

## ***CULTRA RESIDENTS' ASSOCIATION***

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18 August 2008

Aarhus Convention Compliance Committee  
c/o Jeremy Wates Esq  
Secretary to the Aarhus Convention  
United Nations Economic Commission for Europe  
Environment and Human Settlement Division  
Room 332, Palais des Nations  
Ch-1211 Geneva 10  
Switzerland

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Dear Sirs

**VARIOUS RESIDENTS' ASSOCIATIONS  
v  
DEPARTMENT OF THE ENVIRONMENT FOR NORTHERN IRELAND**

**RE: GEORGE BEST BELFAST CITY AIRPORT**

**COMMUNICATION TO THE AARHUS CONVENTION'S COMPLIANCE COMMITTEE**

I am writing on behalf of Cultra Residents' Association of Cultra, County Down, which represents over 200 families in the Cultra area of North Down, Northern Ireland.

My association was one of five Residents' Associations who were the Applicants in Judicial Review proceedings brought in the High Court of Justice in Northern Ireland, Queen's Bench Division (Judicial Review) in 2007. The Respondent in the case was the Department of the Environment for Northern Ireland and the matter was heard at the "leave" stage by Mr Justice Weatherup and later by Lord Justice Girvan, who delivered his judgement on 7 November 2007.

I enclose the following for your information by way of background:-

1. Copy Response from Cultra Residents' Association to the Northern Ireland Affairs Committee Inquiry of the House of Commons into Air Transport Services in Northern Ireland
2. Copy Notice of Motion

3. Copy Affidavit of Herbert Lowry McCracken
4. Copy Skeleton Argument on behalf of the Applicants
5. Copy Order of Lord Justice Girvan dated 7th November 2007
6. Copy letter from Johnsons, Solicitors for the Applicants to Arlene Foster, Minister of the Environment dated 19 February 2008
7. Copy letter from Glynis Aiken, Private Secretary to Arlene Foster, Minister of the Environment, to Johnsons, Solicitors for the Applicants, dated 28 March 2008

You will note that after hearing the case brought by the five Residents' Associations, Lord Justice Girvan dismissed the Application on the grounds of prematurity, stating that "it would be inappropriate in an ongoing and incomplete process which has not reached the stage of a decision for the Court to be drawn into the process of analysing the arguments and evidence which is going to be taken into account in the decision making process".

After judgement Counsel for the Department of the Environment asked for full costs to be awarded against the Applicants and the Court duly ordered that the Department be paid its full costs.

My Association and its co-Applicants have now paid the Department the sum of GB£39,454.00 in settlement of its court costs. This is in addition to the costs of our own legal advisors.

By seeking payment of full costs in the Judicial Review procedure, after the "leave" hearing where Mr Justice Weatherup held that the Applicants had an arguable and timely case, which was neither out of time nor premature and gave them leave to proceed, my Association believes that the Department of the Environment is acting unfairly and directly in conflict with both the spirit and the provisions of the Aarhus Convention and by this calculated action the Department is not encouraging the public to participate in decision making in environmental matters.

It seems to my Association that Government is being wholly unreasonable in seeking full costs in an environmental case where an Applicant has cleared the hurdle of a "leave" hearing and has been given leave by a court of law to proceed with the action. There is little practical merit in a Government claiming that the courts are always available to members of the public in environmental matters where the Government is the counter party, if at the conclusion of an unsuccessful application, the Government seeks prohibitive costs.

Obviously if the Applicant does not clear a "leave" hearing then one can see some justification in the Government seeking costs up to that stage as the existence of an arguable and timely case would not have been proven.

Clearly the award of prohibitive costs against a Resident's Association such as mine, which has been formed by ordinary citizens seeking to protect their environment against excessive and unreasonable development, creates a very real barrier to access to justice.

(See letters of 19 February and 28 March 2008 enclosed herewith: Friends of the Earth were quite alarmed by the decision).

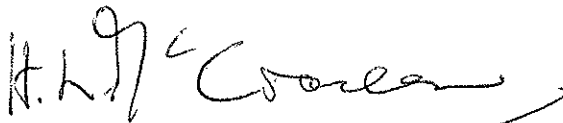
In the present case it is submitted that the Government attitude is particularly harsh as the proceedings arose out of a situation where Residents' Groups were urging the Department to set up a public inquiry so that all of the people of Northern Ireland would have the opportunity to express their views on the proposed expansion of an Airport whose operations have a direct impact on a large section of the population of Northern Ireland, but despite this clamour for a public enquiry the Department opted for an Examination-in-Public hearing where the rights of the public are much more restricted.

The decision not to hold a public inquiry plus the fact that the Department is seeking to control operations at Belfast City Airport by a private agreement between two parties is further evidence of a government policy designed to exclude the public from decision making and from justice in environmental matters, a policy clearly in conflict with the provisions of the Aarhus Convention. It would appear that there are breaches of Articles 3, 7 and 9 of the Convention.

I would be grateful if you would acknowledge receipt of this Communication and let me know if the Compliance Committee is willing to consider the alleged non-compliance of the Department of the Environment for Northern Ireland with the provisions of the Convention by seeking full costs in this matter when the Applicants had been successful at a "leave" hearing.

If you require any further material or information to assist you, please let me know.

Yours faithfully

A handwritten signature in black ink, appearing to read 'H. L. McCracken', with a long horizontal flourish extending to the right.

H. L. McCracken  
Committee Member authorised by  
Cultra Residents' Association