STRIVING FOR ACCESS TO ENVIRONMENTAL JUSTICE: A LEGAL APPRAISAL OF THE AARHUS CONVENTION 1998

Dissertation submitted to Jawaharlal Nehru University in the partial fulfillment of the requirements for award of the degree of

MASTER OF PHILOSOPHY

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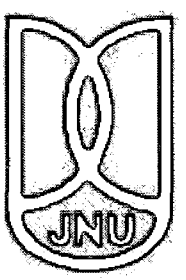

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DECLARATION

I declare that the dissertation entitled, **"Striving for Access to Environmental Justice: A Legal Appraisal of The Aarhus Convention 1998"**, submitted by me in partial fulfilment of the requirements for the award of the degree of **MASTER OF PHILOSOPHY** of Jawaharlal Nehru University is my original work. This dissertation has not been previously published or submitted for any other degree of this University or any other University.

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CERTIFICATE

We recommend that this dissertation be placed before the examiners for evaluation.

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CONTENTS

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CHAPTER 1

INTRODUCTION

CHAPTER 1

INTRODUCTION

Adequate protection of the environment is essential to human well-being and for the enjoyment of basic human rights, including the right to life itself.[1] Every person has not only a right to live in healthy environment for his health and well being, but also has duty to protect and improve the environment for the benefit of present and future generations in order to achieve sustainable environment.[2] To enjoy the right of wholesome environment a person must have some other rights too, say for e.g. one must have access to information, right to participate in environmental decision-making, a right for protection in front of authorized state organs and above and beyond all in front of the administrative and justice system. These rights have long standing in the important international documents in the realm of human rights, now these rights are well connected with right of environmental protection.[3]

Environmental protection now has become one of the major global concerns which have resulted into growing demands for legal regulations ensuring efficient environmental protection.[4] Within the ambit of global legal and institutional framework different forms of legal regulations have been put into effect that include international, regional and domestic systems of protection. Owing to many

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[1] See preambulary Para 6, to the Aarhus Convention 1998, United Nations Economic Commission for Europe, Convention on Access to Information, Participation in Decision-making and Access to Justice in Environmental Matters, opened for signature 25 June 1998 in Aarhus, Denmark; entered into force 30 October 2001. For the text of The Convention see: http://www.unece.org/env/pp/documents/cep43e.pdf. Preamble to the Stockholm Declaration(UNCHE), 14th June 1972 also adopt similar kind of language, Both aspects of man's environment, the natural and the manmade, are essential to his well-being and to the enjoyment of basic human rights.

[2] *Ibid.* The concept of sustainable development is found in many MEAs, but was recognized broadly after Brundtland Commission report 1987, for further discussion See: P. Sands (2003) Principles of International Environmental Law, New York Cambridge University Press, pp. 10-14.

[3] See Kostic (2006), *The Right of Access to Environmental Information in The Sense of The Aarhus Convention European Stream and Legal Framework in Serbia and Montenegro*, Master Thesis, Beograd European University, Viadrina Frankfurt, p. 36.

[4] See Stevan Lilic (2007), "The Aarhus Convention and Access to Environmental Justice in the EU and Serbia European Integration Studies", [Online: web] Accessed on 10 April, 2011 URL: http://internet.ktu.lt/en/science/journals/eis/01/Lilic_2007_7-14p. page No. 1-2.

unprecedented environmental issues, massive bodies of legislations have been created through international treaties at regional and national level for procurement of environmental justice. Following the rapid development of environmental issues, the problem of compliance with new rules necessarily arise accomplishing environmental justice. Some special characteristics of environmental issues created new situations for administration, tribunals and for the public itself.

Throughout the ages, human society has been confronted with numerous challenges those have been noted as global issues. Global environmental problems may be resolved through international environmental cooperation, international organizational framework and mechanism. The major environmental issues which we are facing today, such as high concentration of disserving gases, over exploitation of natural resources, excessive contamination of fresh water and air. Lilic regards them as environmental crisis, which can be procured through environmental justice[5]. The answer to these environmental crises may be found in the concept of "sustainable development", which is emerged as a major development in the field of international environmental law. This means that the existing economic and social models are basically respected, provided that the need of the future generations is not deterred by the needs of the present generation. The concept of sustainable development essentially hinges on the notion of access to justice in environmental matter.

Various laws at international level provided plethora of substantial environmental rights in the hands of the public leaving behind the issue that how these rights will be implemented effectively and realized by the global citizens. Though institutional mechanisms were established to follow up the international commitment, it is very difficult to comply with the international obligations because of loosely conceived compliance mechanisms.

The international community recognized that to enjoy adequate and wholesome environment citizens must have access to information, be entitled to participate in decision-making and also must have access to justice in environmental matters.[6] In

[5] *Ibid.*
[6] Preamble, the Aarhus Convention, 1998.

1998, a multilateral environmental treaty was concluded which recognized and guaranteed these three procedural rights in the hands of the public for better environmental governance. The public was given power to exercise these procedural rights as to enforce their substantial environmental rights.

It was UNECE[7] Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental matters which guaranteed these abovementioned procedural rights[8]. The Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters 1998, 'Aarhus Convention' entered into force in October 2001. This Convention is often associated with pursuit of environmental justice because of the fact that importance of information and public participation in decision making has now been established as integral part of eco-administrative governance. It doesn't define the phrase "environmental justice", however.

This convention is striking in several respects: *firstly,* it gives individuals and NGOs a formal role in ensuring that the Contracting Parties to the Aarhus Convention comply with it. *Secondly*, the Aarhus Convention is arguably the first multilateral environmental treaty that focuses exclusively on obligations of the Contracting Parties *vis-a-vis* their citizens. Unlike other international environmental agreements, the Convention does not address substantive environmental issues, such as ozone depletion or climate change; instead it establishes procedural obligations for policy-making, implementation, and enforcement with the aim of enhancing public participation. The Convention is based on the premise that "every person has the right to live in an environment adequate to his or her health and well being".

To achieve this goal, the Convention provides to the citizens the right to obtain environmental information, to participate in environmental decision-making, and to

[7] UNECE was set up in 1947 by Economic and social council (ECOSOC). It is one of the five regional commissions of United Nation's. Its major aim is to promote European economic integration. To do so, UNECE brings together 56 countries located in the European Union, non-EU Western and Eastern Europe, South-East Europe and Commonwealth of Independent States (CIS) and North America. All these countries dialogue and cooperate under the aegis of the UNECE on economic and sectorial issues. The area of expertise which UNECE covers, environment is one of them.

[8] See note 1.

appeal to courts or non-judicial bodies. Although regional in scope, its importance is global and it may serve as a model for strengthening procedural environmental rights in all United Nations member states. These three important rights are termed as procedural rights, Aarhus rights or rights of stake holder's involvement. It looks eminently rational to involve those into the decision making, who are likely to be affected by these environmental related decisions.

With the commutation of the era, the public involvement has been increased in decision making. The involvement of public can lead to better results in terms of environmental quality and other social objectives, as well as enhance trust and understanding among parties. The serious environmental, social and economic challenges faced by society worldwide cannot be addressed by public authorities alone without the involvement and support of a wide range of stakeholders, including individual citizens and civil society organizations. Thus, public participation is utmost important and necessary in order to achieve environmental justice. Moreover, the Aarhus Convention also concerns government accountability, transparency and responsiveness and it is considered as a pioneer governance tool in the environmental field.[9]

Historical Backdrop

The European governments first recognized public participation in environmental matters at the Regional Ministerial Conference held in Bergen, Norway, in May 1990. The Aarhus Convention itself, however, was inspired by the *Environment for Europe Process* (The 1991 Dobris Ministerial Conference), initiated in 1991 by the governments of the UNECE countries at the First Conference of the Environmental Ministers at Dobric, the Czech Republic which eventually led to the Aarhus Convention. Initially it was established to identify and develop European strategies for environmental reparation and protection. The Environment for Europe has evolved into an open-ended forum for regional cooperation, information-sharing, regional and

[9] See Georges Stavros, Kremlis (2005), "The Aarhus Convention and its Implementation in European Community", Paper Presented in Seventh International Conference on Environmental Compliance and Enforcement, Rue de la Loi, Brussels, Belgium, [Online: web] Accessed on 15 May 2011 URL: http://www.inece.org/conference/7/vol1/22_Kremlis.pdf pp. 1-3.

national policy development and investment in the environment of the UNECE countries. Its recommendations are negotiated and implemented by parties to it.

From the inception of the Environment for Europe Process, environmental ministers and other stakeholders recognized the importance of public participation and information disclosure in achieving environmental objectives. Origin of the Aarhus Convention can also be traced back in Principle 10 of the Rio Declaration,[10] adopted during the United Nations Conference on Environment and Development, which reads as follows:

> "Environmental issues are best handled with participation of all concerned citizens, at the relevant level. At the national level, each individual shall have appropriate access to information concerning the environment that is held by public authorities, including information on hazardous materials and activities in their communities, and the opportunity to participate in decision-making processes. States shall facilitate and encourage public awareness and participation by making information widely available. Effective access to judicial and administrative proceedings, including redress and remedy, shall be provided."[11]

The Second Conference of the Environmental Ministers held in Lucerne, Switzerland, in 1993, where in public participation in environmental management was included as one of the seven key elements in the Environmental Program for Europe. It was adopted at this meeting, and resulted in the Lucerne Declaration that called for proposals by the UNECE for legal, regulatory and administrative mechanisms to encourage public participation. Following the Lucerne Conference decision, UNECE task force of government and NGO representatives were charged with drafting guidelines and suggesting tools and mechanisms to promote public participation in environmental decision-making. NGOs and some governments called for a stronger, binding commitment to institutionalize public participation. In response, the Third Conference of the Ministers in Sofia, Bulgaria, in 1995 was held which endorsed so-called Sofia Guidelines,[12] and recommended that the UNECE countries draft and

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[10] The United Nations Conference on Environment and Development, 3 to 14th June 1992, Rio Declaration is one of the five documents were finalized at this conference, available at: http://www.unep.org/Documents.Multilingual/Default.asp?documentid=78&articleid=1163

[11] *Ibid.* Principle 10 of Rio Declaration.

[12] 1995 Sofia Guidelines endorsed at the third ministerial conference "Environment for Europe" available at: http://www.unece.org/env/documents/1996/Sofia_Guidelines_1996.pdf

agree upon a regional binding instrument for public participation.[13] The negotiation process for these guidelines was pushed by European non-governmental organizations in Budapest.[14]

This framework document paved the way for negotiations on an international agreement. At its special session on 17 January 1996, the Economic Commission for Europe Committee on Environmental Policy (" CEP") decided to establish an Ad Hoc Working Group for the preparation of a draft convention on access to environmental information and public participation in environmental decision-making.

Within two years of negotiations from 1996 to 1998, there were ten meetings at which NGOs were also involved throughout whole proceedings. At the fourth conference in Aarhus, the Convention was finally adopted by 36 countries and the EC.[15] Thus, the process leading to the Aarhus Convention spanned eight years and four Ministerial Conferences.

The Aarhus Convention 1998 was endorsed by The United Nations Economic Commission for Europe (UNECE) which was adopted on 25 June 1998 and entered into force on 30th October 2001. Till 19th August 2010, among 56 member of UNECE, 44 parties have ratified the convention. The Aarhus Convention enforced in the framework of UNECE links environmental rights with human rights. It acknowledges that we owe an obligation to future generations also. It establishes that sustainable development can be achieved only through the involvement of all stakeholders. It focuses on interactions between the public and public authorities in a democratic context and is forging a new process for public participation in the negotiation and implementation of international agreements. The subject of the Aarhus Convention goes to the heart of the relationship between people and

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[13] See L. Lavryson (2010), "The Aarhus Convention: Between Environmental Protection and Human Rights", Liege, Strasbourg, Bruxelles: parcours des [Online: web] Accessed on 15June 2011, URL: http://archive.ugent.be/input/download?func=downloadFile&fileOId=1083647&recordOId=1082727

[14] The responsible Directorate-General of the European Commission as well as by the Regional Environment Centre (REC).

[15] See ST. McAllister (1999), "Human Rights and The Environment: The Convention on Access to Information, Public Participation in Decision-Making, and Access to Justice in Environmental Matters", *Colorado Journal of International Environmental Law and Policy*, 10: pp. 187-191,

governments. Lavryson[16] argues that The Convention is not only an environmental agreement; it is also a Convention about government accountability, transparency and responsiveness.

The Aarhus Convention grants various rights to the public and imposes on Parties and public authorities certain obligations regarding access to information, public participation and access to justice. This Convention is described as milestone in European environmental policy making towards achieving environmental justice, because it provides mechanism for ensuring justice in environmental matters. No doubt it could serve as a model for other regions also. As it was observed by the then Secretary General of UN,

> "Although regional in scope, the significance of the Aarhus Convention is global. It is by far the most impressive elaboration of principle 10 of the Rio Declaration, which stresses the need for citizen's participation in environmental issues and for access to information on the environment held by public authorities. As such it is the most ambitious venture in the area of environmental democracy so far undertaken under the auspices of the United Nations."[17]

Definitions and General Provisions

The Convention adopts a rights-based approach. The preamble to the Aarhus Convention highlights the connection between the concepts that adequate protection of the environment is essential to the enjoyment of basic human rights and the concept that every person has the right to live in a healthy environment. It concludes that to enjoy abovementioned rights and obligations, the citizens must have access to information, be entitled to participate in decision-making and have access to justice in environmental matters. The preamble also recognizes that sustainable and environmentally sound development depends on effective governmental decision-making that contains both environmental considerations and input from members of the public. When governments make environmental information publicly accessible

[16] L. Lavryson (2010) note 13 pp. 5-6.

[17] Statement by Kofi A. Annan, Former Secretary-General UN (1997-2006), quoted in Elisa Morgera (2005), An Update on the Aarhus Convention and its Continued Global Relevance, Review of European Community and International Law 14: 2 PP. 139. Also see Fiona Marshall (2006), "Two Years in the Life: The Pioneering Aarhus Convention Compliance Committee 2004-2006", *International Community Law Review*, pp.123-154.

and enable the public to participate in decision-making, they help to meet society's goal of sustainable and environmentally sound development.

The first three articles of the Convention comprise the objective, the definitions and the general provisions. Article 1, setting out the objective of the Convention, requires Parties to guarantee rights of access to information, public participation in decision-making and access to justice in environmental matters. It also refers to the goal of protecting the right of every person of present and future generations to live in an environment adequate to health and well-being. These rights underlie the various procedural requirements in the Convention provided in its three pillars. The Convention establishes minimum standards to be achieved but does not prevent any Party from adopting measures which go further in the direction of providing access to information, public participation or access to justice.[18] The Convention prohibits discrimination on the basis of citizenship, nationality, domicile, registered seat or effective centre of its activities against natural or legal persons seeking to exercise their rights under the Convention.[19]

1. Public Authority

The main thrust of the obligations contained in the Convention is towards public authorities. The rights provided in the Convention can be exercised against the public authorities.

Article 2(2) defines the term 'public authority' as follows:

> Government at national, regional or other level; Natural or legal persons performing public administrative functions under national law, including specific duties, activities or services in relation to the environment; Any other natural or legal persons having public responsibilities or functions, or providing public services, in relation to the environment, under the control of a body or person above mentioned and The institutions of any regional economic integration organization referred to in article 17 which is a Party to this Convention.[20]

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[18] See Article 3(5) and 3(6) Aarhus Convention, provides that: The provisions of this Convention shall not affect the right of a Party to maintain or introduce measures providing for broader access to information, more extensive public participation in decision-making and wider access to justice in environmental matters than required by this Convention.

[19] *Ibid.* Article 3(9).

[20] *Ibid.* Article 2(2) 1998.

Although the Convention is not primarily focused on the private sector, however, privatized bodies having public responsibilities in relation to the environment and which are under the control of the aforementioned types of public authorities are also covered by the definition of 'public authority'.

2. Environmental Information

The Convention defines environmental Information in the following terms:

> Any information in written, visual, aural, electronic or any other material form on:
>
> (a) The state of elements of the environment, such as air and atmosphere, water, soil, land, landscape and natural sites, biological diversity and its components, including genetically modified organisms, and the interaction among these elements;
>
> (b) Factors, such as substances, energy, noise and radiation, and activities or measures, including administrative measures, environmental agreements, policies, legislation, plans and programs, affecting or likely to affect the elements of the environment within the scope of subparagraph (a) above, and cost-benefit and other economic analyses and assumptions used in environmental decision-making;
>
> (c) The state of human health and safety, conditions of human life, cultural sites and built structures, inasmuch as they are or may be affected by the state of the elements of the environment or, through these elements, by the factors, activities or measures referred to in subparagraph (b) above.

This definition is comprehensive and inclusive in nature. This has been kept broad intentionally. Thus any such information can be sought from the public authority by any person, which is likely to affect the environment. This right to access the environmental information has been given by first pillar of the Convention.[21] It is the question of the fact that the information sought lies under the defined ambit and in case of refusal one has to persuade the court that the sought information lies under Article 2(3) of the Convention.

[21] See discussion upon each pillar of the Convention in Chapter 4.

Three Pillars of the Convention

The Convention is founded on three pillars and each pillar corresponds to three procedural rights guaranteed in it.

First Pillar: Access to Information

This pillar consists upon Article 4 and 5. Article 4 sets out each country's requirements regarding the release and dissemination of environmental information. Any person may request the information covered by this Convention from public authority. This pillar is similar to freedom of information laws, which many countries use to determine information available or exempted from public disclosure and the process by which this information is disseminated.

The Convention is broader than the freedom of information laws of many countries in two respects: *Firstly*, the ambit of environmental information is wider than most of the freedom of information laws; *secondly*, the public authority, against whom this right can be exercised is broader and includes the government and other authorities under the control of the government or private bodies performing public functions[22]. The Convention also requires the public authorities to periodically disseminate the information on proposed or existing activities which may significantly affect the environment.

Second Pillar: Public Participation in Decision-making

This pillar of the Convention consists upon Articles 6-8, which allows the public to participate in certain governmental decisions which may have adverse effect upon the state of the environment. Comprehensive list of such governmental decisions covered by the Convention is similar activities subject to environmental impact assessment.[23]

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[22] See McAllister (1999), note 15 at page 190.

[23] Annex I of the Convention sets out the covered activities, which include: (1) energy production, (2) metal production and processing, (3) mineral and chemical production activities, (4) waste management activities, (5) paper and pulp production, (6) transportation infrastructure development, (7) animal-based food production activities, (8) water resources transfers, and (9) other activities that could have a significant affect on the environment.

Third Pillar: Access to Judicial Redress for Environmental Grievances

Article 9 of the Convention gives citizens the right to seek the review of refused requests for information and denial of participation. It aims to guarantee citizens and environmental NGOs the right of access to justice and enhance their involvement in environmental law enforcement. It seeks to achieve this by guaranteeing them access to review procedures when their rights to information, participation or environmental laws in general have been breached.

The study will discuss all three pillars in detail in chapter 4, while dealing with the strengths and weaknesses of the Aarhus Convention.

Access to Environmental Justice

Beside the Aarhus Convention's requirement of linking human rights and environment, it also addresses the philosophical question of what constitutes environmental justice. But it seems that question remains unanswered because of its locus and focus. The detailed discussion is provided under next chapter, however, brief analysis is as follows.

As outlined in Article 1 of the Convention that its objective is "to contribute to the protection of the right of every person of present and future generations to live in an environment adequate to his or her health and well being"[24], academicians believe that this touches strongly on issues of environmental equity and sustainability.

The Aarhus Convention makes several provisions on how environmental justice may be achieved. Yet, recent studies suggest that some of the difficulties encountered by citizens exercising this right of environmental justice.

Restrictions on the legal standing of NGOs and members of the public in the field of the environment before the courts, lack of effective penal provisions and interim relief measures in case of violation of environmental laws, risk of high legal costs and lack of public funding for environmental cases serving public interest and low level of

[24] See Preamble Para and Article 1, to the Convention note 1.

expertise of magistrates and judges in environmental law matters are some of the issues to be resolved in order to procure environmental justice.

Overall, costs are seen as the most significant barrier to accessing justice. This is despite provisions under Article 9(4) and (5) of the Convention, which require Parties to ensure that costs are not prohibitively expensive and to reduce or remove financial and other barriers.

Overall, the Aarhus Convention has been seen as a big step forward in providing more rights to citizens and NGOs in environmental matters. The Convention by upholding the principle of non-discrimination and by providing opportunities of public participation in environment decision-making and influencing the substance of the decisions, it can ensure the fare treatment and meaningful involvement.[25] Some scholars argued that though the Convention has inherent weakness of environmental justice, it is weak chapter in the environmental protection arena, yet it may serve few purposes in this field.[26] It appears that Environmental justice is evolving process which can be achieved steadily. It is worth to take an overlook of the thesis to have an apparent view how this work proceeds. This work will approach on the premises of antecedents based upon few assumptions regarding this whole debate of pursuing environmental justice.

The thesis will advance on the following hypotheses in order to examine the present work:

1. The environmental justice can only be achieved through participation of public concerned.
2. Enhanced citizen participation in environment decision making results in to better environmental policy and improved enforcement of environmental standards, hence conclusively into environmental justice.
3. Public participation has been proven in ameliorating environmental quality and level of protection, which resulted into procurement of environmental justice in UNECE region and worldwide.
4. Compliance mechanism developed under The Convention is strong enough to accomplish justice in environmental matters.

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[25] C. Nadal (2008), "Pursuing Substantive Environmental Justice: The Aarhus Convention as a Pilar of Empowerment", *Environmental Law Review,* 10: 28 p. 36.

[26] *Ibid.* See also M. Lee & K. Abbot(2003), pp. 80-108.

The above hypotheses will be examined in the light of following research questions:

1. What is environmental justice?
2. Who are the public, what is the public participation and what are the contours of the public participation in environmental decision making to secure environmental justice?
3. Does Public participation in environment decision making enhance in the level of environmental protection, and does it at different levels raises accountability and reliability of decisions?
4. What are the rights and/or duties have been granted to the public, under Aarhus Convention to influence the decision making process in order to procure environmental justice?
5. How is the compliance mechanism of Aarhus Convention and how it is different from other multilateral environmental agreements?

Analyzing these questions the study will discuss in second chapter the overall analysis of contours of 'environmental justice'. Since environmental justice is often defined in different ways and context of 'justice', the study will examine what may constitute environmental justice; what have been causes for emergence of environmental justice paradigm; and how it has been incorporated into various international legal instruments.

In chapter third, public participation in environmental justice will be taken into consideration in its entirety. It will also examine that whether environmental justice can be pursued with public participation.

Chapter four is will dwell upon the evaluation of the Convention, whether it has real teeth or it's a mere document of 'moral conduct' as most of the time this term is associated with international law.

Last chapter will conclude the work with main findings and possible suggestions for better pursuit of environmental justice.

CHAPTER 2

ENVIRONMENTAL JUSTICE: AN OVERVIEW

CHAPTER 2

ENVIRONMENTAL JUSTICE: AN OVERVIEW

Introduction

Access to justice in environmental matters is one of the most proudly proclaimed and widely violated principles of global environmental regime. Indubitably environmental laws have much contributed embellishing the courts with the constitutional cases involving deprivation of inherent and basic right of adequate environment, instead of resolving the issue for justice.[1] Millions of people are deprived of access to justice in environmental matters. We do have plethora of substantial environmental rights and numerous attorneys to argue before the courts but who gets what and how much? Apart from the issue of standing before the courts in cases of violation of environmental laws, the matter of cost in litigation, some time experiences the traversal for justice. The gap between environmental rights and primitive justice is not by reason of excessive rights and law suits but because of inexcessive remedies in environmental matters.[2] Access to justice is, some time referred to access to judicial system, however justice may not be guaranteed in spite of that until proper execution of the provisions of the inscribed documents is done.

In fact the environmental protection has turned into one of the major global concern which is termed as environmental crisis,[3] which is spreading irrespective of respecting the formal boundaries of the states. It must be resolved through international environmental cooperation so that access to environmental justice could be accomplished. Justice, social, economic and environmental to human being is essential element for expansive development. When a person is allowed to live equal in rights and with dignity in all aspects, he is said to live in the environment conducive to justice. Here the notion of justice is wider and may differ in the different

[1] Debora, L. Rhode (2004), *Access to Justice*, New York: Oxford University Press, pp. 3-5.
[2] *Ibid.* at p. 4.
[3] Stephen Lilic (2007), "The Aarhus Convention and access to Environmental Justice in the EU and Serbia, European Integration Studies" [Online: web] Accessed on 12March 2011 URL: http://internet.ktu.lt/en/science/journals/eis/01/Lilic_2007_7-14p.pdf.

context. It may be the matter of accomplishing the rights guaranteed by legal instruments, say for example, environment adequate to his or her health is basic and inherent right recognized and confirmed by various international legal instruments agreed upon by committee of nations, conferring those rights may be confirming justice in environmental context.

Call for environmental justice has been grown very recently, nevertheless very little attention has been paid to the domain what is meant by environmental justice, particularly in the realm of social justice movement demand. In general parlance the environmental justice refers to the issue of the equity or the distribution of environmental ills and benefits among all.[4] There have been many attempts to define the environmental justice by academicians through environmental political theories, but most of the theories have been inadequate to reach exactly what is meant by environmental justice.[5]

When we talk about access to environmental justice, it should be distinct that this segment be accessible to each and every individual. Access to environmental justice is a consequential issue for the over all protection of the environment and implementation of environmental policies and the enforcement of environmental laws.[6] The justice in environmental matters is associated with the enforcement of the laws, with out which environmental law will be toothless because a strong link will be missing in the regulatory chain.[7] For the effectiveness of the law there should be a link between the implementation and review procedure so that it could be challenged in the court of law.

This chapter will deal with the over all analysis of the concept of environmental justice. It will accentuate how the theories of justice have been deduced into the domain of environmental justice, what have been the causes that this movement has been started at global level.

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[4] David Schlosburg (2004), "Reconceiving Environmental Justice: Global Movement and Political Theories", *Environmental Politics*, 13:3. pp. 517-540.

[5] *Ibid.* p. 522.

[6] G. Kremlis, "European Perspective on Access to Justice in Environmental Matters, Judicial and Legislative Affairs European Commission", DG XI Belgium [Online: web] Accessed 3 March 2011 URL: http://www.biopolitics.gr/HTML/PUBS/VOL8/html/Kremlis.htm

[7] *Ibid.*

It appears that the notion of environmental justice is gained ground in the recent past. It is the attempt to equalize the burdens of pollution, noxious development, and resource depletion. Environmental justice requires both, more equitable distribution and greater public participation, in evaluating and apportioning of environmental goods and bad.[8] The ambit of environmental justice is identically wide, and to understand the concept we will have to reflect upon the notion of 'justice' itself.

Justice

The development of substantive and procedural rights has gone hand in hand with the development of other rights, some of them basic, such as the right of association and assembly, the right to freedom and development and even right to file a petition against the government in case of infringement of the legal right.[9] Schlosburg says that academics and activists have been discussing about the contours of the 'justice' for last few decades.[10] The justice literature in political theories has expanded over this time, nevertheless the innovations there have rarely been applied to the environmental justice movement. Previously most of the 'justice' studies have been defined and preceded from the theories of John Rawl. These theories focused on a conception of justice solely based upon distribution of goods in a society and the best principles by which to distribute those goods. Schlosberg argues that while construing the 'justice' the focus should not be just on the distribution of goods, but also more particularly on how those goods are transformed into the flourishing of individuals and communities.[11] Justice may differ in its context say for e.g. social or legal

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[8] Kristin Shrader-Frechette (2002), *Environmental Justice: Creating Equality, Reclaiming Democracy*, New York: Oxford University Press, p. 6. Author supported the view of distributive justice, of sharing goods and bads.

[9] Stephen Stec (1998) "Doors to Democracy
Current Trends and Practices in Public Participation in Environmental Decision-making in Central and Eastern Europe" [Online: web] Accessed 22 March 2011, URL http://archive.rec.org/REC/Publications/PPDoors/EUROPE/Justice.html

[10] David Schlosburg (2007), *Defining Environmental Justice: Theories, Movements and Nature,* New York: Oxford University Press, pp. 3-4. Schlosburg dealt with the concept of environmental justice in detail tracing the origin of the concept in classical theories of justice propounded by J. Rawl, and he also explained the ecological justice and different theories relating to environmental justice movement. See also D. Schlosburg (2004), "Reconceiving Environmental Justice: Global Movements And Political Theories", *Environmental Politics.* See note: 10.

[11] *Ibid.*

justice[12] but the notion of justice in the domain of the environment is much different since it is not imbibed merely in equal distribution.[13]

Justice may be defined in many ways and also can be understood in interlinking ways. David argues that in the past nearly four decades of the literature of political theory, attempts have been made to define the justice approximate exclusively as a question of equity in the distribution of social goods.[14] According to him the concept of justice only applies where some distributive consideration comes into play, other issues are merely questions of right and wrong.[15] He claims that the 'fundamental question is this: how, and to what end, should a just society distribute the various benefits[16] it produces, and the burdens[17] required to maintain it?'

The subject of justice, then, is the very basic structure of a society; it defines how we distribute various rights, goods, and liberties, and how we define and regulate social and economic equality and inequality.

John Rawl[18] defined justice as a standard, whereby the distributive aspects of the basic structure of the society are to be assessed. Rawl advocated about the appropriate distribution of social advantages, he argues that we could develop a fair notion of justice that every one could agree. Thus Rawl has taken justice as a matter of equal

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[12] For a detail analysis of upon the discourse of social justice and legal justice see, Wojciech Sadurski (1984), "Social Justice and Legal Justice", *Law and Philosophy*, Vol 3, No. 3 pp. 329-354. He challenges the validity of the distinction between the legal justice and social justice, his main proposition is that what people usually call "legal justice" is either an application of the more fundamental notion of "social justice" to legal rules and decisions or is not a matter of justice at all.

[13] See note 10, at pp. 74-75. For notions of Environmental justice see also Eckhard Rehbinder "Democracy, Access to Justice and Environment at the International Level", [Online: web] Accessed on 15 March 2011 URL: http://www.cidce.org/pdf/livre%20rio/rapports%20g%C3%A9n%C3%A9raux/rehbinder.pdf. See also Dorceta E. Taylor (2004) The Rise of the Environmental Justice Paradigm, Injustice Framing and the Social Construction of Environmental Discourses, he identifies Environmental justice paradigm and compare it with new environmental paradigm, he discussed why Environmental justice movement grew so fast.

[14] See note 9 at pp. 6-7.

[15] See Brian M. Barry (1995), *Justice as Impartiality,* Oxford: Oxford University Press. Also cited in David Schlosburg (2007) at page 9.

[16] Such as resources, opportunities, and freedoms.

[17] Such as costs, risks, and unfreedoms.

[18] See John Rawl (1972), *Theory of Justice*, London:Oxford University Press, pp 7-11. The literature available upon distributive justice are myriad however few may be referred here such as: Barry Brian, (1995), Miller (1999), Wojciech Sadurski, (1984), Deborah
L. Rhode (2004) etc other may be referred.

and just distribution or application of those rules which provides equal distribution of social economic, political or economic advantages or bads.

Environmental Justice

The philosophy of justice has far back history while the discourse upon environmental justice arises recently. We are discussing the colloquy of environmental justice almost since last two decades,[19] while the justice literature in political theory has been expanded over the past three or more decades. Jamieson[20] has suggested:

> "Perhaps the most important idea of global environmental justice views the environment as a commodity whose distribution should be governed by principles of justice."

David, discarding it argues that the focus is not just on the distribution of goods, but also more particularly on how those goods are transformed into the flourishing of individuals and communities.[21] It's true that defining justice in terms of the distribution of environmental benefit or burden over state or people will lead to radically different notion of environmental justice. Environmental justice emerged as a concept in United States, in early 1980s.[22] Shlosburg maintains the view that as outcome of the attempt to define the Environmental justice it has become what ever its documenters and examiners have put forward.[23] He argues that the definitions used by environmental justice activists in the U.S and worldwide incorporate four major ideas: the equitable distribution of environmental risks and benefits; fair and meaningful participation in environmental decision-making; recognition of community ways of life, local knowledge, and cultural difference; and the capability of communities and individuals to function and flourish in society.[24]

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[19] See note 10 pp. 1-2.
[20] Dale Jamieson (1994), "Global Environmental Justice", *Royal Institute of Philosophy Supplements* Vol:36, pp. 199-210.
[21] *Ibid.*
[22] The environmental justice discourse began with the 1982 campaign of a predominantly African-American community against a polychlorinated biphenyl (PCB) waste landfill in Warren County, North Carolina, generally recognized as the birth of a new multiracial environmental justice movement. For more detail see: Tom Stephens, Esq (2003), An Overview of Environmental Justice, Lecture delivered at the Thomas M. Cooley Law School, Law Review Symposium, Environmental Injustice on October 29,2002, and was revised as a written article in February 2003 published in 20 T. M. Cooley Law Review, 229
[23] See note:10 at p. 50.
[24] *Ibid.*

The term Environmental justice is use often loosely and with broad range of connotations. The frame of Environmental justice is to a great extent socially constructed but has been grounded in an objectively verified set of social pattern.[25] In a broad sense it mean, ensuring that every one has equal right of clean environment adequate to his or her health, regardless of their race, cast and place of residence. Environmental justice also means being able to secure access to the justice system in resolving environmental concerns:

> "Broadly speaking, environmental justice refers to a political and social movement to address the disparate distribution of environmental harms and benefits in our society, and to reform the processes of environmental decision making so that all affected communities have a right to meaningful participation."[26]

The root of Environmental justice movement lies in diverse political efforts.[27] In EPA in its reaffirming commitment to Environmental justice administrator, Christine Whitman, elaborated that "environmental justice is achieved when everyone, regardless of race, culture, or income, enjoys the same degree of protection from environmental and health hazards and equal access to the decision-making process to have a healthy environment in which to live, learn, and work."[28]

However, Environment Protection Agency (EPA) defined environmental justice in these terms:

> "Environmental Justice is the fair treatment and meaningful involvement of all people regardless of race, color, national origin, or income with respect to the development, implementation, and enforcement of environmental laws, regulations, and policies. Environmental justice can be achieved when

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[25] Stella M. Capek, (1993), "The Environmental Justice Frame: A Conceptual Discussion and an Application".

[26] Clifford Rechtschaffen (2003), "Advancing Environmental Justice Norms" [Online: web] Acceseed on 20 April 2011, URL: http://digitalcommons.law.ggu.edu/cgi/viewcontent.cgi?article=1035&context=pubs&sei-redir=1#search=%22Clifford%20Rechtschaffen%20Advancing%20Environmental%20Justice%20Norms%29%22.

[27] Say for e.g. the notable political efforts have been, the civil rights movement organizing efforts of Native Americans and labor, the traditional environmental movement, and perhaps most importantly, the local grass roots anti-toxics movement of the 1980s.

[28] In 2001, memo reaffirming EPA's commitment, Memoranda from Christine Whitman on EPA's Commitment to Environmental Justice (August 9, 2001) available at http://www.epa.gov/Compliance/resources/policies/ej/admin_ej _commit_letter_081401.pdf. Cited in Clifford Rechtschaffen (2003), note 24.

everyone enjoys the same degree of protection from environmental and health hazards and equal access to the decision-making process to have a healthy environment in which to live, learn, and work."[29]

Lazarus[30] argues that environmental Justice focuses on the distribution of environmental hazards across society and seeks a fair distribution of those hazards. If we analyze the environmental justice in this context, than we may arrive to the conclusion that it will radically increase the level of environmental degradation. Say for e.g., if the people of a vicinity are bearing hazardous substances in their environment,, the claim that there should be equal distribution of the hazards too, hence who are not getting should get it, it will not be an element of Environmental justice, rather that those hazardous activities should be removed from the vicinity.

In order to have clear understanding of the Environmental justice, we may refer to what environmental injustice consists. On the basis of above discussion we can deduce that an environmental injustice exists when a person or group of the persons suffer disproportionately at regional or national levels from environmental risks or hazards, and/or suffer disproportionately from violations of inherent right as a result of environmental factors, and/or denied access to environmental benefits, natural resources, or denied access to information, participation in decision making or access to justice in environmental matters.[31]

One thing should be kept in mind that environmental justice should not only be confined to the recognition that environmental injustice exists, but there should be a collection of normative goals to be achieved so that environmental justice may be secured. Now the element of Environmental justice and equity are part of multilateral environmental negotiations like UNFCCC and Kyoto protocol. The issue of justice in environmental matters may be taken in the broader framework of environmental sustainability. As a matter of justice it is necessary, to take into account differentiate

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[29] United State's Environmental Protection Agency, on its websites provide this outline [Online: web] Accessed 25 May 2011, URL:http//:www.epa.gov/environmentaljustice/

[30] See Richard J. Lazarus (1993), "Pursuing Environmental Justice: The Distributional Effects of Environmental Protection", *Northwestern University Law Review*, Vol. 3.

[31] This definition has been taken from Participants of the Central and Eastern European Workshop on Environmental Justice (Budapest, December 2003), they defined environmental justice solely in terms of "equal distribution", and lack of discrimination.

impact arising out of disproportionate contributions to environmental degradation so that fare treatment could be ensured. Such conception of justice will have to consider in terms of common but differentiated responsibilities.

Environmental Justice Based Upon Shared Notion of Responsibility

As we discussed above that element of environmental justice assimilate in it the equality and fair treatment on the basis of shared responsibilities. The Brundtland Report 1987 (WCED)[32] claims that "inequality is the planet's main environmental problem", inequality may be thought as social and historical problem, rather it may be, an ethical problem, if we deeply think Environmental protection in many ways confers various benefits but at the same time impose several burden too. The benefits of environment protection are obvious and significant, while the burdens of environmental protection range from the obvious to more subtle.[33]

For example reduction in level of the pollution increases the sustainability and also enhances public welfare by allowing greater opportunity for enjoyment of the amenities associated with a cleaner natural environment. Historically, developing countries have had different need in terms of development, social, environmental and priorities and have not enjoyed the same economic benefits as the developed countries those degraded the global environment in their process of industrialization.[34]

Even in this context, it is not equitable for developing countries to equally share the burden of controlling GHG emissions when, until recently, developed countries have done most of the pollution. This is because economic growth is still the primary strategy for eradicating poverty and should not be prohibitively restricted through the use of environmental controls. Due to this principle of equity, asymmetrical or differentiated obligations for developed and developing countries have become the norm in international environmental treaties. This equity principle is now often called

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[32] A/RES/42/187 Report of the World Commission on Environment and Development.

[33] See note 28.

[34] See Anita M. Halvorssen (2007), "Common, but Differentiated Commitments in the Future Climate Change Regime, Amending the Kyoto Protocol to include Annex C and the Annex C Mitigation Fund", 18 *Colorado Journal of International Environmental Law & Policy* pp. 247-269. The author suggested that fastly developing countries, say for e.g. India and China, now in next 2012, climate regime, should take binding commitment of limiting their gas emission.

"common, but differentiated responsibility" and is briefly expressed in Principle 7, of Rio Declaration on Environment and Development.[35] Principle 7 of the Rio Declaration states this principle thus: States shall co-operate in a spirit of global partnership to conserve, protect and restore the health and integrity of the Earth's ecosystem In view of the different contributions to global environmental degradation, states have common but differentiated responsibilities The developed countries acknowledge the responsibility that they bear in the international pursuit of sustainable development in view of the pressures their societies place on the global environment and of the technologies and financial resources they command.[36]

As a nascent principle of international environmental law, "common but differentiated responsibility" evolved from the notion of the "common heritage of mankind."[37] Since the climate is common concern for all thereby it is responsibility of all countries to protect the environment.

In spite of the fact that this principle of common but differentiated responsibilities is not generally considered binding law, nevertheless it has become a cornerstone of burden-sharing structures adopted in international environmental treaties. In the context of climate change, developed countries have historically contributed the most to the climate change problem and have the greater technological and economic capacity to address the problem, whereas developing countries have not significantly contributed to climate change and are more vulnerable to its impacts because they lack the resources to address the problem.[38] The 1992, Framework Convention on Climate Change,[39] is the first international legal instrument to address climate change and also is most comprehensive international attempt to address adverse changes to

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[35] Principle 7 was particularly controversial, with the text satisfying neither developed nor developing States. Whilst developed States disliked the idea of being held legally responsible for their past acts of environmental degradation, many developing States felt the final text failed to specifically blame the North for its past and current behavior. See Duncan French (2000), "Developing States and International Environmental Law: The Importance of Differentiated Responsibilities", *The International and Comparative Law Quarterly*, Vol.49. No. 1Pages 35-60.

[36] See Philippe Sands (2003), *Principles of International Environmental Law*, Second Ed. New York Cambridge University Press Pages 286-287.

[37] The concept of common heritage of mankind has been gained caliber in the United Nations Convention on the Law of the Sea December 10th opened for signature 1982, 21 International Legal Material 1261. However this concept is evolved much back before 1950.

[38] See note 35 at p. 257.

[39] United Nations Conference on Environment and Development (UNCED) Framework Convention on Climate Change, May 9,1992.

the global environment. Among the various goals of the Convention most important is the steadies and to abate the greenhouse gases concentration in the atmosphere to protect the level of the pollution to keep it safe from dangerous anthropogenic interference with the climate system." Some industrialized countries voluntary agreed to reduce their GHG emission into atmosphere, up to a level with in certain period.

As it is evident from its nomenclature The UNFCCC is a framework agreement, which provides amongst its objective that which country will reduce its gas emission and how much. For that target, to be achieved in 1997, parties to the convention agreed to negotiate in Kyoto through a protocol laying out binding time bound commitment for the reduction of GHGs. Among the various principles to be acted upon through the Convention, one was the same "common but differentiated responsibility" according to which the developed countries would take the lead in addressing the climate change problem, specifically whereby developing countries will be excluded from any binding commitment of GHG reductions.

This principle is based upon shared notions of fairness: the developed countries are disproportionately responsible for erstwhile GHG emissions and have the greatest capacity to act.

Thus, the Framework Convention makes few demands on the much less responsible and usually much less capable developing countries.[40] The exclusion of the developing countries became one contentious issue whereby United State insisted that since these countries also make substantial contribution to these gases and will be doing so in future too, but this demand of United State was in the contradiction of this principle of common but differentiated responsibility. In this backdrop the practicable question arises that who is the violator of environmental laws? Is the violater responsible for its protection and also to restore the damages already done as per the polluter pace principle? In this context justice in environmental matters may be achieved if the restoration is done by the poluter or one prevents from further contamination of atmosphere.

[40] See Paul G. Harris (1999), "Common But Differentiated Responsibility: The Kyoto Protocol and United States Policy", *New York University Environmental Law Journal*, Vol.: 7 pp. 28-30.

The basis of shared responsibility of the country's is their historical contribution to the problem, its level of economic development, and its capability to act. This was suggested by Principle 23 of the 1972 Stockholm Declaration, which states that it is essential to consider "the extent of the applicability of standards which are valid for the most advanced countries but which may be inappropriate and of unwarranted social cost for developing countries." This principle was also implicit in the 1987 Montreal Protocol on Substances that Deplete the Ozone Layer, and it has been recognized in other important international undertakings also.

Similar language also exists in the 1992 Climate Change Convention, which provides that the parties should act to protect the climate system 'on the basis of equity and in accordance with their common but differentiated responsibilities and respective capabilities'.

Sands observed that the principle of common but differentiated responsibility includes two elements. The first concerns the common responsibility of states for the protection of the environment, or parts of it, at the national, regional and global levels. The second concerns the need to take account of differing circumstances, particularly in relation to each state's contribution to the creation of a particular environmental problem and its ability to prevent, reduce and control the threat.[41] Consequently this principle of such shared responsibility has two practical corollaries, according to Sands, First, it entitles, or may require, all concerned states to participate in international response measures aimed at addressing environmental problems. Secondly, it leads to environmental standards which impose differing obligations on states.

The notion of common responsibility implies the shared obligations of two or more states towards the protection of a particular environmental resource, taking into account its relevant characteristics and nature, physical location, and historic usage associated with it.[42] Natural resources can be the 'property' of a single state, or a 'shared natural resource', or subject to a common legal interest, or the property of no state. Common responsibility is likely to apply where the resource is not the property

[41] *Ibid.*
[42] *Ibid.*

of, or under the exclusive jurisdiction of, a single state. The differentiated responsibility of states for the protection of the environment is widely accepted in treaty and other practice of states. It translates into differentiated environmental standards set on the basis of a range of factors, including special needs and circumstances, future economic development of developing countries, and historic contributions to causing an environmental problem.

The 1972 Stockholm Declaration emphasized the need to consider 'the applicability of standards which are valid for the most advanced countries but which maybe inappropriate and of unwarranted social cost for the developing countries'. The 1974 Charter of Economic Rights and Duties of States makes the same point in more precise terms as; the environmental policies of all states should enhance and not adversely affect the present and future development potential of developing countries. In the Rio Declaration, the international community agreed that environmental standards, management objectives and priorities should reflect the environmental and developmental context to which they apply, and that the special situation of developing countries, particularly the least developed and those most environmentally vulnerable, shall be given special priority so that fare treatment could be confirmed. The distinction is often made between the capacities of developing countries and their needs.

Under the 1987 Montreal Protocol, the special situation of developing countries entitles them, provided that they meet certain conditions, to delay their compliance with control measures. Under the 1992 Climate Change Convention, the principle of 'common but differentiated responsibilities' requires specific commitments only for developed country parties and other developed parties, and allows differentials in reporting requirements. The 1997 Kyoto Protocol applies the principle of 'differentiated responsibility' to OECD countries, setting a range of different targets depending upon states' historic contribution and capabilities. The special needs of developing countries, the capacities of all countries, and the principle of'common but differentiated' responsibilities has also resulted in the establishment of special institutional mechanisms to provide financial, technological and other technical assistance to developing countries to help them implement the obligations of particular treaties.333

This whole notion of responsibilities is based upon the Principle 7, of Rio declaration, as discussed above. According to such notion of commonality based upon customary obligation, all states are under an obligation not to cause harm to the environment beyond their respective boundaries. This 'no harm' obligation is not based upon the socioeconomic condition of the state.[43] In fact, the "no harm" principle is seemingly applicable to both North and South alike. Moreover, this customary obligation has, more recently, been supplemented by the environmental principles of "'common good', 'common interest' and 'common concern of humankind'". Such principles are having a significant effect on both the nature and scope of international environmental law.[44]

The relevant question arises that why there is such differentiated responsibility since the environment is common concern for all and environment is not confined to the geographical boundaries of the particular state. The answer may be found in the historical responsibility of particular region for current environmental degradation, and its present capability to remedy such problems. However there are many other factors for the existence of differentiated responsibility. These include: *firstly,* recognition within the international community that international obligations must take into account the specific needs and circumstances of developing countries; *secondly,* the emerging principle on States to assist each other in international relations to achieve sustainable development, the idea of a "global partnership"; and third, as an inducement to hesitant States to sign and then implement multilateral environmental agreements.

However, merely by stating that the particular stream of countries is responsible for environmental damage blurs a number of other issues. First, despite saying that a country's responsibility should correlate with its contribution to the damage caused, this is not an easy principle to translate into practice. How can an international agreement truly reflect the contribution of an individual State, or group of States, to an environmental problem? The second justification for differentiation is that some States have greater current capability with which to tackle the causes of global

[43] See principle 21, of Stockholm Declaration on the Human Environment 1972, also see Principle 2 of the Rio Declaration, 1992, the principle of no harm.
[44] See Duncan French (2000), note. 35 at p. 45.

environmental problems, and where negative environmental impacts are inevitable, to try to ameliorate the consequences. Principle 7 of the Rio Declaration talks in terms of "technologies and financial resources". The Climate Change Convention, following the wording of UNGA Res. 44/228, uses the term "respective capabilities". Both, however, refer to the same issue that of obligations being differentiated on the basis that those States with greater access to technology and resources are required to assist other States in the implementation of their international commitments.

A final justification for the existence of differentiated responsibilities is that it provides an inducement to hesitant States, particularly those in the South, to participate in multilateral environmental agreements. Whatever the actual justification of the notion of differentiated responsibilities, it is clear that it plays a very significant part in many international environmental regimes. And this significance is likely to increase as developing States continue to take an active role in environmental policy and law-making. The notion of environmental justice is reflected in this kind of shared responsibilities. Indubitably every state is responsible and under an obligation to protect the environment but the countries that are amenable for degrading the level of the environment they should be more responsible for the restoration and protection of the environment. However, the international community's reliance on differential obligations is not without its critics who note that it jeopardizes the very purpose of international environmental law of combating environmental justice readily.

The engagement of one state with the world is necessarily global in its scope, but the world is characterized by a multiplicity of agents none of whom can single-handedly bear the onus of global responsibility, the way in which our ethical responsibility is to be acted upon has to be contested and negotiated. These multiple agents with different capabilities to cope with and handle burdens may find themselves in a world that thrusts upon them a disproportionate number of risks and dangers. Because of the essentially differentiated impacts on common ecological resources and functions by different agents with different capabilities and vulnerabilities, it is argued that, a theory of justice, which is compatible with a critical conception of ecological

sustainability, must be based on the principle of shared but differentiated responsibilities.[45]

New International Ecological Order

After Stockholm Conference international environmental law was a greenhorn with few multilateral agreements. While today this branch of international law is deluging for the development of international law.[46]The international legal regime on environment protection has provided an opportunity and at the same time obligated the international community to come together to face common challenges to survival of the present and future generations as well.

Environmental rights are one part of justice while the ecological human rights are another part of justice. The relation of man to other human living creature of the earth lies under the category of ecology, which is also subject of justice. Since the Stockholm conference, plethora of environmental laws was introduced in international arena which formed a new ecological order. According to Taylor[47] one of the significant developments in international environmental law reforms in last few decades has been the linkage between the ethics discourse and law He further argues that these attempts began with the recognition that philosophical discussions concerning the relationship between humanity and nature, and the moral worth of nature, were not only relevant to understanding the limitations inherent within current law, they were also fundamental to creating new legal obligations.[48] In this backdrop phrases such as the "intrinsic value of nature", "respect for nature", "responsibility for nature", and "future generational equity" have often found a place in dialogue and writings concerning traditional and new environmental legal obligations. At municipal level such discourses were found place in early 1970s while it appeared at

[45] See Asghar Ali (2006), "A Conceptual Framework for Environmental Justice Based on Shared but Differentiated Responsibilities" in Tony Shallcross and John Robinson (eds.), *Global Citizenship and Environmental Justice*, Amsterdam Netherlands, pp. 41-81.

[46] There are hundreds of international legal documents which directly or indirectly deal with the issue of environment protection, which reportedly overflowed after 1970s, particularly after Stockholm Conference 1972. See Edith Brown Weiss (1993), "International Environmental Law: Contemporary Issues and the Emergence of a New World Order", 81 *Georgetown Law Journal,* p. 675.

[47] Prudence E. Taylor (1997), "From Environmental to Ecological Human Rights: A New Dynamic in International Law" 10 *Georgetown International Environmental Law Review,* p. 309.

[48] *Ibid.*

international level lately. Nevertheless, by 1991 one of the first texts on international environmental law acknowledged that "ethical and philosophical concepts are crucial in understanding the actual nature of environmental law and the challenge it poses to international law." As it was remarked by the Brazilian President Fernando Collor de Mello that,

> "However we are facing the paradox of securing, environmentally healthy planet in a world that is socially unjust".[49]

Acknowledging the idea of "socially unjust", Desai[50] illustrated the disparity which exists among the developed and developed countries. According to Desai, the real challenge before the developing countries is inequality in terms of income, consumption of natural resources and impoverishment.

> "For example the United States with 5% of the world population uses 25% of the global energy, accounts for 22% of all CO_2 produced, and possesses a 25% share of the global GNP, as compared to India which with 16% of the world population uses 3% of the global energy, contributes 3% in total CO_2 produced, and has a paltry share of 1% of the global GNP."[51]

Shrader-Frechette, in his book presents that in the early movement for the protection of environment, many environmentalists were allied with the policies of the governmental interests, the environmental movements concentrated upon the protection of threatened forests, rivers, and non-human species, not humans.[52] Thereafter human became the subject of environmental movements when it was realized the environment is in much danger and in near future will be highly difficult to sustain for the future generation to enjoy their rights, because what affects the planet affects us all.

Actually this whole debate of a new ecological order begin aftermath of the dialogue of creating new international economic order. At the time the continuing crisis in the world economy has been the reason for the United Nations to give special consideration for the first time in its history to the problems of raw materials and

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[49] Cited in B. H. Desai (1997), "Global Accords and Quest for a New International Ecological Order: From Law of Indifference to Common Concern", *Business & the Contemporary World* Vol. 1X(3), pp. 545-572.

[50] *Ibid.* at pp. 558-559.

[51] *Ibid.*

[52] See Kristin Shrader-Frechette (2002), *Environmental Justice: Creating Equality, Reclaiming Democracy,* New York: Oxford University Press, pp. 10-31. The author dealt with the Distributive justice. The Principle of Prima Facie Political Equality and participative justice in context of the environment.

development and to attempt to establish some basic norms to govern international economic relations. This concern was developed by many developing countries owing to that they are not able to consume the resources of the world as equivalent to what the developed countries are doing[53]. As Desai[54] argues that the attempt by developing countries to follow new international economic order was started especially since they were "dissatisfied with the system which shaped their economies but excluded them from management". The big concern of the developing countries was that they have been suffering from an unequal share in the consumption of resources of the world.[55] The other countries wanted there equal share rather than performing secondary role in the process. Thus the developing countries took the shelter of UN General Assembly to put forward their concern to seek a new order for their economy. As a sequel to the growing demand, the Sixth Special Session of the General Assembly was convened in 1974 on raw materials and development. It leads to the adoption of a Declaration on the Establishment of a New International Economic Order. This new international economic order declaration provided for amending inequalities and redressing developing countries and to ensure steadily accelerating economic and social development.[56] As a follow-up to the work of the Sixth Special Session, the General Assembly debated the NIEO issue further at its Twenty-Ninth Session. Consequently resolution on the Charter of Economic Rights and Duties of States was adopted. The Charter reflected the growing aspirations of the developing countries for placing international relations on a just and equitable basis.

Throughout the NIEO debate in the General Assembly, the developed countries expressed strong reservations to the demands voiced by the developing countries. But in spite of the resistance by developed countries the economic order could not do much.

At the initiative of the developing countries, the General Assembly in 1990 adopted, for the first time by consensus, a "blueprint for the coordination of national and international economic policies." It avoided any direct reference to the earlier NIEO

[53] For e.g. the decision of the oil producing and exporting countries for various reasons to impose large increases in the price of oil and petroleum products. For more detail see Robin C. A. White (1975), The International and Comparative Law Quarterly, Vol. 24, No. 3.
[54] See note 43.
[55] See Desai (1997), see note 49 at pp. 558-561.
[56] *Ibid.* p. 560.

debate, yet in substance it sought to "reinstate the development objective" in North—South cooperation and reflected the same issues. An important development, however, was that the Eighteenth Special Session, in general, regarded environment protection as a priority for the next decade. - The efforts at linkage between environment protection and development made the developing countries alert. In fact, they argued that "the revitalization of growth and development in developing countries is required as an essential condition for the promotion of environmental protection."[57]

This was an early indication of the mood of the developing countries to use the environment as one of the pivotal bargaining tools with the developed countries. After the conclusion of the debate of the NIEO, environmental factor came to make strong influence on the agenda of developing countries. Consequently the links between economic, and ecological development came into front. The World Commission on Environment and Development (Brundtland Commission) which was set up by the U.N. General Assembly, in its report entitled Our Common Future, has reinforced the widespread perception of disequilibrium in economic relations as well as consumption of natural resources and its adverse effect on the global environment. It affirmed a further step towards achieving environmental sustainability.

The work of the Brundtland Commission highlighted the conjoining of the debate of ecological and economic development, for it the Brundtland Report suggested "sustainable development" as a possible way out to accomplish environmental justice. Sustainable development, an important component of environmental justice is associated to the right to healthy environment for the present generation and as well duty of the present generation to preserve the environment as the future generation also could find their place in the environment adequate to ones health.

Right to healthy environment is most regarded as third generation constitutional right that requires the authorities to guarantee an objectively high level of protection.[58]

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[57] *Ibid.*

[58] See note 9, S. Stec, (1998), PP. 1-5, See also Chapter 3: The Public's Right to Enforce Environmental Law, Stephen Stec, Handbook on Access to Justice under the Aarhus Convention Szentendre, Hungary Ministry of the Environment Republic of Estonia. p. 35.

Prior to publication of Brundtland Report 1987,[59] the concept of sustainable development may be found expressly or inferably in various environmental treaties and in other instruments related to the environment. However the Brundtland Report is characterized as the point at which sustainable development became a broad global policy objective and set the international community on the path which led to UNCED[60] and the body of rules referred to as 'international law in the field of sustainable development'. The Brundtland Report defined sustainable development as 'development that meets the needs of the present without compromising the ability of future generations to meet their own needs'.[61] Two key concepts are assimilated in this definition, first, the concept of need of the present generation to live and enjoying the right to healthy environment and second the idea of limitations imposed by the state of technology and social organization on the environment's ability to meet present and future needs.

Sustainable development though is an important element of environmental justice. However, according to Sands international law of sustainable development is wider than that of international environmental law.[62] Justice requires the clear understanding of the rights and duties, because the recognition of the environmental rights and duties in legal form is aspect of the justice in environmental matters, which has been guaranteed and recognized by the Aarhus Convention. There has been steady progress in the recognition of the procedural rights in forms of the access to information and public participation in decision making which are important of the access to justice, however but access to justice in environmental matters does not mean only access to justice in access to information and public participation.[63] By all these rights the right to a healthy environment is sought. There is old legal maxim "where there is right,

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[59] Report of the World Commission on Environment and Development: Our Common Future. Transmitted to the General Assembly as an Annex to document A/42/427 - Development and International Co-operation: Environment. Visit: http://www.un-documents.net/wced-ocf.htm

[60] United conference on environment and development, Rio de Janeiro, 3-14 June 1992 Informal name The Earth Summit, 172 Government participated 108, heads of the state or government. 2400, representative from the NGOs. Resulting document Agenda 21, the Rio Declaration on Environment and Development, the Statement of Forest Principles, the United Nations Framework Convention on Climate Change and the United Nations Convention on Biological Diversity. As a follow up measure the Commission on Sustainable Development was established. For more detail visit: http://www.un.org/geninfo/bp/enviro.html

[61] See note 35 p.10.

[62] Apart from environmental issues sustainable development includes economic and social aspects of development. See Philippe Sands (2003) note 35 p.10

[63] See S. Stec (2003) note 9 page 1.

there is remedy", if one accepts the maxim "there is no right without a remedy," then it is attendant upon the courts to use the tools at their disposal to see that "everyone has his due." The adequacy of remedies is an important question in this respect.

Though various international treaties were formulated to accomplish environmental justice but it was the Aarhus Convention that confirmed access to justice in environmental matters. The Aarhus Convention was adopted in 2001 by UNECE. As per this Convention the nomenclature of environmental justice assimilates in it three important procedural rights upon which environmental justice exist. Nevertheless environmental justice is broader concept than these three procedural rights. The Aarhus Convention stresses in its recitals that "effective judicial mechanisms should be accessible to the public, including organizations, so that its legitimate interests are protected and the law is enforced."[64] Article 1 stipulates that "each Party shall guarantee the rights of access to justice in environmental matters in accordance with the provisions of this Convention."

In this context, the Aarhus Convention (1998) focuses on access to information, public participation in decision-making and access to justice in environmental matters and is substantially linked to international human rights and basic constitutional rights and freedoms. Access to environmental justice, as stipulated by the Aarhus Convention rests on the basic human right to a fair trail. The Convention penetrated into issues which have previously been perceived as domain reserve of individual states, making them now issues of international law.[65] First two pillars of the Convention contain procedural rights to the public, namely, right to access the information and public participation in decision-making. While third pillar of the Convention deals with the access to justice in terms of access to judicial system in form of courts or any other independent body established for such purpose. In this regard the Convention says that each Party shall, within the framework of its national legislation, ensure that any person who considers that his or her request for information has been ignored, wrongfully refused, whether in part or in full, inadequately answered, or otherwise not dealt with in accordance with the provisions of that article, has access to a review procedure before a court of law or another

[64] See preamble, the Aarhus Convention 1998, note 1.
[65] Ebeson, (2002), sighted in Stevan Lilic, (2007) note 3 page 1.

independent and impartial body established by law.[66] In the circumstances where a Party provides for such a review by a court of law, it shall ensure that such a person also has access to an expeditious procedure established by law that is free of charge or inexpensive for reconsideration by a public authority or review by an independent and impartial body other than a court of law. It provides that such final decision will be binding upon the authority holding the information and so refused pursued such demand.

Thus here emphasis is upon the access to judicial system rather than ultimate justice, because the people may not get justice even spending hours in the courts. With regard to access to environmental justice as per the Aarhus Convention Ebbeson observes:

> "three pillars of the Aarhus Convention - i.e. access to environmental information, public participation in decision-making and access to justice in environmental matters, the 'access to environmental justice' segment can be defined as a means of having erroneous administrative decisions on environmental issues corrected by a court or another independent and impartial body established by law."[67]

Achieving environmental justice in this sense would mean that first of all once right to access the information and participation should have been violated by public authorities, than he should have collected the erroneous decisions and than these would be corrected by the another court than the outcome so, will be as just in terms of the environment. The reasonable apprehension is that with out invoking the court's jurisdiction the environmental justice can never be achieved. It is true in case of the third pillar of the Aarhus Convention, which provides this access to justice only when any of the right contained under first or second pillar has been violated by the public authority. However Para 3rd of Article 9 may produce disparate result which confers right upon the public to initiate the proceeding against the private person in case of violation of the provisions of the national environmental laws. On the basis of the above discussion the issues involved in environmental justice may be pointed as follows:

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[66] See Article 9, of the Aarhus Convention 1998.

[67] Cited in S. Lilic (2007), "The Aarhus Convention and Access to Environmental Justice in The EU and Serbia European Integration Studies" at page 5.

An important aspect of access to justice in environmental matters the issue of standing as locus standie, as who has what kind of standing and what kind of procedure in order to achieve environmental justice. This aspect is important with relating to public participation as this question is particularly relevant to public participation, since participation can take many forms, from mere notification by authorities to actual decision-making by the public, with different possibilities for action when participatory input is disregarded. The issue of recognition of the environmental rights in administrative and judicial proceeding on the basis of legal interest is another matter. Legally recognized interest may take different form, nevertheless a right is itself interest protected and enforced by court of law.

Moreover, in some countries for an interest to be legally recognizable it must involve effects which are differentiated from those of the general public. Direct enforcement of environmental laws through citizens is rare in most of legal system including European system, since citizens have not been granted the right to enforce the environmental law directly. However few examples are there where citizens may directly trigger the environmental laws enforcing mechanism. A notable exception is Spain, which allows citizens to bring forward criminal actions to challenge against environmental harm.

In Hungary also, NGOs only have a special right to bring forward civil court cases seeking an injunction against environmentally harmful activities. In most countries, citizens generally have opportunities only to apply to the above authorities or to use the civil courts when they have a cause of action. Possibly the same mechanism is found in Slovenia, where individuals may bring a case for removal of immediate environmental dangers. However direct citizen enforcement of environmental laws is not yet well-developed in Europe, although a few countries have either long-standing rules or is moving forcefully in this direction.[68] Sometime few powers are granted to NGOs.

Another issue in access of environmental justice is matter of cost. As per much celebrated maxim, that the most efficient result can be reached in any dispute where

[68] Stevan Lilic (2007) The Aarhus Convention and Access to Environmental Justice in EU and Serbia, European Integration Studies, at pp. 2-3.

there are zero transaction costs. The introduction of transaction costs, on the other hand, may skew the results of the process of dispute resolution and reach inefficient results. The West, especially in the last generation or two, has taken strides towards lowering barriers to access to the courts and administrative tribunals by decreasing costs and increasing efficiencies in the administration of justice. In fact such kinds of process are yet to be incorporated into legal system of the states. In order to file a civil case the cost of litigation is most important barrier. The cost of the litigation is inclusive of procedural expenses and the fee of the attorney. Sometime more serious problem needs to be presented through more skilled attorneys, which mean more cost, This results in the situation where the more serious the problem, the more difficult it is to address it through civil means. However in some advance countries mechanism has been introduced to lower cost barrier.

The Aarhus Convention provides in its access to justice pillar which guarantees access to an expeditious procedure established by law that is free of charge or inexpensive.[69] But there are many issues as this rule has not been incorporated into national laws of the parties[70], however one possibility is a "one-way" shifting of the costs of litigation onto the losing party, whereby those suing in the public interest can recover costs, but in any case would not have to pay the other party's costs, unless the suit is completely groundless. But the cost is not insurmountable barrier to access to environmental justice, nevertheless, it is significant.

Access to justice is the one "pillar" supporting the whole environmental rights structure which reminds us most spectacularly that the Aarhus Convention does not provide all the answers. It is not just that the convention is relatively weak in handling access to justice. Beyond that is the knowledge that even this minimal level of achievement required a difficult struggle. While it is difficult to talk of access to justice in environmental matters on global level, nonetheless it is some how possible and this Convention is a significant development. Across Europe, law and justice are well on the way toward de-politicization, whereas less than a generation ago considerations of fairness and justice were connected with politics. The enforcement

[69] See Article 9(1), of the Aarhus Convention 1998. This rule will also be followed in case if the matter is to be heard by independent and impartial body other than a court.

[70] Slovakia exempts public interest organizations from the payment of court fees.

of substantive and procedural rights and recognition of access to justice in environmental matters, it seems, gaining grounds.

Though environmental justice has not been defined by the Convention itself, however it attempts to procure the justice in environmental matters by providing procedural rights to compel the public authority to confirm adequate environment. Further in proceeding chapters we will deal with the appraisal of the Aarhus Convention 1998, which is a milestone in arena of environmental justice.

Conclusion

So far as environmental justice is concern, there has been much debate since last two decades, first of all to define exactly what is environmental justice and than introducing multilateral environmental agreements in order to achieve it. Mostly environmental justice has been defined in contextual terms. Equal distribution of benefits and hazards and shared responsibilities are discources of environmental justice.

The Aarhus Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters (1998, provides for "three pillars of environmental justice". They include access to environmental information, participation in environmental issues decision-making and access to environmental justice. The Aarhus Convention is binding upon the member of UNECE, including European Community, in such case, the Convention is binding in regard to the legislation of all member-states regardless of the fact if an individual member-state is party to the Convention or not.

The Aarhus Convention draws its substantial values from similar international and European human rights documents, including the European Convention on Human Rights, particularly in the field of "access to justice", as the Aarhus Convention provides for a review procedure before a court of law and/or another independent and impartial body established by law.[71]

[71] S. Lilic, (2007), see note 3, pp. 7-8.

The Aarhus Convention is associated with pursuit of environmental justice, however it is regarded as a weak pillar of the empowerment, but it may serve to achieve the environmental justice.

The environmental justice should not only be considered on the basis of the facts that environmental justice exists, but there must be strive for pursuing a collection of normative goals.

CHAPTER 3

PUBLIC PARTICIPATION IN DECISION-MAKING UNDER AARHUS CONVENTION

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Introduction

Public participation is a crucial aspect of democracy and important to ability as a society to make sound decisions related to the pressing challenges of our time. Participatory system provides opportunity, to stake holders who are potentially affected by such decisions, to be part of decision making. Public involvement is critical for more effective development and for successful solution of tough societal problems.[1] One of the problems which have configured it pandemically is degradation of human environment which should be resolved in greater interest of present and future generation as well. Environment also can be better protected by the participation and meaningful involvement of the public, because public participation process when done correctly, improve the quality and legitimacy of the decision likely to affect the environment.

Public participation in decision making has turned to be a core issue of good environmental governance. It has become significant feature of many environmental regulatory frameworks over past few decades.[2] Weather it is individual, whole community or organization effected by developmental approvals of public authority in terms of pollution licenses or any other types of regulatory processes, they have demanded greater consultation, more transparent and accountable decisions.[3]

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[1] Allyson Siwik, Elaine Hebard, Celso Jaquez (2010), A Critical Review of Public Participation in Environmental Decision-Making along the U.S.-Mexico Border Lessons from Border 2012 and Suggestions for Future Programs, Mexico-Chihuahua Rural Task [Online: web] Accessed, 28 April 2011,
URL:http://www.scerp.org/bi/BI_X/papers/12Public%20Participation%20in%20Environmental%20Decision-Making.pdf, pp. 1-26. See also Lynn A. Maguire (2003), Public participation in environmental decisions: stakeholders, authorities and procedural justice, International Journal of Global Environmental Issues, V.3:2 PP. 133-148

[2] B. J. Richardson & J. Razzaque, (2006), Public Participation in Environmental Decision-making, in B.J. Richardson and S. Wood (eds.) Environmental law for Sustainability: A Reader, Hart. Pages 165-194

[3] *Ibid.*

Democratic form of the government established through periodic election is widely insufficient to provide, in day to day environmental decision-making, meaning full involvement of the public. Thus, the role of the public becomes very important in respect of the environment to protect and accomplish environmental justice.
Public participation may be in various forms such as: education, information dissemination, access to environmental information, public advocacy, meaningful involvement of the public into decision-making through public hearing and litigation too. Such input from the public may enhance the level of environmental protection and may raise accountability in decisions therefore the acceptability of the environmental decisions may be increased. Cumulatively these exerts will result into less litigations and better implementation of plethora of substantial environmental rights.[4]

We are well conversant of the fact that public participation is particularly significant for sustainable development. The principles of inter- and intra-generational equity in sustainable development discourse reflect the centrality of public involvement and social justice.[5] Implementation of the precautionary principle, another part of sustainability discourse, also depends on public input into the assessment of acceptable risks.[6] There are various environmental legislations confirming various rights to the public but this environmental legislation will only be effective if individuals have a formal right to obtain environmental information, are empowered to participate fully in environmental decision-making and have redress to the courts if refused or denied to exercise these rights.[7]

Public participation is not only dependent upon the clemency of the government but it is the right enshrined in various international legal document and latter specifically granted by international environmental agreements. In this chapter we will discuss in

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[4] Maria Lee & Carolyn Abbot (2003), "The Usual Suspects? Public Participation Under The Aarhus Convention", *Modern Law Review*, 66, p. 81. See also, Thomas C. Beierle (1998), Public Participation in Environmental Decisions: An Evaluation Framework Using Social Goals Discussion Paper 99-06

[5] I Voinovic (1995), "Intergenerational and Intragenerational Equity Requirements for Sustainability" 22(3) *Envtl. Conservation* 223, Quoted in Richardson & Razzaque (2006) Public Participation in Environmental Decision-making, note 1.

[6] B. J. Richardson & J. Razzaque see note 2 at p. 167.

[7] United Nation Economic Commission for Europe, 2006 Your Right to Healthy Environment, A Simplified Guide to Aarhus Convention United Nations Publication

brief the origin of the involvement of the public in environment decision-making as a matter of right which was granted by various multilateral environmental agreements especially by Aarhus Convention. We will analyze that which law granted the right to public participation in effective manner and what may be the benefit of the public participation for the purpose of ensuring environmental justice. However the focalized discussion will be upon the Aarhus convention which under its different provisions especially in second pillar confirms to the public various rights of participation at different level. Highlighting the history of public participation Richardson Razzaq writes that,

> "Public participation provisions began to appear in the planning and environmental regulations of some states during the late 1960s and 1970s, coinciding with the political upheavals of these times when publics agitated for more democratic governance and decision-making to promote social welfare. By the 1990s, consultation and participation became the buzzwords of successful environmental decision-making, stronger environmental protection. During the 1970s and early 1980s, commentators increasingly emphasized the value of a 'bottom-up', people- centered approach to economic development. Economists such as Schumacher stressed the value of grass-roots, small-scale feeding into broader discourses on 'good governance', 'environmental justice' and 'environmental citizenship'."[8]

Narrowing the issue to public participation related to the environment provides a focal point for selecting the compulsory elements of effective participation. Although the basic human rights instruments sweep broadly enough to touch environmental issues, they are supplemented and complemented by many international legal instruments that specifically address the right to public participation in the context of the environment.[9]

Right of participation to the citizens has been given by various international legal instruments, some of them are as follows:

(a) the World Charter for Nature, approved as a resolution of the United Nations General Assembly, recommends: "[a]All persons, in accordance with their national legislation, shall have the opportunity to participate, individually or with others, in the formulation of decisions of direct concern to their environment, and shall have access

[8] See B. J. Richardson & J. Razzaque (2006), note 2, at p. 168.

[9] Neil A. F. Popavic (1993), "The Right to Participate in The Decisions Which Affects The Environment, *Pace Environmental Law Review*, Vol.10 p. 687.

to means of redress when their environment has suffered damage or degradation"[10].
(b) The International Union for the Conservation of Nature and Natural Resources (IUCN) Draft Covenant on Environmental Conservation and Sustainable Use of Natural Resources provides: "states shall provide and promote widespread participation by individuals and non-governmental organizations in all aspects of conserving the environment. In particular states shall: afford the opportunity to participate, individually, or with others, in the decision-making process."[11]
(c) Participants in the 1992 United Nations Conference on Environment and Development in Rio de Janeiro agreed on a Declaration on Environment and Development ("Rio Declaration"). It addresses political participation as follows:
Environmental issues are best handled with the participation of all concerned citizens, at the relevant level. At the national level, each individual shall have appropriate access to information concerning the environment that is held by public authorities, including information on hazardous materials and activities in their communities, and the opportunity to participate in decision-making processes. States shall facilitate and encourage public awareness and participation by making information widely available. Effective access to judicial and administrative proceedings, including redress and remedy, shall be provided.[12]

The above instruments do not purport enforceable obligations in the legal sense, nevertheless these do provide valuable insight into the elements of an operational right of participation and reflect a degree of international consensus. Moreover, instruments like the Rio Declaration provide examples for regional instruments that increase the specificity and in some cases create binding obligations on states regarding public participation in the environmental decision-making process. Several regional organizations also have adopted instruments that address political participation in the environmental sphere[13].

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[10] G.A. Res. 37/7, U.N. GAOR, 37th Sess., Supp. No. 51, at 18, U.N. Doc. A/37/ 51 (1982) (referencing principle 23).

[11] U.N. Doc. A/CONF.151/PC/WG.III/4, at 10 (1991) (quoting art. 10) [IUCN Draft Covenant].

[12] U.N. Doc. A/CONF.151/PC/WG.III/L.33/Rev. 1, principle 10 of Rio Declaration, 1992. Principle 10 was adopted by the participating states at the U.N. Conference on Environment and Development, 3-14 June 1992, Rio de Janeiro. See also World Comm'n on Env't and Dev, Our Common Future 330 (1986).

[13] See note. 3. The Arab Ministerial Conference on Environment and Development issued an Arab Declaration on Environment and Development and Future Perspectives ("Arab Declaration") that affirms that the right of individuals and non-governmental organizations to acquire information

In 1990, the United Nations Economic Commission for Europe adopted a Draft ECE Charter[14] on Environmental Rights and Obligations, which sets forth twenty-four principles that relate to public participation in decisions that affect the environment. The Draft ECE Charter addresses environmental information, education and training by framing rights to: adequate information relevant to the environment, including information on products and activities which could or do significantly affect the environment and on environmental protection measures; adequate information about potential sources of accidents, including contingency planning, and the right to be informed immediately when an emergency occurs; access to administrative or judicial review when the requested information is not provided in a timely manner; adequate environmental education and training; and reports prepared by competent authorities on the state of the environment at local, provincial and national levels, including the extent to which public activities have had a significant effect on the environment[15].

With respect to decision-making per se, the Draft Charter requires the following components: the right of everyone to participate in the decision-making process for activities that do or could have a significant impact on the environment; environmental impact assessment tied to decision-making authority; the right to receive the information necessary to participate in a timely and effective manner in the decision-making process; and the right to be informed without delay of the reasons for the decision taken. These all legal instruments more or less provided for public role in those decisions which are likely to impact adversely on the quality of the environment, but most of these are soft laws and doesn't provide effective remedy in case if the public could not be given opportunity to participate.

Finally on international arena a legally binding multilateral treaty was concluded in 1998, at Aarhus, a city in Denmark. We can say that the adoption of Aarhus Convention is one of the unique developments in the public participation arena. There

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about environmental issues relevant to them, to have access to data and to participate in the formulation and implementation of decisions that may affect their environment.

Sea also, Letter of the Conference on Environment and Development, 46th Sess., Agenda Items 34, 77(e)-(h), 78 & 79, at 4, U.N. Doc. A/46/632 (1991).

[14] Draft ECE Charter on Environmental Rights and Obligations, adopted at the Experts Meeting, U.N. Economic Commission for Europe, Oslo, Norway, 29-31 Oct. 1990.

[15] *Ibid.* Principles 4-9.

are other environmental treaties containing provisions for public participation but only the Aarhus Convention is dedicated exclusively for participation in environmental decision-making at different level.[16] This Convention guaranteed various procedural rights in order to make authorities accountable for any action which is likely to degrade the environment since it imposes participation standard for decision-making by public authorities. This Convention was adopted after a long discussion since 1991. Tracing the history of the campaign of the convention, in 1991, the United Nations Economic Commission for Europe (UNECE) created the "Environment for Europe" process to harmonize the activities of countries working toward sustainable development in Europe[17]. There after at the third conference of the "Environment for Europe" process in 1995, officials from across Europe agreed to new standardized guidelines for public participation in environmental decision-making matters.[18] These guidelines served as mere recommendations and were not binding on participating countries[19]. However, the 1995 Conference directed a working group to draft a legally binding convention in time for the Fourth Conference of the Parties. From June 23 to 25, 1998, the Fourth Conference of the Parties met at Aarhus, Denmark. At this conference, the UNECE formulated the Convention on Access to Information, Public Participation in Decision- Making, and Access to Justice in Environmental Matters (Aarhus Convention).[20]

The convention is operational in UNECE[21] region to which European Union is party, it has been described as a mile stone in European environmental policy making because it includes several provisions that could increase the involvement of the public and citizen access to environmental discourse.

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[16] See Richardson & Razzaq (2006), note 2at p. 169.

[17] ST McAllister 1999Convention on Access to Information, Public Participation in Decision-Making, and Access to Justice in Environmental Matters. Colorado Journal of Environmental Law & Polity P-187

[18] *Ibid.*

[19] *Ibid.*

[20] United Nations Economic Commission for Europe, Convention on Access to Information, Participation in Decision-making and Access to Justice in Environmental Matters, opened for signature 25 June 1998 in Aarhus, Denmark; entered into force 30 October 2001. For the text of The Convention see: http://www.unece.org/env/pp/documents/cep43e.pdf Visited 26 March, 2011, it was adopted in UNECE region which includes most European countries, the former Soviet Union, the United States, and Canada

[21] United nation economic commission for Europe, it is one of the five regional commission of UN, was established in 1947 by ECOSOC, it brings together 56 countries located European Union, non-EU Western and Eastern Europe, South-East Europe and Commonwealth of Independent States (CIS) and North America. Sea UNECE About UNECE Online Web accessed 25 January 2011 URL: http://www.unece.org/about/about.htm

The Study is dwelling in this chapter upon the public participation under Aarhus Convention. Broad view of this notion possibly can lead to two perceptions of public participation; *firstly*, the participation of public in formulating the Aarhus convention itself and; *secondly*, public participation guaranteed by the convention as a matter of right in the hands of the public in order to make decisions with accordance of sustainable development.

First the study will summarize that what level of participation has been from the public and civil societies in formulation of Aarhus convention. In fact NGOs have played key role through out the evolution of The Aarhus Convention. Initially, the very idea for developing such treaty was introduced by NGOs themselves. They were further involved in drawing up the original document and had a significant influence on the outcome of the negotiations. NGOs have since taken part in monitoring the Convention's implementation and continue to play an important role in the process itself. NGO may nominate independent member to the compliance committee for its possible election and may play an important role in making the parties in complying the obligations of the convention.[22]

The Convention has been widely praised for the level of involvement accorded NGOs in the plenary sessions and drafting of the final agreement. More than 200 NGOs from forty-nine countries contributed to the final draft of the Convention. The NGOs fully participated in the working sessions that produced the initial draft document.[23] In addition, they were invited to attend the private working sessions of the Ministers and took part in the plenary discussions on a "more or less equal basis" with the participating nations. The NGO coalition described the openness of the process as unprecedented, and called for this process to serve as a model for future negotiations.

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[22] Jeremy Wates (2005) "The Aarhus Convention a Driving Force for Environmental Democracy " *Journal for European Environmental & Planning Law* 2(1) 1-11 for main Article visit [Online: web] Accessed 24th February 2011, URL: www.parliament.uk/documents/post/postpn256.pdf

[23] ST McAllister (1999), "Convention on Access to Information, Public Participation in Decision-Making, and Access to Justice in Environmental Matters" *Colorado J. Envtl Law & Polity,* p. 188.

As one NGO representative said, "I dread to think what this would have looked like if we [NGOs] hadn't been there"[24]

Public Participation Guaranteed by the Aarhus convention

The Aarhus convention is a big step forward in the field of environment and democracy as well. It improves the right of the public in making and implementation of environmental policies. If government consult the citizens than it automatically brings the social stability and confidence among the public. Citizens will consider themselves that they are still part of democratic process while they have already exercised right of adult suffrage. The Aarhus Convention broadly implements Principle 10[25] of the Rio Declaration, which is a fundamental and solemn environmental proclamation explicitly describing the three Aarhus Pillars as procedural environmental rights[26].

Before going into detailed discussion about the rights conferred by the convention it will be helpful to understand that what does public participation actually mean? To whom the participation is guaranteed and at what level it is relevant and who are the public which is here directed? In fact the bearers of the rights to access to information, public participation and access to justice in environmental matters are the 'public' and its members.

The public can be defined in various ways irrespective of the ambit of The Convention. Public may be referred in general to the members of the society at large, any citizen or non citizen. However the term 'public' can be referred to a specific characteristic as being open and available to all or to the opposite of 'private'.[27] We are analyzing the 'public' here in correlation to environmental protection. The

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[24] See Daniel Pruzin, Environmental Information: Convention on Public Participation Signed by European Environmental Ministers, Int'l Env't Daily (BNA), June 26, 1998, available in WESTLAW, BNA-IED Database.

[25] See principle 10 of Rio Declaration, note 12.

[26] U.N. Doc. A/CONF.151/PC/WG.III/L.33/Rev. 1, principle 10. See above Note: 12. See also Benjamin Dalle, 2006 The Global Aspiration of The Aarhus Convention and The Case of The World Bank, Paper presented at 2nd Global Administrative Law Seminar June 9-10 2006 Viterbo Italy

[27] Vera Rodenhoff, (2002), "The Aarhus Convention and Its Implications for The Institutions of European Community", *Review of European Community and International Law*, 11(3). P. 344.

members of the society who are effected or likely to be affected on the account of environment degradation, capable to exercise their right of clean and adequate environment are public in general.

The Aarhus Convention defines the public as that the public mean any legal or natural person. According to the Convention the association, organizations and groups of such persons are also with in the purview of the public.[28] The Convention recognizes two kind of public; first the 'public' as we discussed above and second the 'public concerned'. Public concerned mean the public affected or likely to be affected who have an interest in the environment decision-making.[29] The ambit of public concerned is narrow than general public. There are different rights enshrined in the Convention which can be exercised with out stating an interest,[30] while some provisions can be invoked only after furnishing sufficient interest.[31]

Public participation has been guaranteed by the Convention in respect of seeking the information and participating in decision-making. The term public participation also has a sociological and political meaning as the general sociological forum or 'network' for communication. The 'public' in this latter sense represents one of the elements in the process of decision making and an organizing principle of the political order in modern democratic societies. For the purposes of the Convention, the term 'the public' is not used in the sense of public sphere or forum, but rather as the sum total of all of society's potential actors.[32] According to Robbert Cox public participation may be defined in these words:

> "I define public participation as the ability of individual citizens and groups to influence environmental decisions through (1) access to relevant information, (2) public comments to the agency that is responsible for a decision, and (3) the right, through the courts, to hold public agencies and businesses accountable for their environmental decisions and behaviors."[33]

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[28] See Article 2(4), note 17.

[29] *Ibid.* See also Article 2(5).

[30] See Article 4(1) (a), of Aarhus Convention 1998 which provides that the public authority will provide the information with out an interest having to be stated.

[31] See Article 9(2)(a), of Aarhus Convention 1998, which requires member of the public having sufficient interest or maintaining impairment of the right shall have access to review procedure

[32] *Ibid.* p. 348.

[33] Robbert Cox (2009) Sage London, Quoted in Deiniol Jones, (2008) 'Solidarity and public participation: the role of the Aarhus Convention in containing environmentally induced social conflict, Global Change, Peace & Security, 20: 2, 151 — 168.

However it is not easy to define the term public participation, because of the diversity of the nature of this notion.

The convention in respect of public participation has adopted *right based approach.* The first Article sets out the objectives of the Convention which requires Parties to guarantee rights of access to information, public participation in decision-making and access to justice in environmental matters. Now the question arises that this participation is for whom, who are the public which is to be participated. In fact the bearers of the rights to access to information, public participation and access to justice are the 'public' and its members.

The right of public participation in decision-making has provided in second pillar of the Convention, it consists upon Articles 6-8. This public participation requirement contained in second pillar of the Convention include; timely and effective notification to the public concerned[34], reasonable timeframe for the participation including provision for participation at an early stage; a right for the public concerned to inspect information which is relevant to the decision-making free of charge; an obligation on the decision-making body to take due account of the outcome of the public participation; and prompt public notification of the decision, with the text of the decision and the reasons and considerations on which it is based being made publicly accessible.[35]

As we discussed above that Convention has distinguished between two types of the public, viz. public and public concerned. This distinction is of particular importance, it determine that which section of the public is marked by this Convention, say for e.g. who will get the interest against the rights contained under three pillars of The Convention.

The public concerned accords special role to the non-governmental organization in whole discourse of environmental justice. Public participation in democracy,

[34] J Wates (2005), "The Aarhus Convention: a driving force for environmental democracy", *Journal for European Environmental & Planning Law*, p. 1-11.
[35] See Article 6.

transparency in decisions, legal procedure, public administration, secrecy, and the notion of democracy itself have up to now only been regulated in such detail at national levels. These issues are still considered to be regulated in national domain and their regulation is considered an essential attribute of State sovereignty.[36] An attempt has been made by this Convention to make these notions diverged from a point where members of committee of nations agree to be regulated, so that better results could be achieved in ensuring procedural environmental rights and environmental justice could be confirmed.

The addressees[37] of these rights are the public authorities.[38] The public authorities include government at national or regional level,[39] any persons performing public administrative functions under national law including the duties, activities or services in relation to the environment[40], as well as persons performing functions or providing public services in relation to the environment under the control of the aforementioned bodies.[41] According to Article 2(d), institutions of any regional economic integration organizations, which can become party to the Convention in accordance with its Article 17 (like the EC) are also public authorities for the purposes of the Convention. It further provides that bodies or institutions acting in a judicial or legislative capacity are out of the ambit of public authority[42]for the purpose of this Convention.

This Convention provides public the opportunity to participate in different ways which have been contained under three pillars of the Convention. The public is empowered to seek environmental information from public authorities and also to participate in environment decision-making. The public may approach to the courts or tribunals for the enforcement of their rights in case of refusal to provide information

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[36] Vera Rodenhoff (2002), "The Aarhus Convention and Its Implication for The Institutions of European Community", *Review of European Community and International Law* 11(3), pp. 344-357. See also J. Ebbeson (1997), "The Notion of Public Participation in International Environmental Law", 8 *YIEL* (1997), 51, at 55.

[37] Addressees are the authority either the government or any body under the control of public authority performing public function, against whom public may enforce the rights provided under this Convention.

[38] See Article 2(2) of The Aarhus Convention 1998

[39] *Ibid.* Article 2(a).

[40] *Ibid.* Article 2(b).

[41] *Ibid.* Article 2(c).

[42] *Ibid.* Article 2(d) Para (ii).

or denial of participation in decision-making.The public will have discourse to exercise these rights irrespective of citizenship, nationality or domicile.[43]

Public participation has gained considerable importance since 1992 United Nations Conference on Environment and Development (UNCED), it has been endorsed as a mean of achieving sustainable development.[44] The public participation has further been backed by Agenda 21,[45] to achieve sustainable development.

Benefits of Public Participation

It is contended that the local public frequently know and understand the issues better than those officials who are decision-makers or in charge of the implementation of the policy which are at the stake. Sometime the inhabitants, public interest groups and scientific communities have valuable special knowledge and information. Such knowledge may be beneficent for long run environment protection. Participation of such public or interest groups in environment decision making improves the quality and acceptance of environmental decisions and allows decision makers to profit from the public's knowledge, expertise and innovation. Also public participation at different levels raises accountability and reliability of decisions, lessens risks of possible conflicts and inconsistencies and facilitates implementation.[46] The effect of decisions or activities on the environment cannot be measured in purely objective terms, but it depends on the context and the perception of all the stakeholders involved.[47] Public participation provides the possibility to introduce this contextual or 'subjective' element into decision making. Furthermore, providing the public with an opportunity to be heard can help in reaching to a consensus on contentious projects and plants, consequently lead to public support for a decision.

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[43] *Ibid.* Article 3(9).
[44] See note 27 at p. 345.
[45] Agenda 21, Report of the United Nations Conference on Environment and Development (UN Doc. A/Conf.151/26), Annex II.
[46] Tamar Gugushvili, "Public Participation in Environmental Decision Making - Case Study of Georgia", Aarhus Centre Georgia, [Online: web] Accessed on 10 April 2011, URL: http://envirocenter.research.yale.edu/envdem/docs/OTHERS/GUGUSHVILI/Gugushvili_Final%20Paper.doc.
[47] *Ibid.*

As with access to environmental information, public participation elements are already covered by numerous multilateral environmental agreements.[48] But none of these instruments contain such effective, clear and binding obligation that contained in The Aarhus Convention.

The Convention confers upon the public right of participation in different ways viz.: participation in decisions on proposed activities listed in Annex I[49]; participation in decisions on proposed activities not listed in Annex I but may have a significant effect on the environment[50]; participation during the preparation of executive regulations or generally applicable legally binding normative instruments.[51]
For ensuring this participation the public concerned shall be informed in appropriate manner in relation to the decision of proposed activity,[52] the nature of possible decision and about the authority responsible for making the decision. Full opportunity will be provided for participation with the adequate information of the venue of public hearing.[53] The public will be provided early opportunity for participation.

Articles 6-8, contain some more obligations. Article 6, contains various requirements as pointed above in respect of proposed activities which are falling in the scope of the Convention. Article 6 of the Convention establishes certain public participation requirements for decision-making on whether to license or permit certain types of activity which may have a significant effect on the environment.

Article 6, Para 1 (a) requires that each Party shall apply the provisions of this article with respect to decisions on whether to permit proposed activities listed in annex I.[54]

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[48] The 1991 UN/ECE Convention on Environmental Impact Assessment in a Transboundary Context, 31 International Legal Material (1992), the 1991 Espoo Convention, Article 2(2) and (6) and Article 4(2) 1992 UN Framework Convention on Climate Change, 31 ILM (1992), 849, Article 6(a)(iii)
1992 UN/ ECE Convention on the Transboundary Effects of Industrial Accidents, 31 ILM (1992), 1330, Article 9(2), 1992 Convention on Biological Diversity, 31 ILM (1992), 822, Article 14(a), 1999 Cartagena Protocol on Biosafety to the Convention on Biological Diversity, 39 ILM (2000), 1027, Article 23.
[49] The Aarhus Convention Article 6(a)
[50] *Ibid.* Article 6(b).
[51] *Ibid.* Article 8.
[52] *Ibid.* Article 6 (2)(a).
[53] *Ibid.* Article 6(2) (c).
[54] Annex I LIST OF ACTIVITIES REFERRED TO IN ARTICLE 6, PARAGRAPH 1 (a) such as energy sector, production and processing of metals, chemical industry, waste management, industrial plants, and Extraction of petroleum and natural gas for commercial purposes where the

It should be noted that according to paragraph 20 of Annex I to the Convention: "Any activity not covered by paragraphs 1-19 above where public participation is provided for under an environmental impact assessment procedure in accordance with national legislation" is subject to the obligation of Article 6. Similarly, paragraph 22 of the annex-I, provides : "Any change to or extension of activities, where such a change or extension in itself meets the criteria/thresholds set out in this annex, shall be subject to Article 6, paragraph 1 (a) of this Convention". Secondly, there is an obligation upon the parties to apply in accordance with their national law, the provisions of Article 6, to decisions on proposed activities not listed in annex I which may have a significant effect on the environment.[55] To determine it the parties shall have to analyze whether such a proposed activity is subject to these provisions. If the national law provides, the parties may decide not to apply the provisions of this article to proposed activities serving national defense purposes, if that Party deems that such application would have an adverse effect on these purposes.[56]

Thus it guarantees an opportunity for proactive public participation in a wide range of environmental decision-making in respect of those activities listed in annex I, such as waste management or energy or determined by the Party's discretion over non-Annex I in conformity of the objective of the Convention's.[57] These public participation requirements include timely and effective notification of the public concerned, reasonable timeframes for participation, including provision for participation at an early stage, a right for the public concerned to inspect information which is relevant to the decision-making free of charge, an obligation on the decision-making body to take due account of the outcome of the public participation, and prompt public notification of the decision, with the text of the decision and the reasons and considerations on which it is based and making it publicly accessible. The relevant information to the

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amount extracted exceeds 500 tons/day in the case of petroleum and 500 000 cubic meters/day in the case of gases

[55] Article 6(b) of The Aarhus Convention.

[56] See Luc Lavrysen (2010), "The Aarhus Convention: Between Environmental Protection and Human Rights", Liège, Strasbourg, Bruxelles: parcours des [Online: web] Accessed on 15June 2011, URL: http://archive.ugent.be/input/download?func=downloadFile&fileOId=1083647&recordOId=1082727

[57] See Nadal (2008), *Environmental Law Rev.* 10:28, p. 37. See also Malgosia Fitzmaurice (2002), *Some Reflections on Public Participation in Environmental Matters as a human Right in International Law*, Netherlands: Kluwer Academic Publishers, pp. 18-19.

decision making shall have to be made available to the public concerned entirely free of charge, unlike the access to information under Article 4, and 5.

The Convention sets out minimum criteria to be followed for the maximizing public participation. Under Article 7, The Convention further provides for the public participation concerning plans, policy and programs relating to the environment,[58] however it has not been defined in The Convention that what include basically the programs and policies in relation to the environment, which may be interpreted there after accordingly. However Lavryson argues that the term 'relating to the environment' is very broad covering not only plans or programs but also sect oral plans, transport, energy and tourism etc.[59]

Article 7 also applies to decision-making on policies relating to the environment in more recommendatory form. The public which may participate shall be identified by relevant public authority with in view of the sprit of the convention. The Convention provides that the parties will endeavor to provide an opportunity to the public to participate in policies relating to the environment. Participation during the preparation of regulatory and generally applicable legally binding normative instruments[60] will be guaranteed. Article 7 provides that public participation in plans and programs in relation to the environment by public authority, in this regard the parties are required to: make appropriate practical and/or other provisions for the public to participate, within a transparent and fair framework, having provided the necessary information, and within 'this framework Article 6(3), (4) and (8) shall be applied'. Thus, early participation of the public during the preparation of plans and programs within reasonable timeframes and when all options are still open is required. The parties have to ensure that they take into account the outcome of the public participation and try to execute it into final outcome in terms of decision-making.[61]

Article 8 generally encourages the parties to promote effective public participation during the preparation by the public authorities of executive regulations and other generally applicable legally binding rules that may have a significant effect on the

[58] *Ibid.* Article 7.
[59] See note 56 at page 13.
[60] *Ibid.* Article 8.
[61] See note 27 at p. 348.

environment. Although the Convention does not apply to bodies acting in a legislative capacity, yet this article clearly would apply to the executive stage of preparing rules and regulations even if they are later to be adopted by parliament. Like the other public participation provisions, Article 8 only covers acts of the executive branch of government. As a guideline, it suggests three factors for effective participation: the fixing of time frames sufficient for public participation; ensuring the public availability of draft rules by publishing or other means; and giving the public the opportunity to comment on the draft rules, either directly or through representative bodies.[62]

The Convention through this pillar of participation guarantees meaningful involvement of the public. If we interpret this term than we will find the following elements as meaningful involvement:

- The resident of a community who are potentially affected should have an appropriate opportunity to take part in decision about the proposed activity which is likely to affect their environment or health;
- The public contribution should influence decisions of public authorities and public agencies;
- The opinion so gathered of the involvement should be taken into account while formulating final decision;
- The participation should be made easy.[63]

The actual public participation is when the public is able to influence the decision, otherwise the participation which produced no result is not a participation in true sense. Therefore, ability to influence the decision, particularly in terms of the integration of environmental justice concerns into the decision is very important. If implemented strictly and interpreted owing to true sense of the Convention then participation provisions can have significant implications in terms of meaningful participation and empowerment of environmental justice advocates.[64] The activities which are benign should be listed in annex-1, in light of climate change and there should be mandatory public participation in decision making.

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[62] The Aarhus Convention 1998, Article 8(a)-(c)

[63] See C. Nadal (2008), "Pursuing Substantive Environmental Justice: The Aarhus Convention a Pilar of Empowerment", *Environmental Law Review,* 10: 28 p. 36.

[64] *Ibid.*

The public participation provisions of the Convention are to be applied with out any discrimination as to citizenship, nationality or domicile. Razzaq argues that "the Aarhus Convention signaled the culmination, rather than the beginning, of public participation reforms made since the 1970s."[65] The proper implementation of the Convention could be possible after incorporating its principles into national legislation through amendment or by enacting the laws for this effect.

Various states were acquiescent to ratify the Convention which reflected the fact that they already provide or willing for providing similar kinds of public involvement in environmental decision-making. European Community is full party to the Convention, however the scope for public participation at EU level is less developed. The European Commission has undertaken necessary measures to implement the Convention by adopting regulations to align EU legislation to the sprit of the Convention. The Convention is of particular importance for the European Union institutions[66] as they are covered by its definition of public authorities.

The EU has adopted a directive concerning public access to environmental information, reflecting the first pillar of Aarhus Convention. In addition, two important pieces of EU environmental legislation have been amended to take account of the public participation in certain environmental decision-making procedures. Directive 2003/35/EC86 updates provisions on public participation in national procedures on environmental impact assessment and integrated pollution prevention and control, and introduces rules on access to justice. In addition, provisions related to access to justice are introduced in the Directive on environmental liability. However, the latter provisions fail to specify that access be fair, timely and not prohibitively expensive. Almost all parties with in EU have national law to implement the public participation in their environmental decision-making processes.

However, the contexts in which these procedural rights operate are diverse, and reflect differences of legal and democratic traditions. Mindful of this, the European Commission's proposed directive on access to justice on environmental matters

[65] See note 2.
[66] E.g. the Commission, the Parliament and the Council.

addresses only the acts and omissions of public authorities, and does not extend to private entities. On the ground of the 'subsidiary' principle (i.e. that decisions should be made at the lowest level of government where feasible), the Commission believes that administrative or judicial review of the environmental behavior of private entities is best left to individual Member States to determine. Even in relation to the public sector, 'standing' rules vary considerably among EU Member States. Similar variations in national practice have been documented in relation to the other limbs of Aarhus concerning participation in administrative decisions and access to information.

Public not only has been given the right to participate but also right to access the redresser system in case of infringement of participatory rights. The Convention aims to provide access to justice system in three different contexts: first review procedures with respect to information requests, secondly, review procedures with respect to specific (project-type) decisions which are subject to public participation requirements, and thirdly, challenges to breaches of environmental law in general.[67] The public may trigger this provision in any case.

This provision not only underpins the first two pillar of the Convention but also reflect the way to empower the citizens and non governmental organizations to assist in the enforcement of the mandates of the treaty.[68] For instance Article 9(2), of the Aarhus Convention deals with Access to Justice concerning environmental decision-making with regard to activities that may have a significant effect on the environment. If the public were denied to participate in accordance with Article 6-8,[69] the Convention provides right to seek a review in connection with decision-making in respect of projects and activities listed in that part.

The review procedure so invoked should be organized before a court of law or any other independent or impartial body constituted for that purpose, where the substantive or procedural illegality of any decision, act or omission may be

[67] See Article 9(1), and 9(2). See also Stephen Stec (2003), Handbook on Access to Justice under the Aarhus Convention, Szentendre Hungary, Ministry of the Environment Republic of Estonia, pp. 27-31.

[68] S. R. Achim A. Halpaap (2001), "The Aarhus Convention and the Politics of Process: The Political Economy of Procedural Environmental Rights Draft paper for The Law and Economics of Environmental Policy: A Symposium", Faculty of Laws, University College London, September 5-7, 2001 at p. 5.

[69] See above discussion upon Articles 6, 7 and 8.

challenged.[70] So, the review procedure should not be restricted to the question whether the public participation requirements of Article 6 were observed in preparation of permits for activities that fall under that provision, but should extend to all questions of legality, both of substance and of procedure. The decision so made by public authorities may be challenged before such court if it violated any binding law, weather international or domestic.[71]

The parties may provide wide access to the public by allowing the review procedure in other provisions of the Convention, however. The review procedure should be open to "members of the public ", that is to say" the public affected or likely to be affected, or having an interest in the environmental decision making", including environmental NGOs" meeting any requirements under national law".[72] Article 9.2, subparagraph 2, states: "what constitutes a sufficient interest and impairment of a right shall be determined in accordance with the requirements of national law and consistent with the objective of giving the public concerned wide access to justice within the scope of this Convention."

To this end the interest of any non-governmental organization meeting the requirements referred to in Article 2, paragraph 5, shall be deemed sufficient for the purpose of subparagraph (a) above. Finally, according to Article 9.2, third subparagraph, this provision on access to justice shall not exclude the possibility of a preliminary review procedure before an administrative authority and shall not affect the requirement of exhaustion of administrative review procedures prior to recourse to judicial review procedures, where such a requirement exists under national law. The administrative appeal system is not intended to replace the opportunity of appeal to the courts, but it may in many cases resolve the matter expeditiously and avoid the need to go to court.

[70] See note 56.
[71] *Ibid.*
[72] See Article 9(2) (b) of Aarhus Convention.

Conclusion

Thus the Aarhus Convention guarantees public participation as a matter of right at different level in environmental decision-making. The participation so granted should be meaningful which could influence the decisions in the interest of procurement of environmental justice. If the participation is meaningful then the involvement may have significant implications upon the final outcome of the environment decision-making for the empowerment of environmental justice. By providing an opportunity of participation and challenging very structural processes the Convention can result into environmental and social empowerment. However the Convention is silent about those who are already suffering environmental injustice. It will not be wrong to say that the participation mechanism of the Convention is predominantly consultative platform rather than deliberative mechanism, nevertheless it may serve as a model for future multilateral environmental agreements.

CHAPTER 4

EVALUATION OF AARHUS CONVENTION (1998)

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EVALUATION OF AARHUS CONVENTION (1998)

Introduction

One of the major global concern confronted before the committee of the nations is environmental protection, which has acquired considerable significance since last three decades, consequently this disquietude has resulted into the growing demand of the legal regulations worldwide ensuring efficient environmental protection, yielding into plethora of multilateral environmental treaties.[1] The corresponding similarity has been among most of the treaties that most of these provided for substantial right to the people. But in 1998, an international Convention was adopted which not only provided the substantial environmental rights but also ensured the procedural rights in the hands of the public to enforce against the government and public authorities to assert their rights guaranteed by multilateral environmental agreements.

The Aarhus Convention[2], which came into effect in 2001, though presently applies to UNECE[3] region but has global significance in field of promotion of environmental governance. The Convention which is an important multilateral environmental treaty focuses upon the need for civil participation in environmental issues in order to enhance the reliability and accountability of the decisions relating to environment through seeking relevant environmental information held by the government or public authorities, exercising right of participation and having recourse to justice through courts or tribunals.

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[1] There are hundreds of international treaties relating to protection of the environment concluded within the period of last 40 years.

[2] United Nations Economic Commission for Europe, Convention on Access to Information, Participation in Decision-making and Access to Justice in Environmental Matters, opened for signature 25 June 1998 in Aarhus, Denmark; entered into force 30 October 2001. For the text of The Convention see: http://www.unece.org/env/pp/documents/cep43e.pdf Visited 26 March, 2011

[3] The United Nations Economic Commission for Europe (UNECE) was setup in 1947, by ECOSOC. It is one of the 5, regional commissions of UN, others are: the Economic and Social Commission for Asia and the Pacific (ESCAP), the Economic Commission for Latin America and the Caribbean (ECLAC), the Economic Commission for Africa (ECA) and the Economic and Social Commission for Western Asia (ESCWA). Its major aim is to promote pan-European economic integration. To do so it brings 56, countries together. For more detail about UNECE see: http://www.unece.org/about/about.htm visited 20 March 2011

Adequate protection of the environment is essential to human well-being and for the enjoyment of basic human rights, including the right to life itself which is basic human right. In respect of providing explicit linkages between environmental rights and human rights[4] The Aarhus Convention goes further than previous international treaties pertaining to the environmental protection. The Convention[5] contains important administrative guarantees those are to be respected by the public authorities of the State parties to the Convention when making rules and decisions in environmental matters.

Dalle[6] argues that The Aarhus Convention is in addition invaluable in the sphere of global governance, as an instrument to enhance the accountability of international administrative bodies. There are various substantial rights are available in the hands of the public but first time three important rights,[7] to be called procedural environmental rights have been granted by this international convention. This convention is striking in several respects. In the first place, it gives individuals and NGOs a formal role in ensuring that the Contracting Parties to the Aarhus Convention comply with it. In the second place, the Aarhus Convention is arguably the first multilateral environmental treaty that focuses exclusively on obligations of the Contracting Parties viz-a-viz their citizens. Unlike other international environmental agreements, the Convention does not address substantive environmental issues, such as ozone depletion or climate change. Instead, it establishes procedural obligations for policy-making, implementation, and enforcement with the aim of enhancing public participation.

The Convention is based on the premise that "every person has the right to live in an environment adequate to his or her health and well being". To achieve this goal, the

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[4] Michael I. Jeffery (2005), "Environmental Governance: A Comparative Analysis of Public Participation & Environmental Justice", *Journal of South Pacific Law*, Vo.l 9:2 pp. 1-14.

[5] The Aarhus Convention, see note 2.

[6] Dalle Benjamin (2006), "The Global Aspirations of the Aarhus Convention and The Case of The World Bank", Paper presented at 2nd Global Administrative Law Seminar June 9-10, 2006, Viterbo, Italy.

[7] These three rights are: firstly, right to seek information relating to environment, secondly, right to participate in decision-making that are likely to affect the environment and third is right to access to justice if any of the right guaranteed by this convention has been violated. These rights have been given under three pillars to the convention.

Convention provides to the citizens the right to obtain environmental information, to participate in environmental decision-making, and to appeal to courts or non-judicial bodies. The environmental rights contained in Aarhus Convention are divided into, so called three pillars; namely, right to access to environmental information, right to participate in decision making and right to access to judicial remedy. Before proceeding further into detail of the each pillar's strengths and weaknesses of the Convention, it is important to take a narrow look of the Convention.

The Aarhus Convention 1998

The Aarhus Convention[8] 1998 was endorsed by The United Nations Economic Commission for Europe (UNECE)[9] which was adopted on 25 June 1998 and entered into force on 30th October 2001. Till 19th August 2010, among 56 member of UNECE, 44 parties have ratified the convention.[10] The Convention is an international legal document running over 22, Articles and currently enforced in UNECE region. As the title of the convention 'The UNECE Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters 1998,' suggest that, broadly it provides three important procedural rights contained in its three pillars namely:

(I) Access to information

(ii) Public Participation in decision-making

(iii) Access to justice in Environmental matters.

These three procedural rights are tools to attain a substantive goal, that of environmental protection. Moreover, the Aarhus Convention also concerns government accountability, transparency and responsiveness and it is considered as a pioneer governance tool in the environmental field.

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[8] See note 2.

[9] See note 3.

[10] The Convention came into force in accordance with Article 20(1), and definitively on 30 October 2001, in accordance with article 20(1), there are 40, signatories and 44, parties to The Convention, latest party to join the convention is Montenegro who joined on 25 November 2011. the list of the parties and signatories is available at : http://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=XXVII-13&chapter=27&lang=en visited on 30th April 2011

These three pillars will be discussed in detail, the compliance mechanism of The Convention is distinguished in comparison to other multilateral environmental agreements, which will be discussed with its distinguishing character. A critical review of the provision of the convention will be presented as many scholars have argued that The Convention has a kind of permissive language. Before going into detail of the pillars or theme of The Convention it's important to look upon the general features of the convention.

General Features:

(A) Right based Approach

The Convention adopts right based approach for the protection of the environment. Article 1, setting out the objective of the Convention, requires Parties to guarantee rights of access to information, public participation in decision-making and access to justice in environmental matters.[11] It also refers to the goal of protecting the right of every person of present and future generations to live in an environment adequate to health and well- being, which represents a significant step forward in international law. These rights underlie the various procedural requirements in the Convention.[12]

(B) A Floor not a Ceiling

The Convention mandates is to establish minimum standard should be achieved; however it doesn't prevent any party to from adopting any measure which goes beyond the requirement of The Convention,[13] viz. access to information, public

[11] The Aarhus Convention 1998, Article 1, provides: In order to contribute to the protection of the right of every person of present and future generations to live in an environment adequate to his or her health and well-being, each Party shall guarantee the rights of access to information, public participation in decision-making, and access to justice in environmental matters in accordance with the provisions of this Convention.

[12] See, Jeremy Wates (2005), "The Aarhus Convention: A Driving Force for Environmental Democracy", *Journal for European Environmental and Planning Law*, pp. 1-10.

[13] See for e.g. Article 3(5), which provides; The provisions of this Convention shall not affect the right of a Party to maintain or introduce measures providing for broader access to information, more extensive public participation in decision-making and wider access to justice in environmental matters than required by this Convention.

participation and access to justice.[14] But here going beyond mean that after complying minimum requirements of the Convention in addition a party may provide any other remedy but not less than which have been prescribed in the Convention itself.

(C) Non Discrimination

The Convention prohibits any such practice which leads to discrimination on the basis of citizenship, nationality or domicile against persons seeking to exercise their rights guaranteed by the Convention.[15]

(D) Public Authorities

The main thrust of the obligations contained in the Convention is towards public authorities, which have been defined to include, government at national and regional level,16 other authorities performing public administrative functions under national law in relation to the environment17 and, any other person having public responsibilities or functions or providing services in relation to the environment.18 More over the institutions of any regional economic integration organizations are also under the ambit of public authorities.19 Although the Convention is not primarily focused on the private sector, but its evident from the definition of public authorities that privatized bodies having public responsibilities in relation to the environment and which are under the control of the aforementioned types of public authorities are also covered by the definition, however Bodies acting in a judicial or legislative capacity are excluded.20

(E) Compliance Mechanism

The compliance mechanism of the Convention is said to be unique among existing multilateral environmental treaties. The Convention requires that the Meeting of the

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[14] *Ibid.* p. 2.

[15] See Article 3(9), to The Aarhus Convention, which provides: within the scope of the relevant provisions of this Convention, the public shall have access to information, have the possibility to participate in decision-making and have access to justice in environmental matters without discrimination as to citizenship, nationality or domicile.

[16] *Ibid.* Article 2(2) (a).

[17] *Ibid.* Article 2(2) (b).

[18] *Ibid.* Article 2(2) (c).

[19] *Ibid.* Article 2(2) (d)

[20] *Ibid.* Para second.

Parties is required to establish, on a consensus basis, optional arrangements for reviewing compliance with the provisions of the Convention.[21] As compliance the opportunity will be provided for the public involvement and may include the option of considering communications from members of the public on matters related to this Convention. We will take detailed view of the compliance mechanism with its strengths and weaknesses in detail in this chapter latter.

(F) Non ECE Countries

The Convention is open to the member of United Nations even if they are not the member of UNECE[22] but they can accede to the Convention with the approval of meeting of the parties.[23]Though till now no other than state than member of UNECE has done so.[24]

Three Pillars of The Convention

This Convention doesn't address substantial environmental issues like other international environmental agreements, such as ozone depletion or climate change. Instead, it establishes procedural obligations for policy-making, implementation, and enforcement with the aim of enhancing public participation. The Convention is based on the premise that adequate protection of the environment is essential to human well-being and the enjoyment of basic human rights, including the right to life itself.[25] To achieve this goal, The Convention grants citizens the right to obtain environmental information, to participate in environmental decision-making, and to appeal to courts or non-judicial bodies. These are three procedural rights contained under three separate pillar of the Convention. These three pillars of the Convention are interdependent, these assumes that meaning participation in policy making depends

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[21] *Ibid.* Article 15.

[22] See note 2.

23 See Article 19 of The Aarhus Convention.

[24] See also Fiona Marshall (2006), "Two Years in the Life: The Pioneering Aarhus Convention Compliance Committee 2004-2006", *International Community Law Review*, Vol. 8, pp. 124-25. See also J. Wates (2005) "The Aarhus Convention: A New Regional Convention on Citizen's Environmental Rights", *IAEA-CN,* pp. 78-111.

[25] See Aarhus Convention note 2, Preambulary Para, where it recognize in addition that simultaneously duty, both individually and in association with others, to protect and improve the environment for the benefit of present and future generations.

upon environmental information and access to justice guaranteed to the citizens. These are being mentioned here in detail.

First Pillar: Access to Environmental Information

Access to information is the prerequisite for environmental democracy and environmental governance. Without it, neither public participation in decision making nor the enforcement of environmental regulations would be possible and environmental justice can never be achieved. In this context the first pillar of the Convention addresses the essential elements of a system for securing the public's right to seek environmental information on request held by the public authorities. Here the information which can be sought by the public, is environmental information, we will have to understand that what does the environmental information include?

In this respect Article 2, the definitional part of the Convention provides the definition of the environmental information, it provides that: "Environmental information" means any information in written, visual, aural, electronic or any other material form on state of element of the environment, factors and state of human health and safety.[26] This definition is intentionally kept broad. It is wider than any other freedom of information law.

The Convention's Access to Information provisions are laid out mainly in Articles 4 and 5. Article 4 discusses parties' obligations to provide environmental information upon public request, while Article 5 mandates a more proactive state role in collecting and disseminating environmental information. The two Articles thus can be distinguished as passive versus active state obligations.[27] Article 4 establishes the general principle that any environmental information held by a public authority must be provided when requested by a member of the public, unless it can be shown to fall within a finite list of exempt categories. Such information held by public authorities

[26] See chapter 1, for detailed definitional part.

[27] Bende Toth, (2010), "Public Participation and Democracy in Practice: Aarhus Convention Principles as Democratic Institution Building in the Developing World", *Journal of Land Resources & Environmental Law,* p. 295. See also J. Wates (2005) at Page 1-10.

must be accessible to any member of the public when requested without a need for that person to state a particular interest. Thus it's not necessary to prove any locus standee in order to seek the information. This is the key feature of freedom of information acts of this type.[28]

Those requesting the information do so as interested citizens, they are not required to explain why they want the information. Here the goal of the access to the information is to give better access to the information and reasoning behind internal decision of the executive, to those who are outside of the government.[29] The information shall have to be given in timely manner ("as soon as possible"). It requires that information shall be made available with in one month of the request for such information, in exceptional circumstances it may be extended up to two month if there is a justification for such extension.[30]Further the provision limits fees for accessing environmental information to "a reasonable amount".[31]

Article 5 impose an obligation upon the parties to the Convention to provide for "mandatory systems" to ensure "an adequate flow of information to public authorities about proposed and existing activities which may significantly affect the environment."[32] Further, positive obligations on Parties under Article 5 include the establishment of basic procedures for the dissemination of government documents, and for procedures allowing the public to request such information.[33] Where there is an "imminent threat to human health or the environment," Article 5(1) (c) requires that "all information which could enable the public to take measures to prevent or mitigate harm arising from the threat and is held by a public authority is disseminated immediately and without delay to the relevant authorities and to the affected

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[28] See S. R. Achim A. Shiplap (2001), "The Aarhus Convention and the Politics of Process: The Political Economy of Procedural Environmental Rights Draft paper for The Law and Economics of Environmental Policy: A Symposium" , Faculty of Laws, University College London, September 5-7, 2001.

[29] *Ibid.* at page 3.

[30] See note 2, Article 4(2).

[31] *Ibid.* Article 4(8), also see Timothy Swanson (2001), Describing the ability to access information without explanation as a key feature of access to information legislation.

[32] See above Note: 2, Article 5(1) (b).

[33] *Ibid.* Article 5(2)-5(5).

public."[34] Here parties are required to "progressively" make environmental information publicly available in electronic databases which can easily be accessed through public telecommunications networks. The Convention specifies certain categories of information (e.g. state of the environment reports, texts of legislation related to the environment) which should be made available in this form, which could help the public to take measures to prevent or mitigate harm arising from imminent threat to human health or the environment. In this respect the Public authority must actively engage in collecting the information relevant to their function, and for this purpose system must be established which warrant an adequate flow of information to Public authorities in the event of any such threat.

Exemptions

There are exceptions to the rule that environmental information must be provided, in this respect Article 4, provides that the Public authority may withhold the information in some circumstances where disclosure will affect various interests. In this context the Convention provides that public authorities may withhold information in the following cases for e.g. National defense, international relations, public security, the course of justice, commercial confidentiality, intellectual property rights, personal privacy, the confidentiality of the proceedings of public authorities, or where the information requested has been supplied voluntarily or consists of internal communications or material in the course of completion.[35]

There are however some restrictions on these exemptions, e.g. the commercial confidentiality exemption may not be invoked to withhold information on emissions which is relevant for the protection of the environment. To prevent abuse of the exemptions by over-secretive public authorities, the Convention stipulates that the aforementioned exemptions are to be interpreted in a restrictive way, and in all cases may only be applied when the public interest served by disclosure has been taken into account.

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[34] *Ibid.* Article 5(1) (c).
[35] *Ibid.* See Article 4(4).

Refusals

The Public Authority may refuse to provide the information in few cases, say for e.g.; the public authority to which the request is addressed does not hold the environmental information requested, the request is manifestly unreasonable or formulated in too general a manner; or the request concerns material in the course of completion or concerns internal communications of public authorities where such an exemption is provided for in national law or customary practice, taking into account the public interest served by disclosure.

Second Pillar: Public Participation in Decision Making

Second pillar of the Convention deals with the public participation in environment decision-making. Here the Convention sets out minimum requirements for public participation in various categories of environmental decision-making. This segment consists upon Articles 6-8,[36] as Article 6 addresses public participation in decisions on certain specific activities (as listed in Annex I), or other activities likely to significantly impact the environment, as determined by the Parties to the Convention. Article 7 discusses public participation "concerning plans, programs and policies relating to the environment", it is pared-down version of Article 6, while Article 8 applies to public participation "during the preparation of executive regulations and/or generally applicable legally binding normative instruments" and this Article operates as a set of guidelines only for implementing public participation mechanism.

Of the three articles, Article 6 is by far the most detailed in its public participatory requirements.[37] The activities which are included under Article 6 are those generally subjected to the environmental impact assessment (EIA) procedure under the UNECE Espoo Convention on Environmental Impact Assessment in a Transboundary Context,

[36] Requirements for public participation in environmental decision-making are addressed through article 6 (decisions on specific activities), article 7 (plans, programs and polices), and article 8 (preparation of executive regulation and legally binding normative instruments).

[37] See Bende Toth note 27,at p. 303. See also Vera Rodenhoff (2002), "The Aarhus Convention and its Implications for the Institutions of the European Community", *RECIEL,* 11:3 pp. 343-356.

as well as activities subject to the Integrated Pollution Prevention and Control (IPPC) directive of the European Community.[38] Many activities which have been mentioned under Article 6 are likely to have adverse impact upon the environment at local level.

For such activities, the Convention prescribes a fair formal and detailed public participation process. The public participation requirements include timely and effective notification of the public concerned, reasonable timeframes for participation, including provision for participation at an early stage, a right for the public concerned to inspect information which is relevant to the decision-making free of charge, an obligation on the decision-making body to take due account of the outcome of the public participation, and prompt public notification of the decision, with the text of the decision and the reasons and considerations on which it is based being made publicly accessible.

It talks about the early participation in the process when the options are still open for effective participation so that public may be given fare chance to place their argument thereafter due account must be taken of outcome of public participation after it. The activities which are covered under Annex 1, are: (1) energy production, (2) metal production and processing, (3) mineral and chemical production activities, (4) waste management activities, (5) paper and pulp production, (6) transportation infrastructure development, (7) animal-based food production activities, (8) water resources transfers, and (9) The requirements also apply, albeit in a slightly more ambivalent form, to decision-making on other activities which may have a significant effect on the environment.

The activities serving national defense purposes may be exempted from this exercise. Article 7 requires Parties to make, appropriate practical and/or other provisions for the public to participate during the preparation of plans and programs relating to the environment.[39] It is to be noted here that the term 'relating to the environment' is quite broad, covering not just plans or programs prepared by an environment ministry, but

[38] See S. R. Achim (2001) note 28 at p. 5. See also Council Directive 96/61/EC concerning integrated pollution prevention and control (IPPC), September 1996, Official Journal of the European Communities, L 257/26. Cited in S. R. Achim (2001), "The Aarhus Convention and the Politics of Process: The Political Economy of Procedural Environmental Rights".

[39] See Article 7, to the Convention where it provides that within this framework, article 6, paragraphs 3(reasonable time frame for different phases), 4(early participation) and 8(due account of outcome of public participation), shall be applied.

also sectoral plans (transport, energy, tourism etc), where these may have significant implication on the environment. Though the Convention is less prescriptive with respect to public participation in decision-making on plans or programs than in the case of projects or activities, the provisions of article 6 relating to reasonable timeframes for participation, opportunities for early participation (while options are still open) and the obligation to ensure that "due account" is taken of the outcome of the participation are to be applied in respect of such plans and programs.

Article 7 also applies, in more recommendatory form, to decision-making on policies relating to the environment.[40] Article 8 applies to public participation during the preparation by public authorities of executive regulations and other generally applicable legally binding rules that may have a significant effect on the environment. Article 8 applies to public participation during the preparation by public authorities of executive regulations and other generally applicable legally binding rules that may have a significant effect on the environment.

Like the other public participation provisions, Article 8 only covers acts of the executive branch of government. It stipulates that draft rules be published or otherwise be made publicly made available, that the public should be given the opportunity to comment directly, or through representative consultative bodies, and that the results shall be taken into account as far as possible. This Article is less precise than the previous one and the parties may find the way to interpret the provision differently.[41] The Convention does not apply to bodies acting in a legislative capacity, but this article will clearly apply to the executive stage of preparing rules and regulations even if they are subsequently to be adopted by parliament, therefore the primary stage where such rules are made is matter of concern its immaterial that latter the same rules are presented before the parliament before it for making any law.

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[40] See note 2, Article 7Para 1-3. See also L. Lavrysen (2009), An Introduction to The Aarhus Convention, Paper presented at International Conference on the Practical Implementation of the Aarhus Convention Brno, Czech Republic 16-17 April 2009, pp. 1-7.

[41] See note 28, Achim A. Halpaap (2001) at pp. 3-5.

Third Pillar: Access to Justice in Environmental Matters

This pillar contains Article 9, its main function is to ensure compliance with the access to information and public participation pillars by requiring parties to the Convention to provide a remedy for challenging noncompliance with those pillars. It provides remedy in three contexts:

(I) Review procedure with respect to request to information;

(II) Review procedures with respect to specific (project-type) decisions which are subject to public participation requirements;

(III) Challenges to breaches of environmental law in general.[42]

Thus the inclusion of an 'access to justice' pillar not only underpins the first two pillars; it also points the way to empowering citizens and NGOs to assist in the enforcement of the law.[43]

Therefore it rooted first two pillars and includes also the general violation of environmental law by the private person or public authority. The Convention requires Parties to provide access to administrative or judicial procedures to challenge acts and omissions by private persons and public authorities which breach laws relating to the environment. Any person who's request has not been entertained under Article 4, or has been denied participation under Article 6, may have recourse to the judicial authority.[44] Thus this pillar provides the opportunity to the public to make an appeal before the appropriate authority.

A person whose request for information has not been dealt with to his or her satisfaction, must be provided with access to a review procedure before a court of law or another independent and impartial body established by law.[45] The Convention

[42] See note 2, The Aarhus Convention, Article 9(1) - (5).

[43] J. Wates (2005), "The Aarhus Convention: A New Regional Convention on Citizen's Environmental Rights", *IAEA-CN*, pp.78—111. See also J. Wates (2005) note 12 at p. 6.

[44] See note 27, Bende Toth (2010) at pp. 312-313.

[45] The second option of independent and impartial body indicates towards the accommodation for those countries which have a well-functioning office of Ombudsperson, who can perform in this capacity in place of any established judicial system.

attempts to ensure the justice for such appeal. It provides that where such appeal is allowed and it involves high cost, there expeditious access will be provided free of charge or inexpensive.[46] The final decision in this regard will be followed by the Public authority. The remedy here may be available to the persons who's right has been affected or having particular interest unlike in the first pillar where no such interest is to be stated.

Article 9, provides that within the national legislation framework the member of public concern having sufficient interest that's right has been affected have access to review procedure before the court of law or any other body independent or impartial.[47] Therefore many NGOs have regarded this access to justice provision limited and weak point, The Convention is less than satisfactory in this area. The Convention provides for a right to seek a review in connection with decision-making on projects or activities covered by Article 6.

The review may be sought either of substantive or procedural legality of the decision or both, however as we earlier discussed that the review procedure may be invoked by the person having sufficient interest and whose right has been effected.[48] One particular thing with the Convention is that the Convention requires Parties to provide access to administrative or judicial procedures to challenge acts and omissions by private persons and public authorities which breach national laws relating to the environment.[49] Such access is to be provided to members of the public 'where they meet the criteria, if any, laid down in national law' - in other words, the issue of standing is primarily to be determined at national level, as is the question of whether the procedures are judicial or administrative. There are some other particular quality standard for the different procedures , these procedure shall provide adequate and effective remedies, including injunctive relief as appropriate, and be fair, equitable, timely and not prohibitively expensive.[50]

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[46] See Article 9(1), note 2. This will be provided with in the framework of national legislation.
[47] See note 2, Article 9(2) (a) - (b).
[48] *Ibid*, See also L. Lavrysen (2009) note 40, at page 5.
[49] *Ibid.* Article 9(3).
[50] *Ibid.* Article 9(4).

These requirements are seemingly difficult to implement because of judiciary facing the backlog in courts of various state parties. In such circumstances only interim relief is an adequate solution, but unfortunately the conditions under which one can obtain interim measures are often very severe and not in accordance with the Treaty requirements. The council fee is not a matter to be neglected easily, in that situation the prohibitively inexpensive legal aid is not possible in all cases.

Lavryson [51] observed that "these issues are difficult to solve by the judges themselves and raise more general questions of judicial management, state investment in the judiciary and appropriate legal aid schemes and we need long term work programs to solve these problems in an acceptable way. The European Community has adopted the legislations to implement the Convention particularly first and second pillar but there is nothing for the implementation of third pillar. Though on 24 October 2003, the European Commission has tabled a Proposal for a Directive on access to justice in environmental matters, but till now this proposal hasn't won sufficient support from the Member States.

Compliance Mechanism

At the First Meeting of the Parties to the Aarhus Convention 1998, in October 2002, the Parties adopted a truly innovative mechanism to assess how well the parties comply with the provisions of the Aarhus Convention to help enforce the obligations contained in it.[52] The Aarhus Convention compliance mechanism is regarded a unique mechanism warranting some novelties in comparison to other multilateral environmental agreements it comprise discrete significant features including: the ability of nongovernmental organizations to nominate experts for possible election to the Compliance Committee; the requirement that all Committee members be independent experts rather than representatives of state Parties to the Convention; and the right of any member of the public and any NGO to file a "communication" with

[51] See note 40, L. Lavrysen (2009) at Page 7.
[52] See Kravchenko (2007), "The Aarhus Convention and Innovations in Compliance with Multilateral Environmental Agreements", *Colorado Journal of International Law and Polity*, pp. 1-50.

the Committee alleging a Party's noncompliance. The Aarhus compliance mechanism provides guidance through authoritative interpretation of the Convention, which allows the people in case if their procedural environmental rights, guaranteed by the Convention, have been violated. It helps out to those countries who want to improve their laws to improve environmental standard.

The compliance mechanism of the Convention provides for consideration of communications about alleged non-compliance from the members of the public, including NGOs working in field of protection of environment.[53] Similarly the compliance Committee is regarded to be innovative because of the fact that it consists of independent members and the Convention is first multilateral environmental treaty which allows the member of the public to trigger its compliance procedure by communication submitted to the compliance committee through secretariat.

In this regard the first case by the member of the public seeking the review against a state party's was submitted to compliance Committee in February 2004.[54] It was a radical change in the way of compliance mechanism ever adopted since this was the first time in history that a member of the public had triggered a multilateral environmental agreement's compliance procedure.[55] Since than various communications have been received from the member of the public so far.[56]

This case was heard in open session in December 2004, was first for multilateral environmental agreement compliance mechanism procedure. In May 2005 the Aarhus Convention's Compliance Committee made its first report to the Meeting of the Parties. We will discuss this communication in detail latter while dealing the cases in this chapter.

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[53] Jeremy Wates (2005) note 12 p. 7.

[54] Fiona Marshall (2006), "Two Years in the Life: The Pioneering Aarhus Convention Compliance Committee 2004-2006", *International Community Law Review*, 8 pp. 123-155.

[55] *Ibid* at p. 123.

[56] 59th communication received from Kazakhstan on 1st June 2011, ACCC/C/2011/59, for sheet available visit: http://www.unece.org/env/pp/compliance/Compliance%20Committee/59TableKZ.htm

Structure of Compliance Committee

Article 15 of the Convention requires the Meeting of the Parties to establish, on a consensus basis, optional arrangements of a non-confrontational, non-judicial and consultative nature for reviewing compliance with the provisions of the Convention. Following this obligation, the Meeting of the Signatories established a Working Group to prepare such a mechanism, consequently through Decision I/7 on review of compliance[57] at their first meeting in October 2002, the Meeting of the Parties elected the first Aarhus Convention Compliance Committee for this purpose. The annex to Decision 1/7 on review of compliance sets out the structure and functions of the Compliance Committee and also the procedures for the review of compliance.

At their second meeting in May 2005 the Parties reviewed the work undertaken by the Committee in the first three years of its operation, including the Committee's report and draft recommendations within the framework of decisions on compliance issues. The parties further adopted decision II/5 on general issues of compliance[58] at their third meeting in June 2008; the Parties addressed the issue of compliance, inter alia on the basis of the Compliance Committee's report on general issues of compliance as well as its report with regard to compliance by several individual Parties.

The compliance mechanism established under the Convention is innovative in both structure and procedure.[59] In terms of structure NGOs have the right to nominate the independent members for the selection as a member of compliance committee. If we look the committee it consists of all independent members rather than representatives to the concerned government as the member of the Committee serves in their personal capacity. While in terms of procedure NGOs have right to file complaints with the compliance committee and have right of participation in preparation of national

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[57] The decision I/7 on review of compliance adopted in October 2002 in first meeting of the parties, to see the copy of the decision please visit:
http://www.unece.org/env/pp/documents/mop1/ece.mp.pp.2.add.8.e.pdf [Online: web] Accessed November 24 2011. For more detail visit also: http://www.unece.org/env/pp/ccBackground.htm [Online: web] Accessed November 25 2011.

[58] Available at UNECE website, visit: http://www.unece.org/env/documents/2005/pp/ece/ece.mp.pp.2005.2.add.6.e.pdf [Online: web] Accessed November 30, 2011.

[59] See Svitlana Kravchenko (2007), "The Convention and Innovations in Compliance With Multilateral Environmental Agreements", *Colorado Journal of International Law and Polity*, 18:1 p. 10.

report. The committee has adopted lucid procedures to make the compliance transparent. In some instances, these are unique, while in others they are at the leading edge of changes that are occurring in international law.[60]

The compliance mechanism, as we discussed is inventive in many respect, the member of the public can bring the complaint before the compliance Committee against state parties in the event of their non-compliance to the provisions of the Aarhus Convention. Furthermore, non-governmental organizations promoting environmental protection and within the scope of Article 10(5) of the Convention can nominate candidates for election as Committee members[61] in the same way that Parties and Signatories can do. Transparency is one of the components of the committee's *modus operandi*. The compliance mechanism of the Convention may be triggered in four ways:

(1) A Party may make a submission about compliance by another Party;

(2) A Party may make a submission concerning its own compliance;

(3) The secretariat may make a referral to the Committee;

(4) Members of the public may make communications concerning a Party's compliance with the convention.

(1) By submission about another party

A party may trigger the compliance mechanism of the compliance committee by submission about compliance by another party, In accordance with paragraphs 15 and 16 of the annex to decision I/7 of the first session of the Meeting of the Parties to the Aarhus Convention. A submission may be brought before the Committee by one or more Parties that have reservations about another Party's compliance with its obligations under the Convention. Such a submission shall be addressed in writing to

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[60] *Ibid.* at p. 10.

[61] Nomination by NGOs was one of the difficult issues upon which to reach a consensus during meetings of the Task Force on Compliance Mechanisms in 1999 and 2000 and subsequent negotiations in the Intergovernmental Working Group (IWG) on Compliance and Rules of Procedure in 2000 and 2001. The proposal from the Chair that NGOs should be able to nominate experts was accepted at the third meeting of the Working Group of the Parties in Pula, Croatia, in July 2002. Despite various criticisms the compliance mechanism was adopted and two persons nominated by NGOs were elected to the committee. For more detail see, Kravchenko S. (2007) at pp. 10-13.

the secretariat and supported by corroborating information. The secretariat shall, within two weeks of receiving a submission, send a copy of it to the Party whose compliance is at issue. Any reply and supporting information shall be submitted to the secretariat and to the Parties involved within three months or such longer period as the circumstances of a particular case may require but in no case later than six months. The secretariat shall transmit the submission and the reply, as well as all corroborating and supporting information, to the Committee, which shall consider the matter as soon as practicable. So far one such submission by Romania about compliance by Ukraine has been made.[62]

(2) By submission concerning its own compliance

A party may make submission before the compliance committee if it concludes that, despite its best endeavor, it is or will be unable to comply fully with the obligation under the Aarhus Convention. This submission shall be made in writing to the secretariat and explain those particular circumstances that the party considers to be the reason of its non-compliance. So received the submission will be transmitted to the committee which shall consider the matter as soon as possible.[63]

(3) By Referral of secretariat

In accordance with paragraph 17 of the annex to decision I/7 of the first session of the Meeting of the Parties to the Aarhus Convention, where the secretariat, in particular upon considering the reports submitted in accordance with the Convention's reporting requirements, becomes aware of possible non-compliance by a Party with its obligations under the Convention, it may request the Party concerned to furnish necessary information about the matter. If there is no response or the matter is not resolved within three months, or such longer period as the circumstances of the matter may require but in no case later than six months, the secretariat shall bring the matter to the attention of the Committee, which shall consider the matter as soon as possible.[64]

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[62] ACCC/S/2004/1, for finding of the compliance committee see: http://www.unece.org/env/documents/2005/pp/c.1/ece.mp.pp.c1.2005.2.Add.3.e.pdf

[63] No communication so far has been received by committee, visit: http://www.unece.org/env/pp/Submissions.htm#SubmissionsSelf.

[64] To date no referral has been made by the secretariat see: http://www.unece.org/env/pp/Referrals.htm

(4) By communication of member of the public

Communication may be brought before the compliance committee by one or more member of the public in relation to any party's compliance with Convention unless the party has submitted the instrument of depositary. We will be dealing with the communications from the public in detail in proceeding paras.

In addition, the Committee may examine compliance issues on its own initiative and make recommendations; prepare reports on compliance with or implementation of the provisions of the Convention at the request of the Meeting of the Parties; and monitor, assess and facilitate the implementation of and compliance with the reporting requirements under article 10, paragraph 2, of the Convention. Since its establishment, the Committee has reached a number of findings with regard to compliance by individual Parties. The structure of the compliance Committee is as follows:

Structure

Morjera maintains the view that the composition of the compliance committee is quite unprecedented, when compared with analogous bodies in other multilateral environmental agreements (MEAs).[65] The Committee has eight members[66], each member serving in their personal capacity[67]. The member must be independent expert as national of state parties or signatories rather than any governmental representative. Members of the committee must be persons of high moral character and recognized competence in the fields to which the Convention relates, including persons having legal experience.[68] Members must be nationals of a Party or Signatory and can include no more than one from the same State.[69] Consideration should be given to the geographical distribution of membership and diversity of experience.[70] Before taking up his or her duties, each member must make a solemn declaration in a meeting of the

[65] See E. Morjera (2005), "An Update Upon The Aarhus Convention and Its Continued Relevance", *Review of European Community and International Law*: 11(2) pp.138-148.
[66] It consist of Chairperson and Vice Chair, Since 2008 the Chairperson is Mr Veit Koester (Denmark), Vice Chair is Ms Svitlana Kravchenko(Ukraine).
[67] See Para 1, Annex to the Decision 1/7. However the number of the members may be extended up to 9, after Third Meeting of Parties in 2008.
[68] *Ibid.* Para 2.
[69] *Ibid.* Para 2, and 3.
[70] *Ibid.* Para 8.

Committee that he or she will perform his or her functions impartially and conscientiously. This fact that the members should be expert in their capacity is a deviation from other compliance mechanism practice. The independence in personal capacity[71] refers to neutrality of the members with respect to attachment with any diplomatic or political agenda so that they could give the committee the greater independence and flexibility. Non-governmental organizations, can nominate candidates for election. They are elected by the Meeting of the Parties by consensus or, failing consensus, by secret ballot. At each ordinary meeting the Meeting of the Parties elects four members for a full term of office.[72] The Committee elects its own chairperson and vice chair.[73]

Communication from the Public

An important and rather unusual feature of the Aarhus Convention is that the Compliance Committee accepts not only the submissions of Parties and referrals from the Secretariat about non-compliance with the Convention (which are the only sources of information for other conventions) but also communications from the public.

The communication by the public creates the possibility for members of the public to invoke the cognizance of the compliance committee by reporting the matter to the committee of non-compliance of the party.[74] Such communications from the member of the public were allowed to be brought to the compliance committee, 23 October 2003, or 12 months after the date of the Convention's entry into force for the concerned party.[75] But parties have right to opt out of the communication up to four years, however no party has done so yet. Communications from the public must be

[71] There have been experienced many problems with the representatives of the government, for e.g. the continuity, they can't continue with same member representation in each party which consumes more time as to understand all things relating to the matter for a new member and, the members who are elected by the government are generally are not able to express their personal evaluation but only the constrained view of concern government. For more detail see Cravchenko (2007).

[72] See F. Marshall (2006), "Two Years in the Life: The Pioneering Aarhus Convention Compliance Committee 2004-2006", *International Community Law Review* 8, at p. 129. See also Para 5-12 of Annex decision I/7 of 2002, adopted at first meeting of the parties.

[73] See note 66.

[74] See F. Marshall (2006) at p. 129.

[75] *Ibid.*

addressed to the Committee through the secretariat in writing and supported by corroborating information.[76]

The committee can refuse the communication to entertain if it considers it, as abuse of right to make such communication, or if it is manifestly unreasonable.[77] In edition the committee may consider that weather domestic remedies have been exhausted or not, nevertheless the committee may accept the communication with out such exhaustion if the domestic remedies application is unreasonably prolonged or obviously does not provide an effective and sufficient means of redress.[78] In brief, a communication to be admissible must not be:

(a) Anonymous;

(b) An abuse of the right to make the communication;

(c) Manifestly unreasonable;

(d) Incompatible to decision I/7, or with the provision of the Convention.[79]

After receiving the communication the compliance committee will make the preliminary determination that if it is admissible. If the communication is admissible than it must bring the communication to the attention of the party concerned who is in non-compliance of the Convention as soon as possible. The Party alleged to be in non-compliance has a maximum of five months period in respect of a communication and six months in respect of a submission or referral to provide the Committee with a written explanation or statement clarifying the matter and describing any response that it may have made.[80] The committee there after gather the information and discussion will be held, where the party concerned and communicant may participate. This discussion phase may be concluded in single meeting or it may go for two or more meetings. After the discussion phase, the Committee will go into closed session

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[76] The decision I/7 on review of compliance adopted in October 2002 in first meeting of the parties, to see the copy of the decision please visit:
[Online: web] Accessed 24 November 2011. URL http://www.unece.org/env/pp/documents/mop1/ece.mp.pp.2.add.8.e.pdf

[77] *Ibid.* Annex Para 19 to the decision.

[78] *Ibid.* Para 20-22

[79] *Ibid.* Para 18-22 to Annex to decision to I/7, See also note 72, F. Marshall (2006).

[80] *Ibid.* Para 23 of Annex to decision I/7.

to make its deliberations. If the Committee makes a provisionally finding that the Party concerned is not in compliance, it will consider and agree upon possible measures or recommendations. In this context, "measures" refer to actions which the Committee may take to address compliance issues of its own accord pending the next Meeting of the Parties. "Recommendations" are measures that the Committee recommends the Meeting of the Parties to take at its next Meeting of the Parties. Whether the Committee adopts measures or recommendations will generally depend on the remaining time interval before the next Meeting of the Parties. The committee's power to take measures to promote the compliance is limited, in this power the compliance committee may:

(a) In consultation with the Party concerned, provide advice and facilitate assistance to individual Parties regarding implementation of the Convention.

(b) Subject to the agreement of the Party concerned:

(i) Make recommendations to that Party; (ii) Request the Party to submit a strategy, including a time schedule regarding the achievement of compliance and to report on the implementation of the strategy; (iii) In cases of communications from the public, make recommendations to the Party concerned on specific measures to address the matter raised by the public.

Under its power of recommendation the committee may recommend:

(a) Provide advice and facilitate assistance to individual Parties regarding the implementation of the Convention;

(b) Make recommendations to the Party concerned;

(c) Request the Party concerned to submit a strategy, including a time schedule, to the Compliance Committee regarding the achievement of compliance with the Convention and to report on the implementation of this strategy;

(d) In cases of communications from the public, make recommendations to the Party concerned on specific measures to address the matter raised by the member of the public;

(e) Issue declarations of non-compliance;

(f) Issue cautions;

(g) Suspend, in accordance with the applicable rules of international law concerning the suspension of the operation of a treaty, the special rights and privileges accorded to the Party concerned under the Convention;

(h) Take such other non-confrontational, non-judicial and consultative measures as may be appropriate.

As the committee has only power of making recommendations therefore the meeting of the party is not under an obligation to follow the recommendations so made by the compliance committee. However the parties have followed the recommendations of the committee which is a positive sign.[81]

This openness to public participation by civil society has already produced remarkable results in the functioning of the Committee. Till June 2011 59 communications have been received by compliance committee.[82] The latest communication has been filed by the public member against Kazakhstan at June 1st 2011.

Transparency of Compliance Procedure

The compliance committee gives much importance to transparency. Transparency is an important part of the compliance committee's procedure. Various scholars have argued about the transparency of the compliance committee because to a large extent, the Compliance Committee's *modus operandi* reflects the access to information and public participation provisions of the Convention itself. The committee reassures to the parties that other parties are meeting their obligations, if they are not then certain matters may be taken owing to non-compliance before it. In general, no information held by the Committee can be kept confidential, however, it is subject to limited exceptions in which the communicant or the Party concerned may request

[81] Meeting of the parties adopted the majority of the recommendations at its second meeting in May 2005,

[82] See above note: 56, visit: http://www.unece.org/env/pp/pubcom.htm

confidentiality.[83] Some where it enhances the accountability and responsiveness of the government as the citizens may watch that weather their government is fulfilling the obligations which they have made on the account of the Convention.

Transparency of the Aarhus compliance process may be assessed into two forms: (1) public access to Committee's documents (mostly by means of a website on the Internet) and (2) the Committee's open meetings.

(1) Committee Documents

The Aarhus Convention website enhances the transparency of the Committee's work. According to the Committee's *modus operandi*, in order to facilitate public access to information related to compliance issues, the Committee lists on its website all submissions, referrals, and communications that are determined to be admissible and significant. The website provides comprehensive guidance on the committee work, including agendas, reports and official documentation in respect of committee meetings. All documents related to these material issues are available, except for information that is required to be kept confidential pursuant to Chapter VIII of the Annex to Decision I/7. As a result, the website of the Compliance Committee contains hundreds of documents including all communications from the public with related attachments, preliminary determinations of admissibility by the Committee, meeting agendas and reports, and correspondence between the Committee or Secretariat and the Parties or communicants. Thus the website will provide the submission, referral or communication, response by the party concerned and the supporting documentation in public domain which may be accessed by the public.

(2) Meetings

Meetings are a second area where the activities of the Aarhus Compliance Committee are notably more transparent than those of other Conventions. The public's right to participate in the Committee's processes reflects the concept of participation enshrined in the Convention itself. Their meetings are generally open to the public. The Aarhus Compliance Committee invites parties to a dispute, the Party concerned or the Party

[83] See the grounds set out in Articles 4(3) (c) and Article 4(4) of the Aarhus Convention, see above discussion "exceptions and refusals".

making a submission and the member of the public making a communication to the Committee to Committee meetings in order to participate in the discussion.

They can participate in the entire meeting except during closed deliberations involving the adoption of findings, measures, and recommendations of the Meeting of the Parties. Non-governmental organizations such as 'earthjustice'[84] and 'the Center for International Environmental Law'[85] participate regularly in the Committee meetings as observers and also offer their comments on each case.[86] The Committee usually gives to observers a chance to present their comments and information and then takes their position into consideration during deliberations.

Although the Aarhus Convention Compliance Committee makes recommendations to the Meeting of the Parties for punitive measures, in addition, the compliance mechanism provides that the Compliance Committee itself may, "in consultation" with the Party concerned, "provide advice and facilitate assistance to individual Parties regarding the implementation of the Convention." Furthermore, with agreement of the Party concerned, the Committee can (prior to a Meeting of the Parties):

(a) Make recommendations to the Party concerned;

(b) Request the Party concerned to submit a strategy, including a time schedule, to the Compliance Committee regarding the achievement of compliance with the Convention and to report on the implementation of this strategy;

(c) In cases of communications from the public, make recommendations to the Party concerned on specific measures to address the matter raised by the member of the public.

The Meeting of the Parties may decide upon further appropriate measures to bring about full compliance with the Convention. Specifically, the Meeting of the Parties

[84] Founded in 1971 as the Sierra Club Legal Defense Fund Name changed to Earthjustice in 1997. It works through the courts on behalf of citizen groups, to ensure government agencies and private interests follow the law. For more detail visit: http://earthjustice.org/about

[85] Since 1989, the Center for International Environmental Law (CIEL) has worked to strengthen and use international law and institutions to protect the environment, promote human health, and ensure a just and sustainable society, for more detail visit:http://www.ciel.org/CIEL/About_Us/index.html

[86] in 2006, compliance committee meetings, 11th, 12th, 13th and 14th in Geneva,, see : http://www.unece.org/env/pp/calendar_2009.htm.

may, taking into account the cause, degree, and frequency of the non-compliance, decide upon the measures listed above, as well as the following measures:

(a) Issue declarations of non-compliance;

(b) Issue cautions;

(c) Suspend, in accordance with the applicable rules of international law concerning the suspension of the operation of a treaty, the special rights and privileges accorded to the Party concerned under the Convention.

Some Cases of Compliance

Few findings and recommendations of the committee are being discussed here for having a practical understanding. These cases reflect the issues which were faced by the public or the parties. The cases raise a number of issues concerning the future effectiveness of the Aarhus Convention compliance process.

The first case[87] was received by compliance committee in 2004, by Kazakh non-governmental organization Green Salvation,[88] where this NGO on February 2007 submitted a communication to the committee alleging non-compliance by Kazakhstan with its obligation under Article 4, Para 1 and 7, Article 6, Para 6 and Article 9, Para 1, of the Aarhus Convention. The NGO requested information from the National Atomic Company Kazatomprom,[89] as per Article 4[90], related to the proposed draft act on the import and disposal of radioactive waste in Kazakhstan.[91] But the information was not answered and the request was rejected owing to various reasons. Having received no response the communicant challenged the refusal to provide the sought

[87] ACCC/C/2004/1, Available at:http://www.unece.org/env/documents/2005/pp/c.1/ece.mp.pp.c1.2005.2.Add.1.e.pdf

[88] The communicant a NGO working in the field of environmental protection and falls under the definition of the public, as set out in article 2, paragraph 4, of the Convention

[89] The National Atomic Company Kazatomprom is a legal person performing administrative functions under national law, including activities in relation to the environment, and performing public functions under the control of a public authority.

[90] Article 4, access to environmental information, where public authority is under an obligation to provide sought information with in the framework of national legislation.

[91] Para 9, of the communication.

information filing a law suit in one of the Almaty district court.[92] However, the case was dismissed on 13 June 2003 on procedural grounds for lack of standing.[93] The decision was presented in appeal but remained unsuccessful.

The Kazakh Government[94] replied that Kazatomprom was not a public authority and that the information requested could not disclosed because it did not relate to any ongoing decision-making procedure of the Government. The Govt also stated that the people generally should supply the reason or state the interest why they want the information in accordance with the practice in Kazakhstan. Subsequent appeal procedures in courts of various jurisdictions and instances failed, to meet the requirements of article 9, paragraph 1, of the Convention.

According to the communication, the lawsuits were rejected first on grounds of jurisdiction and subsequently on procedural grounds as the courts did not acknowledge the right of a non-governmental organization to file a suit under article 9, paragraph 1, in its own name rather than as an authorized representative of its members. The communication was forwarded to the concern party on 17 May 2004, following a preliminary determination as to its admissibility.

The party replied to in response to the compliance committee forwarded the communication to the party, the party replied[95] that the communicant did not fall under definition of public concern with in the meaning to article 2(5), the requested information didn't relate to any ongoing decision-making procedure as the matter was not under consideration of the govt at that time, and national atomic company, Kazatomprom didn't fall under public authority with in the meaning of article 2(2). The committee in its fourth meeting[96] determined on preliminary basis that that the communication is admissible.

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[92] *Ibid.* Para 10, of the communication.

[93] The decision stated, in particular, that, as an environmental non-governmental organization, the plaintiff could represent in court only the interests of its individual members and that it had failed to present a power of attorney from the individuals whose interest it represented.

[94] Kazakhstan deposited its instrument of ratification of the Convention on 11 January 2001, The Convention entered into force for Kazakhstan on 30 October 2001.

[95] Response was received on 27 October 2004.

[96] Para 18, MP.PP/C.1/2004/4 .

Observations of the committee

The compliance committee observed that the communicant being a NGO working in the field of environmental protection falls under the definition of public as set under article 2 Para 4. The national atomic company performing administrative and public function under national law including activities relating to environment, the company fully owned by the government, hence the company falls under the definition of Public authority. The information requested falls under the definition of environmental information as set under article 2(3).[97] Therefore being a Public authority the company was under an obligation to provide the environmental information as under article 4, the reason of requesting the information does not need to be justified.

Findings of the committee

The Committee found that, by having failed to ensure that bodies performing public functions implement the provisions of article 4, paragraphs 1 and 2, of the Convention, Kazakhstan was not in compliance with that article. The compliance committee found that the lengthy review procedure and denial of standing to the non-governmental organization in a lawsuit on access to environmental information was not in compliance with article 9, paragraph 1.

The Committee further found that the lack of clear regulation and guidance with regard to the obligations of bodies performing public functions to provide information to the public and with regard to the implementation of article 9, paragraph 1, constituted non-compliance with the obligations established in article 3, paragraph 1, of the Convention.

[97] Para 18 see note 7.

Recommendations

The committee recommended to the party that to submit to the Compliance Committee, not later than the end of 2005, a strategy, including a time schedule, for transposing the Convention's provisions into national law and developing practical mechanisms and implementing legislation that would set out clear procedures for their implementation. Recommended to the government to submit to the Compliance Committee, not later than the end of 2005, a strategy, including a time schedule, for transposing the Convention's provisions into national law and developing practical mechanisms and implementing legislation that would set out clear procedures for their implementation. Further recommended to the govt to provide officials of all the relevant public authorities on various levels of administration with training on the implementation of the Memo on Processing Public Requests for Environmental Information and to report to the Meeting of the Parties, through the Compliance Committee.

As we discussed so far 59 communications from the public have been received, first communication being from Kazakhstan and most recent also from Kazakhstan. The data sheet shows that in the history of received communications, 6 communications have been forwarded by the member of the public from Kazakhstan to the compliance committee.[98] However most of the communications between the period, 2005-2010, have been received from the public of United Kingdom[99] followed by Kazakhstan and European community respectively.

Thus in this first communication the compliance committee found that the Kazatomprom is public authority and is bound to follow the obligations contained under The Convention, to which ultimately meeting of the parties also agreed. Whatever refusal was made by the Kazatomprom was not in the conformity of the provision of the Aarhus Convention. There was clear lack of regulations and guidance with regard to the obligations of the bodies performing public functions. Thus the

[98] See the data sheet, where from Kazakhstan 1, 2, 6, 10, 20, 59th communication have been received, visit: http://www.unece.org/env/pp/pubcom.htm,

[99] 19, 23, 27, 33, 38, 40, 45, 46, 47, 49, 52, 53, 55th and 56th, so far 14 communications were received.

recommendations were issued to the party to make necessary changes to make the system within the conformity of the Convention.

Similarly in another communication,[100] ClientEarth, an NGO on December 1st 2008 which is supported by a number of entities and private individuals submitted to the compliance committee alleging a failure by the European Union (EU) to comply with its obligations under article 3, paragraph 1, and article 9, paragraphs 2, 3, 4 and 5, of the Aarhus Convention. It was alleged in the communication that by applying the "individual concern" standing criterion for private individuals and NGOs that challenge decisions of EU institutions before the Court of Justice of the European Union and the General Court or Court of First Instance the EU fails to comply with article 9, paragraphs 2-5, of the Convention[101] concerning compliance by the European Union.

The communication further alleges that the law adopted by the EU in the form of a regulation in order to comply with the provisions of the Convention (hereinafter the Aarhus Regulation), fails to grant to individuals or entities, other than NGOs, such as regional and municipal authorities, access to internal review; and that the scope of this internal review procedure is limited to appeals against administrative acts of an individual nature.

As a result, the EU fails to comply with article 3, paragraph 1, and article 9, paragraph 2, of the Convention. It was also the contention of the communicant that EU fails to comply with Article 9, Para 4, by charging the applicants before the court with uncertain expenses in the event of the losing their case, more over the EU is alleged to breach the Article 6, for not providing public participation and related access to justice in decision-making related to decisions taken by institutions of European Union. Thus the communicant has alleged the general failure of EU to comply with the provision of the Aarhus Convention.

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[100] Findings and recommendations with regard to communication ACCC/C/2008/32, against European Community, available at: http://www.unece.org/env/pp/compliance/CC-32/ece.mp.pp.c.1.2011.4.add.1.edited.adv%20copy.pdf

[101] Access to review procedure, ability of member o the public to challenge acts and omissions by private persons and, timely and inexpensive remedy and removal barrier to access to justice.

Receiving the complaint the communication was forwarded to the party concerned.[102] The committee, after taking into consideration, comments from both side, prepared the draft finding at its 31st meeting in February 2011 considering the main allegations of the communicant by taking into account the jurisprudence of the court of EU on access to justice in environmental matters. At its thirty-second meeting, the Committee proceeded to finalize its findings in closed session, taking account of the comments received. The committee observed that when evaluating whether a Party complies with article 9, paragraph 3, the Committee pays attention to the general picture, i.e., to what extent the domestic law of the party concerned effectively has such blocking consequences for members of the public in general, including environmental organizations, or if there are remedies available for them to actually challenge the act or omission in question.

The committee observed further that in this evaluation, article 9, paragraph 3, should be read in conjunction with articles 1 to 3 of the Convention, and in the light of the purpose reflected in the preamble, that "effective judicial mechanisms should be accessible to the public, including organizations, so that its legitimate interests are protected and the law is enforced."[103] The Committee has concluded that the established jurisprudence of the EU Courts prevents access to judicial review procedures of acts and omissions by EU institutions, when acting as public authorities. This jurisprudence also implies that there is no effective remedy when such acts and omissions are challenged.

The compliance committee found that with regard to access to justice by members of the public, the Committee is convinced that if the jurisprudence of the EU Courts, as evidenced by the cases examined, were to continue, unless fully compensated for by adequate administrative review procedures, the Party concerned would fail to comply

[102] It was forwarded pursuant to Para 22 of Annex to Decision I/7 of the meeting of the parties on December 24, 2008.

[103] See ACCC/C/2005/11, Para. 34; and ACCC/C/2006/18, para.30.p Para 79, of preceding communication, see above Note:19

with article 9, paragraphs 3 and 4, of the Convention[104]. However, the committee also found that the allegations of non-compliance with paragraphs 4 and 5 of article 9 of the Convention, with respect to costs, were not sufficiently substantiated by the communicant.[105] The compliance committee here in this communication recommended to the party that while the Committee is not convinced that the Party concerned fails to comply with the Convention, given the evidence before it, it considers that a new direction of the jurisprudence of the EU Courts should be established in order to ensure compliance with the Convention.

Therefore, the Committee, pursuant to paragraph 36 (b) of the annex to decision I/7, recommends the Party concerned that all relevant EU institutions within their competences take the steps to overcome the shortcomings reflected in the jurisprudence of the EU Courts in providing the public concerned with access to justice in environmental matters.

In a communication forwarded by an Austrian NGO, "Global2000/Friends of the Earth Austria", in collaboration of Greenpeace alleging a failure by Slovakia to comply with its obligations under article 6 of the Convention. It was alleged that that Slovakia has failed to comply with Article 6, Para 1, 4 and 10, by failing to provide for public participation in the decision-making process for a construction permit with regard to the Mochovce Nuclear Power Plant.[106] Here the communicant also alleges that, since it was not possible to appeal against the different decisions due to restricting standing requirements in Slovak law and by generally not providing for access to justice in environmental matters in its legislation, the Party concerned fails to comply with article 9, paragraphs 2, 3 and 4, of the Convention.

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[104] *Ibid.* Para 94.

[105] *Ibid.* Para, 93.

[106] Findings and recommendations with regard to communication ACCC/C/2009/41 concerning compliance by Slovakia (adopted by the Compliance Committee on 17 December 2010 visit http://www.unece.org/env/pp/compliance/C200941/Findings/ece_mp.pp_2011_11_add.3_as_submitted.pdf

The compliance committee at its 24th meeting[107] determined that the communication is admissible, accordingly on July 23rd 2011, the communication was forwarded to the party concerned.[108] The committee prepared its draft finding at its 29th meeting (21-24 September 2010) in accordance with paragraph 34 of the annex to decision I/7) which were forwarded for the comments of the party concerned, there after both party and communicant were invited to provide comment by November 8, 2010.[109] In this reply party concerned expressed strong concern about the conclusions made by the compliance committee in its draft finding, by raising the contention that no analysis was performed as to weather the condition of public participation were fulfilled or not. Slovakia argued that that "it is not open to the Committee to substitute its views for those of the authority; it can only interfere when the decision is manifestly unreasonable".[110]

The NGO exhausted all domestic remedies.[111] Here the committee evaluated that Nuclear power plants, such as the Mochovce NPP, are activities covered by article 6, paragraph 1, and annex I, paragraph 1, of the Convention, for which public participation shall be provided in permit procedures. After examining all discourses the compliance committee found that by failing to provide for early and effective participation in the decision-making leading to 2008 UJD[112] decisions[113] of 14 August 2008 concerning Mochovce NPP, thus the party concerned failed to comply with article 6, paragraphs 4 and 10, of the Convention Para 64.

Thus the committee recommended pursuant to paragraph 35 of the annex to decision I/7, the meeting of the parties to that concerned party should review its legal framework so as to ensure early and effective public participation is provided for in decision-making. The committee finally invited Slovakia to submit to the Committee

[107] *Ibid.* Para 3, this meeting was held on 30 June-3 July 2009.
[108] *Ibid.* Para 4Pursuant to paragraph 22 of the annex to decision I/7 of the Meeting of the Parties to the Convention see Para 4.
[109] *Ibid.* see Para 9.
[110] *Ibid.* Para 11.
[111] *Ibid.* Para 32-36.
[112] It is Slovak Nuclear Regulatory Authority Úrad Jadrového Dozoru .
[113] 246/2008, 266/2008 and 267/2008)

a progress report on 1 December 2011 and an implementation report on 1 December 2012 on achieving the recommendation above.[114]

After analyzing these cases it is reasonable to remark that committee is treating each communication with care and reaching to the conclusion which is in favor of party while some time in favor of communicants. These communications are somewhere playing the role of catalyst in complying the environmental procedural rights. The result of recommendations made by the compliance committee shows that parties are inclined to follow these and are incorporating into their national legal framework in order to make in line of environmental protection.

Various measures were recommended by the compliance committee but often so recommended to the parties were: (1) Recommendation to adopt the regulations; (2) Change in Concerned Legislations to bring them in to conformity of Aarhus Convention; (3) Development in Implementing Mechanism; (4) Capacity building and; (5) Report to parties in next meeting of the parties.

We can say that the review of these cases reflects the cross cutting nature of the Aarhus Convention. The compliance committee has dealt with issues of compliance impacting with local, national and even international level. The ambit of substantive subject matter also has been broadened by the reason of the fact that the committee has included various activities under its compliance mechanism such as: an industrial park, gold mines, a landfill, a radioactive and hazardous waste and shipping canals etc.

Among the provisions which have been claimed to be commonly violated by the concerned party, Article 9 is leading.[115] Article 9(3) requires Parties to provide access to administrative or judicial procedures to challenge acts and omissions by private persons and public authorities which contravene environmental law. Article 3, also

[114] Para 70 Sub Para a to the findings, see note 24.

[115] This Article is reported to be violated most of the time, particularly Para 3rd which provides for expeditious, free of charge or inexpensive access to justice.

reported to be violated.[116] Public participation provisions also have been reported to be violated in many cases. But it is interesting to note here that often those provisions which were sited by the communicants being in violation, but according to committee those provisions were not found so, while other were found in non-compliance. Say for e.g. Article 4(1), Article 6(1)-(4) were wound in non-compliance.

Analysis of the Convention

The Convention is a powerful tool in the hands of the public in respect of enforcement of their environmental rights as per the procedure established by the convention. The Convention looks very strong in terms of providing the public procedural environmental rights to compel the respective government in case of non-compliance to the provisions of the convention. In spite of various rights contained under the convention the vague and permissive kind of language of the convention makes it week and meager document.

In case of soft and permissive kind of language the parties may find a leeway to escape the liability and rather to make the rules for incorporation in the way which suits them, because there is no such authority which strictly follows to guide them while formulating the rule for practical implementation of the Aarhus Convention. However, there are many things which have been first time introduced in a multilateral environmental treaty, pursuing to obligations to the Aarhus Convention, rather many new rules confirming better environmental rights have been incorporated. In this section we will see the strengths, weaknesses and effectiveness of the Convention. Weather the convention has gotten real teeth or it is just rule of moral conduct as mostly regarded in reference of international law.

The Convention is outcome of the response of the immerging need of public involvement in decision-making. The Convention has received generally positive response from the governments, public and from the Non Governmental

[116] Article 3 (9) provides that rights under the convention to be provided with out discrimination to nationality citizenship and domicile.

Organizations realm. Article 1 obliges each Party to guarantee, procedural rights of public participation in environmental decision-making in order to contribute to the Convention's overriding objective of the protection of the right of every person of present and future generations to live in an environment adequate to his or her health and well-being. The Convention contains substantive rights for which every person is entitled. The non-exclusionary definition of the 'public' under Article 2(4) as 'one or more natural or legal persons, and, in accordance with national legislation or practice, their associations, organizations or groups' further supports this claim.[117]

On the basis of Article 1, which guarantees in theory the procedural rights of present generations, not only is the substantive right of future generations to live in a healthy environment protected but also the rights of participation in decision-making which are a precondition for the enjoyment of the former. Lee and Abbot observed that,

"Although it is a fairly weak legal document, given its quite vague and permissive character and the absence of adequate enforcement mechanisms, the Convention makes a potentially powerful statement on the importance of public participation in a wide range of decisions".[118]

Though there are some week international obligations in the Convention, all the same will be given real bite through appropriate legislations formulated by the UNECE members for the implementation of the Convention's obligations.

If we evaluate the convention and its three pillars, viz. right to access the information, public participation in decision-making and access to environmental justice, in this context Lee and Abbot argue that,

"the usefulness of access to information depends on the information being understood by the lay public; participation depends partly on being able to take part in dialogue;

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[117] See C. Nadal (2008), "Pursuing Substantive Environmental Justice: The Aarhus Convention as a Pilar of Empowerment", *Environmental Law Review* 10, p. 28.

[118] Lee & Abbot (2003), "The Usual Suspects? Public Participation Under The Aarhus Convention", *Modern Law Review*, V. 66:1 at p. 82.

access to justice may depend on challenging technical information on its own terms".[119]

Here though, The Convention provides the right to seek the information which is held by public authority but these are reasonable concerns that the usefulness of the information depends upon the fact that how it is understood by the public and how to be interpreted. There are technical approaches to the scientific information which are connected to the environment. So far as the participation is concerned I is very strong pull upon environmental policy making, but in real sense its meaning has been not been made clear, as there are many skeptics about the public participation pertinent to involvement of the particular member of the public. Lee and Abbot further observed that,

"The Aarhus Convention is certainly ambiguous in its objectives, with the recitals recognizing diverse, yet interrelated motivations. The recitals refer to rights and duties to an 'environment adequate to health and well-being', and posit that rights advocated in the Convention enhance 'the quality and the implementation of decisions' and 'public awareness of environmental issues'."[120]

There may be so many lacunae in the convention itself assimilating many mixed motives in spite, it has very equitable motive that is improvement and protection of the environment through procedural environmental rights. This procedure might improve problem solving but the level of environmental protection is still potentially open ended. The reason which has been reflected in Aarhus Convention and it has relied that public participation improves environmental protection. While it may be the substantial question that what is environmental protection which is being sought here through various procedural environmental right. However the involvement of environmental interest groups is probably crucial, and indeed the distinct role for NGOs is perhaps the most significant innovation of the Convention.

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[119] *Ibid.* at p. 85.
[120] *Ibid.* at p. 87.

Involvement of the public is directly is not always easy rather it is extremely difficult. Moreover, there are problems of cost time and money. The most pressing difficulty appears to be that we overstate the potential of participation, as seems likely, it actually favors elite groups rather than the general public.

If we analyze the whole convention than it may be concluded that the first pillar, viz. access to information is the clearest obligation in the Convention, which is necessary starting point for any involvement of the public in decision-making. Right to information has been recognized as an inherent right and essential element of democracy. Subsequently various environmental treaties also included provisions relating to providing environmental information.[121] It is intended to ensure free access and dissemination of environmental information held by public authorities throughout the EC by setting out basic terms and conditions on which the information should be made available.

The EU directive is also intended to ensure greater environmental protection and remove disparities in member state's laws which create unequal conditions of competition.[122] 1992 Ospar Convention[123] also contains provisions relating to right to access the information. Article 9 of the 1992 Convention requires the competent authorities of the parties to make available, to any legal or natural person any information in written, visual, aural or data-base form on the state of the maritime area, on activities or measures adversely affecting or likely to affect it and on activities or measures introduced in accordance with the Convention. On environmental information, the Convention introduces several innovations which clarify- or develop, depending upon one's perspective - the approaches reflected in the 1990 EC Directive and Article 9 of the 1992 OSPAR Convention, which it generally follows.[124]

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[121] The EC Directive on Access to Environmental information as the first international instrument to create a right of access to environmental information

[122] See Philippe Sands (2003), "Principles of International Environmental Law", New York: Cambridge University Press, pp. 854-856.

[123] The Convention for the Protection of the marine Environment of the North-East Atlantic, the Ospar Convention, Opened for signature22, September 1992, entered into force 25 March 1998.

[124] See note122.

Directive 90/313 on Freedom of Access to Information on the Environment represented the EC's commitment to safeguarding the rights of citizens to request access to information held by public authorities in EC Member States. The convention has strengthened the right to access to information in many respects than any other available legal framework. Say for example the definition of the information has been broadened and the procedure has been similar and time has been reduced in comparison to other information directive. Aarhus Convention remedied the problem seeking the information from privatized entities such as water and sewerage authorities, the ambit of the bodies against whom right to access the information can be exercised has been broadened by including the public authorities and the bodies having public responsibilities.

Article 2 (2) (c) covers 'any other natural or legal persons having public responsibilities or functions, or providing public services, in relation to the environment, under the control of a [governmental or administrative] body or person'. If we compare this obligation with existing law, it appears lucidly expansive to include public utilities, and may even be interpreted to cover publicly or privately owned entities that provide a public service or having public responsibilities such as waste collection.[125] The Convention has included many things into the ken of environmental information, this phrase is broad even in comparison to the E.U directive[126] on access to information.

E.U. directive Article 2(a) of the Directive defined environmental information as encompassing any information on the state of the various aspects of the environment and 'measures adversely affecting or likely to affect' those aspects) Article 2(3) (b) of the Aarhus Convention goes further, however, explicitly including information on 'biological diversity and its components, including genetically modified organisms', energy, noise and radiation in its definition[127]. The Convention, recognizing the importance of economic evaluation in environmental decision-making, also includes

[125] *Ibid.* at page 826-827

[126] Directive 2003/4/EC of the European Parliament and of the Council of 28 January 2003 on public access to environmental information and repealing Council Directive 90/313/EEC, available at: http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2003:041:0026:0032:EN:PDF

[127] See article 2(3a, 3b, 3c) note 2.

'cost-benefit analysis and other economic analyses and assumptions used in environmental decision-making' in its definition of information to which access should be provided.

However, the Convention has various exceptions to the rule where in that case the information can be refused to be given. The information requested may be refused only in the case if the disclosure of the information would adversely affect interests covered by the exemptions, which include international relations, intellectual property rights and the confidentiality of commercial and industrial interests. Furthermore, Article 4(4) goes on to state that 'the aforementioned grounds for refusal shall be interpreted in a restrictive way, taking into account the public interest served in disclosure. Whilst introducing a welcome element of proportionality into the process, there is no explicit requirement that information is disclosed where it is in the public interest to do so.

The Convention's review procedure following denial of access is also potentially more liberal than that provided for under existing law. If the information has been refused than in that case Article 9, of the convention provides that the party has access to the review procedure before of the court of law or nay independent and impartial body established by law. For example, Article 9(1) goes on to state that in providing such review, Member States, shall ensure that such a person also has access to an expeditious procedure established by law that is free of charge or inexpensive for reconsideration by a public authority or review by an independent and impartial body other than a court of law. Final decisions made by such a body will be binding on the public authority holding the information.

Although the wording is ambiguous, it would appear that the Convention is attempting to ensure that a dissatisfied party has an alternative means of review other than formal court proceedings, a welcome development in administrative justice, although one that will require little change in the existing review mechanisms of many parties. The Convention further push to the active collection and dissemination of environmental information and to publish national report on the state of the environment. More over a publicly accessible data base will be compiled through standardize reporting. In fact such a positive obligation has the potential to empower

the public and civil societies group to in their formal and informal role in field of environment protection.

The Aarhus Convention talks about the 'responsibilities' , 'functions' and 'public services' relating to the environment, but it doesn't talk much about the measures to be taken in case of the affecting the environment. Though the first pillar containing right to access information is direct and strongest obligation which is least controversial too, however it is by no mean completely straight forward. The relevant articles are ambiguous in places, leaving room for state (or EC) discretion, and its interaction with the range of existing provisions may be awkward. Thus the first pillar of the convention provides the right in the hand of the public to seek the information and also an obligation upon the state parties to disseminate the information in publicly accessible format with regularly preparing reports. The term environmental information has also been made wider to include various things which may relate to environment including genetically modified organism.

The public participation provisions contained in the second pillar are positive which impose an obligation upon the parties to inform the public about the proposed work and providing the public reasonable opportunity for their participation in decision-making. As we discussed while dealing with second pillar that Article 6, of the Convention applies to the decisions permitting certain activities listed in the convention or other activities likely to have significant impact upon the environment[128]. Here the public not only will be informed but also will be given opportunity to participate in the decisions. The need for reasonable time frames is stressed in Article 6, and there must be 'early public participation, when all options are open and effective public participation can take place. Article 6(8) provides that 'due account' must be taken of the outcome of the public participation. It mean the public views cannot be simply ignored rather the views will be considered while taking final decision, however the reason of final decision will be given[129].

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[128] Annex I LIST OF ACTIVITIES REFERRED TO IN ARTICLE 6, PARAGRAPH 1 (a) such as energy sector, production and processing of metals, chemical industry, waste management, industrial plants, and Extraction of petroleum and natural gas for commercial purposes where the amount extracted exceeds 500 tons/day in the case of petroleum and 500 000 cubic meters/day in the case of gases

[129] See Article 6(9) note 2.

The detail on timing, provision of information, taking due account of contributions, and an obligation to give reasons for a decision, although they leave a great deal in the hands of the public decision-makers, suggest that the Convention envisages 'real' participation, with the potential to exert a genuine influence on decisions. In respect of the 'policies relating to the environment', Article 7 of the Aarhus Convention simply imposes an obligation to 'endeavor' to provide opportunities to participate 'to the extent appropriate'. Here many countries may think that this is soft law and there is no such clear obligation, this is like what European commission was of the view that it is soft law and does not require any legislation.

Article 8 on 'executive regulations and other generally applicable legally binding rules that may have a significant effect on the environment' provides that 'each party shall strive to promote effective public participation at an appropriate stage, and while options are still open'. This provision is quite novel, relating not just to individual decisions, or decisions by independent agencies, but also to wide ranging legislative decisions. There are provisions to allow for time-frames sufficient for effective participation, publication of draft rules, and the opportunity to comment directly or through representative consultative bodies. The result of the public participation shall be taken into account as far as possible. Moreover, the notion of an 'environmental' decision is not explored in the Convention, but Article 8 extends well beyond classic pollution or conservation law, and could easily embrace, for example, decisions on agriculture, energy or transport. Although this provision is negligible in terms of formal obligation, it could be a significant political tool in the 'integration' of environmental concerns into other policy areas.

The Convention contains the provisions of affirming access to justice in environmental matters it imposes this obligation upon the state parties. The access to justice provisions are closely related to other limps of the conventions, the environmental justice can be ensured in real meaning when the public is provided environmental information and are given opportunity to participate in decision making and their opinion are incorporated into decisions finally being made by the authorities.

Article 9, of the Convention provides for the establishment of the review procedure in case of the refusal of the access to information right and violation of public participation provision. Article 9(2) provides that members of the public having a 'sufficient interest' or who maintain 'impairment of a right where the administrative procedural law of a Party requires this as a precondition', are able to 'challenge the substantive or procedural legality of any decision, act or omission' subject to Article 6, and also, 'where so provided for under national law' any decision subject to 'other relevant provisions' of the Convention. In determining the 'standing' of the public concerned, the Convention defers to national law, but emphasis is given to the objective of giving the public concerned wide access to justice. Furthermore, bodies that comply with the Convention definition of 'the public concerned', which includes 'non-governmental organizations promoting environmental protection and meeting any requirement under national law are explicitly deemed to have a 'sufficient interest' or 'rights capable of being impaired.' Persons or groups who satisfy these conditions must have access to 'a review procedure before a court of law and/or another independent and impartial body established by law'.

Furthermore, bodies that comply with the Convention definition of 'the public concerned', which includes 'non-governmental organizations promoting environmental protection and meeting any requirement under national law0 are explicitly deemed to have a sufficient interest or rights capable of being impaired. Persons or groups who satisfy these conditions must have access to 'a review procedure before a court of law and/or another independent and impartial body established by law'. Here there is little discrepancy, access to information provides that a person may seek information with out interest to be stated, but here the review procedure is only for those who are having sufficient interest than only those persons may trigger this pillar that are having sufficient interest. The public who exercised their right to seek information with out stated their interest and their request have been rejected than they will be unable to invoke the review procedure of the convention. It mean that the public authority may be encouraged that they can simply refuse the request for information which has been moved from the group who are not having sufficient interest because there is no remedy in their hands for review after rejection or refusal or their information petition.

So an applicant for judicial review must have a 'sufficient interest' in the subject-matter being reviewed. Therefore the application of locus standi is problematic here in environmental disputes. Article 9(3) of the Convention provides that In addition and without prejudice to the review procedures referred to in paragraphs 1 and 2 above, each Party shall ensure that, where they meet the criteria, if any, laid down in its national law, members of the public have access to administrative or judicial procedures to challenge acts and omissions by private persons and public authorities which contravene provisions of its national law relating to the environment. The lack of private rights in the unowned environment and the fact that environmental disputes are centered around broader societal values has led to calls for broader rights of access. Whilst the courts have recently demonstrated a willingness to relax the locus standi requirements to enhance the standing of groups and individuals representing environmental interests, this area of law remains somewhat uncertain.

Practically, Article 9(4) provides that access to justice shall be 'fair, equitable, timely and not prohibitively expensive', whilst judicial review is notoriously slow and expensive[130]. Moreover, it is debatable whether the judicial review procedure complies with the remainder of Article 9(4) which requires that 'the procedures shall provide adequate and effective remedies, including injunctive relief as appropriate'.

As we have seen, one of the main purposes of the Aarhus Convention is to encourage public participation in environmental decision-making and provide access to justice where a Party fails to adhere to the principles of the Convention. Article 9(3) takes this one step further and recognizes the importance of the public enforcement of environmental law in general, by providing for direct action. Members of the public are to have access to 'administrative or judicial procedures to challenge acts and omissions by private persons and public authorities which contravene provisions of its national law relating to the environment. The philosophy seems to be that participation is beneficial throughout the environmental regulation process, right up to enforcement. All in all, although Article 9(3) states that parties 'shall' permit members of the public to initiate such challenges, it is unlikely to mean much in practice.

[130] See Lee & Abbot 2003 at p. 105.

Conclusion

The obligations in Article 9(2) and (3) of the Aarhus Convention are disappointing and provide only a watered down guarantee of access to justice. Due to the continuing references to 'national law', implementation will depend on the extent to which states advocate and support more wide-ranging access to the courts.

Thus we can hereby conclude that the Convention focuses upon the procedures rather than the substantive environmental rights. The convention suffers from vague and weak language, and the absence of enforcement mechanisms emphasizes its relative lack of compulsion, its adoption and ratification does at least suggest some political if not legal commitment to real and genuine public engagement with environmental problems. As well as being a tool of persuasion, parts of the Aarhus Convention are likely to be given some force in English law by the introduction of EC legislation. From the language of the Convention it reflects that there is much emphasis for the involvement of NGOs, However, we should always be aware of the dangers of claiming that NGOs 'represent' anybody, and of the possibility that a small (even if larger than before) number of participants will wrap up important decisions.

Although the Aarhus Convention has an untapped potential for empowering those suffering environmental injustice, it is overall a weak pillar of empowerment[131] in the absence of an environmental justice rationale owing to certain inherent fault lines of disempowerment.

[131] See C. Nadal (2008), "Pursuing substantive environmental justice: The Aarhus Convention as a Pilar of empowerment", *Environmental Law Review*, 10: 28 pp. 25-30.

CHAPTER 5

CONCLUSION

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CONCLUSIONS

No doubt, Access to justice in environmental matters has been one of the most proudly proclaimed and coequally violated principles of global regime on environmental law. Over the past few decades gaining considerable importance, Environmental Justice has qualified to be the part of legal lexicon. The principle of environmental justice with its compelling call for fairness in treatment and meaningful inclusion in public processes has become part of the environmental decision-making fabric. We are trying to accomplish environmental justice keeping in view the fact that justice itself is a concept with multiple and integrated meanings. As per various justice theory advocates, like Rawl, Jamieson and Schlosberg A singular focus of the justice has been upon the distribution and equal distribution, either of the goods or badness. Since the notion of the environmental justice is not clear and no concrete definition could be given to the term environmental justice, in this prospect the difficulty is that what we are supposed to achieve in the name of the environmental justice? Answers are many as this study found that since Environmental justice itself is a contested concept which is susceptible to multiple interpretations. However in present scenario equal distribution of benefits and hazards and shared responsibilities are elements of environmental justice.

Public access to the information, right to participate in the decisions relating to the environment and access to judicial system have been recognized as a procedure to environmental justice pursuit.

It is quite rational to make the part of the decisions to those who are likely to be affected by these decisions, therefore it can be concluded that meaningful involvement of the public is one of the important element of struggle for access to environmental justice.

Since last few decades we are striving to pursue environmental justice, in this respect the study found that plethora of substantial rights are not enough for the procurement of environmental justice. The study also found that environmental justice can not be

confirmed until effective implementation of the existing laws and procedural rights are granted to enforce those substantial rights. In this link the study dwelt upon the Aarhus Convention in detail which dealt with three important procedural rights. These rights have been proven as to raise in the level of the protection of the environment. The study dealt with the adoption of the Aarhus Convention, which is a new chapter in the environmental justice paradigm, as this Convention has been considered and associated with environmental justice pursuit. This Convention guaranteed public participation at different level which enhanced the accountability and level of the protection of the environment. The participation is worth so provided because the public not only has been given the right to participate but also the right to go to the court or any other independent body established for the purpose. This shows the sincere effort to deal with such problems and to make the decisions in the conformity of the public consent. By providing an opportunity of participation and challenging very structural processes the Convention resulted to some extant, into environmental and social empowerment. However it has been matter of the fact how much a layman understand the consequences of the proposed activity. It has been found that most of the time people objected or raised alarm against the proposed project or plan when their personal interest is hampered through such activities, say for e.g. acquisition of their land, or if the activity is going to place in their backyard.

The Convention doesn't provide any remedy to those who are already suffering the environmental injustice. It will not be wrong to say that the participation mechanism of the Convention is predominantly consultative platform rather than deliberative mechanism; nevertheless it may serve as a model for future multilateral environmental agreements. Such kind of participation is not enough to unravel the problems we facing today. Involvement of the public is directly is not always easy rather it is extremely difficult; more over there are problems of cost time and money.
If the participation is meaningful, than the involvement may have significant implications upon the final outcome of the environment decision-making for the empowerment of environmental justice. In this respect what ever is the mandate of the Convention, it seams that it has not been realized yet.

Rather, the information rights given force by the Convention are rendered inconsistent in practice on the account of:

(1) The discretion accorded to Convention Parties in interpreting Aarhus rights;
(2) The exclusion of private entities from mandatory information disclosure duties;
(3) The indeterminate coupling of procedural and substantive rights.

The Convention follows a kind of permissive and equivocal language. Such permissive kind of language always gives an opportunity for a party to implement the commitment as per their choice. It renders the convention vague, weak and open to more than one interpretation.

The Aarhus convention is a proceduralization of the environmental regulation it focuses more on setting and listing procedures rather than establishing standards and specifying outcomes, permitting the parties involved to interpret and implement the convention on the systems and circumstances that characterize their nation.

However the innovations, compliance mechanism and the role created for NGOs make it an extremely valuable laboratory for assessing the effectiveness of a more participatory and transparent approach to the implementation of international environmental agreements. The Compliance mechanism is distinct in international environmental law, as it allows members of the public to communicate concerns about a Party's compliance directly to a committee of international legal experts empowered to examine the merits of the case Nonetheless, the Compliance Committee cannot issue binding decisions, but rather makes recommendations to the full Meeting of the Parties. The Convention has gained recognition world wide due to its distinct character, there seems to be much scope for international attention on the developments of the regional Aarhus Convention. The conclusion and entry into force of the Aarhus Convention represented a ground-breaking event in international environmental law, the recent developments that have occurred within its framework confirm its relevance at the global level, despite its regional character.

This Convention focuses on procedure rather than substantive environmental standards, which is an approach that is increasingly becoming familiar in EC and domestic environmental regulation.

In the environmental justice discourse legal standing represents an important set of problems in access to justice in environmental matters. Direct citizen enforcement of environmental laws is not yet well-developed in UNECE region, although a few countries have either long-standing rules or are moving forcefully in this direction. Though the Convention provided the right in the hands of the public to approach the judicial system in case of the violation of environmental rights, yet this mandate has not been incorporated into the domestic laws of the parties. There are many problems regarding the locus standie in environmental cases, for e.g. many difficulties in obtaining timely redressal or injunctive relief for the problems. It is therefore one of the major stumbling blocks to achieving access to justice in environmental matters. Cost of the litigation is another major obstacle in way of environmental justice, if we accept that the costs are not necessarily an insurmountable barrier to access to justice, yet we have to acknowledge that they are nevertheless significant. Though the Convention in Article, 9, talks about the access to expeditious, free or inexpensive redressal but these provisions are not able to clear the way of consensus of the parties. It is true that if the litigation cost is high than transaction costs tend to introduce inefficiencies and may often have an impact on the final resolution of disputes.

Access to justice, the third pillar of the Convention is one segment supporting the whole environmental rights structure which reminds us most spectacularly that the Aarhus Convention does not provide all the answers. The very incompleteness of this pillar itself emphasizes the failure of the drafting parties to accept on a political level that environmental protection is intertwined with democratization and fundamental notions of justice. While it is difficult to talk of access to justice in environmental matters on a pan-European level, it is nonetheless somehow possible, and this itself is a significant development. However, for the Convention to effectively realize its potential as a pillar of empowerment it depends upon and demands its explicit contextualization in the broader framework of grassroots environmental justice. Although the Convention suffers from vague and weak language, and the absence of enforcement mechanisms emphasizes its relative lack of compulsion, its adoption and ratification does at least suggest some political if not legal commitment to real and genuine public engagement with environmental problems.

In spite of various rights contained under the convention the vague and permissive kind of language of the convention makes it week and meager document. In case of soft and permissive kind of language the parties may find a leeway to escape the liability and rather to make the rules for incorporation in the way which suits them, because there is no such authority which strictly follows to guide them while formulating the rule for practical implementation of the Aarhus Convention. I subscribe to the view that the usefulness of access to information depends on the information being understood by the lay public, participation depends partly on being able to take part in dialogue, access to justice may depend on challenging technical information on its own terms.

Thus after going through the whole Convention, it may be deduced that in this respect that first pillar access to information is the clearest obligation in the Convention, which is necessary starting point for any involvement of the public in decision-making. While second pillar also serves the purpose of environment protection, but third pillar is in effective.

The Aarhus Convention talks about the 'responsibilities' , 'functions' and 'public services' relating to the environment, but it doesn't talk much about the measures to be taken in case of the affecting the environment. The obligations in Article 9(2) and (3) of the Aarhus Convention are disappointing and provide only a watered down guarantee of access to justice. Due to the continuing references to 'national law', implementation will depend on the extent to which states advocate and support more wide-ranging access to the courts.

Consequently and in addition to its inherent weaknesses, the Convention is a weak pillar of empowerment for the pursuit of substantive environmental justice. The first two pillars of the Conventions have been to a great extant implemented in UNECE region but the important one, that third pillar has not been implemented so far. It can be regarded a document with two pillars with a broken stick.

REFERENCES

REFERENCES

(*indicates primary source)

Achim, S. R. A. Halpaap (2001) "The Aarhus Convention and the Politics of Process: The Political Economy of Procedural Environmental Rights" *Draft paper for The Law and Economics of Environmental Policy*: A Symposium, Faculty of Laws, University College, September 5-7, 2001.

*African Charter on Human and People's Rights, of (1981) 21 ILM (1982).

Ali, Asghar (2006), "A Conceptual Framework for Environmental Justice Based on Shared but Differentiated Responsibilities", in Tony Shallcross and John Robinson, {eds.}, *Global Citizenship and Environmental Justice,* Amsterdam, Netherlands.

Barry, Brian M. (1995), *Justice as Impartiality*, Oxford: Oxford University Press.

Beierle, Thomas C. (1998), "Public Participation in Environmental Decisions: An Evaluation Framework Using Social Goals" *Discussion Paper 99-06*, {Online: web} Accessed 13 May 2011 URL: http://www.psu.edu.

Brown, Edith Weiss (1993), "International Environmental Law: Contemporary Issues and the Emergence of a New World Order", *Georgetown Law Journal 81*, pp.675-698.

Capek, Stella M. (1991), "The Environmental Justice Frame: A Conceptual Discussion and an Application", Paper presented on 19 August 1991, at the annual meetings of the *American Sociological Association* in Cincinnati.

*Convention on Biological Diversity, of 1992, 31 ILM (1992), 822.

*Convention on Civil Liability for Damage resulting from Activities Dangerous to the Environment, of 1993, 32 ILM (1993), 1228

Dalle, Benjamin (2006), "The Global Aspirations of the Aarhus Convention and the Case of the World Bank" *2nd Global Administrative Law* Seminar, June 9-10, 2006, Viterbo, Italy.

Desai, B. H. (1997), "Global Accords and Quest for a New International Ecological Order: From Law of Indifference to Common Concern", *Business & the Contemporary World*, 1X(3), pp. 545-572.

*Draft ECE Charter on Environmental Rights and Obligations, adopted at the Experts Meeting, U.N. Economic Commission for Europe, Oslo, Norway, 29-31 Oct. 1990

Ebbeson, J. (1997), "The Notion of Public Participation in International Environmental Law", *Yiel Law Oxford Journal*, 51, pp. 55-79.

Frechette, Kristin Shrader (2002), *Environmental Justice: Creating Equality, Reclaiming Democracy*, New York: Oxford University Press.

French, Duncan (2000), "Developing States and International Environmental Law: The Importance of Differentiated Responsibilities", *The International and Comparative Law Quarterly*, 49:1, pp. 335-387.

Georges, Stavros Kremlis (2005), "The Aarhus Convention and its Implementation in European Community", Paper Presented on 13 June, 2005 in Seventh International Conference on *Environmental Compliance and Enforcement*, Rue de la Loi, Brussels, Belgium.

Gugushvili, Tamar (2011), "Public Participation in Environmental Decision Making -Case Study of Georgia" *Aarhus Centre Georgia*, {Online: web} Accessed on 11 March 2011, URL:http://envirocenter.research.yale.edu/envdem/docs/OTHERS/GUGUSHVILI/Gugushvili_Final%20Paper.doc.

*Hague Declaration on the Environment of 1989, 28 ILM (1989) 1308.

Halvorssen, Anita M. (2007), "Common, but Differentiated Commitments in the Future Climate Change Regime Amending the Kyoto Protocol to include

Annex C and the Annex C Mitigation Fund" *Colorado Journal of International Environmental Law & Policy,* 18 pp. 247-269.

Harris, Paul G. (1999), "Common but Differentiated Responsibility: The Kyoto Protocol and United States Policy", *New York University Environmental Law Journal*, 7, pp. 28-57.

Jamieson, Dale (1994), "Global Environmental Justice", *Royal Institute of Philosophy Supplements,* Voll: 36, pp. 199-210.

Jaquez, et. Al (2010), "A Critical Review of Public Participation in Environmental Decision-Making along the U.S.-Mexico Border Lessons from Border 2012 and Suggestions for Future Programs" *Mexico-Chihuahua Rural Task* {Online: web}
Accessed, 28 April 2011.
(URL:http://www.scerp.org/bi/BI_X/papers/12-public%20Participation%20in%20Environmental%20Decision-Making.pdf)

Jeffery, Michael I. (2005), "Environmental Governance: A Comparative Analysis of Public Participation & Environmental Justice", *Journal of South Pacific Law*, 9:2, pp. 1-14.

Jones, Deiniol (2008) "Solidarity and Public Participation: The Role of the Aarhus Convention in Containing Environmentally induced Social Conflict" *Global Change, Peace & Security*, 20:2, pp. 151 -168.

Kostic, M. (2006) "The Right of Access to Environmental Information in the Sense of the Aarhus Convention European Stream and Legal Framework in Serbia and Montenegro", Master Thesis, *Beograd European University,* Viadrina Frankfurt.

Kravchenko, S. (2007), "The Aarhus Convention and Innovations in Compliance with Multilateral Environmental Agreements", *Colorado Journal of International Law and Polity*, pp. 1-50.

Kremlis, G. (2011), "European Perspective on Access to Justice in Environmental Matters", *Judicial and Legislative Affairs European Commission*, DG XI Belgium.
{Online: web} Accessed 3 March 2011,
URL: http://www.biopolitics.gr/HTML/PUBS/VOL8/html/Kremlis.htm

Lavryson L. (2010) "The Aarhus Convention: Between Environmental Protection and Human Rights", {Online: web} Accessed on 12 January 2011, URL: http://archive.ugent.be/input/download?func=downloadFile&fileOId=1083647&recordOId=1082727

Lazarus Richard, J. (1993), "Pursuing Environmental Justice: The Distributional Effects of Environmental Protection", *Northwestern University Law Review*, Vol. 3, pp. 114-129.

Lee, Maria & K. Abbot (2003), "The Usual Suspects? Public Participation under the Aarhus Conventio", *Modern Law Review*, 66, pp. 50-91.

Lilic, Stevan (2007), "The Aarhus Convention and Access to Environmental Justice in the EU and Serbia", *European Integration Studies*, {Online: web} Accessed 23 May 2011 URL: http://internet.ktu.lt/en/science/journals/eis/01/Lilic_2007_7-14p.

Maguire, L. (2003), "Public participation in environmental decisions: stakeholders, authorities and procedural justice", *International Journal of Global Environmental Issues*, 3:2, pp.133-148.

Marshall, Fiona (2006), "Two Years in the Life: The Pioneering Aarhus Convention Compliance Committee: 2004-2006", *International Community Law Review*, 8, pp. 124-44.

McAllister, ST. (1999), "Human Rights and the Environment: The Convention on Access to Information, Public Participation in Decision-Making, and Access to Justice in Environmental Matters", *Colorado Journal of International Environmental Law and Policy*, 10, pp. 189-211.

Morgera, Elisa (2005), "An Update on the Aarhus Convention and its Continued Global Relevance", *Review of European Community and International Law*, 14:2, pp. 138-155.

Nadal C. (2008) "Pursuing Substantive Environmental Justice: The Aarhus Convention as a Pilar of Empowerment", *Environmental Law Review,* 10:2, pp. 36-71.

Popavic, Neil A.F. (1993), "The Right to Participate in the Decisions which affects the Environment", *Pace Environmental Law Review*, pp. 687-711.Rawl John (1972), "Theory of Justice", London: Oxford University Press.

Rechtschaffen, Clifford, (2003), "Advancing Environmental Justice Norm", {Online: web} Accessed on 24 June 2011, URL:http://digitalcommons.law.ggu.edu/cgi/viewcontent.cgi?article=1035&context=pubs&sei-redir=1#search=%22Clifford%20Rechtschaffen%20Advancing%20Environmental%20Justice%20Norms%29%22

Report of the "World Commission on Environment and Development: Our Common Future".

Rhode, Debora, L. (2004), "Access to Justice", New York: Oxford University Press

Richardson and S. Wood (eds.), *Environmental law for Sustainability: A Reader*, New York, Oxford University Press.

Richardson, B. J. & J. Razzaque, (2006), "Public Participation in Environmental Decision-making", in B.J.

*Rio Declaration on Environment and Development, (1992) 31 ILM (1992), 874 June 14, 1992,

Rodenhoff, Vera (2002), "The Aarhus Convention and its Implications for the Institution of the Community", *Review of European Community and International Law*. 11: 3.

Sadurski, Wojciech (1984), "Social Justice and Legal Justice", *Law and Philosophy*, 3:3, pp. 329-354.

Sands P. (2003), *Principles of International Environmental Law*, New York: Cambridge University Press.

Schlosburg, David (2004), "Reconceiving Environmental Justice: Global Movement and Political Theories" *Environmental Politics*, 13:3, pp. 517-540.

Schlosburg, David (2007), *Defining Environmental Justice: Theories, Movements and Nature*, New York: Oxford University Press.

Sofia (1995), Guidelines Endorsed at the Third Ministerial Conference "**Environment for Europe**" Available at: http://www.unece.org/env/documents/1996/Sofia_Guidelines_1996.pdf

Stec, Stephen, (1998), "Doors to Democracy, Current Trends and Practices in Public Participation in Environmental Decision-making in Central and Eastern Europe", {Online: web} Accessed 22 March 2011, URL http://archive.rec.org/REC/Publications/PPDoors/EUROPE/Justice.html

Stephens, Tom, (2003), "An Overview of Environmental Justice" Lecture delivered at the Thomas M. Cooley Law School, Law Review Symposium, Environmental Injustice on October 29,2002, and was revised as a written article in February 2003 published in 20 T. M. *Cooley Law Review*, 229

Taylor, Dorceta E. (2004) "The Rise of the Environmental Justice Paradigm" {Online: web} Accessed on 21 May 2011, URL: http://webhost.bridgew.edu/ramey/www/g333pdf/TaylorEjustParadigmSocConstruction.pdf

Taylor, Prudence E. (1997), "From Environmental to Ecological Human Rights: A New Dynamic in International Law" *Georgetown International Environmental Law Review*, 10, pp. 309-331.

*The United Nations Framework Convention on Climate Change, of 1992, 31 ILM (1992), 1330

*The UN/ECE Convention on Environmental Impact Assessment in a Transboundary Context, of 1991, 31 ILM (1992), 89

Toth, Bende, (2010) "Public Participation and Democracy in Practice: Aarhus Convention Principles as Democratic Institution Building in the Developing World" *Journal of Land Resources & Environmental Law,* 295-312

*UN/ ECE Convention on the Transboundary Effects of Industrial Accidents, of 1992, 31 ILM (1992), 1330

*UNECE Convention of October 30, 1998 on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters (1998)

United Nation Economic Commission for Europe (2006), "Your Right to Healthy Environment: A Simplified Guide to Aarhus Convention", United Nations Publication.

United Nations Conference on Environment and Development (UNCED) Framework Convention on Climate Change, May 9,1992,

*United Nations Economic Commission for Europe (2001), "Convention on Access to Information, Participation in Decision-making and Access to Justice in Environmental Matters", opened for signature 25 June 1998 in Aarhus, Denmark; entered into force 30 October. For the text of The Convention see: http://www.unece.org/env/pp/documents/cep43e.pdf Visited 26 March, 2011.

Voinovic, I. (1995), "Intergenerational and Intragenerational Equity Requirements for Sustainability", *Environmental Conservation Law Review*, pp.22- 42.

Wates, Jeremy (2005) "The Aarhus Convention a Driving Force for Environmental Democracy " *Journal for European Environmental & Planning Law,* 2:1, pp.1-11.

*World Charter for Nature, of 1982, 23 ILM (1983), 455