



4th Ministerial Conference "Environment for Europe", Århus, Denmark, 23-25 June, 1998

## **GOOD PRACTICE IN**

Background Document for NGO Session, 3-6 pm, 24 June, 1998

## **PUBLIC PARTICIPATION**

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This publication has been prepared within the project "Environment for Europe - Environmental NGOs' preparatory process for the Pan-European Environment Ministers Conference Århus/Denmark, June 1998" and financially supported by Danish Ministry of Environment and Energy and DG XI of the European Commission.

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## INTRODUCTION

The 4<sup>th</sup> Pan-European Ministerial Conference, Environment for Europe, Århus, 23–25 June 1998, includes a significant new element in the programme: a half-day session on the theme of ‘Strengthening Participatory Democracy for Sustainable Development’, organised entirely by ECOs in collaboration with the Regional Environmental Centre for Central and Eastern Europe.

The NGO session is designed to promote debate about the subject of public participation, in all its aspects: access to information, public participation and access to justice in environmental issues. This is a unique opportunity for those who have responsibility for regulating the possibilities of public participation and those who exercise this participation to exchange opinions.

This publication is intended as a contribution to the debate. It does not present a vision of the obstacles or problems found in implementing public participation, but rather ideas about possible solutions; at least, ideas or solutions that have been put into practice in some places.

To do this we have chosen to publish a sample of the many cases of good practice in public participation. These examples are highly varied, and also come from a variety of different places. They refer to some or several of the pillars of public participation considered in the Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters (the Århus Convention).

We hope that this publication may serve as an incentive for the exchange of information about cases of good practice which in turn offer a rich source of ideas, suggestions and practical solutions for putting into practice the principles of public participation on the road to sustainable development.

Finally we would like to thank the Danish Ministry of Environment and Energy and DG XI of the European Commission for having made this publication possible. We would also like to thank all the authors for their contributions and their kind support.

*Madrid, 10 June 1998*

*Fe Sanchis Moreno*

*TERRA, Environmental Policy Centre*

## Public Access through the Internet

Mary Taylor (Friends of the Earth, England, Wales and Northern Ireland)

In the UK, a considerable amount of environmental information and data is available. Nevertheless, officials are generally reluctant to plan for dissemination of data in response to requests, let alone plan for proactive dissemination. Even as professional campaigners and researchers, time and time again we find ourselves faced with practical difficulties – the high costs demanded; inefficiency of data organisation; lack of copying facilities; ‘too busy’, under-resourced officials who do not give the requests priority. The mere existence of data does not fulfil the right to know, if it is in practice inaccessible or unaffordable.

At Friends of the Earth, we decided to publish annual industrial emission data from the official ‘Chemical Release Inventory’ on the Internet. ‘Point and click’ maps allowed users to explore their locality and look at the chemicals released from individual factories. The project demonstrated the following:

- data provision 24 hours a day is possible at relatively low cost
- interest in the data was hugely increased (our site had 50,000 visitors in 18 months, as opposed to 750 enquiries to the Environment Agency in one year)
- if database functions and/or map (GIS) functions are available, data and particular maps specified by the user can be produced (we automatically provided maps centred on the user’s postcode); the production of one ‘virtual’ map or a million such maps involves virtually no extra cost
- industry itself could use the site to check the information – several companies contacted us about errors which had existed in the official data base!
- the system could be two-way – industries (or other reporters) could use the Internet to send data on customised forms, which could be automatically loaded into the system and displayed as appropriate for the sender to verify, greatly increasing the efficiency of data collection as well as data dissemination
- other data sets could be linked in; for example, links to profiles of specific chemicals could be provided, ambient air quality monitoring data could be shown, etc.
- combining maps (and other graphics) with data can be very powerful; they allow everyone to begin to articulate a description of their neighbourhood or locality or region or country. If we can compare data, then they begin to have meaning, and we begin to address not only the public’s right to know, but the public’s right to understand.

*An Internet project by Friends of the Earth (England, Wales and Northern Ireland)  
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## ACCESS TO INFORMATION

Mary Taylor is a Senior Research Officer at Friends of the Earth (FOE) in London, one of the foremost environmental pressure groups in the UK. Although originally working in biochemistry research, Mary became interested in environmental policy and analysis about ten years ago. She enjoys challenging regulators, politicians and databases, has written several pollution guides and given evidence to parliamentary committees investigating environmental issues. She led the FOE team which published the UK’s Chemical Release Inventory on the Internet, with interactive maps. Currently, Mary is pressing for improved rights to information on industrial emissions.

## Involving the Public

Pasi Rinne (Expert of the Ministry of Environment, Finland)

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#### *Finnish National Commission on Sustainable Development*

Like any other long-term process, reaching sustainable development takes time and effort, and passes through different stages along the way. During this process, qualitative changes will take place in politics, the economy, methods of participation, and values; in other words, in society as a whole.

Fortunately, we have moved beyond the stage in which integrating environmental issues and sustainable development into sectoral policy was more an objective than a reality, and where only a few people were familiar with the concept of sustainable development and participation was quite limited. In short, we have been able to move on to a stage where awareness becomes action and observation becomes participation. We are on the way forward.

Sustainable development (SD) concerns all sectors of society. Therefore, broad co-operation is needed between the various sectors and levels. Since 1987, Finland has striven systematically to promote sustainable development by integrating environmental considerations into sectoral policy. In 1993, the Finnish National Commission on Sustainable Development (FNCSD) was established to co-ordinate different measures on sustainable development at different levels.

Environmental problems have usually been tackled as single issues and by limiting discharges. This approach is not sufficient to resolve the accumulated environmental problems, unless the underlying causes of environmental problems are also tackled at the same time. These underlying causes are, in particular, the growth in energy consumption, the increase in traffic and the overuse of natural resources. We must change production and consumption patterns and the planning of human settlements to conform to the principles of sustainable development.

It has not been possible to promote sustainable development by administrative and legislative instruments alone. We also need other instruments to stimulate changes in human behaviour. Above all, there is a need for economic instruments and an increase in environmental awareness. We must be willing to meet the real costs of environmental changes. There must be more information and awareness of how our activities influence the environment and of how our lifestyle should be changed in order to conform to the principle of sustainable development.

Not just the government, but also other actors are beginning to ask questions. Nowadays, companies are encouraged to enhance the environmental performance of their products. Customers, suppliers, consumer and environmental organisations, even banks and insurance companies, are formulating new requirements with respect to environmental performance.

The work to engage various sectors in the promotion of sustainable development has begun. The Finnish Government recently approved a programme for sustainable development. In addition, some of the most important sectors both in the central government and in the private sector already have, or will have in the near future, strategies and programmes on sustainable development. Moreover, more than 200 municipalities are working on Local Agenda 21s.

The composition of the FNCSD is very broad. To give political impetus to sustainable development issues, the Commission is chaired by Prime Minister Mr. Paavo Lipponen and co-chaired by Minister of the Environment Mr. Pekka Haavisto. Additionally, the Minister of Social Affairs and Health, the Minister of the Interior, the Minister of Education, the Minister of Culture and the Minister of Agriculture and Forestry are members of the Commission.

All sectors of Finnish society are represented on the Commission: parliament, public administration (including local authorities), business and industry, labour unions, the scientific community, NGOs, interest groups representing different sectors of society and the media. Finland's two official languages have also been taken into account in the representation and so have Finland's indigenous people (the Sami).

Since the Commission itself only meets about three to four times a year, the FNCSD has four subcommittees who prepare the work for the Commission on the following issues:

- education and training
- changing production and consumption patterns, financial issues, transfer of technology
- socially just development (health, employment, poverty, demographic issues)
- local aspects of sustainable development (especially local Agenda 21s)

The membership of the subcommittees is flexible. The experts in each group may change in accordance with the issues. In each case, relevant ministries, experts and major groups are represented.

In addition, the operational secretariat of the FNCSD (comprising about twenty people) is composed of the secretaries of each subcommittee, working groups and committees, and contact persons in other relevant ministries, together with the Secretary-General and the Secretary of the Commission.

#### *Euro-Mediterranean Ministerial Conference on the Environment*

Finland hosted the Euro-Mediterranean Ministerial Conference on the Environment in late November 1997. The conference was part of the Barcelona Process, where the countries of the European Union discuss development and the environment in the Mediterranean region with southern and eastern Mediterranean states. The conference adopted the Short- and Medium-Term Priority Environmental Action Programme, and discussed in more detail desertification, integrated coastal zone management and hot spots, in order to encourage the preparation and launching of concrete programmes and projects.

A particular success of the conference was the larger involvement of non-governmental organisations. At the conference, a selected group of prominent non-governmental organisations of the region were able to attend the ministerial session as observers. In addition, the NGOs, together with several IGOs, had the opportunity to hold constructive dialogue with the civil servants during the preparatory meeting preceding the ministerial session. The ministers, civil servants and representatives of the organisations found these discussions to be very productive. The non-governmental organisations contributed notably to the process by making it more participatory, and by linking political decision-making directly to the local level, where the implementation of the adopted Action Programme takes place.

#### *The Role of Ngos in Changes to Finnish Forest and Nature Protection Policies*

Throughout the 1990s, forest policies and nature protection in Finland have been subject to much attention and have undergone dramatic changes. During the transformation process, politicians, public administrators, forest enterprises and NGOs have come to agree that all interested parties are entitled to express their opinion and to influence decision-making. Development of economically, ecologically and socially sustainable forestry is a task for all. The important role of NGOs is manifested in their participation in working groups on the protection of old-growth forests in Finland, on forest certification, and on a

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number of other official negotiating bodies. Public debate has also greatly influenced new legislation on forestry and nature protection.

Discussions on forest management and the conservation of biological diversity are, by the very nature of the issues, international. Both official authorities and NGOs take part in the debates. With regard to concrete co-operation, Finland has the closest contact with Russia. Presently, co-operation is through a bilateral development programme on sustainable forestry and conservation of biological diversity. This programme has been in progress since summer 1997. The participation of Russian and Finnish NGOs in the development programme is under discussion. No doubt contradictory opinions exist, but nobody can deny that NGOs play an important role when new directions are being sought in Russian forestry. Russian and Finnish NGOs have shown a particular interest in inventories and the protection of old-growth forests in north-west Russia.

### *New Building Act (Proposal)*

The Finnish Ministry of the Environment is currently in close co-operation with various stakeholders, finalising its proposal for the new Building Act. The objectives of the proposal are to promote sustainable development and open up interaction in planning and decision-making in the communities. The Act would provide people in the community with the opportunity to participate in decision-making concerning their environment.

The concept of a participant would be redefined in the Act. According to the new proposal, participants would be, in addition to landowners, all those whose living or working conditions or other relevant circumstances might be influenced by the new municipal plan. Communities and authorities could also be participants.

Additionally, access to information would be improved. Authorities preparing a plan would be required to notify all the participants about the principles, objectives, any possible alternatives and impacts on the environment at an early stage. This would give participants a chance to influence the preparation of the plan.

The Act would require that municipal authorities draw up a scheme showing who should be involved in the planning process and the extent of such involvement, and what kind of environmental and cultural impacts would need to be assessed.

If participants believed that they had been unable to obtain information or were not given the opportunity to influence the plan, each would have the right to request negotiation assistance from the regional environmental centres.

The new Act would enlarge the participatory process and would give municipalities, NGOs and individuals the chance to take part in a many-sided interactive process and to improve the planning process. Many Finnish municipalities have already gained experience from participatory planning processes. These experiences have shown that widening access to decision-making can be a successful way of committing people and communities to the development of their environment, which generally leads to a more attractive municipality.

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## Experience in the Baltic Sea

Johan Niss (Swedish Society for Nature Conservation)

**C**oalition Clean Baltic (CCB) was created in 1990. The idea was suggested by the Estonian Green Movement in 1989 and carried out by the Swedish Society for Nature Conservation and Finnish Nature and Environment in 1990. The organisation now consists of about 25 member organisations from the Baltic Sea countries, representing the major ECOs in the area.

### *Helcom*

As an NGO, CCB got observer status to the Helsinki Commission (Helcom; full name: Baltic Marine Environment Protection Commission) from the start and it is in this context that good practice can be demonstrated. Helcom is the inter-governmental body following up and implementing the Convention on the Protection of the Marine Environment of the Baltic Sea area (the Helsinki Convention, 1974) and the Baltic Sea Joint Comprehensive Environmental Action Programme (adopted 1992). Helcom consists of several working groups that focus on various aspects of the Helsinki Convention and the Action Programme. There is a formally agreed procedure for issuing and following up recommendations, action programmes, etc., within the work of Helcom.

As an observer, CCB gets all the information that is sent out regarding the work of Helcom, both in terms of the working groups and other meetings or bodies within Helcom. At the meetings, CCB has the right to speak and make proposals. All proposals are considered and treated in the same way as proposals from the official delegates (representing the contracting parties).

This, in theory, enables full public participation of ECOs in decision-making at the inter-regional level of the Baltic Sea area. In practice, full participation is not always possible, due to economic restrictions. Support from the Swedish Society for Nature Conservation, which has access to funds from the Swedish Ministry of Environment and Swedish International Development and Co-operation Agency (SIDA), has limited these restrictions and made it possible for ECOs (CCB, including its member organisations) to participate in the most important work of Helcom.

Furthermore, the channel provided by CCB into intergovernmental work also was of great importance during the first years of independence of the Baltic states Estonia, Latvia and Lithuania.

### *Baltic 21*

In 1996, the prime ministerial meeting in Visby, Sweden, started the process of developing an Agenda 21 for the Baltic Sea Region. The subsequent meeting of environmental ministers in Saltsjöbaden, Sweden, adopted the Saltsjöbaden Declaration that agreed on (among other things) the following:

- 2.1 'to immediately start the development of an Agenda 21 for the Baltic Sea Region'
- 2.2 'an integrated approach is fundamental' and, with regard to public participation:
- 2.13 'The process of developing an Agenda 21 for the BSR should be democratic, transparent and open to the participation of all actors, including NGOs and indigenous peoples. Education and information are vital in order to strengthen participation and support the Agenda 21 process. In order to facilitate a broad public participation and access to necessary environmental information, the on-

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Here is a short presentation of what is encouraging about the Baltic Sea case concerning participation and access to information. There are two parts, one concerning co-operation within Helcom (beginning 1990), the other describing the Baltic 21 Process (started in 1996).

going preparations under UN/ECE auspices of a convention on this subject should be concluded as soon as possible.'

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The procedure that has been used is that CCB (being co-ordinator for the other ECOs in the region) and other interested NGOs have been able to participate in the negotiating group of officials, the Senior Official Group (SOG), under the same conditions as in Helcom. Also, the sub-groups, created to prepare background material for the seven sectors that were deemed to be of greatest importance (transport, energy, forestry, agriculture, tourism, industry, fisheries), are open to the ECOs.

Information has been properly distributed to governmental representatives and NGOs at the same time, and all the progress reports, documentation from the different meetings, etc., as well as clearly organised information about the contact persons and participating organisations, has been published on the Baltic 21 web site. Here information is readily available, and it possible for organisations and others that join the process late to backtrack the procedure and catch up with current developments and positions.

Financial resources and time have been the main constraints on public participation. The process has been under severe time pressure, which was not totally necessary; almost a year was lost between the prime ministerial meeting and the first meeting of SOG. Money has been scarce, but governments have given some small funding to cover costs related to participation in working-group meetings, and the Swedish Ministry of Environment has given a substantial contribution to cover the cost of salaries and the organisation of seminars in the CIT bordering the Baltic Sea.

### Public Participation through Direct Democracy Referendum and Initiative: The People's Decision-Making System in Switzerland

Theresa Herzog-Zimmermann (European Eco Forum)

#### *A Model for Other Countries?*

The citizens of Switzerland have a particularly broad political right to decide directly about new laws, plans or projects. The Swiss system is therefore called a 'direct democracy', as it is, to a large extent, the people who decide and not elected representatives. Switzerland is a country which is organised from the bottom up. Political power rests first of all at communal level. A lot of tasks, however, have been delegated by the people to other levels within the state, according to the subject. The next level up is the canton level (26 regional state entities), to which a lot of important competencies – such as education, energy, spatial planning and construction, road building, regional economy, health, etc. – have been transferred. The top level is the federal level, to which tasks requiring common federal solutions have been transferred. At each level, the people's rights to initiative and referendum are well defined and cover the tasks of the respective levels.

#### *The Political System*

All competencies, as mentioned above, rest, in principal, with the communes, unless they have decided to delegate them to a higher (cantonal or federal) level. The communes organise themselves, and they create their own regulations in their remaining competencies. In most communes, decisions are still taken by a show of hands at communal assemblies. However, bigger communes and towns decide by written vote at the communal offices. At communal level, the people's rights to make proposals ('initiatives') for new laws, projects or plans are the most extensive. Depending on the size of the community, several

hundred signatures for any proposal can be enough to oblige the communal authorities to organise a vote on the proposal, the decision from which is compulsory. The right to referendum also exists at communal level. If the communal authorities take a decision which the people do not like, it is possible, on collection of a certain number of signatures, to oblige the communal authority to present the decision to a people's vote (referendum).

At cantonal level, again there are people's rights to initiative and referendum for all the issues which have been delegated to that level. At both the communal and cantonal levels, the right to a referendum can also be used to oppose major expenditure (finance referendum). At cantonal level, a quorum of a few thousand signatures (3,000 to 5,000 or more) is required for an initiative; depending on the number of citizens. The required quorum of signatures for referenda is usually only half as many.

The system of initiative and referendum exists also for issues whose competencies lie at federal level. At federal level, the right to initiative is guaranteed for proposals which aim to change the federal constitution. The right to referendum exists in two versions: as an obligatory referendum, where the parliament in any case has to ask the people for acceptance of the decision taken; and as a facultative referendum, where people first have to collect signatures in order to provoke a referendum.

All constitutional change is submitted to an obligatory referendum. The same is necessary for membership of supranational organisations, but, in these cases, a double majority is required: not only must it be accepted by the majority of the people, but also by the majority of cantons. The votes are always counted in the framework of each canton, which gives the referendum results for that canton. A facultative referendum refers to new federal laws and time-unlimited multilateral agreements. If a certain number of people are not satisfied with a decision of parliament about a new law, they can collect signatures for a referendum, which is compulsory if the necessary number of valid signatures is achieved. In the framework of facultative referenda, a simple majority of the electorate is necessary. At present, there is no finance referendum at federal level. However, a revision of the federal constitution is being debated in parliament, by which it is proposed to expand people's rights to include voting in a finance referendum for major projects or expenditure, the right to initiatives for normal federal law, and a new form of referendum which would allow not only the rejection of a parliamentary law but also the proposal of an alternative at the same time (a so-called 'constructive referendum').

The processes for referenda and initiatives at the federal level are described below.

### *Referenda*

Each decision of parliament regarding new laws (or any other decision which requires a facultative referendum) is publicised, with an indication of the time-period within which a referendum can be requested by the people. A referendum can be requested at federal level if 50,000 signatures are collected within three months. People or NGOs who do not agree with a decision have to act quickly. They have to print leaflets on which the decision of the parliament and its date are mentioned, as well as a sentence referring to the decision about which the signatories request a people's vote – a referendum. Groups usually form a 'referendum committee' with several like-minded NGOs and organise the collection of signatures. In practice, this means that the leaflets are sent to all the contact addresses of the participating NGOs, asking people to sign, to ask their friends and neighbours for their signatures and send the form back to the committee, and to install tables in public places where people can sign. Usually, many events are organised in order to make people aware of the subject and of the collection of signatures. If the number of 50,000 signatures is reached in time and submitted to the federal authorities, they have to organise a referen-

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Facultative referenda

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dum. Once the requirements for the referendum have been met, the campaign really starts. In the months before the referendum takes place, events, public debates, advertisements, etc., are organised in order to inform the electorate.

At the present time (June 98), Swiss environmental NGOs and farmers' organisations are collecting signatures for a referendum against a change in the Swiss law on spatial planning which would allow, to a certain extent, the construction of houses in agricultural zones. So far, house building in agricultural areas has not been allowed, with the exception of buildings required by the agriculture industry. The new law would allow existing agricultural buildings to be used for other commercial purposes, and the construction of buildings for commercial indoor 'meat production' in agricultural zones, entailing additional threats to soil and water and the destruction of landscapes. A referendum has been requested and environmental groups hope to persuade the people to reject this change in the law on spatial planning.

### Obligatory referenda

As mentioned above, an obligatory referendum has to take place for any change to the federal constitution, and also in respect to membership of a supranational organisation or organisations of collective security. This means that, after the decision has been taken in parliament, the referendum is organised by the authorities. The decision requires a double majority of both people and cantons.

The right to a referendum has a stabilising effect. It is a means of stopping decisions which might go too far or in the wrong direction. The people can intervene at any time – not only once every four years at election time – and they can have an effect on specific subjects. Furthermore, the people's right to a referenda pushes the authorities to integrate as far as possible the points of view of all groups of society.

### *Initiative*

The right to make a people's initiative is a progressive tool for change. It allows anyone to propose the text for a new law or an amendment or deletion of an existing paragraph of the constitution. Usually, a group of people – an NGO, for example – campaigns for the introduction of new measures in a particular field of public concern. They have to write their proposal, using the exact wording which would be entered in the constitution. This is a so-called initiative for an 'elaborated draft' paragraph. There is a second form of initiative, whereby a suggestion for regulating a policy field can be made. This form is a 'general suggestion', where parliament is mandated to elaborate the respective law in detail. 'Elaborated drafts' are the more common initiative. If you are successful, your own text enters the constitution.

For an initiative at federal level, 100,000 signatures are needed, to be collected within 18 months. If these requirements are met, the federal authorities have to organise an election. The decision on people's initiatives is also taken by double majority (as it deals with constitutional change). People form an 'initiative committee', which organises the collection of signatures and raises funds for the campaign with events, public debates, advertisements, etc. The 'initiative committee' is also usually authorised to withdraw an initiative, if the authorities come up with an acceptable alternative proposal. This frequently happens. An initiative idea is taken up by the government or by parliament and used to modify the initial proposal. It is also possible to retain the initiative despite an alternative proposal being elaborated by the authorities. In this case, people can vote for or against each proposal.

It is not always easy to win an initiative. Sometimes several attempts are necessary and important subjects always come back on the agenda until a satisfactory solution is reached. Although the majority of the numerous initiatives are rejected, the system has a big influence on change and the development of

policy and law. Each initiative campaign has a tremendous awareness-raising effect in any given subject. Therefore, most subjects which have been proposed by an initiative are taken up by parliamentarians or the government and the proposed law is duly elaborated. Broad political awareness of the people is also a good base for effective implementation of new laws.

On Sunday 7 June, we voted on the environmental NGOs' initiative for the protection of life and the environment from genetically modified organisms. The initiative proposed to prohibit the production, purchase and transport of genetically modified animals and the release of genetically modified organisms into the environment, as well as the prohibition of patents on life species, plants and animals. The proposal also contained regulations on the handling of genetically modified products and production methods, and it subjected those seeking permits to demonstrating a need for such products, to guaranteeing the security of the product and to showing the lack of alternatives. Furthermore, the ethical acceptability of the operation had to be explained. Unfortunately, the proposal was rejected by a two-thirds majority. However, the campaign has created public awareness about the issue and, during the campaign, several changes of law were realised (for instance, genetically modified components in products now have to be declared by law), and an additional law, which does not go as far as the initiative text, has been prepared. In this case, the opponents to the initiative were the powerful pharmaceutical multinationals, which invested large sums in campaigning against the initiative.

Results are bound to be influenced by the budget available. California, which has a similar direct democratic system, with initiatives and referenda, has developed rules for the transparency of the finances of the campaign. The committees on all sides have to publish the amounts which they have invested in the political campaign as well as the sources of their funds.

### *Benefits for Sustainable Development*

Several initiatives in the field of sustainable development and nature protection have been successful in recent years. An initiative for a moratorium on nuclear power was accepted by the people, forbidding any concession for new nuclear power plants or enlargement of existing nuclear power plants for a period of ten years. Within the ten years, an energy conservation strategy has to be implemented with the aim of replacing the energy coming from nuclear sources by energy saving and the use of renewable energies.

Another big success has been the so-called 'Rotenthurm initiative', which proposed complete protection of an important wetland near Rotenthurm as well as the protection of all remaining important wetlands in Switzerland. The text has a very stringent formulation which does not allow any change in those areas.

In the field of agricultural policy, a parliamentary proposal for an unsustainable policy was rejected by a referendum and this opened up the way for a new proposal which drew on elements from an initiative of environmental NGOs and bio-farmers which was pending at the time. In this way, people had the opportunity to accept an alternative proposal for a shift to an ecologically sound agricultural policy which supports farmers using sustainable cultivation methods. Thousands of farmers have changed to biological farming methods in the two or three years since then.

A very important success was the acceptance of the 'Alpine Initiative'. This initiative obliges all transalpine freight traffic through Switzerland to use the railway instead of the road, and is to be implemented by the year 2004. Furthermore, it forbids any expansion of the road network in the alpine region. The implementation of this initiative will be achieved by the internalisation of external costs into freight transport costs. We hope that this example of Swiss transport policy can be promoted in other countries in order to achieve a sustainable transport policy all over Europe, both for the sake of the people and of the environment.

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The newest OECD review shows that Switzerland is regarding its environmental policy and law one of the most advanced countries. One of the reasons for this are the direct democratic tools.

### *A Model for Other Countries? Yes!*

Direct democracy – with initiatives and referenda – is not an exclusive model for very specific States. It could be introduced by change of constitution in any country; even those that are part of a union, as the example of California shows. Several European countries, like Denmark, Austria and Italy, have elements of direct democracy in their constitutions. The introduction of direct democratic rights is a question of political will. There is a citizens' movement for the promotion and development of direct democracy in Europe, with active groups in different countries. They discuss transnationally not only ways of introducing elements of direct democracy into individual States at the various levels, but also how direct democracy can be introduced at an international level, including in the European Union. Ways of introducing direct-democratic instruments into the European Union are also being discussed in the science sector. An important part of this debate is the question of subsidiarity (in the sense of solving the tasks at the lowest possible state level); in other words, which tasks need supranational solutions or multilateral approaches and which are best handled at regional or local level. Direct democracy is a sustainable way of taking decisions. It may be slower than other decision-making processes, but decisions taken by the people have a solid base, are part of a steady development and are often more progressive than proposals which emanate from the authorities. And, most importantly, the process itself is as important as the goals.

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## The Mediterranean Commission on Sustainable Development: An Example of Information and Participation

Rafael Madrueño (MED Forum)

The MCSD was created in 1996 by the United Nations Programme to protect the Mediterranean. The MCSD is an autonomous body which comprises representatives of twenty States, the European Community, five NGOs, three local authorities and three socio-economists. It is a significant innovation that all the members participate in the Commission on an equal footing. The Board of the MCSD is chaired by the Environment Minister of Tunisia and the rapporteur is the President of EcoMediterrània, a Spanish NGO member of MED Forum, the Network of Mediterranean NGOs. This allows all the NGO members of MED Forum (more than 80 in 22 Mediterranean basin countries) to receive reliable information on the subjects dealt with by the MCSD.

The Mediterranean Action Plan (upper body of the MCSD), which is comprised only of the States who have signed the Barcelona Convention to Protect the Mediterranean (1975), allows NGOs to participate as observers with the right to speak and to receive information.

This participation process has created a 'Mediterranean style' of the participation of civil society which has had repercussions on other forums, such as the Conference of Environment Ministers in Helsinki where the SMAP (Priority Action Programme for the environment in the Mediterranean) was approved. The main NGOs participated in the elaboration of the SMAP contents and attended the ministers' plenary. Mr. Zohir Sekkal, the MED Forum president, spoke to the plenary session representing the Mediterranean NGOs.

In conclusion, the best way to obtain information is through direct participation in the bodies that represent the main concerned sectors and are formed by the most representative organisations, with all being on an equal footing. Networks such as MED Forum provide a means for the many organisations in concerned countries to receive and transmit information.

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### New Partnerships for the Environment

Czeslaw Wieckowski (Polish Environmental Law Association)

In May 1996, the Project on Co-operation between the Ministry for Environmental Protection, Natural Resources and Forestry (MEPNRF) and Ecological NGOs, sponsored by the Harvard Institute for International Development (HIID), was commissioned by the Department of Ecological Policy of MEPNRF to assist the Polish government in implementing both national environmental policy and international obligations in relation to access to information and public participation in environmental protection. To supervise the project, a special Steering Committee was established, chaired by a deputy-head of the Department of Ecological Policy of MEPNRF, and consisting of representatives of MEPNRF and the National Environmental Fund (NFOSGW), and representatives of ecological NGOs and the HIID. The successful bidder for the project was

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a team of experts, most of whom were affiliated to ecological NGOs, co-ordinated by the Polish Environmental Law Association (PEAL). The team was supported by Milieu Kontakt Osteuropa.

The approved agenda for the project included carrying out an opinion poll on a representative group of ecological NGOs (about 10% of the 700 – approximately – ecological NGOs active in Poland) and a series of interviews with officials from all departments of the Environment Ministry and from other authorities with environmental-related responsibilities. The project also included two public debates: one to present the draft report and one to present the draft final report. In both cases, an extensive period was provided for public comment and notice.

The project's final report was completed in February 1997. It is divided into two parts and consists of nine chapters, providing a comprehensive analysis of relationships between ECOs and environmental authorities. Part One presents an analysis of the existing situation in Poland, in the light of international instruments and the experience of other countries, in the following way:

- presentation of relevant international documents and obligations of Poland (Chapter 1)
- description of the experiences of other countries (Chapter 2) and Poland (Chapter 3)
- conclusions arising therefrom (Chapter 4).

Part Two is devoted to the future. It contains both elaborated proposals from the project team and a description of relevant legal and organisational changes independent of the project. Chapter 9 estimates the likely costs of the proposed changes.

Both parts of the report follow the same pattern, which is supposed to facilitate comparisons. This pattern reflects the assumption that three interrelated aspects of the issue have to be examined – legal, organisational and financial – while the main areas of co-operation include access to information, participation in policy- and law-making, participation in decision-making and in enforcing the law.

The final report was accepted by the Steering Committee in March 1997 and recommended for implementation. The Environment Ministry created a special task force, which included two NGO representatives, to develop the corresponding Implementation Program. This Program and a political document called the 'Declaration on Co-operation between the Ministry of Environmental Protection, Natural Resources and Forestry and Ecological NGOs' were both adopted formally by the minister in spring 1998.

The Declaration acknowledges the need for co-operation and sets out some basic principles in this respect. One of the most fundamental principles is the recognition that ecological NGOs, despite the different opinions they may have on particular issues, are natural allies and partners of environmental authorities in promoting environmental protection and sustainable development. Thus, the ministry expresses its willingness to co-operate broadly with them, respecting their diversity and fluctuation of opinions as being necessary features of social movements. On the other hand, the ministry expects them to respect its legal competencies and responsibilities. The basis for this co-operation should be clear and transparent procedures for various forms of co-operation should be initiated, in particular concerning consultations, the participation of NGOs in various advisory bodies and official delegations to meetings, etc., as well as the granting of financial support from public funding. The ministry committed itself to take measures which would serve the capacity building of NGOs, including steps to introduce a legal framework enabling the provision of so-called core funding to NGOs, in addition to already available financial support for concrete projects.

The Implementation Program identifies concrete tasks to be undertaken (such as putting in place time frames, designating responsibility, etc.). It also aims to strengthen the institutional capacity of the unit responsible for co-operation, to set in place a procedure for consultation, provide funding for updating the database of ecological NGOs and train officials and NGO activists in issues relating to co-operation, and is committed to using electronic means of communication and disseminating information via publicly-funded NGO-related periodicals.

Independently of the concrete aims identified in the Implementation Program, the ministry has taken a series of practical steps to facilitate both public participation and co-operation with NGOs, which seems to suggest that the findings of the project have greatly influenced the approach of officials towards transparency and public participation. For example, though there is not yet any general obligation to disseminate information electronically, in practice there has been great progress in this area over the last year, both on the part of central government and of parliament.

The Environment Ministry's web site is quite elaborate now and provides information in both Polish and English about various issues, including the following:

- legal Acts (including the texts of actual legislation)
- structure of the ministry, with names, telephone numbers, etc., of ministry officials
- information about publications available from the ministry
- current news and events
- information about other environment agencies
- a page for comments and remarks (comments@mos.gov.pl)
- environmental policy
- financing of environmental investments

Parliamentary web sites are a bit less elaborate but are probably more useful for obtaining current information, because they are regularly updated and are quite detailed. For example, they give information about meetings of the Environment Committee, including what was discussed, what are the conclusions, etc.

The ministry has recently taken practical steps to facilitate participation in developing programmes, policies and proposals for legislation. Consultations are announced, either via web sites (a recent example is the announcement of consultation on a new ecological policy to be adopted) or through newspapers or journals. Individual requests for comments are also addressed to NGOs which are on a consultation list. This list covers both NGOs and individuals who are active (or critical) in a given field, or those who specifically indicated their willingness to be consulted.

Also worthy of mention are the efforts made by the ministry to consult the Polish position when negotiating the forthcoming Århus Convention, whereby NGOs were consulted three times during the process: firstly, when the draft elements were translated and distributed for comments, secondly, via a public hearing held at the ministry, and finally, with a second public hearing held, together with the Parliamentary Environmental Commission, shortly before completing negotiations.

It should be noted that it is not just the ministry which has taken steps to implement the project. NGOs have also made an effort to implement the measures envisaged in the project. In April 1998, the Lobby Facility became fully operational, after a candidate to run the office had been selected by a selection committee (comprised of representatives of NGOs interested in the issue) from about 60 candidates who answered the announcement made on the Internet and in the country's main newspapers.

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## A Percentage for Participation: The Campaign for More Effective Public Participation

Chris Church (UNA-UK/ANPED, United Kingdom)

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The 'Percentage for Participation' campaign was set up in 1996 by the UK Community Architecture Group. It aims to encourage more local authorities to develop and implement clear policies to enable effective participation. It also seeks to ensure that participation exercises, in whatever context, are properly resourced. Its suggestion for participation in built environment projects is that 1% of the total development cost should be spent on participation by the affected communities – hence the campaign title.

#### *Introduction*

It is accepted by many organisations that it makes good sense for people to have a right to a say in decisions which will affect their lives, and the quality of their lives. At the moment there are only limited ways in which that right can be exercised. The campaign was launched by a group of architects experienced in participative working, in both urban and rural areas. They concluded from many years' work that good participative working was both possible and very effective, but that such good examples were rare.

It was also felt that it was vital to provide adequate funding for such exercises, and for that reason a simple target, 1% of development costs, was selected. There are numerous examples where such a level of expenditure has taken place and has produced excellent results.

For that reason the CAG set up a campaign that seeks:

- to make good practice in public participation the norm rather than the exception
- to ensure adequate resourcing for public participation in all fields
- to identify and resolve the political obstacles that prevent effective public involvement in development decisions

Funding was provided by the Royal Institute of British Architects, by charitable trusts and by British Telecom, who had supported other work done by the CAG. A part-time co-ordinator was appointed.

#### *Developing the Campaign*

Some degree of public participation is required in the UK in many areas, including planning applications, regeneration programmes, local authority development plans, and the 'Local Agenda 21' process. However, there is a lack of guidelines as to how this should best be done and a dearth of well-described good practice. This means that effective public participation is still rare.

The campaign was reinforced by research done for the Department of the Environment in 1994 which suggests that, 'at its best, community involvement can enable:

- processes to be speeded up;
- resources to be used more effectively;
- product quality and feelings of local ownership to improve;
- added value to emerge;
- confidence and skills to increase for all; and
- conflicts to be more readily resolved.'

The campaign was targeted at all key groups including:

- architects and other professionals
- user groups such as local residents
- local and national government, to develop understanding and support for procedures that will encourage widespread adoption of 'good practice'

Through discussion and a seminar, the key obstacles were soon identified as

- Lack of resourcing

Many bodies try to run participation exercises with little or no money.

- Lack of expertise

Many planners, designers and architects lack the experience and skills needed to set up good participation exercises.

- Institutional inertia

The 'adversarial' nature of the planning system in the UK means that members of the public wishing to be involved in many developments are seen only as 'objectors' to plans produced by small groups of professionals.

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The campaign then developed clear policy goals:

- to establish the practice whereby every significant development includes in its budget a specific amount to fund effective public participation at all stages
- to make it a requirement that developers of significant projects produce a 'Public Participation Statement' that would identify those affected – the 'stakeholders' – and set out how they will involve those stakeholders in the development process

The campaign was taken forward by inviting local councils, architecture practices and voluntary organisations to sign up to a simple declaration, which committed them to:

- develop a clear policy for participation
- ensure that staff working with the public are properly trained
- publicise this commitment

This declaration was launched at a major national conference on 'A right to participate', which was supported by many organisations and included speakers from anti-poverty groups, housing bodies and from a Local Agenda 21 process. Progress was initially slow, although over 150 architecture practices signed up. Local councils were wary about making clear their support for the initiative, not least because it committed them to a programme of action. Two local councils in the south of England, Basingstoke and Southampton, were the first to sign up to the campaign. There were discussions about the idea of a 'Public Participation' statement, but the campaign has lacked the resources to take this work forward.

### *Work on Good Practice*

In seeking to identify good practice, the campaign first needed to say why a process was 'good practice'. This led to lengthy discussion. Some principles were agreed:

- Everyone affected by a proposed development should have an adequate opportunity to have a constructive input and be listened to.
- There should be a clear assessment of how the proposed development will meet local needs and interests.
- The participation process should be adequately resourced, in terms of money, information and staff, so as to ensure that it is fair and effective.
- Those likely to be affected should be involved in running the participation process and the developments that may result from it.

From these points a checklist was developed that suggests that a good participation process at any level should include:

- an initial stakeholder analysis that is open to discussion and amendment, carried out by the initiator
- a statement of commitment to effective participation from the initiating body
- a representative body that can work with the initiator on the objectives and on developing and monitoring the process

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- a published budget for the agreed participation process
- acceptance of the need to use independent facilitators as relevant
- a full, clear and agreed record of all discussions being made available to the public, along with all key documentation
- a final document that lists the relevant areas of agreement and disagreement arrived at during the process and that is agreed by the representative forum
- a final independent review that measures the satisfaction of participants

The campaign also produced a checklist which suggested which participation techniques were appropriate for which purpose.

### *Participation and Sustainability.*

Effective participation is an integral part of developing strategies for sustainable development and making sure that they are carried forward. Principle 10 of the Rio Declaration makes this clear: '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 . . . and the opportunity to participate in decision-making processes. *States shall facilitate and encourage public awareness and participation* by making information widely available.'

The CAG recognises that this applies not just to changes to the built environment, but also to all issues that affect our lives. These include issues such as our health-care needs, the state of the local environment and reducing poverty. Effective participation can lay the foundations for a just, sustainable and truly democratic society.

### *Conclusions*

Since 1997, funding for the campaign has been limited. However, many of the ideas raised by the campaign have been taken up by other bodies. The debate about the value of public participation has grown across the UK and is increasingly focusing not just on what techniques to use but on the policies that are needed to create a culture of participation. The CAG campaign has also played an important part in opening up discussions about what is and is not good practice for sustainable development.

#### *The Community Architecture Group*

*The aim of community architecture is to enable people to get directly involved in the design and management of the buildings and environments they use, giving local communities more control over the decisions that affect their environment. A community architect will provide people with design and organisational skills to ensure that their ideas are turned into a practical reality. The RIBA Community Architecture Group links and supports community architects throughout the UK. It can provide advice on best ways forward, on training, and, where appropriate, on making contact with an architect or other professional.*

*For more information, contact: RIBA CAG, 66 Portland Place, London W1N 4AD, or 'From Vision to Action', participation policy advice, PO Box 893, London E5 9RU.*

## Danish Example on Current Practices in Public Participation in the ECE Region

The Danish Society for the Conservation of Nature

Compared to other countries, Denmark is known for its transparent decision-making processes. Openness and decentralisation characterise Danish administrative procedures in the environmental area. Another aspect of these procedures is that, besides the official decision-making processes, there is a tradition of informal practices and procedures between the Danish authorities and NGOs in connection with environmental policy making. Having said this, there are still some areas where progressive change is needed.

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### *Public Participation in the Policy-Making Process*

NGOs have the right to submit comments and proposals to government officials and this right is widely used. In some areas, however, there is a gap between having a right to be heard and actually exerting an influence on the final outcome. At present, the comments and proposals of NGOs only affect authorities' final decisions to a limited extent. In this regard, the interpretation of the Precautionary Principle is the main point of discrepancy between NGOs and authorities.

In 1997, for instance, the Danish Society for the Conservation of Nature participated in approximately ten hearings concerning genetically modified organisms, but in none of these cases did the comments of the organisation change any of the decisions made by the authorities.

NGOs' organisational and technical resources are important for strengthening NGO participation in policy making. Policy making on chemical substances and materials is one of the most time- and resource-consuming fields of interest. Access to considerable resources is necessary if one wishes to keep updated on the development of chemicals and their consequences on the environment in the future. In fact, it is a very uneven 'race' between the industry and NGOs, which means that, even if the right to participate exists, the reality is that most NGOs are unable to use this right fully. This makes it even more important for NGOs to have access to any information that the public authorities possess.

The implementation in 1994 of the EU directive on freedom of access to information on the environment led to some improvements regarding the rights of the public, especially concerning the right to request information on the environment from semi-public enterprises. The directive stated that enterprises under governmental control were obliged to provide information on the environment if they were approached. But the reality is that in some situations it has proven difficult to get the information requested, as is the case with major infrastructure projects where the government establishes a joint-stock company to control the project.

Since 1987, when the European Single Market came into force, an increasing number of directives on environmental issues have derived from the European Union. Due to the fact that it is more difficult for Danish NGOs to influence the decision-making process inside the EU system, it has become increasingly harder for Danish NGOs to influence the elaboration of environmental legislation.

### *Developing New Ways of Public Participation*

Until recent years, the Danish environmental administration has primarily been based on a sector approach: the so-called end-of-pipe environmental administration. According to this approach, environmental issues are primarily a question of managing resources. However, this approach is not sufficient for the

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environmental challenges facing us now and in the years to come. The tendency in environmental administration is for new market-based mechanisms and voluntary agreements such as EMAS and eco-labelling to increasingly supplement regulations based on targets and time schedules. This has to be reflected in the future framework of access to environmental information, public participation and access to justice.

Today, for instance, standardisation organisations have a significant influence. The process, however, is without any public participation, influence or control. The committees which elaborate the standards are dominated by industry, and it is impossible for NGOs, with limited resources, to keep up. The result is that industry can implement standards without taking public opinion into account. This is not an acceptable development, because it will weaken public participation in environmental decision-making.

As outlined in Agenda 21, sustainable development calls for the integration of the environment into all other policy areas. The approach must be cross-sectoral. New ways of public participation must be developed, securing transparency and a high level of environmental protection and enforcement. Public participation is just as crucial in the implementation process as in the decision-making process. The public has to be involved in the implementation. Individuals, NGOs, industry and trade associations must co-operate in mutual projects to carry out sustainable solutions. To change production and consumption patterns in a sustainable direction, there is a need for active participation of the population as well as industry and agriculture.

In Denmark there has been no discussion of how to implement Agenda 21 at a national level, nor has the government made any national guidelines.

Responsibility for the implementation of Agenda 21 was handed over to the municipalities. The consequence is a lack of an overall direction or established indicators of what sustainable development implies. This has meant that the efforts of the municipalities are scattered and without any measurable effect. Of all the municipalities in Denmark, 50% (in 1997) were active in connection with Agenda 21 and of these only very few chose to focus on public participation and, thereby, the involvement of local citizens.

The work of the national authorities on Agenda 21 has been criticised for being too academic and not sufficiently concrete, and the need has been stated for a plan of action which can guide the future work of the municipalities.

## Access to Courts in NIS Countries

Olga Razbash (Regional Public Environmental Law Centre 'For Human Rights and Environmental Defense', Russia)

*a) A conclusion of the GEE can be appealed against in court if it could lead to violation of the right to a prosperous environment (Article 38 of RF Law 'On Environmental Protection')*

In 1993, the prosecutor of Kemerovo Oblast filed a lawsuit to protect citizens' rights to a prosperous environment and the environmental interests of the state, against the conclusions of GEE on the project for the reconstruction of a metal processing battery at the Kusnetsk metallurgical plant, seeking to have it declared illegal and unfounded. Experts had concluded that the citizen's right to a prosperous environment had not been violated.

The district court of Kemerovo agreed the prosecutor's case, and the GEE conclusions of the Kemerov Oblast Environment Protection Committee were acknowledged to be illegal.

The Presidium of the Supreme Court of Russia Federation (RF) heard appeals from plaintiffs and protests by the general prosecutor on 2 February 1994 and found the following:

According to p. 2 Article 38 of RF Law on Environment Protection (19 December 1991) (with later changes and additions), the conclusions of the GEE can be appealed against in a court or an arbitration court. The Supreme Court stated that the prosecutor, according to Article 41 of the Civil Procedural Code (CPC RF), is empowered to appeal to a court to protect the rights and interests of other persons – 'unlimited circle' – who are residents of a specific region and are likely to be affected by the decision.

The conclusions of the GEE permitted the reconstruction without environmental protection measures, which could lead to a violation of citizens' rights and interests protected by law. The planned activity would adversely impact not only the territory of the plant but citizens' rights to a prosperous environment in the whole region (Article 5 of RSFSR law 'On Sanitary-Epidemiological Safety of the Population', 1991).

*b) Joint lawsuit by a citizen and a prosecutor, seeking to render the decision of a governmental body of the RF to be invalid because it violates citizens' rights to a prosperous environment and was adopted in violation of existing nature protection legislation (Article 42 of RF Constitution; Article 28 of RF Land Code; Article 5 of RSFSR law 'On Sanitary-Epidemiological Safety of the Population'; Article 12 of federal law 'On Ecological Expertise'; Article 36–37, 54 of RF law 'On Environment Protection')*

A decree of the head of the Vladimir Oblast administration in 1996 permitted the location of a regional centre for land burial of industrial and urban waste on a territory of 50 hectares in first-category specially protected forests, a water protection zone, and an area of rare species habitat. The construction was planned without any Environmental Impact Assessment (EIA) or GEE input. Importing toxic industrial waste formed a part of the project.

There was no consultation, either with residents in the region or with local municipal councils, as is required by existing Russian legislation.

The decision of the Vladimir Oblast administration was appealed against in Vladimir Oblast court by a Muscovite who owns a property in the region – a house in a village near to the planned site. A prosecutor's protest was also filed in the same court. The defendant stated that its activities did not violate any laws or citizens' rights.

The case was first heard in Vladimir Oblast court, then appealed against by the defendant (the administration) in the Supreme Court of RF. The Supreme Court ruled that citizens' rights to a prosperous environment, safety, timely and

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adequate environmental information and public participation in environmental decision-making had been violated.

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### The USA Experience

John E. Bonine (Chair of Board of Directors of Environmental Law Alliance World-wide, US Office and Founding Attorney, Western Environmental Law Centre, USA)

#### *Access to Justice*

In the USA, 'access to justice' has been completely integrated into the practices for enforcement of both 'access to information' and 'access to decision-making (public participation)'. Citizens, non-governmental organisations (NGOs) and others have the absolute right to seek a court order when their rights to information, to public participation, or to many other similar matters are denied by a government agency.

#### *Freedom of Information Act Example*

A typical Freedom of Information Act (FOIA) case took place in the mid-1980s, on behalf of environmental activists Paul Merrell and Carol Van Strum. This essay will summarise some aspects of this exercise of 'access to justice'.

In the late 1970s, the US Environmental Protection Agency (EPA) was considering whether to ban the herbicide 2,4,5-T (one half of the mixture called 'Agent Orange' when it was used in Vietnam to defoliate trees during the Vietnam War). A number of women in the Coast Range mountains of the State of Oregon started to become suspicious at the high rate of birth miscarriages (so-called 'spontaneous abortions'). They wondered whether the heavy spraying of their watersheds by the government and companies using 2,4,5-T to eliminate 'unwanted vegetation' in tree plantations could have any correlation with their miscarriages. After they had made an investigation and created a chart showing that a correlation apparently did exist, they submitted the information to the EPA. EPA reacted swiftly, issuing an 'emergency suspension' of the use of 2,4,5-T, a pesticide that the EPA and industry had been studying for nearly ten years because of concerns over dioxin.

The EPA sent a scientific team to the Alsea Valley, where the women lived. The team collected water samples, human tissue samples from aborted fetuses, samples from a baby born with no brain (anencephalic), and so on. They assured the residents that they would tell them the results. Months went by and there was no report. Carol Van Strum started asking for the data, eventually filing FOIA requests demanding the material, which she called the 'Five Rivers Study' after the valley in which she lived, near the Alsea Valley. The EPA responded that there was no such study and they had no such information. But Ms. Van Strum had required the EPA officials to sign a receipt for some of the material they had taken, so she had proof. Still little happened. When she filed FOIA requests, the EPA denied that it had any data. When her husband filed a lawsuit over herbicide spraying and pursued 'discovery' against EPA files, EPA again denied it had such data.

She wrote about her frustration in a book, *A Bitter Fog: Herbicides and Human Rights*, published by the US NGO, the Sierra Club.

During an environmental law conference in Colorado in the early 1980s, Professor John Bonine was reading Ms. Van Strum's book in the evenings and he noticed that some of the scientists mentioned by Ms. Van Strum were from Colorado State University. He picked up the telephone and called the university, asking to speak to the scientists. Yes, there had been a study. The results had been sent to an EPA laboratory in Mississippi. His colleague Michael Axline called that lab, which in turn referred him to Dr. Nelson Gross at the University of Nebraska.

When asked about the data from Oregon, Dr. Gross found it among his papers and exclaimed, 'Oh, my God! Didn't EPA do anything about this?' Mr. Axline asked him to send a copy of the information he had.

The data showed levels of dioxin five times higher than the town of Times Beach, Missouri, where the EPA had closed and evacuated the town. The news hit the newspapers. As they say in America, 'all hell broke loose'. The EPA stated that some samples had become mixed up and the highest readings had come from another study involving Midland, in Michigan, just downstream from the Dow Chemical factory. This led to another uproar in Michigan.

Meanwhile, the Western Environmental Law Centre in Eugene, Oregon, had filed a lawsuit against the EPA for failing to provide the information in an FOIA request. John Bonine and Michael Axline were the lawyers. Legal papers were filed in the case, *Van Strum v. Ruckelshaus*. The EPA started releasing documents. Then more documents. Ultimately, 30,000 pages of documents on dioxins were released – involving the Five Rivers Study, and dioxins associated with the Dow Chemical plant and other places.

In the midst of this, documents were uncovered showing dioxin contamination by pulp and paper mills, due to bleached, white paper production. This led, over time, to a major new programme at the EPA to combat such pollution.

There was a congressional investigation of the EPA's denials of access to information. The Inspector General of the EPA, a kind of ombudsman, issued a report saying that lawyers at the EPA had wilfully and improperly lied about the supposed non-existence of documents that were responsive to Ms. Van Strum's request when she first filed it.

Major programmes were changed because of the persistence of one woman and the fact that NGO lawyers were willing to take her case to court.

In an ironic footnote, when the lawyers applied to the court for attorney fees (litigation expenses), the court refused to order the EPA to pay anything. The court said that the EPA would have released the documents without any lawsuit being filed. As a result, all the work in the case was not compensated.

On the other hand, a large number of law students received training in the case over the years. Major changes occurred in the EPA. And some citizens and NGOs felt empowered to continue trying to change the policies of their government. There was justice in the end, and access to justice to enforce FOIA, but more justice should have been done.

It is a story, in short, of both good and bad practices in access to justice in the USA.

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