



**STRENGTHENING CAPACITY FOR ENVIRONMENTAL LAW
IN MALAYSIA'S JUDICIARY:
TRAIN-THE-JUDGES PROGRAM (TTJ)
10 - 13 JULY 2017
ILKAP, BANGI, MALAYSIA**

**ACCESS TO JUSTICE AND PUBLIC PARTICIPATION IN
ENVIRONMENTAL CASES**

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INTRODUCTION

- For a number of years there has been movement towards the greater provision of access to justice and public participation in environmental cases.
- In the UK, the Environmental Information Regulations 1992, provided for specific environmental information, subject to exceptions, to be made available 'to every person who requests it because access to information on environment held by public authorities will improve environmental protection.
- EC Council Directive 85/337/EEC (Environmental Assessment) was an early Directive that required environmental information to be made available to the public.

ACCESS TO JUSTICE AND PUBLIC PARTICIPATION

- Principle 10 was adopted in 1992 as a part of the Rio Declaration, states that:

“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.”

- Provision of information about environment and regulatory process is an integral element for the regulation of environmental information.

CONT'D

- **Legal and policy weaknesses**

- Many countries lack the requisite legislation and detailed administrative rules and operational policies for advancing the realization of the rights enshrined in Principle 10.
- Consequently, communities face a huge struggle to secure or practice their rights in line with Principle 10.
- But in some countries that have enacted freedom of information, public participation and access to justice laws, implementing these laws has progressed very slowly.

CONT'D

- The WWF Environmental Justice Project Report 2004 found that the civil law system fails to provide environmental justice and identified a number of concerns and barriers in relation to access to environmental justice in the UK:
 - The current rules on costs;
 - A lack of judicial understanding of and/ or sympathy with environmental issues;
 - The limited scope of judicial review proceedings;
 - The inability to obtain interim (injunctive) relief; and
 - The uncertainty about standing.

CONT'D

Vulnerable groups

- Around the world the poor suffer disproportionately from more frequent and severe storms, floods and droughts. Climate change induced human displacement and resulted them to become climate refugees.
- The poor are also affected by health impacts of toxic pollution, civil war, and insecurity of access to productive resource such as arable land, freshwater and sustainable energy.
- Many countries still have cultural practices that negate the rights of vulnerable groups, such as women, youth and minorities:
 - Some countries lack secure land tenure regimes for indigenous and local communities, often leading in dispossession and involuntary resettlements.
 - When communities are dispossessed of their land, women are often disproportionately affected because of their traditional role in procuring water, fuel or trading goods for their families.

CONT'D

- Whilst the urban poor suffer from disproportionate impacts of toxic pollution on their health and welfare., the rural poor, often suffer from lack of access to the myriad opportunities that exist from productive use of natural assets and extractive resources related for example to forests, minerals and energy.
- Lack of access to justice and rule of law is a key barrier to transformative change. Environmental justice is one means to combat this, calling for the legal and social empowerment of the poor, and freedom from the inequities that result from entrenched and unsustainable forms of resource use.

WHY GIVE GREATER ACCESS TO ENVIRONMENTAL INFORMATION?

- Improving regulation by increasing public participation
- Monitoring the effectiveness of regulation
- Informing the public about environmental risks
- A fundamental 'right' to environmental information
- Improving enforcement

INTERNATIONAL APPROACHES TO ACCESS TO INFORMATION

- The role of information in meeting the goal of sustainable development is acknowledged in the Agenda 21 document which was agreed at the 1992 Earth Summit in Rio mentioned above.
- The Aarhus Convention on Access to Information, Public Participation in Decision Making and Access to Justice in Environmental Matters. (1998, Denmark) is the driving force behind EC and UK's initiatives towards a wider access to environmental justice:
 - The aim of the Convention is to '... further the accountability of and the transparency in decision-making and to strengthen public support for decisions on the environment.'
 - It recognizes that every person has the right to live in an environment adequate to his or her health and well-being, and the duty both individually and in association with others, to protect and improve the environment for the benefit of present and future generation.

CONT'D

- The Aarhus Convention sets up the 'three pillars' for access to environmental justice:
 - A right of access to environmental information (Art 4 & 5)
 - A right to participate in the decision making process (Art 6)
 - Access to justice for non compliance (Art 9).
- Even the Court of Human Rights decided in *Guerra v Italy* (1998) 26 E.H.R.R. 357 that there was an obligation, under Art 8 of the ECHR, on the state to provide essential information about the dangers from a factory that would have enabled the applicant to assess the risks they and their families might face if they continued to live in the area.

ARGUMENTS AGAINST ACCESS TO ENVIRONMENTAL INFORMATION

- Commercial confidentiality
- Cost
- Misuse of information and 'green nutters'

PUBLIC PARTICIPATION

- Environmental issues are best handled with the participation of all concerned citizens. The public which includes all natural and legal persons, associations, organisations or group should be entitled to environmental information ‘without an interest having to be stated.’ This is emphasized in Articles 2.4 and 3.1 (a) of the Aarhus Convention.

BENEFITS OF PUBLIC PARTICIPATION

- Social consensus mitigates conflicts
- Process of decision-making and final decisions becomes more transparent and legitimate

CONT'D

- helps prevent or and adverse environmental consequences of the decisions
- generate more solutions and opinion to solving problem
- For government and business costs of possible wrong decision could reduce significantly

CONCLUSION

The public must be considered to have a right, analogous to a beneficial interest, in the condition of the environment and to be able to obtain information on how far they are being degraded. For the poor and vulnerable communities, the benefits of a legal empowerment approach go well beyond reform of individual laws and regulations, seeking rather a shift from a political-economy of exclusion and ecological decline to a system of governance conducive to their full participation in decision-making over natural resources and the environment.

In this regard the public may need assistance in order to exercise their rights.

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