2005).

- List the decision-making processes that are subject of the provisions of Aarhus and make sure that the relevant personnel are aware of their obligations in this regard.

34. Regulation (EC) No. 761/2001 of the European Parliament and of the Council of 19 March 2001 allowing voluntary participation by organisations in a Community eco-management and audit scheme (EMAS) and Commission Recommendation (2003/532/EC).

- Ratification of the SEA Protocol[35].
- Ratification of the GMO amendment to the Aarhus Convention[36].
- Research into public-participation techniques.
- Research into Alternative Dispute Resolution (ADR) techniques.
- Extend the skill base in facilitation established in the Civil Service Training and Development Centre throughout the public services.
- Capacity building for SEA/EIA. All SEA and EIA must involve the public from the scoping phase onwards.

35. Protocol on Strategic Environmental Assessment to the Convention on Environmental Impact Assessment in a Transboundary Context, Kiev 2003.
36. Decision II/1 Genetically Modified Organisms adopted at the second Meeting of the Parties held in Almaty, Kazakhstan, on 25–27 May 2005

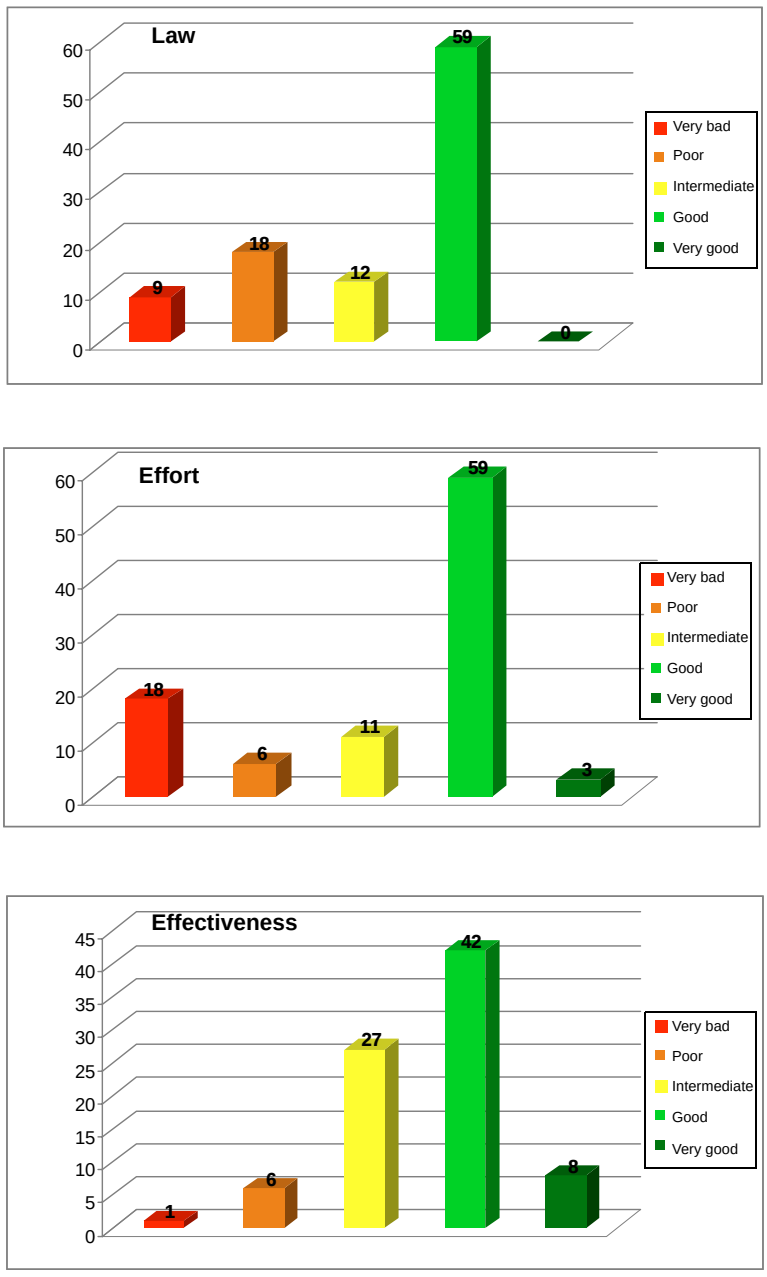

Figure 6.1. Percentage of public-participation indicators with each value.

- **SEA/EIA review body**
  The establishment of an independent review body to examine the quality of SEAs/EIAs produced and to adjudicate on their compliance with national and international legislation.

- Review of the DoEHLG guidelines on SEA to include the full provisions of Article 7 of the Aarhus Convention and of the SEA Protocol.

- **Establishment of a public-participation schedule**
  A public-participation schedule or unit should be created and funded by each public body as part of their basic function.

- **Capacity building**
  Provision of training and technical guidance for both staff of the responsible public bodies and the public is vital if effective public participation is to be achieved.

- Citizen participation in setting and monitoring environmental standards.

- The role of community fora as a conduit for gathering and sharing information, and as a representative stakeholder in local sustainability decision making should be resourced and developed.

- The Minister for the Environment, Community and Local Government should establish a number of focus groups to take a creative look at the ways in which civil society and government at all levels can work more effectively together to promote the sustainability agenda and enable more effective decision making.

- National listings by county of all proposed developments with online links to the relevant planning authorities.

- A standing consultation list of relevant NGOs, established by the DoECLG in co-operation with the IEN, should be notified by each planning authority regarding developments likely to have significant impacts on the environment.

- The EPA guidelines on conducting an EIA should be amended to include clear guidelines on public participation.

- Prospective planning permit applicants should be encouraged in the relevant guidelines to identify the public concerned, to enter into discussions, and to provide information regarding the objectives of their application before applying for a permit.

- The development of a single public-participation portal online.

- Steps must be taken to ensure that less resourced groups are in a position to respond to the consultation and that consultation methods take account of the fact that some parties may not have access to Internet facilities. Care should also be taken to ensure that the views of vulnerable groups, such as the elderly and disabled and those with literacy problems, are reflected in the consultation process. This may necessitate the use of particular consultation methods such as public meetings, focus groups, etc.[37]

- The development of tools that include the cultural language of particular communities.

- All public authorities shall ensure that the detailed arrangements for informing the public and consulting the public concerned are determined and made publicly available.

- The public should be included in the screening stage of RIA, as required in the SEA Protocol.

- Revision of the notification procedures for all public notices. Public notices should be placed in at least two newspapers circulating in the area of a proposed activity or development. They should be bilingual, i.e. in Irish and in English. Text should follow the NCBI guidelines. They should have the location and the nature of the proposal in large bold print at the top of the advert, along with the name of the relevant permitting authority.

37. *RIA Guidelines – How to conduct a Regulatory Impact Analysis.* 2005. http://www.betterregulation.ie

Thought should be given to permitting authorities having a regular listing of applications at a regular time on local radio. Whilst the website listing is very useful, the majority of the population does not either have access to or make regular checks of postings.

- Introduction of a lead time of 2 weeks and an increase of the period set aside for participation to take into account the time periods allowed under SI No. 133 of 2007 for the public to access information that they might need to participate effectively. The minimum period for participation should be 6 weeks following a lead-in of 2 weeks of notification of the commencement of the process. The 6-week period should be seen as a minimum and be increased where the decision to be made is technically complex. The lead-in time is intended to allow the public to digest the information provided in the notification.

- The departmental review of the RIA process should be widely disseminated and consultations opened up as part of the wider study of participatory practice.

- In environmental decision making, all public authorities should give reasoned decisions that are widely disseminated.

6.7.2 Regarding Local Area and County Development Plans, Regional Planning Guidelines and Waste Management Plans

- **The decision-making process**
  The final decision on these plans and guidelines is vested in the elected councillors by the relevant legislation. These councillors have the right to overrule both professional advice and public input. The power vested in the councillors is considered disproportionate and has discouraged public participation amongst certain stakeholders. It is, therefore, recommended that the law should be reconsidered to allow councillors vote only on those matters where there is no agreement between the professionals (employed by the responsible local authority) and the public. This will greatly encourage more public participation as it will give the public more confidence that their input matters. The present practice where the councillors can overrule both sides (the public and professionals) even when there is agreement is a valid concern that must be addressed. The involvement of the councillors in the consultation processes, alongside the members of the public, would give them the opportunity to engage with the public and with the dialogue between the officials and the stakeholders. The councillor's influence could be brought to bear here, and their relationship with the electorate strengthened.

6.7.3 Regarding Regional Waste Management Plans

- **Capacity building**
  In the field of waste management (in Ireland) the expert, in this case the environmental consultant, is still presented as key information provider, educationalist and primary decision influencer (if not decision maker), holding privileged and legitimate knowledge. In every modern society where knowledge is progressively specialised and politicised, some people will be ignorant in relation to certain complex issues, at some time and in some places. Provision of training and technical guidance for both staff of the local authorities within the regions and the public is therefore vital if effective public participation is to be achieved. The training of staff should be regular (at least once in 3 years) and elaborate to cover the concept, principles and practice of public participatory approaches, and environmental planning.

6.7.4 Regarding oral hearings by An Bord Pleanála

- **The decision-making process**
  The law regarding oral hearings should be amended to allow An Bord Pleanála to take a contrary view to the inspector's recommendations only on those matters where there is no agreement between the professionals (employed by An Bord Pleanála) and the public. This will greatly encourage more public participation as it will give the public more confidence that their input matters. The present practice where An Bord Pleanála can overrule both sides (the public and professionals) even

when there is agreement is a valid concern that must be addressed. Recognising that expertise is contained within the Bord, it is recommended that it plays a public role in the hearing itself. This would create a greater public confidence in and understanding of the final decision made.

6.7.5 Regarding Planning and Development (Strategic Infrastructure) Act, 2006

- The Act should be amended to enable the public to engage in the consultations regarding scoping the content of a planning application and any EIA that is required.

7 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 France[38]

7.1 Introduction

The implementation of the access-to-justice pillar of the Aarhus Convention is considered here first under the provisions of Article 9 of the Convention, and then through the analysis of a series of case studies.

The Aarhus Convention, in its provisions for access to information and public participation, creates certain rights and obligations, and these are backed up by the third pillar of the Convention through Article 9. Under the Convention, 'access to justice' means that members of the public have administrative and legal mechanisms that they can use to gain review of potential violations of the access-to-information and public-participation provisions of the Convention, as well as of domestic environmental law.

Under Article 9, not only Parties, but also individuals and NGOs as members of the public, can enforce the Convention through the Compliance Mechanism[39].

The access-to-justice provisions provide a level of standing to go to court or to another review body to individuals and NGOs. The Convention provides slightly different guidance on standing, depending on the type of review requested.

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 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.

38. http://www.aphorismsgalore.com/author/Anatole_France.html. Anatole France (1844–1924) won the Nobel Prize in 1921.
39. Article 15 of the Aarhus Convention on review of compliance requires the Meeting of the Parties to establish arrangements for reviewing compliance with the Convention (http://www.unece.org/env/pp/compliance.htm).

The capacity-building provisions of Article 3 also apply to the access-to-justice pillar of the Convention.

7.2 The Implementation of Article 9 of the Convention

Article 9(1) provides review procedures relating to information requests under Article 4.

SI No. 133 of 2007[40] provides for two levels of review, with the ultimate option of an appeal to the High Court. The first of the reviews is an internal review by a senior person in the relevant public authority for which there is no fee. The next level is a review by the Commissioner for Environmental Information for which a fee of €150 is payable. The decision of the Commissioner is binding, and, if necessary, the Commissioner may apply to the High Court for an order directing the public authority to comply with that decision. The person seeking the information may also seek a judicial review following the decision of the Commissioner.

Article 9(2) provides review procedures relating to public participation under Article 6 and other relevant provisions of the Convention.

The main body for administrative review of environmental decisions in Ireland is An Bord Pleanála. However, the Bord is precluded from acting in this role under the Roads Legislation (Roads Act, 1993 as amended) and under the Planning and Development (Strategic Infrastructure) Act 2006. There is no provision for administrative appeal under either of these Acts. Similarly, there is no independent administrative review for decisions made by the EPA under the IPPC and waste licensing legislation. In these situations, the only recourse is that of a judicial review of the validity of the decision, which carries with it very serious cost implications, as well as being slow, complex and risky.

40. European Communities (Access to Information on the Environment) Regulations 2007

Administrative review processes for RIA and SEA are not provided for either.

Article 9(3) provides review procedures for public review of acts and omissions of private persons or public authorities concerning national law relating to the environment.

There are no administrative mechanisms whereby breaches of environmental law may be challenged. Planning authorities must investigate complaints from private citizens under legislation regulating land use and decide whether to issue enforcement proceedings. However, the private citizen has no further part in the process. Similar administrative enforcement mechanisms exist in other areas of environmental legislation but, in each case, there is a lack of a mechanism for follow-up on a complaint. Ireland's legislation does not meet the Article 9(3) requirements insofar as they relate to administrative processes.

In short, the absence of administrative mechanisms and the prohibitive costs attached to judicial enforcements mean that Ireland is not in compliance with this Article.

Article 9(4) provides for minimum standards applicable to access-to-justice procedures, decisions and remedies.

As seen above, adequate and effective remedies, including injunctive relief are available to everyone. However, the slowness of the judicial system coupled with what are for most people associated prohibitive costs puts it out of reach for many. Add to this the matter of lack of the required fairness, where an individual or small community trying to protect the environment may be engaged in a David and Goliath struggle with a large corporation or indeed the organs of the State.

Article 9(5) requires Parties to facilitate effective access to justice.

As outlined above and in the case studies below, there have been no attempts to remove the severe financial barriers that face the ordinary person who seeks access to justice with regard to the environment. The requirement to be able to demonstrate 'a substantial interest' in order to bring judicial review proceedings under the Planning and Development Act 2000 as opposed to the previous requirement for 'a sufficient interest' has raised another barrier to public access.

Standing is also affected by the time limits on participating in the original planning procedure and appeal process, as these are quite strict and if their strictness excludes an individual from participating in the process in the first instance then that person will be unable to establish locus standi at judicial-review level. Modification of the standing test by the Planning and Development (Strategic Infrastructure) Act 2006 in EIA cases for NGOs is an attempt to implement the Aarhus Convention and Article 10a of the EIA Directive. The jurisdiction of the High Court to require an undertaking as to damages from an applicant as a condition of the grant of leave was already established by case law.[41] It is submitted that by placing the power on a statutory footing, it is likely to be invoked more frequently by the courts. In the specific context of judicial review of major infrastructure projects, the requirement to furnish an undertaking as to damages is likely to pose an insurmountable barrier to many applicants[42].

7.3 Case Studies

- **Access to justice in the denial of rights to information**
  - Complaint to the Ombudsman
  - The Information Commissioner Appeal
  - Harding v Cork County Council
- **Access to justice in the denial of rights of participation in decision making relating to the environment**
  - Rooney v An Bord Pleanála (2003) IEHC 100 (20 March 2003)
- **Access to justice in cases of environmental harm to humans or the environment**
  - An Bord Pleanála Appeals Cases
    - Ballard/Valeco Appeal

41. O'Connell v Environmental Protection Agency (2001) 4 IR 494 and Seery v An Bord Pleanála (2001) 2 ILRM 151.
42. http://www.lawlibrary.ie/viewdoc.asp?m=&fn=/documents/memberdocs/Legislation/planning2006.doc [Accessed 19 May 2008]

- – Ringaskiddy Incinerator Appeal
- – Carrickboy Pig Farm Appeal
- Court Cases
  - – O'Connell v EPA & Dungarvan Energy (Thesio Ltd) (2002) IEHC 46
  - – O'Connell v The Environmental Protection Agency (2003) IESC 14 (21 February 2003)

7.4 Summary of Access to Justice

Certain barriers to access to justice in environmental matters are endemic.

In the courts, these include issues such as delay, standing and costs. The costs barrier to access to justice is a multifaceted issue, encompassing problems with the current civil legal aid system, the complexity of the legal system (which also is a factor in delay), and legal issues in relation to the way in which the burden of the costs in a court case are normally distributed by judges making orders as to costs. Costs normally 'follow the event' in court cases. This means that costs are paid by the losing side. The fact that High Court costs can run into hundreds of thousands of euro, and that environmental cases are normally by judicial review in the High Court, basically means that taking a case on an environmental issue such as planning or an IPPC licence amounts to a massive gamble, in which one can lose the roof over one's head. Given the recognised and acknowledged public interest element in environmental cases this would seem unreasonable and is definitely contrary to the Aarhus Convention.

In the planning system, cost barriers are caused primarily by the need for expert legal and scientific aid to put together a proper case for the Bord, and by the way that oral hearings are run. Ordinary people potentially incur high costs when trying to participate in oral hearings of An Bord Pleanála, which are held between 9 am and 5 pm, or later, and sometimes carry on for weeks. These are non-obvious hidden costs such as loss of earnings from taking unpaid leave from a job, or costs incurred in arranging childcare during hearings.

Summarising the findings of the case studies, the percentages of indicators with particular values give a very strong indication of the state of access to justice in Ireland (Fig. 7.1). The legislation is rated as being either poor or very bad in 49% of the indicators across the nine cases and good or very good in only 21%. By contrast, the effort to make the most of this bad situation was given values of good or very good in over 40% of indicators, with the reduced number of 34.5% poor or very bad. Despite this, the effectiveness of provision of access was found to be poor or very bad in 64% of the indicators.

7.5 Conclusion – Access to Justice

Although there is a great deal of room for improvement regarding standing, costs and timeliness, the part of this research relating to access to justice has highlighted some positive factors regarding citizen participation in this country in environmental matters, with good levels of participation in the planning process allowed and strong remedies in place when rights are infringed. A wide choice of complaint fora for environmental issues, legislation providing for access to information, and strong legislation for ethics and standards in public office all contribute to fostering a climate of participation and involvement and to creating a culture of environmental democracy in Ireland.

This culture of participation, involvement and democratic decision making is still in its infancy, however, and whilst only beginning to gain widespread acceptance, is in danger of being fatally undermined by some issues in the Irish legal system and planning process. A 2007 Prime Time documentary[43] on planning issues in Ireland highlighted widespread flouting of the requirements of Standards in Public Office Legislation by local councils, who are the frontline of environmental justice in local communities. The 2003 amendment to the Freedom of Information Act 1997 was seen as a step backwards by some commentators (McDonagh, 2003), introducing broader and vaguer grounds for refusal of information by public bodies, which led to situations such as the Ombudsman case study above, where a local council misinterpreted the vague exception of 'National

43. 26 November 2007, RTE.

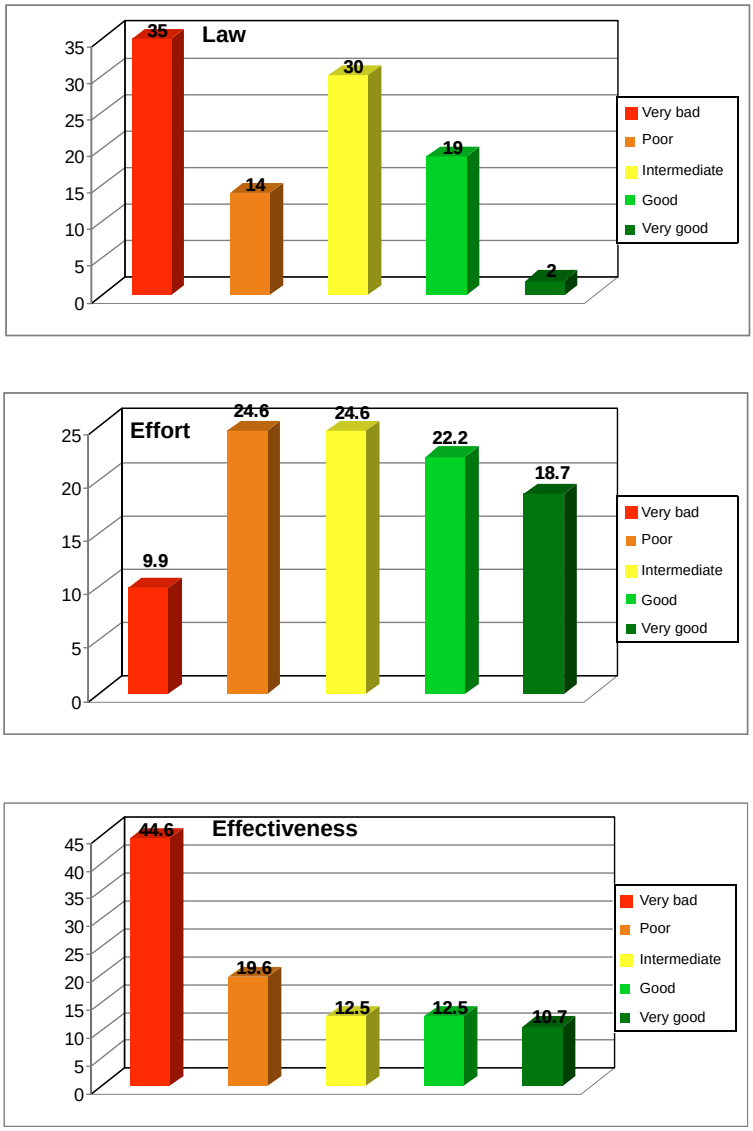

Figure 7.1. Percentage of access-to-justice indicators with each value.

Security' as allowing it to refuse planning information regarding the Thornton Hall Prison development to the local residents, thereby rendering them unable to exercise the right to participate in the planning process. This case study is a good example of how the right of access to information is inextricably linked to the right of access to justice.

The broad range of legal remedies available in cases of environmental issues is 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. Rising costs are also becoming an issue in taking appeals to An Bord Pleanála and indeed in participating in the planning system in the first place, as the need to meet the standard of proof requires a high level of legal, scientific and technical expertise. This can clearly be seen in case studies such as the Ballard/Valeco An Bord Pleanála Appeal.

Delay is also a fact of life in the Irish courts system, with cases taking years to process, as can be seen by the 14-year legal battle that occurred in the case study of Rooney v An Bord Pleanála. In cases that involve environmental harm, delay can be fatal, as once environmental damage occurs it is often difficult, if not impossible, to reverse. In this respect, the precautionary principle should be the guiding one.

One of the most important issues that 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. Non-government organisations and grassroots environmental organisations have an important role to play in developing awareness of rights and their infringements and in assisting people in asserting their rights. Non-government organisations should be given support in this role as they can often be more effective in this than public authorities.

Overall, then, access to justice is available but restricted as can be seen from the above case studies. There are serious issues regarding access to justice in Ireland that 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.

7.6 Recommendations for Access to Justice

7.6.1 General

- Transposition of Directive 2003/35/EC into Irish law.
- Ratification of the Aarhus Convention by Ireland.
- Examination of the far-reaching changes contained in the Prisons Act 2007 and the implications they have for public participation.
- A protocol should be established for administrative chains of command monitored by the DoECLG between the sub-national authorities such as the local authorities, An Bord Pleanála, and the EPA.
- The introduction of a system of administrative appeals boards based on the Dutch system.[44]
- Environmental NGOs should be given locus standi in all administrative and judicial review processes of environmental decision making regardless of previous involvement.
- Environmental NGOs should be given support in the role of educating the public regarding their access-to-justice rights.

7.6.2 Regarding the Office of the Information Commissioner

- Introduction of enforced time frames for decision making.
- Provision of multilingual assistance for foreign nationals
- Removal of the €150 fee introduced by the 2005 Regulations for appeals to the Information Commissioner.

7.6.3 Regarding the Office of the Ombudsman

- A review of the internal procedures being used within the Office of the Ombudsman for dealing with complaints.
- Creation of a more defined statutory protocol for the Office of the Ombudsman.
- Provision of full-time multilingual assistance for foreign nationals.

7.6.4 Regarding An Bord Pleanála oral hearings

- **Reducing the cost to participants**
  Create a panel of experts to provide the expertise necessary to individuals and community groups attempting to participate in these tribunals. The funding of science and law shops in third-level institutes would be one appropriate way to do this. Stronger regulation for distributing the burden of costs between the parties at the end of the process, with regard to factors such as who stood to profit from the situation, and who has the deepest pockets. Place the burden of proof on the person who stands to profit the most, and has the deepest pocket. It is open to the Bord to provide funding for the reasonable costs of the appellant's expert witnesses, but this is rarely done. The rules regarding this should be revisited.

44. Examples are the Environmental Appeal Board and the Nature Protection Board of Appeal.

- Examination of the issues raised regarding An Bord Pleanála's inability to look at pollution concerns in a case which also comes under the IPPC licensing scheme.
- The development of a proper protocol for EPA involvement in oral hearings, with a duty for the EPA to take an active part in them where the proposal relates to a potential IPPC-licensed facility or a waste license.
- Examination of the protocol for holding oral hearings to see if the system could be improved, and be made more user friendly. The model of the Compliance Committee of the Aarhus Convention might be looked at in this regard.
- **Experts and representation**
  The examination of the protocol on oral hearings should include a review of the involvement of 'experts' and legal representatives in these hearings to ensure an equality of arms.
- Attention should be given to the timing and venues of oral hearings to ensure that they do not discourage community participation.
- Workshops/Talks should be held by county councils on using the systems that they provide and by An Bord Pleanála on using the planning appeals system at regular intervals and especially to community groups such as the community fora and particularly in areas where large developments are being initiated.
- An Bord Pleanála Inspector's reports and recommendations should be given more weight, perhaps by introducing measures that only allow the Bord to disregard the findings of the report in exceptional circumstances.

7.6.5 Regarding the High Court

- Establishment of an Environmental Courts List.
- Improved case management.
- Very clear legislation regarding the issue of standing needs to be put in place.
- Very clear legislation regarding the issue of judicial reviews examining substantive as well as legal errors in environmental decisions needs to be put in place.
- The issue of cost barriers to access to justice needs to be seriously addressed from all aspects of the problem.
- In a case falling within the terms of Aarhus and where a PCO is sought, the overarching requirement must be for a PCO that secures compliance with Aarhus.
- Encouragement of pro-bono legal work by professionals.
- Greater support and education for members of the public attempting to use the legal system.
- Greater education to all members of the public as to their access rights.
- The timeliness of court cases needs to be addressed.
- Cost-shifting arrangements should be looked at and formalised for individuals in the cases of High Court judicial review.
- Active dissemination of information regarding the courts system, and the law.
- Greater outreach to minority groups.

7.6.6 Regarding the Supreme Court

- Environmental law case lists.
- **The costs issue**
  Cost-shifting arrangements should be looked at and formalised for individuals in the cases of High Court judicial review where individuals who have established a genuine case at leave stage should be protected from the possible financial implications of losing, to encourage more active citizenship. The law on PCOs in public interest cases needs to be expanded from its current restrictive mode. The only requirement for protection from costs should be that the case raises a genuine arguable case. Other possible solutions include establishing a central fund, in the courts or Government, from which a judge can order costs to be paid when the justice of the

case and the public interest requires. Also, the 'cost follows the event' rule should be discarded as being akin to trial by honour. Costs should always be based on the party's situations, aggravation of the costs, public interest in the case being taken and other interests.

7.6.7 Regarding IPPC and waste licensing

- The final decisions made by the EPA should be open to administrative review by a separate independent body, with the final option of a judicial review.

Bibliography

Andrews, A. *South Africa: Case Study on Citizen Participation in Setting and Monitoring Environmental Standards*. Legal Resources Centre, Cape Town, South Africa. http://www.inece.org/5thvol2/andrews.pdf [Accessed 12 December 2011]

Australian EIA Network, 1996. *International Study of the Effectiveness of Environmental Assessment.* EPA, Canberra, Australia. http://www.ea.gov.au/assessments/eianet [Accessed 12 December 2011]

Bonine, J.E., 1999. *Broadening "Standing to Sue" for Citizen Enforcement*. Fifth International Conference on Environmental Compliance and Enforcement. p. 249. http://www.inece.org/5thvol2/bonine.pdf [Accessed 12 December 2011]

Burnham, J.B., 2003. Why Ireland boomed. *The Independent Review* **II(4):** 537–556.

Canadian Business Room Project. Online at: http://www.parl.ns.ca/business/about.html [Accessed 27 March 2007]

Case of Guerra and Others v Italy (116/1996/735/932), European Court of Human Rights, Strasbourg, France. 19 February 1998.

CEAA., 2001. *Environmental Assessments.* http://www.ceaa.acee.ga.ca [Accessed 19 May 2007]

Central Statistics Office, 2001. *Quarterly National Household Survey.* Central Statistics Office, Dublin, Ireland.

CEQ, 1997. *The National Environmental Policy Act – A Study of its Effectiveness after Twenty-Five Years.* Council on Environmental Quality. http://ceq.eh.doe.gov. [Accessed 19 May 2007]

Commissioner for Environmental Information, 2008. Case CEI/07/0006. *Decision on Appeal to Commissioner for Environmental Information.* http://www.oic.gov.ie/en/Temporary-Accessto InformationontheEnvironment/Decisionsofthe Commissioner/

Corburn, J., 2003. Bringing local knowledge into environmental decision making – Improving urban planning for communities at risk. *Journal of Planning Education and Research* **22(4):** 420–443.

Cormick, G., 1989. Strategic issues in structuring multi-party public policy negoticontribution. *Negotiation Journal* **5(2):** 125–132.

Cuff, J., 2001. *Participatory Processes: A Tool to Assist the Wise Use of Catchments.* Wise Use of Floodplains. Environment Agency, UK.

Dale, M.H. and English, M.R., 1999. *Tools to Aid Environmental Decision-Making.* Springer-Verlag, New York, USA. p. 9.

Darbishire, H., 2007. *Comparative Review of Access to Information Oversight Bodies*. Access Info Europe. p. 8.

Department of the Taoiseach, 2002. *Towards Better Regulation*. Department of the Taoiseach, Dublin, Ireland.

Department of the Taoiseach, 2007. *The Concept of Active Citizenship*. Department of the Taoiseach, Dublin, Ireland. http://www.activecitizen.ie/ [Accessed 24 April 2008]

Depoe, S.P. et al., 2004. *Communication and Public Participation in Environmental Decision Making.* State University of New York Press, Albany, NY, USA.

Dialogue by Design, 2007. *A Handbook of Public & Stakeholder Engagement.* Dialogue by Design, London, UK.

Doyle, O., 2007. *Measures on Access to Justice in Environmental Matters (Article 9(3)) Country Report for Ireland*. Report prepared by Milieu Ltd., under contract to the European Commission, DG Environment.

Dublin City Public Libraries, 2005. *The Value of Public Libraries in the Delivery of E-government Services*. Dublin City Public Libraries, Dublin, Ireland. http://www.dublincity.ie/SiteCollectionDocuments/Public%20Libraries/researche-gov.pdf [Accessed 30 December 2007]

Easterly, W. and Pritchett, L., 1993. The determinants of economic success: luck and policy. *Finance and Development* (October): 38–41.

Eccleston, C.H., 2000. *Environmental Impact Statements.* John Wiley and Sons, New York, USA. p. 65.

eGov monitor Newsdesk Published Friday, 1 April, 2005 – 12:28 *eGovernment Role of UK Online Centres April 2005.* http://www.egovmonitor.com/node/346 [Accessed 12 December 2011]

Enterprise Ireland, 2005. *Ireland – Economic Profile October 2005.* http://www.enterprise-ireland.com

Environmental Protection Agency (EPA), 2006. *Environment in Focus 2006. Environmental Indicators for Ireland*. Environmental Protection Agency, Johnstown Castle Estate, Wexford, Ireland.

EUROPA http://www.internetworldstats.com/europa.htm#ie

European Commission, 2000. Public Participation and Consultation. *Environmental Integration Manual: Good Practice in EIA/SEA*. Gibb Ltd., p. 239 (http://www.gibbltd.com) [Accessed 19 May 2007]

European Commission, 2008. *Towards a Shared Environmental Information System (SEIS)* COM(2008) 46 final.

European Environmental Bureau (EEB), 2007. *How Far has the EU Applied the Aarhus Convention?* EEB Publication Number: 2007/010.

Ewing, M.K., 2003. *Public Participation in Environmental Decision-making*. pp. 80–112. http//:www.gdrc.org/decision/participation-edm.html [Accessed 24 April 2008]

Ewing, M., 2007. *A Guide to the Amended EIA Process*. http://www.woodlandleague.org/documents/sustainability/A%20Guide%20To%20The%20Amended%20EIA%20Process.pdf [Accessed 12 December 2011]

Fien, J., Scott, W. and 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:** 153–162.

Foster, R.F., 1988. *Modern Ireland, 1600–1972.* A. Lane, London, UK.

Hamilton, C., 1996. *Equity and the Environment*. Environmental Economics Seminar Series. Department of the Environment (Australia), Sport and Territories, Canberra, Australia. ISBN 0 64278 24878 8.

Hatton, C., 2008. *Ensuring Access to Environmental Justice in England and Wales*. Report of the Working Group on Access to Justice. London, UK.

Honohan, P., 1999. *Fiscal Adjustment and Disinflation in Ireland: Setting the Macro Basis of Economic Recovery and Expansion. Understanding Ireland's Economic Growth.* Barry, F. (Ed.) St. Martin's, New York, USA. pp. 75–98.

van den Hove, S., 2000. Participatory approaches to environmental policy-making: the European Commission Climate Policy Process as a case study. *Ecological Economics* **33(3):** 457–472. doi:10.1016/S0921-8009(99)00165-2 [Accessed 19 May 2007].

Hughes, I. et al., 2007. *Power to the People? Assessing Democracy in Ireland.* TASC, Dublin, Ireland. ISBN: 978-1-905494-37-8

IMPEL (The European Union Network for the Implementation and Enforcement of Environmental Law), 2005. *Informal Resolution of Environmental Conflicts by Neighbourhood Dialogue*. IMPEL Dialogue Project 2004/2005.

International Monetary Fund (IMF). Department of Finance. Undated. *International Financial Statistics.* Washington, DC, USA.

Jacobs, F., 2006. The role of the European Court of Justice in the protection of the environment. *Journal of Environmental Law* **18(2):** 185–205, 2006. Available at SSRN: http://ssrn.com/abstract=914775.

Keaveney, M., 2005. *Human Rights and Environmental Law.* Irish Environmental Law Association http://www.iela.info/IELA%20paper%20delivered%20by%20michael%20keaveney%20november%202004.pdf [Accessed 27 March 2008]

Kelly, M., 2007. *Environmental Debates and the Public in Ireland*. Institute of Public Administration, Dublin, Ireland.

Kelly, M. and Kennedy, F., 2007. Changing environmental attitudes and behaviour in Ireland, 1993–2002. *In:* Hilliard, B. and Nic Ghiolla Phádraig, M. (Eds) *Changing Ireland in International Comparison*. The Liffey Press, Dublin, Ireland. pp. 165–185. ISBN 1-905785-18-6.

Klees, R., 2002. *Environmental Impact Assessment Systems in Europe and Central Asia Countries.* World Bank. http://www.worldbank.org/eca/environment [Accessed 19 May 2007]

Konisky, D.M. and Beirele, T.C., 2001. Innovations in public participation and environmental decision making: Examples from the Great Lakes region. *Society & Natural Resources* **14(9):** 815–826. ISSN: 0894-1920.

Krugman, P., 1997. Good News from Ireland: A Geographical Perspective. *In:* Gray, A.W. (Ed.) *International Perspectives on the Irish Economy.* Indecon Economic Consultants, Dublin, Ireland. pp. 38–53.

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. ISSN: 0194-4363.

Lein, K.L., 2003. *Integrated Environmental Planning*. Blackwell, London, UK.

MacLaran, A., Clayton, V. and Brudell, B., 2007. *Empowering Communities in Disadvantaged Urban Areas: Towards Greater Community Participation in Irish Urban Planning?* Combat Poverty Agency, Dublin, Ireland. ISBN: 978-1-905485-48-2.

MacSharry, R. and White, P., 2000. *The Making of the Celtic Tiger.* Mercier Press, Dublin, Ireland.

Margerum, R.D. and Whitall, D.R., 2004. The challenges and implications of collaborative management on a river basin scale. *Journal of Environmental Planning and Management* **47(3):** 407–427.

Mascarenhas, M. and Scarce, R., 2004. "The intention was good": Legitimacy, consensus-based decision making, and the case of forest planning in British

Columbia, Canada. *Society & Natural Resources* **17(1):** 17–38.

McDonagh, M., 2003. *Freedom of Information in Ireland: Five Years On*. University College Cork, Cork, Ireland. Posted September 22, 2003 on http://freedominfo.org.

Milieu Ltd., 2007. *Inventory of EU Member States' Measures on Access to Justice in Environmental Matters*. Summary Report. http://ec.europa.eu/environment/aarhus/study_access.htm [Accessed 9 December 2011]

Motherway, B., 2001. *Public Involvement in Environmental Decision-Making in Ireland.* The Policy Institute, Trinity College Dublin, Dublin, Ireland.

NCBI, 2007. *Make It Clear.* http://www.ncbi.ie/services/services-for-organisations/making-print-and-multimedia-accessible-mcs/make-it-clear [Accessed 9 December 2011]

Organization for Economic Cooperation and Development (OECD), 1991–2001. *OECD Economic Surveys – Ireland.* (various issues). OECD, Paris, France.

Organization for Economic Cooperation and Development (OECD), 1999. *Communications Outlook: 1999 Edition.* OECD, Paris, France.

Organization for Economic Cooperation and Development (OECD), 2000. *Economic Outlook.* OECD, Paris, France.

Porter, M., 1990. *The Competitive Advantage of Nations.* Free Press, New York, USA.

O'Rourke, D. and Macey G.P., 2003. Community environmental policing: assessing new strategies of public participation in environmental regulation. *Journal of Policy Analysis and Management* **22(3):** 383–414.

Ortolano, L., 1997. *Environmental Regulations and Impact Assessment*. John Wiley & Sons, New York, USA. pp. 402–422.

Overdevest, C., 2000. Participatory democracy, representative democracy, and the nature of diffuse and concentrated interests: A case study of public involvement on a national forest district. *Society & Natural Resources* **13(7):** 685–696.

Partnerships Online http://www.partnerships.org.uk/guide/time.htm#Init [Accessed 9 December 2011]

Pellow, D.N., 1999. Negotiation and confrontation: environmental policymaking through consensus. *Society & Natural Resources* **12(3):** 189–203.

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

Ridder, D., Mostert, E. and Wolters, H.A., 2005. Harmonising collaborative planning (HarmoniCOP). *In:* Ridder, D., Mostert, E. and Wolters, H.A. (Eds) *Learning Together to Manage Together/Improving Participation in Water Management.*

Roseland, M., 2000. Sustainable community development: integrating environmental, economic, and social objectives. *Progress in Planning* **54(2):** 73–132.

Ryall, Á., 2007. EIA and Public Participation: Determining the Limits of Member State Discretion: EC Environmental Impact Assessment Directive—Implementation—Public participation in certain assessment procedures upon payment of fees—Scope of national discretion. *Journal of Environmental Law* **19(2):** 247–257.

Ryall, Á., 2008. *The Impact of the Public Participation Directive (Directive 2003/35/EC) on Irish EIA Law.* Presented at the Enforcing Community Environmental Law Conference, University College Cork, Cork, Ireland.

Saddler, B. et al., 1999. *Principles of Environmental Impact Assessment Best Practice*. Institute of Environmental Assessment, UK.

Scannell, Y., 2005. *Environmental and Land Use Law.* (Thomson Round Hall) (Brehon Series) (2005) clxiv +pp. 1067, Para2-434.

Shaywitz, S.E. and Shaywitz, B.A., 2001. *The Neurobiology of Reading and Dyslexia*. Focus on Basics 5 (A). National Center for the Study of Adult Learning and Literacy, Boston, MA, USA.

Singleton, R., Castle, P. and Short, D., 1999. *Environmental Assessment.* Thomas Telford, London, UK. p.103.

Stec, S. and Casey-Lefkowitz, S. 2000. *The Aarhus Convention – An Implementation Guide*. UNECE, Geneva, Switzerland. p.16.

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 20 March 2008)

The Environment Council, 2002. *Dialogue for Sustainability, Facilitation Skills and Principles.* C1/V1 Mod:14/01/2005.

Tovey, H., 2007. *Environmentalism in Ireland: Movement and Activists.* Institute of Public Administration, Dublin, Ireland. ISBN: 978-1-904451-56-1.

Tuler, S. and Webler, T., 1999. Voices from the forest: What participants expect of a public participation process. *Society & Natural Resources* **12(5):** 437–453. ISSN: 0894-1920.

USA Report on the Environment 2008 http://www.epa.gov/Envindicators/abouteii.htm [Accessed 12 December 2011]

van de Kerkhof, M., 2006. Making a difference: On the constraints of consensus building and the relevance of deliberation in stakeholder dialogues. *Policy Sciences* **39(8):** 279–299. ISSN: 0032-2687.

Verheem, R., 2002. *Recommendations for Sustainability Assessment in the Netherlands.* Netherlands Commission for EIA, Utrecht, Netherlands.

Webler, T., Tuler, S., Shockey, I., Stern, P. and Beattie, R., 2003. Participation by local governmental officials in watershed management planning. *Society & Natural Resources* **16(2):** 105–121. ISSN: 0894-1920.

Resources for Public Participation

Acland, A. et al., 2007. *Dialogue by Design – A Handbook of Public & Stakeholder Engagement*. http://www.dialoguebydesign.net/consultation/resources_handbook.htm

Centre for Management and Organisation Development. *The Facilitator's Handbook.* http://www.finance.gov.ie/cstc/cstdcdocs/facilitators_handbook.pdf

Dialogue Designer. Online engagement design system. http://designer.dialoguebydesign.net

Designing and Managing Electronic Consultation Processes (2003) http://www.dialoguebydesign.net/docs/articles/DesigningandManagingElectronicConsultationProcesses.pdf

Environment Council (UK) focuses us on seeking new ways to resolve and build truly sustainable solutions http://www.the-environment-council.org.uk/

Involve, 2005. *People and Participation – How to put citizens at the heart of decision-making.* http://www.involve.org.uk/mt/archives/blog_37/People%20and%20Participation%20final.pdf

Process Planner. This is an easy to use search engine for participatory methods. It is designed for users who are in the stage of planning for participation. http://www.peopleandparticipation.net/pages/viewpage.action?pageId=24215596

Rush, R., 2005. *Building Trust with Communities – a Toolkit for Staff*. Environment Agency of England and Wales. London, UK.

Wates, N. (Ed.) , 2000. *The Community Planning Handbook*. Earthscan Publications, London, UK.

Wilcox, D., *The Guide to Effective Participation*. http://www.partnerships.org.uk/guide/time.htm#Init

Acronyms

AC	Advisory Council
ADR	Alternative Dispute Resolution
Comhar	Sustainable Development Council
CSPE	Civics, Social and Political Education
DAD	Decide, Announce, and Defend
DoECLG	Department of the Environment, Community and Local Government
DoEHLG	Department of the Environment, Heritage and Local Government
EENGO	Environmental (Ecological) NGO
EHO	Environmental Health Office
EIA	Environmental Impact Assessment
EIS	Environmental Impact Statement
EMAS	Eco-management and audit scheme
ENGO	Environmental non-governmental organisation
EPA	Environmental Protection Agency
FSC	Forest Stewardship Council
GIS	Geographic information system
GMO	Genetically modified organism
IEN	Irish Environmental Network
IPPC	Integrated Pollution Prevention Control
NCBI	National Council for the Blind of Ireland
PCO	Protective Cost Order
PP10	Partnership for Principle 10
PRTR	Protocol on Pollutant Release and Transfer Registers
RBD	River Basin District
RIA	Regulatory Impact Analysis
SEA	Strategic Environmental Assessment
SIRBDAC	Shannon International River Basin District Advisory Council
SOE	State of the Environment
SPC	Strategic policy committee
TAI	The Access Initiative
WFD	Water Framework Directive
WRFB	Western Regional Fisheries Board

An Ghníomhaireacht um Chaomhnú Comhshaoil

Is í an Gníomhaireacht um Chaomhnú Comhshaoil (EPA) comhlachta reachtúil a chosnaíonn an comhshaol do mhuintir na tíre go léir. Rialaímid agus déanaimid maoirsiú ar ghníomhaíochtaí a d'fhéadfadh truailliú a chruthú murach sin. Cinntímid go bhfuil eolas cruinn ann ar threochtaí comhshaoil ionas go nglactar aon chéim is gá. Is iad na príomh-nithe a bhfuilimid gníomhach leo ná comhshaol na hÉireann a chosaint agus cinntiú go bhfuil forbairt inbhuanaithe.

Is comhlacht poiblí neamhspleách í an Ghníomhaireacht um Chaomhnú Comhshaoil (EPA) a bunaíodh i mí Iúil 1993 faoin Acht fán nGníomhaireacht um Chaomhnú Comhshaoil 1992. Ó thaobh an Rialtais, is í an Roinn Comhshaoil, Pobal agus Rialtais Áitiúil.

ÁR bhFREAGRACHTAÍ

CEADÚNÚ

Bíonn ceadúnais á n-eisiúint againn i gcomhair na nithe seo a leanas chun a chinntiú nach mbíonn astuithe uathu ag cur sláinte an phobail ná an comhshaol i mbaol:

- áiseanna dramhaíola (m.sh., líonadh talún, loisceoirí, stáisiúin aistrithe dramhaíola);
- gníomhaíochtaí tionsclaíocha ar scála mór (m.sh., déantúsaíocht cógaisíochta, déantúsaíocht stroighne, stáisiúin chumhachta);
- diantalmhaíocht;
- úsáid faoi shrian agus scaoileadh smachtaithe Orgánach Géinathraithe (GMO);
- mór-áiseanna stórais peitreail;
- scardadh dramhuisce.

FEIDHMIÚ COMHSHAOIL NÁISIÚNTA

- Stiúradh os cionn 2,000 iniúchadh agus cigireacht de áiseanna a fuair ceadúnas ón nGníomhaireacht gach bliain.
- Maoirsiú freagrachtaí cosanta comhshaoil údarás áitiúla thar sé earnáil - aer, fuaim, dramhaíl, dramhuisce agus caighdeán uisce.
- Obair le húdaráis áitiúla agus leis na Gardaí chun stop a chur le gníomhaíocht mhídhleathach dramhaíola trí comhordú a dhéanamh ar líonra forfheidhmithe náisiúnta, díriú isteach ar chiontóirí, stiúradh fiosrúcháin agus maoirsiú leigheas na bhfadhbanna.
- An dlí a chur orthu siúd a bhriseann dlí comhshaoil agus a dhéanann dochar don chomhshaol mar thoradh ar a ngníomhaíochtaí.

MONATÓIREACHT, ANAILÍS AGUS TUAIRISCIÚ AR AN GCOMHSHAOL

- Monatóireacht ar chaighdeán aeir agus caighdeáin aibhneacha, locha, uiscí taoide agus uiscí talaimh; leibhéil agus sruth aibhneacha a thomhas.
- Tuairisciú neamhspleách chun cabhrú le rialtais náisiúnta agus áitiúla cinntí a dhéanamh.

RIALÚ ASTUITHE GÁIS CEAPTHA TEASA NA HÉIREANN

- Cainníochtú astuithe gáis ceaptha teasa na hÉireann i gcomhthéacs ár dtiomantas Kyoto.
- Cur i bhfeidhm na Treorach um Thrádáil Astuithe, a bhfuil baint aige le hos cionn 100 cuideachta atá ina mór-ghineadóirí dé-ocsaíd charbóin in Éirinn.

TAIGHDE AGUS FORBAIRT COMHSHAOIL

- Taighde ar shaincheisteanna comhshaoil a chomhordú (cosúil le caighdéan aeir agus uisce, athrú aeráide, bithéagsúlacht, teicneolaíochtaí comhshaoil).

MEASÚNÚ STRAITÉISEACH COMHSHAOIL

- Ag déanamh measúnú ar thionchar phleananna agus chláracha ar chomhshaol na hÉireann (cosúil le pleananna bainistíochta dramhaíola agus forbartha).

PLEANÁIL, OIDEACHAS AGUS TREOIR CHOMHSHAOIL

- Treoir a thabhairt don phobal agus do thionscal ar cheisteanna comhshaoil éagsúla (m.sh., iarratais ar cheadúnais, seachaint dramhaíola agus rialacháin chomhshaoil).
- Eolas níos fearr ar an gcomhshaol a scaipeadh (trí cláracha teilifíse comhshaoil agus pacáistí acmhainne do bhunscoileanna agus do mheánscoileanna).

BAINISTÍOCHT DRAMHAÍOLA FHORGHNÍOMHACH

- Cur chun cinn seachaint agus laghdú dramhaíola trí chomhordú An Chláir Náisiúnta um Chosc Dramhaíola, lena n-áirítear cur i bhfeidhm na dTionscnamh Freagrachta Táirgeoirí.
- Cur i bhfeidhm Rialachán ar nós na treoracha maidir le Trealamh Leictreach agus Leictreonach Caite agus le Srianadh Substaintí Guaiseacha agus substaintí a dhéanann ídiú ar an gcrios ózóin.
- Plean Náisiúnta Bainistíochta um Dramhaíl Ghuaiseach a fhorbairt chun dramhaíl ghuaiseach a sheachaint agus a bhainistiú.

STRUCHTÚR NA GNÍOMHAIREACHTA

Bunaíodh an Ghníomhaireacht i 1993 chun comhshaol na hÉireann a chosaint. Tá an eagraíocht á bhainistiú ag Bord lánaimseartha, ar a bhfuil Príomhstiúrthóir agus ceithre Stiúrthóir.

Tá obair na Gníomhaireachta ar siúl trí ceithre Oifig:

- An Oifig Aeráide, Ceadúnaithe agus Úsáide Acmhainní
- An Oifig um Fhorfheidhmiúchán Comhshaoil
- An Oifig um Measúnacht Comhshaoil
- An Oifig Cumarsáide agus Seirbhísí Corparáide

Tá Coiste Comhairleach ag an nGníomhaireacht le cabhrú léi. Tá dáréag ball air agus tagann siad le chéile cúpla uair in aghaidh na bliana le plé a dhéanamh ar cheisteanna ar ábhar imní iad agus le comhairle a thabhairt don Bhord.

NDP
National Development Plan 2007 - 2013

Science, Technology, Research and Innovation for the Environment (STRIVE) 2007-2013

The Science, Technology, Research and Innovation for the Environment (STRIVE) programme covers the period 2007 to 2013.

The programme comprises three key measures: Sustainable Development, Cleaner Production and Environmental Technologies, and A Healthy Environment; together with two supporting measures: EPA Environmental Research Centre (ERC) and Capacity & Capability Building. The seven principal thematic areas for the programme are Climate Change; Waste, Resource Management and Chemicals; Water Quality and the Aquatic Environment; Air Quality, Atmospheric Deposition and Noise; Impacts on Biodiversity; Soils and Land-use; and Socio-economic Considerations. In addition, other emerging issues will be addressed as the need arises.

The funding for the programme (approximately €100 million) comes from the Environmental Research Sub-Programme of the National Development Plan (NDP), the Inter-Departmental Committee for the Strategy for Science, Technology and Innovation (IDC-SSTI); and EPA core funding and co-funding by economic sectors.

The EPA has a statutory role to co-ordinate environmental research in Ireland and is organising and administering the STRIVE programme on behalf of the Department of the Environment, Heritage and Local Government.

epa
Environmental Protection Agency
An Ghníomhaireacht um Chaomhnú Comhshaoil

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SSTI
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Comhshaol, Pobal agus Rialtas Áitiúil
Environment, Community and Local Government