

# CONTENTS

<b>The Contributors</b>	xv
 Chapter 1	
<b>Access to Environmental Justice: Some Introductory Perspectives</b>	<b>1</b>
<i>Andrew Harding</i>	
I. ORIGINS	1
II. SOAS/A2EJ: AN OUTLINE	3
III. SOAS/A2EJ: THE FINDINGS	7
IV. THE CONTRIBUTIONS TO THIS BOOK	11
(a) Ghana (Accra)	11
(b) India (Bangalore)	11
(c) Indonesia	12
(d) Malaysia (Kuala Lumpur)	13
(e) Nepal	14
(f) Pakistan (Karachi)	15
(g) People's Republic of China	16
(h) South West Pacific	16
(i) Thailand	17
(j) United Kingdom	18
(k) United States	18
V. FINALLY ...	19
 Chapter 2	
<b>Access to Environmental Justice in Ghana (Accra)</b>	<b>21</b>
<i>James S. Read</i>	
I. INTRODUCTION: GENERAL BACKGROUND	21
(a) Accra: the growth of the city and its people	23
(b) Accra: its economy in the national context	24
(c) Environmental law in Ghana in historical perspective	25
(d) Accra: an environmental crisis	26



II. CONTEXT: GENERAL ‘PARTICIPATION ENDOWMENTS’	27
(a) Policy framework for citizen participation	27
(b) The constitutional foundation for participation	27
III. STRUCTURES FOR ENVIRONMENTAL DECISION-MAKING	30
(a) National agencies and procedures	30
(i) Ministry for Environment, Science and Technology	30
(ii) National Development Planning	30
(iii) Environmental Protection Agency	31
(iv) Environmental Impact Assessment	32
(v) Planning law	34
(vi) Other legislation	35
(vii) Judicial remedies	36
(viii) Commission on Human Rights and Administrative Justice	38
(b) Local agencies	39
(i) Local government: structure and powers	39
(ii) Local government in Accra	40
(iii) Traditional authorities, local customary laws and indigenous culture	41
(iv) Strengthening community management	43
IV. THE ROLE OF NON-GOVERNMENTAL ORGANISATIONS	44
(a) CENCOSAD	44
(b) La Mansaamo Kpee	45
(c) Association of Vegetable Growers	45
(d) Accra Sustainable Programme	46
V. GATEWAYS TO PUBLIC PARTICIPATION: RIGHTS, DECISION-MAKING AND PROCESS	47
(a) Water	47
(b) Air	49
(c) Land	50
(i) Land tenure in Ghana	51
(ii) Access to land in Accra	52
(iii) Access to land: self-help as a gateway to law reform	54
(d) Waste disposal	55
VI. CONCLUSION	57

Chapter 3	
<b>Access to Environmental Justice in India’s Garden City (Bangalore)</b>	<b>59</b>
<i>Amanda Perry-Kessaris</i>	

I. AN ANATOMY ... OF PUBLIC RESPONSIBILITY	60
(a) Municipal Corporation	60
(b) Development Authority	60
(c) Industrial Areas Development Board	61



(d) Specialist agencies	62
II. ... OF LEGAL GATEWAYS	63
(a) Criminal	63
(b) Civil	64
(c) Public	65
III. ... OF OBSTACLES TO ENVIRONMENTAL JUSTICE	67
(a) Morale and motivation	69
(b) Scepticism	69
(c) Democratic deficit	71
IV. 'THE POLITICS OF BANGLAORE IS THE POLITICS OF REAL ESTATE'	76
(a) Land use law and practice	76
(i) Building and conversion of land use	76
(ii) Compulsory acquisition of land for private companies	78
(b) The Bangalore-Mysore Infrastructure Corridor saga	80
(i) Environmental clearances and public input	81
(ii) Acquisition of land	82
(iii) NICE as real estate agent	84
(iv) Concessions	85
(v) Challenging the notification process in the courts	85
(vi) The future	86
V. CONCLUSION	86
 Chapter 4	
<b>Access to Environmental Justice in Indonesia</b>	<b>89</b>
<i>Adriaan Bedner</i>	
I. INTRODUCTION	89
(a) Environmental disputes in Indonesia	91
(b) Environmental justice?	91
II. LEGAL GATEWAYS TO ENVIRONMENTAL JUSTICE	92
(a) Introduction	92
(i) Principles	93
(ii) The right to information	94
(b) Civil litigation	96
(i) Standing	97
(ii) Limitation period	98
(iii) The right to compensation	98
(iv) Proving causation	99
(v) Evidence of pollution or damage	100
(vi) Strict liability	103
(vii) Remedies	103
(viii) Conclusion	105
(b) Litigation against the state	105
(i) Litigation in the Administrative Court	106



(ii) Litigation against the police or the Public Prosecutor’s Office	108
III. ALTERNATIVE DISPUTE RESOLUTION	109
(a) Legal framework	109
(b) Getting started	110
(c) Getting an agreement	113
(d) Implementing the agreement	114
(e) Conclusion	115
IV. ACCESS TO LITIGATION AND MEDIATION AND FACTORS SHAPING THEIR EFFECTIVENESS	116
(a) Economic conditions	116
(b) Liberalisation	117
(c) Decentralisation and democratisation	118
(d) State control	119
(e) The role of NGOs	120
(f) The image of the judiciary	121
V. CONCLUSIONS	122
Chapter 5	
<b>Access to Environmental Justice in Malaysia (Kuala Lumpur)</b>	<b>125</b>
<i>Andrew Harding and Azmi Sharom</i>	
I. INTRODUCTION	125
II. ENVIRONMENTAL LAW IN HISTORICAL PERSPECTIVE	127
III. STRUCTURE OF ENVIRONMENTAL DECISION-MAKING	128
(a) Local Government	130
(b) Planning and Development Control	131
IV. THE JUDICIARY	135
(a) Archaic rules of <i>locus standi</i> (standing)	136
(b) Procedural barriers	137
(c) Lack of development of planning law	137
(d) Tort actions	138
(i) Causation	139
(ii) Limitation	140
(iii) Expert evidence	140
(iv) Costs and representation	140
V. HUMAN RIGHTS	141
VI. WATER POLLUTION	143
VII. AIR POLLUTION	144
VIII. SQUATTER COMMUNITIES	145
(a) Land rights	146
(b) Case study: Kampung Merbau Berdarah	148
IX. LICENSING	149



X. ENVIRONMENTAL IMPACT ASSESSMENT	151
XI. GENERIC PROBLEMS	152
XII. CONCLUSIONS	154

## Chapter 6

<b>Access to Environmental Justice in a Politically Unstable Environment: A Case Study of Nepal</b>	<b>157</b>
<i>Surya Subedi</i>	

I. INTRODUCTION	157
II. ENVIRONMENTAL IMPACT ASSESSMENT	160
(a) An EIA for All Major Development Projects	160
(b) EIAG 1993	162
(c) Environment Protection Act 1997	163
(d) Environmental Protection Regulations 1997	164
III. ACCESS TO JUSTICE	164
(a) Constitutional remedies	164
(b) Remedies under the Environmental Protection Act 1997	166
(c) The Civil Code	166
(d) The case law	167
(e) Individual right of access to environmental information	173
IV. CONCLUSION	174

## Chapter 7

<b>Access to Environmental Justice: Karachi's Urban Poor and the Law</b>	<b>177</b>
<i>Martin Lau</i>	

I. INTRODUCTION: KARACHI AND ITS URBAN POOR	177
(a) The setting	178
(b) Master plans	180
(c) The informal housing market	183
(d) Case study: Rehmanabad	184
(e) Regularisation	186
II. THE LEGAL FRAMEWORK	190
(a) Constitutional rights	190
(b) Environmental laws	192
(c) Environmental laws and the urban poor	194
(d) Environmental litigation	197
(e) Access to justice	199
III. CONCLUSION	203



Chapter 8	
<b>Towards a Greener China? Accessing Environmental Justice in the People’s Republic of China</b>	<b>205</b>
<i>Michael Palmer</i>	
I. INTRODUCTION	205
II. THE LEGISLATIVE FRAMEWORK FOR ENVIRONMENTAL PROTECTION	207
III. INSTITUTIONAL FRAMEWORK	211
IV. SEEKING ENVIRONMENTAL JUSTICE	215
(a) Avoidance and force	216
(b) Negotiation and mediation	218
(c) Umpiring – administrative penalties	223
(d) Umpiring – going to court	226
(e) Umpiring – criminal justice	231
V. CONCLUSIONS	233
References	235
Chapter 9	
<b>Access to Environmental Justice in the South West Pacific</b>	<b>237</b>
<i>Nicola Pain</i>	
I. INTRODUCTION	237
II. THE SOUTH WEST PACIFIC	238
(a) Regional environmental organisations	240
(b) Environmental rights and customary ownership	241
III. ACCESS TO JUSTICE: PROCEDURAL ASPECTS OF PARTICIPATION	243
(a) Constitutional provisions	244
(b) Procedural rights in national legal systems	245
(c) NGO participation at the national level	245
IV. PUBLIC INTEREST ENVIRONMENTAL LITIGATION	247
(a) The nature of environmental court action at the national and local levels	247
(b) Hurdles to public interest litigation	250
(c) Environmental litigation in developing countries	251
V. CASE STUDY: MINING IN PAPUA NEW GUINEA	253
(a) The Constitution	253
(b) Large-scale mining activity and environmental protection	255
(i) Panguna	256
(ii) Ok Tedi	257
(c) Access to legal representation	260



VI. CASE STUDY: FORESTRY IN THE SOLOMON ISLANDS	260
(a) Constitution	261
(b) Environmental protection and sustainable development	262
(c) Managing natural resources: local v national interest	263
(d) Access to the law	267
VII. CONCLUSION	268
Chapter 10	
<b>Access to Environmental Justice and Public Participation in Thailand</b>	<b>271</b>
<i>Thawilwadee Bureekul</i>	
I. INTRODUCTION	271
II. PUBLIC PARTICIPATION	273
(a) Enhancement and Conservation of National Environmental Quality Act 1992	274
(b) Official Information Act 1997	274
(c) The Constitution	275
(i) The Government	275
(ii) Local government organisations	275
(iii) Traditional communities	276
(iv) Non-governmental organisations	276
(v) Citizens	276
(d) Public Hearing Regulation 1996	276
IV. CASE STUDY: HIN KRUD POWER PLANT	278
(a) The project	278
(b) Public hearing activity	279
(c) Conclusion	282
V. MAJOR FACTORS AFFECTING PUBLIC PARTICIPATION	282
(a) Legislative factors	282
(b) Government policy commitment	283
(c) Culture	283
(i) Problem awareness	283
(ii) Compromise orientation and trust	284
(iii) Public participation factors	285
(iv) Access to Information	285
VI. CONCLUSION AND RECOMMENDATIONS	285
Appendix: Chronology of the Hin Krud Project	287



Chapter 11	
<b>Access to Environmental Justice in United Kingdom Law</b>	<b>289</b>
<i>Jean-Jacques Paradissis and Michael Purdue</i>	
I. ACCESS TO ENVIRONMENTAL INFORMATION	289
(a) Public registers of environmental information	290
(b) EC Directives 90/313 and 2003/4 and the Environmental Information Regulations 2004	294
(c) Freedom of Information Act 2000	297
II. LEGAL RIGHTS OF PUBLIC TO PARTICIPATION IN ENVIRONMENTAL DECISION-MAKING	298
(a) Public participation in environmental impact assessment	299
(b) General rights of public participation in environmental decision-making	300
(c) Public participation in policy and plan-making	305
(d) Strategic environmental assessment	307
(e) Public participation in the preparation of legislation	308
III. ACCESS TO THE COURTS	309
(a) Who can apply to the courts	309
(b) The costs of legal proceedings	312
(c) The substantive law and the need for an environmental court or tribunal	315
IV. CONCLUSIONS	315
Chapter 12	
<b>Access to Environmental Justice in the United States: Embracing Environmental and Social Concerns to Achieve Environmental Justice</b>	<b>317</b>
<i>J. Mijin Cha</i>	
I. THE BEGINNINGS OF ENVIRONMENTAL JUSTICE	319
II. LOOKING TO STATUTES AND THE COURT FOR RELIEF	322
III. STANDING REQUIREMENTS IN BRIEF	323
(a) Article III Standing Requirements	324
(b) Prudential Standing Requirements	324
(c) Administrative Agency Action	325
IV. EXECUTIVE ORDER 12898	327
V. FEDERAL SUBSTANTIVE ENVIRONMENTAL LAWS	329
(a) Clean Air Act	331
(b) Clean Water Act	332
(c) Citizen Suit Provisions	334
(d) National Environmental Protection Act	334
(e) Title VI, Civil Rights Act of 1964	336



(f) 42 USC 1983	337
(i) <i>South Camden Citizens in Action v New Jersey Department of Environmental Protection</i>	340
(ii) District Court’s Initial Decision	340
(iii) The Introduction of <i>Alexander v Sandoval</i>	344
(iv) District Court’s Decision after <i>Sandoval</i>	345
VI. THE CENTRE ON RACE, POVERTY AND THE ENVIRONMENT	349
(a) The Kivalina Relocation Planning Committee Case	349
(b) The Residents of Blythe, California’s Title VI Claim	351
VII. CONCLUSIONS	354
 <b>A Note on Environmental Law-Enforcement Duties</b> <i>Andrew Harding</i>	 355
 <b>Index</b>	 363