

# Promoting the principles of the Aarhus Convention in international processes dealing with Environmental Impact Assessment in a transboundary context



Attracta Uí Bhroin

Environmental Law Officer of the Irish Environmental Network, IEN





European ECO Forum facilitates civil society's involvement in, and provides input to, the “Environment for Europe” processes of the UNECE, ensuring public participation in high level environmental decision making

**Attracta Uí Bhroin**, Environmental Law Officer, Irish Environmental Network, IEN

The coalition of nation eNGOs in Ireland



# Context today for Art 3(7) has never been more important!

Need to read Article 3(7) in light of the objective of the Aarhus Convention.

Aarhus - Article 1 Objective:

“In order to contribute to the protection of the right of every person of present and future generations to live in an environment adequate to his or her health and well-being, each Party shall guarantee the rights of

- access to information,
- public participation in decision-making, and
- access to justice

in environmental matters in accordance with the provisions of this Convention”

# Sixth Assessment Report

## Synthesis Report

20 March 2023



# The warning

Pace and scale of climate action are insufficient to tackle climate change



## Adverse impacts from human-caused change will intensify

Water scarcity and food production



Health and wellbeing

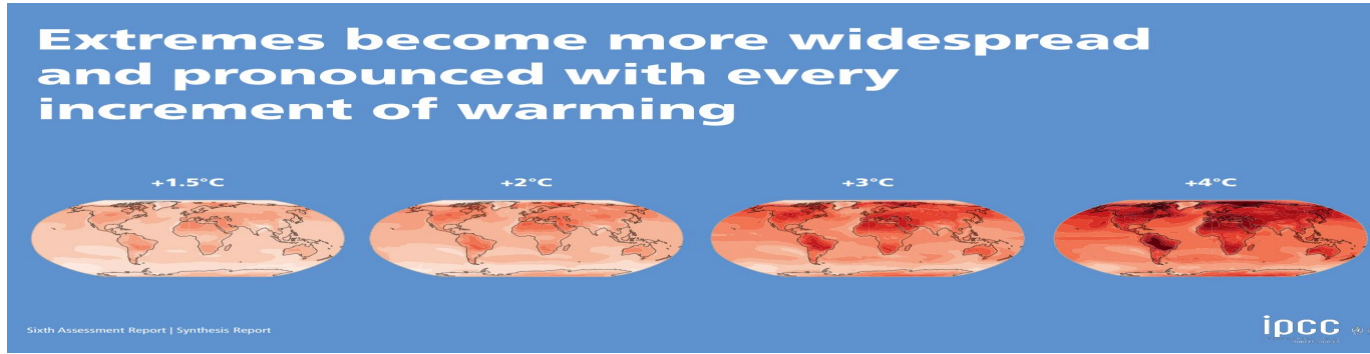


Cities, settlements and infrastructure



Ecosystem structure, species range shifts and changes in timing





## Observed Warming and its Causes

**A.1 Human activities, principally through emissions of greenhouse gases, have unequivocally caused global warming, with global surface temperature reaching 1.1°C above 1850–1900 in 2011–2020.** Global greenhouse gas emissions have continued to increase, with unequal historical and ongoing contributions arising from unsustainable energy use, land use and land-use change, lifestyles and patterns of consumption and production across regions, between and within countries, and among individuals (high confidence). {2.1, Figure 2.1, Figure 2.2}

## Current Mitigation Progress, Gaps and Challenges.

**A.4 Policies and laws addressing mitigation have consistently expanded since AR5. Global GHG emissions in 2030 implied by nationally determined contributions (NDCs) announced by October 2021 make it likely that warming will exceed 1.5°C during the 21st century and make it harder to limit warming below 2°C.**

There are gaps between projected emissions from implemented policies and those from **NDCs** and **finance flows fall short of the levels needed to meet climate goals across all sectors and regions.** (*high confidence*) {2.2, 2.3, Figure 2.5, Table 2.2}

# Interdependent climate & biodiversity crises

The 2023 Synthesis Report (SYR) of the IPCC Sixth Assessment Report (AR6) :

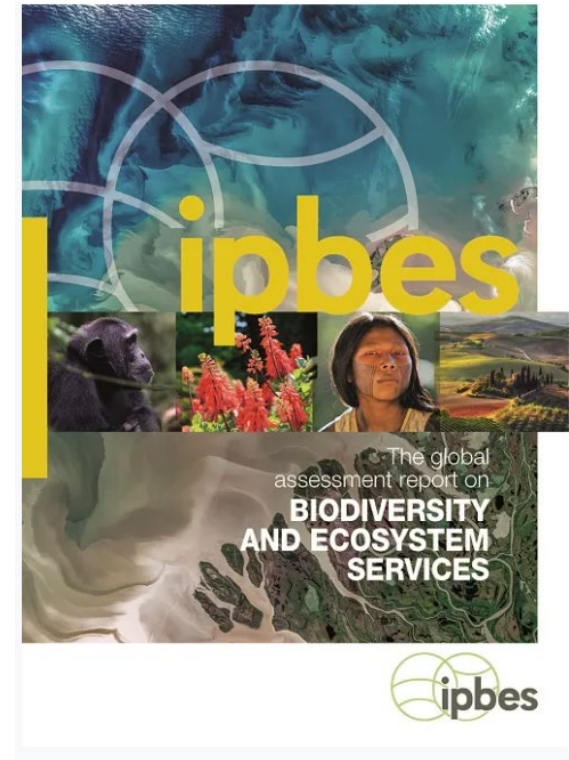
“..summarises **the state of knowledge of climate change**, its **widespread impacts and risks**, and climate change mitigation and adaptation, **based on the peer-reviewed scientific, technical and socio-economic literature** since the publication of the IPCC’s Fifth Assessment Report (AR5) in 2014.”

“This report integrates the main findings of the AR6 Working Group reports<sup>1</sup> and the three AR6 Special Reports<sup>2</sup> . **It recognizes the interdependence of climate, ecosystems and biodiversity, and human societies**; the value of diverse forms of knowledge; and the close linkages between climate change adaptation, mitigation, ecosystem health, human well-being and sustainable development.”



# Intergovernmental Science-Policy Platform on Biodiversity and Ecosystem Services, IPBES

- “A4 Nature across most of the globe has now been significantly altered by multiple human drivers, with the great majority of indicators of ecosystems and biodiversity showing rapid decline”
- “A5 Human actions threaten more species with global extinction now than ever before. An average of around 25 per cent of species in assessed animal and plant groups are threatened (Figure SPM.3), suggesting that **around 1 million species already face extinction, many within decades**, unless action is taken to reduce the intensity of drivers of biodiversity loss. Without such action, there will be a further acceleration in the global rate of species extinction, which is already at least tens to hundreds of times higher than it has averaged over the past 10 million years.”



Aarhus Article 3(7) – is not just a technical requirement:

Aarhus Article 3(7) is an **imperative** in light of Article 1, and the interdependent climate and biodiversity crises

“Each Party shall promote the application of the principles of this Convention in international environmental decision-making processes and within the framework of international organizations in matters relating to the environment.”



# The cruel irony however ....

- The climate and energy crises in particular, are being used to justify short circuiting and undermining information, participation and access to justice rights...across the board ...
- Real risk for transboundary processes
- Recommendation:
  - Key to hold firm to Aarhus principles in such fora and decisions
  - Please take these messages to your colleagues in other areas of responsibility

# Almaty Guidelines – Decision II/4, May 2005

## Snapshot on the Almaty Guidelines

### Promoting Public Participation in International Forums

A Snapshot on the Almaty Guidelines  
to the Aarhus Convention



Promoting Public Participation in International Forums.

Each Party to the Aarhus Convention has a binding legal obligation to promote the application of the principles of the Aarhus Convention in international environmental decision-making processes and within the framework of international organizations in matters relating to the environment.

This leaflet summarizes main aspects of the Almaty Guidelines. It is available in English, French and Russian.

Read more:

[ENG](#) 

[FRE](#) 

[RUS](#) 

- Guidelines
- Non-exhaustive lists
- Substantive decision making also
- “2. These Guidelines are intended to provide guidance to Parties in the context of:
  - (a) The development, modification and application of relevant rules and practices applied within international forums (e.g. rules of procedure covering issues such as transparency, accreditation, etc.); and
  - (b) The treatment of relevant substantive issues within those forums.”

# Past Experience on Hinkley Point C, Nuclear Power Plant in UK

- Quick recap: transboundary consultation issue
- Espoo Implementation Committee own initiative investigation, EIA/IC/CI/5, UK
- UK's proactive response
- Recap on:
  - 1. Ireland's problematic response to the further round of consultation initiated in this international decision-making process to address the non-compliance
  - 2. The subsequent interactions with the Espoo Implementation Committee and the public concerned in determining the need for an EIA under the Espoo Convention, following the new consultation:
    - UK - positive
    - Ireland – less positive
    - Real issues in respect of information, participation and remedies ...

# The definition of international forums in the Guidelines

Not exhaustive ... but expressly includes:

- (a) The negotiation and implementation at the international level of MEAs, including decisions and actions taken under their auspices;
- (b) The negotiation and implementation at the international level of other relevant agreements, if decisions or actions undertaken at that level pursuant to such agreements relate to the environment or may have a significant effect on the environment;
- (c) Intergovernmental conferences focusing on the environment or having a strong environmental component, and their respective preparatory and follow-up processes at the international level;
- (d) International environmental and development policy forums; and
- (e) **Decision-making processes within the framework of other international organizations in matters relating to the environment.**

# Further issues within Espoo forums:

- Regional economic integration organizations (e.g., the EU) or forums exclusively comprising all member States of a regional economic integration organization are expressly excluded from the scope of the Guidelines.
- However, it is important to remember they are not excluded from the scope of Article 3(7) in the Convention.
- Member States are parties to the Convention in their own right, as is the European Union
- **Quick recap on issues at Espoo Inter-sessional Meeting of the Parties in 2019 impacting on (public) participation**
- **Recommendation:**
  - **While respecting the distinct nature of the Espoo Convention - uphold Aarhus Principles in the context of the engagement and decision-making**

# Very current experience on Hinkley Point C permit variations –

- **Clear case of needing to avoid consultation problems in the first place, which will otherwise invariably lead to complications in international for a down the road.**
- **Current Issues:**
  - Confusion on the meaning of the “public concerned” and public participation obligations, and
  - Expectations that Espoo process will discharge consultation responsibilities



# Very current experience on Hinkley Point C permit variations –

- Espoo focuses on party to party consultation
- Aarhus focuses on the public concerned.
- National obligations may actually exceed these requirements
- Recap on key learnings from findings in: **ACCC-C-2012/71** and ACCC-C-2016-143

“67. It is clear from the wording of article 6 that the obligations imposed by that article are not dependent on obligations stemming from other international instruments.

**An international treaty may envisage that a Party of origin and an affected Party share joint responsibility for ensuring public participation in the territory of the affected Party (as under the Espoo Convention), or even that the affected Party has sole responsibility for this. However, the obligation to ensure that the requirements of article 6 are met always rests with the Party of origin”**

- **Recommendation:**
  - Need to understand clearly Aarhus consultation obligations and to figure out how/if they can be fully accommodated within other processes
  - **Ideally need to factor this thinking into international Espoo level discussions – while respecting the distinct nature of the Espoo Convention**

# UN International Atomic Energy Agency (IAEA)

- IAEA: mandate to oversee the non-proliferation of nuclear weapons and promote nuclear energy and nuclear safety. **Obvious overlap with considerations on transboundary EIA matters**
- The lack of PP in the international fora is leading to lack of awareness of and engagement of the public (concerned) with respect to individual activities.
- The ACCC secretariat spoke last year at a conference organized by the IAEA including on transboundary Public Participation and the Dukovany case...however I understand the public was not given the floor there and could only participate remotely.
- **Recommendations** from last WGP presented by ÖKOBÜRO – Alliance of the Austrian Environmental Movement and Nuclear Transparency Watch:
  - 1. Encourage that information shared with and received from the IAEA falls under the access to information provisions under the Convention,
  - 2. Actively motivate the IAEA to include forms of public participation in decision-making and operational procedures like missions, exercises, when Parties to the Convention are involved, and
  - 3. Seek for improved stakeholder involvement and possibilities to engage members of the public in international events organised by the IAEA.

# Thank-you!



## The warning

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Health and wellbeing



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Ecosystem structure, species range shifts and changes in timing



Report

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### Extremes become more widespread and pronounced with every increment of warming



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Attracta Uí Bhroin  
[Attractaub@gmail.com](mailto:Attractaub@gmail.com)  
[Attracta@ien.ie](mailto:Attracta@ien.ie)