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Environmental justice for the poor?

The case of the Aarhus Convention in the post-Soviet region

Key points

- The Aarhus Convention may remedy cases of environmental injustice for the poor
- The states' discretionary powers in implementation may obstruct environmental justice
- Strong international partnerships are thus needed to strengthen environmental justice in the region



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Environmental justice and poverty alleviation in the post-Soviet region

Introduction

This policy brief discusses how environmental justice may contribute to achieving the United Nations (UN) 2030 Agenda for Sustainable Development. Among the most relevant Sustainable Development Goals (SDGs) in this regard are SDG 1—no poverty— SDG 16—peace, justice, and strong institutions – and SDG 17 – partnerships for the goals. In Figure 1 below, SDGs 1 and 16 are defined as societal, while SDG 17 is needed to strengthen all the others.

By addressing environmental justice among countries receiving Official Development Aid (ODA) in the South Caucasus and Central Asia, we explore how increased participation in decision-making in environmental

matters may also contribute to poverty alleviation. We focus on ODA-approved former Soviet republics, of which several receive some of the world’s highest ODA rates per capita (i.e., Armenia, Georgia, and Kyrgyzstan). According to the 2022 and 2023 DAC list of ODA recipients; Kyrgyzstan, Tajikistan, Ukraine and Uzbekistan are lower middle-income countries, whereas Armenia, Azerbaijan, Belarus, Georgia, Kazakhstan, Moldova and Turkmenistan are upper middle-income countries.¹ Several post-Soviet countries (especially Kyrgyzstan and Moldova) also have levels of work migration and remittances as share of GDP on par with countries such as Nepal.

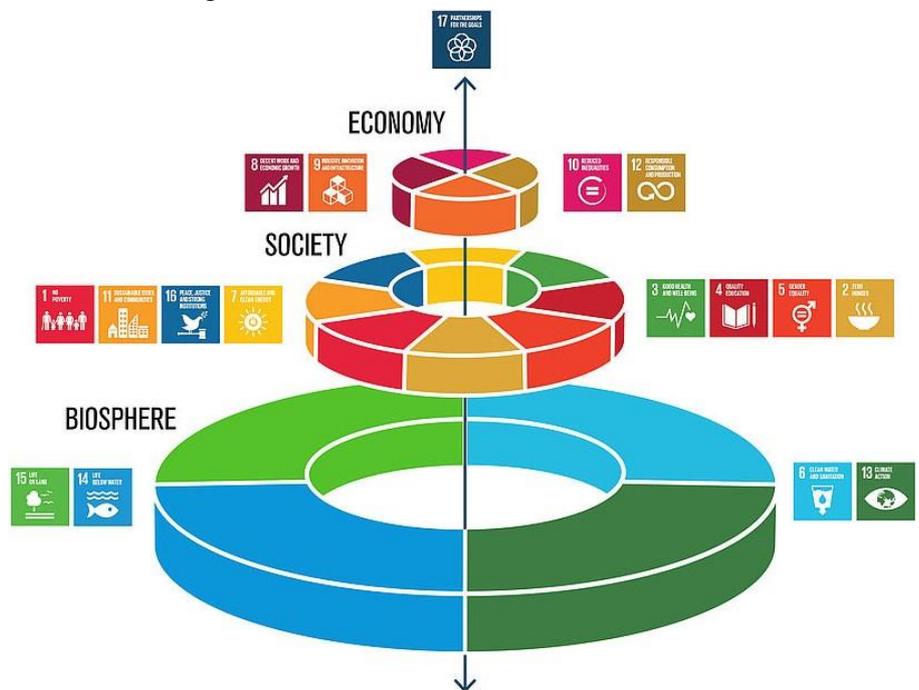


Figure 1: SDGs SOURCE: Credit: Azote for Stockholm Resilience Centre, Stockholm University CC BY-ND 3.0.

¹ [OECD 2022 DAC List of ODA Recipients](#)

The link between increased inclusion and poverty alleviation is an indirect one: Contemporary policy discourses promotes political inclusion and the participation of the poor in policy dialogues, as poverty reduction is the focal point of the international development effort (Green 2006: 1–2). At the same time, it has been claimed that procedural rights and environmental democracy are necessary preconditions and important tools for environmental protection and poverty alleviation (Kravchenko 2009). A central regional instrument being used to achieve environmental justice is the United Nations Economic Commission for Europe (UNECE) Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters (the Aarhus Convention).

The Aarhus Convention

Immediately following the dissolution of the Soviet Union, 15 newly independent states joined the UNECE—countries that, ‘at least symbolically, were keen to embrace democratic values’ (Mason 2014:86). In the subsequent years, the Aarhus Convention was established within the framework of the UNECE’s ‘Environment for Europe’ process (Skedsmo 2019).

The UNECE promotes environmental information disclosure, a practice that is closely related to ‘its democracy promotion efforts in Central and Eastern Europe’ (Mason 2014:86). The Aarhus Convention is clearly liberal, as ‘environmental democracy’ is largely

defined by United States (US) and Western European models of market liberalism (Mason 2014:96).

The Aarhus Convention seeks to combine human rights with environmental protection. Rules and procedures related to access to information, decision-making, and justice make up what are commonly referred to as the ‘three pillars’ in the discourse on environmental rights. A basic premise of the convention is that sustainable development can only be achieved through the involvement of all relevant stakeholders (Skedsmo 2019), including the region’s poor. Within this context, information can be understood by activists and non-governmental organizations (NGOs) as a means by which to reach a political end; if they can get the information, they can more easily hold governments to account.

As a *lex superior* in the countries that have ratified it, the Aarhus Convention empowers have provided environmental NGOs in Central Asia and the South Caucasus, providing them with alternative legislative remedies needed to further the interests of the public once the national remedies have been exhausted.

Environmental organizations in the region closely monitor environmental impact assessments, access to information, and public participation procedures, especially in high-profile cases in which members of the public have expressed concerns about the legitimacy of projects affecting the environment and livelihoods of locals.

The 3 pillars of the Aarhus Convention:

- 1) Access to environmental information
- 2) Access to participation and decision-making
- 3) Access to justice in environmental matters



If national remedies have been exhausted, NGOs may file communications to the convention's Compliance Committee, which then decides whether the case is admissible and, if it is, reaches a non-binding ruling.

Until 2022, 194 cases have been brought before the Compliance Committee from 'members of the public.' Of these, 25 cases (13%) came from ODA countries in the former Soviet Union.² In the following paragraphs, we will explore a few cases from Kazakhstan and Armenia to explore whether and how the Aarhus Convention contributes to the achievement of SDGs, especially concerning poverty alleviation and the building of stronger institutions.

Kazakhstan

Kazakhstan is a case where both the civil society and the state have learned to utilize the Aarhus Convention. Kazakhstan ratified the Aarhus Convention on October 23, 2000. Kazakh civil society is relatively strong and influential, yet it is in an early phase of development (Makhmutova and Akhmetova 2011). Knox and Yessimova (2015) find that civil society in Kazakhstan is neither strong nor

weak, instead acting as a moderating power to the state or as an avenue for the amplification of societal voices before the authorities. Unlike in most other post-Soviet countries, environmental NGOs in Kazakhstan have been relatively independent from government influence and have not yet experienced harassment campaigns from the state or businesses.

Indeed, Kazakh NGOs have been among the first to use the Aarhus Convention Compliance Committee remedy, filing communications to the committee for the first time in 2004. To date, there have been a total of nine communications from the public received from Kazakhstan, of which Kazakhstan was found not to comply with the Aarhus Convention on five occasions. The cases of non-compliance by Kazakhstan can be grouped into three main themes: lack of public participation and access to information, poorly substantiated decisions, and bias and lack of judicial independence. The Aarhus convention was most effective at correcting lack of public participation and access to information.

² See [Compliance Committee Communications from the Public](#)

The Aarhus Convention has played a significant role in improving the right of access to environmental information in Kazakhstan. For example, in 2002, the environmental NGO Green Salvation was denied access to environmental information by the state enterprise Kazatomprom. Having exhausted domestic legal remedies, the NGO filed a communication to the Compliance Committee in 2004. Kazakhstan claimed that it was complying with the convention on the grounds that a) the NGO did not fall under definition of 'the public concerned,' 2) the information requested by the NGO did not concern any ongoing projects and was not under consideration by the government as of 2002, and c) Kazatomprom did not fall under definition of 'public authority.' However, the Compliance Committee found Kazakhstan in non-compliance and advised Kazakhstan to develop practical mechanisms for implementation.

In response, the Kazakh Ministry of Natural Resources and the Organization for Security and Co-operation in Europe (OSCE) developed the Memo on Processing Public Requests for Environmental Information, which explained in detail what is involved in the right to access environmental information and the procedure of its implementation.

Our analysis of the lawsuits brought by Green Salvation against the state for breaching the right of access to environmental information in the period of 2007 to 2020 demonstrates a significant decrease in the number of dismissed cases and an increase in the number of lawsuits for which the claims to environmental information were satisfied.

The Aarhus Convention has specifically improved citizens' rights related to access to information and participation through public hearings. In Kazakhstan, these rights have been strengthened both through Kazakh legal mechanisms and through appeals to the Compliance Committee. However, a particular issue that remains unresolved regarding the implementation of the Aarhus Convention in Kazakhstan remains the amount of red tape that surrounds access to justice. We have found that rampaging corruption renders legal mechanisms in Kazakhstan ineffective, as in practice, a writ of mandamus issued by the Supreme Court can be overturned by a court of lower instance. The Aarhus Convention is very effective in dealing with small-scale violations, yet the legal system in Kazakhstan is not able to deal with violations committed by resource-rich perpetrators. This coincides with the finding related to environmental politics in other parts of the region that while policies and procedures may change, changes in how politics work (e.g., strongman politics or corruption) are harder to achieve (Richardson 2015). Internal political struggles and the 'strongman' patrimonial nature of Kazakh politics may influence various outcomes, sometimes to the delight of environmentalists, as in the case of a proposed ski resort the building of which halted after intervention from a new Kazakh president. However, the decisions of the Aarhus Compliance Committee provide a strong legitimacy boost to the civil society, forcing the domestic elites to take it into consideration.

Armenia

Armenia demonstrates how the Aarhus Convention was effective at providing additional tools to the civil society, although the problem of lack

of public participation and access to information cannot be fully addressed using the Convention due to national legislation. Armenia ratified the Aarhus Convention in 2001, and several cases have been brought before the Compliance Committee. The most notable cases are related to the Dolma orchards outside the capital Yerevan, and the Teghut mining license in Tavush province. Civil society in the country enjoys a relatively liberal political climate with a well-developed local NGO scene (Ishkanian 2008, Skedsmo 2019) fostered by generous diaspora funding where networks between social movements, NGOs and individuals have spurred (Glasius and Ishkanian 2014). However, corruption and nepotism looms large over Armenia's development, hindering environmental justice to be achieved.

The Dolma orchards is an agricultural area located to the southwest of Yerevan and is mainly used by the local population as allotments in which to grow food for household consumption. This area is of 'significant historical, cultural and environmental value for Yerevan.'³ The Government of Armenia adopted several decrees related to the land use and urban development of this area, while failing to inform and consult the public. In this case, the Compliance Committee found the Government of Armenia to be in non-compliance with the convention, regarding access to information and participation.⁴ This limited the opportunity of the largely poor local population to have a say in

the further development of an area widely used for subsistence farming.

Between 2009 and 2014, several Armenian organizations decided to let the Armenian courts test the legitimacy of the mining license of the operators of Teghut Mine (Ishkanian 2016, Skedsmo 2019). In view of what the plaintiffs considered inadequate public consultation, they asked the court to render invalid the licenses obtained by the Armenia Copper Program, and environmental impact assessment that had been carried out. Several courts in Armenia dismissed the cases, and the Administrative Court further refused to hear the case because the appeal 'contains no justification of how or by what the rights of the non-governmental organizations that act as the plaintiff have been violated.'⁵ According to the Administrative Court, because the plaintiffs lacked the phrase 'environmental protection' (or similar phrasing) in their organizational mission statements, their petition was invalid.

This implies that in Armenia, a NGO's legitimacy, in legal terms, is restricted to what is mentioned in the organization's statutes. NGOs and civil society at large tend to base their legitimacy on a claim to speak on behalf of a wider public. This *actio popularis* is applied in a quite restrictive manner in Armenian legislation—something that the Focal Point of the Aarhus Convention also acknowledged.⁶ The Compliance Committee recommended that Armenia practice a more liberal actio



³ See [COMMUNICATION to the Aarhus Convention's Compliance Committee](#)

⁴ [Report by the Compliance Committee](#)

⁵ See Administrative Court of the Republic of Armenia. 2009. Decision on Denying Admission of the Claim. In VD/3275/05/09, edited by Administrative Court of the Republic of Armenia. Yerevan, Armenia

⁶ See page 2 in "[Considerations on Communication ACCC/C/2009/43](#) sent by Armenia to Compliance Committee of Aarhus Convention."

popularis but also acknowledged that, because Armenia has the discretion to implement the Aarhus Convention in its own way, the country was not in non-compliance in this case. While claiming to speak on behalf of the public, public hearings carried out reveal that the local population close to Teghut perhaps were more positive to the prospects of future mining than the Yerevan-based organizations (Skedsmo 2019). Despite the challenges with a restrictive actio popularis and a lack of proper consultation with the public in some cases, the Aarhus Convention has changed the environmental discourse in the country (Skedsmo 2019).

Ukraine

Ukraine is as highlighted above among the lower middle-income countries in the region. Russia's illegal annexation of Crimea and its war by proxies in Donbass starting in 2014, and especially the full invasion of Ukraine starting in February 2022 has further exacerbated the situation related to poverty, environmental hazards and justice in the country at large. When the war ends – one way or another – Ukraine is expected to need a large-scale international development effort. At the same time, it is important that international institutions partner up to safeguard the environmental situation in the country in a way that also ensures the environmental rights of the local population to be given due consideration. For instance, the European Commission for the Support Group for Ukraine is already planning the future reconstruction and development effort targeting a free Ukraine.

The eventual international development effort in Ukraine calls for strong international partnerships (SDG 17) to be formed. A predecessor to this

might be the EnvSec Initiative jointly financed by OSCE, NATO, UNDP and UNEP in the Post-Soviet region 15 years ago. Through its focus on environmental security, the EnvSec Initiative supported the establishment of Aarhus Centres across the region. The Aarhus centres (often several in each country), were established in order to facilitate the implementation of the Aarhus Convention and be a convener of dialogue between the public and governments.

Conclusion

The cases analyzed in this policy brief show that the Aarhus Convention may be an effective tool for environmental NGOs and private citizens to remedy cases of injustice in the environmental sphere—cases that are also related to the livelihood and rights of the poor. Although it is not always the case that the decisions of the Compliance Committee will be implemented, it is an important tool and a strong argument that can be used in addressing domestic injustices. Often, the ombudsmanship of the Compliance Committee is described and understood in the public conscience as a rhetorical appellant and as an unbiased independent party. While statutory rights and liberal principles in the shorter term does not change political practices related to corruption, informal networks and the like, as documented in Ukraine (Richardson 2015), the Aarhus Convention and its track record of changing the discourses related to environmental justice, will in the longer run be important to facilitate change (Skedsmo 2019).

From this analysis of Compliance Committee cases in the region, it seems, however, that there are several prerequisites for the efficient use of

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the Aarhus Convention with regards to contributing to poverty alleviation.

First, the implementation of the Aarhus Convention relies on the activity of domestic NGOs, and the countries in which the Aarhus Convention achieves the most tangible progress tend to allow for a certain degree of freedoms—in particular, an anti-harassment requirement and a more liberal *actio popularis*. Secondly, because countries are allowed a considerable amount of discretion in implementing the convention, they must be willing to adhere to the spirit of the convention as well as to its exact requirements. Combined, the lack of these two aspects may hinder the development of environmental justice in the region and, consequently, the involvement of the region's poor. Only when these prerequisites are met can the convention become most effective, both in terms of its powers of environmental protection and contribute to poverty alleviation, by securing tools that allow the region's poor to effectively address environmental injustices.

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