

University of the Western Cape

Faculty of Law

Degree: LLM (Mode 1)

MINI THESIS



LACK OF ACCESS TO ENVIRONMENTAL INFORMATION: A PROBLEM IN
PROMOTING ENVIRONMENTAL PROTECTION

UNIVERSITY *of the*
WESTERN CAPE

A Comparative Study of the Law of the Republic of Congo and South Africa

Candidate: Kib-Inel Kibamba

Student number: 2828420

Supervisor: Professor T.P. van Reenen

Date: 16 November 2009

Acknowledgements

I would hereby express my sincerest gratitude to The University of the Western Cape, especially to the faculty of Law for giving me the privilege in participating in the LLM programme.

I would like also to thank all the significant persons in my life, who contribute in career success and always supported throughout my mini theses to make this stage possible

- My parents Joel and Marceline Kibamba, and Josephine Kilonda, Thank for your love and support and patience. Particularly to my wonderful father, who has supported during my years of study
- My sisters, Nelie, Jodye, Grace and Michelle Kibamba who always supported me while away. I hope that this work could serve as a source of inspiration.
- My uncle, aunt and cousin, Simba and Davina Wada, to their baby Dinah who has been my special source of inspiration. To my cousin Vianney Ngoyi, Brasny.
- My friends: Gracia Mera Fernandez, Luis, Leticia, Pinzo
- Supervisor and Lecturer: I am particularly grateful to my lecturer, Prof. Professor Van Reenen, a truly distinguished and legal mind.
- My special Thanks go to the Staff at the library for their input into this work.

Abbreviations

AIPPA: Access to Information and Protection of Privacy Act of 2002

DG: Director General

DEAT: Department of Environmental Affairs and Tourism

EC: European Commission

EU: European Union

FAO: Food and Agriculture Organisation

FEA: French Equatorial Africa

GMO: Genetically Modified Organisms

ITLOS: International Tribunal on Law of the Sea

KERIC: Khayelitsha Education Resource and Information Centre

NEMA: National Environmental Management Act 107 of 1998

NGO: Non-governmental Organisation

PAIA: Promotion of Access to information 2 of 2000

PBMG: Pebble Bed Modular Reactor

UK: United Kingdom

UN: United Nations

UNCED: United Nations Conference on Environment and Development

UNECE: United Nation Economic Commission for Europe

UNESCO: United Nation Educational, Scientific and Cultural Organisation

Table of Contents

Chapter 1: Introduction

Key words	1
1.1 Problem statement	2
1.2 Rational for the study/ research	2
1.3 Theoretical assumptions/ points of departure/ premises	3
1.4 Literature review	5
1.5 Research methods	7
1.6 Significance of the research	7
1.7 Overview of Study	7



Chapter 2: The value of environmental information

2.1 Introduction	10
2.2 Why environmental information is of value to us?	10
2.2.1 What is environmental information?	11
2.2.2 Typology of environmental information	12
2.2.3 Who should be able to participate to requesting?	13
2.3 Nature of environmental information	13
2.3.1 Democracy and the access to environmental information	14

2.3.2	Environmental Information as a promoter of environmental protection	14
2.4	The realization of human rights through the access to environmental information	15
2.4.1	Defining the right to information as a human right	16
2.4.2	Operationalising sustainable development via environmental information	17
2.5	Conclusion	18

Chapter 3: Framework relating to access environmental information at the international level

3.1	Introduction	19
3.2	The right to environmental information under the international law	20
3.2.1	The right to information and the Stockholm Declaration	20
3.2.1.1	Ratification and Principle	20
3.2.1.2	Legal force of Stockholm Declaration	21
3.2.2	EC Directive on Access to Environmental Information	21
3.2.3	The duty to inform under the 1992 OSPAR Marine Environment Convention	22
3.2.4	Rio declaration	22
3.2.5	The Aarhus Convention	24
3.3	The realization of access to environmental information in international law	25
3.3.1	Common position of cooperation between states in international law.	25
3.3.2	Obligation Neighborliness and the Duty to cooperate	27

3.3.3	Exchange of information between states	27
3.4	Critical analysis of the right to environmental information	28
3.4.1	Developing countries	28
3.4.2	Developed countries	30
3.5	Conclusion	31

Chapter 4: Access to environmental information in the Republic of Congo

4.1	Introduction	32
4.2	Legal framework of access to environmental information	32
4.3	Problem of freedom of information in the Republic of Congo	34
4.3.1	Causes of lack of access to environmental information in the Republic of Congo	35
4.3.1.1	Lack of environmental interest from Congolese authorities	35
4.3.1.2	Lack of environmental democracy	35
4.3.1.3	Absence of citizen participation in environmental decision making	37
4.3.1.4	Corruption in the governmental system	38
4.3.1.5	Overpopulation	39
4.3.1.6	Lack of environmental justice in the Republic of Congo	40
4.4	Poverty of information and misunderstanding as consequences	42
4.5	Giving access to environmental information to the population	44
4.5.1	Establishing competent authority in the Republic of Congo	47

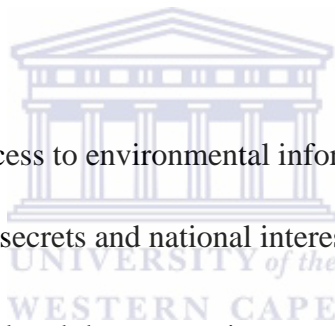
4.5.1.1	Decentralisation of decision making	45
4.5.1.2	Role of local government	46
4.5.1.3	Ensuring the citizen participation	46
4.5.2	Establishing policies	47
4.5.3	Enforcing environmental impact assessment	48
4.5.4	Establishing environmental education	48
4.5.5	The network	49
4.5.6	Opening of the library	49
4.5.7	Providing access to internet	50
4.6	Conclusion	50



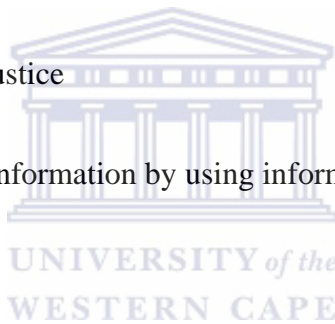
Chapter 5: Access to environmental information in the Republic of South Africa

5.1	Introduction	51
5.2	The right of access to environmental information: Does it exist in South Africa?	51
5.2.1	Legal background	52
5.2.1.1	Interim Constitution [article 23]	52
5.2.1.2	Bill of rights, Constitution of the Republic of South Africa 108 of 1996	53
5.2.1.3	National Environmental Management Act 107 of 1998	54

5.2.1.4	Promotion of access to information Act 2 of 2000	55
5.2.2	Application of the right to inform	56
5.2.2.1	Public body	57
5.2.2.2	Private body	57
5.2.2.3	Manner to access	58
	<ul style="list-style-type: none">• Form of request• Fees• Forms of access• Language of access	58 59 59 59
5.2.3	Commons limitations of access to environmental information	61
5.2.3.1	In case of commercial secrets and national interest	61
5.2.3.2	Privacy of the individual and data protection	62
5.2.3.3	In case of confidential information	63
5.3	Problems with the access to environmental information in South Africa	63
5.3.1	Causes in South Africa	64
5.3.1.1	Poverty	64
5.3.1.2	Population growth	65
5.3.1.3	Negative impacts of heritage of Apartheid on environmental information	66



5.3.1.4	Lack of environmental data	67
5.3.1.5	Environmental mismanagement affecting access to environment information	68
•	Environmental administration failure	68
•	Environmental mismanagement in local areas	70
5.4	What should be done in South Africa?	72
5.4.1	Providing environmental education	72
5.4.2	Updating environmental data	73
5.4.3	Enforcing environmental justice	74
5.4.4	Increasing environmental information by using information technology	76
5.5	Conclusion	77
Chapter 6:	Conclusion and recommendations	78
6.1	Access to environmental information as a limited right	78
6.2	Providing of access to environmental information	79
6.2.1	African commitment	79
6.2.2	Towards an environmental justice	80
6.2.3	Towards the Promotion of legislation	81





Key words:

1. Environment
2. Protection
3. Access
4. Information
5. Lack of
6. Republic of Congo
7. International Law
8. Comparative Law
9. Constitutional Law
10. Republic of South Africa



Chapter 1: Introduction

1.1 Problem statement

The concept of environmental protection can only be realised through the provision of relevant environmental information to the public. Although there are parts of the world where environmental consciousnesses have become the norm, the same cannot be said about the majority of the people around the world for whom issues of environmental degradation are not among their major concerns. This is, of course, can largely be attributed to the lack of access to information concerning the environment. The right to environmental information is crucial in promoting environmental protection. The aim of this research is to examine issues related to access to environmental information. The research will also look at the mechanisms through which access to environmental information can be improved. The research will also look at how access to environmental information can contribute to an effective environmental protection. In doing so, it will also seek to identify the major issues that states are facing in their effort to make access to environmental information a possible reality to the majority of their respective populations. This also includes indicating the relevant measures that states have to adopt in order to ensure effective access to environment information.

1.2 Rationale for the study/research

This study aims to analyse the role of environmental information as an instrument in the protection of the environment. It sets out to achieve this goal by examining the accessibility of environmental information in two countries: The Republic of Congo and South Africa. In Europe, we have witnessed the ratification of many treaties that promote access to environmental information, such as the Aarhus Convention.

1.3 Theoretical assumptions/points of departure/premises

Both the 1992 and 2002 Constitutions of the Republic of Congo have included a fundamental right to a clean and healthy environment. The state has the obligation to ensure access to environmental information. Article 19 of the new Constitution of the Republic of Congo states that each and every citizen shall have the right to a satisfactory and healthy environment and the capability to defend it at all cost. This constitutional commitment to environmental information is not, however, supplemented by legislation that promotes access to environmental information. In the Republic of South Africa, laws have been enacted to provide and promote the right to access environmental information. Both the Interim Constitution of 1993 and the Final Constitution provide for the right to access information. Section 32 of the Final Constitution states that everyone has the right to access information, including information held by the state and any other person. It seems that South Africa, compared to the Republic of Congo, provides more protection in terms of ensuring the right to access environmental information. This especially becomes clear when one notes that the constitutional protection of the right to access environmental information is given practical effect through different legislation that promotes environmental protection. This includes the Promotion of Access to Information Act No 2 of 2000, which also promotes environmental information and the National Environmental Management Act No 107 of 1998, which provides for co-operative environmental governance by establishing principles for decision making on matters affecting the environment.

At the international level, several documents recognise the right to a healthy environment. Principle 10 of the Rio-Declaration, which was adopted at the United Nations Conference on the Environment and Development in Rio de Janeiro in 1992, recognises the right to access environmental information.¹ Access to environmental information is also mentioned in the Stockholm Declaration. Agenda 21 also makes several references to access to environmental information and public participation. Although the Aarhus Convention provides for the right to a healthy environment, it is not the only instrument that acknowledges such a right. Many other

¹ Hallo (1993) at 50

instruments have either implicitly or explicitly recognised the right to a healthy environment.² The oldest instrument to explicitly recognise a right to “a satisfactory environment” is the 1981 African Charter of Human and People’s Rights. In 1988, an Additional Protocol to the American Convention on Human Rights provided for a similar right, namely the right to a healthy environment.

1.4 Literature review

Access to environmental information is non-existent in many countries, especially in Africa. The lack of access to environmental information undermines the capacity of the public to participate in environmental protection. Sands notes that the availability of access to information allows for preventive and mitigation measures to be taken, and ensures the participation of citizens in national decision-making processes that can influence individual, consumer and corporate behavior.³ Sands states further that information allows the international community to determine whether states are complying with their legal obligations.⁴ According to Sands, “improving the availability of information on the state of the environment and on activities which have adverse or damaging effects are well-established objectives of international environmental law.”⁵ Sands further states that “information is widely recognised as a prerequisite to effective national and international environmental management, protection and co-operation.”⁶ This shows the crucial and instrumental role of information in environmental protection and, hence, why it should be given attention. The objective of protecting the environment cannot be achieved without public participation. This inevitably raises the issue of democracy as one cannot talk about public participation without democracy. As noted by Parnell, “at the root of most discussions about

² Louka E (2006) at 129

³Sands P (2003) at 826

⁴ Ibid.

⁵ Sands P (2003) at 826

⁶ Ibid.

public participation in environmental decision-making are philosophical questions about the nature of democracy.”⁷

Democracy is therefore an essential component of public participation. The problem is that there is no universally accepted definition of democracy. Deelstra and Yanitsky outline an extensive argument. According to them, “the institutions at the levels of the state are no longer sufficient to ensure the political stability of Europe. Citizens have a key role to play now”. They state further that citizens must “think globally, act locally”. Based on this argument, many international agreements regarding citizen participation have already been adopted. In fact, the exchange of information, prior notification, consultation, and informed consent are considered the “staples” of many international treaties,⁸ such as the Rio Declaration and the Stockholm Declaration.

Article 10 of the Rio Declaration underlines, for example, the point that public participation has an important role to play in environmental protection. It states: “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.”⁹ It further states that individuals should have the opportunity to participate in decision-making processes in their respective communities. States shall facilitate and encourage public awareness and participation by making information widely available. This includes effective access to judicial and administrative proceedings, including redress and remedy. However, many other instruments implicitly or explicitly have done so in the past.¹⁰ Kiss emphasises that “Human rights texts generally contain a right to freedom of information or a corresponding state duty to

⁷Parnell M (2009) “Public Participation in Environmental Decision-Making” at <<http://www.edo.org.au/edosa/research/arialpaper.htm>> (accessed March 10, 2009)

⁸ Louka E (2006) at 120

⁹ Rio Declaration at < http://www.globalcompact.org.ua/img/usr/files/Rio_Declaration_EnD.pdf.> (accessed on 28 September 2002)

¹⁰ The oldest instrument to recognise explicitly a human right to “a satisfactory environment” is the 1981 African Charter of Human and Peoples’ Rights. In 1988, an Additional Protocol to the American Convention on Human established a right to a healthy: An Implementation Guide 2-4.

inform”.¹¹ For example, in the case of *Earthlife Africa (Cape Town Branch) v Eskom Holdings Ltd*, the Court states that the state has the duty to inform.¹² In the case of *Leander v. Sweden*, the applicant alleged violation of article 10¹³ after he was refused access to a file that was used to deny him employment. The Court unanimously states: “The right to receive information basically prohibits a Government from restricting a person from receiving information that others wish or may be willing to impart to him. Article 10 does not, in circumstance such as those the present case, confer on the individual a right to access to a register containing information on his personal position, nor does it embody an obligation on the Government to impart such information to the individual.”¹⁴

Du Plessis notes that “the past few decades have seen a significant shift in environmental governance systems towards openness, transparency and accountability”. According to Du Plessis “one key mechanism which has facilitated this shift is the grant of a right of access to information held by public and private bodies”.¹⁵ Yue states that “we must understand clearly that public participation is the right and interest of the people endowed by law. The government has the obligation to respond to and to protect this right.”¹⁶ However, certain essential environmental information may not be in the public domain, and public and private bodies may, therefore, be required to specifically request access to it¹⁷. Du Plessis further maintains that “the

¹¹ Kiss A & Shelton D (2004) at 700

¹² In this case the Court found that the applicant had a right to access to information in terms of section 32 (1)(b) of the Constitution of the Republic of South Africa, 1996, and that the applicant could rely on the right since it sought to enforce section 24 of the Constitution of the Republic of South Africa, 1996.

¹³ Article 10 of the European Convention on Human Rights

¹⁴ *Leander v. Sweden*, 116 Eur. CT. H.R. (ser.A) (1987), Para. 74. See also *Gaskin v. United Kingdom*, 160 Eur. (ser.A) (1987) (government did not breach Convention in failing to allow access to personal file of former foster child).

¹⁵ Du Plessis W (1999) at 197

¹⁶ Yue “the environment needs public participation” at <http://www.chinadialogue.net/author/show/91-Pan-Yue-br> (accessed on the 05 December, 2006).

¹⁷ Du Plessis W (1999) at 198

right of access to information is not, however, an absolute right and may be restricted in certain circumstances, for example to protect commercial interest or privacy of individuals”¹⁸.

1.5 Research methods

The research of this thesis will be done by using library research, with an exclusive focus on books, journals, case law, reports from the media and different non-governmental organisations. The methodology will include the use of the Internet.

1.6 Significance of the research

The lack of access to information regarding the environment is among one of the major factors that undermine the effort to protect the environment. For some time, the crucial role of access to information was not recognised both in the Republic of the Congo and in South Africa, especially when compared to European countries. However, both countries, in the past few decades, have seen a significant shift in governance systems towards openness, transparency and accountability.¹⁹ The constitutions of the two countries have now affirmed that the right to environmental information is a key tool in insuring the enforcement of the fundamental right to a clean and healthy environment.²⁰ The significance of the study is that it seeks to establish the reasons for the paucity of environmental information.

1.7 Chapter structure

The research paper is divided into six chapters.

¹⁸ Section 32 is limited by s 36 of the Constitution, and actual grounds of refusal are enunciated in PAIA (see part 2, chapter 4 and part 3, chapter 4); and NEMA (s 31)

¹⁹ Paterson A & Kotze L J (2008) at 197

²⁰ Du Plessis W (1999) at 92-112

Chapter 1: Introduction

This chapter outlines the background, rationale, methodology and significance of the research.

Chapter 2: The value of access to environmental information

This chapter examines the value of access to environmental information. The study explains the concept of “environmental information”. The premise underlying the discussion in this chapter is the instrumental role of information in promoting environmental protection.

Chapter 3: Framework relating to access to environmental information at the international level

This chapter examines the position of environmental information at the international level. It also looks at how countries have given effect to the right to access environmental information.

Chapter 4: Access to environmental information in the Republic of Congo

This chapter examines the model of accessibility to information in the Republic of Congo. The focus is on laws applicable to access to environmental information. Specific attention is given to the pertaining provisions of the Constitution. The limitations that affect access to environmental information also discussed. Without losing sight of the fact that the right to environmental information is not an absolute right,²¹ attention is also given to the problems that affect access to environmental information. The focus here is on the causes and consequences of factors that undermine the right to access environmental information. Finally, this chapter deals with remedies available in the Republic of Congo to give access to environmental information.

²¹ Du Plessis W (1999) at 100

Chapter 5: Access to environmental information in the Republic of South Africa

This chapter provides an overview of the concept of the right to environmental information in South Africa. It looks at the provisions of the Constitution of South Africa, the provisions of the Promotion of Access to Information of 2000, and the provisions of NEMA relating to access to environmental information. It examines the limitations of the right of access. It also deals with problems which affect the right of access to environmental information by establishing causes and consequences. Finally, this chapter draws conclusions by giving some solutions to the problem.

Chapter 6: Comparative conclusions and recommendations

This chapter, first, provides a summary of this research paper. It concludes this research by noting that many problems are challenging our environmental communication, from the lack of democracy to the lack of national legislation, and solutions can be found. The chapter notes that few policies are regulating the field, and the lack of methodology affects the achievement of an effective promotion of access to environmental information. Second, it offers some recommendations or suggestions that would improve effective access to environmental information.

Chapter 2: The value of environmental information

2.1 Introduction

Only a public that is well informed about the environment can make an effective contribution in the effort to protect the environment. The availability of, and access to, information allows for the adoption of preventive and mitigation measures and ensures the participation of citizens in national decision-making processes, and can influence individual, consumer and corporate behavior,²² Access to information is also a crucial element of a democratic society, a precondition of basic rights like the right to vote or the right to free speech. It is also an essential condition for any form of participation in decision making.²³ Environmental information allows the international community to determine whether states are complying with their legal obligations.²⁴ Introduced recently, following an EC Directive on Access to Environmental Information of 1990, access to environmental information has come to play a very important role in promoting environmental protection. The discussion of this chapter will demonstrate that the availability of resources is one of the central factors that must be considered regarding environmental protection. This section sets out to explain not only the role of information in the protection of environment but also the reasons why access to environmental information is important in our society. The importance of environmental information is examined in the context of what should and can be done within the existing environmental assets and in the context of identified constraints.

²² Sands P (2003) at 826

²³ Holder J. & Lee M (2007) at 101

²⁴ Sands P (2003) at 826

2.2 Why environmental information is of value to us?

Given the increasing importance of environmental issues, it is important to inquire about the need to provide information regarding our environment. What is the value of environmental information? Currently, this question forms the centre of the effort against environmental degradation.

2.2.1 What is environmental information?

The right to environmental information deals with people's participation in decision-making processes relating to the protection of the biosphere of which people are part.²⁵ The recognition of a right to environmental information does not guarantee the protection of the environment. It is rather tool to monitor actions that may be detrimental to the environment.²⁶ In fact, information is widely recognised as a prerequisite to effective national and international environmental management, protection and co-operation.²⁷ Therefore, open access to information can embarrass both plotters and public regulators, contributing to more effective environmental policy.²⁸ The term "environmental information" should be easy to define. But Constitutions do not define the term "information". Due to the lack of definition in the Constitution, the choice will be to turn to the dictionary's definition. According to the Cambridge International Dictionary, "information" is knowledge about something, specifically facts and news, the process of finding stored information on a computer.²⁹ However, this definition is vague and does not help us much. Article 4 of the Aarhus Convention (Chapter III) provides us with a broad definition of "environmental information". According to this article, the scope of

²⁵ Du Plessis W (1999) at 94

²⁶ Ibid.

²⁷ Sands P (2003) at 826

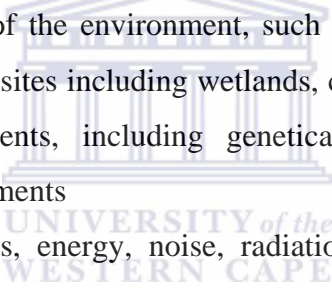
²⁸ Holder J & Lee M (2007) at 101

²⁹ Cambridge (1995) International Dictionary of English: guides you to the meaning. Cambridge University Press

information is quite broad, encompassing a non-exhaustive list of elements of the environment (air, water, soil etc.); factors, activities or measures affecting those elements; and human health and safety, conditions of life, cultural sites and built structures, to the extent that these are or may be affected by the aforementioned elements, factors, activities or measures.

2.2.2 Typology of environmental information

Constitutions provide for the right of access to environmental information; they do not provide for the typology of information. In Europe, for example, the typology of environmental information may be available by using the Access to Environmental Regulations 2007.

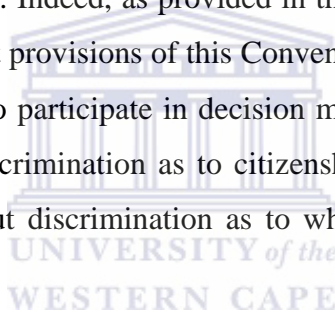
- 
- The state of the elements of the environment, such as air and atmosphere, water, soil, land, landscape and natural sites including wetlands, coastal and marine areas, biological diversity and its components, including genetically modified organisms and the interaction among these elements
 - Factors, such as substances, energy, noise, radiation or waste, including radioactive waste, emissions, discharges and other releases into the environment, affecting or likely to affect the elements of the environment
 - Measures (including administrative measures), such as policies, legislation, plans, programmes, environmental agreements, and activities affecting or likely to affect the elements and factors referred to above as well as measures or activities designed to protect those elements
 - Cost-benefit and other economic analyses and assumptions used for the above measures and activities
 - The state of human health and safety, including the contamination of the food chain, where relevant, conditions of human life, cultural sites and built structures that may be affected by the elements of the environment

- Reports on the implementation of environmental legislation³⁰

That regulation traces all types of information on the environment that can be requested by the public. However, it is very important to know who should be able to participate in requesting, when and how.

2.2.3 Who should be able to participate to requesting?

In order to ensure the protection of the right of each person, access to environmental information is available by request to everyone. Indeed, as provided in the Aarhus Convention in this article 3: “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 and, in the case of a legal person, without discrimination as to where it has its registered seat or an effective centre of its activities”³¹.



2.3 Nature of environmental information

The environment is the source of energy and materials that mankind transforms into goods and services to meet his needs³². It provides for a number of basic conditions needed for the existence of a successful economy³³. As Albert Einstein once said, “[t]he environment is that is

³⁰ See Convention on Access to environmental information 2007

³¹ Art.3 “Convention on Access to information, Public Participation In Decision-Making and Access to Justice In Environmental Matters” at < <http://www.unece.org/env/pp/documents/cep43e.pdf>> (visited 8 June, 2009)

³² Thornton & Beckwith (2004) at 1

³³ Ibid.

not me”³⁴. This also explains why “the protection and preservation of the environment is now perceived as being of crucial importance to the future of mankind.³⁵” The right of access to environmental information is the best way to promote environmental protection. In line with this understanding, constitutions around the world provide for the right to access to environmental information. As noted by many analysts, the right to access environmental information has a democratic value. The right is considered as the foundation for a democratic society as citizens must be informed³⁶. For a country such as South Africa; the Constitution recognises the importance of the right to information in exercising and protecting all rights³⁷.

2.3.1 Democracy and the access to environmental information

Historically the right to information has played an important role in the elaboration of environmental democracy. In fact, it was an essential element of participatory democracy (See chapter VI)³⁸. Today, it continues to play the same role. Indeed, the right to information promotes democracy by promoting citizen participation. The right to information has also been credited with the important role of attracting citizen for participating in general affairs of society. A document of Tanzanian government has, for example, emphasised the positive impact of access to information in the process of democracy. According to the Tanzanian government, “government needs information for informed policy dialogue and decision making. Civil society and politicians require information to participate in policy formulation and to guide

³⁴ Thornton J & Beckwith S (2004) at 4

³⁵ Lord Goff, *Cambridge Water Co. v Eastern Leather plc*, (1994) House of Lords 1 All E.R. 53.

³⁶ Constitutional Protections of the Right to Information at <<http://right2info.org/constitutional-protections-of-the-right-to>> (last accessed on April 10, 2009)

³⁷ Ibid.

³⁸ See more in Chapter VI

implementation of poverty reduction initiatives. Development agencies need information for policy development and implementation”.³⁹

2.3.2 Information as a promoter of environmental protection

The introduction of a right to environmental information has certain advantages⁴⁰. Although behavior change largely depends on people’s free will, communication and the dissemination of information always have a bigger impact on changing people’s behaviour. They play an important role in advertising environmental affairs. This is one of the real values given by access to environmental information in protecting the environment⁴¹. Besides, access to information theoretically permits the acquisition of environmental knowledge, the control and the management of environmental issues as it the case, for example, when the media release environmental information. Indeed, the media plays an important role in bringing about environmental literacy⁴². Disclosure of environmental information could lead to a positive development in climate management over secrecy⁴³. The individual and organisation’ role will be strengthened if they could discuss matters with government and private companies regarding the implementation of their environmental policies⁴⁴. It could also stimulate private companies to take steps to improve environmental performance⁴⁵.

³⁹ Government of Tanzania ‘Communication strategy for the national for growth and reduction of poverty’ at <<http://www.tanzania.go.tz/mkukuta/commstrat.pdf>> (Last accessed on September 10, 2009)

⁴⁰ Cf Du Plessis W (1999) at 109-112

⁴¹ Reference 10 code

⁴² Du Plessis W (1999) at 94

⁴³ Ibid.

⁴⁴ Ibid.

⁴⁵ Hallo (1993) at 50

2.4 The realisation of human rights through the access to environmental information

The relation between environmental right and human rights has been the subject of many writings. The debate on this can be traced as far back as the early 1970s. By the time the Stockholm United Nation Conference on the Human Environment took place in 1972, the idea that an acceptable environment constitutes a precondition for the enjoyment of certain human rights was firmly established⁴⁶. Does the concept of ‘environmental right’ have human right value?

2.4.1 Defining the right to information as a human right

With the adoption of the Draft Principles on Human Rights and the Environment by the UN Sub-Commission on Prevention of Discrimination and Protection of Minorities⁴⁷, the status of ‘environmental rights’ in the context of the human rights has changed radically. In fact, environmental quality had acquired the status of a ‘fundamental’ human right⁴⁸. The implication of considering environmental right as human right is immense. It would at least mean that the right of access to environmental information has a human right value. Human rights are implicated because knowledge of environmental risks and information on how to minimise or avoid those risks can directly affect the quality of a person’s life.⁴⁹ That makes the right to information at the same time an important component of human right and environmental right.⁵⁰

Human rights are primarily concerned with the relationship between the individual and the state. The same is true with environmental rights as it pertains to the relationship between individual

⁴⁶ Miller C (1998) at 1

⁴⁷ Ibid.

⁴⁸ Ibid.

⁴⁹ Ibid.

⁵⁰ Hunter D, Salzman J, Zaelke D (2002) at 1316

and the state. However, the right to information protects not only individuals and groups but also governments themselves⁵¹. In the context of human rights and the environment, the rights to information finds support in a number of human rights conventions⁵². In the context of environmental right, state's access to information would enable it to transmit the information to its residents and protect the human rights of its residents⁵³.

2.4.2 Operationalising sustainable development via environmental information

"Sustainable development" has been an enormously influential concept in environmental law beginning from the early 1980s⁵⁴. The term 'sustainable development' has been included in the Rio Declaration on Environment and Development to denote the need to balance environmental and development considerations⁵⁵. The inclusion of long-term in policy debate has been a distinguished feature of sustainable development since the emergence of Brundland Report's⁵⁶ "definition" of sustainable development, which defines the latter as development that "meets the



⁵¹Hunter D, Salzman J, Zaelke D (2002) at 1317

⁵² Article 19 of the Universal Declaration of Human Rights, supra note 113; Article 19 of the Covenant of Civil and Political Rights, supra note 114; Article 10 of the European Convention on Human Rights, Nov. 4, 1950 (entered into force Sept 3, 1954) reprinted at <http://conventions.coc.int/>. (visited Oct. 13, 2009); Article 9 of the African Charter on Human Rights, supra note 156; European Council Directive on Freedom of Access to Environmental Information, Council Directive 90/313 (7 June 1990), OJL 158, June, 23, 1990, at 56. See also Clarke A.R., International Law and Sustainable Development at <<http://books.google.co.za/books>> 93, (accessed on Oct. 16, 2009)

⁵³ Ibid.

⁵⁴ Holder J, Lee M (2007) at 217

⁵⁵ Rio Declaration on Environment and Development, supra note 143. See also Holder J, Lee M. (2007) at 221-224.

⁵⁶ World Commission on Environment and Development, Our Common Future (Oxford University Press 1987) more commonly known as the Brundtland Report, see at < www.un.org/events/wssd/>. (Johannesburg 26 August- 4 September 2002)

needs of the present without compromising the ability of future generations to meet their own needs⁵⁷.

The concept of sustainable development is thus a principle accepted not merely by the developing countries, but has a worldwide acceptance⁵⁸. The principle of sustainable development is thus part of modern international law not merely because of its inescapable logical necessity but also by reason of its wide acceptance by the global community⁵⁹. The components of the principle of sustainable development come from well established areas of international law, including human rights, state responsibility, environmental rights, economic and industrial law, equity, territorial sovereignty, abuse of rights, good neighbourliness⁶⁰. If we consider environmental information as a human right and an environmental right, then, we can consider that the right to environment information as one of component of the principles of sustainable development. The characteristics of the right to environmental information, as described above, encourage sustainable development through transparency. And transparency presupposes participation in decision-making process⁶¹. The result is that the state, private companies and interested parties and affected parties are forced to become partners in environmental protection⁶².

2.5 Conclusion

The right to information has a real value in promoting of the citizen participation, as human right. This right could be a good opportunity for states to promote environmental protection effectively.

⁵⁷ Holder J & Lee M (2007) at 231

⁵⁸ Hunter D, Salzman J, Zaelke D (2002) at 342

⁵⁹ Ibid.

⁶⁰ Ibid.

⁶¹ Du Plessis W (1999) at 103

⁶² Ibid.

Chapter 3: Framework relating to access environmental information at the international level

3.1 Introduction

The history of the right to access to environmental information in international law is related to the history of modern international environmental law which can be traced directly to international legal developments which took place in the second half of the nineteenth century⁶³. The first period began with the emergence of bilateral fisheries treaties in the nineteenth century⁶⁴. The second period commenced with the creation of the UN and culminated with the UN Conference on the Human Environment, which was held in Stockholm in June 1972.⁶⁵ The third period ran from 1972 Stockholm Conference and concluded with United Nations Conference on Environment and Development in June 1992⁶⁶. During this period, the UN endeavoured to put in place a system for coordinating responses to international environmental issues⁶⁷. The right to environmental information has been secured at the national level directly through constitutions. At the international level, the need to secure environmental issues has been emphasised with the adoption of treaties and conventions such as the Stockholm Declaration, Rio Declaration and, more recently, the Aarhus Convention. Since the development of these treaties, the right to access to environmental information has become an international fundamental right, imposing a duty on states to cooperate in exchange of information in order to promote international environmental protection. This chapter examines the position of environmental information at the international level. It also looks at how countries have given effect to the right to access environmental information.

⁶³ Sands P (1995) at 25

⁶⁴ Ibid.

⁶⁵ Ibid.

⁶⁶ Ibid.

⁶⁷ Ibid.

3.2 The right to environmental information under the international law

Various international agreements provide for the right to information. Many agreements, which have been enacted with the view to promote environmental protection, provide explicitly the right to environmental information. Good examples are the Rio Declaration and the Aarhus Convention. Others, like the Stockholm Declaration, provide, albeit implicitly, access to environmental law.

3.2.1 The right to information and the Stockholm Declaration

The 1972 Stockholm Conference can be traced to an Intergovernmental Conference of Experts on the Scientific Basis for Rational Use and Conservation of the Resources of the Biosphere convened by UNESCO in 1968 (the 1968 Biosphere Conference)⁶⁸.

3.2.1.1 Ratification and Principle

The Stockholm Declaration was one of the most successful UN conferences⁶⁹. The Conference was held in Stockholm from 5-16 June 1972, under the chairmanship of Maurice Strong. It was attended by 114 states and large number of international institutions and non-governmental observers⁷⁰. The Conference did not explicitly announce the rights to access to environmental information in any principles. However, article 19 of the Declaration states that: "...It is also essential that mass media of communications avoid contributing to the deterioration of the

⁶⁸ Sands P (1995) at 33

⁶⁹Hunter D (2002) at 173

⁷⁰ Sands P (1995) at 34

environment, but, on the contrary, disseminate information of an educational nature, on the need to protect and improve the environment in order to enable to develop in every respect”⁷¹. Article 20 clearly recognises the right to access environmental information. It reads as follow: “Scientific research and development in the context of environmental problems, both national and multinational, must be promoted in all countries, especially the developing countries. In this connection, the free flow of up-to-date scientific information and transfer of experience must be supported and assisted, to facilitate the solution of environmental problems; environmental technologies should be made available to developing countries on terms which would encourage their wide dissemination without constituting an economic burden on the developing countries⁷²”.

3.2.1.2 Legal force of Stockholm Declaration

The language used in articles 19 and 20 suggest a legal obligation to grant access to information to the public in order to promote environmental protection. It is necessary to note that in 1972 environmental law was just beginning to develop. The question of access to environment information was not really discussed. It is only in 1990, for the first time that the ‘term’ right to access environmental information was declared in EC Directive on Access to Environmental Information.

3.2.2 EC Directive on Access to Environmental Information

EC Directive on Access to Environmental Information⁷³ was the first international instrument to create a right to access environmental information⁷⁴. It is intended to ensure free access to, and

⁷¹ Hunter D (2002) at 24

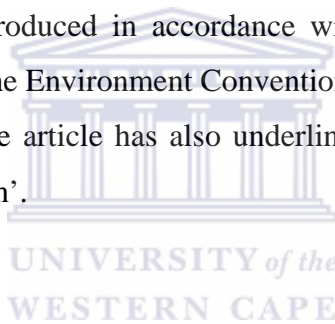
⁷² Ibid.

⁷³ Council Directive 90/313/EEC, OJ L 158, 23 June 1990, 56

dissemination of environmental information held by public authorities throughout the EC. It also sets out the basic terms and conditions under which information should be made available⁷⁵.

3.2.3 The duty to inform under the 1992 OSPAR Marine Environment Convention

The 1992 OSPAR Marine Environment Convention is the first Convention through which the right to access to environmental information was provided. Article 9 of the 1992 Convention requires the competent authorities of state parties to make environmental information available to any legal or natural person: “Any available information in written, visual, oral or data-base from 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”. According to article 9 of the 1992 OSPAR Marine Environment Convention, the information must be available to any legal or natural person. The article has also underlined the fact that the duty to inform concerns ‘any available information’.



3.2.4 Rio declaration

The Rio declaration can be regarded as a compromise between the affluent North that is concerned with global environmental problems and the poor South that is primarily concerned with development questions⁷⁶. This is one of the most important declarations about environmental issues. It is also ratified by a number of African countries. In its preamble, the Rio Declaration reaffirms the Declaration of the United Nations Conference on the Human Environment, which was adopted in Stockholm on 16 June 1972, and seeks to build upon it.⁷⁷ Its

⁷⁴ Sands P (1995) at 619

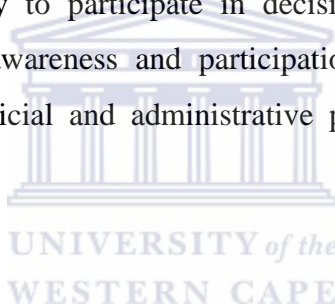
⁷⁵ Art. 1 of the 1992 OSPAR Marine Environment Convention

⁷⁶ Hunter D (2002) at 196

⁷⁷ Hunter* D (2002) at 30

goal is to establish a new and equitable global partnership through the creation of new levels of cooperation among states, key sectors of societies and people⁷⁸. Recognising the integral and interdependent nature of earth, our home,⁷⁹ it works towards international agreements which respect the interest of all and protect the integrity of the global environmental and development system.

In contrast to the Stockholm Declaration, the Rio Declaration explicitly provides for the right to access to environmental information. Principle 10 states: “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”.



This Principle imposes not only an obligation on states to give effect to access to information but it also obliges states to provide information: “States shall facilitate and encourage public awareness and participation by making information widely available.”By some measures, the post-Rio era has continued the momentum that was created by UNCED⁸⁰. The UNECE Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters was adopted on 25th June 1998 in the Danish city of Aarhus at the Fourth Ministerial Conference in the 'Environment for Europe' process.

⁷⁸ Ibid.

⁷⁹ Ibid.

⁸⁰ Hunter D (2002) at 204

3.2.5 The Aarhus Convention

According to Kofi A. Annan⁸¹, "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 access to information on the environment held by public authorities." Thirty-six States and the European Community have signed the Protocol⁸². The Aarhus Convention is a new kind of environmental agreement as it links environmental rights and human rights. It acknowledges that we owe an obligation to future generations. It states that sustainable development can be achieved only through the involvement of all stakeholders. It links government accountability and environmental protection. It focuses on interactions between the public and public authorities in a democratic context and it is forging a new process for public participation in the negotiation and implementation of international agreements.⁸³ The subject of the Aarhus Convention goes to the heart of the relationship between people and government. The Convention is not only an environmental agreement; it is also a convention about government accountability, transparency and responsiveness. It grants rights to the public and imposes obligations on parties and public authority regarding access to information, public participation and access to justice⁸⁴.

⁸¹ Former Secretary-General of the United Nations (1997-2006)

⁸² Member: Armenia, Austria, Belgium, Bosnia and Herzegovina, Bulgaria, Croatia, Cyprus, the Czech Republic, Denmark, Estonia, Finland, France, Georgia, Germany, Greece, Hungary, Ireland, Italy, Latvia, Lithuania, Luxembourg, the Netherlands, Norway, Poland, Portugal, the Republic of Moldova, Romania, Serbia and Montenegro, Slovenia, Spain, Sweden, Switzerland, Tajikistan, the former Yugoslav Republic of Macedonia, Ukraine, and the United Kingdom see Aarhus Convention.

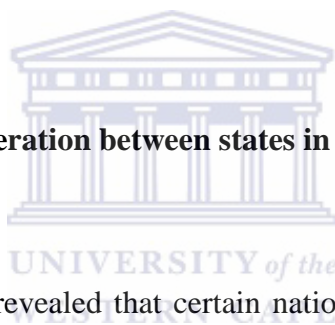
⁸³ Introducing the Aarhus Convention at <http://www.unece.org/env/pp> (last accessed on 10 June 2009)

⁸⁴ Ibid.

3.3 The realisation of access to environmental information in international law

In international law, discussions about access to environmental information usually centre on rules and principles of international law on the protection of the environment. These rules and principles are keys to the realisation of environmental protection. In fact, they contribute in the implementation of duties of due care of states to protect the environment. But, at the same time, rules and principles contribute to the effort to raise awareness among states about environmental degradation. Examples include the principle of information exchange, the principle of environmental impact assessment, the principle of prior notification, the principle of warning and the principle of consultation⁸⁵. Finally, rules determine how access to environmental information can be realised.

3.3.1 Common position of cooperation between states in international law.



Comparison between nations has revealed that certain nations have economic advantages over others. This view may not be accurate when one notes that developing nations have valuable resources while developed nations have technology and financial resources⁸⁶. As a result both sides have an advantage over the other⁸⁷. This makes the idea of more cooperation between states a real choice. The international community acknowledges that the effects of absence of cooperation on environmental information are one of the biggest issues in environmental protection. For the international community, the public plays an important role in environmental protection. The role of the public can be enhanced by providing them access to environmental

⁸⁵ T. Imawa, (2002) "Emerging Principles and rules for the Prevention and Mitigation of Environmental Harm", in Brown Weiss E. (Ed.), *Environmental change and international law: New Challenges and Dimensions, United Nations*. Tokyo: Tokyo University Press, available at <www.unepbooks/uu25ee/uu25ee0k.htm> (last accessed 4 May 2009).

⁸⁶ Hunter D, Salzman (2004) at 126

⁸⁷ Ibid.

information. Environmental information must be supported by cooperation between states in order to have complete information and details.

In addition, cooperation between states has a fundamental value in cases of international environmental dispute. Indeed, international environmental dispute often involves questions of policy that are more conducive to diplomacy than adjudication⁸⁸. This is because environmental law is a complex area of law that encompasses many legal technical issues. It may thus be appropriate to establish separate forums to hear environmental disputes⁸⁹. Such forums can help to enforce a system of cooperation between states in international law. However in such system of cooperation, if a state cannot produce the relevant information, then there is a presumption that the state is in violation because it is unwilling, rather than unable, to comply⁹⁰. Thus the obligation to cooperate is a fundamental concept international law. One example, in which cooperation has been seen as a fundamental principle, is the MOX Plant Case (Ireland v United Kingdom),⁹¹ where the International Tribunal on Law of the Sea (ITLOS) Ireland requested provisional measures from ITLOS, pending constitution of an arbitration tribunal to adjudicate on a dispute concerning the UKs authorisation of a new facility in Sellafield to reprocess spent nuclear fuel⁹². The Irish Government protested that the plant would potentially pollute the Irish Sea, and emphasized the risks involved in transportation radioactive material to and from the plant⁹³. The tribunal found that provisional measures were not warranted in these particular circumstances but did emphasise that the duty to cooperate is a fundamental principle in the prevention of pollution of the marine environment under Part 12 of the UN Convention on the Law of the Sea and general international law.⁹⁴ It indicated that prudence and caution require the

⁸⁸ Salzman, Zaelke (2004) at126

⁸⁹ Hunter D (2002) at 127

⁹⁰ Ibid

⁹¹ 41 (2002) *ILM* 405

⁹² Glazewski J (2005) at 37

⁹³ Ibid.

⁹⁴ Ibid.

two countries to cooperate in exchanging information about the risks of effects of the MOX plant's operation⁹⁵.

3.3.2 Obligation Neighbourliness and the Duty to cooperate

International environmental commitments often involve question of obligations and duties of states *vis a vis* agreements. States have to comply with obligations and duties. The obligation to cooperate with your neighbours is, therefore, a cornerstone of international law⁹⁶. In fact, the duty to cooperate is a general rule of international law that covers many different activities⁹⁷. Indeed, in terms of the right to environmental information, states have the duty to produce information to any other states which needs it. The duty of state has to comply regarding principles, rights and obligation concerning transboundary natural resources and environmental interferences. The duty of state has to comply regarding principles, rights and obligation concerning transboundary natural resources and environmental interferences. Examples include non-discrimination, exchange of information, prior assessment and notification, equal access and treatment.

3.3.3 Exchange of information between states

Information exchange, an obligation common to many international environmental agreements, plays an important role in the consolidation of cooperation among states. The international community has recognised the importance of information exchange as it affects the interest of states. Information exchange, as exchanges of scientific and technical knowledge, is endorsed by

⁹⁵ Ibid 37, see also Devine "Provisional Measures ordered by the International Tribunal for the Law of the Sea in the Area of Pollution" (2003) 28 SAYIL 263.

⁹⁶ Hunter D, Salzman, Zaelke (2002) at 112

⁹⁷ Hunter D. (2002) at 113

Principle 20 of Stockholm Declaration as a means of strengthening ‘endogenous capacity-building for sustainable development by improving Scientific understanding’⁹⁸. According to the principle of transboundary natural resources and environmental interferences, states of origin shall provide timely and relevant information to other concerned states⁹⁹. The international community has, therefore, recognised the need to ensure the availability of information on activities and other circumstances which could affect the interest of states in relation to shared natural resources¹⁰⁰. The exchange information could also be considered very important in case of environmental pollution, like in the situation of Chernobyl in 1986 in Ukraine.

3.4 Critical analysis of the right to environmental information

Environmental protection through the access to information can be a solution. However, at the international level, the accessibility to environmental information is complicated by the lack of appropriate policies and the necessary political will of some countries to participate. Indeed, the growth of protectionism, motivated by economical interest, and the absence of real will to implement policies at the national level make the situation practically impossible. The situation of access to environmental information in international law may be analysed in accordance to the location of a country and the size of its economy, as there are different types of countries. In some countries, the right of access to environmental information is well developed. This can be explained largely because of the fact that democracy is well established in those countries. However, there are also countries, most of them in Africa, where the right to access environmental information is simply theoretical. This is largely due to the lack of democracy in most African states.

⁹⁸ Ibid.

⁹⁹ Hunter D, Zaelke D (2004) at 117

¹⁰⁰ Sands P (1995) at 605

3.4.1 Developing countries¹⁰¹

As stated above, analysis into the right of access to environmental information into a developing country must take into account the location of a country, the size of its economy and its capacity to comply with principles of democracy. Therefore, the right of access to environmental information has not yet been accepted fully in the political governance of most African states. Except for a few countries like South Africa, Zimbabwe, and Mauritius that have implemented policies that give effect to the right to access environmental information, most African states have either done nothing or are on the process of implementing the right. Indeed, Zimbabwe, with its Access to Information and Protection of Privacy Act of 2002, and South Africa, with its Promotion of Access to Information Act 2 of 2002, are the only two countries that have attempted to legalise access to information by implementing access to environmental information.

On another hand, developing countries that are also regarded as newly industrialised, which included a group of nine countries, have shown some progress in environmental protection. These are: the Federal Republic of Brazil, People's Republic of China, Kingdom of Thailand, the Republic of India, Malaysia, and the Republic of the Philippines, the Republic of South Africa, the Republic of Turkey and United Mexican States. In these countries, there is development in the areas of access to information. The right is guaranteed through constitutional provisions and national policies.

Therefore, the analysis shows that the newly industrialised countries present different levels of implementation regarding the regulation of freedom of information. Countries like the Republic of the Philippines, Malaysia, Brazil and China present have not been proactive in implementing policies. It is surprising that one of the biggest countries in the world, and most probably the next superpower, China, has no legislation that provides for the right to information. However, the

¹⁰¹As example of study, it has chose Africa and Newly industrialised countries

foregoing discussion has also revealed that countries like the Republic of South Africa, Mexico, Turkey, and India (with its relevant legislation, the Right to Information Act, 2005, no.22 of 2005) have been exemplary in the regulation of the right to information. South Africa is particularly one of the most progressive countries in this regard. It has demonstrated a commitment to promote environmental protection and entrenches the right of access to environmental information by implementing policies like the Promotion of Access to information Act 2 of 2000, NEMA and constitutional provision. Besides, the Republic of South Africa, it can be quoted The Republic of the India, which is one of the most populated country which has implemented the right of access to environmental information. Indeed the Republic of India provides one of the best examples. The relevant legislation is the Right to Information Act, 2005, no. 22 of 2005. According to the act, the right to information has an important economic dimension, as it embraces not only political freedom but also the freedom to lead a life with dignity, unfettered by domination and discrimination¹⁰². According to the preamble, the objectives of the Act is “to provide for setting out the practical regime of right to information for citizens to secure access to information under the control of public authorities, in order to promote transparency and accountability in the working of every public authority, the constitution of a Central Information Commission and State Information Commissions and for matters connected therewith or incidental thereto”¹⁰³.

3.4.2 Developed countries

With its well established culture of democracy, the developed world does not really face the question of access to information and more specifically to environmental information. There

¹⁰² Government of India “India Act” at < <http://www.rtiindia.org/guide/fundamental-facts-about-rti-2/what-is-right-to-information-6/>> (last accessed 2002)

¹⁰³ Government of India “India act” at < <http://www.persmin.nic.in/RTI/WebActRTI.htm>> (last accessed on 14 September 2009)

seems to be an understanding among developed countries that environmental protection cannot be successful without involving citizens. The instrumentality of access to environmental information is also given full recognition. In France, the right of access to environment information has been guaranteed by the Law on Access to administrative Document of 1978. In Sweden the right of access to environmental information has been guaranteed by the Freedom of Press Act of 1766. In the United States of America the right to inform has been guaranteed by the Freedom Act signed on 4 July 1966. Finally, there are also state legislations that protect the right to information and ensure citizens more access to environmental information.

3.5 Conclusion

To conclude, the right of access to environmental information is well developed in international law. The weight of the laws existing in international law regarding the access to environmental information proves that international law is considered to be fundamental in promoting environmental protection. It can be said that the access to environmental information was first implemented in international law before being considered in national policies in many countries, such in South Africa. Overall, for many countries, international law has been considered as source for implementing national policies. In addition, the study above has showed that those countries (African countries) which do not have their own policies use international law as their reference. Therefore, the right of access to environmental information as framed in international law can be seen as broad enough to be applied universally. It not only includes the access to environmental information but also the role of the public in the decision making and finally the access to environmental justice.

Chapter 4: Access to environmental information in the Republic of Congo

4.1 Introduction

The past few decades have seen a significant shift in environmental governance through transparency of environmental affairs at the international level. The reason was to grant access to environmental information. The right of access to information is becoming a symbol of a modern democratic country. This makes the provision of the right of access to information to the public, fundamental. Therefore, the Republic of Congo, in order to show its desire regarding the protection of the environment, recognises the right to inform the public. The right to inform is enshrined in the Constitution in which it is regarded as an instrument in effective protection of the environment. This chapter examines access to information in the Republic of Congo. The focus is on laws that regulate access to environmental information. Specific attention is given to the relevant provisions of the Constitution. The right to environmental information is not an absolute right.¹⁰⁴ The chapter also looks at the limitations of access to information. Factors that affect access to information are also explored. In this regard, the focus is on factors that undermine access to environmental information. Finally, the chapter focuses on remedies available in relation to access to environmental information.

4.2 Legal framework of access to environmental information

Congo-Brazzaville gained autonomy on November 28 1958, under the name Afrique Equatoriale Française (AEF), and the term French Congo was used to designate Congo-Brazzaville until it gained its independence from France on 15 August, 1960. When Brazzaville was chosen as the capital of French Equatorial Africa (FEA) in 1910, it was mainly for its environmental features, which were largely favourable and beautiful. In the face of this beautiful biodiversity, the

¹⁰⁴ Du Plessis W (1999) at 100

authorities deemed it important to implement legislation to ensure the right to inform in order to promote access to environmental information. Then, this right of access to environmental information was enshrined in the Constitution of the Republic of Congo of 1992 and the Constitution of January 2002. This is in line with a number of international agreements which the Republic of Congo has ratified, including the African Charter on Human and People's Rights, the Rio Declaration, and so on.

According to article 19 of the Constitution of 2002, "all citizens have the right to express and to diffuse freely their opinion by speech, by writing, by image and any other form of communication. Freedom of the press and information is guaranteed. Censorship is prohibited. Access to sources of information is free". The same article further states that: "Every citizen has the right to information and communication. The activities related to these domains shall be exercised with respect for the law."¹⁰⁵ In this article, the responsibility of the state is made quite evident. The state, as a guardian of the respect of principles and constitutional rights, is responsible for the application of these rules. It is also important to note that the right environmental information had been previously included in article 27 of the Constitution of 1992, which states that access to sources of information shall be free and that every citizen shall have the right to information and communication. Activities relative to these domains shall be exercised in total independence in respect of the law.¹⁰⁶ This Constitution is no longer applicable.

In addition to the Constitution, the Republic of Congo has put in place a set of laws that protect aspects of the environment and promote the right to access environmental information. The Law n°003/91 on the environmental protection regulates forestry. Also relevant is the penal law on the environment, which deals with penal sanctions in matters related to the environment. The Law n°48/83 on 21 April 1983 is also worth mentioning as it defines conditions of conservation and exploitation of wild fauna, finally the Law no 16/2000 of November 2000 establishes the forest code. However, despite the constitutional provisions, no specific policy deals with the right to

¹⁰⁵ Constitution of the Republic of Congo 2002

¹⁰⁶ Ibid.

environmental information. In addition, many of the policies are not well developed. Others are simply transplanted from other jurisdictions, like France. The source of many policies in the Republic of Congo is France. This makes the interpretation of law very difficult. Notwithstanding this, the gap in legislation regarding environmental matters is filled by the ratification of international agreements. Among the international agreements that the country has ratified, the most important is the African Charter on Human and People's Rights, which is a regional instrument for the promotion and the protection of human and people's rights.¹⁰⁷

4.3 Problem of freedom of information in the Republic of Congo

Across the world, the lack of good behaviour towards the environment has resulted in many types of problems, as result of which our ecosystem is suffering today. The nature of those problems varies from country to country. However, generally, the problems seem to be the same (i.e. climate change, deforestation, flood, hunger, economy growth, overpopulation, etc) be it in developed or developing countries. In the Republic of Congo, the whole issue of access to environmental information is not clear. Except for the Ministry of Forestry economy and the environment, there is no national environmental management body that is responsible for monitoring a national environmental policy. The Ministry does not have any legal policy that helps it to deal with issues related to access to environmental information. Except for constitutional provisions, there are no legal instruments that deal with the issue of access to environmental information. This section will start off with an overview of the causes of lack of access to environmental information in the Republic of Congo. Attention will then be given to the causes. Next, attention will be given to the consequences of lack of access to environmental information in promoting environmental protection in Congo-Brazzaville.

¹⁰⁷ Evans M D & Murray R (2008) at 2

4.3.1 Causes of lack of access to environmental information in the Republic of Congo

4.3.1.1 Lack of environmental interest from Congolese authorities

The Republic of Congo gained its independence from France in 1960 and became an autonomous country, with the right of self-governance to administer its own affairs. Although the Republic of Congo is the fourth largest oil producer in sub-Saharan African, the country is facing insurmountable difficulties in fulfilling the hope of its population. Ensuring peace and economic stability was the objective which the country was setting out to achieve in the past 12 years¹⁰⁸ following the traumatic events that the population had endured in recent years. In this quest for economic stability, the threat to biodiversity, which comes as a result of exploitation of natural resources, has been neglected for a long time by the authorities, thus, creating new social and ecological problem. The failure of government to give access to environmental information has negative effects in so far as the promotion of environmental protection is concerned. Many think that being a developing country is an excuse not to implement policies pertaining to environmental protection. That also explains why there is no such policy in the Republic of Congo.

4.3.1.2 Lack of environmental democracy

Democracy plays an important role in ensuring respect of rights such as the right of access to environmental information. This is because political rights enable individuals to participate freely in the political process.¹⁰⁹ It is also because it a system through which the polity chooses authoritative policy makers and attempts to make binding decisions affecting the national, regional or local community.¹¹⁰ Out of this process, and in relation to the environment, has

¹⁰⁸ 1997 and 2009, 1997, there was a war in Congo, which ended in 1999

¹⁰⁹ Barnett C & Low M (2004) at 29

¹¹⁰ Ibid. at 29

developed what is called “environmental democracy”. Environmental democracy is defined as a participatory and ecologically rational form of collective decision making.¹¹¹ It describes existing political practices and institutions that respect the social and ecological conditions of communicative freedom.¹¹² The Republic of Congo provides one example of a particular form through which lack of environmental democracy is considered as the main obstacle in the promotion of environmental protection. Most developing countries face the same problem as the Republic of Congo as there is little or no environmental democracy in most of these countries. Of course, there are different degrees and types of democracy. The Republic of Congo and most other African countries belong to that type of democracy that is only characterised by the holding of ‘free’ and ‘fair’ elections at regular intervals. Five major problems confront environmental democracy in the Republic of Congo and the rest of Africa:

- (a) the absence of citizen participation;
- (b) violation of civil rights;
- (c) corruption in the governance system;
- (d) lack of application of constitutional provision or absence of real policies relative to fairness and transparency; and
- (e) lack of competent authorities.

The problem of promotion of environmental protection in Africa lies in the fact that there is no access to information. This, in turn, is largely attributed to the lack of political will on the part of African authorities. In the Republic of Congo, for example, this is further complicated by the incompetence of public authority in environmental management matters. Thus, the culture of secrecy adopted by African authority in managing the public services seems to adversely influence environmental promotion. In fact, there is no way to gain access to environmental information.

¹¹¹ Mason M (1999) at 1

¹¹² Ibid.

4.3.1.3 Absence of citizen participation in environmental decision making

In a discussion of democracy, it is always a question of citizen participation, on the one hand, and competent authority, on the other hand. As indicated above, the absence of citizen participation is widely noted. Today, with the drastic increase of human activities at the beginning of this century, which is now causing serious degradation of the environment, not only at the local and the regional level but also on a global scale, the need to enforce the idea of global participation in environmental matters is imperative. A large body of literature exists on the subject of citizen participation; in environment-behaviour studies, for example, the term refers to individuals taking part in decision making in the institutions, programmes and environments that affect them.¹¹³ The objective of participation is generally to improve the lives of citizens and the actions of government. However, in order to exercise this responsibility, citizens must therefore be granted certain rights, including access to information, the right to participate in environmental decision making and access to a tribunal in order to challenge environmental decisions.¹¹⁴ Various advantages of conferring such rights may be summarised as follow:¹¹⁵

- It is likely to improve confidence in environmental decision making (public reassurance);
- It will better inform consumer choice. For example, eco-labeling will enable people to make environmentally responsible purchasing decisions;
- In turn, informed consumer choices may stimulate industry to take environmental protection seriously;
- Knowledge that their decisions will come under scrutiny and may be challenged will improve accountability of public agencies and may also improve the quality of their decision making;

¹¹³ Altman W (1987) at 116

¹¹⁴ Sunkin M, Ong DM & Wight R (2001) at 743

¹¹⁵ Ibid. at 743, see also Royal Commission 10th Report, Tackling Pollution-Experience and Prospects, Cmnd 9149 discussed by Roman-Robinson, J et al, Public access to environmental information: a means to what end? (1996) 8(1) JEL 19-42

- The democratic process will be advanced by enabling the public to participate more effectively both in policy formulation and decision making on environmental issues.¹¹⁶

Unfortunately, the need to involve the public in environmental matters is not always appreciated in the Republic of Congo. There is conflict between those who are making decision and those who are following orders. It becomes a serious problem when governments remain apathetic to the demands of the public.¹¹⁷ This affects relations between citizens and authorities, in particular when it concerns the involvement of citizens in decision making.

4.3.1.4 Corruption in the governmental system

Another obstacle in the realisation of environmental protection is corruption. Although governed with principles of democracy, the Republic of Congo, according to some analysts, is one of the 20 most corrupt countries in the world. Corruption, which is defined as “the abuse of public power for private gain”, is a world phenomenon. It represents one of the most serious problems that plague the socio-economic, political, human and environmental sphere of the Republic of Congo. By undermining the socio-economic and political system, it helps to create poverty; it reduces resources available for infrastructure, and public services. Regarding the environmental question, it limits the capacity to implement new regulations and as a result it reduces access to environmental information, which is crucial in promoting environmental protection. By undermining the political system, corruption takes away the hope of fulfilling environmental protection. The Republic of Congo is a palpable example in which democracy is reduced to simple rhetoric, through which citizens are disillusioned by their government that is characterised by the prevalence of corruption and lack of transparency. Article 47 of the Constitution of 2002 of the Republic of Congo states that “public goods are sacred and inalienable” and that “every Congolese citizen must respect them scrupulously and protect them;” the law specifies the conditions for the alienation of public goods in the name of public

¹¹⁶ Ibid.

¹¹⁷ Morales B.L.F. (2002) at 193-198

interest. The same article 47 states that “any act of sabotage, vandalism, corruption, illicit enrichment, dissipation, abuse and dilapidation of goods is reprimanded within the conditions determined by the law.”¹¹⁸ To abuse public power for private gain becomes noble action, understood as no different to ordinary simple actions such as to give birth or to claim the right to live, for example. No one would be surprised to see the right to corrupt, or to be corrupt, one day adopted in such a situation as pertains in the Republic of Congo. The impact of the prevalence of widespread corruption on the environment is that environmental matters are reduced to simple administrative matters or discussions on the street corner.

4.3.1.5 Overpopulation

In addition to the lack of environmental democracy, population growth is another primary source of concern in so far as environmental issues are concerned. The population is increasing, which means fewer resources; a resource can be food, material, finances, but it can also be the availability to environmental information. Already in 1798,¹¹⁹ Thomas Malthus saw a world where the human population would continually press against available food supplies.¹²⁰ Some link the rapid degradation of earth to population growth. In particular, population growth has "momentum", which means that if one makes a sudden change in the fertility rate in a society, the full effect of the change will not be realised until every person who was living when the change was made has died. In this context, overpopulation limits the availability of information. It is interesting to note the response of Asimov when he was asked to respond to the following question:

What happens to the idea of the dignity of the human species if this population growth continues at its present rate?

¹¹⁸ Constitution of the Republic of Congo of 2002

¹¹⁹ Thomas Malthus, a British clergyman, warned in his famous piece, *An essay on the Principle of Population*, of the tendency for population to grow exponentially while food supply grew arithmetically Lester R. Brown, Gary Gardner, Brian Halweil. (1998) 7

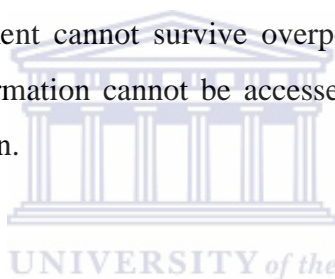
¹²⁰ *Ibid* at 7-8

Asimov responded:

It will be completely destroyed. I like to use what I call my bathroom metaphor: if two people live in an apartment and there are two bathrooms, then both have freedom of the bathroom. You can go to the bathroom anytime you want to stay as long as you want for whatever you need. And everyone believes in freedom of the bathroom; it should be right there in the Constitution.

But if you have twenty people in the apartment and two bathrooms, no matter how much every person believes in freedom of the bathroom, there is no such thing. You have to set up times for each person; you have to bang on the door, "Aren't you through yet?" and so on.¹²¹

By the same token, the environment cannot survive overpopulation. This is because in such circumstances environmental information cannot be accessed easily and that adversely affects environmental protection promotion.



4.3.1.6 Lack of environmental justice in the Republic of Congo

The right of access to environmental information has become a priority to many countries in terms of conservation and preservation of the natural environmental. In fact, governments have invested all their muscle in promoting environmental justice. As the Aarhus Convention¹²² states, “environmental justice can only be achieved by a combination of access to environmental information, public participation in environmental decision making and access to the courts in environmental matters.”¹²³ Without access to environmental information, it has become difficult for people to take part in drafting of policies or decision making, which is crucial. In this context,

¹²¹ Moyers B (1989) at 276

¹²² The Aarhus Convention on “Access to Information, Public Participation in Decision Making and Access to Justice in Environmental matters” was adopted on 25 June 1998 and came into force on 30 Oct. 2001.

¹²³ Harding A (2007) at 289

the rise of environmental justice in environmental issues has been seen by many as a fundamental contribution to the process of environmental protection. Furthermore, environmental justice has contributed in many cases by enforcing the value of environmental rights. In South Africa, for example, a case can be quoted as an instance of this contribution by the justice system, the case of *Trustees, Biowatch Trust v Registrar: Generic Resources*,¹²⁴ where the application was a result of four failed attempts by Biowatch to obtain certain information from the registrar pertaining to matters relating to the use of GMOs in South Africa.¹²⁵ The Court noted, however, that right of access to information is intended to serve the purpose of ensuring that there is open and accountable administration in all spheres of government and that one of the stated objects of the Promotion of Access to Information Act of 2 of 2000 was to generally promote transparency, accountability and effective governance of all public and private bodies with the aim of, among others, enabling persons to effectively scrutinise, and participate in decision making by public bodies that affect their rights.¹²⁶ The Court thus held that the disclosure of information, or the granting of access to information, should be necessary for the proper application of the provision of the Genetically Modified Organisms Act 15 of 1997.¹²⁷

The above case simply illustrates how justice can promote the right of access to environmental information in South Africa. However, what is the case in Congo? Is there an environmental justice that promotes the right to access environmental information?

The idea of environmental justice in the Republic of Congo today is still worthless, which makes the promotion of the right to access environmental information very difficult. I personally think that the Congolese government and the foreign companies which operate in Congo can be seen as the lucky ones because they do not make any use of environmental rights, except if those rights are in their favour, and only then can one talk of environmental justice. Environmental

¹²⁴ 2005(4) SA 111 (T)

¹²⁵¹²⁵ Kotze LJ, Du Plessis W, Ferris L & Oliver M (2008) at 135

¹²⁶ Ibid. at 135

¹²⁷ Ibid. at 135

justice in Congo may only exist when an environmental case is brought by the Government in their favour. In such a situation, it is impossible to promote environmental matters. For example, in the region of the Kouilou, in the east of the Republic of Congo, where the production of oil and gas is concentrated, oil companies used to exploit the oil and gas onshore and offshore. In doing so, many accidents used to occur in the water and still do. In the process, the oil and gas spread on the surface of the beach, causing an unpleasant smell and degradation of the natural habitat, but the government takes its time to clean up the spillage. However, such cleaning does not often happen. Such degradation is so obvious that even a blind man would be aware of the effects. Besides the destruction of the biodiversity, there are also many effects within the villages near the sea, such as air pollution, causing a lingering unpleasant smell from the exploration. Even the second largest town of Congo, Pointe Noire,¹²⁸ is also a victim of this degradation. No judicial action has been taken on that matter and no environmental information has been given to the population. A few years after the initial exploration, a group of people from many villages around the exploration site went to express their dissatisfaction to the authorities, and to the oil companies, concerning the matter. The problem was solved by giving food and equipment to that group of people, which was later advertised on TV. Thus, this practice case shows, by itself, where environmental justice stands in the Republic of Congo is. In addition, the paucity of environmental justice cases makes the promotion of the right of access to environmental information difficult in the Republic of Congo.

4.4 Poverty of information and misunderstanding as consequences

Although the term “environment” is widely used, it means various things to different people.¹²⁹ It is particularly important for an environmental manager to recognise that different professions attach specific connotations to the term environment.¹³⁰ The public must also be cognisant of the issues related to the environment. In the Republic of Congo, there is a problem in understanding

¹²⁸ Principal Port of the Republic of Congo

¹²⁹ Fuggle RF (1992) at 4

¹³⁰ Ibid.

environmental issues both by environmental managers and by the public at large. In fact no real measures are taken against environmental issues. As a result, access to environmental information is poor. Indeed, the main issue that affects environmental protection adversely is lack of awareness about environmental matters. The overwhelming majority of the population in Congo is poor. As a result, the environmental impact of economic activities is not given due attention. The public gives less priority to environmental issues when compared to economic issues; individuals focus on economic affairs that demonstrate the best hope of creating jobs and improve their living conditions. Owing to misunderstanding that is largely attributed to the lack of environmental information, people have their own interpretation regarding environmental issues. Generally, the population interprets environmental matters by taking into account their cultural knowledge.

The Republic of Congo has various types of Bantu people, but also a small group of Pygmies who inhabit mainly the northern forest region. A small European population, mainly of French¹³¹ and Chinese origin, also resides in Congo. Congo has its distinct culture and “religion” that is predominantly Roman Catholicism. However, 30% of the population tends to adhere to traditional beliefs, generally called “animism”.

This demographic diversity makes the understanding of environmental issues rather difficult. Why? Animists believe that many spirit beings exist in the universe. These spirits live in a spiritual part of reality but they also actively interact with the material world. Some are seen to inhabit material objects (like trees and rocks), some are heavenly objects (sky, sun, moon and stars), some are animals, and others are believed to be the spirits of people who have died. The spirit world is understood to exist parallel to the material world (like a different dimension) and the two worlds exist in a symbiotic relationship with one another.¹³² Such philosophy has direct impact on our society and affects negatively the dissemination of environmental information.

¹³¹ The People at <<http://geography.howstuffworks.com/africa/geography-of-congo-brazzaville.htm>> (accessed on 18 March 2009)

¹³² Animism at <<http://marketfaith.com/resources/Animism.pdf> > (last accessed on 20 November 2008)

Since it “assumes that any kind of unexplained event happens because spirit beings, or supernatural forces, are at work in the natural world,”¹³³ it does not help in environmental understanding. This philosophy carries the danger of promoting environmental illiteracy, contributing to lack of access to environmental information. Thus, I would like to see animism being used as a positive philosophy whereby people might be persuaded that degradation of the environment would anger the spirit of nature who would then have revenge on greedy people who damage nature.

4.5 Giving access to environmental information to the population

Providing access to environmental information to the population can go a long way in improving our effort in addressing environmental problems. The question is how to improve access to environmental information in the Republic of Congo. Today, the relatively inexpensive air travel, telephone and computer network coverage, and a host of other recent technological advances have taken this further and created a world where one person can instantly connect to another person in any part of the world.¹³⁴ With access to multimedia in the Republic of Congo, it has become easy to disseminate environmental information. Access to environmental information can be made by

- (1) Establishing competent authority
- (2) Establishing policies
- (3) Enforcing environmental impact assessment
- (4) Establishing environmental education
- (5) Network

¹³³ Ibid.

¹³⁴ Mercurio L (2008) at 5

(6) Opening libraries

(7) Providing Internet access to people.

4.5.1 Establishing competent authority in the Republic of Congo

Two objectives underlie the establishment of competent environmental authority in the Republic of Congo: the decentralisation of decision making and the participation of the population in decision making in the Republic of Congo.

4.5.1.1 Decentralisation of decision making

In the Republic of Congo, the need to decentralise decision making constitutes one of the solutions for disseminating environmental information. The constitutional requirement of decentralized governance is not specifically outlined in the Constitution. This is despite the pronouncements made by the government about the establishment of decentralisation. This is in contrast to the situation, for example, in Ghana, where the constitutional requirement of decentralised government is outlined and implemented by the Local Government Act 1993.¹³⁵ The Act recognises existing districts, each with an elected Assembly as the highest political authority. Each Assembly has a variety of responsibilities, functioning both as legislative and executive authority. It is also a planning authority, responsible for the development, improvement and management of human settlements and the environment in the district.¹³⁶ A similar model of local governance is available in South Africa where local authorities enjoy strong powers in managing environmental issues in local areas. The model has been established in the Republic of Congo, albeit without real basic structure. Local authorities do not enjoy autonomous power. The decision-making process needs to be decentralised with the view to

¹³⁵ Article 462 Ghana's Constitution; see also Harding R (2007) at 39.

¹³⁶ S. 10 (3) (e).

giving more responsibility to the local government as this is the best way to deliver sustainable development in the local sphere in Congo.

4.5.1.2 Role of local government

Local government has a considerable influence in environmental decisions; it is responsible for the majority of planning of land-use development decisions.¹³⁷ It is undeniable that the local government environmental management is the best way for managing environmental issues in Congo. The South African model is a good example of environmental management at the local level and other African countries would do well to follow it. However, in the Republic of Congo, local government must be responsive to the needs of the communities which it represents and is funded by.¹³⁸ Issues that local government needs to consider in its interaction with the public on environmental management matters include improving public awareness of the council's role and responsibilities, facilitating easy access to services and information that assist environmental management processes and encouraging public and resource users' confidence in the delivery of services and environmental outcomes, and trust in the decision-making and compliance-monitoring processes.¹³⁹ Local government should play a greater role in development planning in the Republic of Congo. It should, as is the case in South Africa, prepare a district development plan for approval, via regional co-coordinating councils, by the National Development Planning Commission.¹⁴⁰

4.5.1.3 Ensuring citizen participation

¹³⁷ Harding R (2007), Environment decision making at <http://books.google.co.za> p 228

¹³⁸ Local government environmental management: a study of models and outcomes (Aug. 1999). Report Summary at <http://www.e-envi2009.org/presentations/W2/Pick.pdf>

¹³⁹ Ibid.

¹⁴⁰ Harding R (2007) at 39

Nothing can be done well in the process of promotion of environmental protection without the involvement of citizen participation, even in the most advanced country in the world. Developed nations have understood this principle for a while now, while the governance system in most developing countries is still characterised by the absence of the involvement of citizens in decision making. What is citizen participation? Citizen participation can be defined as “a process wherein the common amateurs of a community exercise power over decisions related to the general affairs of a community,”¹⁴¹ or a process which provides private individuals an opportunity to influence public decisions.

4.5.2 Establishing policies

According to popular opinion, the more ecologically one lives, the more illegal it is; the world is not an ecologically friendly place in which to live. It is a place in which economic interest prevails. That is why it is necessary to regulate it in order to make it ecologically sustainable. Indeed, access to environmental information is one of the important elements that help to achieve this. To legalise access to information goes a long way in promoting protection of the environment. The legalisation of access to information can be achieved by implementing new policy which will regulate information. One of the many countries that have appreciated the importance of legalising access to information is South Africa, which has adopted the Promotion of Access to Information Act of 2000 (see chapter 5 below). What is the real benefit of legalisation? Legalisation gives a right to someone or something; it gives permission to do or not do. Indeed, it gives right to that which is due to a person or government. Legalising access to environmental information is one of most democratic values through which the promotion of environmental protection is realised. Four values underlie this process of legalising access to information:

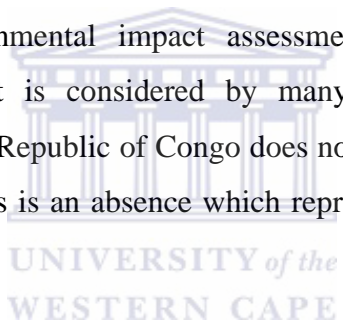
- (a) The right as guarantee of access
- (b) The right as guarantee of democracy

¹⁴¹ Johnson WC (1984) at 164

- (c) The right as fundamental human right
- (d) The right as guarantee of promotion.

4.5.3 Enforcing environmental impact assessment

Since the 1972 Stockholm Conference, the concept of environmental impact assessment has emerged as an important international and domestic legal technique for integrating environmental considerations into socio-economic development and decision-making processes.¹⁴² Since the concept was first established in the domestic law of the United States under the 1972 National Environmental Protection Act, it has been progressively adopted in many other national legal systems.¹⁴³ However, in the Republic of Congo, things seem to be different as there is no environmental impact assessment at all. Despite the fact that environmental impact assessment is considered by many international agreements as an important national instrument, the Republic of Congo does not provide this instrument as part of its environmental governance. This is an absence which represents the lack of an environment-sensitive government.



4.5.4 Establishing environmental education

If we consider education as the best way to learn something, as a continuous and creative process that aims at developing human capacities, then we miss a big opportunity if we fail to use education as an instrument to inform people regarding environmental matters. Education, in terms of the knowledge, qualities, skills, attitudes, and capacities that enable individuals to become conscious subjects of their growth and active, responsible participants in a systematic process of building a new world order,¹⁴⁴ should be a way to disseminate information. It also

¹⁴² Sands P (1995) at 579

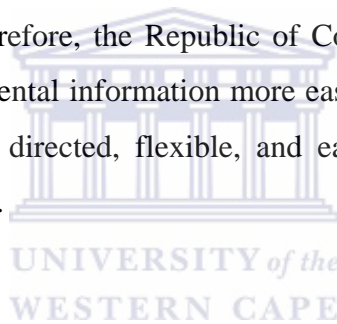
¹⁴³ Ibid.

¹⁴⁴ The Role & Goal of Education, at <<http://www.cmseducation.org/rolegoal/role.htm>> (last accessed May, 2009)

helps in raising the awareness of schoolchildren, who represent the society of the future. This ensures that children will grow up with an education that includes awareness about the environment. Using the school education to teach environmental issues is the best way to promote environmental protection.

4.5.5 The network

More than ever, people have access to electronic mail. All countries should invest in that type of system for the sole purpose of improving communication. It would be beneficial to have good and regular communication between people. Thus the primary function of the network would be co-ordination with the view to rationalising and improving the flow of information and documents in the network.¹⁴⁵ Therefore, the Republic of Congo needs to improve its network system in order to make environmental information more easily available. As mentioned above, the communication will be more directed, flexible, and easily updated. The most important benefit is that it will be transparent.



4.5.6 Opening of the library

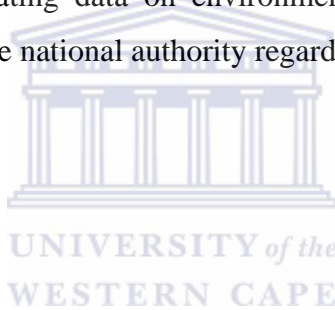
There are no more than 10 modern libraries in the total area of the country. This makes a commitment to opening libraries essential. Opening libraries should be the first priority on the way to improving environmental communications. The library is one of several kinds of institutions which can play a primary role in collecting and preserving essential records.¹⁴⁶ In a local area, small town or village, people will use those libraries to apply environmental information via the network of the library.

¹⁴⁵ FAO fisheries Report No 740, Regional Workshop on Network for improved access to fisheries and Aquaculture information in Africa, FAO Rome 2004, 18

¹⁴⁶ Harvey R (1993) at 5

4.5.7 Providing access to the Internet

The global spread of new information technology networks, particularly the Internet, has raised hopes that the voices of marginalised groups will now reach the ears of global decision makers more swiftly and directly.¹⁴⁷ In the future, new approaches to the Internet will be needed to provide information more rapidly anywhere and at any time. This will require new ways to collect the necessary data, new ways to analyse those data to create and present information, and new ways to deliver or make available that information worldwide to advantaged and disadvantaged users alike.¹⁴⁸ With the Internet, there is no excuse to say there is no information. Today, even a little child can create his or her blog and put in his or her own information easily. Why not a country? The Republic of Congo needs to use the Internet as the way of disseminating information by creating data on environmental matter, including policies and environmental strategies held by the national authority regarding environmental matters.



4.6 Conclusion

This chapter has traced issues related to access to environmental information in the Republic of Congo. It also traces responses towards environmental protection. The real response outlined is the establishment of good environmental governance through which the sense of environmental responsibility is nurtured. This responsibility can be encouraged by the improvement of democratic practices and transparency in introducing citizen participation in decision making. The chapter also identifies the manner in which the application of access to information can be made.

¹⁴⁷ Moore (2007) at 171

¹⁴⁸ Environmental Information for Naval Warfare at <<http://www.nap.edu/catalog/10626.html>> (last accessed in 2005)

Chapter 5: Access to Environmental Information in the Republic of South Africa

5.1 Introduction

The concept of environmental protection is more developed in South Africa than it is in the Republic of Congo. This is because the Republic of South Africa has taken initiatives for some time to recognise the basic needs of human beings and to accept the right of human beings to a clean, safe, and healthy environment¹⁴⁹ and has also developed a wide number of policies giving access to environmental information. Nevertheless, despite the fact the South Africa has the most sophisticated environmental promotion in Africa; the access to environmental information still poses serious problems. This chapter looks at the legal framework to the right of access to environmental information. It will also examine the problems relating to the availability of information. Finally, it draws conclusions and suggests some solutions.

WESTERN CAPE

5.2 The right of access to environmental information: Does it exist in South Africa?

The Constitution of the Republic of South Africa 108 of 1996 does recognise the right of access to environmental information. The right has been provided in section 32 of the Constitution. This right has also been approved by NEMA. Therefore, with the promulgation of the Promotion of Access to Information Act 2 of 2000, the right to access to information has been well entrenched in South Africa.

¹⁴⁹ McDonald DA (2002) at 15

5.2.1 Legal background

The development of right to access to environmental information in South Africa differs to that of the Republic of Congo. In South Africa, the development can be understood by following the history of its Constitution. Clearly, the South African Constitution has played an important role in promoting the access to information. It has been utilised to provide information to people and also to implement favourable policies to allow access to environmental information. The growing number of policies implemented after the implementation of Constitution 108 of 1996 shows, itself, the influence that the Constitution has had in promoting freedom of access to environmental information. Thus, the development of freedom to access environmental information started with the Constitution, particularly the Interim Constitution, followed by two main acts: the Promotion of Access to Information Act 2 of 2000 and NEMA.



5.2.1.1.1 Interim Constitution [article 23]

The inclusion of environmental concerns in the Interim Constitution has been seen as fundamental in promoting environmental rights. Of the many rights quoted in the Constitution, the right of access to information is among the most important ones. It was described in article 23 as follows: “[E]very person shall have the right of access to all information held by the state or any of its organs at any level of government in so far as such information is required for the exercise or protection of any of his or her rights.”¹⁵⁰

An examination of article 23 of the Interim Constitution of 1993 does not show what type of information can be applied for. It announces the right of access to “all information”. Therefore, according to some analysts, article 23 was one of the most heavily-litigated rights in the Interim Constitution and, as a result, there is a reasonably detailed jurisprudence dealing with its

¹⁵⁰ Interim Constitution of 1993 of South Africa

interpretation and application.¹⁵¹ However, in 1996, the Interim Constitution was replaced by the new Constitution, which was supposed to be more constitutional than the previous one.

5.2.1.1.2 Bill of Rights, Constitution of the Republic of South Africa 108 of 1996

The Constitution of the Republic of South Africa, 1996 introduced an entirely new approach to environmental law, governance, and management by providing to everyone the right to an environment that is not harmful to health or well-being.¹⁵² In this context, the Bill of Rights, which is the Constitution of South Africa of 1996, provides, as did the Interim Constitution, the right of everyone to access to information. The value of the provision of the Constitution regarding the access to environmental information may be seen in the case *Earthlife Africa (Cape Town Branch) v Eskom Holding LTD*. For example, in its initial decision of December 2005, the Court found that the applicant had a right to access to information in terms of section 32(1)(b) of the Constitution of the Republic of South Africa, 1996, and the applicant could rely on this right since it sought to enforce section 24 of the Constitution of the Republic of South



¹⁵¹ For a survey of the case law on s 23 and item 23 of the Sixth Schedule to the 1996 Constitution, see J de Waal et al the Bill of Rights Handbook 3 ed (2000) chapter 29. Note, however, that many of the earlier cases dealt with the right in the context of access to information contained in police dockets. In *Shabalala vs. Attorney General, Transvaal*, 1996 (1) SA 725 (CC) para 33 the Constitutional Court held that access to the contents of a police docket prior to trial was regulated by the specific provisions of the right to a fair trial rather than the more general provisions of the access to information right.

¹⁵² Section 24 states that:

Everyone has the right:

- (a) to an environment that is not harmful to their health or well-being, and
- (b) to have the environment protected , for the benefit of present and future generations through reasonable legislation and other measures that-
 - (i) prevent pollution and ecological degradation
 - (ii) promote conservation; and
 - (iii) Secure ecologically sustainable development and use of natural resources while promoting justifiable economic and social development.

See, also Strydom HA & King ND (2009) at 5

Africa, 1996¹⁵³. Article 32 states that “everyone has the right to access to any information held by the state; and any information that is held by another person and that is required for the exercise or protection of any rights.”¹⁵⁴

An examination of article 32 of the Constitution of 1996 shows a resemblance to article 23 of the Interim Constitution of 1993 in this first part. However, the Constitution of 1996 has been written in two parts, with the goal of making the right more accessible and valuable. The same article 32 states further that national legislation must be enacted to give effect to this right, and may provide for reasonable measures to alleviate the administrative and financial burden on the State.¹⁵⁵ The objective aimed at here is to give access to relevant environmental information in order to improve environmental protection. This article underlines the duty of the State to inform the population.



5.2.1.2 National Environmental Management Act 107 of 1998

Besides the provision in the Constitution of 1993 and the Constitution of 1996, The National Environmental Management Act 107 of 1998 (NEMA) defines the right to access to information on the environment. Therefore, the right to access to environmental information is confirmed by NEMA in article 31. Furthermore, section 31 of NEMA guarantees access to information on the state of the environment and threats to the environment.¹⁵⁶ Article 31 states that “every person is entitled to have access to information held by the State and organs of state which relates to the implementation of this Act and any other law affecting the environment, and to the state of the environment and actual and future threats to the environment, including any emissions to water, air or soil and the production, handling, transportation, treatment, storage and disposal of

¹⁵³ [2006] 2 All SA 632 (W)

¹⁵⁴ Article 32 (a) of the Constitution of 1996

¹⁵⁵ Article 32 (b) of the Constitution of 1996

¹⁵⁶ Strydom HA & King ND (2009) at 95

hazardous waste and substances.”¹⁵⁷ Article 31 states further that “organs of state are entitled to have access to information relating to the state of the environment and actual and future threats to the environment, including any emissions to water, air or soil and the production, handling, transportation, treatment, storage and disposal of hazardous waste held by any person where that information is necessary to enable such organs of state to carry out their duties in terms of the provisions of this Act or any other law concerned with the protection of the environment or the use of natural resources.”¹⁵⁸

5.2.1.2.1 Promotion of the Access to Information Act 2 of 2000

The most important regulation regarding the right to access to information in the Republic of South Africa would probably be the Promotion of Access to Information Act 2 of 2000. This Act is the national legislation of the Republic of South Africa. This Act gives effect to the constitutional right of access to any information held by the State and any information that is held by another person and that is required for the exercise or protection of any rights; and to provide for matters connected therewith.¹⁵⁹ In this preamble, the Act recognises that the system of government in South Africa before 27 April 1994, amongst other factors, resulted in a secretive and unresponsive culture in public and private bodies which often led to an abuse of power and human rights violations.¹⁶⁰ Thus, the legislation of South Africa regarding the question of the right of access to environmental information is well developed, when compared to that of the Republic of Congo, which is limited in that it only proclaims the right in its Constitution. No national policy exists in the Republic of Congo besides the provision of the Constitution. However, the array of mechanisms prescribed in the above laws, aimed at providing ready access to information, are essential to both public and private actors in the environmental context.¹⁶¹ They potentially provide public authorities with ready access to

¹⁵⁷ Article 31 (a) of NEMA

¹⁵⁸ Article 31 (b) of NEMA

¹⁵⁹ Juta's Statutes of South Africa, 2006/7 Vol 5 at 1-221

¹⁶⁰ Ibid at 1-221

¹⁶¹ Du Plessis W (1999) at 198

information, thereby theoretically facilitating improved environmental decision-making, monitoring, compliance and enforcement.¹⁶² They also potentially provide the public with more ready access to information thereby theoretically increasing its power as an effective environmental watchdog and a private environmental enforcer.¹⁶³

5.2.2 Application of the right to inform

Because of lack of implementation of national policies in the Republic of Congo, it is very difficult to describe the mechanisms of disclosure of information; the way to obtain information seems unclear compared to South Africa's model. In South Africa, there are various ways to obtain information.¹⁶⁴ The information can be requested by public and private bodies. Because these bodies have an obligation to inform the population, as has been mentioned above, one of the ways to facilitate environmental information compliance and enforcement is to provide ready access to environmental information held by public and private bodies, including the general state of the environment, the state's compliance with international and domestic obligations, environmental planning, impending legislative and administrative action, applications for environmental authorisations, and terms and conditions of current environmental authorisations.¹⁶⁵ Thus, it is imperative for public and private bodies to release information to anyone who wants to be informed. The Access to Information Act of 2002 defines public body and private body.

¹⁶² Ibid at 198

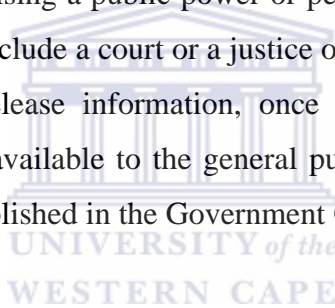
¹⁶³ Ibid at 198

¹⁶⁴ Du Plessis W (1999) at 198

¹⁶⁵ Ibid at 199

5.2.2.1 Public body

The Act defines the public body as “an official of a public body or private body in his or her capacity as such; or an independent contractor engaged by a public body or private body in the capacity as such contractor, is regarded as being a record of that public body or private body, respectively”.¹⁶⁶ The interpretation of this Act does not define the subject of the present study clearly. However, under the terms of the Constitution, the definition of “public body” is well understood. According to the Constitution, article 239, the term “public body” should be understood under the term “organs of state”, which means “any department of state or any administration in the national, provincial or local of government;¹⁶⁷ or any other functionary or institution exercising a power or performing a function in terms of the Constitution or a provincial constitution;¹⁶⁸ or exercising a public power or performing a public function in terms of any legislation, [but] does not include a court or a justice officer.¹⁶⁹ In terms of this obligation, public bodies may voluntarily release information, once a year, in a list of categories of information that is automatically available to the general public.¹⁷⁰ According to section 15 of PAIA, the information must be published in the Government Gazette.



5.2.2.2 Private body

A private body is defined by the PAIA as “a natural person who carries or has carried on any trade, business or profession, but only in such capacity;¹⁷¹ a partnership which carries or has carried or any trade, business or profession;¹⁷² or any former or existing juristic person, but

¹⁶⁶ Article 4 of PAIA

¹⁶⁷ Article 239 (a) of the Constitution of 1996

¹⁶⁸ Article 239 (b)(i)

¹⁶⁹ Article 239 (b)(ii)

¹⁷⁰ Du Plessis W (1999) at 199

¹⁷¹ Chapter 1 of PAIA

¹⁷² Chapter 1 of PAIA

excludes a public body.”¹⁷³ As with the public body, the private body has the right to release information that is automatically available. However, a private body, although not statutorily obliged to do so, may release information of this nature.¹⁷⁴

5.2.2.2.1 Manner to access

The Promotion of Access to Information Act 2 of 2000 (PAIA) provides the framework and procedures for the exercise of the constitutional right to information. The procedures of access can be made in accordance with PAIA, by following certain criteria, such as:

- **Form of request**



A request for access to a record of a private body must be made in the prescribed form to the private body concerned at its address, fax number or electronic mail address.¹⁷⁵ The form for a request for access prescribed for the purposes of subsection (1) must at least require the requester to provide sufficient particulars to enable the head of the private body concerned to identify the record or records requested and the requester;¹⁷⁶ to indicate which form of access is required; to specify a postal address or fax number of the requester in the republic;¹⁷⁷ to identify the right the requester is seeking to exercise or protect and provide an explanation of why the requested record is required for the exercise or protection of that right;¹⁷⁸ if , in addition to a written reply, the requester wishes to be informed of the decision on the request in any other manner, to state that manner and the necessary particulars to be so informed; and if the requested is made on

¹⁷³ Section 1 (c) of PAIA

¹⁷⁴ Article 52 of PAIA

¹⁷⁵ Article 53 (1)

¹⁷⁶ Article 53 (2)(a)

¹⁷⁷ Article 53 (2)(c)

¹⁷⁸ Article 53 (2)(d)

behalf of a person, to submit proof of the capacity in which the requester is making the request, to the reasonable satisfaction of the head.¹⁷⁹

- **Fees**

The PAIA provides, in section 22, for the payment of a fee upon request for access to information. It states: “the information officer of a public body to whom a request for access is made, must by notice require the requester, other than a personal requester, to pay the prescribed request fee (if any), before further progressing the request.”¹⁸⁰

- **Forms of access**

The forms of access to a record in respect of which a request of access has been granted are the following: If the record is in written or printed form, by supplying a copy of the record or by making arrangements for the inspection of the record;¹⁸¹ if the record is not a written or printed form, according to the PAIA, in the case of a record from which visual images or printed transcriptions of those images are capable of being reproduced by means of equipment which is ordinarily available to the public body concerned, by making arrangements to view those images or be supplied with copies or transcriptions of them.¹⁸²

- **Language of access**

A requester whose request for access to a record of a public body has been granted must, if the record exists in the language that the requester prefers, be given access to the record in the

¹⁷⁹ Article 53 (2)(f)

¹⁸⁰ Article 22 (1)

¹⁸¹ Article 29 (2)(a)

¹⁸² Article 29 (2)(b)

language preferred;¹⁸³ or if the record does not exist in the language so preferred or the requester has no preference or has not indicated a preference, be given access in any language the record exists in.¹⁸⁴

However, certain essential environmental information may not be released in the public domain, and private bodies may, therefore, be required to specifically request access to it.¹⁸⁵ It is important to note that the freedom to access information is not an absolute right. Therefore the right to access environmental information may be limited, for example, to protect national interest, commercial interest or even the privacy of the individual. The Constitution itself limits this right of access to environmental information in article 36. Article 36(1) of the Constitution states that “the rights in the Bill of Rights may be limited only in term of law of general application to the extent that the limitation is reasonable and justifiable in an open and democratic society based on human dignity, equality and freedom, taking into account all relevant factors, including the nature of the rights; the importance of the purpose of the limitation; the nature and extent of the limitation; the relation between the limitation and its purpose; and less restrictive means to achieve the purpose.”¹⁸⁶ Besides article 36 of the Constitution of the Republic of South Africa, the Promotion of Access to Information Act of 2000 also limits this right by enforcing principles quoted in article 36 of the Constitution. In its preamble, the Act states the limitations of the right. First, it emphasises that the state must respect, protect, promote and fulfill, at least, all the rights in the Bill of Rights, which is the cornerstone of democracy in South Africa;¹⁸⁷ second, it proclaims that the rights of access of any information held by a public or private body may be limited to the extent that the limitations are reasonable and justifiable in an open and democratic society based on human dignity, equality and freedom, as contemplated in section 36 of the Constitution.¹⁸⁸ Finally, NEMA also limits the right of access to environmental information in section 31. NEMA states, in Article 31(c), that a

¹⁸³ Article 31 (a)

¹⁸⁴ Article 31 (b)

¹⁸⁵ Du Plessis W (1999) at 198

¹⁸⁶ Article 36 (1) of the Constitution of the Republic of South Africa, Act 108 of 1996

¹⁸⁷ Juta’s Statutes of South Africa, 2006/7 Vol. 5at 1-221

¹⁸⁸ Ibid p 1-221. See also section 36 of the Constitution of the Republic of South Africa, 1996 quoted above.

request for information contemplated in paragraph (a) can be refused only if the request is manifestly unreasonable or formulated in too general a manner; if the public order or national security would be negatively affected by the supply of the information; or for the reasonable protection of commercially confidential information; if the granting of information endangers or further endangers the protection of the environment; and for the reasonable protection of personal privacy.¹⁸⁹

5.2.3 Common limitations of access to environmental information

The idea of limiting the access to environmental information is shared by all parties participating in the international field. The restriction of information is required in certain circumstances which can be related to the national interest, commercial interest and privacy of the individual.

5.2.3.1 In cases of commercial secrets and national interest



The PAIA protects financial, commercial, scientific or technical information. It also defines two categories of commercially valuable information protected from disclosure,¹⁹⁰ the first being financial or commercial and the second being scientific or commercial. The article which protects the commercial secrets is article 64.¹⁹¹ Article 64 (1) states that the head of a private body must refuse a request for access to a record of the body if the record contains trade secrets of a third party, financial,¹⁹² commercial, scientific or technical information other than trade secrets of the third party, the disclosure of which would be likely to cause harm to the commercial or financial interest of that third party.¹⁹³ However, in international law, the right to

¹⁸⁹ Article 31 of NEMA

¹⁹⁰ Ibid at 136

¹⁹¹ See also Article 68 (1) of PAIA

¹⁹² Article 64 (1) (a) of PAIA

¹⁹³ Article 64 (1) (b) of PAIA

access to environmental information is also limited regarding commercial secrets. In Europe, for example, the Draft Council of Europe Convention on Access to Official Documents¹⁹⁴ provides that parties to the Convention may establish limitations to protect commercial and other economic interests, private or public.¹⁹⁵ The main purpose of this exception is to prevent undue harm to competitive or bargaining positions. An example of information that may be covered is information that amounts to “trade secrets”, which pertain to competition or production procedures, trade strategies, lists of clients, and so on.¹⁹⁶ It may also be information that public authorities use to prepare collective bargaining in which they take part or data for tax purposes collected from individuals and legal persons.¹⁹⁷ However, in the Republic of Congo, the limitations of the right of access to environmental information are given by the general provision of the Constitution of 2002, which states, in article 19, that “Freedom of information and communication shall be guaranteed and the activities related to these domains shall be exercised with respect for the law.”¹⁹⁸



5.2.3.2 Privacy of the individual and data protection

Privacy of the individual and the protection of property are both protected by PAIA in South Africa; article 66 of PAIA states that the head of a private body must refuse a request for access to a record of the body if its disclosure could reasonably be expected to endanger the life or physical safety of an individual. The same article adds further that a “private body may refuse a

¹⁹⁴ At the 1025th meeting of the Ministers' Deputies (30 April, 2 and 5 May 2008, item 4.3), the Committee of Ministers decided to invite the Parliamentary Assembly to give an opinion on the draft Council of Europe Convention on access to official documents, contained in document CM(2008)56 addendum 1. I enclose a copy of the draft Convention and of its Explanatory Report At <<http://assembly.coe.int/Main.asp?htm>> (last accessed 7 may 2008)

¹⁹⁵ Chapter 1 (g)

¹⁹⁶ Ibid.

¹⁹⁷ Ibid.

¹⁹⁸ Constitution of Republic of Congo

request for access to a record of the body if its disclosure would be likely to prejudice or impair the security of a building, structure or system, including, but not limited to, a computer or communication system; a means of transport; or any other property; or methods, systems, plans or procedures for the protection of an individual in accordance with a witness protection scheme.” This protection also applies in international law. Regulations such as those contained in the Council of Europe’s 1981 Convention for the Protection of Individuals with regard to the Automatic Processing of Personal Data¹⁹⁹ have also been created at international level. However, in the Republic of Congo, besides the provision of article 19 of the Constitution which gives a general limitation, there is not any specific response regarding the protection of data information or of privacy of the individual.

5.2.3.3 In cases of confidential information

The Promotion of Access to Information Act 02 of 2000 protects confidential information. Article 65 states that the head of a private body must refuse a request for access to a record of the body if its disclosure would constitute an action for breach of a duty of confidence owed to a third party in terms of an agreement.²⁰⁰

5.3 Problems with the access to environmental information in South Africa

The lack of access to environmental information in South Africa is mainly related to environmental governance issues but also due to some aspects of economic living, which is also the case in the Republic of Congo. However, in South Africa, like the Republic of Congo, each country faces its own issues in terms of the lack of access to environmental information.

¹⁹⁹ Convention for the Protection of Individuals with Regard to the Automatic Processing of Personal Data Convention, ETS No. 108, Strasbourg, 1981

²⁰⁰ Article 65 of PAIA

5.3.1 Causes in South Africa

The whole issue of access to environmental information is still not well defined in South Africa. Although South Africa has the most sophisticated legislation concerning environmental protection in Africa, its environmental performances are lower than its potential. The country is still lagging behind regarding the promotion of environmental protection, particularly in lack of access to environmental information. One of the main causes of lack of access to environmental information can be attributed to socio-economic problems; and mismanagement is the other main problem related to the matter, which makes it difficult to spread information among people. In that list, apartheid can also be included.

5.3.1.1 Poverty

There is a link between poverty and the environment in South Africa, from an environmental protection perspective. With the concentration on economic development, environmental problems are largely disregarded in Congo-Brazzaville, as in South Africa. This is a common point shared by both countries. The Republic of Congo and the Republic of South Africa, on one hand, have similar bodies of governance who are more preoccupied in improving the state of their economy, thereby neglecting the environment, which is obviously wrong. On the other hand, people are trying to improve their life style and depend on the government to do so. Due to the high rate of poverty in both countries, it is difficult to convince people to look after the environment when they cannot look after themselves; what hungry people need is food. People living in a state of poverty have a sense of urgency, in that any contribution to survival today is worth much more than a promise of a better future.²⁰¹ Thus in a day-to-day survival situation, resources tend to be exploited with little regard for the future consequences, even if environmental problems are well understood.²⁰² This makes the task of informing people and persuading them against environmental degradation very difficult. In a situation of poverty,

²⁰¹ Strydom HA & King ND (2009) at 41

²⁰² Ibid at 41

people give less attention to environmental matters; generally they cannot afford the fees asked for obtaining the information. Why would they bother to be interested in knowing about the environment if they can hardly afford their simple life? In such a situation, environmental information becomes itself a problem of less interest to a poor man. The access to environmental information becomes almost impossible unless it is free and available easily. The only solution is to deal with the poverty problem in order to make information more available to people. In Europe, for example, information is more accessible because the rate of poverty is very low compared to the Republic of Congo and South Africa. People have a better living standard and because of that, they even live longer; avoiding starvation is not a priority to them.

5.3.1.2 Population growth

Besides the poverty issue, population growth is another primary impediment to the management of environmental issues; it interferes in the effectiveness of relaying information to the general population. Rapid population growth can put stress on political institutions and stability, particularly in the regions where there are established ethnic differences.²⁰³ Furthermore, there are many links between population growth and social conflict,²⁰⁴ which easily affects the environment. In highly populated regions, it is always difficult to talk about environmental concerns, particularly about access to environmental information. South Africa is one of the regions which face high population growth as South Africa has many informal settlements. Khayelitsha, Philippi, and Langa in Cape Town are just three examples of settlements with growing populations and very few or no basic services such as housing, water, sanitation, electricity, refuse collection, and proper roads.

Khayelitsha is one of the largest townships in the Western Cape Province and, according to information from the Khayelitsha Education Resource and Information Centre (KERIC), the

²⁰³ Palmer JA (1998) at 36

²⁰⁴ Ibid at 36

township covers an area of more than 35 square kilometers and is built exclusively on sand dunes.²⁰⁵ Because no significant statistics have been compiled to date, population estimates vary from 500,000 to more than a million.²⁰⁶ In such a situation, how could it be possible for the population of Khayelitsha to have access to environmental information if they cannot even have a real statement on the population living in the area? Thus, as environmental protection cannot be successfully promoted in conditions of overpopulation, a healthy environment cannot be maintained in such conditions.

5.3.1.3 Negative impacts of the heritage of apartheid on environmental information

The impact of apartheid on the environment can be read in the eroded hillsides of the previous black “homelands”, the unsanitary and hazard-prone conditions in townships and shack settlements, and the stark racial difference in statistics of morbidity and mortality relating to environmental health.²⁰⁷ Attention is drawn not simply to the inequitable distribution of environmental resources and hazards, but also to the actual environmental costs of apartheid,²⁰⁸ particularly to environmental illiteracy, due probably to the lack of environmental education, which definitely affects the dissemination of information. The idea of providing access to environmental information for many black people today in South Africa represents a complex deal which is facing the public authority along with other environmental problems. How could it be possible to inform the population regarding environmental problems in a situation in which millions of people do not read and do not have a basic education because of the terrible historic past of racial segregation? The past represents an obstacle in the promotion of environmental matters, making access to environmental information a privilege reserved for wealthy white people and a minority of wealthy people in the black population.

²⁰⁵ McDonald DA (2002) at 128

²⁰⁶ Ibid at 128

²⁰⁷ Ibid at 93

²⁰⁸ Ibid at 93

The situation, after the end of apartheid in South Africa, regarding the access to environmental resource can thus be seen to be one of inequalities: some can have access to information and others cannot. An important example is in the difference in environmental education status between population subgroups. It is true that urgency to reverse the negative trends has been growing in South African authorities in implementing policies and promoting, as far as they can, environmental matters, but the goal of achieving good environmental protection by giving access of information to the population has yet to be achieved. The provision of a healthy environment and sustainable development of the cities of South Africa are projects which depend largely on an improvement in environmental education through giving access to environmental information.

5.3.1.4 Lack of environmental data

The issue of access to environmental information has already been addressed by the government and other organisations such as the Department of Environmental Affairs and Tourism in South Africa. A lack of environmental data is one of the causes of the lack of access to environmental information in South Africa. The Republic of South Africa has a serious gap in environmental data. The Department of Environmental Affairs and Tourism, in one of their reports, noted that lack of environmental data is one of the reasons that “good policy decisions need to be based on timely, consistent, and accurate information. Such information needs to be collected on an ongoing basis. We also need systems for detecting trends in the data collected, to be used for modifying policy when necessary.”²⁰⁹ The DEAT adds further that “serious gaps in environmental data greatly hamper our efforts to make better policy decisions. The current South Africa Environment Outlook report had to rely on inventory data for greenhouse gases that are more than 10 years out of date.”²¹⁰ In the same vein, the DEAT gives some examples of instances in which it is critical to obtain current information due to the absence of data. The DEAT considers that there are critical indicators for which they have no adequate data; these

²⁰⁹ DEAT “Environmental Information” at <<http://soer.deat.gov.za/themes.aspx?m=498>> (This page was last updated 19/11/2007)

²¹⁰ Ibid.

include current land cover, fine-scale spatial information on habitat degradation, and some aspects of water quality, air quality, and carbon emissions. They have also stated that they do not have reliable data on genetically modified organisms, human vulnerability, or groundwater use and recharge, and have limited knowledge of some aspects of biodiversity. A sector in which there is a real absence of environmental information is the mining sector, which has a serious lack of environmental information and action on the cumulative impacts of mining on the environment.

5.3.1.5 Environmental mismanagement affecting access to environment information

Management is the execution of planned controls so as to achieve a desired outcome.²¹¹ Therefore, when management skills and techniques are not well applied, management becomes itself a problem. One of the ultimate causes of the lack of access to environmental information in South Africa may be related to the problem of environmental mismanagement. The impacts of environmental mismanagement interfere in environmental management by causing distortion in the application of policies, which distorts the way in which environmental information can be made available and also distorts the way in which the population can participate in decision-making at any level. Two points will be addressed in this section: environmental administration failure and mismanagement in local areas.

- **Environmental administration failure**

South Africa faces its own problem in this regard. While it has developed well-established environmental management policies, the country is ineffective regarding the lack of access to environmental information, due widely to lack of good environmental management. In South Africa, the environmental administrative system faces huge challenges in addressing the needs of their citizens, such as limited resources, lack of administration skills, and delays in the execution of administrative matters. Such a situation slows down not only the process of execution of

²¹¹ Strydom HA & King ND (2009) at 3

administration matters, but also all systems of management. As the focus of this study is access to environmental information, attention must be given to the impact of poor environmental administration on the process of releasing environmental information. This matter is crucial. Any problem which affects environmental administration affects also any subject related to it. In these circumstances, environmental mismanagement has a fundamental impact on the process of dissemination of environmental information as it makes the availability of information difficult, expensive and slow, with lengthy delays in acquiring and disseminating information.

In addition to the mismanagement of environmental administration, there is not a strong administrative justice in South Africa. The paucity of environmental case law and apparent judicial restraint in environmental litigation has provided a poorly developed jurisprudence in environmental law.²¹² This does not encourage reference to administrative justice. However, South Africa does have administrative justice. The only problem is that a decision authorising an activity is an administrative decision and, therefore, has to comply with the requirements of administrative law.²¹³ An example of a case where administrative justice has been made in a way to provide environmental information is the case of *Earthlife Africa (Cape Town) v Director-General: Department of Environmental Affairs and Tourism and Another*,²¹⁴ where interested parties had been given an opportunity to comment on a draft of the Environmental Impact Assessment report, but not the final report, which was held to be procedurally unfair.²¹⁵ In this case, the Court stated that in exceptional circumstances internal remedies need not be exhausted before an application for review is brought²¹⁶. The Court then considered the ground for review.²¹⁷ The specific case dealt with the interests of the public in general and not only with those of a few individuals.²¹⁸ The Court considered which information would be necessary to constitute a fair hearing and came to the conclusion that an “interested party must be placed in a

²¹² Strydom HA & King ND (2009) lvi

²¹³ Ibid at 1029

²¹⁴ 2005 (3) SA 156 (C)

²¹⁵ Strydom HA & King ND (2009) at 1029

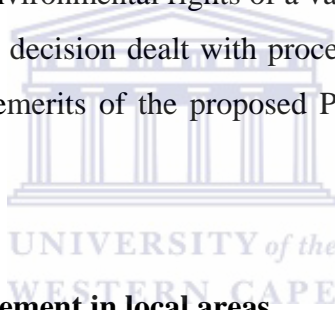
²¹⁶ Kotze et al.(2008) at 128

²¹⁷ Ibid.

²¹⁸ Ibid.

position to present and controvert evidence in a meaningful way ... the aggrieved party should know the 'gist' or substance of the case it has to meet."²¹⁹ The DG conceded that the final report contained information that was not available in the draft report.²²⁰

The question of whether the applicant could make further representation, orally or written, on the final report was then considered.²²¹ The applicant and other interested parties therefore had to be afforded a reasonable opportunity to provide written comments.²²² The decision of the DG was accordingly set aside.²²³ The Court found that up until the final stage, the public participation process was fair and therefore only the final decision was set aside and not the whole process.²²⁴ The Court referred to exceptional circumstances that required consideration, for example, that the "[a]pplication concerns the very sensitive and controversial issue of nuclear power, which potentially affects the safety and environmental rights of a vast number of people."²²⁵ The Court, however, explicitly stated that this decision dealt with procedural fairness and "did not express any opinion as to the merits or demerits of the proposed PBMR, in particular, not of nuclear power in general."²²⁶



- **Environmental mismanagement in local areas**

As mentioned above, environmental mismanagement may cause serious problems in administration matters by making the mechanism of environmental management slow and expensive and thus exclusive to only the category of the wealthy individual in society. However, while the law allows for access by the public to environmental management in South Africa, the

²¹⁹ Ibid.

²²⁰ Ibid. at 129

²²¹ Ibid.

²²² Ibid. The Court considered the question of whether written or oral presentations could be made- see 175F-177B

²²³ Ibid.

²²⁴ Ibid.

²²⁵ Ibid

²²⁶ Ibid.

public seems not to be implicated and remains distanced from environmental management matters. Article 16(5), which gives authorisation for public access, reads as follows: “[T]he Director-General must keep a record of all environmental implementation plans and environmental management plans and relevant agreements between organs of state and any reports submitted under subsection (1)(b): and such plans, reports and agreements must be available for inspection by the public.”²²⁷ However, in reality, the provision of article 16 of NEMA rests without manifestation, mainly observed in the local area. Besides, the permission given in article 16(5) of NEMA to the public, in South Africa, many tools are used by the governments to inform citizens about their nation’s environmental status and about long-term environmental trend data, such as the *States of the Environment Reports* (SOEs).²²⁸ Therefore, environmental information should be available and easy to access by the population. Unfortunately, there is little access to environmental information for a large number of the population. One needs to ask where the problem lies.

Examination of the new environmental governance framework which has emerged in South Africa can provide the answer in that question. In fact, the new environmental governance system has been installed on the basis of decentralisation. However, this concept of decentralisation has shown many problems which have as roots the past of South Africa. Decentralisation, in the local as well as the provincial areas, means, on one hand, a set of good things such as the benefits of wide coverage and expansion of social service, and on the other hand, corruption, conflict of power, and awkward positions of districts and municipalities concerning environmental matters. While the purpose of dissemination of environmental information concerns all national areas, the availability of information in the local and regional areas continues to be inadequate, which represents threats and challenges in present governance and management systems. Unless action is taken now to ensure good governance and effective information management, in order to achieve effective promotion of environmental protection, the situation will only continue to deteriorate. Today, with the new environmental governance, South Africa is fragmented. This makes environmental management a complex system in which

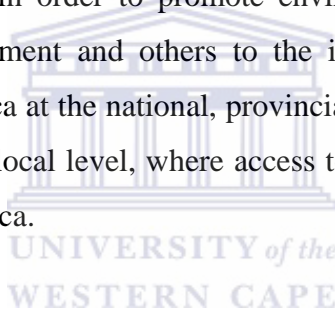
²²⁷ Section 16 (5) of NEMA

²²⁸ Strydom HA & King ND (2009) at 95

the decentralised governance structure may exacerbate duplication and inconsistency between various competencies.²²⁹ The impacts of this fragmentation can affect the access to environmental information by introducing significant gaps to environmental information, ineffective dissemination of information, inconsistent behaviour by government officials²³⁰ regarding the promotion of environmental protection, which may affect the participation of the population in decision-making, and confusion of responsibilities between various governments departments.

5.4 What should be done in South Africa?

Many solutions can be provided in order to promote environmental protection. Some of the solutions relate to social development and others to the improvement of the environmental management system in South Africa at the national, provincial and local levels. However, in this study, attention is confined to the local level, where access to environmental information shows the greatest problems in South Africa.



5.4.1 Providing environmental education

Access to environmental education is the key to achieving an effective promotion of environmental protection. As suggested in the above chapter, the idea of environmental education in South Africa does have major importance. In fact, it is the process of recognising values and classifying concepts in order to develop the skills and attitudes necessary to understand and appreciate the inter-relatedness among human beings, their cultures, and their biophysical surroundings.²³¹ Also, environmental education entails practice in decision-making

²²⁹ Ibid at 18

²³⁰ Ibid at 19

²³¹ International Union for the Conservation of Nature and Natural Resources (IUCN) (1970)

and self-formulation of a code of behaviour about issues concerning environmental quality.²³² Therefore, because environmental protection necessitates environmental knowledge, it is important to give knowledge and skills to help people to improve their environmental protection. Most people base their understanding of environmental processes and development on traditional belief or on information provided by a conventional education.²³³ Many thus remain ignorant about ways in which they could improve traditional practices and better protect the natural resource base.²³⁴ With education, it should therefore be possible to provide comprehensive knowledge, encompassing and cutting across the social and natural sciences and the humanities, thus providing insights on the interaction between natural and human resources, between development and the environment.²³⁵ This is why it is vital to grant an important place to access to environmental information in South Africa and makes it part of sustainable development strategies. Only if such broad education is provided will protection of the environment be effective in South Africa.



5.4.2 Updating environmental data

It is very important to note that environmental data change quite quickly, particularly today with the climate change. Therefore, in such a situation, it is necessary to disseminate information quickly in order to provide current information that is on time and updated. The Republic of South Africa, in this way, can do much better than the Republic of Congo, because of its enormous economic, technical and management potential. In South Africa, however, it is important to note that the separation of environmental governance has exacerbated inequalities regarding the availability of information. At the national level, environmental information is clearly quantified. In the local area, environmental information meets a problem of shortage. The country should make an effort to have environmental information available in each area. It also needs to have available information in each field of the environment, such as adequate data on

²³² Ibid.

²³³ The Report of the World Commission on Environment and Development, (1987) p.111 and p.113

²³⁴ Ibid. see also Palmer J.A. (1998) 78

²³⁵ Ibid.

current land cover, fine-scale spatial information on habitat degradation, and some aspects of water quality, air quality, and carbon emissions, and reliable data on genetically modified organisms, human vulnerability, or groundwater use. With the growing internationalisation of technology and production, the improvement of capacities has to be related to the ability to access international networks where knowledge and technology are produced. The DEAT emphasises that there is, furthermore, a need for a consolidated and consistent monitoring and evaluation system.²³⁶ The DEAT states further that “currently, many data-generation exercises, such as the population Census and national land cover assessments do not coincide with reporting programmes, including the state of environment reports. In fact, according to the DEAT, monitoring is often not carried out at regular intervals, and in some cases is so sparse that meaningful interpretation over large spatial scales cannot be made.²³⁷ Thus, a real monitoring of information available should be made in order to have effective information.



5.4.3 Enforcing environmental justice

Although the government does recognise the right of access to environmental information in the Republic of South Africa, the obligation to provide environmental information has emerged sometimes from the courts. This is of course due to the conflicts between opposing parties. The case of *Earthlife Africa (Cape Town) v Eskom Holdings Ltd*²³⁸ is one of the examples which deals with an application for leave to appeal against a decision by the Court handed down on 15 December 2005.²³⁹ The applicant exercised its right to access to information against Eskom to obtain information relating to the pebble bed modular reactor (PBMR) that was being developed and researched by Eskom. The information officer refused the information based on the grounds of refusal contained in the Promotion of Access to Information Act 2 of 2000. The applicant is a non-governmental, non-profit and voluntary environmental association and is opposed to

²³⁶ DEAT “Environmental Information” at <<http://soer.deat.gov.za/themes.aspx?m=498>> (This page was last updated 19/11/2007)

²³⁷ Ibid.

²³⁸ 2006 (2) All SA 632 (W)

²³⁹ 2005 (3) SA 156 (C)

development and use of nuclear energy. After reformulation of the original request for information, Eskom released some information to the applicant. The applicant, however, persisted in requesting the remainder of the information and accordingly approached the Court.²⁴⁰ In the initial decision of December 2005, the Court found that the applicant had the right to access information in terms of section 32(1)(b) of the Constitution of the Republic of South Africa, 1996, and that the applicant could rely on this right since it sought to enforce section 24 of the Constitution of the Republic of South Africa, 1996.²⁴¹ The applicant's averment that the Court should have relied on section 32(1)(a) was irrelevant as the Court clearly stated it could rely on this right. The Court made a cost order against the applicant; it found that although the "applicant ... came to the court with noble intentions and with a noble cause, ... the applicant persisted in claiming access to all information sought" and "made no concession whatsoever as to whether any portion of the information withheld might have been exempt information."²⁴²

This case illustrates that environmental justice in South Africa has its role to play in promoting access to environmental information. The role that environmental justice plays in the recognition of the right to access environmental information is fundamental. Environmental justice, by way of the decisions of the Court, comes to provide or remind duties and obligations of parties in the process. Using the Court as a tool of justice can, on the one hand, promote the right to access to environmental information, as it can limit it, on other hand. Environmental justice has increased the possibility of obtaining easy information after a decision of the Court. In such cases, parties in the process have an obligation to follow the laws. Therefore, it is very important to enforce the judicial system in order to make environmental information more available.

²⁴⁰ Kotze LJ (2008) at 155

²⁴¹ Ibid.

²⁴² Ibid.

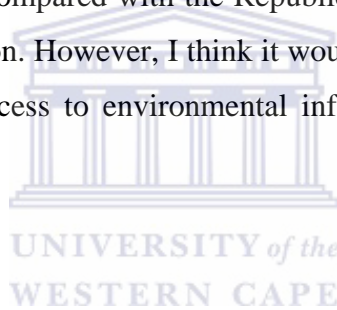
5.4.4 Increasing environmental information by using information technology

The above study has shown that the South African government does recognise the right of access to environmental by increasing or implementing policies. However, in its aim to be more effective in providing information, government should maybe become more proactive in developing information technology. This means that it should deploy ways in which the public sector can be informed easily. The idea to use technology is one of the most valuable today. It has been demonstrated in many countries, such in Japan, that using information technology can easily increase the dissemination of environmental information. With the Internet, for example, it is possible to access information to be shared by many and among many, leading to a many-to-many distribution pattern rather than the standard broadcast-type distribution in which information goes from one to many.²⁴³ This new model of global information sharing emerged with the Internet and should be the way in which South Africa manages its environmental disclosure. It is important to note that, already in South Africa, many governmental institutions are progressing well in this way of sharing information with the population. With the new technology, not only can environmental information be shared by a wide number of people immediately but it is easy to update or to improve the quality of information shared. Thus, regarding South Africa, a set of responses to environmental issues has been made in order to provide more access to environmental information to the public. Some of the answers are common to the situation of access to environmental information in the Republic of Congo, such as providing environmental education and increasing the utilisation of new technology, but others are unique to South Africa, in which the situation of access to environmental information is totally different in terms of the implementation of laws and governance.

²⁴³ Knauer J & Richard M. (2001) "Information System and the Environment" at <<http://books.nap.edu/catalog.php>> (Last accessed 2001)

5.5 Conclusion

Nine years after its implementation, the strategy of promoting environmental protection by the implementation of the Promotion of Access to Information Act 2 of 2000 does not appear as being fruitful to environmental protection. Did the Promotion of Access to Information Act 2 of 2000 fail? The period is too short to give any comment. However, if there is one thing that can be said, it is that since the promulgation of the Promotion of Access to Information Act 2 of 2000 in South Africa, requests for the right to access to environmental information via the courts have become more frequent than before. Do national policies need to be changed? Any change regarding national policies on the right of access to environmental information that might improve on the present situation is necessary. As has been noted above, South Africa has one of the more developed legislations, compared with the Republic of Congo, in terms of the right to access to environmental information. However, I think it would be true to say more sophisticated policies regarding the right of access to environmental information need to be designed and strictly enforced.



Chapter 6: Conclusion and recommendations

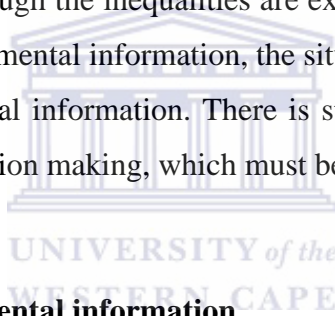
6.1 Access to environmental information as a limited right

Although this study is specifically about the problem of lack of access to environmental information, the lack of access to information in general has been revealed by specifying environmental information, which is itself a type of information. Two concepts of realisation have been studied, one national, with the model of the Republic of South Africa, another international, with the EU model. This study has been limited to analysing domestic African countries in an international context. The Republic of Congo and the Republic of South Africa have been considered as cases. The study has shown a particular limit to finding information regarding the Republic of Congo, where there is no real policy implemented regarding the access to environmental information. The case exception of the Republic of South Africa seems different. It is true that the access to environmental information has some problems due to the lack of availability of information, but the situation is much better than in the Republic of Congo. South Africa has confirmed its recent inclusion in the list of newly industrialised countries, with a strong and rich development of laws in different areas, even concerning the field of access to environmental information, by implementing the Promotion of Access to Information Act 2 of 2000, also by providing some provision regarding the right of access to environmental information in the National Environmental Management Act 107 of 1998 and, finally, and most important, by reserving an entire section in the Constitution of 1996, which has been fundamental to the promotion of environmental protection. Indeed, article 32 of the Constitution of the Republic of South Africa is crucial to environmental protection promotion.

Therefore, the Republic of South Africa and Zimbabwe are the only countries in Africa in which the implementation of the right of access to environmental information has taken place. It is true that the application of the Access to Information and Protection of Privacy Act in Zimbabwe still needs to be verified, but it is important to note that, at least, steps have been taken, which cannot be said of a country like Congo. However, it is important to acknowledge the effort of Angola,

Ghana, Mauritius, Mozambique, Nigeria and Tanzania in the process of promoting environmental information. The analysis has shown the incapacity of African countries to face the promotion of environmental protection. It has questioned the effectiveness of the models of “environmental democracy”, “environmental justice” and “environmental management” in practice in the Republic of Congo and South Africa.

Finally, the question of the right to access to environmental information is not developed in the Republic of Congo, so there is no public participation in environmental decision making process, nor is there a quest for environmental protection. The concept of environmental protection is non-existent and the only recommendation is to start now to build the concept from the beginning in the Republic of Congo, by starting to recognise the right of access to environmental information. In South Africa, although the inequalities are extreme between the populations, and not everyone has access to environmental information, the situation seems much better as there is access to the right to environmental information. There is strong environmental protection and strong citizen participation in decision making, which must be enforced.



6.2 Providing access to environmental information

This section expands on the discussion presented in chapter 5 above regarding provision of access to information.

6.2.1 African commitment

As noted in chapter 5, developing countries, especially African countries, and, in particular, the Republic of Congo, do not give environmental issues primary priority. What should African countries do? The answer is that African countries should recognise that they lag behind the rest of the world in environmental awareness, which is crucial for their future well-being, and take resolutions for promoting environmental protection. Africa should be reminded of the fact that

the right to access environmental information is still in its infancy, and it has time to take measures. Even some developed countries, such as UK, only recently promulgated legislation for protecting the right.

6.2.2 Towards an environmental justice

Waves of implementation of legislation and regulations regarding the question on the right of access to environmental information swept across Europe in the 1990s, introducing, on the surface, the right to access to environmental justice, such as article 6 of the European Communities (Access to Information on the Environment) Regulation 2007²⁴⁴ :

Member States shall ensure that any applicant who considers that his request for information has been ignored, wrongfully refused (whether in full or in part), inadequately answered or otherwise not dealt with in accordance with the provisions of Articles 3, 4 or 5, has access to a procedure in which the acts or omissions of the public authority concerned can be reconsidered by that or another public authority or reviewed administratively by an independent and impartial body established by law. Any such procedure shall be expeditious and either free of charge or inexpensive.

Each country in Africa should have followed the example of EU in its legislation. The Republic of Congo should have introduced environmental justice, with very high sanctions, with more environmental cases regarding the right of access to environmental information and with a strong jurisprudence in the subject as justice will constitute an effective way to promote environmental protection. In South Africa, environmental justice exists already, but does not have enough power to balance environmental matter on the positive side. Environmental justice in South Africa needs be more stringently enforced, to have more powers. Also, as it is still so recent, time is needed for the system to show its full capacity. With time, it will become more trusted and thus more powerful.

²⁴⁴ European Communities (Access to information on the Environment) Regulation 2007

S.I. No. 133 of 2007

6.2.3 Towards the promotion of legislation

In studying the situation of the Republic of Congo, the idea which comes first is to implement policies regarding the field of access to environmental information. However, the implementation of environmental policies does not concern only the Republic of Congo, but also other countries throughout the world. In Africa, for example, each country should have to implement its own policy on the right to access environmental information. If the task seems difficult for African countries, it is possible for them to become united around one group decision, such as the Aarhus Convention, European Communities (Access to Information on the Environment) Regulations 2007.

In sum, worldwide, countries proclaim themselves to be environmentally democratic countries, but the paradox is that environmental democracy is often accompanied by a high rate of inequity, corruption, and violation of rights, which have been recorded consistently. While the absence of respect for fundamental rights has remained notable, people, ironically, use the term “environmental democracy” to prove they are close to the environment. According to reports, the world is moving positively regarding environmental issues and the right of access to environmental information is said to be guaranteed. However, the reality is often quite different and would seem to indicate the need to establish environmental policies urgently. The promotion of environmental protection by ensuring the right of access to environmental information is not present in many developing countries, especially in Africa, and in particular in The Republic of Congo. If the Republic of Congo were to seriously face the challenge by granting the right of access to environmental information, the impact of environmental degradation could be reduced considerably.

Bibliography

BOOKS

Altman, Wandersman (1987) *Neighborhood and community environments*, New York Plenum

Barnett C and Low M (2004) *Spaces of Democracy: Geographical Perspectives on Citizenship Participation and Representation*, Sage Publication Ltd.

Brown L R, Gardner G & Halweil B (1998) “*Beyond Malthus: Sixteen Dimensions of the population Problem*”, Worldwatch Paper

Cornwall A, Coelho, Schattan V (2007) *Spaces for Change the politics of citizen participation in new democratic arenas*, Wed Books.

Deelstra T, Yanistky O (1991) *Cities of Europe: the Public's Role in Shaping the Urban Environment*, Mewdunarodnye Otnoshenia Publishers

De La Mothe J “*Science, and Technology and Governance*” (2001) London and New York: Continuum

Diamond J (1999) *Developing Democracy: Toward Consolidation*, Baltimore, MD: Johns Hopkins University Press.

Evans, Murray (2008) *The African Charter on Human and People's Rights: The System in Practice, 1986-2006*”, (2ed), Cambridge: Cambridge University Press

Fuggle, Rabbie (1992) *Environmental Management in South Africa*, Juta & Co, Ltd

Fuggle, Rabbie (2009) *Environmental Management in South Africa* H. A. Strydom & N. D. King (eds), (2ed), Cape Town: Juta.

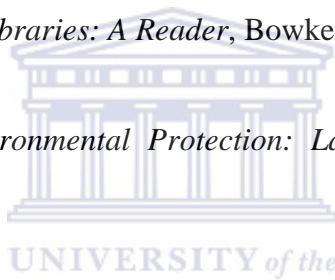
Kiss A, Shelton D (2004) *International Environmental Law*, (3ed), New York: Transnational Publishers, Inc.

Kotze LJ, Du Plessis W, Feris L & Olivier M (2008) *South African Environmental through the cases*, (1ed), Durban: LexisNexis.

Hallo, (1993) “Openbaarheid van milieugegevens: een transatlantische beschouwing” in Van den Broek, Van der Meijden en Hallo (ed) Openbaarheid van milieurelevante bedrijfsgegevens.

Harvey R (1993) *Preservation in libraries: A Reader*, Bowker Saur

Holder J & Lee M (2007) *Environmental Protection: Law and Policy*, (2rd), Cambridge: Cambridge University Press.



Hunter* D, Salzman J, Zaelke D (2002) *International Environmental Law and policy: Treaty Supplement*, (2ed), Foundation Press

Hunter D, Salzman J, Zaelke D, (2002) *International Environmental Law and Policy*, (2ed), University Casebook Series

Imawa T (2002) Emerging Principles and rules for the Prevention and Mitigation of Environmental Harm”, in Brown Weiss E. (Ed.), *Environmental change and international law: New Challenges and Dimensions*, United Nations, Tokyo: Tokyo University Press, available at <www.une.edu/unepbooks/uu25ee/uu25ee0k.htm> (last accessed 4/04/2009).

Lester S, Mercurio B (2008) *World Trade Law: Text, Material and Commentary*, Hart Publishing

Louka E (2006) *International Environmental law “Fairness, Effectiveness and World Order,”*
Cambridge: Cambridge University Press.

Mason M (1999) *Environmental Democracy*, Earthscan Publications

McDonald D A (2002) *Environmental Justice in South Africa*, Ohio: Ohio University Press
Athens, Cape Town: University of Cape Town Press

Miller C (1998) *Environmental Rights: Critical perspectives*, Routledge.

Moore D (2007) *The World Bank: Development Poverty Hegemony*, University of KwaZulu-
Natal Press



Palmer J A (1998) *Environmental Education in the 21st Century: Theory, Practice, Progress and Promise*, London and New York: Routledge 36

Paterson A & Kotze LJ (2009) *Environment Compliance and Enforcement in South Africa: legal perspectives*, Cape Town: Juta.

Sands P (1995) *Principles of International Environmental Law, Frameworks Standards and Implementation*, (Vol.1), Manchester: Manchester University Press.

Sands P (2003) *Principles of International Environmental Law*, (2ed), Cambridge: Cambridge University Press.

Sunkin M, Ong D M, Wight R (2001) *Sourcebook on environmental law*, (2ed) Routledge Cavendish

Thornton J, Beckwith S (2004) *Environmental Law*, (2ed), Thomson: Sweet & Maxwell

Todes A., Sithole S. & Williamson A. (2007) *Local Government: Gender and Integrated Development in Planning*, HSRC Press

ARTICLES IN JOURNALS AND CHAPTERS IN BOOKS

Du Plessis W “Enforcement of environmental rights by way of a right to information” Special edition a tribute to Koyana D S, (1999) Vol 20 1, *Obiter*, 92-113

FAO fisheries Report No 740, Regional Workshop on Network for improved access to fisheries and Aquaculture information in Africa, (2004) FAO Rome

Johnson W.C. (1984) *Citizen Participation in local planning in UK and USA: A comparative Study*, *Progress in Planning*, at <http://www.scopus.com>, (last accessed on 10 April 2009)

Morales B.L.F ‘*Consumo sustentable como derechoobligación Para disfrutar de un medio ambiente sano*’ (2002) Vol. 14 (23) *Región y Sociedad*

Yigen, K., ‘Enforcing social justice: Economics, and social rights in South Africa’ (2002) 4 *International Journal of human Rights* pp 13-29 (Hereinafter referred to as Yigen: 2002), at p 21.

Yue (2004) *The environment needs public participation*, available online at <<http://www.chinadialogue.net/author/show/91-Pan-Yue-br->> Last accessed on the 05 December, 2006.

LEGISLATION

Congo

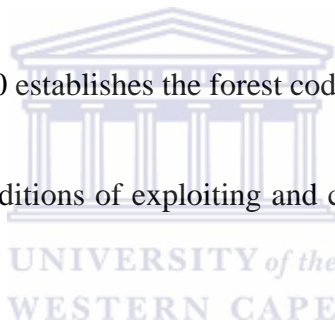
Congolese Constitution of 1992, adopted by referendum on 15 March, 1992

Congolese Constitution of 2002 adopted of the date of 20 January, 2002

Law no 003/91 of April 23, 1991 on the protection of environment

Law no 16/2000 of November 2000 establishes the forest code

The Law n°48/83 defining the conditions of exploiting and conservation of wild fauna; adopted on 21 April 1983



South Africa

Constitution of the Republic of South Africa, Act 108 of 1996

Interim Constitution, Act 200 of 1993

National Environmental Management Act, No. 107 of 1998

Promotion of Access to Information Act 2 of 2000

Promotion of Administrative Justice Act 3 of 2000

Comparative law

France: Law on Access to Administrative Documents of 1978

India: Right to Information Act 22 of 2005

Sweden: Freedom of the Press Act of 1766

United States: Freedom of Information Act signed on 4 July, 1966

Zimbabwe: Access to Information and Protection of Privacy Act of 2002

INTERNATIONAL INSTRUMENTS



Aarhus Convention, done at Aarhus, Denmark, on 25 June 1998.

Convention on Access to environmental information 2007

Convention for the Protection of Individuals with regard to the Automatic Processing of Personal Data Convention, ETS No. 108, Strasbourg, 1981

Council Directive 90/313/EEC, OJ L 158, 23 June 1990

OSPAR Marine Environment Convention signed in Paris on 22 September 1992

Protocol to the American Convention on Human, adopted at Asuncion, Paraguay 06 August 1990

Rio-Declaration 1992, adopted at Rio Conference, Rio de Janeiro, from 3 to 14 June 1992.

Stockholm Declaration 1972, adopted at Stockholm Conference, Stockholm, from 5 to 16 June 1972.

The 1981 African Charter of Human and Peoples' Rights, adopted June 27, 1981.

CASES

Cambridge Water Co. v Eastern Leather plc, (1994) House of Lords 1 All E.R.

Earthlife Africa (Cape Town Branch) v Eskom Holdings Ltd, (2006) 2 All SA 632 (W)

Earthlife Africa (Cape Town Branch) v Director-General: Department of Environment Affairs and Tourism and Another, 2005 (3) SA 156 (C)

Gaskin v. United Kingdom, 160 Eur. (ser.A) (1987)

Leander v. Sweden, 116 Eur. CT. H.R. (ser.A) (1987)

MOX Plant case Ireland v United Kingdom, (2002) 41 *ILM* 405

Trustees, Biowatch Trust v Registrar: Genetic Resources (2005) 4 SA 111 (T)

UNPUBLISHED PAPERS

Mbazira C. (2007) “Enforcing the economic, social and cultural rights in the South African Constitution as justifiable individual rights: the role of judicial remedies” (LLD University of the Western Cape).

REPORTS

Department of environmental Affairs and Tourism *South Africa Environment Outlook* (2006): A report on the state of the environment, Executive Summary and key findings, Department of Environmental Affairs and tourism, Pretoria, 1-43.

Government of Tanzania ‘Communication strategy for the national for growth and reduction of poverty’ at <<http://www.tanzania.go.tz/mkukuta/commstrat.pdf>> (Last accessed on 10 September, 2009)

IUCN *International Working Meeting on Environment Education in the School Curriculum*, (1970) Final Report, September 1970, Gland, Switzerland: IUCN

Local government environmental management: a study of models and outcomes (Aug. 1999). Report Summary, available at <<http://www.e-envi2009.org/presentations/W2/Pick.pdf>>

Royal Commission 10th Report, Tackling Pollution-Experience and Prospects, Cmnd 9149 discussed by Roman-Robinson, J et al, Public access to environmental information: a means to what end? (1996) 8(1) JEL

The draft Council of Europe Convention on access to official documents, Report At <<http://assembly.coe.int/Main.asp?htm>> (last accessed 7 may 2008)

World Commission on Environment and Development, *Our Common Future* (Oxford University Press 1987) more commonly known as the Brundtland Report, see at < www.un.org/events/wssd/> (Johannesburg 26 August- 4 September 2002)

WCED (1987) *Our Common Future*, Oxford: Oxford University Press.

WEBSITES

Aarhus Convention available at < <http://www.unece.org/env/pp/e-mop.htm>> (last accessed 10 June 2005)

Animism available at <<http://marketfaith.com/resources/Animism.pdf>> (last accessed on February 2009)

Constitutional Protections of the Right to Information, available at <<http://right2info.org/constitutional-protections-of-the-right-to>> (last accessed on April 10, 2009)

DEAT “Environmental Information” at <<http://soer.deat.gov.za/themes.aspx?m=498>> (This page was last updated 19/11/2007)

Environmental Information for Naval Warfare at <<http://www.nap.edu/catalog/10626.html>> (last accessed in 2005)

Government of India “India Act” at < <http://www.rtiindia.org/guide/fundamental-facts-about-rti-2/what-is-right-to-information-6/>> (last accessed October 2002)

Government of India “India act” available at < <http://www.persmin.nic.in>> (last accessed 14 September 2009)

Knauer J. and Richard M. “Information System and the Environment” (2001) at <<http://books.nap.edu/catalog.php>> (Last accessed 2001)

Harding R, Environment decision making, available at <<http://books.google.co.za>>
www.nap.edu/catalog/10626.htm (last accessed 2009)

Parnell M “Public Participation in Environmental Decision-Making” at <<http://www.edo.org.au>> (accessed 10 March 2009)

Rio Declaration at <<http://www.globalcompact.org.ua>> (accessed on 28 September 2009)

The People, available at <<http://geography.howstuffworks.com/africa/geography-of-congo-brazzaville.htm>> (last accessed on 17 February 2008)

The Role & Goal of Education, available at <www.cmseducation.org> (last accessed 2009)

Yue “the environment needs public participation” at available at <<http://www.chinadialogue.net/author/show/91-Pan-Yue-br->> (accessed on the 05 December, 2006)

www.unece.org



UNIVERSITY *of the*
WESTERN CAPE