

LAW AND PRACTICE RELATING TO ACCESS TO INFORMATION
ON THE ENVIRONMENT, PUBLIC PARTICIPATION IN PROCESSES
LEADING TO DECISION-MAKING AND
ACCESS TO JUDICIAL AND ADMINISTRATIVE PROCEDURES
RELATING TO ENVIRONMENTAL MATTERS

**A REPORT ON MODELS OF
NATIONAL LEGISLATION, POLICY AND GUIDELINES
IN THE AFRICA REGION, ASIA AND PACIFIC REGION
AND THE LATIN AMERICA AND CARIBBEAN REGION**

**THIS REPORT IS PREPARED IN IMPLEMENTATION OF
UNEP GOVERNING COUNCIL DECISION 20/4**

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Introduction

1. The United Nations Environment Programme (UNEP) Governing Council decision 20/4 (GC20/4) calls on the Executive Director in consultations with Governments and relevant international organizations, to seek appropriate ways of building capacity in and enhancing access to environmental information, public participation in decision-making and access to justice in environmental matters. In this regard, UNEP was further required by decision GC 20/4 to study various models of national legislation, policies and guidelines. This report is a study of State practice in three regions on national legislation, policy and guidelines covering access to information, public participation in decision-making and access to justice in environmental matters. The study outlines various models found in the African region, the Asia and Pacific region and the Latin American and Caribbean region. It is clear from the study that although a lot takes place at the national level there is still a need for UNEP to enhance and promote these principles and create an enabling environment for Governments to build capacity in this area by learning from each other.
2. Ever since the 1972 Stockholm Conference, efforts have been made to have environmental rights recognized in national constitutional and legislative frameworks. A number of Countries have within their national constitutions and legislation, provided for a right to environment and or health. Although this has been the position, there has been a considerable debate on the normative value and character of the right to environment and or a healthy environment. The right to environment has been recognized, in recent years to have a procedural aspect that the enjoyment of this right includes access to information relating to the immediate environment and or of projects intended to be undertaken in the area which is likely to adversely affect the environment. The right to environment has also been recognized to include the right to be informed of plans and projects which may deteriorate the environment; to participate in the procedure leading to a decision and, when necessary; to dispose of adequate means for redress for the damage suffered or for the lack of respect of legal guarantees.
3. The principle of access to information, public participation in decision-making, and access to environmental justice has been emphasized and stressed in Principle 10 of the 1992 Rio Declaration of the United Nations Conference on Environment and Development (UNCED). More recently this principle is reflected in the 1998 Convention on Access to Information and Public Participation in Decision-Making and Access to Justice in Environmental Matters, adopted at Aarhus, Denmark, on 25 June 1998 which was negotiated under the auspices of the United Nations Economic Commission for Europe (UNECE). This Convention which is also referred to as the Aarhus Convention entered into force in October 2001.

4. Public participation, however, requires a legal framework within which to operate. This report thus analyses the framework existing in various countries listed below and the practice of these States with respect to the principles of access to information, public participation in decision-making and access to justice in environmental matters. This report is based on studies of various models of national legislation, policies and guidelines made in the African region; the Asia and the Pacific region and Latin America and the Caribbean region. Also, due regard has been had to the practice of States in these areas including the implementation or otherwise of these principles in their jurisdictions. The UNEP regional offices and the Environmental Law Branch of the Division of Policy Development and Law conducted the study with the assistance of UNEP Infoterra national partners to implement UNEP Governing Council decision 20/4. This report shows the extent to which Governments in policy, guidelines and national legislation have embraced the principles of access to information, public participation in decision-making and access to justice in environmental matters.

5. The term 'access to justice' as applied in this report refers to judicial and administrative remedies and procedures available to a person (natural or legal) aggrieved or likely to be aggrieved by an environmental issue. 'Public participation' includes the availability of opportunities for members of the public to provide input in relation to the making of decisions, which have or are likely to have an impact on the environment including, the enactment of laws, policies, and guidelines. 'Access to information' refers to both the availability and provision of information, which concern the environment.

6. This report thus explores State practice mainly the status of legislation and policies in three regions and makes an analysis of the effectiveness of the law and policy instruments in a number of countries. The report also serves as a tool where Governments may build capacity in improving their legislation or policy in access to information, public participation in decision-making and access to justice in environmental matters by learning from each other.

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AFRICA

ALGERIA

Access to Justice

The Constitution of Algeria does not expressly provide for environmental rights, however, in Article 32 the fundamental human and citizen's rights and liberties are guaranteed as a common heritage for all. Article 34 further protects the right to life as being inviolable.

Article 54 also grants to all the citizens the right for the protection of their health. This protects the citizens from environmental hazards that endanger their health and well being. Article 140 of the Constitution provides that justice is founded on lawfulness and is accessible to all. Article 143 also ensures that there is a right of appeal in administrative authority decisions.

Any miscarriage of justice by the State leads to compensation for the aggrieved person as per Article 49. Framework legislation also provides for criminal sanctions for transgressing the laws, Law No.83-03 of 5 February is such an example at its Chapter VI.

Access to Information

The freedom of creed and opinion is provided for as inviolable under Article 36 of the Constitution, and Article 41 protects the freedom of expression. However, under the Constitution, there is no express right to receive information from the Government or private individuals, but the Framework Law requires the provision of information to the public for projects subject to environmental impact assessment study.

Public Participation in Decision Making

Article 7 of the Framework law provides that public participation in decision-making is an important and essential aspect in the development of environmental legislation and texts of legislation and regulations shall determine the extent of their participation.

The Constitution provides for the right of individual and or collective defense of the fundamental rights and liberties to be guaranteed in Article 33. Further, Article 43 provides for the right to create associations and the State is to encourage development of the civil society and non-governmental organizations. This therefore grants environmental non-governmental organizations a constitutional basis for their formation and hence their participation in making of environmental decisions.

ANGOLA

Access to Justice

The Constitution of Angola provides in Article 24 for a right to live in a healthy and unpolluted environment. The State is enjoined to take measures necessary to protect the environment and any acts, which are damaging to the environment, are declared punishable by law. Further it is for the State to create requisite political, economic and cultural conditions necessary to enable citizens effectively enjoy their rights and perform their personal duties.

Article 43 confers on the citizen the right to contest and take legal action against any acts that violate their rights as set out in the Constitution and other legislation. The interpretation and incorporation of the constitutional and legal norms related to the fundamental rights are to be in keeping with the Universal Declaration of Human Rights, The African Charter on the Rights of Man and Peoples and other international instruments to which Angola has adhered to.

Further, the fundamental rights provided for in the constitution do not exclude others stemming from the laws and applicable rules of international law. Thus, international environmental rights are not excluded even if the constitution does not expressly provide for them.

BENIN

Access to Justice

The right to a healthy, pleasing and sustainable environment and the corresponding duty of all to protect it is provided for in the Constitution in Article 27. The State is responsible for the protection of the environment. Article 28 and 29 prohibit the handling, stockpiling, transportation, importation and discharging of wastes in Benin.

The protection of the environment and the conservation of natural resources fall within the purview of law pursuant to Article 98 of the Constitution.

BURKINA FASO

Public Participation in Decision making

The Burkinabe Framework law¹ provides for the involvement of the public in the environmental policy formulation and implementation as well as Environmental Impact Study review. Article 84 creates the National Environmental Committee (*Comite National de L'Environnement*) whose composition (Article 85) includes representatives of government ministries, government agencies with environmental interests, non-governmental organizations, experts and industry. Its prime function (Article 86) is to assist the Minister for Environment in policy formulation and implementation. A Bureau of Environmental Impact Assessment is also created under Article 89 whose composition is subject to a pending legislation.

¹ Law No. 002/94/ADP du 19 Janvier 1994 Portant Code de L'Environnement au Burkina Faso

CAMEROON

Access to Justice

Article 5 of the Environmental Management Law provides that the laws and regulations shall guarantee the right of everyone to a sound environment.

But the most characteristic feature of Cameroon's legislation is the provision of alternative dispute resolution processes. Article 92 provides that parties to an environmental dispute may settle the dispute by joint agreement through arbitration. Traditional authorities also have competence to settle environmental disputes on the strength of local ways and customs, but this does not infringe the right of the parties to refer the matter to competent courts (Art.93).

Article 91 (1) grants administrative units in charge of environmental management full competence to effect a compromise, but they have to be notified by the defaulter. Strict liability offences are also provided for in Article 77(1) whereby the rules of evidence are dispensed with and the burden of proof falls on the alleged defaulter.

Non-governmental organizations however have a different way of accessing environmental justice. They have to be first of all registered and or authorized before they can engage in actions of public or semi-public environmental institutions. However, once they are registered, they may exercise the rights of plaintiff with regard to facts constituting breach of the Act or causing direct or indirect harm to the common good they are intended to defend.

Public Participation in Decision-Making

The principle of public participation is a fundamental principle in the environmental legislation in Cameroon.² S.9 (e) provides for the principle of participation according to which decisions on the environment shall be taken after consultation with the sectors of activity or groups concerned or after a public debate when they are of a general nature.

Article 3 provides that the President of the Republic shall define national environmental policy whose implementation shall devolve to the Government. The Government shall apply it in collaboration with the decentralized territorial authorities, grassroots communities and environmental protection associations.

The National Environment and Sustainable Development Fund is created under Art. 11(1). Its objectives include the support of legalized associations involved in environmental protection, which carry out significant activities in this domain.

An impact assessment shall be included in the file submitted for public investigation where such a procedure is provided for in Article 17(2). But in case of a project undertaken on behalf of national defence services, the Article provides that the Minister of Defence shall disseminate it under conditions compatible with national defence secrets.

² Chapter III of Law No. 96/12 of 5 August 1996 Relating to Environmental Management.

The population shall be encouraged to participate in environmental management especially through their representation within environmental management bodies under Article 72.

Access to Information

The principle of participation enshrined in Article 9 (e) incorporates free access of every citizen to information on the environment including information on dangerous substances and activities. The Government is mandated to publish and disseminate information on environmental protection and management.

Article 7(1) provides for a right of all persons to be informed on the negative effects of harmful activities on man, health and the environment as well as measures taken to prevent or compensate for these effects. This right is however subjected to legislation.

The impact assessment made shall be made available to public inspection subject to national defence and security considerations under Article 17(2).

Article 72 provides for free access to environmental information pending imperatives of national defence and State security. The public will be further encouraged through production of environmental information and sensitization, training, research and education on the environment. Article 73 provides for the introduction of environmental education in primary and secondary school curriculum. Article 74 enjoins all administrative units and agencies to launch information and sensitization campaigns using the media and other forms of communication.

CAPE VERDE

Access to Justice

The Constitution of Cape Verde in Article 70 guarantees the right to a healthy life and ecologically balanced environment. This is replicated in the framework laws³, which also guarantee the right to a healthy and ecologically stable living environment. The State is enjoined to adopt policies for environmental protection and conservation in collaboration with associations and citizens.

The Constitution also provides for a right of access to judicial means and a right to obtain effective protection of ones rights or interests in Article 26. Article 15 also grants everyone a right of compensation for damages caused to him by the violation of his fundamental right and liberties. Article 19 grants a right to petition the Supreme Court of Justice on appeal for protection of fundamental rights, which includes the right to a clean environment, but this is after the exhaustion of other ordinary means of appeal. There is also a right to present, individually or collectively to public authorities, complaints and

³ Order No. 86/IV/93 of 26 June 1993

claims against public bodies that offend or threaten to offend fundamental rights and freedoms.⁴

Access to Environmental Information

Framework laws lay down principles of development and sensitiveness promotion. Article 4 (1) of the Order provides for the adoption of measures aimed at the establishment of a continual influx of information between responsible bodies and citizens. The Constitution also protects the right to inform and be informed, search and receive and disseminate information⁵.

Public Participation in Decision-Making

The involvement of the public in the management of public affairs is a constitutional objective (Article 7). Article 54 provides for the right to participate in the political life.

Framework laws provide for the involvement of the public in the formulation and enforcement of environmental policies of all social groups. Article 4 of the Order provides for the adoption of measures with the intent to allow for participation of society in the formulation and enforcement of the environmental policies and quality of life. Article 41 enjoins the State and public authorities to encourage the participation of private entities in all initiatives of interest to the objectives of the legislation.

COMOROS

Access to Justice

The right to a healthy environment and the corresponding duty to contribute, individually and collectively, to its safeguard is provided for in the Framework Environmental Law of 1994.⁶ Criminal sanctions are also provided for in the event of infringing on the provisions of the law relating to the environment.

CONGO- BRAZZAVILLE

Access to Justice

The right to a healthy, satisfactory and enduring environment is a constitutional right under the 1992 Constitution of Congo. Article 46 provides for this right and imposes a duty to defend it. The State is under an obligation to strive for the protection and conservation of the environment. The State is also in control of the natural resources of the country by exercise of total and permanent sovereignty over all the riches and natural resources⁷. It is the duty of the citizen also to contribute to the improvement of the quality of life and the preservation of his natural environment and not to negatively affect his environment and the well being of his neighbours.⁸

⁴ Article 19 and 57 of the Constitution.

⁵ Article 45 (2).

⁶ Loi-Cadre No. 94-018 du 22 juin 1994 relative a l'Environnement

⁷ Article 9 of the 1992 Constitution

⁸ Article 65

Article 19 of the Constitution enables any citizen subjected to a prejudice by an act of the administration to have a right to judicial recourse. In any place of juridical personality, citizens have a right to recognition. This therefore is an enabling provision for citizens whose environment is under threat with the sanction of the administration to seek redress in the courts.

Further, citizens have a right to oppose execution of any order received when it touches the rights and liberties contained in the constitution⁹. There is also provided for in the Constitution, the fundamental right to life in Article 10. Every citizen has the “right to life, to free development and full flowering of his person in his psychological, intellectual, spiritual, material and social dimensions”. This therefore includes his environmental concerns.

Article 148 allows any person to address the Constitutional Council on the issue of constitutionality of legislation directly or indirectly or through procedure. Thus in case of legislation which impinge the citizens environmental rights, they have access to an administrative machinery to strike down the legislation.

Public Participation in Decision-Making and Access to Information

The role of the public in the Congolese environmental legislation is not clearly provided for but the Constitution guarantees the right to freely express and diffuse opinion by speech, writing and by image. This therefore can be said to legitimize informal participation of the public through protests and such other means¹⁰.

Article 27 also provides for a right to free access to sources of information and the right to information and communication. Article 156 provides for the establishment of the High Council of Information and Communication, which shall guarantee the freedom of information and pluralistic expression of public opinion.

EGYPT

Access to Justice

Article 65 of the Decree provides that every citizen or association concerned with environmental protection may resort to the administrative and judicial agencies for the purpose of applying the provisions of the law. Article 18 of the Decree further allows the EEAA to file a lawsuit demanding suitable compensation to remedy the damages resulting from the violation where, after follow-up, violations are found in the EIA outputs.

Article 103 of the Law provides for a right of all citizens or societies concerned with environmental protection to report about any violation of the provisions of the law. A Complaints Commission is also set up comprising intergovernmental agency officials to settle administrative disputes arising under the Act. Article 84-101 provides for criminal

⁹ Article 17 of the Constitution

¹⁰ Article 27 (1)

penalties for environmental violations, which is also reflected in sectoral laws like in Article 16 of the River Nile Law¹¹.

Access to environmental information and public participation in decision-making

The Agency for Protection and Development of the Environment¹² is created under Article 2 of the Environmental Law¹³ to be attached to the Minister concerned with environmental matters. The powers of the agency include setting up environmental education programmes for citizens and to cooperate in their implementation. It is also to set up plans for environmental training and supervise implementation. Further, it is to prepare and publish reports on environment.

The membership of the agency includes individual experts, representatives of Non-governmental organizations, government departments, trade and industry and universities. They have powers under Article 5 to prepare draft laws and decrees and express its views concerning environmental legislation.

The Environmental Protection Fund, established in Article 7 of the Decree¹⁴ may be allocated for participating in financing environmental protection projects undertaken by local administrative agencies and Non-governmental organizations to which a portion of financing is provided throughout the public's participation.

EQUATORIAL GUINEA

Access to Justice

Article 60 of the 1982 Constitution provides that the State shall recognize the right to the protection of health. There is no right to a clean environment as such but the protection of the right to health implies a right to live in a clean and healthy environment. The State is required to organize and protect the health of the public, through preventive measures of improvement of the environment in cities and towns and to create the suitable infrastructures, mobilizing the different organizations in charge of carrying them out, in accordance with the law. The main problem however facing the country is the inadequate legal regime for the protection of the natural resources, particularly marine life and forests.

ERITREA

Access to Justice

The 1996 Constitution of Eritrea does not expressly provide for a right to a clean environment but it provides for residual rights in Article 29. This Article provides that the rights enumerated shall not preclude other rights, which arise from the spirit of the Constitution and the principles of a society based on social justice, democracy and the rule of law. However, framework laws recognize the right to a clean environment, Article 12 of

¹¹ Law No. 48 of 1982 Concerning Pollution Protection of the River Nile and the Water Channels.

¹² Also known as the Egyptian Environmental Affair Agency (EEAA)

¹³ Law No.4 of the Year 1994 Promulgating a Law Concerning Environment.

¹⁴ Prime Minister Decree No. 338 of the Year 1995 Promulgating the Executive Regulations for the Environmental Law No. 4 of 1994.

the Environment Proclamation provides for this right. The jurisdiction of interpreting the constitution is conferred on the Supreme Court solely by Article 49(2). Environmental rights can therefore be determined upon the basis of Article 29 and 49(2) by the Supreme Court.

In enforcing the enumerated rights, any person with a complaint shall have the right to be heard respectfully by administrative officials and to receive appropriate and quick response from them (Article 24). In addition any person whose rights or interests are interfered with or are threatened to be interfered with shall have the right to seek due administrative redress. Aggrieved persons shall be entitled to approach a competent court to enforce or protect the right. The court has power to make all orders necessary to secure the applicant's right to enjoy the right and may award monetary compensation in that regard.

Access to Environmental Information and Public Participation in Decision-Making

The Environment Proclamation pronounces a partnership between the Government and the people as the basis for achievement of the objectives of environmental protection and sustainable development (Article 6). Article 13 provides for community involvement in environmental planning and decision making. It further confers on the community access to information necessary to make "conscious and effective participation".

The Eritrean Council for the Environment is composed of a wide sectoral participation to include representatives of Ministries, Universities, Trade and Industry, Non-governmental organizations and Commissions. Their function is to initiate and/or coordinate policies, plans, programmes, laws, regulations and other necessary measures. They are also to ensure integration of local and sub-regional environmental agendas to the national decision-making process.

Eritrean Peoples' Forum for the Environment is also established in Article 28 in village and sub-regional structures to address local environmental issues. Article 40 provides for the freedom of access to any information relating to the implementation of the provisions of the Proclamation and any other environmental laws. The Agency will make the reports on environment available to the public upon request. They may however limit access to proprietary information.

The Agency is also mandated to conduct environmental public awareness campaigns in coordination with line ministries and the Ministry of Education and Information at the central, regional, sub-regional and local levels.

The EIA process also includes invitation of public comments on the EIA report made by Article 51b, and the report itself is a public document to be freely consulted by the public (Article 49).

ETHIOPIA

Access to Justice

The 1994 Constitution of Ethiopia provides for environmental rights under Article 44. It provides that “All persons have a right to a clean and healthy environment. To strengthen the justiciability of these rights, Article 10 provides that human rights and freedoms, emanating from the nature of mankind are inviolable and they shall be respected. All federal and State legislative, executive and judicial organs at all levels shall have the responsibility and duty to respect and enforce the provisions of the Constitution on the rights and freedoms of citizens¹⁵. Their interpretation shall be in line with international instruments to which Ethiopia is a party.

The right to life is also guaranteed under Article 14 and the right to equality before the law in matters of protection under Article 25.

To enforce these rights, Article 37 enables the bringing of suits before a court of law to obtain a decision. Thus everyone has a right to bring a justiciable matter to a court or other competent body with judicial power. Thus environmental rights may be brought before courts. Associations representing collective or individual interest of its members or any group of persons who is a member of or represents a group with similar interests may bring suits before courts or competent bodies. . Thus environmental lobby groups and Non-governmental organizations have standing before the courts in environmental litigation, a situation which is quite a handicap in most African countries.

The right to development under Article 43 also incorporates the concept of sustainable development. But one can question the justiciability of this right under the conditions of the African countries in the sense of their varied developmental needs and priorities.

Access to Information and Public Participation

The Constitution of Ethiopia does not provide expressly for the right to information or public involvement in environmental matters but constitutional safeguards of the freedom of expression provides for the freedom of the press, which incorporates the access to information of public interest¹⁶. Environmental matters are public affairs and hence fall within this ambit.

The freedom of expression in particular includes the right to seek, receive and impart information and ideas of all kinds orally or otherwise. Thus participation of the individual members of the public is encouraged through the exercise of this right. Article 30 and 31 also allow for the freedom of assembly and association respectively. The freedom to assemble includes the freedom to demonstrate peacefully without arms and to petition. The freedom of association can be exercised for any cause or purpose.

GABON

Access to Justice and Public Participation in decision-making

¹⁵ Article 13 (4).

¹⁶ Article 29 (3b).

Article 3 of the 1993 Environmental Act provides for a right to a clean environment and the corresponding obligations both for the State and the citizens to protect and conserve it. Article 5 further grants local communities, public establishments, and groups engaged in environmental activities, rights of participation in the promulgation of rules, regulations and edicts in pursuance of the provisions of the Act. Criminal penalties are also provided for in Chapter Twelve of the Act for violating the provisions of the Act.

GAMBIA

Access to Justice

The National Environment Management Act at S. 4(1) empowers the Attorney General to bring a public interest action, where there has been a refusal by a person to follow certain instructions and he fails to do so, especially where their activities have adversely affected or are likely to adversely affect the environment. The right to life is also guaranteed under the Constitution in Article 18, which impliedly protects the right to a clean environment.

Every person is also empowered to bring a public interest action to protect the environment, but the consent of the Attorney General must be obtained first in order that this avenue may be explored. The Act also provides for criminal sanctions in the event of violating its provisions.

GAMBIA

Public Participation in Decision-Making

The involvement of the public in the making of environmental decisions is a feature in the legislation of Gambia. Every person has a duty to maintain and enhance the quality of the environment including the duty to inform the Agency of activities that affect or are likely to adversely affect the environment (section 3 (1) of the Act).

Public representation in public bodies is also an important feature in framework laws. Thus the composition of the National Environmental Management Council includes “such other person as the President may co-opt”. Thus the inclusion of members of the public in the premier environmental policy making organ of the State ensures the involvement of the public in decision-making. There is also the technical committee of the Agency, which includes experts in the various fields of environmental law.

Local Environment Committees and Ward Environment Committees are also created under S. 17 and 18 respectively of the Act whose composition includes the members of the community where it is based and village elders. Their primary mandate is basically public education and participation in the formulation of local environmental policies.

Access to Information

The Act provides for a right for every person to have free access to any information relating to the implementation of the provisions of the Act or any other law relating to the management of the environment. This is exercised by application to the Agency, which may withhold, refuse or limit access to proprietary information.

In order to be able to provide that information, the Agency is empowered to have access to all public environmental information and to co-ordinate the management of that information. The Agency is also required to gather, analyze, manage and disseminate environmental information. Further, the Agency is equally required to adopt measures for the integration of environmental education in the school curriculum and also to publish the state of the environment reports and to report on the status of environmental awareness.

In respect of Environmental Impact Assessments, the Agency is to invite public comments on the study in general, invite comments of persons most likely to be affected by the project and even to hold a public hearing. The Agency is also expected to study the Report made, invite comments from government departments or agencies and consider all comments made.

GHANA

Access to Justice

The sectoral legislation of Ghana imposes criminal penalties of fines and imprisonment for transgressing environmental laws. The Pesticides Control and Management Act No.528 of 1996 at S.33 imposes specific fines and imprisonment terms for violations of its provisions.

Public Participation in Decision-Making

S. 1 of the Environmental Protection Agency Act No. 490 establishes the Environment Protection Agency. Its Governing Council is composed of a Board, which consists of government officials, representatives of universities, trade and industry, women, local government officials, and research institutions. It is a body responsible for the discharge of the functions of the Agency which includes advising the government on the formulation of policies on all aspects of the environment and liaison and cooperating with government agencies, District Assemblies and other bodies on environmental protection.

S. 11 of the Act further establishes the regional and district offices of the Agency in every regional capital of Ghana and such districts as may be determined. They are zone specific units of the Agency.

Access to Information

The Agency's function includes initiating and promoting formal and non-formal education programmes for the creation of public awareness on the environment (S. 2(m)). It is also to conduct seminars and training programmes and to gather and publish reports and information relating to the environment (S. 2 (p)). To this end, the National Environment Fund is established whose objects include the application of funds to environmental education for the general public (S. 17a).

Sectoral legislation, the Pesticides Control and Management Act oblige the Agency to publish in the gazette annually registered pesticides and their classification, provisionally

cleared pesticides, suspended or banned pesticides and any amendments made to the classification of pesticides

GUINEA

Access to Justice and Access to Information

The 1987 Framework environmental law¹⁷ provides for penalties for environmental transgressions in Article 95-114. Private and public organizations are given the mandate to search for and disseminate environmental information in Article 7 of the Law.

KENYA

Access to Justice

The traditional common-law provision on locus standi has been upheld in a number of court decisions in Kenya, making redress for environmental damage difficult. In *Wangari Maathai v. Kenya Times Media Trust*, the plaintiff, the Coordinator of a local environmental Non-governmental organization, sought a temporary injunction to restrain the defendant from constructing a proposed complex inside a recreational park in the center of Nairobi. The defendant raised the objection that the plaintiff lacked locus standi to bring the suit, and this was upheld by the Court which pointed out that the applicant would not be affected more than any other resident of Nairobi.

This was again upheld in *Wangari Maathai v. Nairobi City Council* in which the plaintiff sued for a declaration that the subdivision, sale and transfer of lands belonging to the local authority was unlawful. The court held that the applicant had no particular interest in the matter. In *Lawrence Nginyo Kariuki v. County Council of Kiambu*, this strict application of the locus standi rule was also applied in rejecting the plaintiff's application.

However, the passage of the National Environmental Management and Coordination Act 2000 has relaxed this requirement of locus standi and S. 3(4) thereof provides that a person shall have capacity to bring action notwithstanding that such person cannot show that the defendant's act or omission has caused or is likely to cause him any personal loss or injury. It also provides for a right of every person to a clean and healthy environment and the corresponding duty to safeguard and enhance it.

Public Participation in Decision Making

Public participation in environmental decision-making in Kenya has not been adequately provided for and or enforced. This has mainly been due to the fragmented nature of legislation on the environment, there being no less than 66 pieces of legislation on management and conservation of the environment. It has been further compounded by generally low levels of active/participative awareness among the majority of the population and gaps and overlaps in the institutional responsibilities, which make enforcement difficult.

¹⁷ Ordonance No. 045/PRG/87 : Portant Code de l'Environnement de la Republique de Guinee.

But with the passage of the National Environmental Management and Coordination Act in 1999, the role of the public has been given a little more improvement. In the drafting process there was active participation of the Government, Universities, Industries, NGOs and local communities. It is hoped that this cooperative and inclusive process will be enforced with the increasing environmental awareness in the country and the highly active civil society movements.

LESOTHO

Public Participation in Decision-Making

The National Environmental Policy of Lesotho provides as a policy objective the encouragement and facilitation of individual, Non-governmental organization, religious organization and business community participation in environmental management (S.2.2.5). This is achieved through activities in programme areas such as gender issues, Non-governmental organization and business sector, science and technology development, participation in decision-making and programme implementation process and environmental education and public awareness (S. 3.3).

LIBERIA

Access to Justice

The Constitution of Liberia provides for fundamental rights, which does not include environmental rights. The main enforcement provision of environmental rights in Liberia is Article 11 (a), which provides that all persons are born equally free and independent and have certain natural, inherent and inalienable rights, among which are the right of enjoying and defending life and liberty and of pursuing and maintaining security of the person. It can be then said that the right to a clean and healthy environment has become of such character of being inherent, natural and inalienable.

In enforcing this provision, a person may invoke the privilege and benefit of a court direction, order or writ including judgment of unconstitutionality. To this, any person has a right to bring suit for appropriate redress. This suit has to originate from the Claims Court, with a direct right of appeal to the Supreme Court (Article 26). The right to appeal from a judgment, decree or decision or ruling of any of administrative board or agency is inviolable (Article 20 b). However, one may seek administrative consideration of a justiciable matter prior to review by a court of competent jurisdiction (Article 65).

Access to Environmental Information and Public Participation in Decision Making

Article 17 of the Constitution provides for a right of all persons to assemble and consult upon the common good, to instruct their representatives, to petition government officials or other functionaries for the redress of grievances. There is also recognized the freedom of expression, the right to hold opinions without interference and the right to knowledge.

The government and its functionaries have a right to inform the public, this right cannot be limited (Article 15). Libraries have a right to make knowledge available by the provision of information.

LIBYA

Access to Justice

The Constitution of Libya, though not specifically providing for a right to a clean environment and the right to petition for the same, provides for a right to resort to the courts in accordance with law. This will include environmental matters as under Article 65 of the Legislative Act No. 7 of 1982 Concerning Protection of the Environment¹⁸ which provides that notwithstanding penal provisions of this and other laws, an injured party's right to claim compensation is not affected. The Constitution further provides that the aim of judicial decisions shall be the protection of the principles of the community and the rights, dignity and freedoms of the individuals. This therefore enjoins the judiciary to make decisions, which furthers the concept of public rights and duties.

Access to Information and Public Participation in Decision-Making

Article 7 of the CPE establishes a Technical Center for the protection of the environment. Its mandate includes conducting various types of information campaigns aimed at promoting increased awareness of the environment and of the rules and principles for its protection from pollution and for the removal of the causes of such pollution¹⁹. The Center will also propose, supervise the application, follow up and implement plans and programmes relating to the environment in Libya²⁰.

Article 13 of the Constitution guarantees freedom of opinion, but within the limits of public interest and principles of the revolution. This can thus be said to encourage non-formal public participation including writing of notes to the authorities on environmental matters.

MADAGASCAR

Access to Justice

The 1992 Constitution of Madagascar does not expressly provide for protection of environmental rights but rather the protection of environmental rights can be derived from the other fundamental rights protected. Article 39 provides that everyone shall have a duty to respect the environment and that the State shall assure its protection.

The Constitution further provides that the law shall assure everyone access to justice, lack of resources will not be an obstacle. This however seems to reflect more on the criminal law than on civil law and environmental law in particular.

¹⁸ Hereinafter referred to as CPE.

¹⁹ Article 7 (5), CPE

²⁰ Article 7 (1), CPE

Public Participation and Access to Information

Article 11 of the Constitution provides that information in all forms will not be subject to restraint. All citizens enjoy the same liberties under the Constitution and equal protection of the law.

Freedom of opinion and expression is also provided for in Article 10 and includes freedom of communication, press, travel, association, assembly, conscience and religion. These freedoms are guaranteed to all. This gives the environmental Non-governmental organizations as an association constitutional basis.

MALAWI

Access to Justice

The Environment Management Act provides for a right to a clean and healthy environment in S. 5(1). It is a duty incumbent on persons empowered under any law to perform functions relating to the protection of the environment to take steps and measures to promote a clean environment in Malawi [S. 3 (2)].

In enforcing the right to a clean and healthy environment, any person may bring an action in the High Court to prevent or stop any act or omission deleterious or injurious to any segment of the environment or which accelerates unsustainable depletion of natural resources. He may also bring an action to procure public officers to take the above measures and also to require the subjection of an ongoing project to environmental audit [S. 5(2)].

Instead of the above procedure, a person may also file a written complaint to the Minister who shall initiate investigations and give a written response within 30 days of all actions taken on the complaint including instructing the Attorney General to take legal action. This procedure does not limit the procedure and rights under S. (2) but an action shall not be commenced before the Minister has responded or where the Attorney General has commenced action on the basis of the complaint.

S. 6 provides that other written laws, which are inconsistent with the provisions of Environmental Management Act, are invalid to the extent of the inconsistency.

Public Participation in Decision-Making

The National Council for the Environment, created under S.9 of the Act is composed of representatives of Non-governmental organizations, trade and industry, universities, women and government agencies. The major function of the Council is to advise the Minister on environmental matters, and to recommend measures for integrated environmental management and harmonization of policies and plans of lead agencies and environmental non-governmental organizations.

Under S.7, the Minister is in charge of policy formulation and implementation in consultation with lead agencies and the public. The Minister is also to receive and

investigate any complaint by any person relating to environmental management and protection. The creation of technical committees under S.5 (1) also ensures that the public is included in the setting up of environmental standards and in the formulation of sectoral policies.

The Council consists of between ten to twenty members with knowledge and experience in environmental management and protection and sustainable utilization of natural resources. Their function includes recommending the criteria, standards and guidelines for environmental control and regulation including the form and content of environmental impact assessment.

The Director is also enjoined to conduct public hearings on the environmental impact reports in order to assess public opinion on the matter. Hence community participation is important in the EIA process of Malawi. The sectoral legislation also involves the communities in the management of natural resources. The Forest Act of 1997 provides for a wide participation of forest related sectors of the country. It also promotes community participation in forestry in S.3(b) and S.4.

Access to Information

S. 25(3) of the Environment Management Act provides that the EIA report shall be open to public inspection provided that the report shall not be used for personal benefits except for bringing civil suits under the Act or under any other written laws on the environment.

S. 52 of the Act provides for a right to access any information submitted to the Director or any lead agency relating to the implementation of the provisions of the Act or other laws on the environment. However, there is no right to access proprietary information without prior written consent from the owner and no publishing or disclosure without the consent of the Director.

The District Development Committees are also empowered in S.19 to promote and disseminate environmental information through public awareness programs. The District Environmental Officer is in charge of promotion of environmental awareness in the District.

MALI

Access to Justice

The right to a healthy environment is provided for in the 1992 Constitution of Mali. The protection and defence of the environment and the promotion of the quality of life is a duty of everyone and of the State. Article 85 confers on the Constitutional Court jurisdiction to entertain matters of constitutional interpretation including matters of the fundamental rights and freedoms of the individual.

MAURITIUS

Access to Justice

The Constitution of Mauritius at S. 3 (a) provides for the right of the individual to life, liberty and protection of the law. S. 17 (1) provides that where any person alleges that any of the provisions of S. 3 to 16 on fundamental rights and freedoms have been contravened in relation to him, he may apply for Constitutional relief. This can be interpreted to make S. 3 separately enforceable.

The Environment Protection Act, 1991 provides for a right, by any person affected in any way by a spill, to seek damages from the owner of the pollutant²¹. Strict liability rules for the owner of the pollutant are provided for in the Act²². The Director of the Department of Environment may also seek recovery of expenses incurred as a result of clean up or removal or any other measures undertaken to reduce, prevent or eliminate the adverse effects of a spill on the environment.

The Environment Adjudication Tribunal is also created in S. 45 to handle environmental issues. Appeals lie to the Supreme Court only on points of law.²³

Public Participation in Decision-Making and Access to Information

The Constitution in S. 3 (b) protects the freedom of conscience, of expression, of assembly and association. This provides a constitutional basis for the formation and operations of environmental Non-governmental organizations and civil society movements. The Environment Advisory Council is established under S. 8 of the Act. It is under the coordination of the Minister in charge of the environment and is made up of several government agencies, private sector organizations, academic institutions and Non-governmental organizations.

The National Environment Commission is the Government chief policy making and coordinating arm and the Council advises the Minister of Environment on the state of the environment and make recommendations on measures to be taken. The Minister of Environment then lays these out in the Commission meetings.

Technical advisory committees may be established by the Minister on specific issues and consists of members selected by him. S. 12 (b) also establishes Environmental Coordination Committee. Its mandate includes the provision of access to information among the different enforcement agencies and Government departments.

The Environmental Impact Assessment procedure in Mauritius provides that the Study be made open to public at all reasonable hours for inspection. However, this procedure is watered down by the exemption of certain undertakings by a public department needed for national interest or for economic development of Mauritius.

²¹ Section 27 of the Act

²² Section 28 of the Act

²³ Section 46 of the Act

The National Environment Fund, established in S. 51 has as its primary objects the promotion of environmental education and research, support for Non-governmental organizations engaged in environmental protection, encouraging local environmental initiatives and to publish reports on the environment. This hence provides the resources needed for public access to information and public participation in decision-making.

MOZAMBIQUE

Access to Justice

The 1990 Constitution of Mozambique guarantees the right to live in, and the duty to defend, a balanced natural environment at Article 72. It is the duty of the State to promote efforts to guarantee the ecological balance and the conservation and preservation of the environment for the betterment of the quality of life of its citizens (Article 37). Workers are also guaranteed the right to a safe, secure and hygienic work conditions in Article 89 (2). The 1997 Framework Environmental Law also recognizes this right to an ecologically sound environment, suitable for physical and mental well being.

In enforcing this right, citizens have the right to present petitions, complaints and claims before the relevant authorities and the duty not to comply with illegal or unconstitutional orders (Article 80). They also have a right to contest (Article 81) and a right to recourse to the courts against any acts violating their rights recognized under the Constitution (Article 82). The State has a duty to guarantee access of citizens to the courts and to make provisions to ensure justice is not denied for lack of resources (Article 100).

The State is liable for damages caused by illegal acts of its agents committed in the exercise of their functions.

Access to Information

Article 74 guarantees the right to freedom of expression, freedom of the press and the right to receive information. The Supreme Council for Mass Communication is to guarantee this right.

Public Participation in Decision-Making

Article 75 and 76 of the Constitution guarantees the right to freedom of assembly and association. Article 185 provides that the local organs of the State are to organize for the participation of citizens in the solving of problems of their community and shall promote local development. This therefore enjoins the organs of State to involve local communities in the development and implementation of environmental policies and projects in their areas of jurisdiction.

The Framework Environmental Law passed in 1997 recognized the need to guarantee the participation of local communities and to utilize their knowledge and human resources in the protection of the environment. A National Commission for Sustainable Development was created, which is a consultative body directly linked to the conservation and

sustainable use of resources. It also provided for the decentralization of management of natural resources down to the district level to facilitate legitimate, cooperative environment of resource management. The National Environment Commission is also established and is inclusive of representatives of government ministries as well as private institutions, such as Non-governmental organizations.

NAMIBIA

Access to Justice

The Constitution of Namibia provides for environment in its Principles of State Policy. Article 95²⁴ provides that “the State shall actively promote and maintain the welfare of the people by adopting policies aimed at maintenance of ecosystems, essential ecological processes and biological diversity of Namibia and utilization of living natural resources on a sustainable basis for the benefit of all Namibians, both present and future.” Article 100 further confers to the State sovereign ownership of natural resources. However, Article 101 provides that the Principles of State Policy, of which mention is made of the environment, are non-justiciable and hence cannot confer a right of enforcement in court.

The right to life can thus be said to be the main enabling provision for enforcing environmental right to justice. Article 6 provides that the right to life shall be respected and protected. Any laws, which tend to abridge or abolish the fundamental rights and freedoms, are invalid²⁵. Aggrieved persons are entitled to seek redress in the courts for enforcement and protection of such right and may seek also legal assistance from the Ombudsman²⁶. The courts have power to award monetary compensation.²⁷

The interpretation of the scope of the rights guaranteed under the Constitution falls on the High Court²⁸, with a right of appeal to the Supreme Court²⁹. The Office of the Ombudsman is also created under the Constitution to investigate complaints or apparent instances of violations of fundamental rights and freedoms.³⁰ His mandate extends also to the investigation of complaints “concerning over-utilization of living natural resources, the degradation and destruction of eco-systems and failure to protect the beauty and character of Namibia.”

There is also a right of appeal from the decisions of the Environmental Commissioner and Board in the EIA process. Further there is access to the courts in this respect.³¹

²⁴ Article 95 (l).

²⁵ Article 25

²⁶ Article 18 and 25

²⁷ ss.4 of Article 25

²⁸ The High Court has original jurisdiction under Article 80 (2)

²⁹ Article 79 (2)

³⁰ Article 91 (a)

³¹ Namibia's Environmental Assessment Policy Cabinet Resolution 16.08.94/002

Public Participation in Decision-Making and Access to Information

The EIA process involves a Scoping feature whereby investigations are made on the project. The proponent of the project will indicate the authorities and public that are likely to be concerned and affected, and the methods to be used in informing and involving them and the opportunities for public input in his EIA report. This will then be examined by the Commissioner to ascertain its effectiveness. Once the report has been made, the Environmental Commissioner will review the document with the assistance of local and or outside experts, sector Ministries and any other organizations/individuals as considered necessary.

When a decision has been made, the record of the decision shall be made available to any interested party, including the public.

NIGER

Access to Justice

The Constitution of Niger guarantees the right to a healthy environment in Article 27. Further, Article 121 of the Rural Code of Niger grants citizens the right to appeal decisions of a *commission fonciere*, local environmental committees. The Code establishes a legal framework for land management, environmental protection and human development in Niger. However, some observers point out that Niger's population being predominantly rural and the economy struggling, much of the population neither understand their legal rights nor the government's legal obligations.

Thus most Niger citizens are unaware of these rights, and the enforcement of judicial decisions is lacking. The effectiveness of any access to justice mechanism depends on an educated and informed citizenry. Effective use of such provisions requires not only education or sensitization of the citizens on these rights, but also specialized training for the judges who must uphold and enforce such right.

Public Participation in Decision-Making and Access to Information in Environmental Matters

Article 118 of the Rural Code provides a form of public participation by institutionalizing the *commission fonciere*s, local environmental committees. The Code states precisely who should be represented on each commission, including representatives of eight local government offices, traditional authority representatives, and one representative each of women, farmers, herders and youth. However, some observers point out that considering the composition of the commissions, combined with the traditional Niger people's deference to governmental and authority figures, the ability of the commissions to provide for real public participation is limited.

NIGERIA

Access to Justice

The 1999 Nigerian Constitution does not expressly provide for a right to a clean environment, however, the protection of the right to life encompasses the right to an environment not detrimental to the right itself (S. 33). The Fundamental objectives and directive principles of State policy provide that the State shall protect and improve the environment and safeguard the water, air and land, forest and wildlife of Nigeria. S. 36 protects the right to a fair hearing within a reasonable time by a court of competent jurisdiction or other tribunal established by law.

The right to seek redress for violation or threatened violation of an individual's fundamental rights is provided for in S. 46 and gives the High Courts original jurisdiction to entertain such applications. There is a right of appeal to the Court of Appeal (S. 239) and finally to the Supreme Court (S. 233) on points of law and constitutionality.

Alternative dispute resolution procedures are also available for parties in environmental disputes. They are mediation (S. 32 of the EIA Decree No. 86/1992) and panel inquiry. Various criminal penalties are also imposed by sectoral legislation for their violation.

Access to Information

S. 39 of the Constitution provides for the freedom of expression, to hold opinions and to receive and impart ideas and information without interference. S 57 (2) of the Decree establishes a public registry to facilitate public access to records of the Federal Environmental Protection Agency. The Agency is required to publish a mandatory study report received in respect of a project proposed to be undertaken.

Public Participation in Decision-Making

The freedom of association is guaranteed under the 1999 Constitution of Nigeria at Article 40. This therefore allows for communal associations and Non-governmental organizations to have a constitutional basis.

The EIA decree provides for the involvement of the public in the development of project appraisals. S. 7 of the Decree provides that before the Agency gives a decision on an activity to which an EIA has been done, it shall give an opportunity to government agencies, members of the public, experts in any relevant discipline and interested groups to make comments of the EIA report of the activity. S. 25 (2) allows members of the public to file comments with the Agency relating to the conclusion and recommendations of the report.

The composition of the Governing Council of the Agency includes government ministers and two members of the private sector who have distinguished themselves in environmental matters. Further, the Technical Committees of the Agency are composed of government ministry representatives, representatives of industrialists, conservation groups

and the public. They are basically policy formulation and implementation bodies of the Agency, and hence the public has a role in these aspects of making decisions and implementing them.

RWANDA

Access to Justice

Environmental rights are not explicitly provided for in the Constitution, but the right to life is protected in Article 12 (1). It provides that the human being is sacred. Thus in order to live that life, it can be construed that the right to a clean environment to live that life is implicit. The Constitutional Court has the jurisdiction to rule on the constitutionality of any legislation or orders intended to be passed by the Legislature.

Access to Information and Public Participation in Decision-Making

The liberty of expressing one's opinion about any subject is guaranteed by the 1991 Constitution of Rwanda. It does not explicitly provide for right to information, but the freedom of conscience and of opinion are expressly provided for in the Constitution.

The freedom of association is also guaranteed in Article 20 of the Constitution hence giving associations like environmental pressure groups and Non-governmental organizations a constitutional basis. Freedom of assembly is also guaranteed in peaceful and unarmed meetings. Hence informal means of public participation like demonstrations are catered for in the Constitution.

SEYCHELLES

Access to Justice

The Constitution of Seychelles confers on every person the right to live in and enjoy a clean, healthy and ecologically balanced environment (Article 38). The State is obliged to take measures to promote environmental conservation, ensure sustainable development by judicious use of resources and promote public awareness on the need to protect, preserve and improve the environment. It is also the duty of citizens to protect, preserve and protect the environment (Article 40).

The enforcement of the right can be taken individually or by a person acting on his behalf, with or without his authority. He may apply to the Constitutional Court for redress directly (Article 46) or where the matter arises in a lower court, be referred directly to the Court. There is also room for appeal to the Court of Appeal from the lower courts. The lower court will dispose of the case in accordance with the ruling of either superior courts. The interpretation of the rights is not to be inconsistent with the international obligations of the country and the courts are to take judicial notice of these international instruments.

Criminal sanctions are provided in the framework legislation for transgressing environmental regulations, penalties being fines and imprisonment.

Public Participation and Access to Information

The Constitution provides for a right of access of any person to information held by a public authority performing a governmental function and to have the information rectified or amended if it is not accurate (Article 28). There is also a right by the public to access information held by the public authorities.

S.4 of the Environment Protection Act 1994, provides that the Minister may constitute a body to collect and disseminate information in respect of matters relating to environmental protection. The constitution of the National Environmental Advisory Council includes representatives of government departments, non-governmental organizations and associations with environment-related functions.

S. 15 of the Act requires the EIA study conducted to be made open to the public for inspection at all reasonable times, but there is a proviso for the exclusion of certain projects from EIA studies in exceptional cases and with the approval of the Cabinet.

SIERRA LEONE

Access to Justice

The right to a healthy or clean environment is not provided for in the Sierra Leone Constitution. However, the protection of this right is in S. 15 (a) where the right to life, liberty, security of person, enjoyment of property and protection of the law is provided. S. 16 protects the right to life, and the right to a clean environment in which to live that life is inherent.

This right can be enforced through section 28, whereby a person can apply by motion to the Supreme Court for redress. In all cases, the Supreme Court will have original jurisdiction to deal with the matter. Where the issue arises in courts other than the Supreme Court, it can be referred to the Supreme Court for determination of the rights.

Access to Environmental Information

The Constitution guarantees a right to hold opinions, to receive and impart ideas and information without interference. This is in Section 25, where the right to receive information is guaranteed. This right also extends to the ownership, establishment and operation of media for the dissemination of information, ideas and opinions. S. 23 provides for the protection of the right to secure protection of the law.

Public Participation in Decision-Making

The Constitution provides for the protection of the right to freedom of association and assembly in S. 26. It includes the right to associate with other persons, to form and belong to any social or professional association, national or international, for the protection of one's interests. Hence, the right to form and join international or national non-governmental organizations is protected. Through these NGO's, the public can participate more in environmental matters, be they as pressure groups or as expert groups.

SOUTH AFRICA

Access to Justice

The right to an environment that is not harmful to the health and wellbeing of an individual is guaranteed under S. 24 of the Constitution. Further S. 38 grants anyone a right to approach a competent court, where he alleges that any of his rights guaranteed under the Bill of Rights has been infringed or is threatened. He may be acting on his own behalf, acting on behalf of another person who cannot act in their own names, acting as a member of, or in the interest of, a group or a class of persons, acting in the public interest or an association acting on behalf of its members.

This has been given judicial backing in *Van Huyssteen and Others v. The Minister of Environmental Affairs and Tourism and Others*.³² In this case, the respondents proposed to build a steel mill on a farm near a national park and a lagoon, and had applied for the rezoning of the land under the Land Use Planning Ordinance, 1985. The lagoon's wetlands were protected in terms of the Convention on Wetlands of International Importance. The lagoon was owned by the trust and the trustees, together with one beneficiary of the trust were the applicants. The trustees intended to build a home on the trust property. Expert opinion was divided on whether the proposed mill would be environmentally undesirable. It was held that they had locus standi to sue as trustees, since their interest in respect of the trust property would be threatened.

The interpretation of the Constitution and the rights guaranteed therein must promote the values underlying an open and democratic society based on human dignity, equality and freedom. The court must promote the spirit, purpose and objects of the Bill of Rights.

The courts on a number of occasions have dealt with the issue of standing to sue. In an earlier decision, *Verstappen v. Port Edward Town Boards and Others*³³, the applicant was the co-owner of certain properties within the area of jurisdiction of the first respondent local authority. One of the properties was adjacent to a worked out quarry and the other opposite it. In 1985, the respondent started using the quarry area as a site for the disposal of waste. The applicant lodged an application to interdict and restrain the respondents from using the quarry and to remove the refuse.

Magid J stated thus about locus standi in environmental matters:

“In order to determine whether a member of the public has locus standi to prevent the commission of an act prohibited by statute, the first inquiry is whether the legislature prohibited the doing of the act in the interest of any particular person or class of persons or whether it was merely prohibited in the general public interest. If the former, any person who belongs to the class of persons in whose interests the doing of the act was prohibited may interdict the act without proof of any

³² [1996] 1 SA 283 (C)

³³ [1994] 3 SA 569

special damage. If not, the applicant must prove that he has suffered or will suffer such special damage as a result of doing the act.”

It was held that the applicant in this case has no locus standi to sue for the damage. This is in contradistinction to later cases where the issue of locus standi has prompted the judges to state that it has since got to be liberally construed.

Pickering J stated in *Wildlife Society of Southern Africa and Others v. The Minister of Environmental Affairs & Tourism and Others*³⁴ that “...time has arrived for re-examination of the common law rules of standing in environmental matters involving the state and for an adaptation of such rules to meet the ever changing needs of society.” In this case, the applicants applied for an order compelling the respondents to enforce statutory duties of environmental conservation. The first applicant was the Wildlife Society of Southern Africa and the second applicant was its Conservation Director. They alleged that land use practices were destructive and or potentially destructive of the ecological integrity of the coastline and constituted a very real threat to the environmental sensitivity of the area. It was held that they had locus standi to apply for an order compelling the State to comply with its obligations in terms of such statute. This case and *Van Huyssteen* case above began an advent of liberal interpretation of the locus standi rules in environmental law.

The Constitution also guarantees the right to have any dispute that can be resolved by the application of the law decided in a fair public hearing in a court or another independent and or impartial forum (S. 34). S. 38 further provides for a right to approach a competent court to seek redress for the infringement of the fundamental rights guaranteed in the Constitution. Juristic persons also enjoy the rights guaranteed in the Bill in so far as they apply to them. The Constitution further guarantees the right to an administrative action that is lawful, reasonable and procedurally fair (S.32).

The National Environmental Management Act No 107 of 1998 provides for various alternative dispute resolution means other than litigation on environmental dispute. They include conciliation and mediation (S. 17), arbitration (S. 19), and investigation (S. 20). These are available for the settlement of environmental disputes, other than litigation. The right to private prosecution can also be exercised to enforce environmental legislation by any body in the public interest, but one has to give notice to the appropriate body and the body has not responded in writing (S. 33). As such, South Africa has been an example of the countries with varied means of access to justice mechanisms under the principles of Aarhus.

Sectoral laws provide for criminal penalties for transgressing environmental laws by imposing fines and imprisonment terms on the violators.

Access to Information

The right to access information held by the Government and private individuals is a constitutional right in the South Africa. S. 32 guarantees this right of access, but has to be

³⁴ Case No 1672/1995

subjected to legislation. In *Van Huyssteen v. Minister of Environmental Affairs & Tourism & Others*, it was held that the applicants had a right of access to documentation held by the Minister of Environment regarding the steel mill, since they required it for the purpose of protecting their rights to the property which was potentially threatened by the steel mill.

S. 31 of the National Environmental Management Act provides for the right of access to information in terms spelt out by the Constitution. The organs of State too have a right of access to information relating to the environment held by any other person.

Public Participation in Decision-Making

The role of the public in decision making on environmental matters is spelt out in the National Environmental Management Act. The general objective of integrated environmental management in the Act is spelt out as to ensure adequate and appropriate opportunity for public participation in decisions that may affect the environment. S. 24 (7) provides that the environmental impact statement procedures must ensure public information and participation in decisions that may affect the environment.

SUDAN

Access to Justice

The Directive Principles in the 1998 Constitution of Sudan at Article 13 provides that the State shall promote public health encourage sports and protect the environment, in its purity and natural balance, in pursuance of safety and sustainable development for the benefit of generations. However, this is just a State policy, which is not justiciable.

Access to justice in environmental matters under the Constitution is not clearly provided for, the main protection provision being the right to life under Article 20. It provides that every human being shall have a right to life, freedom, safety of person and dignity of the honour. This can be said to include the right to an adequate environment for his safety.

The right to litigate shall be guaranteed to everyone and no one shall be denied the right to sue or shall be involved in criminal or civil litigation, save as in accordance with the procedures and rules of law (Article 31). Article 34 provides for a right to appeal to the Constitutional Court to protect his rights as set out in the Constitution, but only after exhausting all administrative and executive means of grievances and complaint procedures. Article 105 (2) further grants the Constitutional Court jurisdiction to deal with claims for the protection of freedoms and rights guaranteed by the Constitution. There is also the office of the Ombudsman, which deals with disputes with the administration.

Public Participation in Decision-Making and Access to Environmental Information

The freedom of expression, reception of information, publication and press guaranteed under Article 25 of the Constitution allows for the involvement of the public in the environmental matters through debates, and provision of information in the media. It allows for “whistle-blowing”, the warning of environmental consequences of activities

undertaken in particular areas. Article 26 guarantees the freedom of association for particular purposes, like trade unions and political parties. This extends to include environmental Non-governmental organizations.

SWAZILAND

Access to Justice

The Swaziland Environment Authority Act 1992 grants a right of appeal to an aggrieved person from any notice, order or decision of the Authority taken in the exercise of its functions under the Act. This right of appeal is to the Minister.

The Draft Environmental Management Bill 2000 grants a person wide avenues to access judicial and administrative justice. S. 58 (1) gives any person power to sue for damages or for an interdict for acts or omissions constituting contravention of the Act, whether or not he suffered or is likely to suffer any loss or harm. S. 81 (1) also grants a right of review to any person aggrieved by any decision made or direction given by the authority of the Board to the Minister.

There are also other powers of application to stay orders³⁵ made under the Act and to conduct inquiry upon application to the Authority. The public may also request the Director of the Swaziland Environment Authority, created under the Act, to conduct investigations on alleged contravention of the Act³⁶ and to issue an order³⁷. If the Director decides not to investigate, the requesting person may lay a charge and initiate and conduct the prosecution and may obtain any assistance from any person in so doing. But for this, he has to notify the Director (Article 56 (4)). Various criminal penalties are also provided for in the Act for the contravention of the provisions of the Act.

Public Participation in Decision-Making

The Draft Environmental Management Bill, 2000 has elaborate provisions on the role of the public in the development of environmental policies and projects in the country. The role of the Environment Authority at Article 12 (r) is to facilitate public involvement in decision-making concerning the environment including establishing procedures to facilitate the submission of comments on licence applications under the Act.

S. 32 (1) subjects projects to the EIA process. All proponents of bills, regulations, public policies programs or plans will be required to submit a strategic environmental assessment of their effects and to receive consent from the Authority. The Minister may convene a public hearing and or public review before making his final determination. Where the project is subjected to an EIA requirement, there may be conducted a public hearing to assess its effects on the public interest. The Minister is to make regulations for the procedural requirements for public hearing. Public hearings and public reviews are the most prominent aspects of the legislation to involve the public. The public will be

³⁵ S. 83 and 84 of the Draft Bill, which has not yet come into, force.

³⁶ S. 57 (1)

³⁷ S. 56 (1)

informed in the gazette of the documents available for public review. S. 59 of the Draft Bill empowers the Minister to make regulations, which enhance the ability of the public to participate in decision-making and to protect the environment.

Access to Information

The Draft Bill provides at S. 12 (q) that the role of the Authority will be to disseminate and facilitate public access to information on the environment, including creating and maintaining an environmental registry. The environmental registry is duly created under Article 50 and will keep documents in paper form in one location and accessible to public viewing during business hours and will also be kept in electronic form, as far as is practicable, in electronic form accessible through a world wide web site in the internet.

S. 38 allows the Minister to order any person to disclose specified relevant information, but may not disclose confidential information. S. 29 (1) provides for the publishing of state of the environment reports every two years.

TANZANIA

Access to Information

S. 11 (1) of the National Environmental Management Act provides that the National Environmental Management Council may call for information from any person or body of persons, which have a bearing on the environmental state of the country.

Public Participation In Decision Making

The participation of the public in the sphere of environmental management in Tanzania is manifested in their representation in the policy-making organs of the State on environmental management. The mandate of the National Environmental Management Council is to stimulate public and private participation in programmes and activities for the national beneficial use of natural resources. They are also to establish and operate a system of documentation and dissemination of information relating to the environment. The Council's primary mandate however is to be the policy formulation organ of the Government in environmental matters and to recommend implementation of the programmes. It is also an advice-giving arm on matters of the environment.

The Council is composed of fifteen members nominated by Ministries and organizations involved in matters relating to the management or protection of the environment. Three other members are also to be appointed by the Minister from members of the public with sufficient experience and qualification in environmental matters.

TUNISIA

Access to Justice

The Constitution of Tunisia guarantees the inviolability of the human person and freedom of conscience and protects the free exercise of beliefs in Article 5.

Access to Information and Public Participation in Decision making

The liberties of opinion, expression, the press, publication, assembly and association are guaranteed in Article 8 of the Constitution, their exercise being subjected to legislation. A consultative assembly, referred to as the Economic and Social Council is created in Article 70, for social and economic matters.

UGANDA

Access to Justice

S. 4 of the 1995 National Environmental Statute grants every person a right to a healthy environment with a corresponding duty of all to maintain and enhance the environment, including to inform the authorities of environmentally deleterious activities. Local authorities and local environmental committees are empowered to bring action in courts notwithstanding the fact that the actions of the defendant has caused or is likely to cause any personal loss or injury.

Any person or group of persons can be granted the Statute in S. 75 also provides for environmental easements upon application to the court and the procedure of their enforcement. S. 105 grants a right of appeal from the decision of the National Environmental Authority by any aggrieved person, and also gives the High Court power to exercise supervisory jurisdiction.

Various environmental offences are provided for in S. 97-103 of the Act and also S. 36 of the 1998 EIA Regulations with penalties and fines imposed.

Access to Information

S. 86 (1) of the Statute gives every person freedom of access to any information relating to the implementation of the Statute but with a proviso that this freedom does not extend to proprietary information which are to be treated as confidential. The Authority is mandated to disseminate information to public and private users and carry out public information and education campaigns.

S. 21 (5) makes the Environmental Impact Statement, a public document, and may be inspected at any reasonable hour by any person. S. 29 (1) of the Regulations makes environmental reports also public documents and access thereto by any person provided for in ss.2 but also with a proviso for the protection of proprietary information in S. 30.

Public Participation in Decision-making

The Principles of Environmental Management in S. 3(2) provides that the Authority is to encourage maximum participation of the people of Uganda in the development of policies, plans and processes for the management of the environment. This is enshrined in the provisions of the Statute with the formation of District and Local Environmental Committees in S. 15 and 17 respectively. Their mandate is basically localized policy

formulation and implementation. The Policy Committee of the Environment, provided for in S. 9 is composed of ministry representatives, academic and research institution representatives, local non-governmental organization representatives and private sector representatives. Its function is to provide policy guidelines, formulate and coordinate environmental policies for the Authority.

The Environmental Impact Assessment procedure includes opportunities for public involvement. There is an opportunity for public hearing provided for in S. 21 and for public comments in S. 20.

ZAMBIA

Access to Justice

The main provision for the protection of the environment in Zambia can be found in Article 12, where the right to life is protected. In order to enforce this right, a person may apply for redress to the High Court under Art. 28 (1) which shall hear and determine the case. It shall make such order, issue such writs and give such directions as to enforce or secure enforcement of the right. There is also a right of appeal to the Supreme Court as long as the intended appeal is not frivolous or vexatious, where an issue of the protection of the fundamental rights is raised in the magistrates courts.

S. 95 of the Environmental Protection and Pollution Control Act 1990 also gives a right of appeal to any person aggrieved by the decisions made under the Act. Penal laws for environmental transgressions are also an important feature in the legislation. Fines and imprisonment penalties are provided for in cases of pollution and failure to adhere to legislation guidelines.

Public Participation and Access to Information

The establishment of the Environment Council under S. 3 of the Act is aimed at a more inclusive regime of environmental policy legislation. The composition of the Board and its functions has been made widely inclusive. The Council is composed of representatives of ministries, research organizations, universities, mining companies, farmers and other interested parties.

The mandate is wide in scope to include doing all things necessary to protect the environment and control pollution. It is also to advise the Government on policy formulation and recommended anti-pollution measures. Further, it is to advise on the need for and to embark upon, general education programmes for purposes of creating an enlightened public on their role in the protection and improvement of the environment.

ZIMBABWE

Access to Justice

There is no express environmental rights in Zimbabwe and even the right to life is couched in terms, which imply only a criminal law perspective. An environmental policy has been promulgated, but the main hindrance has been the fragmented laws with respect to

natural resource management and environmental protection and the fragmented responsibilities among Government departments. There is protected under the Constitution on a broader perspective, the right to life, liberty, security and the protection of the law in Article 11 (a) of the Constitution.

ASIA AND THE PACIFIC

BANGLADESH

Access to Justice

Unlike Article 48-A of the Indian Constitution, Bangladesh has no specific Constitutional provision dealing with the environment. The absence of such specific provision has not prevented the judiciary from extending protection from anti-environmental activities and taking positive action to protect the environment. The Supreme Court has developed the jurisprudence of sustainable development in the course of exercising its powers of judicial review. Rule Nisis have been issued in relation to the leasing of the river which would have caused environmental damage, the unlawful construction of a building, the unregulated operation of a brick yard, the leasing of land to unscrupulous developers, the respect of radiated milk, the unauthorized cutting and raising of hills and motor vehicle pollution.

The Constitution of Bangladesh does not explicitly provide for the right to a healthy environment as a fundamental right. Article 31 however states that “every citizen has a right to protection from action detrimental to life, liberty, body, reputation or property unless these are taken in accordance with law”. Article 32 states, “no person should be deprived of right or personal liberty save in accordance with law”. These articles together incorporate a fundamental right to life.

The Interpretation of fundamental rights was broadened in the 1995 decision of the Supreme Court of Bangladesh decision in *Dr. Mohiuddin Farooque v. Secretary, Ministry of Communication, Government of the Peoples' Republic of Bangladesh and 12 others*. This was a petition against various Ministries and other Authorities for not fulfilling their statutory duties to mitigate air and noise pollution caused by motor vehicles in the city of Dhaka. The Petitioner argued that although the Constitution of Bangladesh contained no specific right to a safe and healthy environment, this “right to life” was enshrined within. This interpretation was supported by Constitutional prohibitions on actions detrimental to life, body or property. It was held that two of the respondents were required to show cause as to why they should not be directed to take effective measures to check pollution.

In *Dr. Mohiuddin Farooque v Bangladesh and others*, the court reiterated Bangladesh's commitment “in the context of engaging concern for the conservation of environment irrespective of the locality where it is threatened”. In this judgment it is expounded that “Article 31 and 32 of our Constitution protect life as a fundamental right. It encompasses in its ambit the protection and preservation of its environment, ecological balance free from pollution of air and water, sanitation without which life can hardly be enjoyed. Any act or omission contrary thereto will be in violation of this same right to life.” (Choudhry, J. par. 101)

The High Court Division, in the case of *Dr. Mohiuddin Farooque v Bangladesh and others* (48 DLR 1996, p.438) stated that the right to life includes the right to fresh air and water and a situation beyond animal existence in which one can expect normal longevity of

life. It appears that the right to a healthy environment has now become a fundamental right, which puts additional responsibility upon the judiciary to ensure the rule of law is guaranteed in cases where the sustainability of a proposed development project is questionable.

The Bangladesh Constitution states that no one can be denied the right to life and property except in accordance with law and if those rights are taken away, compensation must be paid. The laws that regulate a development program in a particular sector usually allow objections to be raised and provide for compensation of all rights and interests affected by relevant projects. Therefore, the people who are adversely affected have the right to ask for compensation.

Procedural measures have been used by the Supreme Court of Bangladesh to investigate environmental complaints. A *Rule Nisi* in the *Sharif Nural Ambia v. Bangladesh* was issued to respondents calling upon them to show cause why multi-story building project should not be declared to have been undertaken unlawfully and against public interest.

In *Bangladesh Environmental Lawyers Association v. The Election Commission and Others*, a 1994 Supreme Court of Bangladesh decision, the petitioner, Dr. Mohiudin Farooque, filed an application alleging that election candidates were flouting election laws and causing environmental noise pollution. The Supreme Court held that in view of the fact that the Election Commission and the Dhaka City Council had taken steps to stop environmental pollution, further direction was unnecessary. The Court did note, however, that it was desirable to mitigate the alleged environmental pollution.

If the process for raising objections under sectoral laws cannot be availed (in most cases, these opportunities are not given), a private person may lodge a civil litigation against the development project. Many such litigations have been contested in Bangladesh, although mostly against land acquisition and not in the case of projects likely to have adverse environmental impacts. However, such proceedings are possible under the law, although assembling the necessary evidence to prove anticipated damages would be a difficult task.

In the case of *Kazi Moklesur Rahman* (26 DLR (SC)44), the Supreme Court granted him standing although he was not a resident of the enclaves acceded to India under the 1973 treaty.

The Supreme Court of Bangladesh has extended the interpretation of “any aggrieved person” in the Constitution of Bangladesh to include not just individually affected persons, but also to the people in general, as a collective and consolidated personality. On two occasions, the question of the standing of the Bangladesh Environmental Lawyers Association (BELA) was kept open: *Dr. Mohiudin Farooque v. The Election Commission and Others* (47 DLR 235) and *Dr. Mohiuddin Farooque v Bangladesh and others* (Writ Petition No. 891 of 1994). The second case relates to 903 polluting industries and factories where the High Court Division of the Supreme Court issued a *rule nisi* in the nature of mandamus. However, in *Dr. Mohiuddin Farooque v Bangladesh and others* (Writ Petition

No. 998 of 1994), in which the legality of an experimental structural project of the huge Flood Action Plan of Bangladesh was challenged, the High Court Division initially rejected the Petition on the ground that the petitioner in that case was an organization, the Bangladesh Environmental Lawyers Association, and they had no standing. The petitioner, the Secretary General of the Bangladesh Environmental Lawyers Association, had filed a petition on behalf of a group of people in the district of Tangail whose life, property, livelihood, vocation and environmental security were being seriously threatened by the implementation of a flood control plain. The petitioner referred a leave of petition to the Appellate Division where the Court granted leave to decide the *locus standi* in the category of public litigation. The Court concluded that the petitioner should be given *locus standi* to maintain the writ position, because the cause the Association bona fide espoused, both in respect of fundamental rights and constitutional remedies, was a cause of an indeterminate number of people in respect of a subject matter of great public concern.

In this same case, a fresh petition was filed by a local resident of the project whose land had been acquired for the project. The High Court issued a *rule nisi* on the respondents to show the legality and public interest in terms of the project. It was held that the *locus standi* in so far as it concerns public wrong or public inquiry or the evasion of fundamental rights of an indeterminate number of people, any member of the public being a citizen or indigenous association as distinguished from a local component of a foreign organization as espousing that particular cause as the person aggrieved and has the right to invoke what you call judicial review jurisdiction under Article 102 of the Constitution.

Public Participation in decision-making

Many sectoral laws explicitly contain provisions to inform local people about projects and to both invite and resolve objections raised. For example, the 1927 Forest Act requires the inquiry and settlement of all private claims when restrictions are to be imposed when the status of a public forest is changed through re-classifying it as a reserved or protected forest. The 1920 Agricultural and Sanitary Improvement Act and the 1952 Embankment and Drainage Act explicitly guarantee the rights of local populations and interest holding parties in proposed project areas to examine and raise objections to the project being considered. Furthermore, neither legal rights nor interests can be extinguished without appropriate compensation. Many of the adverse local social and environmental impacts could be avoided or minimized if the procedures of law were followed.

BHUTAN

Public participation in decision-making

Sophisticated ecological responses to a risk-prone microclimate developed have existed with very little State intervention until development began in the 1960s in rural communities –these factors favored the emergence of local institutions and a string of indigenous knowledge base.

CAMBODIA

Access to environmental information

In relation to public participation, Articles 16 to 18 (Chapter 7) provide for the Ministry of Environment to supply information upon public requests to encourage public participation in environmental protection and natural resource management.

CHINA

Access to environmental information

In 1994, the Research and Training Program on Incorporation of China's Agenda 21 into the National Economy and Social Development Plan was initiated, which put emphasis on sustainable development education so as to enhance public consciousness and promote public participation, through the use of mass media such as newspapers, radio and the television. In addition, it stated that various schools, institutions and universities should be mobilized to spread knowledge about sustainable development, especially among women and children.

Shenyang, as an example, has implemented a number of wide environmental propaganda and education campaigns –through media, special events, public lectures, and public papers. Courses have been organized for directors of government agencies; courses on environmental protection are set in primary and high schools. Special environmental protection programs are available with the participation of citizens, and there is exposure and criticism of illegal pollution sources via radio, television and newspapers. Shenyang Environmental Protection Bureau has organized a variety of environmental protection information and educational campaigns that have been carried out by youth with the aim to encourage other youth. However, clear public awareness of environmental law is not strong, and the majority of the population are unable to make use of the environmental laws in protecting their environment, although the media is playing an increasingly positive role.

Access to Justice

A few victims have informed local government against pollution discharge and a few even brought suits against polluters, which placed pressures on local governments in certain degrees.

Public participation in decision-making

Public participation has been guaranteed by the Constitution and laws pertaining to environment and resource protection.

In 1994, the Research and Training Program on Incorporation of China's Agenda 21 into the National Economy and Social Development Plan was initiated, and stated that a national strategy should be developed to establish related mechanisms for public participation in sustainable development.

The “Sustainable Shenyang” project created in 1994, led by the mayor, has membership from different stakeholder groups including a wide range of municipal agencies, banks, media and educational groups.

Unfortunately, during the decision-making process, there are no existing adequate channels for the communication among decision-makers, enterprises, the public and the media, therefore enterprises may not take initiatives in response to the policies and public may not play a positive role participation, which may influence the effectiveness of the implementation. Efforts made by many actors including citizens, local governments, local EPBs, the scientists, the media, NEPA and the Central Government jointly have affected the placing of water pollution issues on the political agenda –although they are not there until serious pollution had occurred.

FIJI

Access to environmental information

Some effort has gone into public awareness programs carried out by the DOE and several NGOs – but despite efforts, the open response to the environmental degradation in Fiji by the general public has been relatively poor. A 1992 survey showed reason for public remaining quiet on issues concerning the environment was the inability to articulate concerns and an inability to act on them. In Fiji’s multicultural society, with its imbalances in land ownership, economic involvement and cultural values, it is not surprising there is a wide divergence in environmental awareness. It is clear that landowners will determine the efficacy of initiatives in sustainable resource use and environmental control. There is a growing level of environmental awareness among rural communities (for example, concerns voiced to Cakaudrove Provincial Council resulted in operations of Mt. Kasimine being suspended).

Public participation in decision-making/access to justice

In Fiji, land resource degradation is caused by widespread forest fires, the cultivation and overgrazing of steep slopes, agrochemical misuse, loss of prime agricultural land for housing and unsustainable logging practices – the landowners and their representatives have the legal power to influence those practices through the Native Land Trust Board (NLTB) but do not exercise it.

The Sustainable Development Bill (SDB) will provide the basis for creating, through a public consultation process, a variety of new environmental management policy initiatives including: integrated coastal management, sustainable forestry and conservation, management of protected areas, contaminated sites, pollution control, waste management, turtle conservation and management, coral reef management. The institutional structure to be established under the SDB will result in an environmental policy, which will entail broader consultation with, and participation by, the stakeholders. Decisions taken in transparent consultation with the community and the private sector have much more chance of being successful.

INDIA

Access to environmental information

To further the concern that the environment may not be degraded the Supreme Court has sometimes assumed a sort of advisory role. In pursuance of its own directive role to the authorities to anticipate and eliminate the cause of environmental degradation, the Supreme Court in the case of *M.C Mehta v Union of India*, ruled that environmental education should be compulsory.

The petitioner, M.C. Mehta in the 1992 Supreme Court of India decision, *M.C Mehta v Union of India and Others*, asked the Supreme Court to issue direction to cinema halls, radio stations and schools and colleges to spread information relating to the environment. The petitioner made this application on the grounds that the Indian Constitution required every citizen to protect and improve the natural environment, including forests, lakes, rivers and wildlife, and to have compassion for living creatures. To fulfill these obligations to the environment, the petitioner argued that people need to be better educated about the environment. The Court agreed and noted that it was the Government's obligation to keep citizens informed about such matters, and hence issued the requested directions.

The Ministry of Environment and Forests has instituted "Paryavaran Vahinis" from 1992-1993 with the basic objective of creating environmental awareness through people's participation. In addition, 3,000 Eco-clubs have been set up in schools with the Ministry's assistance.

Access to Justice

The Supreme Court and the High Courts of India have exercised jurisdiction and passed orders ensuring curing, preparing and preventing of ecological damage. This has been achieved by superior courts entertaining writ petitions by way of public interest litigation. Public interest litigation is in the nature of a class action brought about by filing a writ petition with a view to protect ecology, prevent pollution and bring benefit to the victim by having the court award damages in appropriate cases. The orthodox rule that the petitioner must have a personal interest in order to have a *locus standi* to file a writ petition has been eliminated. Individual environmentalists, non-governmental organizations and others have been filing writ petitions relating to different types of polluting industries as well as for the law enforcement and implementation of the provisions of the environmental Acts.

The public's right to know was emphasized in *Bombay Environment Action Group, Shaym H.K. Chainani Indian Inhabitant, Save Pune Citizen's Committee v. Pune Cantonment Board*, a 1986 decision in the High Court of Judicature, Bombay. In this case, the Supreme Court upheld the right to information and the rights of recognized social action groups to obtain such information, stating that the disclosure of information in regard to the functioning of the Government and the right to know flows from the right of free speech and expression guaranteed under the Constitution. The Court also said that "people's participation in the movement for the protection of the environment cannot be over-emphasized." To stimulate public participation, people need education.

The inherent power and extraordinary jurisdiction of the Court was highlighted in the 1995 decision of the Supreme Court of India decision in *Research Foundation for Sciences, Technology and Natural Resource Policy v. Union of India*. In this case, given the magnitude of the problem of the generation of hazardous waste, and the promptitude with which it needed to be tackled before the damage became irreversible, the Court gave notices to the State Government and the State Pollution Control Board to comply with the Basel Convention and close all unauthorized hazardous wastes handling sites. Here, affirmative action by the Government was required within a stipulated time.

The 1998 Supreme Court of India decision *M.C Mehta v Union of India and Others*, provided an example of the advancement of the concept of sustainable development underlying judicial decision-making. Here, the court accepted the position for a writ of mandamus to restrain a series of tanneries from disposing of effluent into the River Ganges. The Court observed that while it was conscious that its decision to prevent tanneries, which were polluting the River Ganga from operating until they installed primary effluent treatment plants, could bring unemployment, the decision to defend and improve the environment for the present and future generations had become an imperative goal. The tanneries were ordered closed until such time as primary waste treatment systems were installed despite the fact that the court was aware that the order would cause economic hardship. The court noted Article 48-A and 51-A of the Constitution and also quoted with Approval the Declaration adopted at the UN Conference of Human Environment in 1972.

Another recent development is the tendency of the courts to encourage a sort of specialization in the field of environmental disputes. In the *Vellore Citizen's Welfare Forum* case, the Supreme Court observed that the High Court of Tamil Nadu will be better placed to ensure that the orders of the Supreme Court were faithfully implemented. Consequently, a request was made to the Chief Justice of Tamil Nadu to constitute a special "Green Bench." These benches developed an expertise in the area, and are therefore better able to effectively deal with the problems that arise. In fact, as the Court observed in *Vellore Citizen's* case, such benches already exist in various High Courts across the country. This institution of special benches becomes all the more necessary, given the fact that environmental disputes raise questions of ever increasing complexity, questions to which a generalistic judge might consequently find harder to find answer. This development will ensure that justice is done not only to the environment but also to the people affected by the degradation and also to the alleged polluter.

The polluter pays principle was specifically addressed in the 1996 Supreme Court of India decision in *Indian Council for Enviro-Legal Action v. Union of India*, where an action was brought to stop and remedy the pollution caused by several chemical industrial plants in Bichri village, Udaipur district, Rajasthan. Here, previous Court orders to the respondents directing them to, among other things, control and store their sludge had been largely ignored. The Court noted the finding in the *Oleum Gas Leak Case II* under which an enterprise that is engaged in a hazardous or inherently dangerous activity which results in harm to anyone, is strictly and absolutely liable to compensate all those who are affected by the accident. This rule strayed from the exceptions of strict liability set forth in *Rylands v. Fletcher* as this particularly suited the conditions from India. The Court strongly

endorsed the polluter pays principle, under which the financial costs of preventing or remedying damage lie with those who cause the pollution.

The polluter pays principle also played a role in the 1996 Supreme Court of India decision, *Vellore Citizens Welfare Forum v. Union of India*. Here, the Court noted that although the respondent leather industry was a major foreign exchange earner for India and provided employment, it did not mean that it had the right to destroy the ecology, degrade the environment or create health hazards. The Court ordered the Central government to establish an authority to deal with the situation created by the tanneries and other polluting industries in the State of Tamil Nadu. This authority was to implement the precautionary principle and the polluter pays principle and identify the loss to the ecology/environment, and the loss to individuals and families who had suffered because of the pollution, and then determine the compensation to reverse the environmental damage and compensate those who had suffered. The Court ordered for the establishment of an Environment Protection Fund and the establishment of effluent treatment plants or individual pollution control devices.

The 1990 decision, *Union Carbide Corporation v. Union of India and Others*, shows the extent to which the Indian Court will go to award damages. In this case, the victims of the Bhopal gas leak disaster and the State were awarded a sum of US dollars 470 Million. As per the 1980 decision of the Indian Supreme Court, *Ratlam Municipality v. Vardhichand*, a Municipal Council constituted for the precise purpose of preserving public health and providing better facilities, cannot run away from this principal duty by pleading financial inability.

Public Participation in decision-making

India's Eighth Five-Year Plan (1992-97) identified people's initiative and participation as a key element in the process of development. It also recognized that the role of the Government should be to facilitate and strengthen the process of involvement of major groups by creating the right types of institutional infrastructure. The Ninth Five-Year Plan (1997-2002) includes the objective of promoting and developing participatory institutions like Panchayati Raj institutions, cooperatives and self-help groups.

The roots of a growing trend towards public participation in conservation and natural resource development programs lies in the Constitution provisions: the Constitution states that it shall be the duty of every citizen to protect and improve the natural environment, including forests, lakes, rivers and wildlife, and to have compassion for living creatures.

In India, the need for community participation in development activities has been fully appreciated and recognized. It is realized that development activities undertaken with the active participation of major groups have greater chance of success and can also be more cost effective. In the area of education, health, land improvement, efficient land use, minor irrigation, watershed management, recovery of wastelands, afforestation, and animal husbandry, considerable progress has been achieved by creating institutions for people and encouraging community participation.

There are over 10,000 NGOs in India ranging from national agencies to local groups, from research organizations to mass-based field organizations. Many of these are engaged in promoting eco-development, waste management, forest conservation, preservation of genetic diversity, and eco-friendly techniques in industry and agriculture. Voluntary agencies have developed a variety of innovative approaches that could help secure the involvement of local communities, particularly the poorer sections, in various developmental activities. The Council for Advancement of People's Action and Rural Technology (CAPART) is the agency for financing and assisting voluntary action in the area of rural development.

INDONESIA

Access to justice and access to information

The environmental NGO movement in Indonesia is significant. In 1980, the then State Minister for the Environment, Emil Salim, promoted the creation of WALHI, a forum for environmental organizations initiated by a group known as *Kelompok Sepuluh* (Group of Ten). These organizations subsequently became participants in the WALHI network. There are now over 330 environmental groups affiliated to WALHI. In total, there are over 600 NGOs working on environmental issues throughout Indonesia. In 1988, WALHI became the first NGO to obtain legal standing to sue upon an environmental issue in the case of *WALHI v. Indorayon*. Following this, WALHI obtained standing as a community group in two other suits: *WALHI et al v. Mojokerto District Prosecutor* and *WALHI et al v. President of Indonesia*. These three cases were the genesis of the development of public interest environmental litigation in Indonesia. Despite the significant advances made by WALHI and other NGOs, numerous difficulties still exist, chief of which is the lack of access to information and participation. Even though laws provide for such access, it is usually difficult in reality to obtain public information on issues like land ownership. Second, even though the standing of NGOs is now recognized, actual vindication of environmental rights is lacking. In all 24 environmental cases brought by local communities between 1988 and 1994, not a single one succeeded. Third, environmental activists in Indonesia constantly face the stigma of being branded as "anti-development", or even "communists". Hence, it appears that while their achievements have been encouraging, NGOs still face significant challenges in Indonesia.

Access to Justice

Indonesian environmental legislation provides for environmental dispute settlement either through judicial or extra-judicial means. Judicial settlement anticipates the payment of compensation and the issuance of orders to carry out certain actions. Two, very significant features of the 1997 Environment Management Act appear in chapter VII – first, strict liability is prescribed for violations involving hazardous and toxic materials which cause significant impact to the environment. Even before the cases reach the courts, significant procedural difficulties stand in the way of the plaintiffs' claim. The recognition of environmental NGOs' standing may have gone some way towards alleviating *locus standi* problems, but substantial difficulties remain with the gathering of evidence. To begin with, it is generally very difficult to persuade the police and the prosecutors to investigate environmental violations, especially if the defendants are powerful business

concerns. Litigious cases take a long time to conclude and often entail considerable expense and effort for plaintiffs. This may in part explain the recent emphasis on alternative dispute resolution (ADR) mechanisms, which are seen to be consonant with the *musyawarah* (consensual) culture of administration popular in Indonesia. In spite of all these problems, several major cases have been brought to court, primarily by the NGOs. However, the success rate is not particularly encouraging. Several observers feel that the NGOs have managed to halt infringements of environmental regulations by instituting court cases, while others feel that the courts have been rather weak in applying environmental law and unwilling to act independently of executive policy or against well-connected parties. Ultimately, a balanced opinion can be maintained – that although the scope for enforcement of environmental law through the courts is widening, success in obtaining actual remedies is still extremely limited.

Public participation in decision-making

The Ministry of Environment completed the Agenda 21 Indonesia document at the end of 1996. The project involved 22 national consultants who formed working groups comprising government officials, NGOs, academics, the private sector, and the general public. The document contains recommendations for sustainable development up to the year 2020 for each sector of development.

At the policy level, many regulations contain provisions on people's participation in various ministries such as agriculture, forestry, environment and population. A recent attempt at formulating policy for people's participation is Government Regulation No. 69/1996 on Implementation of Rights and Obligations, Form and System of Community Participation in Spatial Planning. This is derived from Act No. 24/1994 on Spatial Planning. The regulations contain provisions on the right of the community to participate in the process of spatial planning, to know spatial plans in detail, benefit from spatial use and acquire compensation for conditions created as a result of development activities. However, the regulation is yet to be disseminated and understood by the general public. Also, it does not contain provisions on sanctions if any rights were violated, thus the enforceability may be weak.

JAPAN

Access to environmental information

The New National Plan of Action Towards the Year 2000 (formulated in 1987 and revised in 1991) attached importance to the implementation of activities related to environmental education of the general public, environmental learning, the Eco-Mark system with regards to environmentally-friendly products, with the active participation of men and women.

Japan set goals to make efforts to enhance events concerning environmental conservation in which children and youth participate, and to further improve environmental education in schools, homes and regions, and environmental education through direct contact with nature.

Public participation in decision-making

The National Basic Environment Plan, developed in 1994, includes the principle of full participation by all sectors and people in environmental conservation activities and promoting global environmental policy. The Global Warming Policy Promotion Act in 1988 supports citizens activities in climate change.

The Government stated in Agenda 21 goals that it would try and provide assistance to private organizations for projects which supply children and youth to express their opinions about environmental conservation.

MALAYSIA

Access to environmental information

The mass media has been quite cooperative in presenting various articles aimed at increasing public awareness and there are a variety of public awareness programs.

Under the Department of Environment a promotion of environmental awareness and environmental education has been intensified.

Access to justice

The environmental NGO movement in Malaysia has witnessed increasing involvement and exposure in recent years. Several well-publicized environmental incidents like the controversies surrounding the construction of the Bakun Dam and the Asian Rare Earth case have thrust NGOs to the forefront of public attention. In these cases, several NGOs led public protest movements and even court litigation to seek remedies against environmental violations. NGOs like Sahabat Alam Malaysia (Friends of the Earth Malaysia), the Consumers' Association of Penang, the Ratepayers Association of Penang and the Third World Network have been vociferous in their resistance to several developmental projects which threaten environmental quality. The environmental NGOs in Malaysia face many challenges, chief of which is the difficulty in having their standing to sue (*locus standi*) recognized by courts.

Judicial recourse is available only to persons who can demonstrate a sufficient connection with or interest in the subject matter in dispute. Recent court cases in Malaysia have consistently denied the *locus standi* (the right to sue) of environmental NGOs. In the Bakun Dam litigation, the plaintiffs argued successfully before the High Court that as residents in the affected area, they were directly and adversely affected by the inundation of the land caused by the construction of the dam. The Court of Appeal, however, disagreed for several reasons. First, the plaintiffs had suffered no injury –even if the word “life” in Article 5(1) of the Federal Constitution were to include the right to a reasonably healthy and pollution free environment, such rights may be extinguished “in accordance with existing law”. Second, there was no suggestion that the plaintiffs were championing the cause of the other 10,000 natives whose livelihood and customary rights were equally affected by the project. Any injury suffered by the plaintiffs was not over and above the injury common to all others. Third, the Court of Appeal felt that the High Court judge

failed to consider the public and national interests involved, in particular the interests of justice from the defendants' point of view. Hence, arising from the courts' strict interpretation of *locus standi*, environmental NGOs have had to resort to a host of non-legal measures to bring attention to their cause.

The Department of Environment has found an ally in its efforts to enforce the laws –the courts in recent times have turned a sympathetic ear to the speedy hearing and disposal of environmental cases.

Public participation in decision-making

The Environmental Quality Act contains several interesting and progressive provisions. One is the establishment of an inter-agency body known as the Environmental Quality Council to advise the Minister on various spheres of environmental protection. The Council is made up of representatives of several ministries, the East Malaysian States of Sabah and Sarawak, the petroleum, oil palm, rubber and manufacturing industries, registered societies as well as academia.

The federal EIA process requires public consultation requirements before an EIA can be approved.

In the drafting of plans at the state level, environmental considerations including consultations with interest groups are incorporated.

Mechanisms exist to promote and allow NGOs to participate in the conception, establishment and evaluation of official mechanisms to review Agenda 21 implementation. Several environmental NGOs participate in the Inter-Agency Planning Group. NGOs are not included in national delegations to the United Nations Commission on Sustainable Development but are adequately consulted at the national level. The Government provides financial and technical assistance to support the role of major groups in the Inter-Agency Planning Group through allocation from the relevant ministries.

In Kuala Lumpur, the drastic decline of air quality has raised concern among the general public over the seriousness of pollution. During serious episodes of haze in Kuala Lumpur, the public, the mass media, businesses and local volunteer bodies started collaborating in efforts to mitigate the various related problems, including organizing volunteer monitoring units and reporting occurrences of slash-and-burn cultivation. Hopefully, interest and attention will spill over to issues of river pollution and waste management. The level of public awareness on environmental issues is sufficiently high and renewed public interest in environmental issues was kindled by the recent haze over Malaysia. The crisis as well as the public response reached such alarming levels that renewed calls were made for the implementation of the postponed air pollution control measures.

Under the EIA requirements, the public is invited to comment on projects that entail detailed assessments and the EIA report is made public. Unfortunately, the same practice is not extended to projects subject to EIAs at the preliminary assessment stage. Public

comments currently lack in quantity and quality, but questions regarding public right of access to reports and public participation are increasing in environmental monitoring.

MAURITIUS

Access to justice

The Environmental Appeal Tribunal, an independent and impartial body, was established by the Environmental Protection Act in 1991, became operational in 1993 and started functioning in early 1994. The Tribunal hears and determines appeals by aggrieved persons against decisions of the Ministers regarding EIAs, enforcement notices and requirements for compliance monitoring.

NEPAL

Access to environmental information

In implementing the National Conservation Strategy, efforts towards conservation awareness have been comprehensive and fairly systematic. The dissemination of information has become an most important aspect and several measures have been undertaken to disseminate information among various sections of the population.

The incorporation of environmental subjects has been the most significant action in information dissemination (elementary school courses in every school, teacher training, environmental subjects in Bachelor of Education program, various training centres, Nepal Forum of Environmental Journalists). Environmental NGOs are also using video films, street theatres, wall posters, newspapers, radio, and symposia as well as workshops for the more highly educated members of the population.

Significant progress has been made in the public awareness program but mass awareness of environmental problems and their causes, and the required measures for preventing and mitigating such problems is quite low.

Public participation in decision-making

Participation of the community is now considered a must for protecting the environment (e.g. the forestry sector). Some 5000 community forests have been organized and handed over to the respective communities. The successful Annapurna Conservation Project presents a good example of success on managing natural resources while at the same time promoting economic development-resource management development activities are simultaneously carried out in a decentralized and participatory manner at the local level with the role of authorities redefined as promoters and facilitators. This involves active participation of the local community at all stages of sustainable project planning, implementation, monitoring and evaluation.

The IUCN has been helping to develop sustainable village-level strategies and plans, and in assisting local institutions to develop and implement conservation action plans. (For example: Sustainable Local Level Plans in various villages, a Conservation Action Plan in Pokhara) Plans are drawn up on the initiative of, and rely on the active participation of the

stakeholders, with outside experts acting as facilitators only. The Participatory District Development Program (UNDP/Ministry of Local Development), considered to be one of the most successful programs ever in Nepal because of its sustainable impact on the education and training of local people in environmentally-friendly development. The UNDP Parks and People Program, which stresses that the involvement of local people, has been imperative in sustaining conservation efforts. Emphasis is placed on human resource training.

PAKISTAN

Access to environmental information

The Environmental Protection Agency (established in 1989) provides training program especially for government and industrial management and provides information and education to the public through mass media.

Access to justice

Most cases pertaining to the environment have been decided on the basis of Article 9 of the Constitution which provides for, *inter alia*, the right to life. In the case of *Shehla Zia v. WAPDA* (PLD 1994 SC 693), the Supreme Court expanded and enlarged the scope of the right to life and applied the precautionary principle. The Court expressed the view that the provisions of clean and unpolluted drinking water is a fundamental right enshrined in Article 9 of the Constitution. The Court held that life does not simply mean animal life or vegetative existence. It stated that the word "life" is significant as it covers all facets and aspects of human existence. The Court went on to observe that life includes such amenities and facilities to which a person born in a free society is entitled. The Court concluded that the installation or construction of a grid station or transmission line in the vicinity of a populated area may expose the residents to the hazards of electro-magnetic fields and is therefore in violation of Article 9 of the Constitution. Here, the Court also advocated the precautionary principle for the legal system, including both the judiciary and the various regulatory agencies, when responding to scientific uncertainties in the evidence before them. Here it was emphasized that a policy of sustainable development should be adopted to strike a balance between economic progress and prosperity and to minimize possible hazards.

In another human rights case (1996 SCMR 543), the Supreme Court directed the Provincial Government of Sind to take effective measures with regard to eliminating the pollution caused by vehicles. The Court ordered that all vehicles, whether privately owned or publicly owned, should be inspected regularly. The Court directed that motorcycles and auto-rickshaws must not be allowed to operate without silencers. The Court also ordered a ban on the use of pressure horns and multi-tone horns.

In the case of *General Secretary, W.P. Salt Miners Labour Union v. Director, Industries and Mineral Development, Government of the Punjab* (1994 SCMR 2061), the Supreme Court expressed the view that the provisions of clean and unpolluted drinking water is a fundamental right enshrined in Article 9 of the Constitution. Any effort or activity that deprives the citizen of this right is violative of the Constitution. The Court

therefore prohibited further mining in the area as it may contaminate the water reservoir used as drinking water by the residents. The Court went on to elaborate that the Constitution provides for the right to life and ensures the dignity of man. The Court further stated that it would not hesitate to stop the functioning of factory that creates pollution and environmental degradation. As a result of the Court's observations and judgments, together with appropriate directions and instructions issued to the Government and public authorities, remedial actions and measures were undertaken. These included the shifting of hazardous and dangerous machinery and installations away from residential areas, inspecting premises to ensure compliance with the law, and controlling pollution and degradation of the environment. The pronouncements also served an important purpose in arousing public opinion and bringing about public awareness on the issue of protecting and preserving the environment.

Environmental tribunals have been constituted with exclusive jurisdiction to try serious offences under the 1997 Environmental Ordinance (S.20). Minor offences related to pollution by motor vehicles and the violation of rules and regulations etc. are tried by Environmental Magistrates.

An "aggrieved" can file a complaint with the Environmental Tribunal after giving 30 days notice to federal or provincial agency.

Besides exercising their ordinary jurisdiction, the superior courts have also exerted extraordinary jurisdiction conferred by the Constitution (Article 184(3)). Jurisdiction has been exercised through filing of regular petitions or receipts of complaints through letters from concerned citizens or social activists. Many times the court has initiated *suo moto* action. In the process, the courts have passed important orders and land judgments on environmental issues. For example, the Supreme Court took *suo moto* notice of a news report that certain businessmen were purchasing land to use to dump hazardous waste. The Court issued direction to the Provincial Government that no person could be allotted land for such use, asked for a list of those who had already been allotted land, and ordered that a condition be inserted in agreement of allotment to effect that land could not be used for the dumping of waste. In 1996 SCMR 543, the Supreme Court ordered the Government to take effective measures to deal with pollution caused by vehicles, ordered regular inspections and banned certain horns.

As a result of the Court's observations and judgments, together with appropriate directions and instructions issued to the Government and public authorities, remedial actions and measures have been undertaken. This includes the shifting of hazardous and dangerous machinery and installations away from residential areas, inspecting premises to ensure compliance with the law, and controlling pollution and degradation of the environment. The pronouncements have also served an important purpose in arousing public opinion and bringing about public awareness of protecting and preserving the environment. The Supreme Court ordered establishment of a Commission to Review Environmental and Health Impacts of Transmission Line projects.

The Draft North-West Frontier (Pakistan) Environmental Act 1996 includes rights of citizens to a healthy environment, the right of access to information concerning the environment, the right of participation in decisions that affect the environment, the right to an investigation of an alleged offence under the Act, the right of employees to protect against victimization in cases where they file a report or complaint regarding contravention of the Act and the right to initiate legal action regarding failure to comply with the Act.

Public participation in decision making

The National Conservation Strategy of Pakistan has an operating principle of achieving greater public partnership in decision-making. This strategy evolved through extensive process of experts consultations, dialogue with target groups, seminar and meetings, and from a policy adopted in 1993.

The North-West Frontier (Pakistan) government prepared the Sarhad Provincial Conservation Strategy (SPCS). The process involves roundtable discussions constituted from among the stakeholders from within and outside Government. The aim is to improve communications, develop ideas, provide a platform for conflict resolution and policy negotiations and contribute to the monitoring of SPCS implementation. The main role of the focal points of each round table event is to integrate environmental considerations into the activities of the key government departments and to enhance their environmental management capacity.

The work on the National Conservation Strategy created a constituency of people more concerned about the environment and more prepared to do something about environmental protection than ever before. Public hearings were held to hear views of local communities from the Aga Khan Rural Support Program in the Northern Areas to the Orangi Pilot project in Karachi. participatory organizations have proved to be effective agents of change in efforts by society to move towards sustainable development.

The drafting of the Pakistan Environmental Protection Act 1997 had put input from individuals, groups, media, parliamentarians, federal and provincial government functionaries, chambers of commerce and industry, bar councils, journalists, educational institutions and NGOs. Special workshops were held to elicit views and comment, under sections 5(6) and 8(6). Now, federal and provincial advisory committees shall be established for various sectors with representatives from the relevant sectors, educational institutions, research institutions, and NGOs. Proposed National Environmental Quality Standards shall be published for public opinion before being approved (S. 6(1)).

PHILIPPINES

Access to justice/access to information)

The Non-governmental organization (NGO) movement in Philippines is extremely vibrant, particularly in relation to environmental protection. Most NGO activities focus on community-based resource management and the defence of environmental rights. In relation to the latter, litigation before the courts is generally not preferred. Legal remedies

are not recognized as the best solution to protect environmental rights, due to the lack of sufficient enforcement in the Philippines. Environmental NGOs prefer “metalegal strategies” wherein organized citizenry participate in creative and resourceful activities which employ the constitutional rights of freedom of assembly and expression to call public attention to their cause.

The most significant and respected environmental NGOs are the Legal Rights and Natural Resources Inc. (LRC – Friends of the Earth), the Environmental Legal Assistance (ELAC) and Tanggol Kalikasan. These are coalitions of environmental NGOs which have involved themselves in matters relating to legal rights, indigenous peoples, natural resource protection and exploitation of local communities by corporations. In recent years, many NGOs have allied themselves into coalitions for increased exposure and efficacy. The social and political culture in the Philippines is extremely tolerant of and receptive to the work of NGOs. Hence NGOs wield significant influence over the shaping of public opinion and even governmental policy, even though they receive little financial assistance from the Government. Most derive financial support from client revenue, private groups and international institutions like the Rockefeller Foundation and USAID.

Even though the work of environmental NGOs in the Philippines is far-reaching, the multitude of environmental problems which exists still overwhelms their environmental protection efforts. Much remains to be done, and environmental NGOs require tremendous financial, manpower and moral support to build upon whatever benefits they have hitherto brought to local communities facing environmental problems.

The current education system is weak in aspects related to the environment. Only a limited number of institutions of higher learning have integrated environment into their curricula. The Government has identified a clear plan for information dissemination and education in Philippines Agenda 21- recognition and adoption of sustainable development as the new development paradigm, the broadening and mobilization of an active sustainable development constituency from various sectors and all levels of society.

To popularize the Philippines Agenda 21 principles and strategies, the Philippines Council for Sustainable Development (PCSD), through its Subcommittee on Information and Education, took the initiative in the areas of print and broadcast media. Materials have been distributed to PCSD member agencies, which in turn disseminate copies to their stakeholders and local counterparts. Training seminars, briefings and workshops are also venues for the dissemination of materials. Local dialect versions are currently in the development stage, including a PA 21 Popular Book Version. A monthly media forum entitled “Talakayan Kalikasan” provides the opportunity to discuss sustainable development related issues.

Access to justice

The courts in the Philippines have been progressive (relative to other regional countries’ courts) in their recognition of environmental rights. Various cases on land rights and environmental protection have been successfully fought in court, many of them by public interest lawyers and environmental NGOs. One of the most significant in recent

years is *Oposa v. Factoran Jr.*, wherein the Philippines Supreme Court recognized the right of future unborn generations to the environmental patrimony of their country. It appears that the vindication of environmental rights in the courts will continue to complement the administration's enforcement procedures, as well as the "metalegal strategies" favoured by NGOs.

In the Supreme Court of the Philippines decision of *Juan Antonio Oposa v. The Honourable Fulgencio S. Factoran and Another*, the petitioners were a group of Filipino minors who brought this action *on their own behalf and on behalf of generations yet unborn*, claiming that the country's natural forest cover was being destroyed at such rate that the country would be bereft of forest resources by the end of the decade, if not sooner. The suit was brought against the Department of Environment and Natural Resources concerning its role in Granting Timber licence Agreements beyond the sustainable capacity of the forest. In this case, 45 Children, represented by their guardians, instituted action on behalf of their generation and future generations. They brought their action as a taxpayer's class suit claiming that they were entitled to the full benefit, use and enjoyment of the country's natural resource treasure. The petitioners led extensive scientific evidence of the adverse effects to support their case and pleaded that the acts of the respondent constituted a misappropriation and/or impairment of the natural resource treasure that is held in trust for the benefit of future generations. The petitioners further pleaded that they had a constitutional right to a "balanced and healthful ecology" and were entitled to the protection of the State in its capacity as *parens patriae*. The Court here recognized the citizens' and NGOs standing to sue for the protection of the environment as an inter-generational right. The Court held that the petitioners had the right to sue on behalf of succeeding generations, because every generation has a responsibility to the next to preserve the rhythm and harmony of nature for the full enjoyment of balanced and healthful ecology. The Supreme Court further held that the basic right to a balanced and healthful ecology:

"...need not be even written in the constitution for they are assumed to exist from the inception of humankind. Now that they were explicitly mentioned in the fundamental charter, it was because of the well founded fear of its framers that unless the rights to a balanced and healthful ecology and to health were mandated as State policies by the Constitution itself, thereby highlighting their continued importance and imposing upon the State a solemn obligation to preserve the first and advance the second, the day would not be too far when all else would be lost not only for the present generation, but also for those to come –generations which stand to inherit nothing but parched earth incapable of sustaining life."

Public participation in decision-making

National planning involves a mix of "top-down" and "bottom up" approaches and involves the participation of the following key entities: Government (national and local

levels), the private/business sector, people organizations, professional societies, NGOs, the legislature, academics, church, media, farmers groups, youth and other basic sector groups. There is a recognized need to make it more meaningful for the participants and to encourage proactive participation, especially at the local level. Under the leadership of the Philippine Council for Sustainable Development (PCSD), the Philippine Agenda 21 was formulated with financial assistance from the Capacity 21 facility of UNDP. It has benefited from a series of multi-stakeholder and multi-sectoral reviews and consultations.

There has been an adoption of a community-based forest management approach as the national strategy to ensure the sustainable development of forest land resources. The 1987-1992 Development Plan adopted a community-based approach to resource management with a focus on community participation in planning. Under that approach, local communities were empowered to manage the resources, with the Government furnishing the necessary enabling condition such as the Bantay Gubat (Forest Watch) programs in Palawan which have minimized forest destruction and coastal degradation.

The Medium term Philippine Development Plan 1993-1998 recognized major groups of society such as women, youth, indigenous peoples, and communities as equal partners in shaping, crafting and implementing development programs. They participate in all stages of development.

The Philippine Government has implemented an Integrated Environmental Management Program, which has one of its aims, the strengthening of peoples' participation and constituency-building for environmental policy advocacy.

The Environmental Research and Development Program Committee of the Philippines have undertaken initiatives to support sustainable development-oriented activities, including the development of new and innovative mechanisms for public participation in various R & D strategy alliances, action networks, core groups and round table discussions. Research programs include the development, adoption and promotion of appropriate technologies on sustainable agriculture, promotion of chemical-free agriculture, environment-friendly biological control techniques, organic farming and rapid composting technology.

The participatory approach adopted in development planning, environmental rehabilitation and decision-making has paved way for increased community participation in the planning, monitoring and evaluation, and implementation of environmental programs.

New examples of conflict resolution have emerged through the creation of multi-stakeholder mechanisms to bring divergent interests to the negotiating table. This has been a way of facilitating co-ordination and co-operative decision-making (e.g. Presidential Commission on the Development of Tagaytay City).

SINGAPORE

Access to environmental information

The Singapore Environment Council's task is to educate, inspire and assist individuals, business organizations and environmental groups to take care for and protect the environment; to seek public cooperation in protecting and improving the environment; to involve business leaders in a proactive process of environmental management; and to study, develop and improve measures for the promotion and protection of the environment which are sustainable for adoption by private and public organizations, educational institutions, community organizations, the media and the general public in Singapore.

New strategic directions in environmental education have been mapped out in the Singapore Green Plan, the environmental master plan of Singapore into the twenty-first century.

Public participation in decision-making

Heightened awareness among the community has led to greater involvement across a wide sector of the community from primary schools to residents' associations and the general public. This has led to numerous environmental activities being held and higher expectations of a good living environment.

Depending on the issues at hand, relevant groups are invited to participate in the formulation of policies or to provide feedback on proposed policies. Various channels have been employed and these include setting up formal committees, organizing forum or specific feedback sessions and regular dialogue sessions.

SRI LANKA

Access to justice

The Sri Lankan Ministry of Environment, in the 1995 *Appeal Under Section 23DD of National Environmental Act by Ceylon Electricity Board*, concluded that an adequate and rigorous consideration of alternatives is at the heart of any environmental impact assessment process, and sufficient information must always be produced to permit a reasonable choice of alternatives as far as environmental aspects are concerned.

Public participation in decision-making

Seven representatives of environmental voluntary agencies are appointed to the Environment Council of Sri Lanka and assist with the functions of the Council, which consist of giving general advice to the Central Environment Authority pertaining to its duties, responsibilities and powers and advise on issues referred to the Council by the Authority.

THAILAND

Access to environmental information

There has been a trend of curricula reform at primary and secondary schools to integrate energy and environment conservation elements. Forestry environmental education camps have also emerged.

Public participation in decision making

Community leaders play an active role in the National Environment Board.

Under the Environmental Quality Act, Section 6 (1) entrenches the people's right to be informed and to obtain information for the purposes of public participation in the enhancement of national environmental quality. Section 6(2) and 6(3) provide for the right to state compensation arising from environmental damage and the right to complain against environmental offenders respectively. The right to information under Section 6(1), however, is subject to an exception crafted for officially-classified information and secrets pertaining to privacy and property rights of individuals. Further the right to complain and petition under Section 6(3) is dependent upon the discretion of government officials to act upon the complaint. As a result, it would appear that the rights to information and complaint are effectively curtailed, since NGOs and the general public can only obtain such information or remedies which the government officials are prepared to provide.

Mechanisms already exist to allow NGOs to participate in the conception, establishment and evaluation of official mechanisms to review Agenda 21 implementation. NGO inputs are considered important to this process. NGOs are actively involved in the implementation of national sustainable development projects.

The established means of communicating the people's concern through NGOs are altogether perfect. Apart from the problems raised by the registration requirements and the negative perception of NGOs, the NGO representation in the policy-making National Environmental Board (NEB) is outnumbered by governmental representation. Also, NGOs are never selected or elected by the people to advance their interests – questions therefore arise as to whether NGOs are truly representative of the people's will.

In relation to settling disputes, Thai culture has long preferred non-litigious means of settlement. In this respect, many environmental disputes are settled out-of court through mediation efforts, even though the EQA does not exist provide any alternative dispute resolution (ADR) mechanisms. These adhoc mediation efforts are not always satisfactory- for the most part, there is no clear evidence that the injured parties or their representatives have had any meaningful participation in the deliberations of the mediating bodies. It would be preferable if the ADR process is institutionalized within the EQA. Alternatively, environmental disputes could be explicitly settled under the arbitration laws and procedures currently in force.

The above concerns find particular relevance in regard to projects requiring the preparation of EIAs. The right to information is often subject to the discretionary power of

governments officials. The extent to which these officials take into account the opinions of affected residents.

The Environmental Act of 1992 recognized the importance of public participation. Section 6 states that individuals have rights and duties to lodge a complaint etc. Public interest in environmental issues started growing in the 70s and it was originally linked to anti-bureaucratic/military power elite campaigns. There were also cases of community grassroots organizations directly affected by environmental degradation at the time contributing to the environmental movement. Increasingly organized activism around environmental issues occurred in the 1990s because of the Rio conference.

The 8th National plan for the first time calls for the participation of people in the decision-making process at the sub-district, district and provincial levels.

Public awareness has increased partly as a result of the media which has cooperated with NGOs in almost every development and environmental issue to ensure they reach the political agenda. Wide media coverage on environmental issues has created a huge impact on society, gaining official responses, the cooperation of associated sectors as well as public concern. Environmental disputes have actually in some cases changed the Government attitudes toward local protest movements. In some cases protesters actually achieved changes to their favour (e.g. Nam Choen dam construction suspended in 1998; local communities received compensation like in the re: Pakmum Dam in 1995 and Hangdong generation plant withdrawn in 1995; community protests in Bangphli halted the practice of disposal of hazardous wastes). Environmental issues and written complaints and actions by individuals, organization and the media can be institutionalized through the National environment Board (NEB) or the parliamentary sub-committee on the Environment. These actions can influence the NEB who are empowered to prescribe national environmental policies and plans.

Villagers' protests regarding forestry and commercial logging have had great influence on the Governments. This culminated in 1989 with country wide protests supported by students, media, academics, NGOs and public. Today many events are publicized which has contributed to increased public awareness and confidence in conservation efforts.

There has been increased community activism as a result of rising consciousness and enactment of 1992 Environment act. An example is the peoples Committee for Nampong River conservation, an NGO formed to serve as a bridge between this group, academics and the Government.

VIETMAN

Access to environmental information

In general, NGOs play critical roles in promoting environmental awareness amongst groups of students, women, youth, indigenous people as well as private individuals.

Public participation in decision-making

The role of local NGOs in environmental protection has been significant. The Government has often sought the opinions of experts working within such organizations. The committee which prepared the initial drafts of the law on Environmental protection consisted of Government officials, as well as scientists, university academics, lawyers and other non-governmental groups. NGO representation is also present in the Appraisal Councils which review EIA reports.

LATIN AMERICA AND THE CARRIBEAN

ARGENTINA

Access to justice

The Constitution of Argentina, in Article 14 provides for the right to apply for the protection of human rights by the relevant authorities, and in Article 41 provides for the right of appeal against any authority decision which is in violation of a constitutional right.

Article 41 of the Argentina Constitution provides for the right to a healthy environment, and includes the concept of *sustainable development*. It also provides for the obligation to repair any environmental damage, making the authorities liable for the protection of this constitutional guarantee. The civil actions are the most common among the lawsuits brought in connection with environmental damage restoration and indemnity.

In order to protect the constitutional rights, the Supreme Court has established important concepts in environmental matters, for instance, it specifically acknowledged the need to protect the environmental heritage for the survival of future generations as well.

The Criminal Code and the Hazardous Wastes Law provide for liability of Corporations in case of violation of environmental laws.

Public participation in decision-making

Article 39 of the Argentina Constitution provides for the right of people to present bills before the Parliament, the Parliament must analyze the bill and take a decision not later than twelve months thereafter. There are only three exceptions to this right: (i) constitutional amendments, (ii) taxes, and (iii) penalties.

Article 40 establishes that the Parliament may carry out public consultations with respect to any bill under consideration. The affirmative vote of people would be sufficient for the bill to become a law.

The Argentina National Council for Sustainable Development (NCSD) is created by National Decree 767/99. A Consultative Committee is also established by Article 6 of this decree. It consists of representatives of the productive sectors, services and labour; scientific and academic institutions; Non-governmental organizations related to the environmental issues; and representatives of any other sectors that have interest in environmental matters. The Consultative Committee is called to work with the NCSD in advising the Government on policies and actions devoted to attain sustainable development.

Access to environmental information

The Argentina Constitution sets out in its Articles 41 and 42 that the authority shall guarantee protection of the right to a healthy environment through the sustainable use of the natural resources; the preservation of the cultural and natural heritage and biodiversity; and *access to environmental training and information*; in addition to the right to health the constitution also provides for protection and *access to appropriate and true information*.

BARBADOS

Public participation in decision-making

In 1995 the Government of Barbados established a National Commission on Sustainable Development. The Commission is coordinated by the Ministry of the Environment, Energy and Natural Resources and is made up of several Government agencies, private sector organizations and Non-governmental organizations. The Ministry of Environment is the governmental policy-making arm for environment and policy-making issues and the NCSD presently constitutes an extension of its work. Public consultation is one of the mechanisms used to ensure that stakeholders are allowed to air their views.

BELIZE

Access to justice

Although the right for a healthy environment is not clearly provided for in the 1981 Constitution of Belize, the first part of the constitution acknowledges the principles of social justice and protection for children regardless of their right to quality education and health. Moreover, it provides for the rights of individuals to life, liberty and the pursuit of happiness; which ensure a fair social security and welfare system that protects the environment. The Constitution provides an obligation for the State to preserve the environment.

The Constitution recognizes the inviolability of the rights of persons and the right to private property. However, these rights may be legally limited due to public welfare interest or imminent danger to the public or to natural resource conservation (i.e. the protection of coastal and marine ecosystems and the prevention of soil erosion).

Article 6 of the Constitution provides that all individuals are equal under the law, and are entitled without any discrimination to the equal protection of law.

The Environmental Protection Act of 1992 emphasizes the judicial enforcement of offences against the environment or against the integrity and health of people.

BOLIVIA

Access to justice

The Bolivian Constitution presents a basic statement on human rights and, in Article 35, provides for the acknowledgement of other recognized rights and constitutional guarantees, even if not specifically mentioned, acknowledged or set forth in the Constitution. This would be the case for the right to an adequate environment, recognized in the Environmental Law.

Article 14 of the Bolivian Constitution establishes that every person has the right to access to justice.

The Government and the people have the duty to guarantee the right to a healthy environment (Article 17 Environmental Law). The Environmental law provides that the national environmental policy must contribute to improve the quality of life through the implementation of governmental actions destined to guarantee the preservation, conservation, improvement and restoration of the environmental quality, and to promote sustainable development with equity and justice, taking into consideration the cultural heritage (Article 5).

The Environmental Law describes the crimes that can be committed against the environment. The crimes set out in Articles 103 to 113 are to be prosecuted under the Criminal Code and following the Criminal Procedures Code.

According to the Environmental Law, any person, individual, corporation or Government officer can be considered as a criminal in environmental matters (Articles 103, 115).

Access to information, participation in decision-making

The Environmental Law provides for a National System of Environmental Information. The main institution within this system is the Ministry of the Environment, which in this capacity shall register, organize, maintain and update, as well as provide national environmental information (Article 15).

Article 16 provides for all reports and documents produced as part of the scientific activities and technical works related to the environment and natural resources, to be sent to the National System of Environmental Information.

The Government is responsible for establishing the methods and procedures to guarantee public participation including the direct participation of communities and indigenous groups in the sustainable development process, as well as in the sustainable use of natural resources by collection, dissemination and use of knowledge related to the use and management of natural resources (Article 78).

The Ministry of Education is responsible for designing policies and strategies to promote and develop environmental information programmes (Article 81).

The Law on Public Participation creates the Regional Development Corporations in each of the departments in which the country is politically divided. These Corporations have a broad composition and their main function is the regional, subregional and micro-regional sustainable development planning, in coordination with local governments and the Ministry of Sustainable Development and Environment.

BRAZIL

Access to justice

The Brazilian Constitution, Law No. 7.347 and the Environmental National Policy Law (Law 6938), provide for a “public civil action” for liability and compensation for damage to the environment (Article 129, III). The action is filed before the public prosecutor, as the people’s defending counsel. Any person can bring a claim before the courts of law on any issue relating to the protection of the environment.

Law No. 6.938 also establishes the indemnity amounts in case of environmental damage, which are based upon the objective responsibility principle.

The Constitution grants special powers to the Attorney General’s Office to file a civil action in order to protect the environment, this action is known as “social civil process”.

Any citizen has a constitutional right of the federal, State or municipal laws to bring an action before the Federal Supreme Court. The Constitution provides therefore for the counsel-assisted public action (Article 5).

An innovative institution established by the Brazilian Constitution is a “fund” to manage compensation and indemnities for environmental damage. This is an important development that facilitates access to justice and deals with environmental problems.

The Procedural Civil Code establishes preventive measures to avoid any risky situation and potential damage to the environment (Article 798).

Law No. 9.605 of 1998 on Environmental Crimes, sets out the conducts considered as environmental crimes that should be considered before criminal courts. This law introduces the criminal liability of corporations and incorporates as environmental crimes offences such as construction without undertaking the necessary environmental impact assessment, and oil pollution.

Various cases have been dealt with by courts, on environmental matters. Offenders have been found liable and convicted in almost all such cases. An example is the case in which the Mayor of Rolante ordered to deposit the industrial and domestic waste in a place which was inadequate; another example is a case in which the captain of a vessel was sentenced to a prison term for being negligent in causing acid leakage into the ocean.

Access to information, public participation in decision-making

Law 7347 of 1985 explicitly recognizes the right of any person to environmental information.

CHILE

Access to justice

The main protection instrument provided for in the Chilean Constitution (Article 20) is the “Protection Remedy” (“*Recurso de Protección*”), applicable when the right to live in a clean and unpolluted environment (Article 19) is violated by an illegal action of any authority or any person.

There are some court cases supporting applicability of this action, such as the Case *Homero Callejas Molina et al. vs. Compañía Minera del Pacífico, S.A.* The final resolution ordered the Company to interrupt pollution of ocean waters. Another case is *Pedro Flores et al. vs. Corporación del Cobre – CODELCO*. The Supreme Court of Chile enjoined CODELCO from further activities damaging the marine environment of the sea town of Chanaral. The Court of Appeals of Copiapó made a personal survey and report of the pollution at Chanaral. Through aerial and terrestrial inspections, this report concluded that the Chanaral coastline had been devastated by pollution from mining activities. The company was given a one-year period to end the dumping of mineral tailings into the Pacific Ocean and CODELCO was ordered to build a dam to dispose of its wastes.

Other actions related to environmental protection are included in Law No. 18.971 and Law No. 19.300, which provide for the economic protection of the main constitutional rights, including without limitation the right to a healthy environment, and the civil action by any person or institution, as well as by the Government, to claim environmental damage (Article 53).

Two actions are established in Law No. 19300, (i) the indemnity action; and (ii) the environmental action. Through the former the claimant requests monetary compensation for environmental damage (and must prove the intention in the environmental damage as the law or regulation infringed); the second is to demand the restoration of the damaged environment.

Another legal action is the “requirement action”, foreseen in Article 56 of Law No. 19.300 for the cases of non-compliance with the pollution prevention plans or plans of decontamination. Municipalities and other competent Government agencies are entitled to demand in ordinary civil cases the imposition of different sanctions to those responsible for the offence.

Access to information, participation in decision-making

Law No.19300, the “Law on General Basis of the Environment”, provides that the educational process must include environmental concepts in order to create environmental awareness, and to study different environmental problems and their causes (Articles 6, 7).

Article 26 of the above mentioned environmental law provides that the Regional Committees and the National Environmental Committee will establish the method to guarantee informed participation of the civil society in the evaluation process of the Environmental Impact Declarations that are submitted before them. To this effect, they publish once a month a list of the declarations submitted in the previous month.

According to Article 27 a person who submits an Environmental Impact Study for approval, must have it published in the Official Gazette and in a newspaper of national distribution. The announcement must contain an abstract of the Study and the project. Any individual, directly affected by the projected activities, or citizens organizations with legal personality may make comments on the Environmental Impact Study and send them to the Environmental Committee, which is the authority that analyzes the Study (Article 29) and has to take into consideration and evaluate the comments received. This evaluation has to be reflected in the pertinent resolution.

Article 50 provides that any person may object any law or decree considered unfair or that may represent a risk to environment or that contravenes the environmental regulations. The objection must be filed before the civil courts under Article 60.

The National Council for Sustainable Development is established by Decree No.90 of 1998. Its major functions are the study and the presentation of proposals for sustainable development. This objective is to be achieved through a concerted action between private and public stakeholders, with the aim of enhancing the participation of various social groups in the decision-making processes related to these objectives.

COLOMBIA

Access to justice

The 1991 Constitution not only recognizes the right to a sound environment (Article 79) but it also makes it possible to demand the actual enjoyment of these “collective rights”. In fact, under the title “Collective Rights and Environment” the Constitution recognizes two main environmental rights: (i) the right to control the authority’s activity, including laws, regulations and international treaties; and (ii) the right to demand compliance with environmental laws, and the guarantee of constitutional rights of others.

With this purpose, the most important and effective legal actions are:

- “Protection Action”, applicable in case of any action or omission by any authority or person when the constitutional rights are violated (Article 86).

- “People’s Action”, it authorizes any person to object any actions or omissions by the authorities or any other person in violation of the public or community interest (Article 88).
- “Enforcement Action”, its main purpose is to enforce compliance with any applicable law or administrative rule (Article 87).

Law No. 99 provides for the right to a healthy life and harmony with nature, and obliges the Government and the people to jointly protect and preserve the environment. The Government must sponsor the creation of NGO’s to promote environmental protection.

Law No. 99 provides for the establishment of the Ministry of Environment. This law further states that any person can claim the effective compliance with legislation for the protection of the environment through the “execution procedure” established in the Civil Code (Article 77). This Law also provides for the creation of a National Environment Fund, mainly funded by indemnity amounts in case of environmental damage, imposed through the exercise of the actions set forth in Article 88 of the Constitution.

Two types of “people’s legal actions” are established in the Colombian Civil Code, (i) the people’s action in favour of public use goods (Art.1005); and (ii) people’s action in case of contingent damage (Art.2359). Both are applicable to demand the judicial defense and protection of the environment. Law 9^a of 1989 (Law of Urban Reform) expressly extended the scope of Art.1005 of the Civil Code to include the environment elements. In fact, this action is now known as the “people’s action it focuses on the public’s use of goods as it relates to the environment”. These legal actions as Civil Code mechanisms for the protection of the environment constitute a real contribution of the Latin American Law to efficiently respond to environmental commitments.

Access to information, public participation in decision-making

Law No.99 explicitly recognizes the right to environmental information.

Any individual or corporation, Government or private institution may participate in the administrative procedures for the issuance, amendment or cancellation of permits and licenses for activities representing or that might represent a risk to the environment, as well as in the imposition of sanctions for any violation of environmental laws and regulations (Article 69).

Article 74 provides for the right to ask for information related to possible pollutant elements or activities and the danger produced with the use of such elements to human health or to the environment. Any person may claim in favour of his right to be informed about the financial resources used for and destined to environmental preservation.

COSTA RICA

Access to justice, access to information

The Constitution provides for the right to a healthy and balanced environment, and authorizes any person to report any activity preventing the exercise of such a right. The State is compelled to defend and preserve the environment. In this sense the Constitution provides for the right of consumers and users to protection of their health, protection of the environment, security and economic interests, as well as the right to receive true information (Articles 50, 46).

The Environment Framework Law of 1995 also recognizes the right to information. It defines environmental pollution as an offence (Article 2).

The Constitution provides for the right to individually or jointly demand any public officer or Government entity for an expeditious resolution of a matter (Article 27).

Article 2 of the Environmental Framework Law establishes that the Government will support, through its various institutions and entities, an information system which shall contain environmental data, as well as data on the development of the different action plans related to the economic and social activity of the country.

Public Participation in decision-making

The Environmental Framework Law provides for the State and local governments to support the organized and active participation of citizens in the decision-making process related to the protection and enhancement of the environment.

This Law also provides for the creation of regional environmental councils, where citizens can participate in the discussions, studies, reports and analyses of governmental activity in the environmental field (Articles 6, 7).

CUBA

Access to justice

According to the Constitution, it is a duty of the State and citizens to protect the environment and preserve natural resources. The State acknowledges the close relationship existing between the environmental and the economic and social aspects of sustainable development (Articles 26,27). The right to a healthy environment can therefore be considered as a constitutional right and, according to the Constitution, any person who believes that any of his constitutional rights is being violated by the authority or any Government officer, shall have the right to demand for compensation.

The Environmental Law of 1997 also establishes the obligation of the Government and citizens to protect the environment, and acknowledges the connection between the human being, nature and society. The State shall therefore grant all the necessary guarantees for the protection of the environment and every person, counting on the appropriate and sufficient grounds, can initiate an administrative or judicial suit in order to demand compliance with the provisions of the Environmental Law (Article 3, 4).

Decree-Law No. 200 of 1999 on Administrative Offences in Environmental Matters describes the conducts considered as offences. Any person, national or foreigner, may be prosecuted under this Decree-Law, for causing any damage to the environment (Article 2.1).

The above mentioned Decree-law sets forth crimes related to environmental inspection by the Government; the national system of protected areas; biodiversity; the marine environment; environment protection in case of natural disasters; noise, vibrations and other physical facts; protection of the atmosphere; chemical and toxic products; and hazardous wastes (Article 6, 7, 8, 9, 10, 11, 12, 13, 14). The most common sanctions provided for in Decree-Law No. 200 are pecuniary fines, which depend on the level of pollution or damage to the environment, or on the activity produced.

Access to information, Public participation in decision-making

The Environmental Law recognizes the right of every person to obtain information related to environment from any Government agency or authority (Article 4).

The Constitution provides for the People's Power Assembly -the main Government body within a political division- to be granted sufficient powers to make decisions related to political, social and economic matters, within its jurisdiction. It shall also assist in the development of activities and fulfillment of the political action plans. Citizens can participate in governmental matters through Public Councils (Article 103).

The Environmental Law establishes that the environmental management must be carried out with the participation of Government and private institutions, civil society and citizens in general. People's participation in decision-making is on the basis of environmental management, the development of procedures oriented to environment protection and the improvement of the quality of life (Article 4 i, m).

Article 6 of the above mentioned law, provides that the Government and the people must participate in the prevention and mitigation of natural disasters and other environmental problems as well as in the attention thereafter. Local organizations may propose the competent authorities to provide for more severe and specific environmental laws and regulations (Article 16).

The Environmental Law provides for a National Environmental Information System whose main objective is to guarantee to the State, the Government and citizens the required information for a proper evaluation and decision-making in relation to environmental matters. In order to comply with the objective of the Information System, governmental entities have the duty to provide information to the Ministry of Science, Technology and Environment. This Ministry is responsible for the control and provision of the environmental information. This information will be provided free of charge (Articles 34, 36).

The Ministry of Science, Technology and Environment shall set up the necessary mechanisms and procedures to give the public access to this information (Article 37).

DOMINICAN REPUBLIC

Access to information

According to the Constitution, the Government is compelled to promote and support the development of the country and therefore to implement the necessary activities (Article 17)

Article 10 establishes that access to all the information media shall be free, every person has the right to access to both governmental and private sources of information.

The National Follow-up Commission for the United Nations Conference on Environment and Development, created in November 1992 consists of representatives from Government institutions, the private sector, the academic sector and local governments. The Commission also invites other organizations and institutions to participate in their sessions, according to the subject to be dealt with.

ECUADOR

Access to justice, Access to information

Article 3 of the Ecuadorian Constitution establishes among the main duties of the Government, the defense of the natural and cultural heritage of the country and the protection of the environment, as well as the promotion of sustainable development.

The Constitution acknowledges the right of people to live in a healthy, balanced and non-polluted environment. To this effect, the law can establish restrictions to certain rights in order to protect the environment (Article 23).

According to the Environmental Management Law, any person is empowered to report on and to sue those in violation of any environmental law or regulation (Article 28).

The Constitution provides for the right of individuals to submit requests to the authority; the authority has the duty to respond to any public request (Article 23).

Every individual or corporation has the right to be truly and timely informed on any activity of the Government that may cause negative environmental impacts. This right can be exercised individually or collectively (Article 29).

The Environmental Management System shall provide the necessary information to protect and manage the environment and natural resources through the media. It shall publish in a newspaper of national distribution a list of products, services and technologies whose manufacture, importation, trade, transportation and use is prohibited, for being noxious to the environment or human health. The Government shall as well publish a list of these noxious products that are prohibited in other countries (Article 32).

Public participation in decision-making

The Environmental Management Law states that environmental management shall be submitted to the principles of solidarity, public responsibility, co-operation, co-ordination use of environmentally sustainable technologies and respect to the national cultures and traditional practices (Article 2).

Article 5 provides for the establishment of the Environmental Management System as a means of co-ordination, co-operation and interaction among the different systems and subsystems of the environmental management and natural resources administration. People shall participate in this System to protect the environment.

Every individual or corporation has the right to participate in the environmental management, through different means and methods set out in the environmental regulations. Among such means and methods are public consultation, formulation and submission of bill of law, and any modality of association between the public and the private sector

EL SALVADOR

Access to justice

The Environmental Law provides for the right to a healthy environment. It is the obligation of the State to legislate, promote and defend such right in order to assure the sustainable use, availability and quality of natural resources, as the basis for sustainable development (Article 2 a, c).

The Government has the duty to provide the necessary resources and to exercise permanent control of the quality of chemicals, medicines, food and environmental conditions that might represent a risk for human health (Article 69 Constitution).

Access to information, participation in decision-making

According to the Law on the Environment it is the people and the responsibility of the State to protect natural resources. Environmental management shall be carried out by a number of Government institutions and supported by civil society (Article 2 d, c).

The Environmental Law provides for the creation of the National System of Environmental Management, which is responsible for setting out the mechanisms for environmental management coordination among Government institutions, for establishing the procedures to generate, register and provide information related to environmental management and the state of the environment.

Article 9 provides for the right of citizens to be appropriately and clearly informed, (within fifteen days of the consultations) about environmental policies, plans and programmes in order to participate in the public consultations related to the adoption of environmental policies, the use of natural resources, surveillance and protection of the

environment and activities or projects that might require environmental impact assessment permission.

The Ministry of the Environment and other Governmental institutions shall adopt specific policies and programs to support the participation of the community in activities aimed to environmental protection (Article 10).

Article 30 states that the Ministry of Environment and the institutions comprising the National System of Environmental Management have the duty to compile, update and publish environmental information with the aim of making it accessible to the public. The Ministry of Environment prepares a biannual environmental report, the National Report on the State of the Environment, which is submitted to the President.

Executive Decree No.29 creates the National Council for Sustainable Development (NCSD). The Decree stipulates a wide participation of the various sectors of society dealing with sustainable development planning and implementation. It establishes a NCSD for deliberation and consensus building. The NCSD is composed of 22 representatives from the Government and 11 Non-governmental representatives.

To help strengthen the local dimensions of sustainable development, the country is setting up Local Councils for Sustainable Development which must identify priority topics for their region. These members can become local leaders in decision-making, with specific contributions on the impacts of national policies when applied at the local level.

GUATEMALA

Access to justice, Access to information

Article 30 of the Constitution provides that all the administrative proceedings are open to the public, any person has therefore the right to obtain any document he/she may need, with the exception of military and diplomatic documents.

Article 64 defines the social interest of the conservation, protection and improvement of the natural heritage of the country. The Government shall promote the creation of national parks, reserves and natural refuges. The Law of Protection and Improvement of the Environment is given responsibility for the surveillance and compliance with the provisions of this Article.

According to this Law, the authority responsible for the protection and conservation of the environment is the National Committee of the Environment. This Committee has the function, among others, to formulate laws and regulations related to the sustainable use of the natural resources and to keep an updated report containing all the national and international legal provisions related to the protection and improvement of the environment (Articles 21 to 25).

Public participation in decision-making

The Preliminary Law on Regionalization (Decree No.70-86) creates the “regions” as territorial extensions with similar geographic, economic and social conditions, with the objective to allow organized civil society sectors to participate, together with the public administration or in its place when appropriate, in the implementation of development programmes and projects.

GUYANA

Public participation

Every citizen has the duty to participate in activities designed to improve the environment and protect the health of the Nation. The Government is responsible for protecting and ensuring sustainable use of its land, mineral and water resources as well as its fauna and flora, and must take all appropriate measures to conserve and improve the environment (Articles 25 and 26 Constitution).

HAITI

Public participation in decision-making

The Haitian Constitution establishes the duty of the State and citizens to protect the environment. It sets up a system of Government based on the fundamental liberties and the respect of human rights, social peace, economic equity, concerted action and public participation in major decisions affecting the life of the nation.

HONDURAS

Access to justice, Public participation in decision-making

Constitutional Article 145 recognizes the right to the protection of health. In this context, the State has the duty to provide for a healthy environment in order to protect people's health.

Article 146 provides for the obligation of the Government to oversee and control food, chemicals, drugs and biological products.

The Law of Municipalities establishes that one of the objectives of the Municipality is to promote an integral development by protecting the environment, enhancing public participation in the resolution of problems, and rationalizing the use of natural resources in accordance with the national development programmes (Article 14).

The Environment and Natural Resources Law provides for the right to the protection, conservation and restoration of the environment, the right to a healthy and balanced environment, and the general obligation to preserve it (Articles 4).

The Government and private action related to the environment must promote environmental education and research (Article 8 e, f).

Article 94 provides for the obligation of the authority to promote training activities and the provision of information related to the environment and natural resources, through the media and the different working and educational centres, in order for citizens to become aware of the risks to the environment.

Article 102 provides for the obligation of local communities to contribute to the protection of natural resources and the correct use of them.

The National Council for Sustainable Development is created by Executive Decree No. PCM-012-97 as an instance of “mixed” participation in order to maintain coherence and consistency in the sustainable development programmes, policies and projects and promote paradigmatic changes in the decision-making process, according to the mandates of Agenda 21 and ALIDES (Central American Alliance for Sustainable Development).

JAMAICA

Access to justice, Access to information

According to the Natural Resources Conservation Authority Act of 1991, this agency has the mandate to develop, monitor and enforce environmental legislation. The Act empowers this Authority to authorize any person to institute proceedings for offences under the Act.

The Natural Resources Conservation Authority has instituted an environmental permits and licenses system to minimize the damage caused by development and industrial activity through Environmental Impact Assessments, Environmental Management Systems and Environmental Audits.

The Natural Resources Conservation Authority exercises, among others, the functions of public relations and public awareness.

Public participation in decision-making

In January 1998, the multi-stakeholder National Environmental Education Committee (NEEC) completed the National Environmental Education Action Plan for Sustainable Development 1998-2010. The NEEC used a participatory planning framework in developing and implementing the plan, which focuses on identifying education, awareness and training activities which enhance knowledge, values, skills and action on broad issues relating to human interaction with the environment.

The multi-stakeholder Sustainable Development Council of Jamaica (SDC-J) has the mandate to, *inter alia*, monitor progress towards sustainability measured against Agenda 21 and the Action Programme for Small Island Developing States (SIDS); to identify policy gaps, influence policy-makers and promote research, policy reform, programmes and legislation to advance in all sectors and issues leading to sustainable development.

MEXICO

Access to justice

The Mexican Constitution provides for the right to a healthy environment, and the right to a fair lawsuit. Should any of the constitutional rights be violated, any person is entitled to file a defense action before the Supreme Court. (Articles 4, 13, 14)

The Mexican Criminal Code, as amended in 1996, includes a new chapter on environmental transgressions according to which these conducts are criminally sanctioned.

According to the Ecological Balance and Environmental Protection Act, the Ministry of the Environment can initiate criminal actions before a Prosecutor. The same right is given to any citizen who becomes aware of environmental crimes.

The Mexican Civil Code provides for various mechanisms to claim environmental damage repairing.

Access to information, participation in decision-making

Article 26 of the Constitution mandates the creation of a National System for Democratic Planning. On the basis of this Article, a National Consultative Council for Sustainable Development and four Regional Councils were established in 1995 to meet the need for an integrated policy approach and to facilitate participatory action which brings the Ministry of the Environment together with the various sectors. The Councils are the mechanisms, which incorporate the perspectives of each interested social, commercial, civil, academic, Governmental or Non-governmental organisation in planning for sustainable development and Agenda 21 issues.

The Councils for Sustainable Development have participated in decision-making on various subjects which directly fall within the competence of the Ministry of the Environment, including: (i) amendments to the Ecological Balance and Environmental Protection Act; (ii) strategy for decentralization of environment and natural resources management; (iii) procedures for the presentation of requests relating to the effective implementation and enforcement of environmental legislation in compliance with the Environmental Co-operation Agreement of North America; (iv) reports presented to the United Nations Commission on Sustainable Development; (v) the Ministry's strategic approach in the transition towards sustainable development; (vi) preliminary plans for the five sectoral programmes of the Ministry; etc.

The Constitution provides for the right to access to information according to which any person can require the authority the information needed, and the authority has the duty to respond. (Article 8).

The Ecological Balance and Environmental Protection Act (EBEPA) provides for the right to access of information contained in the files of Environmental Impact Studies (with the exception of confidential information) (Article 34).

The EBEPA contemplates the possibility for the Ministry of Environment to carry out public consultations or require any person to give information as far as environmental impact studies are concerned. In case the projected activities are probable to cause serious ecological unbalances or damage to public health or ecosystems, the Ministry of Environment, in coordination with the local authorities, may arrange for a public meeting of information, with the objective to listen to the applicant's explanations on the technical aspects of the project. Interested parties have twenty days to submit proposals on prevention and mitigation additional measures, as well as any other observation. The Ministry of Environment is obliged to take these observations and proposals into consideration in its final decision (Article 34 III-V).

Title V of the EBEPA contains two Chapters, the first one deals specifically with "Social Participation" and the second one with the "Right to Environmental Information". According to Article 157 under the first Chapter, the Federal Government has to promote the co-responsible participation of civil society in planning, implementing, evaluating and monitoring the environmental and natural resources policy. The Government may agree with private institutions to collaborate in the environment protection, and with the media entities, to ensure the access to true information, and to promote actions aimed to the environment protection.

Article 158-I establishes that in order to comply with Article 157, the Ministry of the Environment shall call, in the framework of the national system of democratic planning, the organizations of workers; entrepreneurs; peasants and agricultural; fisheries and forestry producers; agrarian communities; indigenous peoples; educational institutions; private non profit-making social organizations and other interested parties; in order to let them freely express their opinions and make proposals. Article 158-II provides for the adoption of agreements between the Ministry of the Environment and mass media to broadcast and promote information on action to preserve ecological balance and protect the environment.

Following Article 159, the Ministry of the Environment shall integrate advisory bodies with the participation of public administration and academic institutions, social and entrepreneurial organizations. These bodies shall have advisory functions and shall participate in the evaluation and follow up of the environmental policies.

The Ministry of the Environment is called to create a National Environment and Natural Resources Information System in order to register, organize, update and provide environmental national information (Article 159bis).

The Ministry of Environment shall prepare a report on a biannual basis, which shall describe in detail the conditions of the country as far as ecological balance and environmental protection are concerned (Article 159bis 1).

The Ministry of the Environment shall publish a gazette containing laws, decrees, official standards, agreements and administrative actions, as well as environmental information of general interest, and information related to the protected natural areas and sustainable use of natural resources (Article 159bis 2)

Every citizen has the right to access environmental information. In this sense they can request this information from the Ministry of the Environment, the States and the Federal District, and Local Governments. The authority has 20 days to reply in writing to these requests. In case of negative answers, the authority has the obligation to indicate the reasons that motivated such a response (Article 159bis 3, 5).

NICARAGUA

Access to justice

Article 60 provides for the right to live in a healthy environment, and the obligation of the Government to protect the environment and the natural resources.

Article 4 of the Environment and Natural Resources Act provides for the obligation of the Government and citizens to protect, improve, and restore the environment and the natural resources.

Article 6 creates the National Environment Committee, which is the liaison between the Government and the community, and an advisory body to the Executive arm of the Government in issues related to environmental policies, strategies and programmes. It carries out the relevant analyses, consultations and studies as its main functions.

Article 9 provides for an environmental prosecutor to be appointed. The responsibility of the prosecutor is to intervene in any trial relating to the breach of environmental legislation, for the Government and for public interest in matters related to the environment. Article 48 provides for the creation of a National Environmental Fund for the support of programmes and projects of protection, conservation and restoration of the environment and sustainable development. The funds are collected from the licenses, fines and seizures arising from violations of environmental laws.

Access to information, Public participation in decision-making

Article 2 of the Constitution provides for the right to participate in the construction and improvement of the economic, political and social system of the nation through the Parliament or directly, through referendum and plebiscite and other procedures provided for in the Constitution.

Article 26 paragraph 4 of the Constitution recognizes the right to access to the information registered by the authorities, as well as the right to know the sources of such information.

The Environment and Natural Resources Act provides for the establishment of a National Environmental Information System. The information will be of public access and periodically published (Article 31, 32,33).

The National Council for Sustainable Development was established in 1997 by Decree No.31-97. This council is constituted as a forum for analysis; consultations; debates; evaluation; coordination; and for information and follow-up; with the participation of the Government and civil society and aiming at promoting the adoption of a sustainable development model that guarantees, *inter alia*: (i) harmony in integration of economic growth, social equity and the sustainable management of natural resources; (ii) the adoption of the provisions and principles contained in Agenda 21 and the Rio Declaration as well as the other multilateral agreements adopted at the United Nations Conference on Environment and Development (Rio Summit 1992).

PANAMA

Access to justice

Article 41 of the Constitution provides for the right to file petitions and complaints to the public officers.

It is the obligation of the Government to guarantee a healthy and unpolluted environment. The Government together with all the inhabitants of the country must promote a social and economic development that prevents environmental pollution, keep the ecological balance and avoid the destruction of natural resources (Articles 114 and 115). Article 50 recognizes the right of every person to protect his/her constitutional rights against any action of the authorities through the legal action called “Amparo”.

Public participation in decision-making

By Decree 163 of 1996, amended by Decree 297 of 1998, the multi-stakeholder National Council for Sustainable Development was established as an administrative organism attached to the Presidency of the Republic. Its objective is to establish, in a participatory manner, sustainable development policies that promote peace, freedom, democracy and a better quality of life.

PARAGUAY

Access to information, Public participation in decision-making

Article 7 of the Constitution provides for the right to live in a healthy and balanced environment. The preservation, conservation and improvement of the environment must be the main objective of the State and the society, as well as its integration in the human development.

Article 8 of the Constitution provides for assessment of activities that may cause an impact to the environment by the law, and that the relevant authority can prohibit or ban activities that are considered extremely dangerous. All damage to the environment must be repaired.

Article 8 on Environmental Impact Assessment (EIA) provides for the right of people to access the information and data contained in the EIA reports.

PERU

Access to justice

The Constitution of Peru provides that the Government will promote the sustainable use of natural resources and promote conservation of biological diversity and protected natural areas. The State promotes the sustainable development of the Amazon forest (Articles 66 to 69). Any person has the right to an environment that is balanced and adequate for the development of her/his life (Article 2 (22)).

The Criminal Code provides for crimes against the environment and foresees imprisonment penalties therefrom (Articles 304 to 314).

The Civil Procedures Code provides for the right of groups to sue in the name of environmental protection (Articles 82 and 83).

The Environmental Code (Legislative Decree No. 613, as amended by Law No.26913 of 1998) provides punishments for offences against the environment

Access to information and Public participation in decision-making

The Constitution recognizes the freedoms of information, opinion, expression, and thought. It also recognizes the right to request information and to receive a response from any public authority within the stipulated period of time (Article 2 (5) and (4)).

Any person has the right to participate, individually or in association with others, in the political, social, economic and cultural life of the Nation. All citizens have the right of election, removal of authorities, legislative initiative and referendum (Constitutional Article 2 (17)).

Any person has the right to petition, individually or jointly, in writing, to the competent authority. The authority is obliged to respond, in writing, within prescribed periods of time (Constitutional Article 2 (20)).

All Peruvian citizens have the right to participate in the public affairs through referendums, legislative initiative, dismissal of authorities. The people are compelled to participate in their local Government (Constitutional Article 31).

The Sustainable Use of Natural Resources Act (Law No.26821 of 1997) includes a Title on "Citizen Participation", according to which all citizens have the right to be informed and to participate in the definition and adoption of policies related to the conservation and sustainable use of natural resources. The right to petition is also recognized as well as that of promoting initiatives, individually or jointly before the competent authorities (Article 5).

A National Information System is established by Article 96 of the Decree of the Directive Council of the National Environment Council-CONAM (No.001-97-CD/CONAM) following Article 32 of the Regulation on the functioning of CONAM. According to this Article, CONAM coordinates the exchange, registration, compilation,

organization, access to and distribution of environmental information. CONAM shall promote the adoption in all public sectors of the measures required to guarantee the exercise of the right to free access to environmental information.

SURINAM

Public Participation in decision-making

Article 6 of the Constitution establishes that the social objectives of the State shall aim at the identification of the potentialities of the environment and the enlarging of the capacities to expand and develop those potentialities. It also guarantees the participation of civil society in the political life of the country, among other ways through national, regional and local participation.

URUGUAY

Access to justice

The Law on Protection of the Environment (Law No. 16466 known as the “Law on Environmental Impact Assessment” –EIA-) provides for the obligation of all individuals and corporations to refrain from any action that causes adverse or harmful environmental impact, or that may be considered as an action which endangers the environment (Article 3). The Law includes a description of individual and company liability in relation to the environment after defining the concept of “environmental impact”.

Without prejudice to any sanction already established, any person who causes degradation, destruction or pollution of the environment in violation of the law shall be liable for all the damage caused and shall be responsible for recovery measures when possible or, if the damage is irreversible, for adopting and covering the expense of measures to reduce or mitigate the damage to the maximum extent possible (Article 4).

Provision is also made for the possible joint and several liability of the professionals participating in the implementation of a project, in case damage is caused by the activities or works without having obtained the authorization required by law or by not complying with the conditions set out by the authority when approving the project (Article 11).

Access to information, Public participation in decision-making

The EIA Law basically establishes two mechanisms to make EIA public, so that any interested party may present her/his opinion to the Administration. The first one, in accordance with Article 13, specifies that the Ministry of Housing, Land-Use Planning and Environment (MVOTMA) will make known a summary of the project and related EIA. It will be made public through publication in the Official Gazette and in another periodical of national circulation. The second publication mechanism is established in Article 5. It states that the MVOTMA shall keep a registry of EIA of the activities, constructions and works listed in the law, as well as any others, which, in its opinion, might cause significant environmental impact.

The most discussed mechanism for participation is referred to in Article 14 of the EIA Law, which empowers the MVOTMA to order a public hearing in which any interested party may participate during the processing of the authorization request provided for in the Law. The holding of a public hearing is not mandatory but rather a power of the MVOTMA “when it believes that the project under the Environmental Impact Assessment involves serious repercussions of a cultural, social or environmental nature”. Although public hearings have no long-standing tradition in Uruguayan law, there are past examples in some sectoral environmental regulations. For example, the drafting is similar but more detailed in Article 177 of the Code on Waters (Decree-Law 14859, December 1987).

VENEZUELA

Access to justice

The mechanism for the protection of the constitutional rights in Venezuela is set out in Article 1 of the Constitutional Rights and Guarantees “*Amparo*” Act. According to this law, any person has the right to demand from Court the protection of her/his rights recognized in Article 49 of the Constitution. An important aspect of this Law is that it gives the right to have all human rights protected, including those not explicitly recognized in the Constitution. Among these rights one could include the right to a healthy environment, that the Venezuelan Constitution does not explicitly recognize (Constitutional Article 27).

Judges have already established some criteria in relation to environmental matters as considered in the new constitutional framework. This criteria recognize access to environmental justice to individuals and groups, granting in this way the opportunity to protect also collective rights.

Within this framework any association or NGO is able to defend the collective interest of a certain community, and empowered to start any kind of action (administrative, civil, criminal) (Article 5 Decree No. 1.297).

The Criminal Environmental Act of Venezuela of 1992 defines the criminal offences against the environment and provides for penalties on the same. It establishes the liability of both individuals (including public authorities) and legal entities. Any person is able to report on any commission of environmental crimes to the authority. Damage indemnity is considered of public interest.

The Environmental Act provides for civil liability for environmental damage.

Central American Commission on Environment and Development–CCAD

Public Participation in decision-making

CCAD is an organization of the Central American Integration System, which is responsible for the promotion of the regional integration of environmental policies. The CCAD strategy includes the participation of civil society in the decision-making process as well as in the implementation and evaluation of the environmental policy. Public

participation and social support are considered of the utmost importance for the success of public policies.

One of the instruments foreseen in the programme of the Central American Alliance for Sustainable Development is the establishment of National Councils for Sustainable Development (NCSDs). These NCSDs allow the active and informed participation of civil society to collaborate, on a more equal basis, with Government and the private sector in sustainable development decision-making.

NCSDs are in fact a unique mechanism that bring together the *participation* of civil society and private enterprise with Governments and academics to develop and implement strategies for sustainable development, and the *integration* of the social, economic, environmental and cultural dimensions of sustainable development, through a focus on *public good*. It is to be noted that in the whole Latin America and the Caribbean region already 21 countries have established this mechanism or equivalent participatory mechanisms.

Conclusion

In evaluating the steps already taken at the national level as far as this study clearly indicates in the three regions it is clear that a lot has been done to reflect principle 10 of the Rio Declaration which provides for access to environmental information, public participation in decision-making and access to justice in environmental matters. However, although a number of activities and actions that relate to Rio principle 10 of the Rio Declaration have been undertaken in a number of countries these actions are still inadequate, because in most cases the laws or regulations adopted cover just a part of the principle. This explains the call of Governments in GC decision 20/4 asking the Executive Director of UNEP in consultations with Governments and relevant international organizations, to seek appropriate ways of building capacity in and enhancing access to environmental information, public participation in decision-making and access to justice in environmental matters. Furthermore, it is important to note that the UNEP Programme for the Development and Periodic Review of Environmental Law for the First Decade of the Twenty First Century (MonteVideo Programme III) which was adopted by GC 21/23 in February 2001, calls for UNEP action in the area of Public participation and access to information in paragraph 7.

It is expected therefore that the dissemination of publications like this one to Governments and other institutions will serve as a guide to institutions and decision makers to improve the quality of decision-making in environmental matters through increased transparency, access to information and public participation. The strategy provided by MonteVideo Programme III is to promote and further develop means in law and practice to increase transparency, strengthen access to information and improve public participation in processes leading to decision-making that relate to the environment.

This report which is a collection of studies will be disseminated, as a means of capacity building, which can work together with means like training workshops to help in

promoting law and practice relating to access to information, public participation in processes leading to decision making and access to judicial and administrative proceedings relating to environmental matters. Training workshops for decision makers on this area have already been undertaken by the UNEP Office in the Asia and Pacific region.

Apart from collecting, studying and disseminating information on the law and practice relating to access to information, public participation in processes leading to decision making and access to judicial and administrative proceedings relating to environmental matters, other activities that were recommended by Government Officials in the Montevideo Programme III include:-

1. To assist developing countries, and in particular the least developed among them, and countries with economies in transition, in developing means in law and practice to collect and disseminate information concerning the environment;
2. To explore means in law and practice for promoting appropriate public participation in the implementation of, compliance with and enforcement of environmental law;
3. Review procedures and practices with regard to public participation and access to information at international institutions and in negotiations and other activities related to sustainable development.
4. Organize training on laws and procedures relating to access to environmental information and public participation in processes leading to environmental decision making;
5. Investigate the need for the feasibility of new international instruments on access to information, public participation in processes leading to decision-making and access to judicial and administrative proceedings relating to environmental matters.

These are the programme areas that Governments by GC decision 21/23 adopted in February 2001 advised UNEP to focus on in one way or another in the next ten years. This report is a first step towards the implementation of the Montevideo III Programme and allowing Governments to learn from each others experiences.

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