

## Access to justice in Environmental matters and the role of NGOs

Joanna Cornelius, lawyer, Swedish Society for Nature Conservation and European ECO Forum

Principle 10 of the 1992 Rio Declaration emphasizes that accountability mechanisms are essential for ensuring that environmental matters are addressed effectively. It stipulates inter alia that 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, states shall facilitate and encourage public awareness and participation by making information widely available and effective access to judicial and administrative proceedings, including redress and remedy, shall be provided. Principle 10 has been instrumental in the creation of the 1998 UNECE Aarhus Convention. The Convention recognises the right to a healthy environment and in order to contribute to protection of that right, it provides minimum standards on access to information, public participation and access to legal review procedures.

Citizens and nongovernmental organizations (NGOs) role in assuring compliance with environmental requirements are increasingly important. We see environmental degradation and new escalating risks for health. Access rights are central for representative, equitable and effective environmental decision-making and leads to a more effective implementation of environmental law and minimization of corruption and misuse. *Access to information* is necessary for meaningful participation and motivates citizens to take part in decision processes. *Access to public participation* gives the opportunity to voice opinions and thereby improve environmental decisions and enhance acceptance of and compliance with decisions taken. *Access to Justice* is the third pillar of the Aarhus Convention and covers access to justice for decisions on access to information, provides access to justice for decisions of projects effecting the environment and gives the right to challenge acts and omissions by private persons and public authorities. It allows the public to hold state agencies, enterprises and individuals accountable and is crucial to uphold the right to information and participation. The rationale is to provide means for getting just results and includes procedures for reviewing decisions, standing to invoke proceedings before a court or administrative agency, and set standards for costs and timeliness of proceedings.

Environmental law involves priorities, conflicts and balance of interests. The trust in decision procedures and outcomes is dependent on who has the opportunity to participate in the decision-making process. Access to justice thus is critical for the legitimacy and effectiveness of decisions affecting the environment. Legal challenges in court uphold environmental requirements and the jurisprudence that results from court cases enhances the legal framework by providing interpretation of environmental laws. Limitations on access to justice are substantially impeding access to information, public participation, environmental protection, and indeed the rule of law in many countries. Without principles of transparency, inclusiveness and accountability decisions are more likely to be environmentally damaging and unsustainable. NGOs actions to protect the environment and to ensure environmental democracy need to take place not only in the purely domestic context but also on the supranational (e.g. European Community) and international arena. In order to enforce supranational and international legislation the civil society needs to be able to act in e.g. the European Court of Justice as well as in international complaint procedures. The Aarhus Convention Compliance Committee has been crucial in the recent years for an effective implementation of the Aarhus Convention and access rights.