



PARTICIPATORY RIGHTS

**FOR A CLEAN, HEALTHY AND
SUSTAINABLE ENVIRONMENT**

Jonas Ebbesson

SUMMARY



Millions of people worldwide manifested for the climate before the UN climate summit on 23 September 2019 in New York. In Manhattan in New York, around a quarter of a million people are estimated to have participated in the demonstration.

Photo: WWF-US / Keith Arnold

PARTICIPATORY RIGHTS

FOR A CLEAN, HEALTHY AND SUSTAINABLE ENVIRONMENT

Participatory rights of the public – of individuals and associations – for a clean, healthy and sustainable environment refer to the right to have access to environmental information, the right to participate in different environmental decision-making procedures, and the right to have access to justice in environmental matters.

Participatory rights are human rights, to be secured by the state. The state shall ensure that nobody is harassed, persecuted or penalised for exercising their participatory rights.

Participatory rights make it possible for the public to get informed, engage and express their views on matters that affect their living environment and the protection of the environment in a greater context, and also for those concerned to get decisions, acts and omissions that may infringe environmental laws reviewed in court. Getting more people to participate in decision-making processes strengthens the protection of the environment by providing better bases for the decisions and through greater impact of the environmental laws. Participatory rights strengthen democracy, transparency and public control over the practice of public authorities and they can reduce corruption and strengthen the trust in public authorities.

Significant international attention

Participatory rights in environmental matters have gained much international attention and increasing support in international law since the early 1990's. At the UN Conference on Environment and Development in Rio de Janeiro 1992, the world's states agreed for the first time to strengthen the participatory rights of the public. They also agreed that states should enable effective participation of indigenous peoples and their communities in the achievement of sustainable development. Moreover, at that time, international courts and institutions began to apply conventions on the protection of human rights in environmental contexts.

Since the 1992 Rio Conference, participatory rights have been supported in different ways by environmental agreements of *global scope*, on issues such as climate change, biodiversity, chemicals and hazardous substances, and nuclear power. Still, the strongest support is found in *regional environmental conventions*, which clearly set out how the convention parties shall ensure these rights for the public.

“Participatory rights strengthen democracy, transparency and public control over the practice of public authorities.”



The international legal development for participatory rights in environmental matters started at the UN Conference on Environment and Development in Rio de Janeiro in 1992.



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The Aarhus Convention – the most important legal framework

For Europe and Sweden, the 1998 *Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters* (Aarhus Convention) is the most important legal framework.

The Aarhus Convention sets minimum requirements on the participatory rights of the public, to be ensured by the Convention parties through national legislation and public authorities and courts.

In response to a request, the public shall have *access to environmental information* held by public authorities, without an interest having to be stated. The authorities may refuse a request only if any of the grounds of exceptions listed in the Convention applies. In addition, the public authorities are obliged to gather, display and disseminate environmental information in different ways, and to facilitate for the public to get access to the information.

The public also has a right to *participate in decision-making* on permits for activities, the preparation of plans, programmes and policies and the preparation of executive regulations and generally applicable legally binding normative instruments with an impact on the environment. Public participation does not imply a veto for anyone, but a right to express and submit views and have them taken into account. The Convention prescribes with some detail when and how the public must be informed about the decision-making, how it can submit the views, and how different views shall be taken into account in the decision-making and the outcome.

Moreover, the public shall have *access to procedures where it can be legally reviewed* whether decisions, acts and omissions by public authorities and private actors infringe legislation related to the environment.

There is no international court linked to the Aarhus Convention, but the international *Compliance Committee* of the Convention interprets and applies the Convention, makes legal reviews whether the parties comply with the Convention's requirements, and makes recommendations to the parties who do not comply with the Convention. The reviews of the Compliance Committee are mainly based on complaints by the public.

Sweden and the European Union – parties to the Aarhus Convention

Sweden is a party to the Aarhus Convention and implements the Convention's requirements inter alia through the Environmental Code, the Freedom of the Press Act, and the Public Access to Information and Secrecy Act. Yet, it has turned out that Swedish legislation does not implement the Aarhus Convention requirements





The right to demonstrate is part of freedom of expression, freedom of association and freedom to participate in peaceful assembly.

clearly enough, and in several cases the courts have referred directly to the Convention to ensure that Sweden meets its obligations.

The European Union is also a party to the Aarhus Convention and has adopted several laws aimed at implementing the Convention by imposing obligations on the EU member states and the EU institutions. The EU has legislated on matters such as access to environmental information, and participation in environmental assessments, permit procedures and the preparation of plans and programmes impacting on the environment.

Participatory rights are transboundary and apply also when activities, plans, programmes, acts and omissions by public authorities and companies can affect the public or the environment of other countries. The starting-point is that the public outside the territory of a state must not be discriminated compared with the public within the territory.

Participatory rights have robust support in the European Convention on the Protection of Human Rights, even though the Convention does not refer to the environment. The European Court has in several cases applied and interpreted the European Convention articles on the right to life, the right to respect for private and family life, and the right to a fair trial in different environmental contexts.

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On April 19, 2024, Fridays for Future demonstrated in Stockholm.

The Court has, sometimes with reference to the Aarhus Convention, confirmed that everyone has the right to know and get information about the risks to which one is exposed. Furthermore, the conclusions of environmental assessments must be made publicly available, and the public shall be able to participate and express their views in decision-making processes and to get decisions that affect their rights in environmental contexts legally reviewed. The European Court has also made clear that it must be possible to try in court whether the state lives up to its legal responsibility in taking climate action.

The right to a clean, healthy and sustainable environment is a human right

The UN General Assembly recognised in a resolution 2022 that the right to a clean, healthy and sustainable environment is a human right, and that the exercise of the participatory rights is vital to the protection of a clean, healthy and sustainable environment,

Despite the described legal developments, the risk is high in many countries that those who engage in different environmental matters – by demonstrating, speaking out in the media, making demands on public authorities or corporations, participating in decision-making or filing lawsuits – *are threatened, harassed, persecuted, punished or even killed for their environmental commitment.* This is why the protection of “environmental defenders” has gained increasing attention in international law. The Aarhus Convention obliges the Convention parties to ensure that persons exercising their participatory rights shall not be penalised, persecuted or harassed in any way for their involvement.

Participatory rights must not be restricted to looking good on paper or screen. The participatory rights are real and there are those who fight at the risk of their lives to enjoy them, and to have the opportunity to state their views, to participate in decision-making and go to court to hold public authorities and corporations to account for harm to the environment or health. The participatory rights are useful, and they get useful when invoked, claimed and applied. They contribute to better enforcement of environmental laws, to holding public authorities and corporations to account when violating environmental legislation. They strengthen the protection of the environment, democracy and the rule of law – and they are vital for the human right to a clean, healthy and sustainable environment.

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The author of the report, Jonas Ebbesson, is Professor of environmental law and former Chair of the Aarhus Convention Compliance Committee.



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**WWF'S MISSION IS TO STOP
THE DEGRADATION
OF THE PLANET'S NATURAL
ENVIRONMENT AND TO BUILD
A FUTURE IN WHICH
HUMANS LIVE IN HARMONY
WITH NATURE**



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