

From: Carol Day [redacted]
Sent: Wednesday, July 12, 2023 12:44 PM
To: Fiona Marshall <fiona.marshall@un.org>; Anastasia Giadrossi <anastasia.giadrossi@un.org>; Katri Veldre <katri.veldre@un.org>
Cc: Sutherland, Rosie [redacted]; Katie de Kauwe [redacted]; Flora Hausamann [redacted]; Tom Brennan [redacted]; emma@un.org
Subject: Re: Decision VII/8s and A Pillar of Justice II

Dear Fiona and Members of the Aarhus Convention Compliance Committee,

On behalf of the RSPB, the Environmental Law Foundation (ELF) and Friends of the Earth, I am pleased to attach a copy of *A Pillar of Justice II*. The Report analyses trends in environmental Judicial Review in England and Wales, updating the findings of the original Report published in 2019 ([here](#)). It is similarly based on data provided by the Ministry of Justice, but also includes direct experience provided by ELF and the authors of the Report.

The Report concludes the following:

- The number of environmental JRs issued annually in England and Wales has been declining since 2013 (from an average of 140 cases per year in the period between 2013-2019 to 84 cases per year between 2019 and 2022).
- The reasons for the decline in the number of cases being brought are unknown, but the report suggests that it may be down to the impact of legislative reforms (to JR generally and around the Aarhus costs rules in particular) intended to dissuade JR applications.
- Only one challenge to the status of a claim as an Aarhus Convention claim has been successful in the period between 2019 and 2022 (although it is noted there are difficulties around the way the data on this is collected by the Ministry of Justice).
- Approx 37% of environmental JR applications are granted permission to proceed. This figure has remained relatively constant over the last decade and compares favourably to the figure for non-environmental JRs (which is around half that). Very recent data suggests the success rate at the permission stage is declining however, which reflects the author's anecdotal evidence.
- The success rate of environmental JRs has shown a modest increase over the last decade. Approx 10% of env JRs are successful for the Claimant at First Instance, which compares favourably with the success rate for non-env JRs of around 3%.

The Report makes a number of recommendations as to how the decline in the number of JRs being brought to Court could be addressed. Many of these recommendations are relevant to the issue of prohibitive expense and, therefore, Decision VI//8s of the Seventh Meeting of the Parties to the Convention.

We have sent the Report to officials within Defra and the Ministry of Justice, highlighting that the forthcoming review of the ECPR provides a timely opportunity to consider the data and the conclusions arising from the Report in the context of the UK's current Action Plan on costs.

We would be grateful if you could pass the Report to members of the Committee and the Curator for the implementation of Decision VII/8s, Ms Eleanor Sharpston. The Report can also be found online [here](#).

Please do not hesitate to contact us if we can be of further assistance to the Committee in this matter.

Kind regards,
Carol.

Carol Day, Legal Consultant to the RSPB, on behalf of the RSPB, the Environmental Law Foundation and Friends of the Earth