

The Myth of Public Participation in a World of Poverty

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This Article addresses the public participation dimension of poverty—the lack of participation by the poor in decisions that affect their lives, health, and environment—and considers possibilities for increasing participation by the poor. Public participation means access to information about decisions to be made, opportunity to express opinions in oral or written comments, and the ability to have these opinions taken into account in final decisions.

Procedural rights and environmental democracy are necessary preconditions and important tools for environmental protection and poverty alleviation. The author explores the benefits of public participation in environmental decision making for the eradication of poverty. This includes World Bank policies on eradication of poverty, good governance, and consultations with affected communities. The author analyzes the problems of unfair development and inadequate public participation for the poor. Failure to consult local communities and take into account public opinion results in a negative impact on the environment and poor people. Finally, the author proposes solutions for these problems.

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I. INTRODUCTION: DIFFERENT DIMENSIONS OF POVERTY

Poverty is not only a function of meager income. It is true that a person is considered to be living in absolute poverty if his or her income falls below the World Bank's international poverty line, which is a minimum of one U.S. dollar per day per person.¹ However, poverty can also be measured by nonmonetary standards. A person is impoverished if he or she lacks access to clean drinking water, sanitation, electricity, and social services such as health care and education.² Recent World Bank definitions of poverty "have captured the multi-dimensional measures of poverty as including lack of shelter, risk, vulnerability, employment, ill health, and fear for the future, powerlessness, social exclusion, access to social capital, lack of representation and freedom."³

Poverty is also characterized by a lack of basic rights. Those missing rights include procedural rights—access to information, public participation in decision making, and access to justice—formulated for the first time in Principle 10 of the Rio Declaration.⁴ This Article will focus on the right of public participation, how poverty limits that right, and how those limitations can be overcome.

II. THE NEED FOR PUBLIC PARTICIPATION BY THE POOR

The right to participate in decisions affecting the environment and life, health, and subsistence of the poor, if properly organized, can cause public authorities to take into account their opinion and can help public authorities make better decisions for the poor and for the environment. Participation of the poor in decision making can promote good governance and help to eradicate poverty.

The benefits of public participation can be divided into two categories of goals and perspectives: process-based and substantive-based.⁵ From the process-based perspective, participation raises public

1. WORLD BANK, WORLD DEVELOPMENT REPORT 1990: POVERTY 27 (June 30, 1991); *see also* FOUNDATION FOR ENVIRONMENT AND DEVELOPMENT [FEDEV], THE ACCESS INITIATIVE CAMEROON: NATIONAL REPORT ON THE POVERTY PROJECT 5 (Apr. 2008), <http://www.accessinitiative.org/sites/default/files/Cameroon%20Poverty%20Report.pdf>.

2. WORLD BANK, WORLD DEVELOPMENT REPORT 2000/2001: ATTACKING POVERTY, 22864, at 6-7 (Sept. 18, 2001); *see also* FEDEV, *supra* note 1, at 5.

3. FEDEV, *supra* note 1, at 5; *see also* WORLD BANK, *supra* note 2, at 16-21.

4. *See* U.N. Conference on Env't & Dev. [CED], Rio de Janeiro, Braz., June 3-14, 1992, *Rio Declaration on Environment and Development*, princ. 10, U.N. Doc. A/CONF.151/26 (Aug. 12, 1992) [hereinafter *Rio Declaration*].

5. George (Rock) Pring & Susan Y. Noé, *The Emerging International Law of Public Participation Affecting Global Mining, Energy and Resources Development*, in HUMAN RIGHTS IN NATURAL RESOURCE DEVELOPMENT 5 (D. Zillman, A. Lucas & G. Pring, eds., 2002).

awareness, educates and empowers the public, gives the public an opportunity to express concerns, helps to avoid conflicts, and increases public acceptance of decisions and governmental accountability. In terms of substantive-based goals, public participation makes decisions better, more environmentally friendly, and more reflective of local needs and values.⁶

These benefits of public participation apply to the poor as well. Public participation in decision making may help protect the health rights of people and help to prevent harm to communities and natural areas. The public can suggest more acceptable alternative solutions.⁷ The public is also more likely to support a decision made with public involvement.⁸ This can lead to more effective project implementation and enhance the well-being of the poor.⁹ Development projects may be implemented in a more environmentally friendly way. Projects may create new jobs for local communities, provide proper compensation for affected people, and consequently help alleviate poverty. This requires, however, a proper procedure of participation and representation of the poor communities in the decision-making process. The poor are disadvantaged and cannot secure meaningful and equitable representation on their own. As one study stated:

Although the poor are becoming increasingly involved in the various stages of development, questions remain as to whether their inclusion constitutes genuine participation and whether people's capabilities have been increased in such a manner as to enable them to chart the course of their destinies in collaboration with the government¹⁰

III. INADEQUATE PUBLIC PARTICIPATION BY THE POOR

A. *Inadequate Public Participation in EIA*

The Environmental Impact Assessment (EIA) process is one of the main avenues for public participation in many countries.¹¹ Transparency,

6. *Id.*

7. ANANTHA KUMAR DURAIAPPAH ET AL., INT'L INST. FOR SUSTAINABLE DEV., HAVE PARTICIPATORY APPROACHES INCREASED CAPABILITIES? 1 (2005), available at http://www.iisd.org/pdf/2005/economics_participatory_approaches.pdf.

8. *See id.*

9. *See id.*

10. *Id.*

11. *See, e.g.,* Jesse L. Moorman & Zhang Ge, *Promoting and Strengthening Public Participation in China's Environmental Impact Assessment Process: Comparing China's EIA Law and U.S. NEPA*, 8 VT. J. ENVTL. L. 281 (2007); NORMAN LEE & CLIVE GEORGE, *ENVIRONMENTAL ASSESSMENT IN DEVELOPING AND TRANSITIONAL COUNTRIES: PRINCIPLES, METHODS AND PRACTICE* (2000).

access to information and participation are key principles of EIA. EIA is an effective tool to improve good governance and reduce poverty. Poor communities, however, often do not have access to EIA documentation of the project, which will have a negative impact on their health and environment. Even if poor communities do have access to EIA documentation, understanding the technical documents' complexities requires special knowledge and expertise that such communities usually do not have. Nor can these communities afford expert interpretation of such documents.

The full potential for public participation is often not achieved in EIA procedures. For example, in the case of the Cobalt Nickel Mining project, the world's largest deposits of cobalt and the biggest mining operation in Cameroon, efforts to involve the poor indigenous people, the Bantu and the Pygmies, were not effective.¹² This was a problem in spite of the law of Cameroon, which supports public participation in EIA.¹³

Lack of adequate information about the project and EIA process compounded by high illiteracy level of the impacted community retarded effective participation. The project will negatively impact on the poor communities via loss of biodiversity, soil degradation, pollution, health problem[s], unsustainable development, environmental harm and increased poverty.¹⁴

The operational policies of some banks on EIA provide a more detailed framework for public consultations, especially in projects with significant environmental and social impact. However, the language of these policies is often vague and not mandatory. For example, the Inter-American Development Bank procedures provide:

The Bank *expects* project Borrowers to consult affected communities and other local parties having a legitimate direct interest in an operation. The Bank requires that borrowers: (1) employ *reasonable consultation procedures* to elicit the informed opinion of concerned local groups, and take their views into account during project preparation and implementation The methodology and results of consultations, and the manner in which those results are taken into account, as well as provisions for community participation during project implementation, *when applicable*¹⁵

12. FEDEV, *supra* note 1, at 9-10.

13. *Id.* at 9.

14. *Id.* at 10.

15. INTER-AM. DEV. BANK [IDB], GUIDELINE FOR ENVIRONMENTAL IMPACT ASSESSMENTS 4 (Mar. 1999), http://www.iadb.org/pri/PDFs/B_EIA.pdf (emphasis added).

B. Failure To Address Adequately Public Participation by the Poor Regarding Climate Change

The Human Rights Council, in its resolution of March 26, 2008, “Human Rights and Climate Change,” emphasized that “climate change poses an immediate and far-reaching threat to people and communities around the world and has implications for the full enjoyment of human rights.”¹⁶ It noted that “the world’s poor are especially vulnerable to the effects of climate change, in particular those concentrated in high-risk areas, and also tend to have more limited adaptation capacities.”¹⁷ The question is whether these insights by the Council are going to lead to reform in programs.

No one can deny that poverty limits the ability of indigenous people to adapt to climate change. The Inuit people of Alaska and Canada, in a 2005 petition to the Inter-American Commission on Human Rights, argued, inter alia, that the adverse impacts of climate change violate their fundamental human rights to life, property, culture and *means of subsistence*.¹⁸ The petition was submitted by Sheila Watt-Cloutier on behalf of Inuit indigenous people, who were assisted by several U.S. legal experts from Center of International Environmental Law (CIEL) and Earthjustice.¹⁹ The Inuits’ right to subsist is violated by altering their food sources as a result of the adverse impact of climate change on wildlife.²⁰ Some species move to different locations, exacerbating the travel problems; other species cannot complete their annual migrations because the ice they normally travel on no longer exists.²¹ Reduction of sea ice drastically shrinks habitat for polar bears and seals, pushing them toward extinction.²²

One can also not deny that the measures needed to combat climate change will disproportionately impact the poor. Many millions of poor people would be hurt by the cost of emissions reductions. The poor

16. Office of the High Comm’r for Human Rights, U.N. Human Rights Council, 7th Sess., U.N. Doc. A/HRC/7/L.21/Rev.1, at 65 (Mar. 26, 2008), *available at* http://ap.ohchr.org/documents/E/HRC/resolutions/A_HRC-7_L_21_Rev_1.doc.

17. *Id.*

18. Earthjustice, Petition to the Inter American Commission on Human Rights Seeking Relief from Violations Resulting from Global Warming Caused by Acts and Omissions of the United States 111 (Dec. 7, 2005), *available at* http://www.earthjustice.org/library/legal_docs/petition-to-the-inter-american-commission-on-human-rights-on-behalf-of-the-inuit-circumpolar-conference.pdf.

19. *Id.*

20. *Id.*

21. *Id.*

22. *Id.*

would be forced to bear the cost “in the form of higher energy bills, lost jobs, and increased poverty.”²³

There were 262 million people “affected by climate disasters annually from 2000 to 2004, over 98 percent of them in the developing world.”²⁴ Poor countries that contributed very little to global greenhouse gas (GHG) emissions are more vulnerable to the impact of climate change and lack resources to adapt to it. At the Thirteenth Conference of the Parties of the United Nations Framework Convention on Climate Change in Bali in December 2007, the Group of 77 (representing 132 developing countries and China) demanded that technology be transferred from developed countries to help them adapt to the impacts of climate change.²⁵

Yet on many other points the delegations from the poorest countries were unable to participate effectively in climate change negotiations. Dr. Albert Mumma argues that the African Delegation had a difficult time bringing all its interests to the fore because of the acute poverty of the African continent.²⁶ This resulted in a lack of financial, technical, and human resources, and consequent unfairness of representation.²⁷ In other words, even governments in developing countries have a hard time participating in important negotiations. It is hardly surprising that impoverished people have a difficult time participating in governmental decisions.

23. Eric A. Posner & Cass R. Sunstein, *Climate Change Justice*, 96 GEO. L.J. 1565, 1587 (2008).

24. UNITED NATIONS DEVELOPMENT PROGRAMME [UNDP], HUMAN DEVELOPMENT REPORT 2007/2008: FIGHTING CLIMATE CHANGE: HUMAN SOLIDARITY IN A DIVIDED WORLD 8 (2007), available at http://hdr.undp.org/en/media/HDR_20072008_EN_Complete.pdf.

25. United Nations Framework Convention on Climate Change, Dec. 3-15, 2007, *Report of the Conference of the Parties on Its Thirteenth Session*, ¶¶ 2-3, U.N. Doc. FCCC/CP/2007/6 (Mar. 14, 2008).

26. Albert Mumma, *The Poverty of Africa's Position at the Climate Change Negotiations*, 19 UCLA J. ENVTL. L. & POL'Y 181, 202 (2001).

27. *Id.* at 202-03. The author points out that at the 4th Conference of the Parties in Buenos Aires, the U.S. delegation

was a contingent of eighty-three people and the European Union forty-five, excluding the national delegations of EU member states. The “developed country viewpoint” was supported by a whole array of publications distributed by “think tanks”—from the government, business sector and non-governmental organizations. . . . In contrast, the typical African delegation had two to four people. Most countries were able to attend only because they could rely on the two air tickets availed to developing country delegates by the Secretariat.

Id. (citing Provisional List of Participants, U.N. Framework Convention on Climate Change, Conference of the Parties, 4th Sess., U.N. Doc. FCCC/CP/1998/MISC/.10 (1998)).

C. *Insufficient Mechanisms for Public Participation with Regard to Poverty and Biodiversity*

Poor people living in national parks and other protected areas without economic alternatives for survival are likely to threaten natural resources and biodiversity. Marginalized and poor people, however, are often excluded from the kind of participation that can help them reach sustainable solutions. Participation of poor communities, along with other stakeholders, in management of national parks can motivate them to protect biodiversity and natural resources by giving them a voice and including their opinion and needs in decision-making processes.

The Convention on Biological Diversity (CBD) Program of Work on Protected Areas (PoW) highlights governance throughout its formulation in its element 2—Governance, Participation, Equity and Benefit Sharing.²⁸ The CBD PoW (target 2.2) calls on parties to achieve “[f]ull and effective participation . . . of indigenous and local communities, in full respect of their rights and recognition of their responsibilities, consistent with national law and applicable international obligations, and the participation of relevant stakeholders, in the management of existing, and the establishment and management of new, protected areas.”²⁹

The World Parks Congress held in Durban in 2003 accepted a “new paradigm” for protected areas, “equitably integrating them with the interests of all affected people.”³⁰ The Congress urged commitment to involve indigenous peoples in establishing and managing protected areas and participate in decision making on a fair and equitable basis in full respect of their human and social rights.³¹

The Cartagena Protocol on Biosafety under the CBD has procedural rights to information and participation in decision making concerning the safe transfer, handling and use of living modified organisms in relation to the conservation and sustainable use of biological diversity.³² Parties have to “consult the public in the decision-making process regarding living modified organisms and shall make the results of such decisions available to the public” (article 23).³³ How the public can actually

28. Convention on Biological Diversity [CBD], art. 8(j), June 4, 1993, 31 I.L.M. 818, 1760 U.N.T.S. 79.

29. *Id.* art. 2.2.

30. INT’L UNION FOR CONSERVATION OF NATURE [IUCN], DURBAN ACCORD 220 (Mar. 24, 2005), <http://cmsdata.iucn.org/downloads/durbanaccorden.pdf>.

31. *Id.*

32. See Cartagena Protocol on Biosafety to the Convention on Biological Diversity, art. 3, Jan. 29, 2000, 2226 U.N.T.S. 208.

33. *Id.* art. 23.

enforce its right of information, participation, and consultation is unclear, however. The mechanisms adopted to assess compliance by nations with their obligations under the Convention and the Protocol do not allow the public to submit complaints about alleged noncompliance.

Each of these international legal regimes makes gestures in the direction of public participation and involvement in decision making, but none appears to have a program that will ensure the participation of the poor in the process. If the CBD and the commitments made by the World Parks Congress are to take account of the interests of indigenous (and often impoverished) peoples, do programs exist to take this beyond mere promises? If the parties under the Cartagena Protocol are to “consult the public,” how effective will that be if the public lacks the expertise and resources to engage with the decision makers?

D. Promises Made in Other Multilateral Environmental Agreements (MEAs)

On the global level, principles of public participation were set out in Principle 10 of the Rio Declaration on Environment and Development and in Agenda 21 (1992).³⁴ Principle 10 declares that each individual shall have the opportunity to participate in decision-making processes, facilitated by the widespread availability of information and access to judicial remedies.³⁵ The international community declared in Principle 10 that “[e]nvironmental issues are best handled with the participation of *all concerned citizens*” within the state.³⁶

Several environmental treaties included public participation provisions.³⁷ For example, the United Nations Framework Convention on Climate Change (1992), article 6(a)(iii), requires parties to promote and facilitate public participation in addressing climate change and its effects and in developing adequate responses.³⁸ The United Nations Convention to Combat Desertification in Those Countries Experiencing Serious Drought and/or Desertification, Particularly in Africa (1994), calls for public participation in relevant decision making in articles 3(a) and 4.2(e)

34. See *Rio Declaration*, *supra* note 4, princ. 10.

35. *Id.*

36. *Id.* (emphasis added).

37. See, e.g., United Nations Convention To Combat Desertification in Those Countries Experiencing Serious Drought and/or Desertification, Particularly in Africa, arts. 3(a), 4.2(e)-(f), Oct. 13, 1995, 33 I.L.M. 1328, 1954 U.N.T.S. 3 [hereinafter *Desertification Convention*]; United Nations Framework Convention on Climate Change, art. 6(a)(iii), June 19, 1993, 31 I.L.M. 849, 1771 U.N.T.S. 107 [hereinafter *Framework Convention*]; CBD, *supra* note 28, art. 14.1.

38. See *Framework Convention*, *supra* note 37, art. 6(a)(iii).

and (f).³⁹ The Convention on Biological Diversity (1992) allows for public participation in environmental impact assessment procedures in article 14.1.⁴⁰

On the regional level in Europe, even before the Rio Conference on Environment and Development, the United Nations Economic Commission for Europe (UNECE) Convention on Environmental Impact Assessment in a Transboundary Context (1991) (known as the Espoo Convention, for the city in Finland where the convention was signed) established environmental impact assessment of projects and activities that may have significant transboundary impacts on the environment.⁴¹ It has provisions on public participation in both countries of origin and affected countries.⁴² In a final decision on a proposed activity, parties must take due account of the environmental impact assessment, including the outcome of consultations with the public.⁴³

The UNECE Convention on the Transboundary Effects of Industrial Accidents (1992), in article 9, paragraph 2, requires a party under whose jurisdiction an industrial accident may occur to give opportunities for participation to the public in affected areas, without regard to borders.⁴⁴ Public participation provisions are included in the Protocol on Water and Health (1999) to the Convention on the Protection and Use of Transboundary Watercourses and International Lakes (1999),⁴⁵ and the Protocol on Heavy Metals (1998) to the Convention on Long-Range Transboundary Air Pollution (1979).⁴⁶

The best example of an international agreement protecting procedural human rights is the Aarhus Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in

39. See Desertification Convention, *supra* note 37, art. 3(a), 4(e)-(f).

40. See CBD, *supra* note 28, art. 14.1.

41. See Convention on Environmental Impact Assessment in a Transboundary Context, Feb. 25, 1991, 39 I.L.M. 802, 1989 U.N.T.S. 309, arts. 1-20.

42. See *id.*

43. *Id.* art. 6.

44. Convention on the Transboundary Effects of Industrial Accidents, art. 9, ¶ 2, Sept. 18, 1992, 31 I.L.M. 1330, 2105 U.N.T.S. 457, available at <http://www.unece.org/env/documents/2006/teia/Convention%20E.pdf> [hereinafter Industrial Accidents].

45. Protocol on Water and Health to the 1992 Convention on the Protection and Use of Transboundary Watercourses and International Lakes, arts. 1-16, June 17, 1999, U.N. Doc. MP.WAT/2000/1, available at <http://www.unece.org/env/documents/2000/wat/mp.wat.2000.1.e.pdf> [hereinafter Protocol on Water and Health].

46. Protocol to the 1979 Convention of Long-Range Transboundary Air Pollution on Heavy Metals, June 24, 1998, U.N. Doc. E/ECE/EB.AIR/66/1999, art. 4, available at <http://www.unece.org/env/lrtap/full%20text/1998.Heavy.Metals.e.pdf> [hereinafter Protocol on Heavy Metals].

Environmental Matters.⁴⁷ It is regional in scope, but it has global significance.⁴⁸ According to former U.N. Secretary General Kofi Annan:

It is by far the most impressive elaboration of principle 10 of the Rio Declaration, which stresses the need for citizens' participation in environmental issues and for access to information on the environment held by public authorities. As such it is the most ambitious venture in the area of "environmental democracy" so far undertaken under the auspices of the United Nations.⁴⁹

The Aarhus Convention provides detailed procedure on public participation in decisions concerning specific activities.⁵⁰ Among the main requirements for public participation are the following: the public must be informed early in an environmental decision-making procedure and in an adequate, timely, and effective manner about the proposed activity and possible decisions, procedure, and opportunities for the public to participate; the public participation procedures must include reasonable timeframes for the public to prepare and participate effectively; the public must be able to participate early, when all options are open; the public must have free access to documents for examination as the documents become available; the public must have the opportunity to submit comments; and outcomes of public participation must be taken into account.⁵¹ In addition, article 7 of the Convention provides for public participation related to plans, programs, and policies.⁵²

An examination of each of these international agreements, however, fails to reveal specific commitments to helping the impoverished take advantage of the public participation opportunities that are formally provided.

E. Failure To Involve the Poor in Decision Making

There is a long list of failures in efforts to involve the public, including the poor, in environmental decision making. Development projects happen without a proper EIA, without proper consultation with

47. See Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters, arts. 1-22, Dec. 21, 1998, 38 I.L.M. 517, 2161 U.N.T.S. 447 [hereinafter Aarhus Convention].

48. STEPHEN STEC & SUSAN CASEY-LEFKOWITZ, U.N. ECON. COMM'N FOR EUR. [ECE], THE AARHUS CONVENTION: AN IMPLEMENTATION GUIDE, at v, U.N. Doc. ECE/CEP/72, U.N. Sales No. E.00.II.E.3 (2000), available at <http://www.unece.org/env/pp/acig.pdf>.

49. *Id.*

50. See Aarhus Convention, *supra* note 47, art. 6.

51. *Id.*

52. *Id.* art. 7.

the public, or with merely pro forma public participation.⁵³ Other failures include public participation occurring only after an agreement between government and a developer is reached or even after a development is started, when public participation is too late and therefore is meaningless.⁵⁴

People affected the most by big development projects are often marginalized and poor.⁵⁵ They do not have political power, because they cannot afford the monetary commitment necessary to campaign for a political position.⁵⁶ Poverty creates additional hurdles for access to governmental decision-making processes. Corporations may engage in development projects without notifying and consulting with affected people. Poor local communities may lose their ancestors' land, be resettled without adequate compensation, and lose their natural resources, healthy environment, cultural identity, and traditional style of life.

For example, the Mbororo minority ethnic groups of nomadic herders in Cameroon have been resettled from their sites and provided new settlements far away from social facilities due to increasing demand for land by others.⁵⁷

The whole process is undertaken in a non-participatory manner. The authorities seem to share the view [that] pastoralists are squatters and have neither rights nor right to partake in any decision process. . . .

Grazing land is an important asset to the livelihoods of the Mbororo pastoralist and squeezing them into very small portions of rangelands, is exacerbating poverty. The legal provision on [public participation] is not being respected in practice in this case. The population is not conversant with the legal procedure and their rights. . . . Capacity building both for the government authorities or impacted communities is weak.⁵⁸

Property rights are important for the survival and well-being of the poor, especially for indigenous peoples, but processes for recognizing them often do little to accommodate their special situations. In the *Awasi Tingni* case, the Ministry of the Environment and Natural Resources of

53. See generally *id.* arts. 1-22 (discussing shortfalls in the process of public participation in environmental protection and granting public rights to participate in environmental decision making).

54. *Id.*

55. *Id.*

56. *Id.*

57. FOUND. FOR ENV'T & DEV., THE ACCESS INITIATIVE (TAI), CAMEROON: NATIONAL REPORT ON THE POVERTY PROJECT 12-14 (2008), available at <http://www.accessinitiative.org/sites/default/files/Cameroon%20Poverty%20Report.pdf> [hereinafter CAMEROON].

58. *Id.* at 10.

Nicaragua granted a logging concession to a Korean company on the lands of the Mayagna Awas Tingni Community (Community) without consultation with the Community.⁵⁹ The members of the Community subsist on the basis of family farming and communal agriculture, fruit gathering, hunting, and fishing.⁶⁰ These activities are carried out within a territorial space in accordance with a traditional collective form of organization.⁶¹ The Community did not have formal title under the Nicaraguan legal system to its lands.⁶² The State maintained that part of the lands claimed by the Community belonged to the State.⁶³ The Inter-American Court of Human Rights, however, found a violation of article 21 of the American Convention through a creative and evolutionary interpretation of the right of property.⁶⁴ It said that instead of using Western concepts of private property, governments must recognize what indigenous people may consider as their right to use lands where they and their ancestors have lived for centuries.⁶⁵

Indigenous groups, by the fact of their very existence, have the right to live freely in their own territory; the close ties of indigenous people with the land must be recognized and understood as the fundamental basis of their cultures, their spiritual life, their integrity, and their economic survival.⁶⁶

One dissenting judge argued that the indigenous people had not used the process to apply for title that already existed in the law.⁶⁷ He failed to address in his written opinion, however, the issue of how people that could not afford to hire a lawyer should have filed such applications.⁶⁸ Despite his dissent, the majority of the court recognized the right of the Community to the use and title of the land, and the court ordered the State to spend its own funds to carry out delimitation, demarcation, and titling of the territory belonging to the Community.⁶⁹

59. See *The Mayagna (Sumo) Awas Tingni Community v. Nicaragua*, 2001 Inter-Am. Ct. H.R. (ser. C) No. 79, at 2-3 (Aug. 31, 2001), available at http://www.corteidh.or.cr/docs/casos/articulos/Seriec_79_ing.pdf.

60. *Id.* at 49.

61. *Id.*

62. *Id.* at 59.

63. See *id.* at 50.

64. *Id.* at 74.

65. See *id.* at 75.

66. *Id.* at 79.

67. Dissenting Opinion of Judge Montiel Arguello at 2 (Aug. 31, 2001), available at http://www.corteidh.or.cr/docs/casos/articulos/Seriec_79_ing.pdf.

68. See *id.*

69. See *Mayagna*, *supra* note 59, at 75.

The court also ordered that some compensation be paid to the Community.⁷⁰

There is little financing available for the Community to play an active role in this process and the government of Nicaragua has repeatedly dragged its feet on carrying out the court's order.⁷¹ This landmark case perhaps would not have been successful without support and expertise of a few U.S. professors working on the case for several years, giving testimony, and representing the Community in the Inter-American Commission and Court. The poor do not have the financial means of understanding and participating in complex processes. Lack of information and poverty prohibit them from participating in decision making unless special steps are taken to involve them.

In another example, participation by the poor was largely overlooked in the processes for the building of the Chad-Cameroon Pipeline.⁷² Civil society organizations concerned about human rights violations in Chad launched a worldwide campaign against the pipeline project, pressing the World Bank to stop the project and to address human rights issues.⁷³ In a request for investigation to the Inspection Panel, Cameroon opposition leader Ngarlejoy Yorongar alleged violation of World Bank policies on poverty eradication and consultations with local communities.⁷⁴

Directive OP [Operational Policy] 17.57, on public consultation, has been honored only with a crude image. . . . The requirement for participation by grass-roots NGOs [nongovernmental organizations] in projects financed by the World Bank has not been met; the only NGOs consulted were, for the most part, either created for the purpose in hand or commanded no allegiance in the production region. The obligation to take into account the observations of the people affected by the project when preparing and carrying out the environmental impact assessment was never met. . . .⁷⁵

70. *Id.* at 77.

71. See S. James Anaya & Claudio Grossman, *The Case of Awas Tingni v. Nicaragua: A New Step in the International Law of Indigenous Peoples*, 19 ARIZ. J. INT'L & COMP. L. 1, 14-15 (2002).

72. See Korinna Horta, *Rhetoric and Reality: Human Rights and the World Bank*, 15 HARV. HUM. RTS. J. 227, 234-37 (2002).

73. See *id.*

74. See Claim By Persons Adversely Affected by Oil Field Development in the Doba Basin Who Reside in the Cantons of Miandoum, Komé, Mbikou, Bébédjia, and Béboni (Sub-Prefecture of Bébédjia), Presented by Deputy Ngarlejoy Yorongar, Assisted by Attorney Zassino, a Member of the Bar in N'djamena, and His Partners, for the Attention of the Inspection Panel of the World Bank (Dec. 15, 2000), available at <http://siteresources.worldbank.org/EXTINSPECTION/PANEL/Resources/RequestEnglishtranslation.pdf>.

75. *Id.*

The Chad-Cameroon Oil and Pipeline project provides a stark example of the increasing marginalization of poor rural communities and indigenous peoples. Despite promises of development, local villagers in Chad's oil producing region have had their land and common property resources expropriated without adequate compensation. . . .

Overall, the project might amount to a net loss for the impoverished people of Cameroon.⁷⁶

In the past twenty years, multilateral development banks (MDB) have started to acknowledge the importance of public participation in the development of projects and policies as an important precondition for poverty alleviation, but the process is not consistent.⁷⁷

The recognition that local participation enhances development effectiveness is reflected in a host of the MDBs' internal documents, ranging from internal policies and guidelines to resource books and handbooks. However, none of the MDBs have adopted an overarching mandatory policy on participation. Public consultation is only assured in those projects that are covered by standards in other policies—i.e., in projects that significantly affect the environment, involuntarily resettle people, or affect the interests of indigenous peoples. Thus, consultation practices have generally developed ad hoc, designed at the discretion of the staff in response to the specific demands being made by outside critics. As a consequence, public participation processes have been inconsistent and their success has varied accordingly.

. . . Analysis of the various environmental policies and guidelines indicate that many MDBs do not provide sufficient minimum substantive standards for effective public consultation.⁷⁸

NGOs and research institutes are addressing the problem. The Access Initiative, a nongovernmental project based at the World Resources Institute in Washington, D.C., with partners all over the world, is working on developing projects and policies that help alleviate poverty through outlining barriers to civic engagement for people living in poverty.⁷⁹ Among the barriers to participation they have identified the following: literacy (reading skills, language, and technical content), costs (of travel, official fees, forgoing work, child care, and others),

76. Horta, *supra* note 72, at 234.

77. See Nathalie Bernasconi-Osterwalder & David Hunter, *Democratizing Multilateral Development Banks*, in THE NEW "PUBLIC": THE GLOBALIZATION OF PUBLIC PARTICIPATION 151, 151-64 (Carl Bruch ed., 2002), available at http://www.elistore.org/reports_detail.asp?ID=10662.

78. *Id.* at 156-58.

79. See, e.g., CAMEROON, *supra* note 57, at 1-16.

personal and property risks from participating, lack of legal identity, and insufficient property registration.⁸⁰

IV. SOLUTIONS

A. *Is the World Bank Inspection Panel a Solution?*

The World Bank Inspection Panel was established in 1993 for “the purpose of providing people directly and adversely affected by a Bank-financed project with an independent forum through which they can request the Bank to act in accordance with its own policies and procedures.”⁸¹ Independence of the Panel is assured by the requirement that its members cannot serve the World Bank in any capacity for the two years preceding their selection to the Panel and cannot work for the World Bank afterwards.⁸² In recent years, other regional development banks followed with creation of similar mechanisms.⁸³

Any affected group of more than one person living in a country that is a borrower can file a claim to the Inspection Panel about violation of World Bank policies.⁸⁴ A majority of the complaints filed alleged violation of policies on EIA, involuntary resettlement, indigenous peoples, and the failure to consult all affected people properly and in a timely fashion.⁸⁵ The Inspection Panel conducts an investigation and prepares a report and recommendations for the World Bank’s Board of Executive Directors.⁸⁶ Management has to develop a response plan for bringing the project into compliance with World Bank policies.⁸⁷ The Board reviews the Panel report and Management’s response plan and determines what remedial measures the World Bank must take to comply with its policies.⁸⁸

80. *See generally* Joseph Foti, World Research Inst., Draft Paper for the Access Initiative Global Gathering (Oct. 2008) (unpublished manuscript, on file with author). The Access Initiative partners in 2006 decided to sensitize their research guidelines in the Access Initiative Assessment Method to better address the concerns of the poor and their access rights. They produced a not-yet-published draft paper for the Access Initiative Global Gathering in October 2008, based on four country reports from Cameroon, Paraguay, Philippines, and Sri-Lanka.

81. WORLD BANK, THE INSPECTION PANEL, ANNUAL REPORT 116 (2008), *available at* http://siteresources.worldbank.org/EXTINSPECTIONPANEL/Resources/Insp_Panel_2008Final-LowRes.pdf [hereinafter ANNUAL REPORT].

82. *See id.* at 13.

83. *See generally id.* at 17-20.

84. *See id.* at 17.

85. *See generally id.* at 21-88 (describing current, former, and future Inspection Panel investigations).

86. *See id.* at 17-20.

87. *See id.*

88. *See id.*

The Inspection Panel plays an important role in enforcement of the World Bank policies.⁸⁹ However, the Inspection Panel's decisions, in the form of recommendations to the Board, are not mandatory.⁹⁰ The Inspection Panel does not have authority to monitor implementation of its decisions and provide redress and remedy.⁹¹ Therefore it makes little difference for affected and poor people on the ground. Nonetheless, the proactive stance of the Inspection Panel can make up for some of the lack of resources often present for NGOs that complain to the body.⁹²

B. Do MEAs Have Solutions? The Aarhus Convention

The Aarhus Public Participation Convention imposes on parties to the convention a specific legal obligation to provide support, presumably financial, to associations, organizations, or groups who could not otherwise afford to engage in public participation in environmental decision making.⁹³ Article 3, paragraph 4, states: "Each Party shall provide for appropriate recognition of and *support* to associations, organizations or groups promoting environmental protection and ensure that its national legal system is consistent with this obligation."⁹⁴

This obligation of "support" for environmental citizen organizations is obviously intended to overcome some of the financial barriers to public participation that are suffered by those without resources. The Implementation Guide to the Aarhus Convention characterizes the obligation in these terms:

Appropriate government support to such associations, organizations and groups can take various forms. . . . Direct support might be offered to a particular group or organization for its activities, and could be project-based or general core support. In some UN/ECE countries it is not unusual for substantial financial grants or awards to be given to environmental citizens' organizations to support their activities. . . . [I]t would appear that a Party must at least have a legal system that would allow the government to provide support to associations, organizations or groups where appropriate.

Indirect support might involve general rules for tax relief (for example, exempting charitable organizations from payment of certain

89. *See id.* at 17.

90. *See id.* at 17-20.

91. *See id.*

92. *See generally id.* at 21-88 (describing current, former, and future Inspection Panel investigations).

93. *See Aarhus Convention, supra* note 47, arts. 1-22.

94. *Id.* art. 3 (emphasis added).

taxes), financial incentives for donations (such as tax deductibility) or fee waiver provisions.⁹⁵

Lack of financial resources can also be compensated for in other ways. For example, one such method is illustrated in the Compliance Committee under the Aarhus Convention.⁹⁶ The unique Aarhus Convention compliance mechanism allows communication (complaints) from the public about alleged violations of procedural rights—access to information, participation and justice.⁹⁷ Twenty-seven out of its twenty-eight cases have been triggered by communications from the public. The majority of cases in the jurisprudence of the Committee have been about public participation in decision making—fourteen of twenty-three communications from the public and one submission brought before the Compliance Committee by a government have alleged failures to implement provisions of article 6 (public participation in projects) and/or article 7 (public participation in plans and programs).⁹⁸ In a case involving an EIA in Albania, the nongovernmental organization complained of lack of proper participation in a particular project involving a thermoelectric power station, and it characterized the report of participation in the EIA as suspect.⁹⁹ The NGO did not have the resources, however, to prove its allegations. Instead of sitting passively as a judge, the committee undertook to investigate the matter itself. Examining reports, minutes, and the list of participants of two public meetings (October 2002 and September 2003), the committee discovered something rather startling in the minutes:

[O]ut of 16 questions put forward by the participants of the first meeting and 18 questions raised at the second meeting, 12 are exactly the same. Of these, nine questions received practically verbatim identical replies. Introductions to the meetings and some of the general interventions made by the public officials are also identical. Furthermore, the Committee notes that the lists of participants of the two meetings differ only in the four additional public officials who attended the first meeting. The results of

95. STEC & CASEY-LEFKOWITZ, *supra* note 48, at 45.

96. See Svitlana Kravchenko, *The Aarhus Convention and Innovations in Compliance with Multilateral Environmental Agreements*, 18 COLO. J. INT'L ENVTL. L. & POL'Y 1, 1-6 (2007).

97. See *id.*

98. See U.N. Econ. & Soc. Council [ECOSOC], Econ. Comm'n for Eur., *Report by the Compliance Committee to the Third Meeting of the Parties to the Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters*, 16 U.N. Doc. ECE/MP.PP/2008/5 (May 22, 2008), available at http://www.unece.org/env/documents/2008/pp/mop3/ece_mp_pp_2008_5_e.pdf.

99. See REPUBLIC OF ALB. MINISTRY OF INDUS. & ENERGY, FINAL ENVIRONMENTAL IMPACT ASSESSMENT-VLORË COMBINED 110 (Oct. 6, 2003), <http://www.unece.org/env/pp/compliance/C2005-12/Response/FinalEIA.pdf>.

this comparative analysis raise serious concerns regarding the extent to which the report of the meeting can be relied upon as an accurate record of the proceedings as well as regarding the genuine nature of the questions and concerns raised, recorded and subsequently taken into account in the decision-making process.¹⁰⁰

This approach, with the committee actively investigating allegations of shortcomings in public participation, can help when the public lacks the resources to bring such matters to light. In addition, the Secretariat of the Aarhus Convention has a policy to provide funding (air tickets and per diem) to attend meetings of the committee for members of the public making complaints.¹⁰¹

C. National Level Solutions

Public participation provisions are included in some countries' national constitutions. For instance:

The 1987 Constitution [of the Philippines] opened the processes of governance to the participation of people's organizations and civil society groups. . . . Many new laws and policies passed since then have also included provisions that require the participation of public stakeholders in decision-making, including many matters related to environmental governance.

. . . .
The law on the establishment of national protected areas, which applies to this case, explicitly acknowledges that mostly poor people (and in some areas indigenous peoples' groups) have either settled within the boundaries of parks or, if not residing within those boundaries, have nevertheless used the resources of such parks for their livelihood. . . . This is why one intent of the protected area management board (PAMB) is to engage these poor groups in the management of the park so that they are made aware of the importance of and their responsibilities for preserving the protected area.¹⁰²

100. U.N. Econ. & Soc. Council [ECOSOC], Econ. Comm'n for Eur., Meeting of the Parties to the Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters, *Report of the Compliance Committee on Its Sixteenth Meeting Findings and Recommendations with Regard to Compliance by Albania* ¶ 77, U.N. Doc. ECE/MPPP/C.1/2007/4/Add.1 (July 31, 2007), available at http://unece.org/env/pp/compliance/C2005-12/ECE_MPPP_C.1_2007_4Add1.pdf.

101. See, e.g., Irish Envtl. Network, Aarhus Convention Training Day (June 4, 2009), <http://www.ienv.ie/?p=1467> (noting Aarhus Convention travel expenses will be reimbursed).

102. RAMON FERNAN III ET AL., THE ACCESS INITIATIVE TAI—POVERTY ASSESSMENT REPORT 5, available at http://www.accessinitiative.org/sites/default/files/TAI%20-%20Philippines_Poverty%20and%20Access%20Report.pdf (last visited Nov. 19, 2009).

Such solutions may help make public participation a reality, both for the poor and other members of the public. These can include providing proper notification of the public by the government about development projects, organizing meaningful public participation, providing clear procedures, and financing specialists for those without money to compete on an equal footing with development interests.¹⁰³ Some have argued, in fact, that providing adequate funding to public interest intervention in processes such as EIA is “*the key* to effective citizen participation.”¹⁰⁴

There are several models and best practices of financial support for public participation. Canada has a long tradition of providing funding for public participation. This idea began with the Mackenzie Valley Pipeline Inquiry, a lengthy and complex environmental impact process that started in 1974 under the chairmanship of a judge, Thomas Berger of the Supreme Court of British Columbia.¹⁰⁵ He saw the complexities and the difficulties for ordinary people to participate in such a process and arranged funding program for public interest groups.¹⁰⁶ One result was that the project was ultimately abandoned after the effective participation of indigenous people and environmental organizations who brought lawyers and experts, as well as giving voice to native peoples themselves.¹⁰⁷

The next step in development of public participation in Canada was the adoption of Ontario’s innovative Intervenor Funding Project Act in the late 1980s. This law provided public intervenors with a “right” to funding awarded in advance of a hearing before one of the named tribunals with the funding provided by the proponent.¹⁰⁸ For several years, this law put citizens in a position of equal footing with the proponent. However, this act was repealed on April 1, 1996.¹⁰⁹

103. See generally *id.* at 643-57 (discussing the citizen participation movement in environmental law and that movement’s short comings, which have yet to be addressed).

104. *Id.* at 677.

105. See THE REPORT OF THE MACKENZIE VALLEY PIPELINE INQUIRY 9, available at <http://www.neb-one.gc.ca/clf-nsi/rcmmn/hm-eng.html> (click “major applications,” then “Mackenzie Gas Project,” then “Lysyk and Berger Reports,” then “Volume 1,” then “BergerVIch123.”).

106. *Id.* at 213.

107. *Twenty-Five Years After Berger* (Canadian Broadcasting Company broadcast Oct. 31, 2000), available at http://archives.cbc.ca/politics/rights_freedoms/topics/295/ (follow “Twenty-Five Years After Berger” hyperlink).

108. Intervenor Funding Project Act, S.O., c. 71, § 3 (1988) (Ont.) (repealed 1996).

109. See Intervenor Funding Project Act, 1988, R.S.O. 1990 c. I.13, § 16(1) (repealed 1996), available at <http://www.search.e-laws.gov.on.ca/en/isysquery/60f0b557-702b-4d2b-9475-1c90aafe010f/1/frame/?search=browseRepealed&context=>.

Recently, the Canadian Environmental Assessment Agency has encouraged public participation in the federal environmental assessment process under the Canadian Environmental Assessment Act. The Agency believes that public participation strengthens the quality and credibility of environmental assessment.¹¹⁰ It empowers citizens by informing them through its Web site about current opportunities to participate, and projects taking place in Environmental Assessment Registry.¹¹¹ The agency invites the public to apply for funding and encourages public participation through its Participant Funding Program.¹¹²

Another approach is the Australian network of Environmental Defenders Offices, which provide legal representation and advice and offer a significant education program designed to facilitate public participation in environmental decision making.¹¹³ The network consists of nine independently constituted and managed community environmental law centers located in each state and territory of Australia.¹¹⁴ The funding for the network is provided by state governments.¹¹⁵

In the United States, the Wisconsin Legislature created a Public Intervenor Office in 1967 to represent those who had no resources to speak for themselves in matters of pollution control and state permits for development projects. The office operated for thirty years until the Legislature abolished the office in 1997.¹¹⁶ Subsequent efforts have failed to reestablish the office.¹¹⁷

The Department of Ecology of the State of Washington provides Public Participation Grants for nonprofit public organizations and citizen groups to encourage public involvement in monitoring the cleanup of contaminated sites and pollution prevention through waste reduction and elimination.¹¹⁸ The program was not created by the executive branch or the legislature, but by a statewide vote of the citizens in 1997.¹¹⁹

110. See Canadian Env'tl. Assessment Agency, Participation Funding Program Guide (Dec. 2008), available at http://www.ceaa.gc.ca/Content/D/A/C/DACB19EE-468E-422F-8EF6-29A6D84695FC/FPFGuide_en_Jan2009.pdf.

111. See *id.*

112. See *id.*

113. See Australian Network of Environmental Defender's Offices, <http://www.edo.org.au/> (last visited Aug. 29, 2009).

114. *Id.*

115. See *id.*

116. See Wis. Stewardship Network, Facts About the Changes to the Public Intervenor's Office and DNR (Oct. 1998), <http://www.wsn.org/piofactsheet.html>.

117. See *id.*

118. See generally Dep't of Ecology, State of Wash., Public Participation Grant Guideline (2008), <http://www.ecy.wa.gov/pubs/0807023.pdf>.

119. *Id.*

In Ukraine, a demonstration EIA project associated with an oil development proposal in Ivano-Frankivsk had the aim of demonstrating that internationally recognized procedures of EIA with mandatory public participation would work for Ukraine and would be beneficial for the industry, people, and environment.¹²⁰ There were concerns that mandatory public participation would slow down the process.¹²¹ The successful joint project was funded by the United States Environmental Protection Agency, the United Nations Development Program, and the United States Agency for International Development, in partnership with the Ministry of Environment of Ukraine and the Institute of Democracy.¹²² From the beginning, the parties agreed that the EIA process and its final document would be in accordance with Ukrainian legislation but would include additional procedures that would not contradict Ukrainian legislation.¹²³ The process included an unprecedented level of public participation through involvement of local citizens and government, school teachers, and churches.¹²⁴ The full text of the EIA and its nontechnical summary was placed in libraries and other public places.¹²⁵ Several public hearings were organized. However, this comprehensive EIA process, with public participation that met Western standards, happened only once because the Ukrainian Ministry of Environment does not have the resources to do it on regular basis.

Several international institutions have recognized that in Ukraine, domestic legislative practices remain inadequate and provisions on public participation lack clarity and detail.¹²⁶ The Aarhus Convention Compliance Committee found Ukraine in noncompliance with the Aarhus Convention because

the lack of clarity with regard to public participation requirements in EIA and environmental decision-making procedures for projects, such as time

120. See generally Volodymyr Tykhyy, Public Participation in Environmental Decisionmaking: USEPA/UNDP Demonstration Environmental Impact Assessment Project in Ivano-Frankivsk Oblast of Ukraine (July 12, 2002), available at <http://www.epa.gov/OEM/docs/oil/fss/fss02/brasherpaper.pdf> (describing EIA project associated with the oil development proposal in Ivano-Frankivsk).

121. See *id.*

122. See *id.*

123. See *id.*

124. See *id.*

125. See *id.*

126. U.N. Econ. & Soc. Council [ECOSOC], Econ. Comm'n for Eur., Meeting of the Parties to the Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters, *Report on the Seventh Meeting of the Compliance Committee, Findings and Recommendations* ¶ 34, U.N. Doc. ECE/MR.PP/C.1/2005/2/Add.3 (Mar. 14, 2005), available at <http://www.unece.org/env/pp/compliance/C2004-03/> (follow "C03findings.doc" hyperlink).

frames and modalities of a public consultation process, requirements to take its outcome into account, and obligations with regard to making available information in the context of article 6, indicates the absence of a clear, transparent and consistent framework for the implementation of the Convention and constitutes non-compliance with article 3, paragraph 1, of the Convention.¹²⁷

The Compliance Committee recommended Ukraine “submit to the Compliance Committee, not later than the end of 2005, a strategy, including a time schedule, for transposing the Convention’s provisions into national law, and developing practical mechanisms and implementing legislation that sets out clear procedures for their implementation.”¹²⁸ The Second Meeting of the Parties approved Committee Findings and Recommendations in May 2005.¹²⁹ Three years later, nothing had been done and the Compliance Committee moved toward tougher sanctions.¹³⁰ It recommended to the Third Meeting of the Parties, in Riga, Latvia, in June 2008 that a formal caution be considered for Ukraine.¹³¹ The government of Ukraine sent officials to Riga to try to prevent the international sanction, but they appeared to have little understanding of what they needed to do to resolve the problem.¹³² Despite a dramatic appearance of the Minister of the Environment at the full plenary meeting of more than forty countries, the Meeting of the Parties voted that a caution would go into effect in January 2009 if Ukraine did not produce a plan to reform its public participation procedures.¹³³ A plan is now being drawn up and will be considered by the Compliance Committee at its meeting in April 2009 in Geneva.¹³⁴

The Fourth Meeting of the Parties of another UNECE convention—the Espoo Convention on Environmental Impact Assessment in a Transboundary Context—in May 2008 also issued a caution to the government of Ukraine for violation of the Convention, with respect to

127. *Id.* ¶ 40.

128. *Id.* ¶ 41(b).

129. U.N. Econ. & Soc. Council [ECOSOC], Econ. Comm’n for Eur., Meeting of the Parties to the Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters, *Report of the Second Meeting of the Parties of the Aarhus Convention*, ¶ 1, U.N. Doc. ECE/MPPP/2005/2/Add.8 13 (June 2005), available at <http://www.unece.org/env/documents/2005/pp/ece/ece.mp.pp.2005.2.add.8.e.pdf>. It took five years for the government of Ukraine to produce a strategy and present to the MoP-3 in June 2008. MoP-3 found the strategy unsatisfactory and decided to issue a caution effective by January 1, 2009, if Ukraine would not develop a plan for the implementation of the Aarhus Convention.

130. *Id.*

131. *Id.* ¶ 2.

132. The author participated in these meetings and observed these objections personally.

133. *Id.*

134. *Id.*

its Danube-Black Sea deep navigation channel, for inadequate public participation among other noncompliance issues.¹³⁵ It was to go into effect on October 31, 2008, but the caution was lifted on October 30 because Ukraine made several recommended steps to improve the implementation of the Convention.¹³⁶ That action proved to be premature, however, and in October 2009 the Implementation Committee reimposed its sanction.¹³⁷

It remains to be seen whether these international measures will actually make any difference on the ground in Ukraine. The problem is not merely one of lack of resources. Sometimes it appears to be a lack of will.

In Eastern Europe, public participation happens with the support of and representation by public interest environmental law organizations, funded largely by governmental and foundation donors from the United States and the European Commission. Even so, there are just a few such organizations in each country. They are underfunded and struggle for survival. New thinking is needed to devise ways that organizations willing to speak on behalf of those without money may do so.

One possibility might be for the World Bank and regional banks to follow their own public participation policies strictly, evaluate the procedures of public participation in the legislation of a borrowing country before providing investment in projects, and even provide funding to public interest groups willing to stand up for those without financial resources. If no solution is found, public participation will simply remain a myth in a world of poverty.

V. CONCLUSION

In a situation of worldwide economic crisis, eradication of poverty becomes an even more difficult task. This is so not only with regard to economic poverty but also the poverty of social rights and involvement of civil society through public participation. This is a time for new thinking and new efforts to break the cycle of powerlessness and environmental degradation.

135. *Id.*

136. U.N. Econ. Comm'n for Eur., *Report of Executive Secretary Under Secretary-General*, 30, U.N. Doc. ECE/EHLM/239/2008/L (Oct. 2008).

137. Letter from Executive Secretary of UNECE to Deputy Prime Minister to Ukraine Regarding Espoo Convention (Oct. 16, 2009) (on file with author).