



MIDLANDS STATE
UNIVERSITY

Law Review



JULY 2026

**Contemporary global perspectives on public participation and fulfilment
of environmental rights**

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First published October 2014

Midlands State University Law Review

July 2026

Official citation: (2026) *Midlands State University Law Review July 2026*

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Contemporary global perspectives on public participation and fulfilment of environmental rights

Veronica Zano¹ and Dr. Gift Manyatera²

Abstract

This article argues that meaningful public participation has evolved beyond a mere procedural mechanism to become an indispensable component of the realisation of the right to an environment that is not harmful to health and well-being. Tracing developments from the 1972 Stockholm Declaration through the Rio Declaration (particularly Principle 10), the Aarhus Convention, and African regional instruments including the African Charter on Human and Peoples' Rights and the SADC Treaty and Forestry Protocol, the article analyses how these instruments have progressively embedded public participation, access to information, and access to justice as essential pillars of environmental protection. It evaluates the translation of these international norms into national legal systems, identifying persistent challenges including restricted access to environmental information, weak implementation of Environmental Impact Assessment processes, and barriers to meaningful public engagement in environmental decision-making. The article considers Zimbabwe's engagement with these frameworks since the 1992 Rio Summit and assesses the country's progress in domesticating participatory environmental principles. The article's novelty lies in demonstrating that the effectiveness of participatory environmental rights depends not merely on their recognition in international and regional legal instruments but on their coherent domestic implementation within rights-based environmental governance. It concludes that despite significant normative advances at international and regional levels, meaningful public participation remains contingent upon states enacting and effectively implementing legislation that empowers citizens, particularly vulnerable communities to participate in environmental governance. The article argues that new paradigms are required to ensure inclusive environmental decision-making that recognises the interdependence between environmental protection and the realisation of other human rights.

1 Introduction

In the last forty years, international environmental law has evolved rapidly. This has seen environmental rights becoming more apparent and their assessment and management more complex.³ A realization has been noted of how the environment is increasingly integrated with economic development and human rights and thus emphasizing its importance to mankind.

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³ E Weiss *The Evolution of International Environmental Law* (2011) 7.

Some scholars advocate for a separate human right to a clean, decent or healthy environment⁴, whilst others argue that the existing international human rights law encompasses environmental rights such as the right to life.⁵ This article accepts that existing human rights norms provide an important legal foundation for environmental protection but argues that these rights cannot be realised effectively without robust procedural guarantees, particularly meaningful public participation. Although considerable scholarship has examined the recognition of environmental rights, comparatively little attention has been paid to the evolution of public participation as the procedural mechanism through which those rights are realised across international, regional and domestic legal frameworks. Moreover, limited scholarship has examined whether these participatory guarantees have been effectively implemented in national legal systems, such as Zimbabwe.

There are major international developments that took place that created a major boost of modern international environmental law. These major international developments laid down the sources and foundation of the environment as part of contemporary human rights in the form of soft and hard law. The soft and hard law international law frameworks embody important principles and concepts which form common ground. A reflection is also provided in the global environmental frameworks on the evolution of environmental rights particularly principles which give rise to public participation. Today, almost all major binding and non-legally binding international and regional environmental instruments contain or refer to these principles or concepts. This article discusses the key international and regional environmental legal frameworks which were put in place to promote the right to an environment that is not harmful to one's health or well-being and the importance of the direct participatory democracy to effectively promote this right. The discussions will focus on the key environmental principles and concepts that are intrinsically provided in international environmental legal frameworks aimed at ensuring the protection of the environment through meaningful public participation. Finally, an analysis will be made of the progress which states have made in adopting international and regional environmental legal instruments affirming the importance of public participation in the protection of the environment in national laws and policies.

⁴ D Shelton 'Human Rights, Environmental Rights and the Right to Environment' (1991) Vol.28 *Stanford Journal of International Law* 359.

⁵ P Alston 'Conjuring up New Human Rights: A Proposal for Quality Control' (1984) Vol.78 *American Journal of International Law* 608 .

Against this background, this article argues that meaningful public participation has become an indispensable procedural right for the effective realisation of the right to an environment that is not harmful to health or well-being. It demonstrates how international and regional environmental instruments have progressively developed participatory principles and examines the extent to which these principles have been incorporated into domestic legal systems, using Zimbabwe to assess how it engages with these instruments. It further argues that the recognition of participatory rights in international and regional legal instruments is insufficient unless accompanied by effective domestic implementation capable of ensuring inclusive and accountable environmental governance.

2 International legal frameworks on public participation and environmental protection

It is apparent that environmental degradation affects the enjoyment of several basic human rights recognised in international human rights instruments.⁶ A reflection of this has been the efforts made by countries through international law conventions, declarations and treaties giving recognition to the importance of protecting and promoting the right to a clean environment. It is in this perspective that key international environmental legal frameworks will be analysed in order to assess how they form the bedrock of safeguarding the environment and enjoyment of human beings' fundamental rights through the key principle of public participation in decision making.

In 1972, the world came together to identify and address environmental problems at the United Nations Conference on the Human Environment. This conference was popularly known as the Stockholm Conference and it was deemed the first major conference on international environmental issues marking a turning point in the development of international environmental law.⁷ The central issue behind the convening of the Stockholm Conference was the need to address the potential conflict between economic development and environmental protection.⁸ The developing countries however, were concerned that such international efforts which were mainly being driven by the developed countries had the potential to undermine their own development efforts. Concerns with environmental issues were emerging due to the problems experienced by the industrially advanced countries.⁹ Due to the varied concerns on

⁶ A Abdulkadir 'Protection of Environmental Rights for Sustainable Development: An Appraisal of International and National Laws' Vol 6 (2012) *Australian Journal of Basic and Applied Sciences* 258.

⁷ <https://sustainabledevelopment.un.org/milestones/humanenvironment> accessed on 10 August 2017.

⁸ Weiss 7.

⁹ Weiss 4.

the subject matter, a group of experts comprising officials from government, academia and non-government organisations held a meeting before the conference and developed a report. The report called the Founex report recognised that environmental protection and economic development should proceed in tandem.¹⁰

The Stockholm Conference resulted in the adoption by governments of the UN Stockholm Declaration on the Human Environment which set the foundation for the further development of international environmental law concepts such as sustainable development.¹¹ It was at the Stockholm Conference where the international community first recognized sustainable development as the overarching paradigm for improving the quality of life and environment.¹² The World Conservation Strategy drafted by the International Union for the Conservation of Nature and Natural Resources(IUCN)¹³ provided the contemporary foundations of sustainable development. The concept of sustainable development however gained momentum with the publication of the much acclaimed report of the World Commission on Environment and Development (WCED).¹⁴ The Brundtland Commission on Environment and Development defined it as “development that meets the needs of the present generation without compromising the ability of the future generations to meet their own needs.”¹⁵ Sustainable development has been hailed as necessary in the protection of the environment as it enables approaches that take into account long-term strategies that mitigate environment harm such as the environmental impact assessment. However, the relevance of sustainable development to this article extends beyond balancing economic development and environmental protection. Sustainable development introduced a governance approach requiring inclusive decision-making processes because environmental decisions affect communities across generations.¹⁶ Public participation therefore became an essential procedural mechanism through which

¹⁰ The Founex Report on Development and Environment of 1971.

¹¹ Stockholm Declaration of the United Nations Conference on the Human Environment, Report of the United Nations Conference on the Human Environment, U.N. Doc. A/CONF.48/14/Rev.1 (1973), p. 3; U.N. Doc. A/CONF.48/14 (1972), pp. 2-65.

¹² UNCED, 1992.

¹³ IUCN, World Conservation Strategy, 1980.

¹⁴ Our Common Future, Report of the World Commission on Environment and Development (1987).

¹⁵ The Brundtland Commission on Environment and Development was tasked by.... In 1987 and produced the Report, Our Common Future.

¹⁶ See Art 10 of Rio declaration on environment and development UN Doc A/CONF.151/26 (14 June 1992). See also S Stec ‘Developing Standards for Procedural Environmental Rights through Practice – The Changing Character of Rio Principle 10’ in J Jendrośka and M Bar (eds), *Procedural Environmental Rights: Principle X in Theory and Practice* (Intersentia 2017) 4-5.

sustainable development could be translated from a conceptual principle into practical environmental governance.¹⁷

The principle of state sovereignty in environmental protection was also emphasized in Principle 21 of the Stockholm Declaration. Principle 21 of the Stockholm Declaration provides that “States have... the sovereign right to exploit their own resources pursuant to their own environmental policies and the responsibility to ensure that activities within their jurisdiction or control do not damage the environment of other states or of areas beyond the limits of national jurisdiction.” The Stockholm Declaration though not legally binding, marked the first international attempt to recognize environmental rights as human rights as a way of addressing environmental problems.

Although the Stockholm Declaration did not expressly establish a legally enforceable right to participate in environmental decision-making, on analysis its doctrinal significance lies in establishing the connection between environmental protection and collective responsibility. By recognising that environmental protection requires cooperation between governments, institutions and citizens, Stockholm created the normative foundation upon which later procedural environmental rights developed.¹⁸ Public participation, therefore, on analysis initially emerged not as an autonomous legal entitlement, but as a governance principle necessary for achieving environmental objectives. The delegates at the conference proclaimed that “to defend and improve the human environment for present and future generations has become an imperative goal for mankind...”¹⁹ Accordingly, it was agreed that in order to achieve this environmental goal, it will demand the acceptance and responsibility by all citizens and by enterprises and institutions at every level, all sharing equitably efforts.²⁰ The importance of public participation in environmental protection was thus first recognized. Significantly, the non-binding Stockholm Declaration laid a foundation on the emergence and

¹⁷ United Nations Environment Programme “Principle 10’ <https://www.unep.org/civil-society-engagement/partnerships/principle-10> accessed 27 July 2026; See also N Sharman ‘Objectives of public participation in international environmental decision-making’ (2023) 72(1) *International and Comparative Law Quarterly* 346-348.

¹⁸ Ž Mikosa ‘Implementation of the Aarhus Convention through Actio Popularis: Article 9(3) of the Aarhus Convention and Actio Popularis’ in J Jendroška and M Bar (eds), *Procedural Environmental Rights: Principle X in Theory and Practice* (Intersentia 2017).

¹⁹ Report of the United Conference on the Human Environment, paragraph 6.

²⁰ Report of the United Conference on the Human Environment, paragraph 7.

development of public participation as key in the protection, promotion and realization of environmental rights in international environmental law instruments.

The Rio Declaration on Environment and Development was adopted at the United Nations Conference on Environment and Development held in Rio De Janeiro, Brazil in 1992. The Declaration built upon the agenda set by the Stockholm Declaration of addressing concerns of countries across the world relating to the environment, development and the importance of entitlement of people to a healthy and productive life in harmony with nature. The Rio Declaration is premised on the realization that long term economic progress can only be achieved if it is linked with the protection of the environment. The Rio Declaration calls on states to enact effective environmental legislation for environmental management.²¹ This affirms the importance of national legislation aimed at protection, promotion and realization of environmental rights. Principle 4 of the Rio Declaration provides that in order to achieve sustainable development, environmental protection shall constitute an integral part of the development process and cannot be considered in isolation from it.

Importantly, the Rio Declaration is the first international environment instrument that recognised the importance of open environmental decision making facilitated by the right of people to hold their governments to account for environmental policies and laws.²² It affirmed that public participation is essential to environmental protection and sustainable development. Despite this important normative advancement, the contribution of the Rio Declaration remained limited by its non-binding character.²³ Although Principle 10 established international recognition of participation, access to information and access to justice as interconnected elements of environmental governance²⁴, it did not create directly enforceable obligations. According to Principle 10 of the Rio Declaration “Environmental issues are best handled with the participation of all concerned citizens at the relevant level. At the national level, each individual shall have the 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. Further, States were obligated to facilitate and encourage public awareness and participation

²¹ Principle 11, Rio Declaration on Environment and Development.

²² Stakeholder Forum for a Sustainable Future *Review of Implementation of the Rio Principles* (2011) 68.

²³ P Sands *Principles of International Environmental Law* (2nd edn, Cambridge University Press 2003).

²⁴ Principle 10, Rio Declaration on Environment and Development.

by making information widely available. Effective access to judicial and administrative proceedings, including redress and remedy shall be provided.” This was based on the experience that government decision-making was failing to include these essential tenets.²⁵

Principle 10 of the Rio Declaration asserted the international community’s move towards the goal of creating a more transparent, inclusive and accountable decision making in matters affecting the environment and development. Participatory democracy aided by access to information empowers and motivates people to participate in an informed and meaningful manner.²⁶ The provisions of Principle 10 did not only recognize the importance of public participation in environmental protection but imposed a positive obligation placed upon states to ensure the full enjoyment of the right. Thus, the Declaration noted that in order for economic development to take place whilst protecting the environment, states must establish a new global partnership involving government, their people and key sectors of society.²⁷ However, the implementation of Principle 10 has remained uneven.²⁸ While it establishes broad procedural commitments, it provides states with considerable discretion regarding the scope, and participation mechanisms.²⁹ Consequently, participation may become a procedural requirement rather than a meaningful opportunity for communities to influence environmental decisions. It asserted that sound environmental governance and effective environmental policies depended on providing an opportunity for people especially the most disempowered people to shape their own future through participation in environmental protection.³⁰

The recognition by the Rio Declaration of the importance of public participation resulted in it constituting a right forming part of the environmental rights in various other international and regional environmental frameworks.³¹ Public participation in environmental decision making is said to enhance the ability of a government to be responsive to public concerns and demands related to the environment. Furthermore, it enables consensus building by improving

²⁵ J. Foti *Voice and Choice: Opening the Door to Environmental Democracy* (2008) 5.

²⁶ D. Banisar *Rio 2012 and Ensuring Access to Information, Public Participation and Access to Justice for Everyone* (2012) 3.

²⁷ http://www.sustainable-environment.org.uk/Action/Rio_Declaration.php accessed on 10 August 2017

²⁸ UN Environment Programme 'Issue No. 16: Implementing Principle 10 and the Bali Guidelines in Africa' (UNEP Perspectives Series, 2015).

²⁹ UN Conference on Environment and Development 'Rio Declaration on Environment and Development' in *Report of the United Nations Conference on Environment and Development Vol I UN Doc A/CONF.151/26* (14 June 1992).

³⁰ Foti (n 18 above) 5.

³¹ S Atapattu 'The Emergence of a Human Right to a Healthy Environment under International Law' (2002) Vol.16 *Tulane Environmental Law Journal* 87.

acceptance and compliance with decisions aimed at protecting and promoting the environment. This is because citizens feel ownership of environmental decisions made by the government based on their collective in the process.³² The collective role and interest that the environment plays to people implies that citizens cannot be sidelined and decisions concerning it be made behind secret doors.³³

Tied to the issue of the need to have people involved in the development of their economies and the responsibility of safeguarding the environment, Principle 17 of the Rio Declaration provides for environmental impact assessment (EIA) process. The EIA process is mandated for activities that are likely to have a significant adverse impact on the environment whereby an assessment is made of the environmental and social impact of projects that have a significant impact on the environment before their approval.³⁴ In addition, the environmental impact assessment process is tied to the procedural rights of access to information and public participation to those activities subject to the EIA process. However, the participatory rights embodied in Principle 10 are meant to be applied to any environmental activity irrespective of its magnitude to the environment and illustrate the right to participate in prior assessment of activities on the environment. EIA has become one of the most effective tools that has been used to support the implementation of sustainable development and its integrative aspects. The world today is marked with most countries having adopted guidelines or mandatory regulations applicable to public projects that have potential negative bearing on the environment. In addition, environmental impact assessment has also been widely accepted as a mechanism of public participation in environmental planning processes and decision making. This is based on it as a tool to provide the public with environmental information important for their health and well-being and information regarding projects taking place in the country and areas. Whilst the Rio Declaration places public participation at the centre of EIAs, often this open participatory process is faced with hurdles of meaningful participation.

Importantly, the heads of governments who participated at the UN Conference on Environment and Development held in Rio de Janeiro in 1992 adopted Agenda 21 which is a comprehensive plan of Action of the Declaration. Agenda provides the mechanisms in the form of policies, plans and programs and guidelines for national governments by which to implement the

³² S Atapattu 87.

³³ Banisar 4.

³⁴ Banisar 11.

principles contained in the Declaration.³⁵ Agenda 21 calls “broad public participation” as one of the fundamental prerequisites of a sustainable society and it places emphasis on the need to open the decision -making process to groups traditionally absent from the political arena.³⁶ Furthermore, it provides that in the more specific context of environment and development, the need for new forms of participation has emerged. This includes the need for individuals, groups and organizations to participate in environmental impact assessment procedures and to know about and participate in decisions, particularly those which potentially affect the communities in which they live and work. Individuals, groups and organizations should have access to information relevant to environment and development held by national authorities, including information on products and activities that have or are likely to have a significant impact on the environment, and information on environmental protection measures. The Rio Declaration thus provides an enabling legal framework on the right of people to be involved in the development of their economies and the responsibility of human beings to safeguard the environment.

Whilst the Stockholm Declaration and Rio Declaration provided foundations on the acknowledgement by the international community on the importance of public participation for effective environmental protection, there remained a gap on a binding instrument. In 1998, the Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters³⁷ commonly known as the Aarhus Convention was adopted. It was the first legally binding international instrument that enabled the public direct access to public participation in environmental decision making. Although, it is limited geographically, it is the only specific convention on procedural environmental rights which acknowledged that environmental protection and government accountability can only be achieved through the involvement of all stakeholders.³⁸ The Convention places ratifying nations under a series of important obligations including established rules for public participation necessitated by collecting information held by public bodies and requiring public bodies to affirmatively make information available to the public and access to justice measures. Former UN Secretary General Kofi Annan asserted that “The significance of the Aarhus

³⁵ N Robinson *Training Manual on International Environmental Law* (2006) 28.

³⁶ Chapter 32-36, Agenda 21.

³⁷ The Convention on Access to Information, Public Participation in Decision-Making, and the Access to Justice in Environmental Matters was adopted in June 25, 1998 by The United Nations Economic Commission for Europe(UNECE).

³⁸ A. Luttenberger & B. Rukavia *The Right to Information on Environmental Matters* (2004) 257.

Convention is global, it is by far the most elaboration of Principle 10 of the Rio Declaration which stresses the need for citizens' participation in environmental issues... As such it is the most ambitious venture in the area of environmental democracy so far undertaken under the auspices of the United Nations."³⁹

The preamble of the Aarhus Convention recognizes that "every person has the right to live in an environment adequate to his or her health and well-being, and the duty, both individually and in association with others to protect the environment for the benefit of present and future generations and in order to assert this right and observe this duty citizens must have access to information, be entitled to participate in decision making and have access to justice in environmental matters."⁴⁰ The Convention was largely anchored on the respective roles that individual citizens, non-government organisations and the private sector can play in environmental protection. More importantly, the Aarhus Convention played a key role in advancing the recognition given to environmental procedural rights in Principle 10 of the Rio Declaration on the Environment and Development. The Convention made an important development to international environmental law by its emphasis on the co-relationship between environmental procedural rights such as public participation and the protection of the right to an adequate environment. Over 44 countries have ratified the Convention from Western Europe to Central Asia.⁴¹

A number of rights are awarded to the public with regard to the environmental protection which public authorities at local and national level should contribute towards by allowing them to become effective.⁴² The Aarhus Convention provides for the public to participate from an early stage in environmental decision-making and the need for them to be aware of the procedures for participation in environmental decision-making, have free access to them and know how to use them.⁴³ The Convention defines who constitutes the "public" as one or more natural or legal persons in accordance with national legislation or practice, their associations,

³⁹ Stakeholder Forum for a Sustainable Future (n17 above) 69.

⁴⁰ The objective of the Aarhus Convention embodied in Article 1 is provided as "in order to contribute to the protection of the right of every person of present and future generations to live in an environment adequate to his or her health and well-being, each Party shall guarantee the rights of access to information, public participation in decision-making, and access to justice in environmental matters in accordance with the provisions of the Convention."

⁴¹ <https://www.unecce.org/env/pp/> accessed on 25 August 2017.

⁴² Luttenberger & Rukavia (n. 29 above) 257.

⁴³ Preamble, Aarhus Convention adopted in 1998.

organizations or groups. State parties are urged to adopt national laws related to public participation in decisions on proposed specific activities and any others which may have a significant effect on the environment. Annex 1 of the Convention lists some of these specific projects which include airport constructions, oil and gas projects, mining operations, industrial projects, dam construction and several others. In such projects, public authorities should inform the public concerned either by public notice or individually as appropriate, early in an environmental decision-making procedure and in an adequate, timely and effective manner.⁴⁴ The public concerned is defined as the public affected or likely to be affected by or having an interest in the environmental decision-making and includes non-governmental organizations promoting environmental protection under national law shall be deemed to have an interest. The most significant innovation in the Convention is the involvement of environmental interest groups and non-governmental organizations as crucial in environmental protection based on their representation of public interest.⁴⁵ This is based on the realization that public participation is increasingly being seen as a vital part of addressing environmental problems and bringing about sustainable development by allowing governments to adopt policies and enact laws that take community needs into account.⁴⁶

Public participation emphasized by the Convention takes place largely as a part of procedures to assess and mitigate environmental harm such as in the preparation of environmental impact assessments and through policy making.⁴⁷ Procedures for public participation under the Aarhus Convention are supposed to allow the public to submit, in writing or as appropriate at a public hearing or inquiry with the applicant any comments, information, analysis or opinion that it considers relevant to the proposed activity. The Convention also acknowledges key procedural rights which contribute towards meaningful public participation in environmental decision making. According to the Convention, in order for the public to effectively voice opinions and to influence choice amongst possible environmental outcomes, there is need for them to be provided access to information which aid them in decision making.⁴⁸ As such, the Aarhus Convention states the right of everyone to environmental information held by public

⁴⁴ Article 6 (2) of the Aarhus Convention of 1998.

⁴⁵ M Lee & C Abbot 'The Usual Suspects? Public Participation under the Aarhus Convention' Vol 66 (2003) *The Modern Law Review*, Vol. 66, No. 1 (Jan., 2003) 86.

⁴⁶ Unpublished: B Ochieng 'Implementing Principle 10 and the Bali Guidelines in Africa' UNEP Issue Paper (2015) 3.

⁴⁷ Foti 13.

⁴⁸ Foti 15.

authorities. This information can include information on the state of the environment, policies or measures taken towards the environment.⁴⁹ In turn, governments are also conferred with obligations that entail the realisation of the right to access information provided in the two legal instruments. Public authorities regulating the environment are obliged to collect and disseminate information on the environment.⁵⁰ The Convention details the specific information that the public should be accorded to enable their participation in environmental decision-making which includes the proposed activity and the application on which the decision will be made.⁵¹

Some of the specific provisions under the Aarhus Convention that enable public participation but that are linked to access to information include public authorities providing the public concerned access for examination, upon request where so required under national law within one month following the request, free of charge and as soon as it becomes available all information relevant to the decision making.⁵² Information related to specific activities which may have a significant impact on the environment should include a description of the site, the physical and technical characteristics of the proposed activity including an estimate of the expected residues and emissions. A description of the significant effects of the proposed activity on the environment and a description of the measures envisaged to prevent or reduce the effects including the emissions should also be provided to the public being relevant information to environmental decision-making.

States are also encouraged to ensure that operators whose activities have a significant impact on the environment inform the public regularly of the environmental impact of their activities and products. The Convention also notes the revolution in electronic information technology and thus conferring the duty on states to make environmental information progressively available electronically.⁵³ Once an environmental decision has been made, the government should ensure that the public is promptly informed of the decision in accordance with the

⁴⁹ Luttenberger & Rukavia 259.

⁵⁰ Article 5(1) (a), Aarhus Convention, 1998.

⁵¹ Other important information is the nature of possible decisions or draft decision, the public authority responsible, envisaged procedure, commencement of procedure, opportunities for the public to participate, time and venue of the envisaged public hearing and the fact that activity is subject to national and transboundary EIA.

⁵² Article 6(6), Aarhus Convention, 1998

⁵³ Article 5(9), Aarhus Convention.

appropriate procedures.⁵⁴ Furthermore, the government shall make accessible to the public text of the decision along with the reasons and considerations on which the decision is based.

It is evident that in order for the public to effectively participate in decision making related to an environment that is not harmful to health or well-being, disclosure of information is very important. Access to information empowers the public to participate in environmental decision-making in an informed manner. Thus, access to information, therefore, enables citizens to participate meaningfully in decisions that affect their environment as a means to promote accountability and transparency in environmental decision-making.⁵⁵ The right to access information does not mean that citizens may obtain unlimited access to all information, the government is generally permitted to withhold carefully circumscribed types of information in order to protect for example sensitive national security information.⁵⁶ It is however important to note that in order for environmental information to be meaningful, it must be accurate, affordable, accessible, timely and comprehensive.⁵⁷ In addition, the information must be user friendly and the mechanisms set in place to access the information must not impose financial or administrative obstacles that would frustrate the public's ability to obtain environmental information.⁵⁸

The Aarhus Convention also entrenches the need for States to enact national legislation which ensures persons who have been aggrieved by refusal of access to information essential for them to meaningfully participate in environmental decision-making processes to approach the courts for legal recourse.⁵⁹ In Article 9(4) of the Convention, States should ensure national laws relating to the review procedures for access to justice should provide adequate and effective remedies, be fair, equitable, timely and not prohibitively expensive. Public participation is said to have little meaning if citizens lack the right to seek legal redress through effective access to justice. Access to justice is therefore, an important mechanism which the public especially civil society challenge government institutions which fail to follow the rules that govern how the public should be consulted, thus enforcing public participation.⁶⁰ Thus,

⁵⁴ Article 6(9) of the Aarhus Convention.

⁵⁵ M. Bonilla, 'Environmental Law Democracy in Developing Countries' (2004) 20.

⁵⁶ N Popovic 'The Right to Participate in Decisions that Affect the Environment' Vo. 10 (1993) *Pace Environmental Law Review* 683.

⁵⁷ Popovic 683.

⁵⁸ Ibid.

⁵⁹ Article 9, Aarhus Convention.

⁶⁰ Bonilla 22.

access to justice is a form of public participation which ensures review of environmental decisions that undermine the protection of the environment. Fundamentally, the Convention alludes effective access to justice based on State parties' ability to provide the public with information relating to administrative and judicial review procedures.⁶¹ These provisions of the Aarhus Convention have become widely recognised as a minimum standard for effective participatory decision-making regarding specific projects or activities, programmes, plans, policies and general rules and regulations.⁶²

3 Analysis of African regional frameworks to which Zimbabwe is a State Party

Soft and hard law international environmental law instruments such as the Stockholm Declaration, Rio Declaration on Environment and Development and the Aarhus Convention have played an important function in recognizing public participation in environmental protection. These affirmations at the international level on the need to have the public participate effectively in environmental protection contributes towards protecting and promoting the right to live in an environment adequate to one's health and well-being. At regional level, efforts have also been made to develop specific legal instruments aimed at ensuring member states contribute towards the international objectives of addressing environmental protection. Zimbabwe is party to the African Union which is a continental union all countries on the African Continent and the Southern African Development Commission (SADC). SADC is a regional economic community for 15 Southern African member states focused on promoting regional integration, poverty eradication, economic development.⁶³ Specific analysis will be made of the efforts made by these regional institutions to enunciate public participation as integral for environmental protection in regional legal instruments.

The African Charter on Human and Peoples' Rights⁶⁴ is the first binding regional instrument that explicitly endorses the fundamental right to a general satisfactory environment favourable to their development.⁶⁵ In addition, it is the first binding instrument to endorse the right to development. Article 21 of the Charter recognizes in detail the right of the peoples of Africa to freely dispose of the natural wealth and resources, provides as follows "All peoples shall freely

⁶¹ Article 9(5), Aarhus Convention.

⁶² OHCHR Report 'The Role of the Aarhus Convention in Promoting Good Governance and Human Rights' unpublished (2012) 3.

⁶³ <http://www.sadc.int/about-sadc/> accessed 19 September 2017.

⁶⁴ The African Charter on Human and People's Rights, adopted June 27, 1998.

⁶⁵ Article 24, African Charter on Human and People's Rights.

dispose of their wealth and natural resources. This right shall be exercised in the exclusive interest of the people. “the free disposal of wealth and natural resources shall be exercised without prejudice to the obligation of promoting international economic cooperation based on mutual respect, equitable exchange and the principles of international law.” The Charter acknowledges natural resources as forming an integral part of the African society and economic development of its member states underpinned against the utilization of natural resources constituting a key part of the environment. The Charter, therefore, acknowledges the importance of ensuring sustainable environmental protection from the continent’s natural resources which must be done in line of international environmental law principles. Although Article 21 does not expressly create a procedural right to public participation⁶⁶, the recognition that natural resources are to be utilised in the exclusive interest of the people necessarily implies that decisions concerning their exploitation should not be made without meaningful public involvement.⁶⁷ Public participation therefore becomes an important mechanism through which communities exercise collective control over natural resources and ensures that resource exploitation advances both environmental protection and the right to development.⁶⁸ This interpretation is reinforced by the African Charter's collective conception of peoples' rights, which links resource governance to accountability and inclusive decision-making.⁶⁹ As such, economic development from natural resources should be done in line with principles of international law such as the public’s participation in natural resources development initiatives based on their interest in them and based on such initiatives on the environment.

The preamble of the SADC Treaty⁷⁰ alludes to the need to involve the people of the region centrally in the process of development and integration, particularly through the guarantee of democratic rights, observance of human rights and the rule of law. Sustainable use of natural resources and effective protection of the environment is one of the set objectives of the SADC

⁶⁶ See Article 21, African Charter on Human and People’s Rights.

⁶⁷ African Commission on Human and Peoples' Rights, *'State Reporting Guidelines and Principles on Articles 21 and 24 of the African Charter relating to Extractive Industries, Human Rights and the Environment'* (2022); See also African Commission on Human and Peoples' Rights, *'Resolution on the Recognition and Protection of the Right of Participation, Governance and Use of Natural Resources by Indigenous and Local Populations in Africa'*, ACHPR/Res.489 (LXIX)2021.

⁶⁸ Article 22 and 24 of the African Charter on Human and People’s Rights.

⁶⁹ African Commission on Human and Peoples' Rights, *The Social and Economic Rights Action Center (SERAC) & Center for Economic and Social Rights v Nigeria*, Communication 155/96 (2001); See also African Commission on Human and Peoples' Rights, *Communication 276/03 – Centre for Minority Rights Development (Kenya) & Minority Rights Group (on behalf of Endorois Welfare Council) v Kenya* (2009).

⁷⁰ The SADC Treaty is the founding document for the establishment of the Southern African Development Community (SADC) adopted in 1992.

Treaty.⁷¹ The regional instrument thus recognizes the need for its member states to strive towards the environmental protection agenda promoted in the international environmental instruments. Importantly, the role of civil society is acknowledged for purposes of advancing the objective of environmental protection by virtue of them being recognized as key stakeholders.⁷² However, the effectiveness of the SADC Treaty in promoting participatory environmental governance depends largely on implementation by individual member states rather than regional enforcement.⁷³ Unlike the Aarhus Convention, the Treaty establishes broad institutional commitments but provides limited procedural mechanisms through which citizens can directly enforce participatory rights at the regional level.⁷⁴ Consequently, the practical realisation of these commitments varies considerably across SADC member states according to domestic legislative and institutional capacity.⁷⁵ To further the objective of effective protection of the environment provided in the SADC Treaty, sectorial environmental protocols have been developed to foster the objective. The SADC Protocol on Forestry⁷⁶ in its preamble acknowledged this objective. Specifically, the Protocol states its purpose which is to achieve effective protection of the environment and safeguard the interests of both the present and future generations.⁷⁷ It asserts that in order to achieve this objective, state parties should cooperate promoting respect for the rights of communities and facilitating their participation in forest policy development, planning and management.⁷⁸

The SADC Forestry Protocol also provides state parties to facilitate public participation in decision making regarding the sustainable management of forests and use of forest resources. This can be in the form of national forest plans, forest related laws where interested and affected parties shall be given the right to participate in decision-making. In order for the right to participation to be exercised in such environmental decision-making processes, the Protocol states that interested and affected persons should have access to information held by the public or private bodies. The SADC protocol on Forestry thus embodies the important principle of public participation in the effective protection of the environment.

⁷¹ Article 5 (g), SADC Treaty.

⁷² Article 32(1) SADC Treaty.

⁷³ E Mitrotta 'Strengthening Conservation through Participation: Procedural Environmental Rights of Local Communities in Transboundary Protected Areas' in J Jendroška and M Bar (eds), *Procedural Environmental Rights: Principle X in Theory and Practice* (Intersentia 2018).

⁷⁴ Ibid.

⁷⁵ Ibid.

⁷⁶ SADC Protocol on Forestry adopted in 2002 came into force on 17 May 2007.

⁷⁷ Article 3(1) (c) SADC Protocol on Forestry.

⁷⁸ Article (3) (2) (g) SADC Protocol on Forestry.

Collectively, these African regional instruments demonstrate the progressive development of public participation from a general principle recognised in international environmental law into an increasingly important procedural component of regional environmental governance.⁷⁹ However, they also illustrate that recognition of participatory rights alone is insufficient to secure meaningful environmental protection.⁸⁰ Zimbabwe's experience in incorporating these regional commitments into national environmental law therefore provides an important measure of the legislative effectiveness of Africa's regional environmental governance framework.⁸¹

4. Evaluation of global experiences

There is growing recognition and elevation of public participation as vital in protecting environments embodied in the international and regional frameworks. Whilst the various international and regional instruments have advanced mechanisms to promote the public's participation in a bid to effectively protect and promote environmental rights, it has fundamentally remained the role of each state such as Zimbabwe to adopt and enact national laws giving effect to this. The dependence on domestic implementation illustrates one of the principal limitations of international environmental law.⁸² Although international and regional instruments establish common procedural standards, they generally lack direct enforcement mechanisms capable of compelling states to implement participatory rights effectively.⁸³ Consequently, the practical enjoyment of public participation depends upon domestic legislation, institutional capacity and political commitment, resulting in significant variations between jurisdictions.⁸⁴ This is premised on the international law principle of state sovereignty which provides that each country is independent, free from external interference in the running of its own affairs related to environmental governance.⁸⁵ The principles set out in the hard and

⁷⁹ African Commission on Human and Peoples' Rights, Resolution on Developing General Comment on the Protection and Promotion of the Right to Environment in Africa, ACHPR/Res.633 (LXXXIII) 2025.

⁸⁰ Jonas Ebbesson, 'International Participatory Rights and Environment Protection in Africa – Powerful Tools or "Sleeping Rights"?' in Jean-Claude N. Ashukem and Semie M. Sama (eds), *Human Rights and the Environment in Africa: A Research Companion* (Routledge, 2023).

⁸¹ *Constitution of Zimbabwe Amendment (No. 20) Act 2013, Environmental Management Act* [Chapter 20:27].

⁸² P Sands *Principles of International Environmental Law* (2nd edn, Cambridge University Press 2003).

⁸³ *Ibid.*

⁸⁴ *Ibid.*

⁸⁵ P. Nygh & P. Butt *Butterworlds Concise Australian Legal Dictionary* (1998) 104.

soft international environmental law instruments are not universal in nature.⁸⁶ Different cultures or societies may conceive of good environmental governance differently through cultural relativism.

Since the Rio Declaration, over 80 governments across the world have enacted laws that provide citizens information to enable participation in environmental decision-making.⁸⁷ It is therefore important to locate Zimbabwe's domestication position of these international and regional instruments towards enhanced public participation in environmental protection and sustainable development. In countries, such as the United Kingdom procedures exist that govern the free release of information so that matters of public interest are transparent and accessible to all upon the request of individuals, civil society groups and non-governmental organizations.⁸⁸ The comparative experience demonstrates that effective public participation depends less on formal legal recognition than on the existence of transparent administrative institutions capable of implementing those rights. Whereas jurisdictions with established freedom of information regimes have generally strengthened public oversight of environmental decision-making, many developing countries continue to experience institutional constraints that limit the practical exercise of comparable rights despite adopting similar legislative frameworks.⁸⁹ Zimbabwe's experience should therefore be assessed within this broader implementation context rather than solely by reference to legislative adoption.⁹⁰ At the international level, stakeholder participation in international environmental decision-making has significantly improved since 1992. Zimbabwe's commitment to the sustainable development and environmental protection agenda also dates back to 1992, when it attended the Rio Earth Summit.⁹¹ As a result, the country became a signatory to the Rio Declaration and Agenda 21. In addition, the active participation and involvement in these international environmental decisions- making platforms by interested parties such as NGOs have been efforts to promote the provisions of Principle 10 of the Rio Declaration. The active participation of all stakeholders interested in environmental protection at international and regional levels ensures that they be concerted effort to protecting and promoting environmental rights.

⁸⁶ M. Jeffrey 'An Environmental Governance: A Comparative Analysis of Public Participation and Access to Justice' (2005) Vol.9 Journal of South Pacific Law 115.

⁸⁷ Stakeholder Forum for a Sustainable Future 71.

⁸⁸ Ibid.

⁸⁹ P Sands *Principles of International Environmental Law* (2nd edn, Cambridge University Press 2003).

⁹⁰ Nohayi *et al*, *Policy Coherence and Collisions in Multifunctional Landscapes in Zimbabwe* (CGIAR, 2025).

⁹¹ Unpublished: Government of Zimbabwe Report 'A Future we want: Report to the United Nations Conference on Sustainable Development 2012' (2012) 7.

At the UN Global Ministerial Meeting in Bali (Environment Forum) in 2010, UNEP⁹² adopted its Guidelines on Principle 10 also known as the Bali Guidelines. The development of the Bali Guidelines was a significant milestone in the field of environmental law and application of Principle of the Rio Declaration.⁹³ The guidelines cover key areas including freedom of information laws, state of the environment reporting, emergency planning and response, project planning and environmental harms. In addition, the guidelines set out the minimum legal implementation of Principle 10 and the mandate for UNEP to support and assist countries with implementation programmes and policies on such work.⁹⁴ The Guidelines whilst voluntary are meant to demonstrate a willingness by governments to thoroughly engage the public at all levels to protect and manage the environment and related resources.⁹⁵ Nevertheless, the practical impact of the Bali Guidelines should not be overstated. Their voluntary nature means that they neither create legally enforceable obligations nor establish compliance mechanisms. Their principal contribution lies in providing guidance for legislative reform and administrative practice rather than guaranteeing implementation of Principle 10.⁹⁶ Fundamentally, they also underline the recognition for the need to fill gaps in legal norms and practices so as to encourage broad public participation in environmental matters through access to information and justice within the national legislation and processes. Since their adoption in 2010, the Bali Guidelines have increasingly been recognized by international, regional organizations such as at the first Eye on Earth Summit which committed to eight special initiatives addressing environmental issues.⁹⁷

In many countries, environmental planning processes are now designed to ensure that the public have the procedural right to intervene and ensure that public bodies have a duty to take this into account when making decisions. This has mainly been fostered in EIA processes where a substantial adoption of environmental laws having EIA provisions in over 120

⁹² Robinson 92.

⁹³ B Ochieng 3.

⁹⁴ E Geezi 'Sustainability and Public Participation: Towards an Inclusive Model of Democracy' (2007) Vol 29 Administrative Theory and Praxis 379.

⁹⁵ A. Enserink & D. Conor *Public Participation International Best Practice Principles Special Public Series* (2006)1.

⁹⁶ See UNEP 'Guidelines for the development of national legislation on access to information, public participation and access to justice in environmental matters' (2010) available at <https://www.unep.org/resources/publication/guidelines-development-national-legislation-access-information-public> (accessed 27 July 2026).

⁹⁷ The Eye on Earth Summit is a convergence of series of initiatives by several organisations that collectively address challenge of increasing access to information to support sustainable development.

countries.⁹⁸ In practice, Principle 17 of the Rio Declaration on EIAs has faced challenges whereby states and corporations can circumvent or not pay attention to the community's participation in the process. On analysis, among these challenges, the most significant is the failure to involve affected communities at sufficiently early stages of project planning. Where participation occurs only after essential project decisions have already been made, consultation becomes largely procedural rather than capable of influencing substantive environmental outcomes.⁹⁹ On analysis, other barriers, including technical complexity and limited access to information, support this fundamental weakness. Furthermore, the principle of "free, prior informed consent" in international law and jurisprudence which provides that a community has a right to give or withhold its consent to proposed projects that may affect the lands they customarily own, occupy or use faces fundamentally aiding public participation in environmental decision making is often inhibited in EIAs.¹⁰⁰

In several countries, there still exists barriers that inhibit participatory environmental democracy fostered in Principle 10 of the Rio Declaration, Agenda 21 and the Aarhus Convention. This is mainly due to significant legal and institutional capacity challenges faced by States. Others have asserted that the absence of a functioning democracy often results in the implementation of the international and regional instruments promoting public participation in environmental decision making for purposes of safeguarding the environment, especially in states with issues of corruption.¹⁰¹ It is unlikely that citizens in such situations will be consulted on issues relating to the environment, let alone hold them to account over planning and industrial decisions affecting the environment. In some countries, decision-making that impact the environment, secretive and closed door routines continue to remain the norm.¹⁰²

The key challenge of environmental legislation in developing countries is the low priority given to environmental protection at the expense of economic incentives due to development interests.¹⁰³ Restrictions on access to environmental information has mostly been seen as a

⁹⁸ J. Glasson & A. Chadwick *Introduction to environmental impact assessment* (2005) 2.

⁹⁹ J Hall & PJ Lukey 'Public participation as an essential requirement of the environmental rule of law: Reflections on South Africa's approach in policy and practice' (2023) Vol 23 *African Human Rights Law Journal* 303.

¹⁰⁰ Stakeholder Forum for a Sustainable Future 78.

¹⁰¹ A Ansari & S Yamusa 'Protection of Environmental Rights for Sustainable Development: An Appraisal of International and National Laws' (2012) Vol 6 *Australian Journal of Basic and Applied Sciences* 258.

¹⁰² A Ansari & S Yamusa 258.

¹⁰³ Banisar 11.

hurdle to the public's meaningful participation in decisions that have an impact on the environment especially in the EIA process¹⁰⁴ Recent studies have shown that populations are still being denied access to information about the environment. Denial of access to information stems largely from the absence of freedom of information legislation and institutional secrecy of numerous state authorities, coupled with legislation in place preventing access to information, including state secret laws, national security laws. Globally, few laws exist that require governments to proactively release environmental information such as the basic information on air quality and drinking water quality.¹⁰⁵ Meaningful public consultation in decision making on the environment requires governments to proactively gather, analyse and disseminate such information. Whilst most countries produce state of the environment reports of generally good quality, few countries however make attempts to publicize the results critical for meaningful public participation in environmental activities, plans or policies. Soon after the Rio Summit, the government of Zimbabwe produced its first state of the environment report. In 1998, the country produced its second comprehensive state of the environment report whose purpose was "to support sustainable development decision making through the provision of credible environmental information."¹⁰⁶

In some countries where national laws provide for open participatory processes in environmental matters such as EIAs, public consultations are often held too late in the project development cycle to make a difference in project design or selecting outcomes.¹⁰⁷ The implementation of EIAs in some countries has been criticized as weak whereby sequencing of EIAs and permitting processes excludes the public's participation in the scoping and screening process. Furthermore, citizens are provided EIAs at a substantial cost while restrictions to access based on claims of commercial confidentiality are evident in other countries.¹⁰⁸ Other challenges posed to meaningful public participation in the EIA includes the technical nature, access to non-technical summaries in local language and conflict of interest issues on independence of systems to develop and review EIAs.¹⁰⁹ These implementation challenges reinforce the central argument advanced in this article that meaningful public participation depends not simply on legal recognition but on procedural arrangements capable of enabling

¹⁰⁴ Article 19 *Access to Environmental Information in China: Evaluation of Local Compliance* (2010).

¹⁰⁵ M. Lee & C. Abott *The Usual Suspects? Public Participation Under the Aarhus Convention* (2003) 81.

¹⁰⁶ Government of Zimbabwe Report *supra* 7.

¹⁰⁷ J. Scott *EC Environmental Law* (2008).

¹⁰⁸ Lee & Abott *supra*.

¹⁰⁹ Banisar *supra*.

communities to influence environmental decisions effectively. Accordingly, on analysis, the existence of participatory rights in legislation cannot by itself be regarded as evidence of effective environmental governance.

Scholars and environmental activists have proposed the establishment of environmental courts and tribunals at national level as a mechanism to implement and strengthen the right of public participation in the protection and promotion of environmental rights.¹¹⁰ As of 2010, there were over 300 environmental courts and tribunals in 41 countries. National environmental courts are deemed a more effective means of assisting the public to resolve disputes involving environmental decisions made.¹¹¹ The scope given to public interest litigants to have standing to institute legal proceedings related to environmental decision-making is a facet of public participation in environmental decision making. Over years, various national laws have relaxed the rules of locus standi determining who has the right to approach the courts for access to justice where environmental decisions are challenged. Gaps however remain in implementing access to justice provisions in international environmental law instruments such as timelines taken to obtain a remedy and high costs of litigation.¹¹²

The comparative experiences discussed above demonstrate that the effectiveness of participatory environmental rights depends less upon the adoption of international principles than upon the quality of domestic implementation. Across jurisdictions, recurring challenges, including inadequate access to information, weak institutional capacity, delayed public consultation and limited access to justice, continue to undermine meaningful participation. Zimbabwe therefore reflects broader implementation challenges rather than an isolated case, reinforcing the article's central argument that effective environmental governance requires both normative recognition and robust domestic enforcement of participatory rights.

5. Conclusion

It is evident that there have been significant advances and commitments in international and regional environmental law instruments aimed at ensuring the right to an environment that is not harmful to health or well-being is promoted and recognized. The link between public

¹¹⁰ Unpublished Ria Guidone 'Environmental Courts and Tribunals An introduction to national experiences, lessons learned and good practice examples' Legal Innovation Working Paper No. 1(2016).

¹¹¹ B Ochieng supra 6.

¹¹² G. Pring & C. Pring *Greening Justice: Creating and Improving Environmental Courts and Tribunals* (2010) 18.

participation and effective protection of the environment has progressed in these international environmental instruments dating from the Stockholm Declaration, Rio Declaration, Aarhus Convention, the African Charter on Human and People's Rights, SADC Treaty and SADC Protocol on Forestry. Though some of these instruments are not legally binding, their principles have been used by many countries to shape their environmental laws.¹¹³ These international and regional instruments have in turn placed positive obligations on states to protect the environment as well as creating rights for legal and natural persons in environmental matters.¹¹⁴ Public participation is an environmental principle key in the discourse on addressing environmental problems and bringing about sustainable development. Accordingly, states parties to these instruments need to enact policies and laws that integrate the public's participation in ensuring the right to an environment that is not harmful to health and well-being.

Whilst commendable progress has also been made by many countries in the world to adopt the public participatory provisions in international environmental instruments in national laws, this has largely varied. The varied implementation at national level of these international law instruments has been attributed to factors which have included differences in social and legal cultures. It is submitted that regardless of the challenges faced by different countries at any time, it is important that states recognize the rights and obligations provided in the international environmental law instruments. This is done through the enactment and implementation of public participation as a key procedural right to protecting the environment.

Given the high quest for economic development from natural resources particularly and associated impacts on the environment in developing countries, environmental protection cannot be left to government alone without the participation of the affected and interested public. New paradigms need to be developed by countries including Zimbabwe to facilitate effective public participation in environmental decision-making given the continued environmental problems faced. Accordingly, the article argued that future developments in participatory environmental governance require a shift from viewing public participation merely as a procedural requirement towards recognising it as an essential component of environmental rights protection. Such an approach does not require the symbolic creation of

¹¹³ ZELA *Aspects of Environmental Justice* (2008) 15.

¹¹⁴ Bonilla 18 *supra*.

new legal principles, but rather a stronger commitment to implementing obligations relating to participation, access to information and access to justice in a manner that enables genuine public involvement in environmental decision-making. This is particularly important considering the needs of vulnerable communities which have to participate in environmental protection decision-making in order to achieve inclusivity in environmental protection for purposes of protecting other human rights given their inter-dependence.



MIDLANDS STATE
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JULY 2026

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