

Shaping the structure of legal opportunities: Environmental NGOs bringing international environmental procedural rights back home

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Research on legal opportunity structures has focused on how existing law, standing rules and the costs of litigation shape the likelihood that social movement groups will mobilize the law. Yet there has been relatively little research to show why and how legal opportunity structures change over time. This paper focuses on a case study of the mobilization of procedural environmental rights contained within the Aarhus Convention. It addresses the following empirical puzzle: how did rights that were designed to help Eastern Europeans achieve environmental democracy eventually contribute to a re-shaping of the structure of legal opportunities in Britain? Through a two-step historical process-tracing analysis that relies on a social constructivist theoretical approach the research shows that environmental groups mobilized Aarhus rights in a number of ways and across different judicial venues which resulted in an evolution over time of the meaning of access to justice being “not prohibitively expensive”. This research builds on previous work to show that civil society agents are not necessarily passive agents situated within legal opportunity structures but rather strategic actors that can develop and shape access to justice through policy entrepreneurialism and litigation.

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Introduction

In the late 1990s the UK government was involved in negotiating and drafting a new international environmental treaty, the United Nations Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters. Known as “the Aarhus Convention” for the city in which it was signed in 1998 the treaty entered into force in 2001. The convention’s signatories sought to extend procedural environmental rights – the right to participate in decision making, the right to access information and the right to access justice on environmental issues – to citizens and NGOs in 46 European countries. At the time, the UK government believed that it was largely compliant with the letter and the spirit of the international law it was signing. Like their Western European counterparts this treaty was largely understood by UK elites as a way to help Central and Eastern European Countries (CEECs) achieve environmental democracy in the wake of the collapse of the iron curtain. As such, the changes needed to bring the UK into line with the treaty and the costs of domestic compliance in the UK were seen to be minimal.

However, fifteen years later, after a decade of critical scrutiny by international tribunals and domestic courts, the UK was judged to be in systemic breach of the convention’s provisions on access to justice. The UK has been the subject of more complaints in the Aarhus Convention Compliance Committee (ACCC) than any other country. NGOs have launched a series of legal campaigns about the government’s failures on access to justice and time and again international and domestic courts have found that the obligation to ensure that legal procedures are not prohibitively expensive has not been met. At the core of the problem are the ways in which the costs of litigation are structured. The cost rules in the English legal system mean that the loser in a legal case has to bear their opponents costs, known as the “loser-pays” system. This system makes litigation both expensive and risky; a party to a case does not know whether they will be responsible for their opponent’s costs and

what those costs will be upfront. The expense and uncertainty of this feature of the legal system were seen to be a major breach of the Aarhus Convention.

How did this happen? The system that structures legal opportunities in Britain has been significantly modified over recent years so as to make it easier and more affordable for citizens and NGOs to challenge government decision-making in environmental matters. How did procedural environmental rights that were designed to help Central and Eastern Europeans achieve environmental democracy eventually contribute to a re-shaping of the structure of legal opportunities in Britain?

This article offers a two-step answer to this question by bridging legal opportunity structure (LOS) theory with a social constructivist approach which examines what particular legal norms mean for different actors over time. First, the paper unpacks the motivations of Western European political actors in the development and negotiation phase of the Aarhus Convention. The research highlights the important role played by NGOs in the early phases of the development of the convention. I also show that the goal of diffusing procedural democratic rights in the CEECs, the Caucasus and Central Asia was a priority for Western European states. The aim of Western European elites was to support social movement organizations in states emerging from authoritarianism. Second, the paper explores how the meaning of Aarhus legal norms changed through a series of judicial interpretations of the Aarhus requirements offered by domestic and international courts and tribunals, partly on the prompting of environmental NGOs. Environmental groups and individual activists have harnessed the rights provisions of the Aarhus Convention in extensive litigation efforts in England and Scotland. In doing so, they have begun to use these rights – originally destined for others in the minds of signatories – to significantly shape the structure of opportunities for contesting decisions of the state in environmental policy back home. This article shows that

these civil society agents are not simply passive beneficiaries of rights but rather strategic actors that can demand, develop and shape access to justice from the bottom-up.

This case study helps to shed some light on how and why LOSs evolve over time, sometimes in unexpected ways. A rapidly growing literature has explored how the rules that shape legal opportunities can play an important role in constraining or incentivising civil society use of the courts. The existence of relevant legal stock, the rules determining access to the courts and the cost of litigation are all factors that shape the extent to which social movements are able to mobilize the law in pursuit of their social and political goals (Andersen 2006, Hilson 2002, Vanhala 2012, 2017). However, this literature has tended to ignore how and why opportunity structures might change over time.

This paper begins by surveying recent literature on how and why the LOS governing legal mobilization activity matters. It highlights some of the weaknesses with existing LOS theory and draws on a social constructivist approach to develop a framework for understanding institutional change in the case of the LOS. The following section discusses the research methods used to address the research questions and discusses the strengths and limitations of this case study. The analysis is divided into two sections. The first section introduces the Aarhus Convention and focuses on the motivations of different actors in the drafting of the convention. The second part of the analysis draws on two illustrative cases of legal mobilization activity by environmental NGOs in England and Scotland. It traces the changes in the LOS as a result of legal mobilization in both contexts over time. The article will conclude by drawing out some insights about the importance of considering international dimensions in thinking about LOSs and broader theoretical lessons about how LOSs change over time.

Legal Opportunity Structures: Review of the Literature

Recent scholarship on social movements and their interaction with law and courts has deployed the notion of legal opportunity structure to account for why some civil society groups embrace legal tactics and others eschew them (Andersen 2006; Doherty and Hayes 2014; Hilson 2002; Vanhala 2012, 2016, 2017). The focus is on the institutional incentives and constraints that shape a group's ability and/or willingness to sue. There are disagreements as to what constitutes part of the LOS and what does not (see Vanhala 2012, 2017), but a consensus is emerging that at least three factors matter across jurisdictions and across policy-areas: legal stock, standing rules and rules on costs. First, legal stock consists of the existing body of law and constrains the ways in which social movement organizations can articulate their claims if they want to be successful in the courtroom (Andersen 2006). Second, scholars also agree that the regulations that limit or allow access to courts – the standing rules that regulate who can bring cases – are crucial in determining who mobilizes the law and who does not (Evans Case and Givens 2010; Wilson and Rodriguez Cordero 2006). Finally, the rules on who bears the costs in litigation also matter in shaping the opportunity structure for legal action. In the United States, the norm is that each party is responsible for bearing its own legal costs. Under the English rule, by contrast, the losing party pays the prevailing party's fees. This means that the risks and potential costs of litigating in the UK are generally much greater.

While this literature has developed a useful theoretical framework that can help to account for variations in legal mobilization across jurisdictions and across policy areas it has fallen short in three ways. First, this research has largely focused on the national legal opportunity structure as the unit of analysis and has tended to ignore the influence of international factors that might shape the legal landscape for social movement organizations (but see Simmons 2009). In a world where international law increasingly matters and where domestic law is being penetrated by international norms our theoretical frameworks should

take this into account. Existing research on how supranational law, such as EU provisions, offers important guidance here (see e.g. Hilson 2002 and Evans Case and Givens 2010). Second, this research has also tended to understand LOSs as a given. The LOS is almost always characterized as an “independent variable”: the factor that explains a particular outcome be it why a group goes to court in the first place or what explains the ability of a group succeeding in their legal mobilization efforts. There has been relatively little research on how legal opportunity structures emerge in the first place and how and why they evolve over time (but see Evans Case and Givens 2010 and Vanhala 2012). Third, social movement research has now moved beyond structure-agent paradigm debates. In order to adequately address questions about variation in social movement organization behaviour we need to examine both institutional and social contexts as well as the agency exerted by these organizations to shape the structures within which they are situated. Research should focus on the recursive relationship between structures and agents in order to explain agent behaviour but also to address the issue of structural change (Vanhala 2012).

In order to address the research puzzle I rely on a social constructivist approach. This approach is concerned with how actors shape and respond to new ideas or norms – that is, shared conceptions of appropriate behaviour (Finnemore and Sikkink 1998). Constructivism also accords an important role to non-state actors who are often seen as the shapers and carriers of new ideas or norms. A social constructivist approach is useful for addressing the research question here for two reasons. First, it allows scholars to understand the often implicit, ideational or rhetorical mechanisms of law as a driver of policy or social change. Failing to analyze the different assumptions of actors as they affect the formulation, enforcement and implementation of new rights makes it harder for scholars to understand the potential content and direction of change. A second advantage of a constructivist approach is that it recognizes the inter-subjectivity of legal norms. This approach explicitly acknowledges

that the meaning of law is not a given: it is understood differently by different actors. The timing of interpretation can also contribute to the multi-valent character of law (Towns 2012; Schoenfeld 2010).

Methods

To study the use of international legal norms by social movement actors to shape the LOS in Britain, this article relies on what Beach and Pedersen (2013) refer to as “explaining outcome process-tracing.” In this process-tracing approach I craft an explanation of the outcome in question — the change in the LOS — by looking at different interpretations of law by different actors, in different contexts, over time. I adopt a two-step methodology to construct the account. The first step is to identify the motivations of Western European political actors and NGOs in the development and negotiation phase of the Aarhus Convention. In order to do so I relied on primary and secondary data, such as accounts written by those present during the negotiations and analyses of the drafting process. I also conducted, with the help of a research assistant, 60 semi-structured interviews with NGO representative and government officials across Western Europe as part of a larger project on legal mobilization in Western Europe. Many of the interviewees had participated in the efforts to establish the Aarhus Convention or have become involved in efforts to ensure compliance with the treaty. The second step is a historical analysis of how the Aarhus rights – on costs protection in particular – were interpreted in British and international courts and tribunals in cases brought by environmental associations and individuals activists. It explores a range of activities by groups across different venues which have contributed to incremental shifts in the LOS over time. This research draws on case law and interviews with 24 research participants including lawyers and campaigners for environmental NGOs.

The UK serves as an illuminating case for beginning to identify some of the conditions under which a LOS might change. The UK legal system – with its thousand year

history and its lack of a written constitution – is in many ways an “unlikely case” in terms of experiencing significant changes over a short-term period. The UK also offers the opportunity to delve into illustrative case studies of legal mobilization of Aarhus rights. The UK has three separate legal systems. English law and Northern Ireland law are both based on common-law principles and apply in England/Wales and Northern Ireland respectively. Scots law applies in Scotland and is a mixed system based on both common-law and civil-law principles. There is also a parallel civil society sector in the different jurisdictions. For example, among the larger NGOs, Friends of the Earth Scotland is separate from Friends of the Earth in London (which covers England, Wales and Northern Ireland) and both WWF and RSPB have separate administrations in Scotland. This research explores legal mobilization activity in both England and Scotland offering two within-case illustrations of the evolution of the LOS in the UK.

The Aarhus Convention: Creating Procedural Rights and International Legal Opportunities

Principle 10 of the Rio Declaration on Environment and Development (1992), promotes the idea that individuals should have appropriate access to information, opportunities for participation in decision-making and effective access to judicial processes. These soft law principles were eventually embedded in international environmental law in the Aarhus Convention which was adopted on 25 June 1998 as part of the “Environment for Europe” process of the United Nations Economic Commission for Europe (UNECE). The “Environment for Europe” process was established in 1991 in part to help countries in Eastern Europe, the Caucasus and Central Asia improve their environmental standards after the fall of the iron curtain. Former UN Secretary-General Kofi Annan described the Convention as “the most ambitious venture in environmental democracy undertaken under

the auspices of the United Nations [whose] adoption was a remarkable step forward in the development of international law” (cited in Wates 2005, 2).

The Aarhus Convention represents a novel type of environmental agreement in its procedural rights-based approach and its imposition of obligations on member states and on the European Union (EU - also a member) vis-à-vis civil society (Wates 2011). The convention also refers to the goal of protecting the right of every person, both present and future generations, to live in an environment adequate to health and well-being. Maria Lee and Carolyn Abbot note that “the emphasis on public involvement is one of a range of responses to a certain disillusionment with the authority of the state (or the EC) to regulate for environmental protection” (2003, 80).

The Aarhus Convention is also unique in its reflection of the distinctive role of citizen groups and NGOs. Articles 4 to 9 regulate in a detailed manner the three pillars of the convention: (1) access to environmental information and collection and dissemination of environmental information; (2) public participation in decisions on specific activities, public participation concerning plans, programmes and policies relating to the environment, and public participation during the preparation of executive regulations and/or generally applicable legally binding normative instruments, and (3) access to justice. The third pillar of the Aarhus Convention, of particular focus here, is concerned with access to environmental justice. It grants rights to members of the public, including environmental organizations, to challenge the legality of decisions by public authorities that are contrary to the provisions of environmental legislation. Article 9(4) of the convention requires that procedures for rights of access must “provide adequate and effective remedies, including injunctive relief as appropriate and be fair, equitable, timely and not prohibitively expensive.”

In addition to the extensive rights granted to NGOs and individual citizens the Aarhus Convention is supported by a compliance body. At the first Meeting of the Parties (MOP) of

the convention in 2002 a mechanism to review compliance with the convention was adopted. Several features of the Convention Compliance Committee are unique in international environmental law when compared to the compliance mechanisms of other multilateral environmental agreements (Koester 2007; Mason 2006). The compliance mechanism can be triggered in four ways: (1) a party to the convention may make a submission to the committee about compliance by another party; (2) a party may make a submission to the Committee concerning its own compliance; (3) the secretariat may make a referral to the Committee; and finally and most notably (4) communications may be made to the committee by one or more members of the public concerning a party's compliance. Further, the Compliance Committee, rather than being composed of representatives of States, consists of nine independent experts serving in a personal capacity and there is the possibility for environmental organizations to nominate candidates for election to the committee. Two features of the way this tribunal operates – the direct recourse to the Compliance Committee and the input into the composition of the committee itself – grant NGOs unprecedented leverage vis-à-vis their states and the EU.

Drafting the Aarhus Convention

Environmental NGOs were involved at all stages of the convention drafting and negotiation process in a manner unprecedented in the development of international environmental law. Jeremy Wates writes “[i]ndeed, the initial idea of developing a UNECE convention on the theme was introduced by environmental NGOs” (Wates 2005, 10). A coalition of environmental citizens’ organizations from across Europe, that came to be known as the European ECO Forum, established a working group on public participation, led by the European Environmental Bureau (EEB). A convention on procedural rights became central to their demands and while there was little support from governments, the call for a convention was supported by other parties, such as the rapporteur of the Environment Committee of the

European Parliament (one of the most powerful committees within that institution) and the European Greens. Wates has argued that it was this support that ultimately “helped to persuade some of the more progressive governments, notably Denmark which was due to host the next conference, to push for the issue to be on the agenda for the next phase of the process” (Wates 2005, 10).

NGOs were actively involved in the drafting of early versions of the convention. The Committee on Environmental Policy for the UNECE in establishing the mandate of the working group charged with preparing the draft convention deemed that NGOs should be invited to participate “as appropriate”. Thus before negotiations got under way the UNECE secretariat convened a small group of “friends of the secretariat”, including those from the ECO forum, to assist it in preparing a first draft. Jeremy Wates elaborates that when the negotiations began,

NGOs participated to an extent hitherto unprecedented in the development of any international law....they were invited to intervene on a basis more or less equal to that on which government delegations participated, having considerable input to and influence upon the resulting text...The tradition of NGO participation continued uninterrupted into the implementation phase (Wates 2005, 10).

Interview and documentary evidence suggests that policy-makers in Western European states tended to understand the Aarhus Convention and compliance procedures as a mechanism to diffuse environmental democratic rights abroad. For them, the Aarhus Convention was a tool to embed procedural justice and empower the green movement in countries that were making the transition to democratic systems of governance. Interviewees suggested that actors from Western European governments underestimated the effect of the

Aarhus principles in their own countries. For example, one NGO participant from France, reflecting on the drafting and ratification of Aarhus suggested that

At that time we got easy support from our governments; they thought it was a good way to destroy the iron curtain. It did destroy the curtain but it was also a boomerang. It came back. We then had to do it at home. But it was a very slow process...these people did not really take the Aarhus Convention seriously (European Environmental Bureau Board Member, 5 December 2011).

The Finnish Environment Minister at the time of the signing of Aarhus also noted that “Aarhus is not always meaningful for Finland but it is for the CEE countries and the green movement there....We should reach this kind of agreement on a global level” (Former Finnish Environment Minister, 12 September 2011). One observer at the Aarhus MOP, referring to the UK government’s stance towards Aarhus said “they never took Aarhus seriously. I think they thought it didn’t apply to them” (Former NGO In-house Lawyer, April 11th 2011). This is supported by some documentary evidence from the UK government. In their press release on the ratification the Department of Environment, Food and Rural Affairs (DEFRA) asserted that the Government was “satisfied that the necessary European and domestic legislation is in place to ensure complete coverage of the obligations under the convention throughout the UK” (cited in Macrory and Westaway 2011, 315).

There were undoubtedly multiple motivations for developing and ratifying a treaty on procedural rights in environmental issues. For NGOs, this was an opportunity to participate in an unprecedented way in environmental treaty-making but it also granted them the opportunity to enhance access to justice for environmental groups everywhere. For Western Europe elites, evidence from interviews and first hand accounts of the negotiations and ratifications suggests that many state participants thought that the main provisions of this treaty were already in place in their own jurisdictions and hence would mainly have the effect

of promoting environmental democracy abroad. The next section of this paper highlights how the procedural environmental rights contained within the Aarhus Convention were “brought home” in the UK by domestic NGOs.

Bringing Procedural Rights Home

The UK ratified the Aarhus Convention in 2005 and, as noted above, at that time “...compliance with Aarhus was not considered a significant challenge – the prevailing view was that the convention was largely aimed at the emerging democracies in Eastern Europe” (Macrory and Westaway 2005, 315). In announcing the ratification in 2005 a Department of Environment, Food and Rural Affairs spokesperson said

Over recent years, the EU and the UK have taken steps to improve people’s ability to have a say in the quality of their environment. We are also encouraging other countries to make progress in this area, in particular in the Eastern European, Caucasus and Central Asian Region. UK ratification of the Aarhus Convention confirms our commitment to the best principles of environmental democracy, both at home and abroad (DEFRA 2005).

In short, as far as policy-makers were concerned the UK was already living up to its Aarhus commitments and the principles of environmental democracy underpinning the convention. However, the following discussion illustrates the differing understanding NGOs in the UK had regarding the convention’s significance “at home” in Britain and the way in which this has been deployed in legal mobilization efforts to re-shape the LOS in the field of environmental policy.

The following two intra-case studies trace changes in the LOS in two jurisdictions in the UK. Both the English law and Scots law systems have well-developed environmental laws (partly due to UK membership in the EU) and can be described as having good environmental legal stock. The standing of NGOs was established through case law in

England through a series of cases in the early 1990s. However, until recently standing for environmental associations was much more difficult to establish in Scotland. Both jurisdictions have also operated under a loser-pays costs system until about a decade ago when this began to slowly change, first in England and then in Scotland.

The first case study explores the ways in which environmental NGOs and their allies have used the Aarhus principles to challenge the cost rules in the English legal system. Through a series of cases brought in English courts and heard before international courts and tribunals, like the Court of Justice of the European Union (CJEU) and the ACCC, the environmental movement has successfully deployed the Aarhus principles to incrementally re-shape the LOS over the last decade. The second case study examines legal mobilization efforts in Scotland. Historically, Scottish environmental NGOs have faced an even more hostile LOS than their English counterparts because of difficulties gaining standing before Scottish courts in addition to problems with the costs rules. Again, environmental NGOs and individuals concerned with environmental protection have used judicial interpretations of the Aarhus requirements to radically re-shape the rules regulating access to justice. These two illustrative cases highlight how the deployment of international legal norms, which UK policy-makers believed they complied with at the time of ratification, in legal mobilization efforts have transformed the LOS in both the English and Scottish jurisdictions.

The Cost of Justice: England and Wales

For most NGOs interested in legal matters the most worrying element of accessing justice are the costs and risks associated with participating in legal activity. As one former in-house lawyer at Friends of the Earth pointed out, the problem with the English costs structure is a double one, of risk and uncertainty: “Not only do claimants risk paying the costs of the other side, but they also have no idea at the outset of proceedings whether, if they lose their case, they will have to find £5,000, £50,000 or £150,000” (Michaels 2004). In their submission to

the ACCC in 2009 a group of environmental NGOs acting in coalition argued: “The effect is that even the largest environmental NGOs in the UK are very slow to take legal action against the UK Government. It is extremely rare for small environmental NGOs...to take such action for precisely the same reason” (CAJE 2009). The “chilling effect” the cost rules have on litigation has also been expressly recognised by the UK courts. In 2004 the Court of Appeal in *R (Burkett) v LB Hammersmith and Fulham* noted that: “An unprotected claimant... if unsuccessful in a public interest challenge, may have to pay very heavy legal costs to the successful defendant, and that this may be a potent factor in deterring litigation directed towards protecting the environment from harm.” In sum, despite liberal standing rules and an extensive body of environmental law the LOS for legal mobilization was relatively hostile until a decade ago. NGOs and local associations could not easily take legal cases without the potential for significant costs being awarded against them.

The introduction of Protective Cost Orders (PCOs) in 2005 by the Court of Appeal in the case of *R (Corner House Research) v The Secretary of State for Trade & Industry* (2005) somewhat changed this picture (senior barrister, 27 Nov 2009; solicitor 13 April 2010). In this case Corner House Research, a non-profit organization which supports community movements for social and environmental justice, was pursuing a legal case alleging corruption in the award of major contracts by the Export Credit Agency. The court determined that when there is an issue of public interest at stake costs should not limit the ability of a claimant to bring a case. A PCO was thus issued which meant that the claimant’s costs would be capped in advance in order to limit uncertainty and expense.

While the advent of PCOs seemed to be a promising avenue for expanding the opportunities to take legal action, interviews with environmental lawyers working in NGOs suggested other problems with this particular approach. Problems identified include the fact that in many instances a PCO decision comes too late in the proceedings to be of value and

the assumption that a claimant will refrain from pursuing a case if a PCO is not awarded. This meant that for very serious breaches of environmental law a NGO might choose not to pursue a PCO in order to ensure the issue will be addressed by the courts (NGO in-house lawyer, 13 April 2010 and former NGO in-house lawyer, 22 April 2010). Furthermore, a PCO was more likely to be awarded if a lawyer was acting pro bono which made it more financially difficult for environmental lawyers allied with the environmental movement. Most significantly, the ad hoc and discretionary nature of the PCO regime meant, in the eyes of environmental NGOs and their allies in the legal profession, that the UK was not living up to its Aarhus commitments.

The response to this perceived failure to adequately address the problem of affordable access to justice was a flurry of activity by those working in the legal profession in and with the environmental movement. First, this consisted of coalition building activities and lobbying for legal reform on the rules on costs. For example, in 2008 a group of NGO lawyers, environmental barristers and solicitors and a leading judge in the administrative court launched the Sullivan Report, entitled *Ensuring Access to Environmental Justice in England and Wales*. This effort continued over several years and an update to the Sullivan Report, published in August 2010, argued that despite a developing jurisprudence on PCOs

it is obvious that tinkering with the Protective Costs Order regime will not be sufficient to address prohibitive costs and secure compliance with Aarhus. A radical change in the Civil Procedure Rules is required, one which recognises the public interest nature of environmental claims (Working Group on Access to Environmental Justice 2010: 4).

In addition to the launching of the Sullivan Report representatives from the Environmental Law Foundation, Friends of the Earth, Greenpeace, RSPB, WWF-UK and Capacity Global established an alliance called the Coalition on Access to Justice for the Environment (CAJE).

CAJE has undertaken a number of lobbying activities: they have conducted research on NGOs and their use of litigation; they have written submissions to the Civil Procedure Rules Committee (CPRC) to urge them to address the problem of costs and they have presented evidence to parliamentary committees.

Second, the response to the perceived failure of the UK government to live up to Aarhus included extensive legal mobilization activity. This consisted of a series of legal cases launched by different environmental groups in different forums. Since the mid-2000s there have been a number of cases concerning the issue of costs in environmental cases which have all questioned the working of the cost rules and contributed to incremental shifts in levels of access to justice.

In 2005 members of a local campaign group challenged the decision of the Environment Agency to approve the operation of a cement works, including waste incineration, in Rugby. They relied, in particular, on the fact that the project had not been the subject of an environmental impact assessment. The claimants lost their case in the administrative court and also lost in the Court of Appeal in 2008. Costs were awarded against the claimants for £88 000. The decision against full costs was appealed and the Supreme Court ruled that the costs order should be stayed pending the reference to the CJEU for a preliminary ruling about how to interpret the expression “not prohibitively expensive” in the EU directive implementing the Aarhus principles. When *Edwards v Environment Agency* (2014) was finally decided in 2014 after the preliminary ruling of the CJEU the Supreme Court concluded that the cost of litigation must not exceed the financial resources of the person concerned nor appear to be objectively unreasonable; the court could consider “whether the claimant has a reasonable prospect of success, the importance of what is at stake . . . , the complexity of the relevant law and procedure, the potentially frivolous nature of the claim” The use of “could” rather than “should” is illuminating and highlights the

continued degree of discretion granted to courts in making costs rulings. In short, the final decision improved matters somewhat but not in a completely straightforward manner.

At the same time other environmental groups were pursuing the legal campaign against unaffordable justice in supranational venues. In 2005 CAJE submitted a complaint to the European Commission alleging UK non-compliance with the Aarhus Convention. In a series of infringement proceedings in the CJEU the commission claimed that the UK government failed to give effect to the European directives implementing the Aarhus Convention. The high cost of legal action to protect the environment was the crux of the complaint. The commission sent the UK a letter of formal notice – in which the commission sets out how a Member State has failed to comply with the requirements of EU law - in December 2007 and issued the UK with a Reasoned Opinion which is a more detailed outlining of the issues in March 2010. In April 2011 the European Commission referred the UK to the European Court for failing to transpose obligations in Directive 2003/35/EC which implement the requirements of Article 9(4) of the Aarhus Convention to provide access to justice in environmental cases which is not prohibitively expensive. The case, *Case C-530/11 European Commission v United Kingdom* [2014] ECR 0000, was heard in July 2013. The Advocate-General's opinion, released in September 2013, began with the statement "It is well known that in the United Kingdom court proceedings are not cheap." In February 2014, the CJEU gave its judgment. It found that the costs regime for environmental judicial review cases which had been in place in the UK in 2010 had not properly implemented the "not prohibitively expensive" requirement. However, because of shifting regulations back in Britain, in part in response to domestic court cases brought by environmental NGOs and in anticipation of the results of this case, the judgment of the CJEU was somewhat outdated because of revisions in the jurisdictions' cost regime in 2013.

In parallel with this activity by NGOs in the European Union judicial venues, in 2008 ClientEarth, an NGO of environmental lawyers, made a complaint to the ACCC alleging that the law and jurisprudence of the UK failed to comply with the requirements of the convention. ClientEarth represented the Marine Conservation Society, a group that was unable to mount a legal challenge against allegations of toxic waste dumping near the Port of Tyne, Newcastle, because of fears about the potentially crippling costs of losing a potential court case. The ClientEarth communication cites in particular restrictions on review of substantive issues through judicial review procedures, limitations on the possibility for individuals and NGOs to challenge acts or omissions of private persons which contradict environmental law, the “chilling effect” of costs rules and the uncertain and overly restrictive nature of rules related to time limits within which an action for judicial review can be brought in England and Wales. These claims were further supported by an amicus brief by CAJE. In 2010 the Aarhus Compliance Committee in its findings held that the UK was failing to live up to its full obligations under the convention in terms of the prohibitive expense, particularly by the absence of any clear legally binding directions from the legislature or the judiciary about how to make decisions on costs to this effect.

In April 2013 the coalition government introduced bespoke reforms to the Civil Procedure Rules in cases where the Aarhus Convention would be relevant. The rules stated that in any Aarhus-relevant judicial review a claimant could not be ordered to pay costs exceeding the certain amounts – £5,000 for individuals and £10,000 for associations and NGOs. However, the reform also offered a reciprocal cap on costs of the other side: costs recovery against a losing defendant would be capped at £35,000 and it is worth noting that there has been a general hostility from the Conservative-led government and the subsequent Conservative government to the use of judicial review by civil society actors. These reforms meant that by the time the CJEU delivered its findings, which were then adopted into the

Supreme Court's ruling in *Edwards v Environmental Agency*, the position of the UK had already improved.

However, in September 2015, following the election of a Conservative majority that spring, the Ministry of Justice launched a consultation on a series of proposals relating to the costs issue. The Government suggested that the proposals “are intended to tackle the potential for people to use meritless judicial review applications to cause delay and frustrate proper decision-making” (Ministry of Justice 2015). The proposed changes would again make it much more expensive for environmental NGOs to bring cases and would enhance uncertainty as to overall costs exposure. Most significant among the proposed reforms is the doubling of the cost caps to £10 000 for individuals and £20 000 for organizations. The environmental movement responded vigorously to these proposals which could have the effect of negating their previous decade's efforts in the courts. This looks increasingly likely with the withdrawal of the UK from the European Union following the 2016 Brexit referendum.

Even after ten years of legal mobilization in a variety of venues the struggle over the LOS and the meaning of the Aarhus obligations on access to justice continues in England and Wales. This discussion highlights the international dimension of the LOS in this case. First, the groups examined here have relied on the Aarhus Convention and EU law implementing the Aarhus principles in domestic courts. In doing so these environmental NGOs have been able to highlight the constraints within the UK opportunity structure in English courts. Second, these organizations have also filed complaints with international institutions such as the ACCC and the European Commission. This has triggered compliance mechanisms “from above” the state as well. This has resulted in an important shift in the landscape of legal opportunities for environmental groups but the battle over the LOS in England and Wales is not yet over.

Access to Justice in Scotland

Looking north of the English border provides another illustration that can help to shed light on how the Aarhus Convention has had an impact beyond the UK government's expectations on signing and ratification. The Scottish government is obliged to implement the convention's standards: environmental protection is largely a devolved competence although the boundary is not always clear in terms of what falls under this heading (Reid 2009; Ross et al. 2010).

In terms of compliance with the Aarhus Convention two significant issues have proven particularly problematic in the Scottish context: rules on standing and the costs of litigation. First, rules on standing, known as "title and interest" in Scots law have been derived from a private law context. A person with "title" is someone who is a party to a legal relation, with the focus on ownership, contract, trust or other fiduciary relationship. Second, like in England and Wales the cost and risk of litigation is high in Scotland which also follows an after-the-event model of deciding costs. Friends of the Earth Scotland, in a 2011 report on access to justice, *Tipping the Scales: Complying with the Aarhus Convention on Access to Environmental Justice*, argued that:

...Scotland falls considerably short of meeting its international obligations.

Aarhus demands broad and affordable access to justice, but the reality in Scotland is very different. It can be extremely expensive to undertake legal proceedings (environmental or not) in Scotland... In addition, rules on standing – and the interpretation of these rules by the courts – are extremely restrictive, making it very difficult for individuals, communities and NGOs to demonstrate that they have "title and interest" to take an environmental case (Church 2011, 6).

Among the NGOs examined here this research found that the key Scottish groups were involved in efforts to influence the LOS. Although RSPB had previously taken legal cases in Scotland it has been largely reluctant to do so since it incurred major costs in a legal case with WWF in 1998 (see Vanhala 2012). The Head of Policy for RSPB Scotland said “we’ve learned we don’t get access to justice” in speaking of that experience (May 19th 2011). Similarly, Friends of the Earth Scotland had decided after an anti-roads campaign experience that pursuing legal action was too costly and risky (Campaign officer, May 19th 2011). None of these cases were aimed at influencing the LOS, instead they were cases meant to ensure the effective enforcement of EU environmental law.

These perceived failures of compliance with EU environmental law because groups could not challenge government decisions in court due to costs hurdles inspired a series of legal cases in recent years in Scotland. Environmental groups in Scotland have been involved in these litigation efforts in a number of different ways; from providing funding to individual litigants and submitting third-party interventions to using the narratives of failure of access to justice to mobilize their constituencies and pressure the Scottish government to reform the LOS. The following discussion examines, first, legal mobilization efforts on challenging the costs of litigation and then looks at recent involvement by Friends of the Earth that helped to change the Scots law rules on standing.

The concept of public expenses orders (PEOs), the equivalent of PCOs in England and Wales, has been developed in Scottish case law and caps the amount of the other sides’ costs the petitioner would have to pay if she lost the case. In 2006 Friends of the Earth Scotland as part of an anti-roads campaign sought to overturn the Scottish Executive’s decision to permit an extension of the M74 through southern Glasgow. The NGO applied for a PEO but the court refused to grant one suggesting that the desirability of PEOs being introduced in Scotland should be pursued through the Court of Session Rules Council, the

body responsible for addressing procedural rules in the court, and not through the law. According to the NGO's access to justice report FoE Scotland "eventually and reluctantly withdrew the case to conserve scarce funds and in the face of a potential liability for expenses" (Friends of the Earth Scotland 2011: 45).

Another case, *Mary Buchan Forbes v Aberdeenshire Council and Trump International Golf Links* (2010), that was scuppered by procedural barriers to justice concerned Donald Trump's golf and hotel development in Aberdeenshire. The petitioner struggled both with issues of standing and with costs. In 2009, Mary Forbes, a local resident sought to halt development at the site. She alleged that the works were environmentally damaging and that the respondents did not follow correct Environmental Impact Assessment (EIA) and consultation procedures. The petitioner sought an interim interdict (an injunction) to stop the works on nearby sand dunes while her judicial review was in the court but was denied. In the 2010 decision the judge noted the Aarhus Convention and requirements to interpret the test of standing to be in line "with the objective of giving the public concerned wide access to justice". However, the court found that Mrs Forbes, although a neighbour to the site, in living a kilometre from the works being carried out, had failed to show that she was "affected in some identifiable way" and did not demonstrate sufficient interest.

Paradoxically, the petitioner had not sought a PEO as they are confined only to public interest cases and she had been refused assistance with the costs of her case because her "application did not meet the "reasonableness" test for legal aid". According to the Scottish Legal Aid Board legal aid was refused "on the basis of information available to the Board there were other people with an interest in the case who it would appear could fund or make a contribution to funding an action" (Scottish Legal Aid Board 2011). When Mary Forbes lost her initial hearing, and faced the prospect of paying thousands of pounds of the other side's costs, she dropped the proceedings.

Another case concerning the proposed development of a new coal plant in Hunterston, North Ayrshire, became an important example of how the Scottish government was failing to live up to its Aarhus obligations. The proposed site was a Site of Special Scientific Interest (SSSI) for its wildlife. An individual, Marco McGinty, brought a judicial review of the Scottish Government's decision to develop the coal plant near his home. Organizations such as RSPB Scotland, Planning Democracy, WWF Scotland and Friends of the Earth Scotland have all participated in media efforts to raise awareness of the issue of coal-powered energy and have used the example of the *McGinty vs Scottish Ministers* (2010) case to highlight the problems with access to justice. Both Friends of the Earth Scotland and the RSPB Scotland helped to fund the *McGinty* case (Policy officer, May 19 2011).

In some ways the progress of the *McGinty* case represents a waltz of one step forwards and two step backs for Scottish compliance with the Aarhus Convention. A decision on costs in an early hearing resulted in the first ever Public Expenses Order (PEO) being awarded. In this case the judge, citing the case law on PCOs in England discussed above, granted the petitioner a PEO and capped his liability for the defendant's costs at £30 000. The amount was high, particularly in considering the estimated cost of up to £80 000 he would face in bringing the case himself after being denied legal aid. Nonetheless the PEO constituted an important relaxation of the cost rules.

However, in another hearing the *McGinty* petition was also challenged by the respondents on grounds of standing ("title and interest") and timeliness ("*mora*"). The court found in October 2011 that Mr McGinty's occasional use of the site, five miles from his home, for bird-watching might entitle him to "title" but did not meet the criteria of possessing sufficient "interest". The Court clarified this:

He does not in my opinion have a "real and legitimate" or "real and practical" interest to bring proceedings. He does not reside adjacent to the site and is not

therefore a neighbour. His use of the site is limited, intermittent and non-essential. The type of usage he exercises over the site could in fact be exercised over any area of land to which the public has access at any location in Scotland. He does not sue as a member or representative of a group or organisation with title or interest (per Brailsford L.J para. 26).

The petition was ultimately dismissed on standing and timeliness. In a press release in response to the judgment Marco McGinty said:

I am deeply disappointed in this ruling... This is a sad reflection on Scotland and the Scottish planning and legal systems. It would appear that the value of the natural environment, as well as the principles of fairness, openness and democracy are set to one side when wealthy developers like Peel are involved (WWF Scotland 2011).

In September 2013 the Court of Session upheld the substantive ruling against McGinty's challenge of the Government's decision to build the coal power plant. The Court also refused to reduce the level of costs that the claimant would be liable for despite the fact that the rules of procedure that have been introduced since the *McGinty* case stipulate a standard cap of £5000. The Court nonetheless recognised that Mr McGinty had standing to take his case; a relaxation of the rules on who could access the courts. In sum, while it ruled against him procedurally on costs, the court did rule in his favour procedurally on standing.

Another case where a PEO was awarded was in an anti-roads case. A campaign group, Road Sense, and an individual petitioner who was the Chairman of the group lodged a judicial review of the Scottish Government's decision to construct the Aberdeen Western Peripheral Route (AWPR). The new four lane highway would loop around the west and the north of the city of Aberdeen. In 2009 Road Sense made a communication to the ACCC alleging non-compliance by the UK with its convention obligations in respect of the

procedures used in decision-making regarding the proposed road construction. The ACCC rejected these complaints.

The campaigners continued to pursue the case in the Scottish Courts at that point. In 2011 Road Sense were granted a PEO that capped the campaigners' potential liability for the other side's costs at £40 000. In the ruling, which references the Aarhus Convention multiple times, the judge nonetheless took a subjective approach in assessing the amount at which the cap should be set. The cap was established at exactly the amount Road Sense estimated that they could raise from existing funds. In England, in *Garner v Elmbridge Borough Council* (2010), this subjective approach to the granting of PEOs was explicitly rejected by Sullivan LJ as being inconsistent with the objectives of Aarhus. The Scottish Government confirmed that they would challenge Road Sense's title to take the case and the campaign group chose to drop the action.

Thus legal mobilization on the costs issue in Scotland had been relatively unsuccessful on a number of fronts. The rules on standing fared better. Most notably, environmental campaigners have heralded the 2011 UK Supreme Court decision in *Axa Insurance v Lord Advocate* (2011). Friends of the Earth Scotland, participated in the case as a third-party intervener despite it not being a case that addressed issues of environmental law. This was the first time Friends of the Earth Scotland had participated in the courts in this way. The organization also considered intervening in the Road Sense case before an out-of-court settlement was reached (Campaign officer, 3rd May 2012). Friends of the Earth Scotland's interest in the *Axa* case concerned the procedural rules on title and interest which were also at issue. In their written brief Friends of the Earth Scotland argued that they were intervening on the issue of standing for NGOs to bring judicial reviews in Scotland in public interest cases. They wrote:

FoES is a body with a genuine concern for the environment, who with its particular experience in environmental matters, its access to experts in the relevant realms of science and technology and environmental policy is in a position to mount carefully selected, focused, relevant and well-argued legal challenges...FoES do not wish to take legal action on a frequent or regular basis. However, it considers that there are a number of environmental issues in Scotland that are unlikely to be litigated by any other organisation or person (Friends of the Earth Scotland 2011).

The Supreme Court dismissed the insurance companies' appeal. In regards to the issue of standing in Scottish public law the decision represents a decisive shift. The two Scottish judges on the UK Supreme Court in their judgment clearly elucidated a rejection of the approach derived from private law in terms of title and interest. Lord Hope held that:

As for the substantive law, I think that the time has come to recognise that the private law rule that title and interest has to be shown has no place in applications to the court's supervisory jurisdiction that lie in the field of public law. The word "standing" provides a more appropriate indication of the approach that should be adopted (Hope L.J. para 62).

Lord Reed re-iterated the point:

In my opinion, the time has come when it should be recognised by the courts that Lord Dunedin's dictum [on title and interest] pre-dates the modern development of public law, that it is rooted in private law concepts which are not relevant in the context of applications to the supervisory jurisdiction, and that its continuing influence in that context has a damaging effect on the development of public law in Scotland. This unsatisfactory situation should not be allowed to persist (Reed L.J. para 171).

Many of the points made in the judgment echo Friends of the Earth Scotland's intervention; the court concurred with the NGO's suggestion that the time was ripe "to free Scots public law from its private law shackles, and to recognise 'sufficient interest' as the proper test for standing in judicial review" (FoES 2011).

The Scottish Government launched a consultation on a large-scale reform to the Civil Courts system in 2013 and ultimately passed the Court Reform Act in 2014. Friends of the Earth Scotland and RSPB Scotland raised the issue of standing and costs in their lobby efforts when the Bill was passing through the Scottish parliament. Friends of the Earth Scotland (2013) questioned whether the proposals on judicial review went far enough to ensure compliance with the access to justice requirements of the Aarhus Convention. They pointed to the need for substantive review of the merits (as opposed to the mainly procedural review offered by judicial review) as well as the cost of environmental litigation.

The landscape for environmental justice is thus changing rapidly in Scotland with some divergences in approaches among the judiciary.¹ Starting from an inherently more conservative position on standing and costs than the one NGOs were facing in England and Wales the position now is broadly similar. The Aarhus Convention has had a significant impact on whether groups and individuals are able to access justice in Scotland. NGOs have been very active in raising awareness of the implications of the Aarhus Convention in the courts and in their lobbying activities with the Scottish ministers and the Holyrood Parliament. In doing so, they have begun to significantly shape the structure of opportunities for local groups and individual citizens to contest environmental policy decision-making. There are now even discussions about establishing a specialist Environmental Court in Scotland which would represent another important shift in the Scottish LOS.

Conclusion

The two-stage process-tracing analysis presented here helpfully highlights how an unintended outcome - the opening of the legal opportunity structure in both England and Scotland - came about. This research has traced the iterative process by which NGOs can influence the establishment of rights at the international level, then use these rights to expand access to the courts at the domestic level, then travel back to the international level to enforce this opening of the LOS when met with resistance. The social constructivist approach offers a theoretical framework for understanding the gap between meaning-making at the moment of commitment (the development and signing of the Aarhus Convention) and at the moment of compliance (the enforcement of the convention in domestic and supranational courts and in international tribunals) (Simmons 2009). In examining the *longue durée* one can begin to account for how the LOS was acted upon in this case to lead to changes that have been favourable for environmental groups interested in accessing justice.

While Western European elites may have had multiple motivations for supporting the Aarhus Convention, the goal of promoting democratic processes and empowering the environmental movement in the CEECs was certainly among them. I have also suggested that policy-makers were taken by surprise by the impact the convention's rights have had on their own legal system. This resulted, in part, because of different meanings attributed to certain rights within the Aarhus Convention by different actors. The illustrative cases presented here show how the costs and risks associated with litigation across the UK and the restrictive rules of standing in Scotland have regularly hampered the efforts of green NGOs as well as local groups and individual activists in challenging government decisions. In response, environmental NGOs have sought to redefine the idea of access to justice not being "prohibitively expensive" in domestic courts and before the ACCC and the CJEU. In both examples these processes of meaning-making by NGOs and courts contributed to a transformation of the structure of legal opportunities.

This research contributes to the literature on law and social movements in general and research on LOSs specifically. Much research in this vein has tended to treat the LOS as an independent variable: that is, it focuses on how the LOS shapes the decisions social movement actors make in terms of using litigation as a tactic. This research highlights the merit in treating the LOS as a dependent variable as well: a factor that varies and can change over time. Taking these two understandings of the LOS together helps further develop our understanding of legal mobilization as a process that can have reciprocal effects between the activities of social movement agents and the institutional structures within which they are situated.

Future research could engage with these issues in a number of different ways that would be fruitful for the literature on law and social movements. An important first step concerns the further development of a theoretical approach to explain the conditions under which legal opportunity structures are likely to change (researchers could also distinguish between changes in terms of a LOS becoming either more open or more restrictive). The case presented here suggests a number of factors that may be important in explaining change that could be further explored in future research. This includes a) the existence of international procedural rights that can contribute to the opening of the LOS both substantively but also in the range of different groups have been able to access to demand changes; b) the presence of social movement actors that are able to play an entrepreneurial role in shaping access to justice through influencing the adoption of new procedural rights and helping to define the meaning of particular access to justice rights through campaigning and litigation activity and c) the willingness of courts and tribunals at different levels to play a role in expanding (or restricting) access to justice. However, only further comparative, cross-jurisdictional and cross-policy area research can determine the extent to which these, and other factors such as the type of legal system, may matter in explaining LOS change and stasis more generally.

Notes

¹ In a recent Scottish case, John Muir Trust for judicial review of a decision of the Scottish Ministers, an environmental NGO was refused a protective expenses order because the court was not satisfied that the case would be “prohibitively expensive” for the Trust.

Bibliography

Andersen, Ellen Ann. 2006. *Out of the Closets and Into the Courts: Legal Opportunity*

Structure and Gay Rights Litigation. Ann Arbor, MI: Univ. Michigan Press.

Church, Mary Church. 2011. *Tipping the Scales: Complying with the Aarhus Convention on Access to Environmental Justice*. Edinburgh: Friends of the Earth Scotland.

Cichowski, Rachel. 2007. *The European Court and Civil Society: Litigation, Mobilization and Governance*. Cambridge: Cambridge Univ. Press.

Doherty, Brian, and Graeme Hayes. 2014. “Having Your Day in Court: Judicial Opportunity and Tactical Choice in Anti-GMO Campaigns in France and the United Kingdom,” *Comparative Political Studies* 47 (1): 3-29.

Evans Case, Rhonda, and Terri E. Givens. 2010. “Re-engineering Legal Opportunity Structures in the European Union? The Starting Line Group and the Politics of the Racial Equality Directive,” *Journal of Common Market Studies* 48 (2): 221-241.

Finnemore, Martha and Kathryn Sikkink. 1998. “International Norm Dynamics and Political Change,” *International Organization* 52 (4): 887-917.

Friends of the Earth Scotland. 2011. *Tipping the Scales: Complying with the Aarhus Convention on Access to Environmental Justice*. Edinburgh: FoES.

Friends of the Earth Scotland, Written Intervention in *AXA General Insurance Limited and others (Appellants) v The Lord Advocate and others (Respondents) (Scotland)*. 2011. UKSC 46, 45.

- Hilson, Chris. 2002. "New Social Movements: The Role of Legal Opportunity," *Journal of European Public Policy* 9 (2): 238-255.
- Koester, Veit. 2007. "The Compliance Committee of the Aarhus Convention: An Overview of Procedure and Jurisprudence," *Environmental Policy and Law* 37 (2-3): 83-96.
- Lee, Maria and Carolyn Abbot. 2003. "The Usual Suspects? Public Participation Under the Aarhus Convention," *Modern Law Review* 66 (1): 80-108.
- Macrory, Richard and Ned Westaway. 2011. "Access to Environmental Justice: A United Kingdom Perspective" in *The Aarhus Convention at Ten: Interactions and Tensions between Conventional International Law and EU Environmental Law*, edited by Marc Pallemmaerts. Groningen: Europa Law Publishing.
- Mason, Michael. 2006. "Citizenship Entitlements Beyond Borders? Identifying Mechanisms of Access and Redress for Affected Publics in International Environmental Law," *Global Governance* 12 (3): 283-303.
- Michaels, Phil. 2004. "The price of protest," *The Guardian*, Wednesday 23 June.
- Reid, Colin. 2009. *Nature Conservation Law*. Edinburgh: W. Green.
- Ross, Andrea, Hazel Nash and Colin Reid. 2010. "The Implementation of EU Environmental Law in Scotland," *Edinburgh Law Review* 13: 224-251.
- Schoenfeld, Heather. 2010. "Mass Incarceration and the Paradox of Prison Conditions Litigation" *Law & Society Review* 44 (3/4): 731-767.
- Scottish Legal Aid Board. 2011. *Statement Re: Molly Forbes*
<http://www.slab.org.uk/news/archive/articles/news-0037.html>. (accessed February 3, 2016).
- Simmons, Beth. 2009. *Mobilizing for Human Rights: International Law in Domestic Politics*. New York: Cambridge Univ. Press.

- Towns, Ann E. 2012. Norms and Social Hierarchies: Understanding International Policy Diffusion 'From Below.' *International Organization* 66 (2): 179-209.
- United Kingdom. Department for Environment, Food and Rural Affairs. 2008. *Aarhus Convention Implementation Report*. London: DEFRA.
- United Kingdom. Ministry of Justice. 2015. *Costs Protection in Environmental Claims Consultation Document*. London: MOJ.
- Vanhala, Lisa. 2012. Legal Opportunity Structures and the Paradox of Legal Mobilization by the Environmental Movement in the UK. *Law & Society Review* 46 (3): 523-556.
- Vanhala, Lisa. 2012. Legal Opportunity Structures and the Paradox of Legal Mobilization by the Environmental Movement in the UK. *Law & Society Review* 46 (3): 523-556.
- Vanhala, Lisa. 2016. Legal Mobilization under Neo-corporatist Governance: Environmental NGOs before the Conseil d'Etat in France (1975-2010). *Journal of Law and Courts* 4 (1): 103-130
- Vanhala, Lisa. 2017. Is Legal Mobilization for the Birds? Legal Opportunity Structures and Environmental Nongovernmental Organisations in the United Kingdom, France, Finland and Italy. *Comparative Political Studies*. Online first publication date: June 15, 2017.
- Wates, Jeremy. 2005. "NGOs and the Aarhus Convention," in *Civil Society, International Courts and Compliance Bodies*, edited by Tullio Treves, Marco Frigessi di Rattalma, Attila Tanzi, Alessandro Fodella, Cesare Pitea, Chiara Ragni. The Hague: TMC Asser Press.
- Wilson, Bruce, & Juan Carlos Rodriguez Cordero. 2006. "Legal Opportunity Structures and Social Movements: The Effects of Institutional Change on Costa Rican Politics," *Comparative Political Studies* 39(3): 325-51.

Working Group on Access to Environmental Justice. 2010. *Ensuring Access to Environmental Justice in England and Wales*. London: Working Group on Access to Environmental Justice.

WWF Scotland. 2011. *Press Release: Destruction of Nationally Important Wildlife Site Not Open to Challenge*. October 4, 2011.

Cases cited

AXA General Insurance Limited and others (Appellants) v The Lord Advocate and others (Respondents) (Scotland) [2011] UKSC 46

R (Corner House Research) v The Secretary of State for Trade & Industry [2005] EWCA Civ 192

Garner v Elmbridge Borough Council [2010] EWCA Civ 1006

Aarhus Compliance Committee Findings, ACCC/C/2008/33

John Muir Trust for judicial review of a decision of the Scottish Ministers [2016] CSIH 33

Mary Buchan Forbes v Aberdeenshire Council and Trump International Golf Links [2010] CSOH 1.

McGinty v Scottish Ministers [2010] CSOH 5 and [2013] CSIH 78
