**April 2013. Draft Working Paper: A work in progress! All comments, criticisms and suggestions welcome.** **ldesilva@wri.org**

**PUBLIC RIGHTS AND ADMINISTRATIVE JUSTICE**

Lalanath de Silva[[1]](#footnote-1)

The man who steals from off the common,
Has many a safeguard at the trial,
But when the common is stolen from all,

There are no safeguards and no trial!

**Adapted from 17th Century Protest verse**

**Synopsis**

Administrative law, in civil and common law countries, has developed ways and means of judicial review and supervision of executive decision-making that affects individual rights of citizens. However, there is a significant black hole in the review and supervision of executive decisions that affect collective community or public rights. Executive decisions that affect an individual’s (including a corporation’s) rights, such as the right to a driving license or property or a business or export permit are required to follow standards of legality, fairness and reasonableness found in judicial decisions, legislation or administrative guidelines. However, in many countries such standards do not exist for executive decisions that affect the public at large or sections of the public or communities.

This paper briefly discusses some of the historical reasons for this lacuna in public law and looks at illustrative examples of how judges and legislators have attempted to close this gap. The paper argues for the development of a general public rights doctrine that would lay the foundation for greater judicial control of such executive decision-making. Such decision-making has far reaching consequences for the body politic in any nation. The paper ends with a set of nine principles and supporting rules of public administrative justice extracted from judicial decisions and legislation from around the world. These principles and rules can form an inspiring charter for a global campaign for public administrative justice reforms. The principles have been annotated with explanations, illustrative examples and references to legislatio R Vs Metropolitan Commissioner of Police, *ex parte* Blackburn (1968) 2 QB 118

n in **the annex** to the paper.

**Introduction**

If you obtained a driving license, you immediately acquired legal rights to drive a vehicle on public roads. If the government wanted to cancel or suspend that license for traffic violations, the law would insist that you be given an opportunity of being heard in your defense. The law would probably require that you should be given ample notice of the reasons for the proposed suspension or cancellation. Even after all these safeguards, you would probably have a right to appeal to a court or higher public authority against the cancellation or suspension.

With thousands of individuals being issued with driving licenses that give each of them an individual right to use the highway, the risk to personal injury and property damage from negligent driving and road accidents significantly increases. The public’s right to safety and security is adversely affected. The basis on which driving licenses are granted is determined by public officials – probably the department of motor traffic or a commissioner for motor vehicles. The rules and regulations they frame around the issuing of driving licenses and the manner in which they enforce these rules and regulations affect the public at large. But in many countries, the public have no legal rights to be notified of draft rules and regulations nor do they have the right to comment on them or challenge them, if they feel that the draft rules and regulations unnecessarily or unduly affect public safety and security.

For over two decades I was a legal practitioner in Sri Lanka, which has a patchwork of common, civil and customary laws. When an individual client consulted me about a property dispute or interference with her business or with contractual issues, it was relatively easy to find appropriate legal procedures, rules and rights that were applicable. If a client complained that his property was acquired by the government for a public purpose and that the compensation paid was insufficient, there were plenty of laws, rules and judicial decisions to guide a lawyer in finding ways to increase the compensation. My task was always far more challenging if a client complained that a magnificent tusked elephant was being auctioned by the government zoological gardens contrary to the public interest and she wanted it stopped.[[2]](#footnote-2) Many legal issues would immediately arise for the private legal practitioner. What right does the client have to challenge a government entity with regard to an act that does not affect her directly? How will the public interest be defined with regard to a magnificent tusked elephant in a public zoo? What would be the legal standards applicable to the exercise of government powers in the public interest? Even if creative answers are found to these and many such questions, challenging the public auction would be fraught with many uncertainties and would at best be characterized as a wild experiment.

**Public and Collective Right in Jeopardy**

These illustrations highlight the dilemma facing modern common and civil law system when dealing with the rising tide of vast and varied governmental powers and their exercise in the public interest. It brings the contrast between private and individual rights on the one hand and public and community rights on the other, into sharp contrast. Historically, both systems of law have been obsessed with the creation, definition, protection, regulation and vindication of individual and private rights. This trend has been at the expense of creating, defining, regulating, protecting and vindicating public and community rights. Notions of collectivism in the law have fallen into neglect while notions of individualism have flourished. The point is not to make an argument against individual legal rights which are extremely important, rather to make an argument for greater definition, protection, and means of vindication for collective rights.

Neglect of collective rights becomes a problem when actions and omissions by governments and individuals (including corporations) adversely affect large numbers of the public or communities. Because the law in many countries is vague or silent on the precise nature of public and community rights in such situations, many actions and omissions of government and individuals that affect the public or communities at large go unchallenged and uncorrected. When corrective action is contemplated, oftenthe damage may be too much or too late to repair. Often, the affected public is left with the costs of remediation, while the delinquent government department or official or individual has been enriched at the public’s expense.

With the rise of the modern environmental movement in the late sixties, the issues of accountability of government and individuals for environmental degradation and responsibility for environmental protection have received considerable attention. More recently, there has also been a focus on the management of public finances and budgets,[[3]](#footnote-3) the transparency of revenue streams from extractive industries,[[4]](#footnote-4) aid transparency,[[5]](#footnote-5) gender equality, indigenous communities and the rights of children and youth. In all of these focus areas, civil society groups and advocates have called for more robust legal responses to address government decision-making and individual actions/omissions that adversely impact the public or segments of the public. The legislative, judicial and executive responses to this call have in some countries been impressive, but in many others lag far behind.

Among the impressive legislative and judicial responses in the environmental sphere are citizen suit provisions, broader legal standing to bring public interest challenges to courts and tribunals, environmental ombudspersons and ombudspersons for future generations, public hearing and comment periods for new development approvals and regulations, the *actio popularis* in civil law systems, administrative appeals, and specialized environmental courts and tribunals. Despite these impressive innovations, there is still no general legal theory or jurisprudence on public rights, and public interest decision-making and innovation remain piecemeal and disparate. In comparison, legal theory on individual rights and remedies, including human rights are much more developed and well regarded. Yet, if we are to deal with environmental and other issues that have widespread public impacts, legal theory needs to catch up.

**The Public Law Black Hole: Brief Historic Perspective**

Ever since the Magna Carta of 1215, and the reception of the Roman Law in Europe at the end of the middle ages, jurists have spent enormous time and energy defining and providing the philosophical basis for individual rights and the limitations of governmental power. These efforts have responded to the growth of trade, the market and colonial expansion and evolved into the common and civil law. The protection of individual rights - from human rights protections, tort or delictual law remedies for individual harm, private property rights to contractual rights and corporate law – has seen an evolution from rudimentary notions to well-developed legal systems.

The Magna Carta was the result of the rising land owning nobility in England wresting protections for their individual rights and liberties from a reluctant King. With the passing centuries its notions and principles became universalized to cover all citizens. The bills of rights found in American and French legal development signify a struggle for the affirmation of individual fundamental rights as against a powerful government. The post-World War development of international human rights instruments and their reflection in national constitutions of the newly independent states is a symptom of the global reaction to the Holocaust and liberation from colonial rule.

These legal developments were accompanied by assertions of new theories of government such as the social contract theory[[6]](#footnote-6) and ever increasing democratization of governmental institutions – especially the legislative and executive branches. Fundamental to these political developments was the notion that elected representatives were in charge of caring for and protecting the public interest. Democratic society looked to their government to take care of common property and ensure that issues that affected the public at large or segments of society were addressed. Implied, in this notion was that once democratic processes resulted in constituting a government, the public was relieved of the responsibility and perhaps even the power to act directly with regard to public interest issues. The elected government then became the sole institution through which the public interest was to be protected and advanced. Citizens had no individual or collective mandate to interfere in how the public interest was dealt with. If the public was unhappy about how the government dealt with the public they retained the right to change the government at the next election or perhaps through violent revolution. But during the intervening period, citizens had no role to play in either protecting or asserting the public interest.

While these notions have changed in the developed world, even today they continue to be echoed in developing countries where civil society groups confront elected minsters and members of parliament. Any assertion of the public interest by civil society groups would be quickly met with the argument that the people had elected their representatives who knew best how to address the public interest. Nowhere in the democratic models is there any intention to oust the inherent powers of the citizenry to address the public interest themselves, either together or as smaller groups of citizens. On the contrary theories of sovereignty hold the exact opposite, claiming for the people the inalienable right to exercise it. Responding to this implied notion, the law has neglected the development of a branch of jurisprudence that explicitly unravels the ways and means of the public or segments of it (communities, civil society groups etc) asserting collective rights or the public interest. Coupled with private property rights, individual rights has been the historic obsession of civil and common law legal systems and it is only in the last four decades that we have seen a struggle on the part of lawyers, judges and jurists alike to rush to fill the huge lacuna in public law. I call this the public law black hole!

**Minding the Gap**

The development of notions of collective or public rights has been vague, sporadic and ad hoc. The Roman law offers an early example of an attempt to provide a remedy for violations of the public interest by officials of the treasury (*fiscus*). The Roman law gave any citizen the right to bring a legal action called the “*actio popularis*” against the treasury or an official of the treasury to refund public funds that were either abused or misused in its application. Thus, an official who used public treasury funds for a private purpose could be ordered via an *actio popularis* to return those funds to the treasury. The *actio popularis* was lost in many countries through the Napoleonic codifications but where it survived, modern courts have used it to provide remedies for environmental harm caused to common properties like rivers or lakes.[[7]](#footnote-7)

In the United Kingdom, to this day applications for judicial review of executive action by any person, even when it concerns an individual’s rights is brought in the name of the monarch but at the request of the individual. Judicial review originated in the UK as prerogative writs (remedies) that were issued by the monarch to keep officials under control. They are still filed in the name of the monarch by litigants. Presumably, the monarch as the protector of the public interest issued writs to control the executive. But making this remedy available to individuals via the courts was a dual recognition that courts can supervise the public interest while individuals can invoke their powers.

During the last three decades, judiciaries in South Asia, Africa, Latin America and some state courts in the US have invented public interest litigation that allows a genuinely concerned member of the public to sue for the executive branch of the government for violations of the Constitution and the law. The applicant for the remedy need not be affected by the impugned actions or omission but must be able to show that the actions or omissions adversely affect the public interest. The doors for public interest litigation have been opened up by broadening old rules of legal standing that restricted who could bring a case to the courts. Earlier restrictions required that a litigant must show some proprietary interest in the subject matter of the case to be allowed to pursue a claim. Despite the rise of public interest litigation, in many countries, including at the federal level of the US, legal standing continues to be restricted in some.

Both the common and civil law systems have recognized that some officials within the government, such as the Attorney-General or Procurator general represents the public interest and can sue other officials in the executive branch for violations of the law. Yet, practically such actions in common law countries have been far and few between largely because the Attorney general is also paid and controlled by the executive and lacks the independence to bring such cases. On the other hand, in some Latin American civil law countries, Procurator General’s offices enjoy a greater degree of autonomy and have seen many more actions been taken on public interest issues. One of the most recent developments in this respect is the creation of ombudspersons offices in several countries. Hungary created an Ombudsperson for Future Generations and after about five years of experimentation downgraded the office and absorbed it into the general ombudsperson’s office.[[8]](#footnote-8) In many of these interventions, notionally, the government is the upper guardian of the public interest and creates offices such as ombudspersons to ensure that action is carried out. These types of interventions are not premised on the basis that the public can directly assert the public interest or do so through any of its members.

One clarification about class actions and representative actions as opposed to public interest actions would be helpful. A class action is litigation that a group of individuals can bring when they have a common interest that has been in affected. For example, individuals affected by the side effects of a particular medication may be allowed to bring a class action against the pharmaceutical company that manufactured the medication. All the people in the class need not be identified when the action is filed, provided they are definable. In contrast public interest litigation may or may not have a common interest at stake although it is always about actions or omissions that affect the public or a segment of it. For example a toxic chemical dumped in a river might impact some because they drank the water while others may be affected because they lost their fishery livelihood. Both these distinct interests can be combined in one public interest case. A representative action is similar in that one person may represent a class – but that individual must also belong to the class. Class actions and representative actions are therefore modes of convenience that further the vindication of individuals rights as opposed to public interest litigation that vindicates public rights and interests.

In some of these examples, notions of individual rights continue to be closely related to the innovations. Broadening standing to the public spirited citizen implies that the broadening is taking place from well recognized standing accorded to citizens whose individual rights are harmed. In others, the point of departure has been from the established notion that the state is the upper guardian of public rights. In yet others, such as the *actio popularis*, the point of departure is an exceptional remedy that was afforded to any citizen under special circumstances. Few, if any, innovations stands their own ground as based on the public’s right to assert its own interests either collectively or through a representative on its behalf.

**The Legacy of Administrative Law**

Common law countries look to British jurisprudence on administrative law – a branch of the law that deals with judicial control of executive actions. Judicial review and administrative appeals are two remedies that have come to play a major role in this arena. Judicial review consists of judicial examination of a government decision for legality, fairness and reasonableness. The court might strike down the decision for failure of any one or more of these conditions, but it will not substitute its own decision on the merits, for that of the agency or officer. Once a decision is struck down, the agency or officer is free to make that decision afresh in compliance with fairness, legality and reasonableness standards. On the other hand, an appeal to a court from an agency decision will allow the court to review the factual findings as well and substitute its own findings in place of that of the agency. This distinction between review and appeal is important in common law countries. Our concern here is with judicial review.

The starting point for common law judicial review was best explained by Lord Atkin (UK Judge). He explained when judicial review would be available:

“Wherever any body of persons having legal authority to determine questions affecting the rights of subjects, and having the duty to act judicially, act in excess of their legal authority they are subject to the controlling jurisdiction of the King's Bench Division exercised in these' writs."[[9]](#footnote-9)

While this test has been generally followed in common law countries, the requirement for the decision-maker to have a duty to act judicially has been effectively eliminated. Lord Reid made this clear in 1963[[10]](#footnote-10) when he explained that the duty to act judicially is not an added requirement but is to be inferred from the powers of the decision-maker to affect the rights of a subject. Today, in most common law countries, judicial review is available against any decision-maker that has power to decide questions that affect the rights of a citizen. But the challenge must be brought by the affected citizen.

Despite this enlightened view, questions remained as to whether judicial review would be available against a decision-maker whose powers could affect the public or large segments of the public. While the impact of the decision may impact large numbers of citizens, the question whether such decisions are subject to judicial review has been unclear. For example a government official deciding to acquire a private land for a roadway would be subject to judicial review. However, a minister who evaluates and decides between several options to build the roadway may not be subject to review.[[11]](#footnote-11) Explaining this dilemma Lord Reid stated:

“If a Minister is considering whether to make a scheme for, say, an important new road, his primary concern will not be with the damage which its construction will do to the rights of individual owners of land. He will have to consider all manner of questions of public interest and, it may be, a number of alternative schemes. He cannot be prevented from attaching more importance to the fulfillment of his policy than to the fate of individual objectors, and it would be quite wrong for the courts to say that the Minister should or could act in the same kind of way as a board of works deciding whether a house should be pulled down. And there is another important difference. …a Minister cannot do everything himself. His officers will have to gather and sift all the facts, including objections by individuals, and no individual can complain if the ordinary accepted methods of carrying on public business do not give him as good protection as would be given by the principles of natural justice in a different kind of case.”[[12]](#footnote-12)

As a result, by the mid-1060s common law judicially review could examine a broad sluice of administrative decisions but nevertheless did not cover administrative decisions that had large scale impacts on the public or communities. Besides excluding those decisions from judicial review, the courts had adopted restricted standing thresholds requiring the applicant for relief to show that she was directly affected by the decision. But this began to change in the late 1960s.

Raymond Blackburn, a public spirited citizen decided to test if the administrative law system in the UK was robust enough to review administrative decisions that affected the public at large. He discovered that the Commissioner of Police for London had issued an internal circular asking police stations not to enforce the gaming laws because there was uncertainty around its interpretation. He filed a judicial review application to cancel the circular and force the police to enforce the gaming laws.[[13]](#footnote-13) His application was challenged on the basis that he had not been directly affected by the decision and so, had no standing to bring the case. Lord Justice Denning delivered judgement in favour of Mr. Blackburn holding that he had standing to bring the case. In a later case dealing with standing rules Lord Denning and said:

“I regard it as a matter of high constitutional principle that if there is good ground for supposing that a government department or a public authority is transgressing the law, or is about to transgress it, in a way which offends or injures thousands of Her Majesty's subjects, then anyone of those offended or injured can draw it to the attention of the courts of law and seek to have the law enforced and the courts in their discretion can grant whatever remedy is appropriate.”[[14]](#footnote-14)

A few years later he was back in court. This time he was asking the court to order the Police to enforce the pornography laws.[[15]](#footnote-15) During the hearing he obtained an adjournment and walked out on the streets of London and brought back dozens of pornographic material he bought off street vendors. Again, his standing was contested but the court ruled that he had every right as a “public spirited and concerned citizen” to bring the case.

Since then courts around the world, in both common and civil law counties have recognized the right of citizens to challenge administrative decisions that are either contrary to law, unreasonable or unfair. But no court has gone further than the Indian courts. Beginning in the late 1970s the Supreme Court of India began to use its power to grant relief for human rights violations under the Constitution to review administrative actions and omissions that had large scale impacts on the public or on communities. They broadened standing to the point that anyone could write a letter complaining about an illegal administrative action and it would be promptly filed and converted to a human rights case. They called this the epistolary jurisdiction. The court appointed commissioners to investigate facts and report to court and issued orders that fashioned the remedy to fit the problem at hand.

Despite these innovations, the courts in India did not lay down rules for administrators that would ensure good administrative practices. But the Indian court decisions contain precedents that point to underlying principles of good administrative decision-making on matters that affect the public and communities.

**Public Rights and Remedies**

Judiciaries are less daring in their innovations. They are faced with the constraint of applying existing laws or interpreting it to cover a new situation. However, legislatures need have no so compunction, because passing new laws to address new situations is one of their functions. The public rights black hole has been filled in varying degrees by legislatures across the world. In fact, closer examination of laws passed over the last four decades indicate that there is enough legislation around the world to ground a general theory of public rights, principles and remedies. Among the many legislative innovations that either explicitly create and define or implicitly recognize public rights are citizen suits (USA), public hearings (many nations), and independent public prosecutors and controllers (many Latin American countries). The drawback is that these innovations are not comprehensive and are confined to limited areas of public concern. While they are rooted in notions of public rights, they have not given rise to a general legal doctrine of public rights and remedies. Yet, they offer the best existing examples of the recognition of public rights, and mechanisms for their vindication.

**Challenge: Develop a Doctrine of Public Rights**

What is needed is a general doctrine of public rights and interests. What rights does the public and communities enjoy as against the government? How can these rights be clearly defined? How can they be given protection and how can they be regulated? How might such rights be vindicated – by whom, where, when and how? While I don’t have answers to these questions today, I believe these are important questions to answer.[[16]](#footnote-16) They are fertile grounds for research.

**Improving Public Administrative Decision-making**

The World Resources Institute decided to examine legislation and court decisions around the world that dealt with administrative decision-making that affected the public or communities at large. Many types of environmental decisions fulfilled this requirement. We felt that such an exercise was justified even in the absence of a doctrine of public rights. First, we felt that such an examination might help identify key principles that all or most of the court decisions or legislation had affirmed. Second, we felt that such an exercise might help in the development of a general theory of public rights. Third, in the interests of good governance, administrative decisions that affect the public and communities at large need to be reviewed and supervised and decision-makers held accountable. A collection of key principles that can guide such decision-makers would help improve the transparency, inclusiveness, quality and accountability of such decisions. It would also help alleviate unnecessary injustice and suffering for millions of citizens who are subject to them. Fourth, identification of key principles can lead to their codification in the form of a charter that key stakeholders from governments, civil society, private sector and international organization can subscribe to, paving the way for a global reform movement.

As part of this exercise several legal interns and fellows[[17]](#footnote-17) volunteered their time over the last two years to research administrative procedure and justice legislation and judicial decisions in over two dozen countries and to put together a list of nine principles and a baker’s dozen of accompanying rules. The rules have been presented in an annotated version supported by a brief explanation of the rule, illustrative examples and references to legislation and judicial decisions**. The annotated principles and rules are a work in progress and we welcome any suggestions, comments and critiques that may be offered.** Our intention is to organize a meeting at George Washington University, School of Law in the late spring of 2013 for stakeholders from government, academia, civil society and the private sector to discuss and finalize the principles.

**Principles and Expectations of Public Administrative Justice**

In the attempt to extract common principles and rules, we focused our attention of laws and judicial decisions that dealt with administrative decisions that affected the rights of the public at large or a section of the public or communities. At one end of the spectrum of such decisions are decisions which we often refer to as public policy: the national biodiversity policy or the transport policy or foreign policy. At the other end of the spectrum are decisions to build a hydro dam in a particular location for stated purposes or to build road from one place to another. Both of these affect the public or communities. The impact of policy level decisions would probably take longer to manifest because policies generally need to be converted to laws, programs or projects to be implemented. The hydro dam or road decision however, has more direct consequences on the segment of the public or communities who reside in the location of the dam or whose properties will be taken for the road. Our intent was to examine the latter kind of decision in culling the principles and rules. By way of caveat, we have not attempted to define with precision the range of administrative decisions that affect the public, although such an exercise may be required in developing a public rights doctrine.

From our Examination we extracted nine principles and a baker’s dozen of expectations (or rules). These are as follows (not in any order):

**Public Administrative Justice: Principles and Expectations/Rules**

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| **Principle** | **Expectations/Rules** |
| **Legality** | 1. Decision must be legal
 |
| **Impartiality** | 1. Decision maker must be impartial
 |
| **Rationality** | 1. Decision maker must provide reasoned decision
 |
| **Objectivity** | 1. Decision must be based on relevant material (including material received from public participation)
 |
| **Publicity** | 1. Duty to notify those potentially affected/public about pending decision/proceedings
 |
| **Inclusivity** | 1. Duty to identify those potentially affected by a pending decision
 |
| 1. Duty to make participation in proceedings affordable
 |
| 1. Right of poor and marginalized groups to be included in the decision-process
 |
| 1. Right of potentially affected to a meaningful opportunity to be heard
 |
| **Transparency** | 1. Right of potentially affected/public to access all relevant information in a timely and affordable manner
 |
| **Accountability** | 1. Duty to notify those potentially affected/public by a decision once it is made
 |
| 1. Duty to provide oversight procedures to address grievances and correct errors/misuse/abuse/ and hold decision-makers accountable in a timely and affordable manner
 |
| **Recording & Archiving** | 1. Duty to create, maintain and preserve accurate records of public administrative decisions and proceedings.
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ANNEX

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| **1. The Decision Must Be Legal** |
| Goal and Function | Administrative actions must be legal and in conformity with the law of the land. Providing a legal basis for decisions increases the legitimacy of an action and strengthens its enforcement. It is important that the decision-maker is authorized to make decision under the relevant law. |
| Illustrations | (A) A group of concerned citizens have requested that a particular fertilizer be banned by the Controller of Chemicals by an executive order. The Controller of Chemicals can only issue such an executive order if a law authorizes the Controller to issue such an order and only if that order strictly complies with the procedures and other conditions laid down by that law. (B) A member of a forest-fringe community applies for the title to a portion of land under a local forest rights statute to the local agency. The acceptance or rejection of application can be decided by the particular local agency only if the agency is authorized to take such decision under a local or national law and strictly in accordance with procedure and conditions set out in that law. |
| Examples of Good Practices | [Aarhus Convention](http://www.unece.org/fileadmin/DAM/env/pp/acig.pdf)“…members of the public have access to administrative or judicial procedures to challenge acts and omissions by private persons and public authorities which contravene provisions of its national law relating to the environment.”[[18]](#footnote-18)South Africa[PAJA](http://www.justice.gov.za/legislation/acts/2000-003.pdf): judicial review if administrator “not authorized to [make administrative action] by empowering provision” etc. [[19]](#footnote-19)USAAPA: A reviewing court shall hold agency action unlawful if it is “(A)… not in accordance with law; (B) contrary to constitutional right, power, privilege, or immunity; (C) in excess of statutory jurisdiction, authority, or limitations, or short of statutory right; (D) without observance of procedure required by law…”[[20]](#footnote-20)Netherlands[GALA](http://www.juradmin.eu/colloquia/1998/netherlands_annex.pdf): The process of judicial review may overturn an administrative action when a “general-principle of law is considered to have been infringed.” [[21]](#footnote-21)South Korea[APA](http://www.asianlii.org/cgi-bin/disp.pl/kr/legis/sta/apa285/apa285.html?stem=0&synonyms=0&query=administrative): Administrative agencies must notify parties of the factual grounds and legal basis for rendering a disposition.[[22]](#footnote-22)Japan[APA](http://www.cas.go.jp/jp/seisaku/hourei/data/APA.pdf): when giving notice, administrative agencies must provide “the specific provisions of laws and regulations which will be the grounds for the anticipated Adverse Disposition.” [[23]](#footnote-23)“Persons imposing Administrative Guidance shall take care that their actions must not exceed, in the slightest degree, the scope of the duties or affairs under the jurisdiction of the Administrative Organ concerned…”[[24]](#footnote-24) |
| **2. The Decision Maker Must Be Impartial**  |
| Goal and Function | Decisions should be made in an evenhanded and impartial manner. This means that the decision-making process should be free from partiality, bias, or prejudice. While many countries ensure impartiality during the process of judicial review, it would be beneficial if the administrator initially making the decision is not unfairly slanted towards or in favor of a particular person or decision. Bias may be based on pecuniary, personal, policy or subject matter interest. Bias in Administrative procedure can diminish the level of confidence of people in the integrity of the decision-making processes.If an administrator demonstrates bias or reasonably appears to be biased, a different official should be in charge of the decision making process. |
| Illustrations | (A) A Village Commissioner is considering a grant of a planning permit for a power plant project in the vicinity of the village. The commissioner may have publicly expressed strong opinions about the economic benefits of the project. The expression of such strong opinions creates a perception of bias and undermines the impartiality of the Commissioner to make the decision. (B) A local village official is considering a permit grant under a local statute for the construction of a road that goes from the center of the village to a nearby industry. The official must be unbiased and free from pecuniary, personal or other interests in the construction of the road or in the industry.  |
| Examples of Good Practices | South Africa[PAJA](http://www.justice.gov.za/legislation/acts/2000-003.pdf)[[25]](#footnote-25): Judicial review of an administrative action is available if the administrator is “biased or reasonably suspected of bias”Netherlands[GALA](http://www.juradmin.eu/colloquia/1998/netherlands_annex.pdf)[[26]](#footnote-26): “1. An administrative authority shall perform its duties without prejudice 2. An administrative authority shall ensure that persons belonging to it or working for it do not influence the decisions if they have a personal interest in the order to be made.”South Korea[APA](http://www.asianlii.org/cgi-bin/disp.pl/kr/legis/sta/apa285/apa285.html?stem=0&synonyms=0&query=administrative)[[27]](#footnote-27): “The presider of hearing shall independently and fairly execute his duties…” |
| **3. The Decision Maker Must Provide Reasoned Decision** |
| Goal and Function | The requirement to provide reasons for a decision demonstrates that the administrative action is rational. It shows that the decision is justified and on what information and material it is based.There are three aspects to this requirement:1. With regard to agencies, the obligation to provide reasons increases accountability as agencies can be scrutinized internally on the basis of the justifications they supply for the adopted decision or policy.2. The obligation that agencies provide reasons for decisions can result in feedback to the public. Feedback can engage the public potentially enhancing the legitimacy, acceptability and effectiveness of the decision making process as well as the decision itself.3. The requirement facilitates judicial review, which is important for increased accountability.  |
| Illustrations | (A) A pharmaceutical company approaches the State Medicinal Plant Board for a permit to harvest a rare medicinal plant from a village forest. The same plant is used as traditional medicine by local people. In granting or denying the permit the Board should give its reasons for doing so in writing. The reasons should explain the basis of the decision. For example, scientific, legal and cultural reasons for denial or grant of the permit must be analyzed and set out clearly. If the permit is issued, any conditions attached should be justified in the reasoning.(B) A pesticide company requests the local regulatory authority to lift the ban on a pesticide to grow a particular crop on the farmlands. The request is opposed by a group of farmers. In deciding to keep or lift the ban, the local regulatory authority should give reasons as to why the ban is justified (or not as the case may be). Such reasons would generally include scientific, health, economic and social information that is relevant to the decision.  |
| Examples of Good Practices | [Aarhus Convention](http://www.unece.org/fileadmin/DAM/env/pp/acig.pdf)”Each Party shall make accessible to the public the text of the decision along with the reasons and considerations on which the decision is based.”[[28]](#footnote-28)South Africa[PAJA](http://www.justice.gov.za/legislation/acts/2000-003.pdf): “(1) Any person whose rights have been materially and adversely affected by administrative action and who has not been given reasons for the action, may … request that the administrator concerned furnish written reasons…”[[29]](#footnote-29)USAAPA: Provision of judicial review states that agency action cannot be “arbitrary, capricious” or demonstrate “abuse of discretion”.[[30]](#footnote-30)Netherlands[GALA](http://www.juradmin.eu/colloquia/1998/netherlands_annex.pdf) “A decision shall be based on proper reasons.” [[31]](#footnote-31)“The reasons shall be stated when the decision is published”[[32]](#footnote-32)South Korea[APA](http://www.asianlii.org/cgi-bin/disp.pl/kr/legis/sta/apa285/apa285.html?stem=0&synonyms=0&query=administrative): “administrative agencies shall set forth to parties the basis and reasons for dispositions…”[[33]](#footnote-33)Japan[APA](http://www.cas.go.jp/jp/seisaku/hourei/data/APA.pdf): “Results following the consideration of the submitted comments… and the grounds for this [shall be publicly notified]”. [[34]](#footnote-34) |
| **4. The Decision must be based on relevant material (including material received from the public participation).[[35]](#footnote-35)** |
| Goal and Function | To increase the confidence of the public in transparent and accountable decision-making and to encourage better citizen engagement, it is necessary that public concerns, comments and submissions are taken into account in the final decision. Good practice suggests that the public should be informed about how comments submitted by them will be processed by the decision-maker.[[36]](#footnote-36)A summary of relevant public comments together with how the decision-maker dealt with them can be published or made available online. This practice can be useful in developing the public’s understanding of various issues attached to an action and to forge consensus.[[37]](#footnote-37) It is particularly important that the decision-maker should specifically reference public comments even when making a decision contrary to general public opinion.[[38]](#footnote-38) This practice helps mitigate any doubts regarding arbitrary dismissal of the weight of public opinion and decreases the chances of appeal against the decision. |
| Illustrations | (A)The community and an NGO submits comments on the installation of a wind turbine near a residential area. The authorities making the decision whether to allow the turbine must summaries the comments received from the community and NGO and the results of public consultations and comments received via the internet, along with the manner in which the decision-maker dealt with each comments received. This can either be in a separate document or in an attachment to the main decision.[[39]](#footnote-39)(B)Public comments against the construction of a shopping complex in a residential area are submitted to the residential area development committee of a town. The committee makes decision to construct the shopping complex. In addition to the decision, the committee must show how the comments received were dealt with. For example if the comments included concerns about increase in traffic and parking problems due to the construction of the shopping complex, the committee must show how that concern was addressed through a condition requiring the shopping complex to build a parking garage or by requiring additional road access to be built. |
| Examples of Good Practices | [Aarhus Convention](http://www.unece.org/fileadmin/DAM/env/pp/documents/cep43e.pdf) “…due account is taken of the outcome of the public participation.” [[40]](#footnote-40)India[EIA Notification](http://www.unece.org/fileadmin/DAM/env/pp/documents/cep43e.pdf)[[41]](#footnote-41):“After completion of the public consultation, the applicant shall address all the material environmental concerns expressed during this process, and make appropriate changes in the draft EIA and EMP. …The applicant may alternatively submit a supplementary report to draft EIA and EMP addressing all the concerns expressed during the public consultation.” |
| **5. There is a Duty to Notify Those Potentially Affected/Public about a Pending Decision/proceeding** |
| Goal and Function | There should be a broad duty to notify potentially affected parties to enable them to receive basic information about the pending decision and to participate in proceedings leading to the making of the decision. Notices should be issued to all potentially affected parties even if they may have conflicting views. In order to avoid the common practice of mere *pro forma* participation, the public should be informed and engaged at an early stage of decision making “when all options are open”.[[42]](#footnote-42) The preliminary notification must share: 1) nature of activity proposed, 2)name of the project developer (if development project), 3) administrative procedure to be undertaken, 4) possible decision, 5) how to participate and submit comments, 6) time allotted for participation, and 7) where the information can be sought. In the determination of a class of people who are "potentially affected", "persons aggrieved" and like legal terms, it will be important for legislative drafter to consider how narrow the scope of this class should be. To open the category of "persons affected" and get much wider participation, a broad definition (such as, any person whose interests or rights may be affected) maybe proposed.  |
| Illustrations | (A) The head of the energy agency is considering a permit to establish a pipeline to transport tar sands oil from the neighboring country which poses serious environmental and health and safety concerns. The shortest pipeline’s route goes through agricultural lands and may impact an important underground water source of several towns. Parties potentially affected by this permit decision include ranchers, landowners and farmers dependent on these resources and they must be given notice of the pending decision. Additionally, there may be others who may be entitled to notice. They may include civil society organizations who have expressed concern and the oil and pipeline companies.[[43]](#footnote-43) It is also a good practice to inform and explain to the public when there is a delay in decision making. This helps to establish trust between the concerned agencies and potentially affected.[[44]](#footnote-44)(B)A local government body has to decide on the zoning and development of a local community. The body should give notice to the affected community through appropriate media including notices to the community. The local government body can also organize focus groups or public meetings to disseminate information updates on the pending decision. An information center or office with trained staff can be established by the local body to provide concerned parties with additional information.[[45]](#footnote-45)(c)A government ministry is about to make regulations under a law. Draft regulations have been prepared. The ministry should issue a public notice or send notices to all persons affected by the new regulations so that they can comment on and provide feedback on the draft regulation. The notice requirement applies to rule-making as well as decision-making. |
| Examples of Good Practices | South Africa[PAJA](http://www.justice.gov.za/legislation/acts/2000-003.pdf), § 3 (2)(b)(i) – “adequate notice of the nature purpose of the proposed administrative action” must be given to any person to guarantee procedural right protection.[Aarhus Convention](http://www.unece.org/fileadmin/DAM/env/pp/documents/cep43e.pdf) “The public concerned shall be informed, either by public notice or individually as appropriate, early in an environmental decision-making procedure, and in an adequate, timely and effective manner, inter alia, of: (a) The proposed activity and the application on which a decision will be taken; (b) The nature of possible decisions or the draft decision; (c) The public authority responsible for making the decision…”[[46]](#footnote-46)USAAPA: “General notice of proposed rulemaking shall be published in the Federal Register, unless persons subject thereto are named and either personally served or otherwise have actual notice thereof in accordance with law.”[[47]](#footnote-47)Netherlands[GALA](http://www.juradmin.eu/colloquia/1998/netherlands_annex.pdf): “Notice of the application or the draft shall be given in one or more daily or weekly newspapers or free sheets or in any other suitable way prior to the deposit of the application for inspection. Only the substance of the application need be stated… If it concerns an order of an administrative authority forming part of the central government the notice shall in any event be placed in the Government Gazette”[[48]](#footnote-48)South Korea[APA](http://www.asianlii.org/cgi-bin/disp.pl/kr/legis/sta/apa285/apa285.html?stem=0&synonyms=0&query=administrative): Administrative agencies are required to provide advance notification to parties when its action would impose duties or restrict rights or interests.[[49]](#footnote-49)Japan [APA](http://www.cas.go.jp/jp/seisaku/hourei/data/APA.pdf): “In conducting hearings, administrative agencies shall provide to the anticipated subject parties of Adverse Dispositions written notice of the following matters…”[[50]](#footnote-50) |
| **6. There is a Duty to Identify Those Potentially Affected By A Pending Decision** |
| Goal and Function | The goal of this principle is to ensure that groups of people (e.g. a community, neighborhood or city) who may be potentially affected by a pending decision of the government are identified beforehand so that they can be provided with adequate notice of the pending decision and provided an opportunity to engage with the decision-maker. The function of this principle is to cast a positive duty on the government to (a) establish a process for identifying affected persons and (b) implement such process. |
| Illustrations | (A) A government official responsible for regulating water flows from a reservoir for irrigation is about to establish a water release schedule for the next six months. The decision will affect all the farmers who benefit from the irrigation system. The official has a duty to identify every farmer affected by his/her decision before establishing the schedule.(B) The Local Authority of a village is considering a permit application for a new brick kiln that can potentially pollute the air and increase traffic and noise to the neighboring community. The Local Authority has a duty to identify community members who might be affected by the new kiln before considering the permit application. |
| Examples of Good Practices | South Africa[PAJA](http://www.justice.gov.za/legislation/acts/2000-003.pdf): “The administrator must take appropriate steps to communicate the administrative action to those likely to be materially and adversely affected by [the administrative action]…”[[51]](#footnote-51)[Aarhus Convention](http://www.unece.org/fileadmin/DAM/env/pp/documents/cep43e.pdf)Implied in the whole text of Article 6, and explicit in Article 6, ¶ 5 – “Each Party should, where appropriate, encourage prospective applicants to identify the public concerned, to enter into discussions, and to provide information regarding the objectives of their application before applying for a permit.”[[52]](#footnote-52)South Korea[APA](http://www.asianlii.org/cgi-bin/disp.pl/kr/legis/sta/apa285/apa285.html?stem=0&synonyms=0&query=administrative): Administrative agencies are required to provide advance notification to parties when its action would impose duties or restrict rights or interests.[[53]](#footnote-53)United Kingdom[CPC](http://www.bis.gov.uk/files/file47158.pdf): “It is essential that interested parties are identified early in the process…”[[54]](#footnote-54) |
| **7. There is a Duty to Make Participation in Public Administrative Proceedings Affordable.** |
| Goal and Function | The cost of seeking information, commenting and access justice with regard to the administrative structure should be affordable for the average citizen to encourage participation. Costs of participation can be reduced by engaging civil society organization to facilitate participation through the provision of child care, travel assistance, etc. They can also be harnessed for providing translations and representation.The provisions for individuals to sue as an ‘indigent party’ or a ‘pauper’ can help remove the risk of marginalization of less-privileged parties.[[55]](#footnote-55) Costs by way of fees ought to be kept to a minimum and procedures for exempting communities and individuals from such fees in situations of poverty or other exceptional circumstances should be provided for. Costs can also be reduced by providing financial and other aid (such as legal aid) to assist parties involved in a decision. |
| Illustrations | (A)One way to reduce costs is to use appropriate information and communication technology to disseminate relevant information at least cost. The agency can forward information about future public meetings, decisions of consultations, agenda, etc. via text message on mobile phones to the parties concerned who registered for the service to receive information.[[56]](#footnote-56)(B) Government agencies or CSOs can establish facilitation centers for women in developing countries to leave their children at day care or provide such services at the site of public hearings or consultations. Costs can be reduced by ensuring that hearings and consultations are held within walking distance of communities. Agencies can provide free transport service for the community members to go to information centers or public meetings at times that don’t interfere with day time income generation to help save their time and money.[[57]](#footnote-57) |
| Examples of Good Practices | [Aarhus Convention](http://www.unece.org/fileadmin/DAM/env/pp/documents/cep43e.pdf)“…consider the establishment of appropriate assistance mechanisms to remove or reduce financial and other barriers to access to justice”[[58]](#footnote-58)USA[New York State Brownfield Cleanup Program](http://www.clm.com/publication.cfm?ID=300)[[59]](#footnote-59) provides for community grants to seek technical assistance in supporting their concerns.Grant program established under EPA’s Office of Environmental Justice, 1994 provides financial assistance to communities which require funds to conduct environmental research.[[60]](#footnote-60)Netherlands[GALA](http://www.juradmin.eu/colloquia/1998/netherlands_annex.pdf)[[61]](#footnote-61): “A copy of the documents deposited for inspection shall be provided at no more than cost price.” |
| **8. Poor and Marginalized Groups Have a Right to be Included in Decision-Processes** |
| Goal and Function | Even if they have equal rights with the general public, poor and marginalized groups have much less ability to exercise and enjoy those rights. The questions of “access” and “affordability” are key elements to the principle of non-discrimination and thus, effective public participation. Environmental injustice largely affects the marginalized sections of society including tribals, low-income earners, colored peoples, minorities and illiterate individuals.[[62]](#footnote-62) Despite the existence of nondiscriminatory laws, “procedural equity” or fair and nondiscriminatory enforcement of rules and regulation is a constant struggle. For these reasons, it is necessary to proactively include marginalized groups in the decision making process. There is no legislation which expressly creates a binding duty to take particular steps to reach poor and marginalized groups. The UK Code of Practice states that ‘thought’ must be given to this issue, and a US Executive Order, signed by President Clinton in February 1994, which reinforces the 1964 Civil Rights Act by prohibiting discriminatory practices in the planning and allocation of federal finance for public health and safety. However, it is not legally binding.  |
| Illustrations | (A) An administrative agency is considering a permit application for a hazardous waste facility. The agency has identified three communities living near the proposed facility that are either poor or from an ethnic minority or caste. The Administrative agency should find ways to ensure that the information about the pending decision will reach these communities. For example, they could use channels of communication such as radio stations, religious institutions, or community workers to spread information regarding the pending decision.(B) An agency is considering a roadway that runs through a remote village. The villagers have no access to education and are illiterate and poor. The agency should take steps to reduce or waive fees for access to information and participation for these villagers. The agency should hold consultations in the village or arranging for transportation to reduce the barrier of travel costs for the villagers. Because the village is illiterate notifications and other material should be prepared in ways that they can understand and be disseminated through appropriate means such as presentations. |
| Examples of Good Practices | United Kingdom[CPC](file:///C%3A%5CUsers%5Clalanath.desilva%5CAppData%5CLocal%5CMicrosoft%5CWindows%5CTemporary%20Internet%20Files%5CContent.Outlook%5Claw%20and%20policy%20referred%5CCPC%20UK%20text.pdf): “Thought should also be given to alternative versions of consultation documents which could be used to reach a wider audience, e.g. a young person’s version, Braille and audio version, Welsh and other language versions, an “easy-read” version etc. and to alternative methods of consultation.” [[63]](#footnote-63)USA[E.O. 12898](http://www.archives.gov/federal-register/executive-orders/pdf/12898.pdf) on ‘Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations’ states: “The environmental justice strategy shall list programs, policies, planning and public participation processes, enforcement, and/or rulemakings related to human health or the environment that should be revised to…promote enforcement of all health and environmental statues in areas with minority populations and low-income populations;…” [[64]](#footnote-64)[RCRA Public Participation Manual](http://www.epa.gov/osw/hazard/tsd/permit/pubpart/manual.htm#docs): “[w]hen communicating with a community, participants in the permitting process should be take into account the particular pathways and methods of information transfer that are used by that community.”[[65]](#footnote-65)[WRI’s “A Seat at the Table”:](http://www.wri.org/publication/a-seat-at-the-table) states that South Africa, South Korea and the EU’s Roma Directive also provide some basis for improving access for the poor in decisions affecting the environment. Further, it is understood that there is a draft public participation guideline in Chile that addresses this issue.[[66]](#footnote-66) |
| **9. Those Potentially Affected Have a Right to a Meaningful Opportunity to Be Heard** |
| Goal and Function | “Opportunity to be heard” generally means public hearings; however, in this context a more appropriate definition may involve the ability to respond, comment upon, or challenge a proposed decision at an early stage before it has become a final decision. Public input on an administrative agency’s proposed decision provides an opportunity to explain consequences to the decision maker, which may not have been considered but could be potentially serious. It is important that adequate time is provided after the publication of the notice for an environmental public hearing.[[67]](#footnote-67) Adequacy of time directly influences the quality of public comments and representations.On the other hand, it imposes a further duty on the agency to consider the public comments or representations thoroughly and provide adequate response.[[68]](#footnote-68) This procedural tool sets the stage for adequate, timely and effective two-way communication between decision makers and potentially affected parties.[[69]](#footnote-69)It is pertinent to define the indicators for the term “meaningful opportunity” in the context of attaining a level-playing and adequate representation of public concerns. This should incorporate factors of time, place and manner. To increase the openness and availability of the process, meeting should be held at times when the maximum number of affected individuals can attend. Procedure should allow the submission of comments not only within the allotted time frame but should accept oral or written suggestions during the public meeting.[[70]](#footnote-70)Also, the oral comments and written submissions regarding the proposed decision should be accepted and considered by the agency in its entirety[[71]](#footnote-71), though too much emphasis on the formalistic approach for accepting public comments should be avoided. This may increase the budget of collating comments for the agency. A strict, form-based approach may deter less-educated people from commenting at all.Not only the affected stakeholders should be afforded opportunities to participate in environmental decision-making, but in addition the process should be open to comment by NGOs or organizations representing individuals, to improve the quality of organized participation. |
| Illustrations | (A) A ceramic factory has proposed to establish a kiln in the vicinity of an agricultural land. The administrative procedure should provide for an opportunity for the factory owners as well as those owning or working the agricultural lands affected to be heard. The hearing can be an oral hearing or could allow ample time to receive written submissions from individuals and the public, including NGOs on the possible health and agricultural issues involved.(B) On a complaint from a community against an industrial facility, the pollution control agency is considering revoking the environmental license of the factory. The agency must give a fair hearing to the industry and the community that complained before making its decision.(C) A government ministry is about to pass new rules fixing mobile air standards for vehicles. The agency should provide a public hearing or opportunity for public comment on the draft standards. |
| Examples of Good Practices | [PAJA](http://www.justice.gov.za/legislation/acts/2000-003.pdf)[[72]](#footnote-72): Administrative agencies must provide “a reasonable opportunity to make representations…”[Aarhus Convention](http://www.unece.org/fileadmin/DAM/env/pp/acig.pdf)[[73]](#footnote-73) “Public Participation in Decisions on Specific Activities” and “Public Participation During the Preparation of Executive Regulations and/or Generally Applicable Legally Binding Normative Instruments”USAAPA[[74]](#footnote-74): After notice, “agency shall give interested persons an opportunity to participate in the rule making through submission of written data, views, arguments…”Netherlands[GALA](http://www.juradmin.eu/colloquia/1998/netherlands_annex.pdf)[[75]](#footnote-75)– “Interested parties may state their views on the application or the draft either in writing or orally, at their discretion.”South Korea[APA](http://www.asianlii.org/cgi-bin/disp.pl/kr/legis/sta/apa285/apa285.html?stem=0&synonyms=0&query=administrative)[[76]](#footnote-76)– Administrative decisions require public hearings 1. When it is required by acts and subordinate statutes and 2. When it is deemed necessary by the administrative agency.Japan[APA](http://www.soumu.go.jp/main_sosiki/gyoukan/kanri/translation4.htm)[[77]](#footnote-77): Parties may, in lieu of appearing at the hearing, submit written statements. |
| **10. Those Potentially Affected/Public Have a Right to Access All Relevant Information** |
| Goal and Function | The purpose of access to information is to ensure that those affected by administrative action are properly informed of decisions and material relating to the decision that may impact them. As a corollary, those affected or concerned should be informed about the process of reaching that decision. This principle resonates with the idea of an “environmental right-to-know”[[78]](#footnote-78) and further imposes a duty on authorities to share information which they possess or ensure that other entities share information with the public. Affected parties need access to information both to understand the impact of the decision on them as well as to ensure the decision is legal and based on accurate facts and analysis.The access to relevant information refers to concise, understandable and readily available information likely to impact the human health and environment. Providing information in the local and simplified language is one of the first steps to encourage meaningful participation. Another important aspect of effective accessibility to information is the capacity of information provider (sometimes referred to as ‘Public Information Officers’). Ensuring mandatory capacity building of such information officers through guiding manuals and periodic training can go a long way to bridge the gap between public seeking information and the government agency.[[79]](#footnote-79) |
| Illustrations | (A)A state-level government has decided to initiate a river clean-up project which will affect the quality of water appropriated by riparian owners. They must ensure that public documents, notices, minutes of the public consultations and hearings related to the decision are readily accessible to the riparian owners and the public in their local language. This will help the riparian owners and the public to assess the pros and cons of the project and encourage collaborative work.(B)The government can establish partnerships with NGOs to set up clearing house mechanisms or “information access systems” for effective dissemination and discussion between Government authorities, NGOs and public interested on any project affecting their immediate environment. They must inform the public about where and how to obtain the relevant information through public announcements and other communication mediums.[[80]](#footnote-80) Also, establishing a centralized information record office is suggested in regions where public does not have internet accessibility. These channels can then be used to provide information about pending decisions as well. |
| Examples of Good Practices | South Africa[PAI](http://www.sun.ac.za/university/Legal/dokumentasie/access%20to%20information.pdf)A General Introductory Provisions: “The object of this Act are—(a) to give effect to the constitutional right of access to – (i) any information held by the State; and (ii) any information that is held by another person and that is required for the exercise or protection of any rights;…” [[81]](#footnote-81)[Aarhus Convention](http://www.unece.org/fileadmin/DAM/env/pp/acig.pdf)The Convention has express provisions on “Access to Environmental Information”[[82]](#footnote-82) and “Collection and Dissemination of Environmental Information”[[83]](#footnote-83)USA[APA](http://www.archives.gov/federal-register/laws/administrative-procedure/552.html): Each agency shall…publish in the Federal Register for the guidance of the public—1. Descriptions of its central and field organization and the established places at which, the employees…from whom, and the methods whereby, the public may obtain information, make submittals or requests, or obtain decisions;
2. …nature and requirements of all formal and informal procedures available;
3. Rules of procedure, description of forms available or the places at which forms may be obtained…”[[84]](#footnote-84)

[E.O. 12898](http://www.archives.gov/federal-register/executive-orders/pdf/12898.pdf): “Each Federal agency may, whenever practicable and appropriate, translate crucial public documents, notices, and hearings relating to human health or the environment for limited English speaking populations.” [[85]](#footnote-85)South Korea[ADIPA](http://unpan1.un.org/intradoc/groups/public/documents/APCITY/UNPAN025690.pdf): “…providing for the necessary matters concerning the obligation to disclose information possessed and managed by public agencies and the people’s request for the disclosure of such information.” [[86]](#footnote-86)India[Right to Information Act](http://www.iitb.ac.in/legal/RTI-Act.pdf)[[87]](#footnote-87)Japan[Law Concerning Access to Information Held by Administrative Organs](http://www.soumu.go.jp/main_sosiki/gyoukan/kanri/translation4.htm) Some other mechanism for information sharing: It is important to establish a coherent system of data sharing within reasonable time-frame, for example nationwide pollution inventories[[88]](#footnote-88), information portal for all development activities affecting environment[[89]](#footnote-89), chemical release and use standards (Example: United States Standards Strategy[[90]](#footnote-90)), government registers on medicinal plants information (Example: Traditional Knowledge Digital Library in India[[91]](#footnote-91)). Establishing a self- reporting mechanism from the operators whose activities impact the human health and environment is a good practice.[[92]](#footnote-92) Administrative authorities can provide an industry specific checklist to operators regarding the information that they must share with public periodically. |
| **11. There is a Duty to Notify Those Potentially Affected/Public by a Decision Once It Is Made** |
| Goal and Function | After a decision has been made, the administrator must convey the decision to the public or individuals that are affected by it. The notice must be a clear and understandable statement of the decision. It is also preferable to include reasons for the decision as well. The notice should inform about the availability of a review or appeal (where available) and include information about how to seek such review or appeal.It is also important to consider how the information might be made available: what languages should be used and what methods of communication should be used for delivery. Better communication mechanism to increase public engagement and collaboration in the development of local projects. Public support in local projects goes a long way to reduce the cost of mitigating public resistance and consequential delays. |
| Illustrations | (A)The state commission upheld the proposed regulation on the management of non-timber forest produce by the government to the exclusion of forest fringe communities. The notice of the final decision should be communicated to the community. The notice of decision must explain: 1) on what basis the decision was taken, 2) where and how to apply for the review or appeal against the decision, and 3) time limitations to seek review and receive a decision from a higher decision making body.(B)An environmental commission penalized a local industry for disposal of wastewater in the irrigation pond used by the local people. The final decision should be notified to the parties affected. Commission can also send notice by post or engage an NGO worker to visit individual person if they are receiving a share from penalty as compensation.  |
| Examples of Good Practices | South Africa[PAJA](http://www.justice.gov.za/legislation/acts/2000-003.pdf)[[93]](#footnote-93) A concise summary of the administrative action must be published in the Gazette or relevant provincial Gazette in English and at least one other official language. [Aarhus Convention](http://www.unece.org/fileadmin/DAM/env/pp/acig.pdf)[[94]](#footnote-94)“Each Party shall ensure that, when the decision has been taken by the public authority, the public is promptly informed of the decision in accordance with the appropriate procedures.”South Korea[APA](http://www.asianlii.org/cgi-bin/disp.pl/kr/legis/sta/apa285/apa285.html?stem=0&synonyms=0&query=administrative)[[95]](#footnote-95): administrative agencies, when rendering dispositions, must notify parties of their further options, such as administrative adjudication, or litigation.Japan[APA](http://www.cas.go.jp/jp/seisaku/hourei/data/APA.pdf)[[96]](#footnote-96): “Organs Establishing Administrative Orders… shall publicly notify in advance the proposed Administrative Orders…” |
| **12. There is a Duty to Provide Oversight Procedures to Address Grievances and Correct Errors/Misuse/Abuse/ and Hold Decision-Makers Accountable in a Timely and Affordable Manner** |
| Goal and Function | It is important that the public and affected parties have the right to challenge or appeal administrative action that is unlawful, procedurally unfair, or unreasonable. Access to justice is ensured to its fullest when there are legal remedies available to correct the administrative errors- intentional or unintentional. It places “meaningful constraints on government agencies and individual officers”.[[97]](#footnote-97) For the effectiveness of this safeguard, the public must be informed about the review procedure that is provided and the institutional arrangement in place. The error may be corrected by a Court or by “an independent and impartial body established by law”.[[98]](#footnote-98)Generally, judicial review of the administrative decisions is made available when an agency decision suffers from a procedural or substantive error which can significantly affect human health and environment.[[99]](#footnote-99) Available remedies should include: ordering administrative body to share relevant information with potentially affected parties, or ordering administrative body to “keep and update”[[100]](#footnote-100) environmental information for public access if the request for any such information has been ignored or refused[[101]](#footnote-101), declaring the administrative decision invalid for violation of substantive or procedural rights[[102]](#footnote-102);ordering the administrator to reconsider the decision based on relevant material; replacing the administrative decision with the review body’s own decision; and ordering damages to be paid to the affected person.Clarity on the issue of standing is of utmost importance in the context of judicial review. It is a good practice to allow environmental organizations or public interest lawyers to bring judicial review petitions before the court by treating them as having a “sufficient interest” in environmental decision making. The objective of a wider interpretation of ‘sufficient interest’ can provide greater access to justice to the genuinely concerned public.[[103]](#footnote-103) This is however, a decision for each country. The scope of judicial review must be defined by the law of the country. It is the challenge for the judges when reviewing the decision of an independent expert agency, authorized by the legislature to take such decisions. The Court’s deference to an agency decision should be based on the analysis of administrative-political interactions within the governance system of a country. The court may review the decision either through *de novo* trial, or restrict the review to the presence of “substantial evidence on the whole record” [[104]](#footnote-104) to reach a decision. It is a good practice to authorize courts to take *suo moto* review action on significant environmental decisions taken by the administrative agency, if found compellingly unjust to public at large. |
| Illustrations | (A)An oil company applies for and is granted a permit to build a pipeline to pump oil from the oil fields to the harbor. The pipe is routed through tribal lands. A law states that no tribal lands can be used for a development project unless a majority of the tribe consents. No such consent was obtained. The law should allow the permit to be challenged and cancelled on an application or appeal by the tribe or by an individual or organization acting in the public interest or on their behalf.(B) The Commission has issued a permit to an operator to recomplete an existing oil well to extract oil from a reservoir as an exception to the general oil well spacing regulation of the State. The communities in the vicinity and/or neighboring well operator can challenge the commission’s decision as unreasonable given the safety concerns attached to spacing rules. The court must review all the records, scientific and economic, which were considered by the Commission to decide whether the administrative decision is supported by substantial evidence or not.[[105]](#footnote-105) |
| Examples of Good Practices | South Africa[PAJA](http://www.justice.gov.za/legislation/acts/2000-003.pdf)[[106]](#footnote-106): right to “adequate notice of and right to review or internal appeal, where applicable”[Aarhus Convention](http://www.unece.org/fileadmin/DAM/env/pp/acig.pdf)[[107]](#footnote-107)Provisions to review administrative decisions and allow access to justiceUSA[APA](http://www.archives.gov/federal-register/laws/administrative-procedure/553.html)[[108]](#footnote-108),: “Each agency shall give an interested person the right to petition for the issuance, amendment, or repeal of a rule”§§ 701-706 describes the process of judicial review. Netherlands[GALA](http://www.juradmin.eu/colloquia/1998/netherlands_annex.pdf)[[109]](#footnote-109), describes “General provisions on objections and appeals”Australia[ADA](http://www.austlii.edu.au/au/legis/cth/consol_act/adra1977396/) [[110]](#footnote-110) “The person who is aggrieved by a decision to which this Act applies…may apply to the Federal Court or the Federal Magistrates Court for an order of review in respect of the decision…”The section enlists grounds for application for review of decisions. Subsequent sections expressly provide the right to order judicial review when a person is aggrieved by the ‘conduct related to making of decision’ and by agency’s failure to make decisions respectively.[[111]](#footnote-111) |
| **13. There is a Duty to Create, Maintain and Preserve Accurate Records of Public Administrative Decisions and Proceedings.** |
| Goal and Function | It is important that the documents at every step of the administrative proceedings should be well documented by the administrative body considering any decision significantly affecting the public, a community or class of the public including issues of human health and the environment. Such documents should be publicly available online as well as at designated public offices or on request by any member of the public. These records are kept to understand the precise decision and the rationale behind it.Records may be kept in chronological order or by its relevance to the issue under consideration. It is a good practice to have such records available for public and judicial review. The agency can prepare “fact sheets” for a proposed project which would likely to receive large scale public attention or would raise significant public interest issues. Such fact sheets may include the “principle facts and the significant factual, legal, methodological and policy questions considered”[[112]](#footnote-112) in arriving at the decision. Since in most of the countries the judicial review by the courts is limited to documents-on-record which are generated by the agency, a robust record-keeping regime should typically include a notice of proposed action, any studies which agency considered or included in the proposed action notice, public comments submitted along with further studies, the final rule, and the statement of rationale basis and purpose of the final decision.[[113]](#footnote-113) |
| Illustrations | (A) The record of a decision should generally include a chronological record of documents and procedural steps that are part of the decision, evidence, comments and concerns recorded at consultations and hearings, documents and correspondence between the agency and any party to the decision including the applicant, community members, individuals or public, analysis of materials in the record, advice received by the agency from any person and the draft decision and final decision. It should also include all authorizations to make the decision and conduct the proceedings.(B) The local government can be facilitated in establishing a clearinghouse for storing all the decisions arrived at meetings and consultations with the local community. This can act as a public record on all the agendas of meeting, projects discussed, documents referred, attendance record, comments and deliberations to arrive at a decision.[[114]](#footnote-114) |
| Examples of Good Practice | USAAdministrative record includes “the request for determination, all documents submitted to the [agency] by the applicant in respect of the request for determination, all protests and related for determination, all protests and related papers submitted to the [agency] and the applicant in respect of the request for determination or such protests, all pertinent returns filed with the [agency] and the notice of determination by the Commissioner.”[[115]](#footnote-115) [APA](http://www.archives.gov/federal-register/laws/administrative-procedure/552.html) provides an exhaustive list of documents or materials that constitute administrative records- indexed, published or made available- for public inspection.[[116]](#footnote-116) While “agency record” is a broad definition which includes “any record, paper or electronic, that has been created or retained by an agency and that is in the control of the agency”.[[117]](#footnote-117)European Union‘Your Voice in Europe’ website provides all the information on EU level decisions taken including the supporting documents. They also publish the agenda and deliberations of the meeting for public information. United Kingdoms“Administrative data [or records] refers to information collected primarily for administrative (not research) purposes.  This type of data is collected by government departments and other organizations for the purposes of registration, transaction and record keeping, usually during the delivery of a service.”[[118]](#footnote-118) |

1. Lalanath de Silva, LL.M, Director of the Access Initiative, World Resources Institute, Washington DC, USA. [↑](#footnote-ref-1)
2. Sagarika Rajakarunanayake Vs. the Director of the Zoological Gardens, Sri Lanka Court of Appeal Application for Writes of mandamus and Certiorari. [↑](#footnote-ref-2)
3. International Budget Partnership, <<http://internationalbudget.org/>> at 8 April 2013. [↑](#footnote-ref-3)
4. Extractive Industry transparency initiative, <<http://eiti.org/>> at 8 April 2013; Publish what you Pay <<http://www.publishwhatyoupay.org/>> at 8 April 2013. [↑](#footnote-ref-4)
5. International Aid transparency initiative, <<http://www.aidtransparency.net/>> at 8 April 2013. [↑](#footnote-ref-5)
6. Hugo Grotius (1625), Thomas Hobbes (1651), Samuel Pufendorf (1673), John Locke (1689), and Jean-Jacques Rousseau (1762) all contributed to this theory. [↑](#footnote-ref-6)
7. Cepeda-Espinosa, Manuel Jose, *Judicial Activism in a Violent Context: The Origin, Role, and Impact of the Colombian Constitutional Court*, 3 Washington University Global Studies Law Review (2004), 537 at 555, <<http://law.wustl.edu/wugslr/issues/volume3_spec/p529Cepeda.pdf>> at 16 April 2013. [↑](#footnote-ref-7)
8. Pearce, Catherine, Ombudspersons for Future Generations: A proposal for Rio+20, UNEP Perspectives series, No. 6, < <http://www.unep.org/civil-society/Portals/59/Documents/perspectives/ENVIRONMENT_PAPERS_DISCUSSION_6.pdf>> at 16 April 2013. [↑](#footnote-ref-8)
9. Rex v. Electricity Commissioners ([1924] 1 K.B. 171), [↑](#footnote-ref-9)
10. Ridge Vs. Baldwin (No. 1) [1963] App. L.R. 03/14 [↑](#footnote-ref-10)
11. Ibid. Lord Reid stated “I have already stated my view that it is more difficult for the courts to control an exercise of power on a large scale where the treatment to be meted out to a particular individual is only one of many matters to be considered.” [↑](#footnote-ref-11)
12. Above ft. n 8. [↑](#footnote-ref-12)
13. R Vs Metropolitan Commissioner of Police, *ex parte* Blackburn (1968) 2 QB 118 [↑](#footnote-ref-13)
14. R V Greater London Council ex parte Blackburn (1976) 1 WRL 550 cited with approval by Lord Diplock in the House of Lords. [↑](#footnote-ref-14)
15. R Vs Metropolitan Commissioner of Police, ex parte Blackburn (1973) 1 QB 241. [↑](#footnote-ref-15)
16. There have been previous attempts to develop or recognize a public rights doctrine with varying degrees of success. For example see Scheiber, Harry N., *Public Rights and the Rule of Law in American Legal History*, 72(2) California Law Review (1984), 217-51 < [↑](#footnote-ref-16)
17. Josh Grange (JD Candidate, New York University, Law school); Shyam Kapila, Attorney-at-Law India and Barrister UK; John Marsh (JD candidate, George Washington University, Law School) and Naysa Ahuja (LL.M candidate, George Washington University, law School). [↑](#footnote-ref-17)
18. Article 9, ¶ 3, Aarhus Conv. [↑](#footnote-ref-18)
19. § 6 (2)(a)(i) and (ii) [↑](#footnote-ref-19)
20. 5 U.S.C. § 706 (2) [↑](#footnote-ref-20)
21. § 8:77, 2. [↑](#footnote-ref-21)
22. Article 21(1)3 [↑](#footnote-ref-22)
23. Article 15, APA (Japan) [↑](#footnote-ref-23)
24. Article 32, APA (Japan) [↑](#footnote-ref-24)
25. § 6 (2)(a)(iii) [↑](#footnote-ref-25)
26. § 2:4, GALA, 1994 [↑](#footnote-ref-26)
27. Article 28, APA, 1996 (south Korea) [↑](#footnote-ref-27)
28. Article 6, ¶ 9 [↑](#footnote-ref-28)
29. § 5, PAJA [↑](#footnote-ref-29)
30. 5 U.S.C. § 706(2)(A) [↑](#footnote-ref-30)
31. § 4:16, GALA [↑](#footnote-ref-31)
32. § 4:17, GALA [↑](#footnote-ref-32)
33. Article 23, APA (South Korea) [↑](#footnote-ref-33)
34. Article 43(1)(iv), Act No. 88 of 1993 [↑](#footnote-ref-34)
35. It is to be considered whether the ‘relevant material’ principle is related to or implicitly understood as part of ‘Duty to provide reasoned decision’ principle for the implementation purpose. [↑](#footnote-ref-35)
36. Page 46; ‘Public Participation in Making Local Environmental Decisions- Good Practice Handbook, The Aarhus Convention Newcastle Workshop; Published by Department of the Environment, Transport and the Regions, UK, July 2000 (www.unece.org/fileadmin/DAM/env/pp/ecases/handbook.pdf) [↑](#footnote-ref-36)
37. Ibid. [↑](#footnote-ref-37)
38. Ibid page47 [↑](#footnote-ref-38)
39. Ibid [↑](#footnote-ref-39)
40. Art 6(8) [↑](#footnote-ref-40)
41. S.O. 1533(E), Rule 7(i)(III)(vii) (2006) [↑](#footnote-ref-41)
42. Information, Participation and Access to Justice: the Model of the Aarhus Convention (by Jonas Ebbesson, Stockholm University, Page 9, background paper no 5. [↑](#footnote-ref-42)
43. <http://www.guardian.co.uk/environment/2011/nov/10/keystone-xl-pipeline-route-expected> (lasted seen on: 03/05/2013) [↑](#footnote-ref-43)
44. Public Participation in Making Local Environmental Decisions- The Aarhus Convention Newcastle Workshop- Good Practice handbook (pg 47) [↑](#footnote-ref-44)
45. Public Participation in Making Local Environmental Decisions- The Aarhus Convention Newcastle Workshop- Good Practice handbook (<http://www.unece.org/fileadmin/DAM/env/pp/ecases/handbook.pdf>) (page 53) [↑](#footnote-ref-45)
46. Article 6, ¶ 2 [↑](#footnote-ref-46)
47. 5 USC § 553(b) [↑](#footnote-ref-47)
48. § 3:12 [↑](#footnote-ref-48)
49. Art 21, Administrative Procedures Act, Republic of Korea, Act No. 5241, Dec 31, 1996 [↑](#footnote-ref-49)
50. Art 15, Administrative Procedure Act of 1993 [↑](#footnote-ref-50)
51. §. 4 (3)(a), PAJA South Africa [↑](#footnote-ref-51)
52. Art. VI, Aarhus Convention [↑](#footnote-ref-52)
53. Art 21, APA (South Korea) [↑](#footnote-ref-53)
54. criterion 4.1, CPC (UK) [↑](#footnote-ref-54)
55. Ibid, Page-41 [↑](#footnote-ref-55)
56. Discussion Paper: Improving Public Participation in International Environmental Governance, Jacob Werksman and Joseph Foti, UNEP, December 2011, p.6 [↑](#footnote-ref-56)
57. Id., p.8 [↑](#footnote-ref-57)
58. Art 9, ¶ 4 & 5 [↑](#footnote-ref-58)
59. N.Y. ENVTL. CONSERV.L. §27-1401 *et seq.* (http://www.environmental-law.net/wp-content/uploads/2011/09/NYCDEP-E-Designation.pdf) [↑](#footnote-ref-59)
60. http://www.epa.gov/compliance/environmentaljustice/grants. [↑](#footnote-ref-60)
61. §3.11, GALA [↑](#footnote-ref-61)
62. Social Ecology and Environmental Racism; *Overcoming Racism in Environmental Decision Making* (by Bullard, Robert D.) [↑](#footnote-ref-62)
63. criterion 4.4, Code of Practice on Consultation (2000) [↑](#footnote-ref-63)
64. Executive Order 12898 of February 1994. (It reemphasizes on implementation of NEPA process for the benefit of ‘all’ US citizens) [↑](#footnote-ref-64)
65. Chapter 3, p.2, EPA RCRA Public Participation Manual (1996) [↑](#footnote-ref-65)
66. A Seat At The Table: Including the Poor in Decisions for Development and Environment, by Joseph Foti and Lalanath de Silva, World Resources Institute, 2010, pg.17 [↑](#footnote-ref-66)
67. Environment Impact Assessment Process in India and the Drawbacks, (by Aruna Murthy, Himansu Sekhar Patra; Environment Conservation Team; Vasundhara; 2005) pg 13 [↑](#footnote-ref-67)
68. A comparative survey of procedures for public participation in the lawmaking process- Report for the National Campaign for People’s Right to Information (NCPRI), April 2011 (p 36) Oxford Pro Bono Publico [↑](#footnote-ref-68)
69. (Gerald & Foster, 2008) [↑](#footnote-ref-69)
70. Environment Impact Assessment Process in India and the Drawbacks, (by Aruna Murthy, Himansu Sekhar Patra; Environment Conservation Team; Vasundhara; 2005) pg 13 [↑](#footnote-ref-70)
71. Meaningful Involvement and Fair Treatment by Tribal Environmental Regulatory Programs, NEJAC, November 2004 [↑](#footnote-ref-71)
72. §. 3 (2)(b)(ii) [↑](#footnote-ref-72)
73. Art. 6 [↑](#footnote-ref-73)
74. 5 U.S.C. § [553](http://www.archives.gov/federal-register/laws/administrative-procedure/553.html) [↑](#footnote-ref-74)
75. § 3:13, GALA ( ) [↑](#footnote-ref-75)
76. Art. 22 [↑](#footnote-ref-76)
77. Art. 21 [↑](#footnote-ref-77)
78. Information, Participation and Access to Justice: the Model of the Aarhus Convention (by Jonas Ebbesson, Stockholm University, Page 9, background paper no 5. [↑](#footnote-ref-78)
79. Flowing freely: (page 17) [↑](#footnote-ref-79)
80. Flowing Freely: How to improve access to Environmental information and enhance public pariticipation in Water management by Nagy, Magda Toth, et al; a case study on local communication about wastewater management in Osijek, Croatia through internet-based platform. (page 17) UNDP-GEF Danube Regional Project publication. (http://documents.rec.org/publications/flowing\_freely\_2007\_eng.pdf) [↑](#footnote-ref-80)
81. Section 9, Chapter 3,PAIA (2000) [↑](#footnote-ref-81)
82. Art 4, Aarhus Convention [↑](#footnote-ref-82)
83. Art 5, Aarhus Convention [↑](#footnote-ref-83)
84. [5 U.S.C. § 552](http://www.archives.gov/federal-register/laws/administrative-procedure/552.html)(a) (1), (1996) [↑](#footnote-ref-84)
85. Sec.5-5(b), Executive Order no. 12898, February 11, 1994 on ‘Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations’. [↑](#footnote-ref-85)
86. Art. 1, Act No. 5242, Dec. 31. 1996 [↑](#footnote-ref-86)
87. No. 22 of 2005 [↑](#footnote-ref-87)
88. Information, Participation and Access to Justice: the Model of the Aarhus Convention (by Jonas Ebbesson, Stockholm University, Page 9 [↑](#footnote-ref-88)
89. Green Clearance Watch, a public information system created by Center for Science and Environment to provide data about environmental and forest clearances issued for industrial and development projects in India (http://www.greenclearancewatch.org/) [↑](#footnote-ref-89)
90. United States Standards Strategy, published by American National Standards Institute, 2010, New York (USSS, like ASTM International, provides a framework which sets and publishes international voluntary environmental standards amongst others for various US industries. These are used in research and development of new products, services and systems as well as product testing.) [↑](#footnote-ref-90)
91. TKDL provides information on the traditional knowledge related to medicinal and aromatic plants and other genetic resources existing in India to facilitate the patent offices around the world to avoid wrongful grant of patents. <http://www.tkdl.res.in/tkdl/langdefault/common/Home.asp?GL=Eng> (last seen on 03/19/2013) [↑](#footnote-ref-91)
92. Information, Participation and Access to Justice: the Model of the Aarhus Convention (by Jonas Ebbesson, Stockholm University, Page 9, background paper no 5.(pg 10) [↑](#footnote-ref-92)
93. §. 4(2)(b) [↑](#footnote-ref-93)
94. Article 6, ¶ 9 [↑](#footnote-ref-94)
95. Article 26 [↑](#footnote-ref-95)
96. Article 39 [↑](#footnote-ref-96)
97. Judicial Review of Environmental Administrative Decisions: Has it Changed the Behavior of Government Agencies?, Zhang, Xuehua; Leonard Ortolano; The China Journal, No. 64 (July 2010) Publisher(s): The university of Chicago Press on behalf of the College of Asia and the Pacific, The Australian National University. P1 (citing China’s Long March Toward Rule of Law; Cambridge: Cambridge University Press, 2002) [↑](#footnote-ref-97)
98. Information, Participation and Access to Justice: the Model of the Aarhus Convention (by Jonas Ebbesson, Stockholm University, Page 9, background paper no 5. [↑](#footnote-ref-98)
99. Information, Participation and Access to Justice: the Model of the Aarhus Convention (by Jonas Ebbesson, Stockholm University, Page 9, background paper no 5.(page16) [↑](#footnote-ref-99)
100. Information, Participation and Access to Justice: the Model of the Aarhus Convention (by Jonas Ebbesson, Stockholm University, (pg 8) [↑](#footnote-ref-100)
101. <http://www2.ohchr.org/english/issues/environment/environ/bp5.htm> Information, Participation and Access to Justice: the Model of the Aarhus Convention (by Jonas Ebbesson, Stockholm University) Background Paper no. 5 (joint UNEP-OHCHR Expert Seminar on human Rights and the Environment, 2002; Geneva) [↑](#footnote-ref-101)
102. Information, Participation and Access to Justice: the Model of the Aarhus Convention (by Jonas Ebbesson, Stockholm University, Page 9, background paper no 5. (pg-16) [↑](#footnote-ref-102)
103. Aarhus Convention, Art 2 (5) [↑](#footnote-ref-103)
104. citing 5 USC §1009(c) (1946); Judicial Review: “Substantial Evidence on the Whole Record”, Louis L. Jaffe, Harvard Law Review, Vol. 64, No. 8, (Jun., 1951), p.1233 [↑](#footnote-ref-104)
105. Exxon Corp. v. Railroad Commission, 571 S.W.2d 497 (Tex. 1978) [↑](#footnote-ref-105)
106. § 3(2)(b)(d [↑](#footnote-ref-106)
107. Art 9 [↑](#footnote-ref-107)
108. 5 U.S.C. [§ 553](http://www.archives.gov/federal-register/laws/administrative-procedure/553.html) [↑](#footnote-ref-108)
109. § 6, GALA [↑](#footnote-ref-109)
110. §5 of Administrative Decisions (Judicial Review) Act, 1977 [↑](#footnote-ref-110)
111. § 6and 7 of Administrative Decisions (Judicial Review) Act, 1977 [↑](#footnote-ref-111)
112. The Law of Environmental Justice: Theories and Procedures to Address Disproportionate Risks, 2nd Edition , by Michael B. Gerrard and Sheila R. Foster (editors) American Bar Association , Section of Environment, Energy, and Resources (2008) [↑](#footnote-ref-112)
113. Richard j. Pierce, Jr, *Administrative Law*, Foundation Press, 2012, P.86 [↑](#footnote-ref-113)
114. Discussion Paper: Improving Public Participation in International Environmental Governance, Jacob Werksman and Joseph Foti, UNEP, December 2011, p.6 [↑](#footnote-ref-114)
115. Church of Spiritual Technology v. United States, 18 Cl. Ct. 247, 250 (Cl. Ct. 1989) [↑](#footnote-ref-115)
116. 5 U.S.C. § 552 (a)(20(A)-(E), Title 5, Part I, Chapter 5, Subchapter II. [↑](#footnote-ref-116)
117. Richard J. Pierce, Jr., Administrative Law, Foundation press, p.152 (citing Dept. of Justice v. Tax Analysts, 492 U.S 136 (1989) [↑](#footnote-ref-117)
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