Aarhus Convention Index—a pilot test of the Aarhus Convention Indicators for Armenia, the Czech Republic, Serbia, Ukraine, and the United Kingdom

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# Introduction

The Aarhus Convention[[1]](#footnote-1) Indicators (ACI) are being created by the Access Initiative and World Resources Institute, in collaboration with regional experts, to allow civil society, governments, academics, and the private sector to assess how well a country/Party protects the rights enshrined in the UNECE Aarhus Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters (hereafter “the Aarhus Convention”). These rights have been recognised by the United Nations as fundamental to sustainable development and help promote fair and equitable decision-making by improving transparency, stakeholder engagement, and accountability.

The ACI will enable researchers to benchmark the quality of a country’s laws and practices against the Aarhus Convention, an internationally recognised and legally binding standard. The information ACI produces can be used to pinpoint gaps in laws and practices, prioritise reforms and provide models, through international comparison, of good laws and practices. At present, there is no such mechanism allowing stakeholders to easily compare levels of compliance in enactment and interpretation/application of the law against recognized indicators. Together with complementary resources such as the Aarhus Convention Implementation Guide (2014),[[2]](#footnote-2) it is our intention and hope that ACI will encourage and facilitate the improvement of laws and practices to secure the critical rights enshrined in the Aarhus Convention.To do this, we have consulted widely with Aarhus legal experts from a range of backgrounds.

# Background

The Aarhus Convention is the first and only legally binding international convention on the rights of access to information, public participation, and access to justice in environmental matters for individuals and associations. These rights are conferred to members of the public vis a vis public authorities. It was adopted on June 25, 1998 in Aarhus, Denmark as part of the “Environment for Europe” process, and entered into force on October 30, 2001. As of 2017, there are 47 parties to the Convention, including 46 countries and the European Union, with the United Nations Economic Commission for Europe as the secretariat.[[3]](#endnote-1) The UNECE describes key features of the Convention as a) a rights based approach that links the environment and human rights, b) a “floor, not a ceiling” which establishes minimum standards, c) non-discriminatory in that anyone must be allowed to enjoy these rights no matter citizenship, nationality, or domicile, d) defines public authorities, which includes private actors, but only when they serve public service roles, e) includes institutions of the European Union, f) provides a general requirement to promote the Convention in international negotiations, g) creates a non-compliance mechanism (the Compliance Committee), and h) is open to non-ECE countries.[[4]](#endnote-2)

# Country Selection

Pilot countries were selected through consensus discussion by participants at a methodological workshop held in Dublin, Ireland in July 2015. Criteria for selection included geographical representation, a mix of EU vs non-EU parties, common law and civil law legal systems, and recent ratifying parties vs. those that ratified earlier. This generated a list of countries that included France, the United Kingdom, Serbia, Kazakhstan, Czech Republic, Armenia, and Ukraine. From this list, the final five countries were selected based on the availability of qualified legal experts: Armenia, Czech Republic, Serbia, Ukraine, and the United Kingdom.

|  |  |  |  |  |
| --- | --- | --- | --- | --- |
| **Country** | **Sub-region** | **EU status** | **Legal system** | **Ratification year** |
| Armenia | Eurasia | Non-EU | Civil law | 2001 |
| Czech Republic | Eastern Europe | EU | Civil law | 2004 |
| Serbia | Balkans | Non-EU | Civil law | 2009 |
| Ukraine | Eastern Europe | Non-EU | Civil law | 1999 |
| United Kingdom | Western Europe | EU (at time of evaluation) | Common law | 2005 |

# Methodology

The ACI is composed of two discrete sets of indicators—a legal set consisting of 86 indicators responding to eight articles of the Aarhus Convention (Articles 2 to 9), and a practice set consisting of 69 indicators responding to the same eight articles of the Convention plus the ‘regular reporting’ obligation in Article 10(2). The legal indicators seek to measure how well national laws enact[[5]](#footnote-3) obligations under the Aarhus Convention. These indicators measure enactment of Aarhus Convention obligations by way of ***national*** laws in the case of countries, or ***EU laws*** in the case of the European Union’s enactment, since the EU is a Party to the Aarhus Convention in its own right.Neitherlegal nor practice indicators have been developed in respect of Article 1, or Article 10 onwards (except for a practice indicator for Article 10(2)) of the Aarhus Convention, as these provisions do not appear to impose obligations that require enactment.

The legal indicators test if the relevant law measures up to the Aarhus Convention.  A high score indicates that that law conforms to the Aarhus Convention.  That however does not necessarily mean that the law is strong within the context of the legal system of that country.  In some countries, other laws or even policies may trump, or be more authoritative, than the relevant law.  In others, the law may receive a high score but because the rule of law is weak, laws in that country may not be respected. Nevertheless, the ACI assumes that for the public to have enforceable rights to transparency, participation and access to justice, a good starting point is to ensure that those rights are recognised and clearly written down in the legal framework.

Instead of measuring the quality of enacting laws, the practice indicators assess discrete aspects of how the Aarhus Convention is being implemented in practice. Besides that main difference, the authors wish to emphasise that the practice indicators will provide a snapshot of a national level assessment (or regional level in the case of the EU), based on desktop research and the experiences and knowledge of the researcher and reviewer. In other words, scoring the practice indicators does not include extensive surveys, data analysis, or field research, though it may involve a few interviews depending on the experience of the researcher. However, the scores given by researchers/reviewers in respect of the practice indicators will be duly explained and the explanations will be subject to multiple reviews.

With one exception,[[6]](#footnote-4) each legal indicator is scored on a four-point scale, from 0 to 3, with 3 as the highest score. Each choice is guided by criteria that are required to merit that score, such that subjectivity is limited as much as possible. In developing these criteria, we have drawn on “Guidelines for conformity checking (2009),”[[7]](#footnote-5) which guidelines were developed in the context of assessing the conformity of countries’ laws with instruments of EU environmental law. In general, a “0” represents complete absence of the conditions, or legal coverage referred to in the indicator. “1” represents a low level of conditions or coverage. “2” represents a medium level and “3” a high level of presence of conditions or coverage referred to in the indicator. For legal indicators, a 3 means “complete enactment of the provision”. However, under Article 4, for several indicators assessing exemptions to access to information, a score of 3 represents exemptions that are more narrowly worded than the Convention provisions, thus allowing for greater access to information.

In respect of certain indicators we have provided more than one factual permutation for a given indicator score (e.g. there could be two different factual scenarios which would merit the same score of 1, say). In such cases, researchers are to identify the relevant factual scenario and score accordingly, indicating in their comment which of the scenarios was relevant in the case of the Party in question. The range of four possible scores (0 – 3) is used as a general matter because it provides a standard scoring range and captures most of the nuance in range of different possibilities for that indicator. In addition to the scores, the researchers are required to provide the legal provisions that support the score. Finally, researchers use the comment box to provide rationales, explanations, or other clarifications which can help justify the score.

The articles for each pillar (i.e. General (incl. definitions); Access to information; Public participation; and Access to justice) will then be averaged to produce pillar scores. Finally, the average of the pillars will be used to produce the overall country/Party score.

ACI uses arithmetic averages a) for all articles of the Convention and b) from the values of the articles for the pillars and finally, c) for the whole Convention in all cases both for the legal and practical indicators. We note that the scores of certain indicators (e.g. in respect of definitions) will necessarily impact the range of scores that may be selected in subsequent indicators which test the enactment of provisions which rely on those definitions (e.g. once a definition determines the scope of a term too narrowly, this narrows the scope of all rules that use the same definition). The scores of the indicators for each relevant provision of the Aarhus Convention will be averaged to produce a score for each assessed article. The average of each Article score produces the country score.

Ultimately, if ACI moves beyond the pilot phase into a full roll-out to all Aarhus Convention Parties, the intention would be that these scores will be displayed on an interactive map on a website as well as being made available, along with sources, comments and dialogue between researchers and reviewer(s), on each country/Party page. This would represent the Aarhus Convention Index.

## Practice Indicator Scoring

The practice indicators follow the same scoring system as the legal indicators.[[8]](#footnote-6) These indicators check for evidence of the existence and quality of a practice that is required by law. For most indicators (with a small number of exceptions which are scored on a presence/absence basis (i.e. only two options: 0 or 3)), the researcher/reviewer may choose one of four responses (which vary depending on the provision being tested): e.g. Excellent (scored 3), Good (2), Fair (1), Poor (0). Again, in respect of certain indicators we have provided more than one factual permutation for a given indicator score (e.g. there could be two different factual scenarios which would merit the same score of 1, say). Again, in such cases researchers are to identify the relevant factual scenario and score accordingly, indicating in their comment which of the scenarios was relevant in the case of the Party in question.

In respect of the practice indicators certain scenarios have been provided (see the tables of indicators below) as a ‘prompt’ or catalyst to get the researcher/reviewer thinking about potentially relevant situations (and other scenarios that such considerations might prompt); these scenarios may or may not be relevant, or may or may not have arisen, in the relevant national context – e.g. [situations which have been considered previously by the Aarhus Convention Compliance Committee](http://www.unece.org/env/pp/pubcom.html); in [Parties’ 2014 National Implementation Reports](http://www.unece.org/env/pp/reports_trc_implementation_2014.html); in the [Aarhus Implementation Guide (2014)](http://www.unece.org/fileadmin/DAM/env/pp/Publications/Aarhus_Implementation_Guide_interactive_eng.pdf); or by the [Court of Justice of the European Union](http://curia.europa.eu/juris/recherche.jsf).

Researchers are asked to provide a justification for their score and to explain the factors they considered. Researchers and reviewers are encouraged to draw on as broad a range of sources (such as case studies, other sources of professional literature, interviews etc.) as possible in providing their suggested scores. When using such sources a balance should be carefully maintained between official, governmental sources, peer-reviewed sources, and NGO sources.

## 

## Research and Review

There are four stages to the research and review in this pilot phase of the project, to provide adequate checks and balances that ensure accuracy, credibility and verification to the index:

1. **National Researcher:** This role is held by an environmental lawyer who is well-versed in laws and practices relating to environmental democracy in the Party being assessed. The researcher is responsible for scoring the indicators, providing the sources to justify the scores and providing relevant comments to explain the score.
2. **National Reviewer**: This role is held by an environmental lawyer who is well-versed in laws and practices relating to environmental democracy in the Party being assessed. This person critically evaluates the scores of the researcher. S/he may agree, agree and comment, or disagree with the score. Rationale must be provided.
3. **Steering Committee Reviewer**: The Steering Committee reviewer (within EMLA, UCD or WRI) reviews the researcher’s scores and comments as well as the national reviewer’s comments. In the case of a disagreement between the researcher and national reviewer, the Steering Committee reviewer may send a question back to one or both. If the disagreement persists, the Steering Committee reviewer will decide the issue with a clearly reasoned decision. The Steering Committee also provides a second review of the scores, sources, and rationale, and may raise her/his own questions to the researcher.
4. **Final Approval**: The Steering Committee reviewers will also fill this role, although the final reviewer will never be the same person as the Steering Committee reviewer for any given Party. The final reviewer checks scoring and reviews for consistency and sends any final questions back to other parties (researcher, reviewer, etc.).

## Weighting of the Legal Indicators and Practice Indicators

The authors recognize that national context affects the relative emphasis on progress towards legal enactment and practical implementation. Therefore, we have not determined for parties how legal and practice scores should be weighted. We think this conversation deserves more input and invite stakeholders at the 2017 MOP to share their input. For the purposes of the pilots we have provided three weighted averages for comparison:

Weighted average 1: 60% Legal, 40% Practice

Weighted average 2: 50% Legal, 50% Practice

Weighted Average 3: 40% Legal, 60% Practice.

## Stakeholder Feedback

In July, 2015, project partners hosted a two-day workshop with Aarhus Convention experts from several countries, representing civil society, government, the Aarhus Secretariat, and the Compliance Committee, to discuss the methodology and decide on a framework for indicators. The workshop informed the indicators and methodology in the following ways:

* Do not use (or do not use *only*) the term "transposition" and generally be careful to avoid using language that is primarily EU vernacular in order to be more inclusive.
* Ensure the scoring categories for the legal indicators (minor, more than minor, etc.) are clear and consistent
* Practice indicators should limit or remove subjectivity to the greatest extent possible. This means the results should be empirical and verifiable.
* On the basis that it is possible to limit subjectivity in the above-mentioned way re the practice indicators, the legal and practice indicators should be scored on the same basis (i.e. 0,1,2,3) and the scores integrated to produce an overall score for each country/Party. This will help the Index to reflect lived experiences of environmental democracy rights on the ground.
* Generally there was a preference expressed for discrete indicators that test law and practice as specifically/comprehensively as possible (though this should be balanced with indicator proliferation)
* Art. 3(1) indicators – these could be assessed at the very end of the process, and pillar by pillar. They could perhaps be assessed as a 'hybrid' type of indicator, blending both law and practice into single indicators for each pillar.
* The issue of ‘contradictory laws’: the legal indicators should take account of situations where Parties have laws which directly contradict Aarhus rights/obligations.
* How to deal with governments which go further than required: these will not be awarded a 3.5 or 3\* score, but researchers should be asked in each case to reflect in their comments when a Party has gone further than the Convention requires.  Website technology could allow this information to be made easily visible in respect of each Party/provision.
* Strong consensus that indicator guidance should be very clear on which sources to review (researchers could perhaps be asked to list all sources reviewed to aid reviewers).
* There appeared to be a consensus that researchers/reviewers should be given clear and consistent guidance about what to consider for the purposes of the legal indicators: i.e. either they should be told to consider case law or ignore it altogether.

The authors also solicited feedback from the researchers and reviewers themselves, and have collated that feedback in an attached spreadsheet.

# Results

The results described below are summarized from the full indicator assessment and comments provided by researchers. Readers interested in an in depth explanation and justification for any particular score are encouraged to view the indicator document for that country.

### Note on the Serbian results:

After multiple, iterative stages of review, project partners decided that Serbia’s results may be anomalous and could not be fully verified for their accuracy. Therefore, while the scores and averages have been included on the spreadsheet, and all data and review commentary has been included, their results are not discussed in the analysis below. Project partners recommend that they be reviewed by a committee of independent Aarhus Convention experts composed of national and foreign experts.

|  |  |  |  |
| --- | --- | --- | --- |
|  | Weighted total: 60% legal, 40% practice | Weighted total: 50% legal, 50% practice | Weighted total: 40% legal, 60% practice |
| Armenia | 1.56 | 1.53 | 1.50 |
| Czech Republic | 1.76 | 1.78 | 1.80 |
| Serbia | 2.67 | 2.63 | 2.58 |
| Ukraine | 1.43 | 1.39 | 1.34 |
| United Kingdom | 1.93 | 1.95 | 1.98 |

## Article 2

Article 2 of the Aarhus Convention establishes key definitions relevant to the Convention, including “public authority”, “environmental information”, “the public” and “the public concerned”. ACI legal indicators under Article 2 test the extent to which countries have enacted the definitions clearly, fully, and without error, and whether these definitions have been interpreted broadly in practice.

Of the four countries analyzed, the Czech Republic scored highest on both legal enactment (2.33/3) and interpretation in practice of these definitions, the latter tied with the UK (2.5/3). Armenia scored 2/3 on legal enactment and 1.75/3 on interpretation, Ukraine scored 1.5/3 on enactment and 1.75/3 on interpretation and the UK scored 1.83/3 on legal enactment and 2.5/3 on practical interpretation. Notable gaps under this pillar include:

* a “0” for Armenia’s enactment of a definition of “environmental information”;
* “0” for the UK for not including those affected by environmental decision-making in the definition of “public concerned”;
* “0” for Czech Republic and the Ukraine for not including those with an interest in environmental decision-making in the definition of public concerned;
* a “0” for the Ukraine for not including NGOs promoting environmental protection in the definition of “public concerned”.

Notable areas of strong performance include:

* The Environmental Information Regulations (2004) in England and Wales that transpose the EU’s Environmental Information Directive and Act 123/1998 of the Czech Republic on the Right to Information on the Environment which fully enact Article 2 of the Aarhus Convention by establishing broad definitions of environmental information, earning a score of 3;
* Armenia’s Environmental Impact Assessment law scored the highest overall in terms of establishing a broad definition of the “public concerned”.

## Article 3

Article 3 of the Aarhus Convention covers “General Provisions” intended to facilitate more effective use of rights to access information, public participation, and access to justice in environmental matters. These include provisions such as ensuring guidance is provided to the public on how these procedures can be used, promoting environmental education and awareness, legal recognition and support for organizations promoting environmental protection, applying Aarhus Convention principles to international decision-making processes, and to ensure that those seeking to fulfill rights protected by the Aarhus Convention are not harassed or intimidated.

Generally, the countries analyzed scored fair to poor on the legal enactment of this Article, with Armenia scoring the highest at 1.43/3 and the United Kingdom scoring the lowest at 0.73/3. In practice, the average scores were only slightly better, with the UK and Czech Republic each scoring 1.71 across the indicators and Ukraine scoring the lowest at 0.71. Ukraine averaged 1.14 on legal enactment, while Czech Republic averaged 1.0. Armenia’s average on interpretation in practice matched its legal score of 1.43. Notable gaps in legal enactment and interpretation include:

* While the United Kingdom lacks a legal obligation to promote environmental education and awareness (the only country to score 0), practice indicators show that it still occurs, though not consistently. Ukraine on the other hand, scores a 1 on legal obligations in this respect, but a 0 in practice.
* The UK is also the only country assessed to not have enacted or implemented additional measures that go beyond the requirements of the Aarhus Convention in providing access to information, public participation, and access to justice for the environment.
* None of the four countries assessed have taken any steps to enact obligations to apply the Aarhus Convention in international environmental decision-making or in the framework of international organizations. However, in practice the UK has taken steps to promote the Convention in some international settings.
* In regards to the ability of any person, without discrimination against nationality, citizenship, or domicile, to fulfill the rights of the Convention, the Czech Republic does not prohibit discrimination in any way, thus scoring a 0.
* In terms of providing assistance to the public to fulfill their rights in practice, researchers judged the Ukraine’s efforts to be poor or non-existent.

Notable areas of strong performance include:

* Armenia’s constitution, Environmental Impact Assessment law, and Code of Civil Procedure, Code of Criminal Procedure, and Code of Administrative Procedure enact measures which protect these rights without discrimination. Similarly, Ukraine’s Constitution and Law on Access to Public Information and Law on Civil Associations protect these rights to earn a score of 3; and
* In practice, researchers for Armenia, Czech Republic, and the UK, did not identify any cases where discrimination on the basis of nationality, domicile or citizenship limited the ability to exercise rights under the Aarhus Convention.

## Article 4

Article 4 addresses “Access to Environmental Information”. Indicators in this section test how fully parties have enacted each subsection, including ensuring that procedures for making and responding to requests are timely and accessible, while establishing exceptions for information disclosure. In general, the four countries assessed scored fairly well on legal enactment and interpretation of this Article, with a few exceptions. Ukraine scores the highest on legal enactment (2.3/3) but the lowest on practical implementation (1.2/3). Czech Republic scored the lowest on legal enactment (1.7/3) but higher on practical implementation (2.3/3). Armenia scored 1.8/3 on legal enactment and 2.2 on practical interpretation. The UK scores well on legal enactment (2.15/3) and the highest on practical implementation (2.5/3). While scores were generally high, the research did reveal the following gaps:

* There is no statutory protection in the UK to ensure that requesters do not have to provide an interest; however, in practice this is not required;
* Armenia’s laws provide no guidance on the disclosure of information that is still being completed but internal communications are subject to disclosure unless they are a state secret;
* None of the countries assessed enact language to ensure that exceptions based on national security or defense are interpreted in “a restrictive way” and consider the public interest;
* In terms of practical implementation, Ukraine’s researcher reported that exemptions related to the specificity of a request or confidential information are not applied restrictively in practice—earning scores of 0; and
* A public interest test, which can be used to override exemptions of information disclosure when there is a greater public interest in disclosure has not been enacted in Armenia and is not being used in practice in Ukraine, according to researchers for those countries.

Notable areas of strong performance in Article 4 include:

* The UK’s Environmental Information Regulations of 2004 have effectively enacted Article 4(2) and 4(3) (a-c) related to timeliness of information disclosure and created more specific and restrictive procedures for refusing requests when they may be viewed as unreasonable or are too general or to do with national communications;
* All countries assessed have enacted strong procedures to inform information requesters in a timely and clear manner when requests are refused and to explain how they may appeal the refusal;
* The UK was the only country assessed that had not enacted an exemption to information disclosure beyond those provided for in the Aarhus Convention. For example, Czech Republic enables refusal of requests from anonymous applicants and if the request is formulated in “a provocative or obstructive way”, while Ukraine allows refusals for information that is deemed “official use” even if it’s not a state secret;
* Researchers in all countries reported strong anecdotal performance in terms of the timeliness of response to requests while also noting that there are no official statistics to track this; and
* All countries have enacted strong provisions to require authorities to separate out information that can be disclosed from that which is confidential (partial disclosure).

## Article 5

Article 5 covers the “Collection and Dissemination of Environmental Information”, including establishing and maintaining systems and processes for collecting, updating, sharing, and disseminating environmental information in a timely and accessible manner. Specifically, *inter alia:*

* Making publicly available immediately information to prevent or mitigate harm when imminent threats to the environment or health occur;
* Providing information on the type and scope of environmental information that public authorities hold and how it can be accessed or obtained;
* Making lists, registers, and databases of environmental information proactively available;
* Creating a state of the environment report at intervals not exceeding 3-4 years;
* Making publicly available laws, policies, strategies, plans, treaties, and other like documents created at any level of government;
* Encouraging operators of activities that have a significant impact on the environment to inform the public regularly of the environmental impact of their activities;
* Making information available on the performance of public services at all levels that relate to the environment;
* Taking steps to establish coherent, publicly available, nationwide pollution registries or inventories with standardized reporting and including when possible inputs, releases and transfers, including of energy, water, and resource use.

Performance on Article 5 varied greatly, particularly with regards to legal enactment, with Armenia scoring only 0.64/3 on legal enactment and 1/3 on practice while the UK scored 2.5/3 on legal enactment and 2.15/3 on practice. Czech Republic averaged 2.29/3 on legal enactment and 2/3 on practice while Ukraine averaged 1.43/3 on legal enactment and 1.23/3 on practice. The ACI assessment revealed the following gaps in enactment and practice:

* Armenia has not enacted the obligation to create systems to ensure an adequate flow of information to the public regarding existing and proposed activities that may significantly impact the environment;
* Armenia also lacks legal requirements to create lists of available information, make the public aware of information that is held and whom they should contact to obtain it; it also lacks legal requirements to periodically publish environmental information through databases and state of the environment reports;
* Armenia also lags behind the other countries in practice. It is the only country to not publish any data on environmental information requests or to develop mechanisms to ensure consumer product information on environmental impact is made publicly available;
* The UK’s Environmental Information Regulations (EIR) do not require authorities to develop protocols on proactive publication of environmental information; and
* Neither Ukraine nor Armenia have enacted legal requirements to establish a pollution register (often referred to as a pollution release and transfer register, or PRTR). In practice, these countries’ governments and operators of facilities that significantly impact the environment have rarely or never taken steps to inform the public of existing or potential impact on the environment—neither having established a PRTR.

Notable areas of strong performance on Article 5 include:

* Armenia is the only country to fully enact a provision to ensure that information is immediately released by public authorities in the event of an imminent threat that endangers the environment or public health through its Law on “Protection of Population in Emergency Situations”;
* Armenia, Ukraine, and Czech Republic have all fully enacted provisions through their right to information laws to require authorities to publish information on the type and scope of environmental information held, and how it may be obtained;
* The UK—through the EIR—and Czech Republic Act on the Right to Access Environmental Information, have fully enacted provisions to require environmental information, including data, legislation, policies and plans, to progressively be made proactively available online;
* The Czech Republic’s Integrated Pollution Register Act requires operators of activities that significantly impact the environment to report pollutants. The UK has adopted similar provisions and both countries have functioning PRTRs in practice;
* The Czech Republic is the only country to produce a state of the environment report on an annual basis, although each country had produced one within 3-4 years. Researchers from the Czech Republic also graded the quality and breadth of the reports as high (3/3);
* The UK leads the way in both law and practice to provide consumers and the public with information on the environmental impacts of consumer products; and
* In practice, the UK and Ukraine scored highly for publishing information on the results of environmental information requests, with both publishing this information on a monthly or quarterly basis online.

## Article 6

Article 6 of the Aarhus Convention deals with “Public Participation in Decisions of Specific Activities”. It establishes requirements on the types of decisions requiring public participation, establishes criteria for early, adequate, and effective participation, and details a minimum list of information that should be disseminated to the public prior to participation. It includes provisions on how the “public concerned” should be identified, and the enactment of procedures to enable and encourage input as well as procedures that authorities should follow to ensure concerned parties receive a response. The UK scores the highest on legal enactment of Article 6 (2.62/3) and practice (2.45/3) while Ukraine scores the lowest on both law (1.23/3) and practice (0.64/3). Czech Republic scores 2.31/3 on legal enactment and 1.82/3 on practice while Armenia scores 1.62/3 on law and 1.45/3 on practice. ACI revealed the following gaps in enactment and practice:

* Ukraine is the only country not to enact provisions establishing a reasonable time frame for the public to participate in decision-making processes with environmental impact;
* Neither Armenia, Czech Republic, nor Ukraine have any legal requirements for applicants of facilities to proactively identify the public concerned, provide information and discuss the project before applying for a permit;
* Ukraine is the only country to not have enacted any provisions requiring permitting authorities—or operators—to take due account of public comments when issuing a decision; in practice neither Ukraine nor Armenia regularly produce responses to public comment;
* Czech Republic and Ukraine have not allowed public participation on national security projects with environmental impacts; and
* In practice, Armenia does not allow public participation when facilities update or change their operating conditions.

Notable areas of strong performance on Article 6 include:

* Ukraine (through Decree #808) and the UK (2011 Town and Country Planning Regulations) have applied the provisions of public participation to activities not listed in the Aarhus Convention and updates to these activities;
* Czech Republic, through its Environmental Impact Assessment law, has fully enacted provisions to provide for early opportunities for the public to participate in environmental decision-making; in practice the UK fares the best at early and adequate notification, headed by Local Planning Authorities (LPAs) which issue public notices and also directly contact affected households;
* Czech Republic (through its Code on Administrative Procedure and EIA Act) and the UK (Town and Country Planning/EIA regulations) scored the highest in legal enactment for establishing reasonable time frames to enable the public to adequately participate in decision-making processes;
* Czech Republic has enacted the strongest provisions through its EIA law to require operators and permitting authorities to proactively disseminate all relevant information to the public concerned without waiting for an information request; researchers also reported strong implementation of this provision;
* The UK is the only country to fully enact provisions through its Town and Country Planning Act that require public authorities to take due account of public comments received, thereby demonstrating accountability towards public opinion; and
* All countries assessed, except for Ukraine, have enacted strong legal measures requiring a timely release of information to the public on the decision, once it is made, and the rationale behind it.

## Article 7

Article 7 covers “Public Participation Concerning Plans, Programmes, and Policies for the environment, which links to Article 6 to ensure that parties extend these rights of public participation beyond projects to cover plans, programmes and policies. The UK scored the highest on legal enactment (2.4/3) and tied for highest with Czech Republic for practice (2/3). Czech Republic scored 1.6/3 on legal enactment, as did Ukraine, which also scored 1.25/3 on practice. Armenia struggled the most on this Article, averaging 1.2/3 on legal enactment, but 0/3 on practice. Major gaps identified included:

* Czech Republic and Armenia have not enacted legal provisions requiring the relevant public authority to identify the public who may participate in a given decision;
* The UK has not enacted a provision providing opportunities for the public to participate in policy-making for the environment; and
* In practice, researchers for Armenia reported that participation rarely or never takes place for programmes, plans and policies with environmental impacts.

ACI revealed the following areas of strong performance on Article 7:

* The UK has enacted multiple laws to achieve compliance with EU Directives 2003/35 and 2001/42 on public participation in programmes and plans, including air quality standards, planning regulations, and strategic environmental assessment regulations; and
* Ukraine’s Law on Protection of the Environment requires information to be provided to the public prior to participation opportunities.

## Article 8

Article 8 covers “Public Participation during the Preparation of Executive Regulations and/or Generally Applicable Legally Binding Normative Instruments”. There was high variation across the four countries on these scores as well, with Armenia scoring 2.8/3 on legal enactment and 2/3 on practice and Czech Republic scoring 0/3 on legal enactment and 1/3 on practice. Ukraine scores 2.2/3 on law and 1/3 on interpretation, while the UK scores 0.2/3 on legal enactment and 2/3 on practice. ACI identified the following gaps in law and practice on Article 8:

* Neither Czech Republic nor the UK have enacted legally binding provisions to protect the right of the public to participate in the formation of regulations that may impact the environment.

Notable areas of strong performance include:

* Armenia’s Government Decision 296-N on the procedure and organization and implementation of Public Discussion ensures the public has the right to participate in the development of executive regulations, establishing timeframes, transparency, and response protocols; and
* Ukraine’s Law on Principles of Regulatory Policy in Economic Activity ensures that public authorities must take due account of public comments.

## Article 9

Article 9 is on “Access to Justice” and provides for access to review procedures in respect of a broad range of environmental matters, and seeks to ensure that such procedures are timely, adequate and effective, equitable, affordable, and fair, and that decisions of the courts and other such bodies are made public. The UK averages the highest for legal enactment with a score of 2.25/3 with a somewhat lower practice score of 1.86/3. Czech Republic scores the highest on practice (1.93/3) and 2.13/3 on legal enactment, while Armenia scores 2/3 on law and 1.08/3 on practice and Ukraine scores 1.44/3 on law and 1.5/3 on practice. ACI research found the following gaps in law and practice:

* Ukraine has not enacted provisions in national laws to ensure that national environmental laws have fully enacted rights to seek judicial relief and redress;
* Armenia and Ukraine were graded as having restrictive access to justice—meaning the law does not ensure broad standing for environmental cases; in practice Armenia restricts access on environmental cases to both NGOs and individuals;
* Ukraine has not enacted provisions to ensure that costs are not prohibitively expensive to seek justice;
* Armenia lacks provisions requiring information to be made available to the public on how to access administrative and judicial review procedures;
* Armenia also lacks legal mechanisms to lower financial and other barriers to access justice and in practice procedures are prohibitively expensive;
* Armenia does not have examples of civil society being able to effectively use the justice system to challenge acts and omissions related to the environment; and
* Lack of effective assistance mechanisms is a problem in the UK, Armenia, and Ukraine.

Notable areas of strong performance on Article 9 include:

* All countries assessed have enacted review and appeal procedures by impartial bodies for members of the public when information requests are refused and in all countries except Ukraine, the final decisions are binding on the public authority; in practice, researchers in all countries reported that these procedures are functioning as intended and in the UK and Czech Republic they are free of charge;
* The UK’s legal enactment of “sufficient interest” requirements is broad enough to allow a wide range of civil society actors who do not need to form a legal entity; it also scored the highest in practice in terms of not restricting access to NGOs based on “sufficient interest”.
* Armenia’s Code of Administrative Procedures and Law of Armenia of the State Duty provide for relief and remedies that fully meet the Aarhus Convention requirements to be adequate and effective, timely, fair and equitable, and affordable. Czech Republic also affords the highest score in legal enactment for timely, fair and equitable, and affordable remedies through its Code of Administrative Justice and Code of Civil Procedure.
* Review decisions in all countries assessed are made publicly available in practice.

## Article 10

Article 10 covers “Meeting of the Parties” which is described in ACI as “National Reporting and Overall Framework”. Indicators in this section test whether the party is reporting regularly on its implementation of the Aarhus Convention, whether there are clear and transparent frameworks to implement each pillar of the Convention. Countries scored fair on these indicators, with Czech Republic averaging the highest (1.75), Armenia and the UK each scoring 1.5 and Ukraine scoring 1.25. Gaps identified through the research include:

* Armenia’s researchers reported a complete lack of framework and enabling environment to implement the access to justice pillar, evidenced by the challenges faced by public interest NGOs in achieving standing in environmental cases due to very strict interpretations of the Code of Administrative Procedures.

Notable areas of strong performance include:

* Armenia and Czech Republic report regularly to the Meeting of Parties on their progress in implementing the Aarhus Convention.

# Recommendations and Next Steps

The results demonstrate that all of these countries have strengths and gaps in legal enactment and practical interpretation. In three of the countries, practice scores lag behind legal implementation. However, that is not the case for Ukraine and the United Kingdom. This raises the question of whether stronger institutions or more organized civil society have led to practice that exceeds legal requirements. No country uniformly performed better than the others and gaps were identified across each pillar. In some cases, the lack of a key law or implementing regulation—such as Armenia’s EIA law[[9]](#footnote-7)--was evident across multiple indicators. Unlike the Environmental Democracy Index results, public participation was not the lowest scoring pillar. Article 9 (Access to Justice), had lower overall scores than Article 6. This may be due to the effects of the Aarhus Convention in raising the minimum standard for participation across the parties.

While the pilot sample was too small and the analysis inadequate to assess the influence of different factors such as EU membership, legal system type, or history of ratification, the ACI results, if expanded, could provide the data to conduct such research.

Perhaps most usefully, these data highlight gaps and provide evidence for how these countries may be out of compliance, or where practical implementation does not match legal enactment. It should encourage dialogue and discussion between parties and domestic and international stakeholders. It may also highlight where there are gaps in evidence to adequately assess the implementation of certain provisions and encourage researchers and environmental governance scholars at the national and international levels to prioritize the tracking of implementation.

The results are important in a global context as well. These rights are foundational for civil society inclusion, participation, and ability to hold governments accountable. Thus, the fulfillment of the Aarhus Convention is closely linked to the Sustainable Development Agenda and the Paris Agreement, which will require building capacities for transparency and for domestic stakeholders to hold public authorities accountable to climate goals.

The authors recommend the following next steps:

1. Sharing the methodology and results at the Aarhus Meeting of the Parties in September 2017 to build awareness, create a dialogue, and build partnerships for the development of a full index;
2. Sharing the ACI pilot methodology with research institutions for input and validation on the indicator framework;
3. Connecting with national stakeholders in the pilot countries to spur dialogues between civil society and government based on the results; and
4. The development of a full Aarhus Convention Index that is refreshed and renewed every three years to coincide with the MOP.

1. For the time being we have not dealt with the PRTR protocol or with the GMO amendment, since their status is different from the body text of the Convention and this would negatively influence the comparability of the scores. [↑](#footnote-ref-1)
2. See <http://www.unece.org/fileadmin/DAM/env/pp/Publications/Aarhus_Implementation_Guide_interactive_eng.pdf> [↑](#footnote-ref-2)
3. United Nations Treaty Collection, “Aarhus Convention: Status of Ratification” *Accessed June 28, 2017.* https://treaties.un.org/Pages/ViewDetails.aspx?src=IND&mtdsg\_no=XXVII-13&chapter=27&clang=\_en [↑](#endnote-ref-1)
4. United Nations Economic Commission of Europe, “Aarhus Convention: Content,” *Accessed June 28, 2017*. http://www.unece.org/env/pp/contentofaarhus.html [↑](#endnote-ref-2)
5. In EU terminology one might say “transpose” here (and throughout), but since the Aarhus region is much broader than the EU we have opted for the less EU-centric term “enact” (and the related terms “enacted” and “enactment”), which arguably has the benefit of being the correct term in English: see pp.63-4: <http://ec.europa.eu/translation/english/guidelines/documents/misused_english_terminology_eu_publications_en.pdf> [↑](#footnote-ref-3)
6. The exception is an indicator which tests whether Parties have provided for any exceptions from the right to obtain environmental information on request which are not envisaged by the Aarhus Convention. Here a presence (“0”) or absence (“3”) scoring system seemed most appropriate. [↑](#footnote-ref-4)
7. Guidelines for Conformity Checking, Part II, Study Contract No 070307/2009/543947/FRA/A2 Conformity checking of measures of Member States to transpose Directives in the sector of Environment, Milieu Ltd, January 2009. [↑](#footnote-ref-5)
8. This is a key difference between the Aarhus Convention Index and the Environmental Democracy Index (EDI) – in the latter the practice indicators were not numerically scored, and the practice indicators did not impact the overall score for a country. As such, while EDI is a legal enactment index with an indication of practical implementation in certain areas, the idea here is that the ACI index scores will reflect practical experiences of environmental democracy rights on the ground. [↑](#footnote-ref-6)
9. Armenia’s EIA law was the subject of a recent Aarhus Compliance case; http://www.unece.org/environmental-policy/treaties/public-participation/aarhus-convention/envpptfwg/envppcc/envppccimplementation/fifth-meeting-of-the-parties-2014/armenia-decision-v9a.html [↑](#footnote-ref-7)