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I. INTRODUCTION

The primary aim of this thesis is to explore public participation in the environmental decision-making process for potential benefits in developing Korean environmental laws. Public participation contributes to sustainable development through effective environmental management; in addition, it improves accountability and transparency in the decision-making processes of governmental agencies as a complementary measure of direct and participatory democracy. Therefore, public participation is crucial not only to environmental protection but also to the development of democracy—two major concerns of Korea in the new Millennium.

Korea's history extends back over 4,000 years, but it has a relatively short history as an independent country. In the last 55 years, South Korea has achieved a social and economic system comparable to that of major industrialized countries. However, this rapid development came with high costs, including the sacrifice of personal freedoms through a delayed democracy and environmental degradation. North Korea, one of the least developed countries, is groaning under poor economic and political conditions. Its underdeveloped social situation makes it difficult to maintain a clean environment through systematic environmental laws.

As introduced in *Our Common Future*, sustainable development, which intends simultaneous environmental protection and economic development, can be achieved only through the careful management of the environment with environmental laws, such as an environmental impact assessment (EIA) system and wide public participation.¹ Even though Korea has an environmentally friendly ethical culture,² ethics alone cannot create a clean environment without an adequate legal system (i.e., rich, ethical software cannot run without the appropriate hardware of a strong legal system within the rule of law).

Moreover, South Korean environmental laws and regulations were not strongly implemented during its period of rapid development. However, in the mid-1990s, the

¹ UNITED NATIONS WORLD COMMISSION ON ENVIRONMENT AND DEVELOPMENT, *OUR COMMON FUTURE* (1987). The World Commission on Environment and Development is also known as the Brundtland Commission.

² For example, Buddhism, Taoism and Confucianism—three major cultural components in Korea—encourage preservation of the natural environment. Buddhism strongly prohibits killing any life and places restraints on the consumption of natural resources; Taoism orders its adherents to respect Mother Nature and learn lessons from her; and Confucianism highlights man's obligation to live in harmony with nature.

public's concern with the environment and active participation in decision-making processes made environmental laws work more vigorously. In this sense, the Århus Convention on Access to Information, Public Participation in Decision-Making Process and Access to Justice in Environmental Matters³ (hereinafter the Århus Convention), which asks signatory countries to enforce public participation in environmental matters (e.g., access to information, access to process, and access to justice), could provide more opportunities to further develop the public participation regulatory system of South Korea.

Wide implementation of public participation in the government's decision-making processes would contribute toward changing the current closed administrative process that resulted from Confucianism's vertical hierarchy tradition to an open and transparent administrative system. Likewise, public participation would contribute not only to protecting the natural environment in North Korea, but also to providing an opportunity to learn the Western democratic system and to develop North Korea's underdeveloped political system.

This thesis consists of two parts. The first one examines the public participation system in South Korea, and the second one explores how to bring public participation to North Korea. For these purposes, information concerning Korea's political history, culture, government, and legal tradition under a civil law system is provided. Moreover, this thesis provides a survey of Korean (North and South) environmental laws as a basis for understanding public participation in Korea.

After reviewing background information, the author comparatively analyzes the public participation system of the Århus Convention, United States (US) laws⁴ and South Korean laws⁵ that regulate public participation in environmental matters. This is done regarding three elements of participation—access to information, access to process, and access to justice—categorized by separate stages: before decision-making, during decision-making, and after decision-making. After this comparison, this thesis introduces

³ Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters, June 25, 1998, ECE/CEP/43, 38 I.L.M. 517 (1999), available at <http://www.unece.org/env/pp/documents/cep43e.pdf>. The Århus (or Aarhus) Convention was entered into force on Oct. 30, 2001.

⁴ National Environmental Policy Act of 1969, 42 U.S.C.A. §§4321 to 4370d, Freedom of Information Act of 1994 5 U.S.C. §552, and Clean Air Act 42 U.S.C. §604.

⁵ Basic Environmental Policy Act of 1990, No. 4257, Administrative Information Disclosure Act of 1996, No. 5242, and Environment Impact Assessment Act of 1993, No. 4567

some problems with South Korean public participation in environmental law and concludes that ratifying the Åarhus Convention would provide advantages for more effective public participation.

Next, this thesis discusses public participation in North Korea. While the discussion of South Korea is a comparative legal analysis of the current public participation system in South Korea, the discussion regarding North Korea focuses on developing a viable public participation system through examining environmental issues that may arise during the process of unification. This thesis suggests that the development of North Korean environmental law can be more readily achieved with the assistance of South Korea and certain international organizations.

Finally, as an initial step toward cooperation between North and South Korea on environmental laws, this thesis proposes a project—joint management of an Ecological Peace Park in the Korean Demilitarized Zone (DMZ), which could play a role not only in preserving the natural areas surrounding the DMZ but also in reducing military tensions between the two Koreas. This project could help build a basis for public participation across the DMZ and secure the environment of the DMZ as the natural heritage of all Korean people.

II. BACKGROUND INFORMATION ON KOREA

A. General Review of Korea

1. *History and Culture of Korea*

According to historical documents, the Korean people have lived on the Korean peninsula since BC 2333 and as a unified country since AD 661.⁶ The Korean people had three dynasties (Shilla, Koryo,⁷ and Chosun) and contact with neighboring countries, such as China and Japan. Korea lost its sovereignty in 1910 to Japan's unlawful annexation. During the Japanese presence, the Korean people were introduced to Western civilization and the German civil law system. Korea had its own unified and systematic codes, namely the *Kyong-guk Tae-jon* (Great Code of State Governance); however, the Japanese government tried to eliminate all traces of the Korean spirit, prohibiting the use of Korean language and culture and actively suppressing traditional Korean codes.⁸

The Second World War brought about the surrender of the Japanese in Korea as well as Korean independence. However, this newly found independence had an even larger impact on the Korean peninsula—the division of Korea into North and South at the 38th Parallel. Subsequently, the southern portion became recognized as the Republic of Korea (South Korea) and northern portion became known as the Democratic Peoples' Republic of Korea (North Korea). In 1950, Koreans began fighting the Korean Civil War, the worst historical experience for the two Koreas; and the two Koreas still confront each other with hostilities along the 38th Parallel DMZ.⁹

The North Koreans rapidly restored their war-ridden country with support from Communist countries. North Korea, which achieved an economically and militarily superior position to South Korea, stagnated with the downfall of Communism. In contrast, South Korea achieved economic growth more slowly with support from the US. South Korea's per capita GNP in 1960 was a meager \$79; but by 1997, it had increased to \$10,000.¹⁰ South Korea re-introduced herself to the international community through the

⁶ Sam-Kook-Sa-Ki and Sam-Kuk-Yu-Sa (the oldest historical documents in Korea).

⁷ She was known as Korea to the West in the 10th century.

⁸ William R. Shaw, *Social and Intellectual Aspects of Traditional Korean Law, 1392-1910*, in TRADITIONAL KOREAN LEGAL ATTITUDES 2 (Chun, Shaw and Choi ed., 1989). See also generally BYUNG HO PARK, TRADITIONAL KOREAN SOCIETY AND LAW (1994).

⁹ Even though this war ended in 1953, it never formally ended with a peace treaty; an armistice agreement between the US-led United Nations Command and North Korea suspended hostilities along DMZ.

¹⁰ KWANG SU KIM, KOREAN MODERN HISTORY 24 (1998).

1988 Seoul Olympic Games, showcasing its transition from a war-orphan export country to a modern industrialized country. In 1992, Korea became a member of the Organization for Economic Cooperation and Development (OECD), which is an international organization of developed countries. Although Korea enjoyed economic growth during this period, it was obtained through the sacrifice of personal freedoms and a delayed democracy. Natural resources and the social environment were ignored in favor of economic growth.

The late 1980s to early 1990s brought revolutionary change in South Korea. Despite South Korea's booming economy and international relations, its government needed reform. College students and middle class citizens were no longer content with only economic development. They demonstrated in the streets, often resulting in bloodshed from clashes with the military, in a successful effort to gain a democratic form of government. This democratization has extended to many social dimensions, embracing women's rights, unions, and the environment. Moreover, many non-government organizations were born and have played an important role as watchdogs.

In the mid 1990s, North Korea faced severe natural disasters, including repeated droughts and floods that brought famine and resulted in the loss of 2 million citizens according to a 1997 census.¹¹ Then, in 1997, South Korea fell victim to the International Monetary Fund (IMF) control system in a wave of financial destruction originating in Southeast Asia. North Korea is slowly recovering from the famine by virtue of the South Korean government's "Sunshine Policy" toward North Korea, which advocates reconciliation to release tension between the two Koreas through economic support. By 1999, South Korea achieved virtual independence from the IMF control system and was recovering toward economic stability. At last, the future task of Koreans became peaceful, systematic re-unification and achieving a more democratic system in all Korea.

Even though South Korea is a Westernized industrial and democratic society, Koreans live in cultural soil blended with Taoism, Buddhism, and Confucianism. Taoism, which focuses on the individual in nature rather than the individual in society, and Buddhism entered Korea from China in the fourth century. Buddhism was the dominant religious and cultural influence during the three dynasties, especially the Silla and Koryo

¹¹ This figure is an estimate that includes deaths from the famine as well as those who escaped to China.

dynasties. Confucianism was brought to Korea from China in these early centuries, but it occupied a subordinate position until the Chosun Dynasty and the persecution of Buddhists by early Chosun Dynasty kings.

Taoism, Buddhism, and Confucianism played a great role in shaping Korean society and still affect Korean life.¹² Taoism and Buddhism strongly influence the manner in which people interact with nature. Taoism, which teaches respect for nature and highlights harmonious life with nature, influenced Korean environmental ethics. Buddhism, which emphasizes conservation of natural resources and preservation of nature, is also considered an environmentally friendly philosophy.¹³

While Taoism and Buddhism have cultural aspects, Confucianism established the political framework for human relationship. Unlike Chinese Confucianism, which consisted of the social ethics of the classical Chinese philosophers Confucius (*Kong Zi*) and Mencius (*Meng Zi*), Confucianism in Korea was combined with Buddhist and Taoist metaphysics and developed by Korean Confucian scholars such as Yi Hwang (Yi T'oe-gye), who played a significant role in adapting Chinese Confucianism to Korean conditions. During the Chosun Dynasty (1392-1910), Confucianism was the most important state ideology and dominant value system. Confucianism defines formal social relations on all levels of society. Social relations are not conceived in terms of the happiness or satisfaction of the individuals involved but in terms of the harmonious integration of individuals into a collective whole, which, like the properly cultivated individual, mirrors the harmony of the natural order.

Confucianism in Korea became quite rigid and conservative and emphasized hierarchy in human relations. For example, among the “Five Relationships”—the main code to govern not only proper human relations but also all social and political structure—only one was a

¹² In 2001, many South Koreans became Christians. However, when Christianity was adopted in Korea, it mixed with traditional cultures; thus, many Christian people in Korea are influenced by these traditions. Moreover, these converts see nothing contradictory in participating in Confucianism's ancestor rites and even visiting Buddhist temples established as national parks. According to government statistics, 45 percent (over 20 million) of South Korea's population professed adherence to an organized religion. There were at least 9.5 million Buddhists (about 21 percent of the total population), about 7.5 million Protestants (17 percent), and 2 million Roman Catholics (6 percent). This information is available at <http://www.nso.go.kr/eng/info/e-figures.htm>.¹² The author grew up listening to stories that said if we waste natural resources such as water we will go to hell be punished with drinking all the water we wasted wrongfully in this life.

¹³ The author grew up listening to stories that said if we waste natural resources such as water we will go to hell and be punished by having to drink all of the water we wasted wrongfully in this life.

relationship between equals; the others were based on authority and subordination.¹⁴

Throughout traditional Korean society, from the royal palace and central government offices in the capital to the humblest household in the countryside, the themes of hierarchy and inequality were pervasive. Individual rights were not recognized. Moreover, only the well-educated elite of scholar-officials versed in Confucian orthodoxy was legitimized. Therefore, Confucian political philosophies proposed a benevolent paternalism: The masses had no role in government, but the scholar-officials were supposed to look after them as fathers look after their children.

Even though the concepts of equality and respect for individuals existed in Korea,¹⁵ the unequal status and power within the vertical hierarchy of the traditional Korean society have influenced modern Korean society. These cultural aspects have both positive and negative roles. Asian values, which place priority on the whole community's interest over the individual's, brought rapid economic development. However, the vertical hierarchy conflicts with an open and transparent political system. Consequently, traditional Korean Confucianism has conflicted with the equal and open social system of democracy in South Korea since its democratization in the 1990s.

In North Korea, the authoritarian strain of Confucianism has survived, and has been transformed by paternalistic socialism under the one-man-rule system of Kim Il-sung, the ex-president, and now his son Kim Jong-il. Another unique aspect of North Korean culture is the *chuch'e* (self-reliance) ideology. *Chuch'e*, the product of Kim Il-sung's thinking, began with ideas of independence or freedom from foreign powers in economic, national defense, and even cultural areas; however, it became the absolute standard for everything in North Korea, learned and memorized in school by all students.

¹⁴ This "Five Relationship" (*o ryun* in Korean; *wu lun* in Chinese), formulated by classical Chinese thinkers such as Mencius and subsequently sanctified by Confucian metaphysicians such as Zhu Xi, states, "between father and son there should be affection; between ruler and minister there should be righteousness; between husband and wife there should be attention to their separate functions; between old and young there should be proper order; and between friends there should be faithfulness."

¹⁵ For instance, the doctrines of *Tonghak*, a native religion that arose in the 19th century and combined elements of Buddhism, Taoism, shamanism, Confucianism, and Catholicism, taught that every human being "bears divinity" and that one must treat man as heaven or god.

2. Legal Traditions of Korea

a. South Korean Legal System as a Civil Law Tradition

Even though Korean society had its own traditional legal system, Japanese colonialism disconnected Korea from its traditions and introduced Western legal systems, such as civil and criminal procedural laws. South Korea's modern legal system has followed the German civil law traditions.¹⁶ Heavily influenced by the US since the Korean Civil War, many of South Korea's laws and regulations have been modeled after US laws and regulations, particularly administrative and environmental laws.¹⁷ Although South Korea is following the American legislative model, its basic system of law is still the civil law tradition in which the law arises from the codes, not from court decisions.¹⁸

It is necessary to point out the difference between the two legal traditions—civil law and common law. As distinguished from common law, the civil law, also called canon or continental law, originated in the system of jurisprudence administered by the Roman Empire, particularly as set forth in the compilation of Justinian and his successors. It is comprised of Institutes, Code, Digest, and Novels, collectively named the *Corpus Juris Civilis*.¹⁹ The major difference between these traditions is the basic source of law. While common law is based on case law, the source of civil law is strictly limited to its codes. Therefore, courts play the role of lawmaker in common law; but in the civil law system, courts are limited to being the interpreter of codes. Unlike common law, civil law does not have the doctrine of *stare decisis*; therefore, precedent cases do not have a binding effect in another court.²⁰ However, even though the precedent cases do not have a binding effect, case law also works in limited extents in civil law tradition.²¹ Especially

¹⁶ SANG-HYUN SONG, *Special Problems in Studying Korean Law*, in KOREAN LAW IN THE GLOBAL ECONOMY (1996) 1-2.

¹⁷ For examples, the Administrative Information Disclosure Act (AIDA) is modeled after the US Freedom of Information Act (FOIA) and the Environment Impact Assessment Act (EIAA) is modeled after the National Environmental Policy Act (NEPA). Administrative Information Disclosure Act of 1996, No. 5242; Freedom of Information Act, Administrative Procedure Act, 5 US §552; Environment Impact Assessment Act of 1993, No. 4567; National Environmental Policy Act of 1969, 42 U.S.C.A. §§ 4321 to 4370d.

¹⁸ SANG-HYUN SONG, *supra* note 16 at 3.

¹⁹ WILLIAM BURNHAM, INTRODUCTION TO THE LAW AND LEGAL SYSTEM OF THE UNITED STATES 39 (1991).

²⁰ SANG-KYU LEE, ENVIRONMENTAL LAW 31 (1998).

²¹ According to the Korean Act of Organization of Court of Justice, art. 8, a higher court's decision on the case binds the lower court on that case. Moreover, according to art. 4, sec. 1, subsections 3 and 4 of the Act on the Procedures of Appeal, appeals to higher courts are allowed when the lower court interprets laws and regulations contrary to the interpretation of the Supreme Court when there is no case law or when it is necessary to change the current interpretation of the Supreme Court.

for cases involving environmental issues, lower courts generally look to higher court decisions, for example, regarding the extent of nuisance in environmental tort cases and causation in the field of toxic and hazardous exposure injuries.²²

Article 1 of the Civil Code of Korea provides that the civil code, customary laws, and *Jori* are the sources of civil law; and this interpretation of the sources of law extends to general laws. *Jori* (*Nature der Sache* in German), translated as reason, reason of nature, or basic common sense, operates as the final source of law when there is no civil code or customary law regarding a case. *Jori* is a similar legal standard as “reasonable man” in common law. This *Jori* plays a significant role in legal fields where existing laws did not anticipate changes in society, such as the need for a new branch of environmental laws. For example, polluting drinking water is prohibited because of *Jori* that drinking water is directly connected to human dignity and the preservation of humanity; therefore, rights to clean drinking water can arise through an environmental provision in the Korean constitution without other legal regulatory basis for protection of clean drinking water.²³

b. North Korean Legal System as a Socialist Law Tradition

In contrast to South Korea, North Korea embraced a Soviet-influenced, socialist legal system. The Soviet legal system is generally viewed as an outgrowth of the civil law tradition, largely because the pre-revolutionary Russian empire was historically a civil law society.²⁴ The Russian Empire had a legal system based on the Roman civil law tradition, which it received by way of the Byzantines.²⁵ In *The Civil Law Tradition*, John Henry Merryman noted that

an understanding of the civil law tradition is essential to an understanding of socialist law....The actual effect of reform was to impose certain principles of socialist ideology on existing civil law systems and on the civil law tradition Soviet legislation builds on the civil law tradition of system and order.²⁶

Therefore, the North Korean legal system, which is modeled after the Soviet legal system, bears characteristics similar to the civil law tradition. However, the most significant

²² SANG-KYU LEE, *supra* note 20.

²³ 97 Ka Hap 613 (Korean Cheong-ju High Court).

²⁴ Christopher Lehmann, *Bail Reform in Ukraine: Transplanting Western Legal Concepts to Post-Soviet Legal Systems*, 13 HARV. HUM. RTS. J. 191, 195 (2000).

²⁵ *Id.*

²⁶ JOHN HENRY MERRYMAN, *THE CIVIL LAW TRADITION* 4 (1990).

distinction with traditional civil law societies is the socialist belief that law is ultimately only an instrument of an economic and social policy.²⁷ Therefore, it is the rule of ideology or the rule of the Communist Party rather than the rule of law. Furthermore, a leader of the Communist Party, Kim Jong-il, rules over law. For instance, one unique aspect of the North Korean legal system is the “instructions” given to the public by the late President Kim Il-sung and by his son Kim Jong-il, Chairman of the National Defense Commission (the supreme military organization of North Korea). These instructions serve as a source of law and are treated as comprehensive rules applicable to all situations.²⁸

3. *Government System of Korea*

a. Overview of the South Korean Government System

As Americans influenced South Korean government and society, the South Korean government became similar to that of the US. It consists of legislative, judicial, and executive branches. In the legislative branch, unlike the US’ bicameral system, the Korean National Assembly has a single chamber that consists of 273 individual members holding four-year terms. The Assembly governance structure includes a Chairman, Plenary, Committees, Negotiation Groups, and administrative bodies for legislative assistance.²⁹

The judiciary consists of the General Court of Justice as well as Constitutional Courts which is an independent court in the Constitution. According to Article 101 of the South Korean constitution, judicial authority is delegated to the General Court of Justice. There are three tiers of courts in Korea: The District Courts are the courts of original jurisdiction, including the specialized Family and Administrative Courts; the High Courts are the intermediate appellate courts; and the Supreme Court is the highest court. The High Courts and the District Courts are divided into geographic districts.

The Constitutional Court, a specialized court modeled after the European court system, was established solely to decide the constitutionality of laws, ruling on disputes between governmental agencies, adjudicating constitutional complaints filed by

²⁷ Christopher Lehmann, *supra* note 24.

²⁸ WOO JONG KIM, GENERAL UNDERSTANDING OF NORTH KOREA 30 (1990)

²⁹ Dae Kyu Yoon, *Constitutional Amendment in Korea*, 16 KOREAN JOURNAL OF COMPARATIVE LAW 11(1988).

individuals, giving final decisions on impeachment, and making judgments on dissolution of political parties.³⁰ The other specialized court only hears administrative cases. An Environmental Court is expected to be established as a specialized court in the near future.

The executive branch is divided into a central government and local governments. The central government consists of a president and a cabinet of 17 ministers and a prime minister who represents 17 ministers. The local provinces have a governor or mayor, a cabinet, and a legislative branch but do not hold courts.

b. Overview of the North Korean Government System

The North Korean government system is quite different from the South Korean system. Formally speaking, there are three branches: Supreme People's Assembly, Cabinet, and Central Court. However, it is different in terms of the separation of powers because one person currently controls North Korea—Kim Jong-il. Legally speaking, he is not the president of North Korea because the presidential system was dismantled after the death of his father Kim Il-sung by a 1998 constitutional amendment. Although the Chairman of Standing Committee of the Supreme People's Assembly is legally the highest-ranking governmental figure, practically speaking, Kim Jong-il is the highest-ranking political figure.³¹

In addition to these three branches, two other powerful governmental entities exist: the Workers' Party and the National Defense Commission. Even though the legislative, executive, and judiciary branches are the only formal governmental bodies, they are under the control of the Worker's Party as is usual in Socialist countries. The Worker's Party is under the control of Kim Jong-il, who is the General Secretary of the Central Committee of the Workers Party. Moreover, Kim Jong-il is also chairman of the National Defense Commission, which is not only the supreme organization of the military sector but also one of the critical components of North Korean power. This Commission has the power to direct and command the armed forces as well as to proclaim a state of war and

³⁰ South Korean Constitution of 1987, art. 111.

³¹ There was an episode during the first North and South summit meeting in 2000 when signing the joint declaration. Kim Jong-il, the Chairman of National Defense Commission, argued that Kim Young-nam, Chairman of Standing Committee of the Supreme People's Assembly, should sign it due to his official position; however, Kim Dae Jung, the President of South Korea, insisted that Kim Jong-il sign it, arguing

mobilization order in case of emergencies.³² The National Defense Commission has important control in North Korea because the military is a significant force behind the North Korean government.

4. *Environmental Administrative System in Korea*

a. Environmental Administrative System in South Korea

The Ministry of Environment has jurisdiction over environmental affairs within the central government. The Ministry of Environment started in 1977 with four pollution officers within the Environmental Sanitary Office in the Ministry of Public Health and now has 1,296 officials, one minister, and one vice-minister.³³ In 1980, the Environmental Sanitary Office was upgraded to the Environmental Agency, which was under the direction of the President. Due to increasing public interest in the environment, the Environmental Agency was elevated to the Ministry of Environment in 1994.³⁴

The Ministry of Environment currently consists of six bureaus, four regional offices, and four sub-regional offices. One distinct characteristic of South Korean environmental management is that it is based on watersheds, not geographic distribution as are the 10 regional offices in America. The South Korean environmental administration focuses heavily on the supply of clean water. South Korea has four major rivers that play a major role in providing drinking water. The structure of the Korean Ministry of Environment is provided in Figure 1.

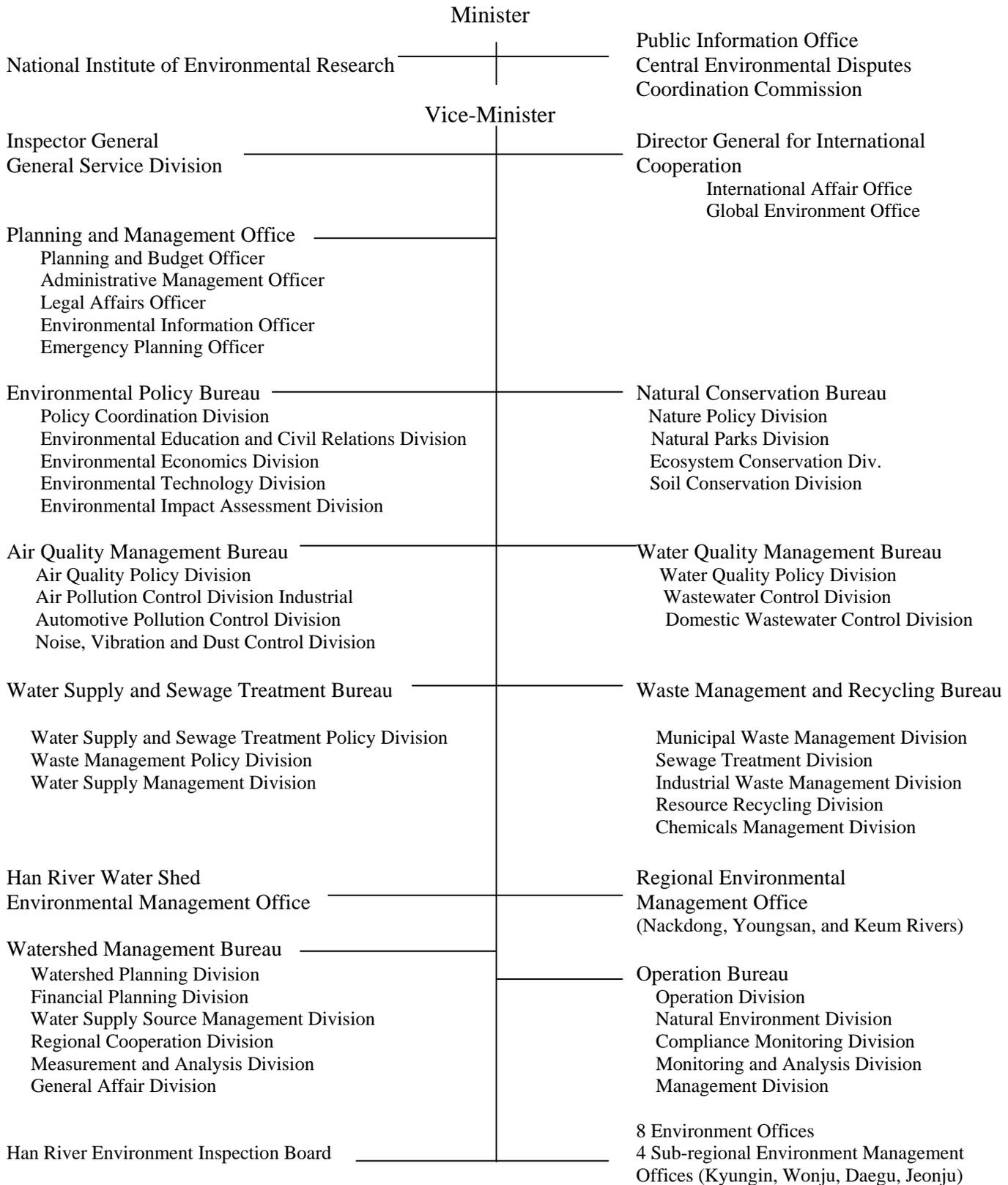
that if the real President of North Korea did not sign, South Koreans would not accept the validity of the Declaration. Finally, Kim Jong-il signed, regardless of his legal position.

³² North Korean Constitution of 1998, art. 103.

³³ SANG-KYU LEE, *supra* note 20 at 52-54.

³⁴ *Id.*

Figure 1. The Structure of the South Korean Ministry of Environment



A unique characteristic of the Korean Ministry of Environment is governmental cooperation with religious groups in policy making and implementation. Christian leaders and Buddhist monks encourage their followers to participate in government environmental programs, such as recycling; and religious groups actively participate in the environmental programs in their churches and temples. In addition, the Ministry of Environment established the Commission of Religious Groups for Accomplishment of Environmental Policy in 2000 to enlarge such cooperation and to accept advice when making major environmental policy.

b. Environmental Administrative System in North Korea

The major environmental administrative body is the Environment Protection Department (EPD).³⁵ To control environmental affairs comprehensively, the National Environment Protection Commission, a predecessor of the EPD, was established as a non-permanent body in 1993 under the State Administration Council and renamed a cabinet by a constitutional amendment on September 5, 1998. The non-permanent Commission became the permanent EPD. In September 1998, it was integrated with the City Management Department as the City Management and Environment Protection Department by way of a Constitutional amendment.³⁶ As of March 1999, the EPD was once again independent of the City Management Department.

³⁵ O SEOCK-ROCK, SOME ISSUES OF KOREAN ENVIRONMENTAL LITIGATION 255 (1999).

³⁶ *Id.*

B. Environmental Laws in Korea

1. *Environmental Laws in South Korea*

a. Environmental Provision in Constitution

Constitutional law is the most basic in the civil law tradition. Constitutional law prescribes a nation's fundamental legislative policy and works is fundamental in interpreting any other laws. Historically, constitutional law, which is a result of the political will of the public, is characterized by gradual changes reflecting the felt necessities and political pressures of the day. As the public's concern for both the global and national environmental crises gained momentum, the legislatures of many countries enacted constitutional environmental provisions. Presently, around 71 countries have environmental sections or provisions in their constitutions.³⁷

Some countries, such as Japan and the Philippines, which do not have constitutional environmental rights provisions, interpret their constitutional rights to life, to human dignity, and to pursue happiness as a source of environmental rights. The US does not have environmental provisions in its federal constitution.³⁸ Some environmentalists argue that environmental rights are implied in the 5th, 9th and 14th amendments;³⁹ however, America's courts have not been persuaded by this reasoning.⁴⁰

³⁷ See Appendix I, Environmental Provisions in Constitutional Laws. All of the countries in the world were not examined for lack of information. At least 71 countries have constitutions with environmental provisions. The manners of controlling environmental protection found in the 71 constitutions are as follows: constitutions that regulate environmental protection as the state's general obligation or responsibility to protect the environment (23 countries), constitutions that express individual environmental rights (22 countries), constitutions that regulate it as not rights but obligations of citizens (13 countries), and constitutions that regulate it as both rights and obligations of citizens (13 countries).

³⁸ There are two efforts to amend the US Federal Constitution. Senator Gaylord Nelson proposed very short two sentences: Every person has the inalienable right to a decent environment. The United States and every State shall guarantee this right; S.J. Res. 169, 91 st Cong., 2nd Sess. (1970) Moreover, congressman Richard Ottinger made the following more detailed proposal:

SEC. 1. The right of the people to clean air, pure water, freedom from excessive and unnecessary noise, and the natural, scenic, historic, and esthetic qualities of their environment shall not be abridged.

SEC. 2. The Congress shall, within three years after the enactment of this article, and within every subsequent term of ten years or lesser term as the Congress may determine, and in such manner as they shall by law direct, cause to be made an inventory of the natural, scenic, esthetic and historical resources of the United States with the state of their preservation, and to provide for their protection as a matter of national purpose.

SEC. 3. No Federal or State agency, body, or authority shall be authorized to exercise the power of condemnation, nor undertake any public work, issue any permit, license, or concession, make any rule, execute any management policy or other official act which adversely affects the people's heritage of natural resources; H.R.J. Res. 1321, 90th Cong., 2d Sess. (1968)

³⁹ *Hagedorn v. Union Carbide Corp.*, 364 F. Supp. 1061, 1063 (N.D. W. Va. 1973)

⁴⁰ *Id* at 1061.

While the US federal Constitution does not have provisions for protection for the environment, several state constitutions have environmental provisions.⁴¹

Unlike the US federal constitution, South Korean constitutional law provides for environmental rights under Article 35: “Every person has a right to live in a healthy and sound environment. The government and people have an obligation to make an effort to protect the environment.” Section 2 stated, “The contents, extent, and exercise of these environmental rights are prescribed through statutes.” Therefore, this provision is the most fundamental legal basis of Korean environmental law and policy.

However, controversy arose as to whether Article 35, which pertains to the right to a clean environment, has self-executing power that gives standing to citizens adversely affected by the unlawful action or non-action of the government. A majority of Korean scholars argue that the language of the law is so general and broad that it is not self-executing but rather is a statement of the policy which provides guidance to the administrators and officials. On the other hand, some commentators contend that the laws should be self-executing like the other civil rights prescribed in the Constitution (e.g., the rights to freedom and equal protection and due process of law) because there is no significant legal difference among them.⁴² The Korean Supreme Court of Justice, the highest court, takes a position that environmental right provisions have no self-executing character. The Court held that:

The Constitutional Law authorizes environmental rights as one of the basic rights in the Article 35 Section 1; therefore, this right should be fully considered and guaranteed in an interpretation and application to civil codes. It is difficult, however, to recognize that this provision authorizes an individual to automatically have concrete and direct civil rights, because the scope of who and what is protected is not specifically defined within the laws. Moreover, recognition of this environmental right as a legal right would limit another person’s freedom and rights. For the foregoing reasons, it is required that clear and concrete written language of subjects, objects, contents and exercising methods must be established through legislative intention or “*Jori*” in order to recognize the environmental right as a source for legal and civil rights.⁴³

⁴¹ For example, the Illinois constitution declares that each person has a right to a healthy environment as well as a duty to simultaneously maintain a healthful environment in Article XI. The 2000 Hawaiian Constitution states that all Hawaiians have a right to a clean and healthful environment in Article XI 9. Additional states—New York,⁴¹ Pennsylvania,⁴¹ Rhode Island,⁴¹ North Carolina,⁴¹ Louisiana, Virginia,⁴¹ and Alaska⁴¹—have environmental provisions in their constitutions. *See* Appendix II.

⁴² SANG-KYU LEE, *supra* note 20 at 36.

⁴³ Korean Supreme Court. 94 Ma 2217.

This Korean Supreme Court opinion exhibits a similar position to that of Justice Feliciano in the judgment of *Minors Oposa v. Secretary of the Department of Environment and Natural Resource (DENR)* of the Philippine Supreme Court (30 July 1993),⁴⁴ which is internationally recognized for granting standing to the unborn or future generations on the basis of intergenerational equity.

Minors Oposa was a class action brought by minors for and on behalf of themselves and generations yet unborn, claiming a violation of their right to a healthful ecology. Associating this right with the twin concepts of intra-generational responsibility and intergenerational justice, the plaintiffs urged the court to cancel all existing timber licenses in the country and to issue an injunction restraining the DENR “from receiving, accepting, processing, renewing or approving new timber license agreements,”⁴⁵ which they claimed were responsible for “a host of environmental tragedies,” such as drought, flooding, water shortages, massive erosion, salinization of the water table, and the disappearance of the indigenous Filipino cultures.⁴⁶ The Philippine Supreme Court had no difficulty in reversing the lower court’s order after a careful consideration of the relevant Philippine legislation, and holding that the petitioners had the “locus standi necessary to sustain the bringing and maintenance of this suit.”⁴⁷

While the Philippine Supreme Court considered Section 15 of Article 2 of the Philippine Constitution, which states “The State shall protect and promote the right to health of the people and instill health consciousness among them,” as substitute source for recognizing environmental rights, Justice Feliciano questioned the section’s self-execution power by mentioning that “as a matter of logic,.... those implications are too large and far-reaching in nature even to be hinted at here.”⁴⁸ He suggested that the petitioners show a more specific legal right that is or may be violated. Moreover, he said, “it seems to me important that the legal right which is an essential component of a cause of action be a specific, operable legal right, rather than a constitutional or statutory policy, because unless the legal right claimed to have been violated or disregarded is given specification in

⁴⁴ Reprinted in 33 I.L.M. 173 (1994).

⁴⁵ *Id.* at 177.

⁴⁶ *Id.* at 177-178.

⁴⁷ *Id.* at 200.

operational terms, defendants may well be unable to defend themselves intelligently and effectively; in other words, there are due process dimensions to this matter.”⁴⁹

While these opinions may be logical and reasonable interpretations, policy and political factors should be also considered. If judicial review is available only when acts or regulations establish specific legal rights, the assumption that nobody can go to the judiciary until the legislature passes laws is validated, despite express environmental language in the most fundamental and basic law, Constitutional Law. The public—the source of sovereignty and real owner of the country—has to beg for its inherent rights before politicians who have consistently postponed to legislate what people want for lack of financial and human resources. While the courts of some nations may be able to order the an administrative officer to carry out a duty that is mandated by law,⁴⁸ Korean courts cannot because under the Korean Act of Administrative Action declaratory judgment does not apply to administrative and legislative action. Therefore, there is no practical legal way for citizens to pursue claims under environmental legislation.⁴⁹

Recently, contrary to the South Korean Supreme Court’s holding, the High Court of Korea (Appellate Court) did allow a citizen to bring an action based on the right to drink clean water, holding that the right to safe and clean water under Article 35 is one of substance and is a concrete law based on “*Jori*” because the pollution of drinking water causes a threat to the preservation of human beings.⁵⁰ This Korean High Court judgment differs from the established position of the Korean Supreme Court, which has not had an opportunity to review the case; however, this judgement holds the possibility of changing the Supreme Court’s position and opening a door to the establishment of environmental rights as self-executing rights or basic human rights.

b. Environmental Laws and Regulations

The first environmental law was introduced in South Korea in the 1960s when environmental problems emerged with industrialization. To address environmental problems arising from industrialization, the Pollution Prevention Act, which consisted of 21 articles, was enacted in 1963. However, the Pollution Prevention Act was enacted only

⁴⁸ *Id.* at 203.

⁴⁹ *Id.* at 204.

⁵⁰ Korean Cheongju High Court 97 Ka Hap 613.

as a formality and did not have regulatory measures; thus, it was not actively enforced.⁵¹ It was revised in 1971 to introduce regulatory measures, such as emission standards and an emission permit system. Nevertheless, environmental degradation in Korea increased due to heavy industrialization in the late 1970s. In response, the government replaced the Pollution Prevention Act with the Environmental Preservation Act in 1977.⁵²

Under this Act, a new regulation system was implemented, including environmental standards, restrictions on the total volume of pollutants, and an environmental impact assessment (EIA) system. Until this time, the South Korean environmental regulatory system consisted of a single act that encompassed environmental policies, basic principles, and all sectors (*e.g.*, water, air, soil, hazardous substances, etc.). However, the new system proved useless because the South Korean government was more interested in economic development than environmental protection.⁵³

In the 1980s, because of the strengthening economy, more South Koreans were showing awareness for the need for environmental protection. Against this backdrop, in 1990 the Environmental Preservation Act enacted in 1977 was separated into six laws: the Basic Environmental Policy Act (BEPA),⁵⁴ Air Quality Preservation Act, Water Quality Preservation Act, Noise and Vibration Control Act, Toxic Chemical Act, and Environmental Pollution Damage Dispute Adjustment Act. With the switch to a plural act system, the BEPA became the controlling act with the other acts as sectoral divisions dealing with specific areas.

The BEPA is the umbrella of South Korean environmental laws. Its purpose is to prevent danger and injury from environmental pollution and to manage and properly preserve the natural and living environment.⁵⁵ To achieve this, the BEPA declare the rights and duties of citizens and the role of the government to protect environment through environmental preservation policy.⁵⁶ One of BEPA's basic policies is sustainable development, which is OECD's major environmental principle and a general environmental law principle of developed countries. BEPA also has a polluter-pays

⁵¹ SANG-KYU LEE, *supra* note 20 at 40-47.

⁵² *Id.*

⁵³ *Id.*

⁵⁴ Basic Environmental Policy Act of 1990, No. 4257.

⁵⁵ BEPA, art. 1.

⁵⁶ BEPA, art. 4-6.

principle stating, “Any person who causes an environmental pollution due to his act or business activities, shall in principle bear the expenses for the prevention of such pollution, recovery of the contaminated environment and relief of damages.”⁵⁷ Another important aspect of BEPA is the Environmental Standard, which falls under Article 10. This standard is the criteria or conditions for the promotion of a healthy and sound environment as protected under constitutional law and the BEPA. The Environmental Standard is similar in function to the National Ambient Air Standards of the Clean Air Act of 1990 in the US and the environmental criteria of Article 9 of the Pollution Prevention Basic Act in Japan.

A number of environmental laws were enacted after the 1992 launch of the democratic government. They include the Soil Environment Preservation Act; Drinking Water Act; Underground Living Space Air Quality Control Act; Natural Environment Preservation Act; Waste Control Act; Resource Saving and Recycling Promotion Act; Act Relating To Treatment Of Sewage, Excretion, and Livestock Waste Water; Transboundary Movement Of Waste; Disposal Act; and Liability For Environment Improvement Expense Act. As of April 2000, 28 acts, 28 regulations, and 25 ordinances or decrees fell under the jurisdiction of the Ministry of Environment.

c. Related Environmental Provisions and International Environmental Agreements

Besides the major environmental laws and regulations, more than 50 laws have environmental provisions, mostly related to environmentally friendly policies like the Act to Facilitate Transition to Environment Friendly Industry Structures,⁵⁸ Act of Supporting and Developing Environment Technologies,⁵⁹ and Environmental Agriculture Supporting Act.⁶⁰ However, some regulations directly restrict the production and trade of certain goods for environmental reasons. For instance, ratifying the Basel Convention enacted the Act on the Control of Transboundary Movement of Hazardous Wastes and Their

⁵⁷ BEPA, art. 7

⁵⁸ Act to Facilitate Transition to Environment Friendly Industry Structures of 1999, No. 5825.

⁵⁹ Act of Supporting and Developing of Environment Technologies of 1999, No. 5871.

⁶⁰ Environmental Agriculture Supporting Act of 1997, No. 5714. Its aims are not only to prevent environmental degradation from agricultural activities but also to encourage organic agriculture through education and financial resources. It has established a green labeling system and sanctions of up to a \$10,000 fine plus up to one year in prison for violating these regulations. EASA § 9, 14, and 17.

Disposal;⁶¹ and ratifying the Montreal Protocol on Substances that Deplete the Ozone Layer enacted the Act on the Prevention of the Ozone Layers Depletion.

In addition to domestic laws, South Korea has signed most major international environmental agreements. These signed treaties and agreements are treated the same as domestic laws.⁶² As of April 2000, South Korea had signed 40 international environmental treaties⁶³ that ultimately contribute to develop Korean environmental laws. For example, after ratifying the Convention on International Trade in Endangered Species, Wild Fauna, and Flora in 1993, the Ministry of Environment amended Korea's Natural Environment Preservation Act to protect endangered species and defined criminal sanctions against violators.⁶⁴ The Wildlife Protection and Hunting Act under the jurisdiction of the Forest Agency was also amended for stricter regulation on illegal trade of endangered species.⁶⁵ The Medicine Affair Act, under jurisdiction of the Department of Public Health and the Commerce Department for illegal trade practices in the traditional medicine market, was also amended in 1993 because most trade in endangered species involves traditional medicine. Moreover, South Korea has cooperated with neighboring countries on regional environmental issues and co-developed environmental laws.⁶⁶

d. Problems of South Korean Environmental Laws

Having introduced above the various laws and regulations enacted for protection of the environment, the important issue is whether these laws are implemented and enforced widely and actively. During the 1970s and 1980s, it was difficult to argue that environmental laws and regulations were actively enforced in South Korea due to the

⁶¹ Act on the Control of Transboundary Movement of Hazardous Wastes and Their Disposal of 1997, No. 5337.

⁶² Korean constitutional Law, art. 6.

⁶³ See Appendix III.

⁶⁴ Natural Environment Preservation Act, art. 2, 27, and 39.

⁶⁵ Wildlife Protection and Hunting Act, art. 2, 24, 25, 28, and 29.

⁶⁶ One current international issue is of the yellow sand haze from China. Yellow sand blown from deserts in China caused much damage in Beijing, as it passed through, in the middle region of the Korean Peninsula, and even in Japan. The Korea Meteorological Administration (KMA) revealed a vast amount of sand has moved towards Korea carried by westerly air currents. Visibility was down to 1.8km in downtown Seoul in Spring 2000, one tenth that of a clear day; and the air was filled with a dark yellow haze throughout the day. To make matters worse, a strong west wind of 7.5m per second blew in the capital; and many citizens used handkerchiefs or masks to cover their faces. Since China's industrialization in the western coastal zone, it is no longer just a natural disaster because the yellow sand haze includes industrial pollutants. To mitigate this

country's priority on economic development. Even though the environmental legal system was well established, the government's unwillingness to implement the laws, and the public's lack of knowledge about and interest in environmental protection, resulted in few legal actions. For instance, after the EIA system was introduced, a total 1,723 Environmental Impact Statements (EIS) were made; but amazingly no project was canceled until 1996.⁶⁷

According to the EIAA, any person who would like to begin any project subject to EIA has to produce a draft EIS; gather public comments through public participation, such as hearings; and consult the Ministry of Environment regarding the final EIS. However, it was common practice for proponents of a development project to discuss it with a few high-level officials and skip the EIA process. Projects were announced, highlighting their economic effects, only after construction had begun. Finally, EISs were created during construction as a matter of procedure, if at all. It is difficult, even meaningless, to challenge this phenomenon technically or legally because of the government's lack of intent to uphold and implement the law. Moreover, citizens' lack of consensus on environmental protection led to this situation because the public's lack of knowledge and concern for environmental protection resulted in problems of government implementation and enforcement.

Starting in the mid-1990s, public awareness of environmental issues caused a rise in enforcement. One major example was the cancellation of the construction of the Tong River (or Dong-kang) Dam. In 1998, the government announced construction of a new dam on the Tong River without the EIA process, as usual. The government claimed the dam would hold 698 million tons of water and produce 19,600 kW of electricity, solving agricultural and industrial water supply problems caused by the drought and introducing a source of electricity for economic development. Moreover, the government said there was no alternate location for the dam in the Kang-won province.

The Tong River runs through Yongwol in Kang-won province, northeast South Korea; and its annual water flow is 1,337,300,000 tons. Its watershed encompasses an

natural disaster, Korea, Japan, and China began to discuss this problem at an environmental forum; and Japan and Korea supported a project to plant trees to prevent the rapid expansion of China's Kobi desert.
⁶⁷Kim Byung-jin, *Studies on Environmental Impact Assessment of Korea*, doctoral thesis, University of Kyunghee, August, 1997 at 147.

area of 2,267 km. This 32-mile stretch of river runs through a unique limestone karst region before flowing into the South Han River. It is not only a source of drinking water for the 20 million people of Seoul but also a habitat of many wild animals, including waterfowl. Moreover, the river was famous for its scenic beauty and its cultural significance as the birthplace of Arirang, Korean traditional music. For these reasons, campaigns to stop dam construction ensued from environmental non-governmental organizations (NGOs) and citizens.

According to the argument of the environmental NGOs, constructing the dam on the Tong River would have conflicted with existing water and wetland policies; moreover, it would have violated the Ramsar Convention for the protection of wetlands, which South Korea ratified in July 1997, because the proposed dam would flood an ecosystem that meets several criteria for identifying wetlands of international importance, lower water levels a full 120 miles downstream, and destroy over 20 prehistoric archeological sites. The Tong River meets several Ramsar criteria: It is a unique wetland site by being the only free-flowing limestone karst region river in Korea, and it also provides natural habitat of rare and endangered species of plants and animals.⁶⁸

Besides potential adverse ecological impacts, the practical problems of constructing this dam on the Tong River included the safety of its proposed geological foundation. Although the government assured citizens that there would be no construction problems, many experts had doubts because the area to have been flooded contains a system of caves and underground rivers, making the project highly suspect for construction problems and severe ecological damage. However, the most important issue was that the two government agencies responsible for its construction—the Ministry of Construction and Transportation and the Korea Water Resources Corporation—did not develop a draft EIA despite the construction being subject to the EIA Act.

In spite of the cultural and ecological costs and controversy over the project, the two leading agencies announced that they would ignore the concerns of citizens, experts, environmentalists, and the Ministry of Environment and begin to construct the dam. The

⁶⁸ A Draft Ramsar Resolution on *karst* and subterranean hydrological systems calls for the uniqueness and specific endemism of such ecosystems to be conserved. The inter-dependency and fragility of the over 240 limestone caves and 30 sinkholes in the region along with its hydrological and hydro geological characteristics easily meet the Draft Resolution's criteria.

mass media brought the issue to the forefront as an environmental matter in a documentary displaying how the Tong River would be completely inundated and its beauty destroyed by the dam. It also addressed the proposed impoundment of water behind the dam, explaining that it would result in the destruction of endangered species' habitats. Public outrage finally led the president to ask a leading agency to review an alternate plan, which ultimately led to cancellation of the project.⁶⁹

Now, the Tong River has garnered the interest and protection of many Koreans' under the Plan of Preservation of the Tong River's Environment in 2000. Moreover, both the central and local governments are preparing to establish the Reservoir for Preservation of Ecosystem in the Tong River to set aside a place that has a rich natural environment and bio-diversity. This case did not go to court because the government cancelled the project in response to public pressure; nonetheless, it is recorded as the first instance of a project effectively aborted by public pressure to protect the environment. Moreover, it showed that the EIA requirements are beginning to be effective as a result of citizens' public participation efforts.

Environmental laws in South Korea have strengthened with citizen participation since the mid-1990s. The public's concerns with the environment and active participation in decision-making processes have made environmental laws more vigorous. For environmental success to occur, it is essential to have broad public participation and an effective legal system that can regulate such public participation. In this sense, the Åarhus Convention, which requires signatory countries to enforce public participation in environmental matters, would provide opportunities to further develop the public participation regulatory system of South Korea. For this reason, Chapter IV, Section A examines the Åarhus Convention and US public-participation systems as models of an advanced legal system for adjusting South Korean environmental laws.

⁶⁹Chosun Ilbo, Korean Local Newspaper, 23 Jan, 1999 at A4.

2. *Environmental Laws in North Korea*

Lack of information makes it difficult to accurately assess North Korea's environmental situation and policies. Based on its poor economic situation, it may be inferred that its environment has not suffered as much degradation as other developing countries.⁷⁰ However, in many inland provinces where industrialization is heavy, water and air pollution have been reported. Moreover, the poor economic situation makes it difficult to improve the environmental situation. For example, due to the failing economy, shortages of water purifying agents imported from Russia have taken a toll on the supply of safe drinking water; thus, the government encourages people to boil their water prior to drinking.⁷¹

As South Korea has the environmental provision in her constitution, the North Korean constitution has also an environmental provision in Article 57. Under this Article, the government has the obligation to provide environmental protection policies prior to development and to protect the natural environment for the well being of persons and to better working conditions. In 1986, North Korea enacted the Environmental Protection Act (hereafter referred to as the NK-EPA) as a means of approaching environmental protection.⁷² Six Natural Environmental Preservation Areas have been designated, and many water purification and sewage disposal facilities were set up. In addition, 15 animal protection areas, 14 plant protection areas, and 8 migratory-bird protection areas have been established.⁷³ Moreover, the Environmental Protection Regulation, which consists of 5 chapters and 55 provisions, was legislated to supplement the NK-EPA. The North Korean system has a single act that integrates all environmental sections, similar to the pre-1990 South Korean system. North Korea is still developing a plural act system. The NK-EPA consists of five chapters: Chapter 1 Basic Principles of Environment Protection, Chapter 2 Preservation and Promotion of Natural Environment, Chapter 3 Prevention of Environment Pollution, Chapter 4 Environmental Administration and Administrative

⁷⁰ 2000 North Korea Report of Department of Unification of Republic of Korea (hereinafter 2000 Reports) Air pollution is further limited by the absence of private automobiles and restrictions on using gasoline-powered vehicles because of the critical shortage of oil.

⁷¹ *Id.*

⁷² The Environmental Protection Act consists of 5 chapter and 52 articles.

⁷³ 2000 Reports, *supra* note 70.

Supports for Environment Protection, and Chapter 5 Compensation and Sanction to Environmental Damages

The NK-EPA enumerates several basic principles in Chapter 1. The Act declares that the purpose of environmental protection is to provide a cultural and sanitary environment for people to work rather than for public welfare, dignity, or right to life.⁷⁴ Moreover, Articles 6 and 8 emphasize the importance of the development of science and technologies for environmental protection and international cooperation. Importantly, Article 5, Paragraph 2, encourages people to participate in environmental protection. Even though it has no implementing provision or independent regulation, this paragraph must be the source of law regarding public participation.

In Chapter 2, the Act expresses an inter-generational equity definition by providing that one purpose of protection of the natural environment is to present a better environment to the next generation.⁷⁵ The Act mentions the importance of ground water and requires careful consideration of development of underground natural resources and underground constructions.⁷⁶ Moreover, it requires permits for hunting endangered wild animals and prohibits imperiling the habitat of wildlife.⁷⁷

Chapter 3 regulates emission standards of environmental pollution substances.⁷⁸ The Cabinet is in charge of establishing the standards.⁷⁹ This chapter integrates all environmental sections and has brief provisions regarding ambient air protection, motor vehicle emissions, sewage, water purification systems, protection of the drinking water supply, coastal zone and ocean pollution control, pesticide control, radioactive substance permits, and noise and vibration control.⁸⁰

Chapter 4 dictates systematic administration of the Department of Environment Protection and support and cooperation with other administrative bodies, such as the Financial Bank and Labor Department, Radioactive Commission, and local governments.⁸¹

⁷⁴ NK-EPA, art. 1.

⁷⁵ *Id.* art. 10.

⁷⁶ *Id.* art. 15.

⁷⁷ *Id.* art. 16.

⁷⁸ *Id.* art. 19-30.

⁷⁹ *Id.* art. 19.

⁸⁰ *Id.* art. 20, 21, 24-33, and 35-36.

⁸¹ *Id.* art. 39-42.

Moreover, it provides scientific and technological cooperation regarding making environmental protection plans.⁸² Finally, it pronounces the necessity of environmental education including scientific and public education.⁸³

The final chapter regulates compensation and sanctions for environmental damages: Any person, institution, corporation, or organization that causes harm to the people's health, property, or country must compensate for the damages.⁸⁴ The Department of Environment Protection may stop construction and contaminating acts against the environment. Moreover, it may order polluters to restore the contaminated environment to its original state. Finally, it regulates administrative or criminal sanctions to citizens and administrative officers responsible for environmental damages.

Besides the NK-EPA, environmental protection provisions are dispersed within several other acts, including the Forests Act of 1992, Criminal Act of 1987, and some economic related regulations. The Forests Act declares the government's obligation to protect the reasonable development of forests.⁸⁵ To do so, the Act defines sustainable yield by providing for rotation-timbering in accordance with long-term plans.⁸⁶ Basically, all property, including timber in the forest, belongs to the government under constitutional law;⁸⁷ therefore, permits are required for lumbering.⁸⁸ The Criminal Act provides criminal penalties for environmental destruction.⁸⁹ It regulates damages to natural resources by providing criminal penalties and by forcing the violators to perform community service for a term of up to two years.⁹⁰ In regard to economic regulations, the Foreign Investment Act prohibits investment that causes environmental degradation.⁹¹ The Company Act of 1992 and Foreign Company Act of 1994 also prohibit incorporating companies that might adversely affect the environment.

⁸² *Id.* art. 45.

⁸³ *Id.* art. 46.

⁸⁴ *Id.* art. 47-49.

⁸⁵ The Forests Act, art. 4 and 7.

⁸⁶ *Id.* art. 31.

⁸⁷ Constitution of North Korea of 1998, art. 21; The Forests Act, art. 2.

⁸⁸ The Forests Act, art. 33.

⁸⁹ The Criminal Act, Chapter 3 [Crime Against Land Management Order].

⁹⁰ *Id.* art. 84-89 and 91.

⁹¹ *Id.* art. 11.

North Korea is not known for its international cooperation; however, its first contact with international environmental protection was participation in IUCN in 1963, followed by its cooperation with United Nations Environment Programme (UNEP) in 1982. Regarding the level of NGO participation, many efforts to work across borders have been made between groups in North and South Korea. One such attempt at cooperation is the Peaceful Forest Movement, geared toward the planting of trees in North Korea. There is also international NGO cooperation; for instance, the Nature Conservation Union of North Korea, a member of the IUCN, participated in the IUCN Congress in Amman, Jordan, in October 2000 for the first time. The Nature Conservation Union is working on holding an environmental symposium with the IUCN. In regard to the level of participation in international environmental agreements, North Korea signed 12 agreements in 1996.⁹² In addition, North Korea participates in regional environmental cooperation networks, such as the Northeast Asian Region Environment Forums.

In brief, although North Korea does not have an independent EIA act or a public participation act, it is clear that there is a legal basis for implementing EIA and public participation systems under North Korean Constitution Article 57 and NK-EPA Article 5, Paragraph 2. Moreover, it is reasonable to assume that North Korea is aware of the principles of sustainable development due to their participation in international environmental conventions such as the Rio Declaration. However, as previously seen in South Korea, a key issue is whether environmental policies and laws are implemented and enforced widely and actively. Lack of information makes it difficult to assess the situation accurately. However, facts indicate that North Korea seems to be ready to implement these policies when the need arises. For example, the Hyundai Group, a business conglomerate in South Korea, entered into an agreement with the North Korean government for the Kumgang Mountain Tour & Development Project in 2000. Notably, the North Korean government considered asking for an EIA from the World Tourism Organization, an international organization promoting development of tourism. In this

⁹² The major agreements include the United Nations Framework Convention on Climate Change, Convention on Biological Diversity, Rio Declaration (including Agenda 21), Convention on the Prohibition of Military or Any Other Hostile Use of Environmental Modification Techniques, Convention on Prohibition of Bio-Chemical Weapons, International Convention for the Prevention of Pollution from Ships, Treaty Banning Nuclear Weapons Tests in the Atmosphere, in Outer Space, and Underwater; *Environment and Life*, 11 JOURNAL OF ENVIRONMENT FEDERATION 12 (1995).

sense, a key of studying North Korean environmental laws including public participation system is how to make a chance to implement environmental laws in North Korea rather than a legal analysis of environmental laws and regulations. A more detailed discussion about how to make a public participation system work in North Korea can be found in Chapter IV, Section B.

III. GENERAL REVIEW OF PUBLIC PARTICIPATION

A. Public Participation as a Political Right

Public participation is defined as civil society's full range of options that engage and integrate the public into the process of making or implementing a policy choice.⁹³ Public participation has many forms. In its broadest form, participation can include education and information, review and reaction, and interaction and dialogue.⁹⁴ It can take the form of lobbying, public advocacy and protest, public hearings, solicitation of public comments, political party involvement, voting, payment of taxes, and jury service. Participation also exists in information-gathering activities, interest group involvement, service on advisory and review boards, campaigns for political office, and simple contacts with elected officials. Even litigation has been included as an example of public participation.⁹⁵

Many people believe that public participation, as a political right, is a fundamental human right. This belief is reflected in international human rights instruments. The Universal Declaration of Human Rights of 1948 proclaimed, in Article 21, that everyone has the right to take part in the government of his country, directly or through freely chosen representatives.⁹⁶ Moreover, the International Covenant on Civil and Political Rights of 1966 also declared, in the Article 25, that "every citizen shall have the right and the opportunity ... without unreasonable restrictions: (a) To take part in the conduct of public affairs, directly or through freely chosen representatives."⁹⁷

As a political right, public participation functions in democratic societies in many ways. According to a 1980 Advisory Committee on Intergovernmental Relations survey of American public-participation objectives, major functions of public participation

⁹³ Eric Dannenmaier, *Democracy in Development: Toward a Legal Framework for the Americas*, 11 TUL. ENVTL. L. J. 1, 21 (1997).

⁹⁴ Paul Wilkinson, *Public Participation in Environmental Management: A Case Study*, 16 Nat Resources J. 117, 119 (1976); See also generally Stuart Langton, *What is Citizens Participation?* in CITIZEN PARTICIPATION IN AMERICA (1978).

⁹⁵ Adam N. Bram, *Public Participation Provisions Need Not Contribute To Environmental Injustice*, 5 Temple Pol. & Civ. Rts. L. Rev. 145, 153 (1996).

⁹⁶ G.A.Res. 217A, U.N.GAOR, 3d Sess., at 139, U.N.Doc. A/810 (1948).

⁹⁷ G.A.Res. 2200, U.N.GAOR, 21st Sess., Supp. No. 16, at 55, U.N.Doc. A/6316 (1966); See also International Labour Conference, Convention 169, Convention Concerning Indigenous and Tribal Peoples in Independent Countries, 28 I.L.M.1382 (1989) (obligating Convention parties to "establish means by which these [indigenous] peoples can freely participate, to at least the same extent as other sectors of the

include the following: (1) Give information to citizens; (2) get information from and about citizens; (3) improve public decisions and programs; (4) enhance acceptance of public decisions and build consensus; (5) supplement public agency work; (6) change political power patterns and power allocations; (7) delay or avoid making difficult public decisions; and (8) protect individual and minority group rights and interests.⁹⁸ It improves the decision-making process by exposing decision-makers to a healthy mix of perspectives.⁹⁹

The right to participation is based on the democratic idea of popular sovereignty and political equality. Because the government is derived from the people, all citizens have the right to influence governmental decisions; and the government should respond to them. Even though one viewpoint must ultimately prevail over all others, the democratic process fosters inclusiveness and may even result in a redistribution of power if those in control yield to the public's desires.¹⁰⁰ Ultimately, public participation enhances democracy by protecting individual rights and interests as one aspect of direct and participatory democratic systems.

B. Public Participation as a Direct Participatory Democratic System

A democratic society is a system that respects pluralistic values and makes decisions through a democratic process. The ideal way to make decisions in a democratic community is for all members of the community to make decisions directly rather than indirectly. The definition of democracy follows logically from a literal translation of the Greek word *demokratia*: "the people (demos) possess the political power (kratos) in the state." Therefore, the definition must certainly entail citizens' direct involvement in the affairs of their community as the people must take part in political affairs.¹⁰¹ In modern society, however, it is impracticable because of the huge populations in a modern

population, at all levels of decision-making in elective institutions and administrative and other bodies responsible for policies and programs which concern them").

⁹⁸ Neil A.F. Popovic, *The Right to Participate in Decisions that Affect the Environment*, 10 PACE ENVTL L. REV. 683, 685 (1993) (citing Advisory Commission on Intergovernmental Relations, *Citizen Participation in the American Federal System* 30, 61-97 (1979)).

⁹⁹ Mark Sagoff, *Can Environmentalists Be Liberals? Jurisprudential Foundations of Environmentalism*, 16 ENVTL. L. 775, 776 (1986).

¹⁰⁰ MARY GRISEZ KWEIT & ROBERT W. KWEIT, *IMPLEMENTING CITIZEN PARTICIPATION IN A BUREAUCRATIC SOCIETY: A CONTINGENCY APPROACH* 49 (1981).

¹⁰¹ CAROL E. PATEMAN, *PARTICIPATION AND DEMOCRATIC THEORY* (1970); A.H.M. JONES, *ATHENIAN DEMOCRACY* (1957); JOSIAH OBER, *MASS AND ELITE IN DEMOCRATIC ATHENS: RHETORIC, IDEOLOGY, AND THE POWER OF THE PEOPLE* (1989).

democracy, unlike a small community in which citizens could (and are expected to) step forth and take part directly in the affairs of their polis. Therefore, an indirect democracy, a representative system through election, has been substituted for direct democracy. Most democratic countries employ representative government, and it is considered a general democratic governmental model. Thus, citizens rule indirectly by casting votes for representatives and subsequently communicating with those representatives.¹⁰² For this reason, a vote is the most common and important act of political participation in a democracy.

However, democracy is not merely an annual exercise in choosing representatives but includes the population's actual ongoing participation in the governmental decision-making process. Moreover, the necessities of active public participation increase because of the limits of the indirect democratic or representative system. The foundation of the representative system is authorization based on faith. The representative must act on behalf of others; consequently, representatives must work within the scope of people's authorization and for their benefit.¹⁰³ Unfortunately, it is easy to find that the representative system does not achieve this purpose in the real world, especially in politically undeveloped countries that lack accountability in their representative systems and lack transparency in government. When people lose faith in the government due to politicians' self-interest or their representation primarily of their financial backers, democracy requires some intervention on the part of the public. Therefore, when the representatives do not adequately represent the public, the gap between the representatives and the people widens and popular distrust of politics becomes widespread. For instance, when public environmental interests are not represented well compared to private or commercial interests, as in the case of a national oil company which ignores environmental interests, it becomes necessary for the public to act directly to balance the representative system. For these reasons, the participatory elements of a direct democracy, which include citizen initiatives, referendums, and citizen recall in legislation and citizen participation in the administrative decision-making process (e.g., public hearings), has

¹⁰² SIDNEY VERBA & NORMAN H. NIE, *PARTICIPATION IN AMERICA: POLITICAL DEMOCRACY AND SOCIAL EQUALITY* (1972); Donald R. Kinder & Don Herzog, *Democratic Discussion*, in *RECONSIDERING THE DEMOCRATIC PUBLIC* (George E. Earkus & Russel L. Hanson ed., 1993).

¹⁰³ HANNA F. PITKIN, *THE CONCEPT OF REPRESENTATION* 28(1972).

recently been reintroduced to compensate for the weaknesses of indirect democracy. Thus public participation helps to compensate for the weaknesses of indirect democracy by providing the participatory element typical of a direct democracy.

Direct participatory systems provide public participation in state affairs beyond the voting system. Direct participatory democracy is important not only because it helps to remedy the weakness of indirect democracy but also because it is our natural right as human beings to engage in our own self-governance.¹⁰⁴ It, ultimately, enhances democracy by protecting an individual's rights and interests. Moreover, widespread participation exposes decision-makers to a healthy mix of perspectives, which improves the decision-making process and may increase the transparency of public processes.¹⁰⁵ Through involvement in government and community affairs, people gain more understanding of the public good and what it requires.¹⁰⁶

A direct participatory system usually involves creating and enacting laws without the intervention of elected representatives. However, it is not limited to the legislative arena, and can be utilized in the three branches. Besides citizen initiatives in proposing legislation, participatory methods include public hearings in the administrative decision-making process and access to government information. Access to government information is important not only in terms of a right to know but also in terms of a prerequisite to informed participation in the decision-making process.¹⁰⁷ Furthermore, the citizen suit mechanism, which allows the public to participate in law enforcement processes, is a direct and participatory system. Public participation in environmental matters (access to information, access to process, and access to justice) is a subset within this direct participatory system.

Because public participation is a direct and participatory political right and plays a potential role in changing political power patterns and allocation, it can foster

¹⁰⁴ Nelson M. Rosenbaum, *Citizen Participation and Democratic Theory*, in *CITIZEN PARTICIPATION IN AMERICA: ESSAYS ON THE STATE OF THE ART* (Stuart Langton ed., 1978).

¹⁰⁵ Mark Sagoff, *supra* note 99 at 776.

¹⁰⁶ Julian N. Eule, *Judicial Review Of Direct Democracy*, 99 *YALE L. J.* 1503,1509 (1990).

¹⁰⁷ These days, technology, especially Internet access to government databases, facilitates public involvement in decision-making processes. Innovations to the administrative decision-making process, such as the adoption of voting in cyberspace, could significantly change the status of public participation. Michael H. McGovern and Thomas C. Beierle, *E-Part: The Future of Public Involvement?*, 12 *Center for Risk Management News Letter* 1 (1997); GRAEME BROWNING, *ELECTRONIC DEMOCRACY; USING THE INTERNET TO INFLUENCE AMERICAN POLITICS* (1996).

development not only of democratic decision-making processes but also of democracy itself in many countries. Korea would be one beneficiary of it. As explained earlier, the Confucian political tradition still impacts Korean society; and Korean decision-making patterns have a vertical hierarchy (top to bottom). This hierarchy excludes the public from the decision-making processes and makes it difficult to build consensus because of the Confucian concept of benevolent paternalism.

The next chapter discusses how public participation could enhance the South Korean administrative decision-making process, which needs to be open and transparent to accept public decision and build consensus as well as contribute to the development of democracy itself.

C. Public Participation and Democracy

What is democracy? The concept of democracy is quite complex, and it is difficult to find simple definitions that capture all of its meanings. However, simply speaking, democracy is a political system governed by the people either directly or representatively.¹⁰⁸ At the base of this system is an understanding that the people are all equals and the will of the people is the source of authority for government (i.e., popular sovereignty principles).¹⁰⁹ Consequently, the core ideas of democracy—that people must be the most important value and that their dignity should be respected—result from the popular sovereignty principle. President Lincoln explained that democracy entails a government “of the people, by the people, for the people”;¹¹⁰ thus, democratic government should respect the people’s will and protect and improve their human rights.

Democracy originated in the fifth century B.C. in Athens, Greece, and developed in Western Europe in the 18th century with modern constitutions.¹¹¹ Its core idea—that people must be the most important value and that their dignity should be respected—is a

¹⁰⁸ BLACK’S LAW DICTIONARY (1991).

¹⁰⁹ JOSEPH SCHUMPETER, CAPITALISM, SOCIALISM AND DEMOCRACY (1947).

¹¹⁰ Abraham Lincoln, Gettysburg Address (Nov. 19, 1863), in LINCOLN ON DEMOCRACY 308 (Mario M. Cuomo & Harold Holzer ed., 1990).

¹¹¹ The French Constitution of 1791, Virginia Constitution of 1776, and US Constitution of 1788 are good examples. These constitutions typical of Western democracies included the following elements: (a) a system in which political powers are derived directly and/or indirectly from the people; (b) free elections and the existence of a competitive party system; (c) the guarantee of protection of fundamental rights; (d) separation of executive, legislative, and judiciary powers subject to checks and balances; and (e) the application of the rule of law. INTERNATIONAL ENCYCLOPEDIA OF THE SOCIAL SCIENCES 3 (D.L. Sills ed., 1972).

universal concept found in all civilizations. Even though there seems to have been no explicit concept of democracy in East Asian culture before the reception of Western political ideas at the end of the 19th century, historical analysis shows that a rich tradition of democratic philosophies and ideas existed in East Asia.¹¹² However, the Asian democratic ideals failed to be institutionalized because of a weak tradition of the rule of law.

While the West developed democracy based on popular sovereignty with other modern principles of the democratic legal system, such as the rule of law, Asian tradition depended on the moral obligation of the rulers to serve the people. Asia relied on the honesty and integrity of a ruler to lead rather than on the systematic protection of the core of democracy, popular sovereignty. Because Asian tradition did not place great weight on the systematic protection of human dignity by rule of law, human rights have not been protected strongly in Asia. To have a strong democracy, it is necessary not only to respect the basic democratic ideals that people are the source of power and that human dignity should be protected, but also to establish democratic systems, such as the rule of law and procedural guarantees by law, to protect this spirit.

Moreover, as previously discussed, Asian tradition does not promote equality and individual rights, two basic concepts of democracy. The Confucian political tradition established a hierarchical social system; thus, only the well-educated elite could take on administrative roles. Ordinary people could not participate in decisions about major issues and believed it was necessary to follow their leaders' direction, without complaint, in the interest of the whole community. These traditions affect modern Korean society, making it possible to have authoritarian, totalitarian, and even dictatorial rule until the late 1980s.

¹¹² Almost two millennia before John Locke claimed that sovereign rights reside with the people and that, based on a contract with the people, leaders are given a mandate to govern that the people can withdraw, Chinese philosopher Mencius preached similar ideas. According to his "politics of royal ways," the king is the "son of heaven;" and heaven bestowed on its son a mandate to provide good government, that is, to provide good for the people. If he did not govern righteously, the people had the right to rise up and overthrow his government in the name of heaven. The people came first, Mencius said, the country second, and the king third. The ancient Chinese philosophy of *Minben Zhengchi*, or people-based politics, teaches that "the will of the people is the will of heaven" and that one should "respect the people as heaven." A native religion of Korea, *Tonghak*, went even further, advocating that "man is heaven" (*Innaechon*) and that one must serve man as one does heaven. These ideas inspired and motivated nearly half a million peasants in 1894 to revolt against exploitation by a feudalistic government internally and imperialistic forces externally. Kim Dae Jung, *Is Culture Destiny?: The Myth of Asia's Anti-Democratic Values*, 73 FOREIGN AFFAIRS 189 (1994).

However, all people are entitled to take a part in the conduct of public affairs and participate in government decision-making processes that will decide their destiny; furthermore, it is the responsibility of democratic governments to open access to participation because a government is derived from the people. Moreover, wide public participation can make social justice and equality possible and contribute to governmental transparency. For these reasons, public participation in decision-making processes is essential to developing democracy in Korea. Furthermore, equality in public participation could change the closed hierarchical structure to a more open and equal one.

D. Public Participation in Environmental Matters

Besides the political aspect, public participation enhances environmental protection as a legal tool for careful environmental management. Public participation contributes to public awareness of environmental issues, gives the public opportunities to express concerns, and enables public authority to take due account of such environmental concerns. An increasing recognition of the importance of public participation in governmental decisions regarding environmental matters has come with the increasing prominence of environmental awareness and protection. Arming the public with environmental knowledge, opening key channels of access to environmental agencies, and allowing citizens to enforce environmental laws when regulators are unable or unwilling to do so are all tactics designed to discourage back-room deals. Strong and open citizen participation plays an essential role in translating the law into effective environmental protection.¹¹³

As seen previously, public participation has many forms. This thesis divides these forms of public participation into three separate stages: before decision-making, during decision-making, and after decision-making. At each of these stages there may be three categories of participation: access to information, access to process (or access to the administrative decision-making process, which usually occurs in the government permit system through public participation in the EIA process), and access to justice. This division is modeled after the Århus Convention—the most comprehensive international

¹¹³ Mark J. Spaulding, *Transparency of Environmental Regulation and Public Participation*, 35 SANTA CLARA L. REV. 1127, 1128 (1995).

agreement on public participation in environmental matters—which addresses the three pillars of public participation: access to environmental information, public participation in the environmental decision-making process, and access to justice that establishes judicial and administrative mechanisms to redress environmental grievances.

The Åarhus Convention was formulated by the United Economic Committee for Europe (UNECE) in 1998 and entered in force on October 30, 2001. This Convention originated in a Draft United Economic Committee for Europe (ECE) Charter on Environmental Rights and Obligations adopted in 1990 by the UNECE.¹¹⁴ The Draft ECE Charter sets forth twenty-four principles that relate to public participation in decisions that affect the environment. The Draft ECE Charter addresses environmental information, education and training by framing rights to: adequate information relevant to the environment, including information on products and activities which could or do significantly affect the environment and on environmental protection measures; adequate information about potential sources of accidents, including contingency planning, and the right to be informed immediately when an emergency occurs; access to administrative or judicial review when the requested information is not provided in a timely manner; adequate environmental education and training; and reports prepared by competent authorities on the state of the environment at local, provincial and national levels, including the extent to which public activities have had a significant effect on the environment.⁵

With respect to decision-making per se, the Draft ECE Charter requires the following components: the right of everyone to participate in the decision-making process for activities that do or could have a significant impact on the environment, EIA tied to decision-making authority, the right to receive the information necessary to participate in the decision-making process in a timely and effective manner, and the right to be informed without delay of the reasons for the decision made.¹¹⁵ On the issues of legal protection and compensation, the Draft ECE Charter outlines the following concepts: the right of access to and due process in environment-related administrative and judicial proceedings; the right to seek immediate state or judicial action to reduce or stop

¹¹⁴ Draft ECE Charter on Environmental Rights and Obligations, adopted at the Experts Meeting, U.N. Economic Commission for Europe, Oslo, Norway, 29- 31 Oct. 1990 [hereinafter Draft ECE Charter].

¹¹⁵ *Id.* principles 10-13.

an environmentally destructive activity; the right to seek reimbursement for expenditures used to prevent or repair damage to the environment; the right to seek a return to the environmental status quo ante; and the right to seek compensation for damage to health, livelihood or the environment.¹¹⁶ Finally, with respect to transboundary impacts, the Draft ECE Charter provides for equal access to administrative and judicial proceedings for affected nonresidents and for public responsibility to take environmental effects into account without discrimination as to whether the effects would occur inside or outside the area under the national jurisdiction of the state concerned.¹¹⁷

In 1991, the UNECE created the “Environment for Europe” process to harmonize the activities of countries working toward sustainable development in Europe.¹¹⁸ At the third conference of the “Environment for Europe” process in 1995, officials from across Europe agreed to new standardized guidelines for public participation in environmental decision-making matters. These guidelines served as mere recommendations and were not binding on participating countries; however, the 1995 Conference directed a working group to draft a legally binding convention in time for the Fourth Conference of the Parties. At the Fourth Conference of the Parties, which took place in Århus, Denmark, from June 23 to 25, 1998, the Århus Convention was born. On June 25, 1998, the Convention opened for signature to the 55 members of the UNECE, which included most European countries, the former Soviet Union, the United States, and Canada. By the closing of the signature period on December 21, 1998, 35 countries and the European Union, excluding Germany, had signed it.

The Convention’s main provisions impose upon signatories a general obligation for public authorities to make information regarding the environment available to the public on request; require the inclusion of public participation procedures for the authorization of certain industrial, agricultural, and construction activities; and call for the establishment of judicial or administrative proceedings allowing the public to challenge environmental decisions by governments.

¹¹⁶ *Id.* principles 14-18.

¹¹⁷ *Id.* principles 19-20.

¹¹⁸ See Jerzy Jendroska, *U.N.E.C.E. Convention on Access to Information, Public Participation in Decision-Making, and Access to Justice in Environmental Matters: Towards More Effective Public Involvement in Monitoring Compliance and Enforcement in Europe*, 13 NAT’L ENVTL. ENFORCEMENT J. 32 (1998).

Some NGO's have criticized the Convention on the grounds that in many respects it is vague and unenforceable; on the other hand some countries have been criticized for failing to sign the final agreement, including Germany and the United States. In any event, both supporters and skeptics of the Convention recognize it as an important step in the democratization of environmental decision-making because it is legally binding; therefore, almost every signatory country will have to alter its laws to come into compliance with the various provisions of the treaty.¹¹⁹

Prior to the Århus Convention, other international instruments recognized public participation in environmental matters. For example, the World Charter for Nature, a resolution of the United Nations General Assembly,¹²⁰ the IUCN Draft Covenant,¹²¹ and the Rio Declaration of 1992 addressed public participation in environmental matters.¹²² Moreover, some regional organizations have adopted instruments that address public participation in the environmental sphere. For instance, the Arab Ministerial Conference on Environment and Development issued an Arab Declaration on Environment and Development and Future Perspectives;¹²³ and the Organization of American States' 1991 Inter-American Program of Action for Environmental Protection recommended public participation in environmental law to member countries.¹²⁴ Likewise, the Århus

¹¹⁹ See Daniel Pruzin, *Environmental Information: Convention on Public Participation Signed by European Environmental Ministers*, Int'l Env't Daily (BNA), June 26, 1998, available in WESTLAW, BNA-IED Database.

¹²⁰ "All persons, in accordance with their national legislation, shall have the opportunity to participate, individually or with others, in the formulation of decisions of direct concern to their environment, and shall have access to means of redress when their environment has suffered damage or degradation." G.A. Res. 37/7, U.N. GAOR, 37th Sess., Supp. No. 51, at 18, U.N. Doc. A/37/51 (1982) (referencing principle 23).

¹²¹ "States shall provide for and promote widespread participation by individuals and non-governmental organizations in all aspects of conserving the environment. In particular, States shall: ... (b) afford the opportunity to participate, individually, or with others, in the decision-making process." IUCN Draft Covenant, art. 10.

¹²² Principle 10 "Environmental issues are best handled with the participation of all concerned citizens, at the relevant level. At the national level, each individual shall have appropriate access to information concerning the environment that is held by public authorities, including information on hazardous materials and activities in their communities, and the opportunity to participate in decision-making processes. States shall facilitate and encourage public awareness and participation by making information widely available. Effective access to judicial and administrative proceedings, including redress and remedy, shall be provided."

¹²³ "The right of individuals and non-governmental organizations to acquire information about environmental issues relevant to them, to have access to data and to participate in the formulation and implementation of decisions that may affect their environment. " Letter of the Conference on Environment and Development, 46th Sess., Agenda Items 34, 77(e)-(h), 78 & 79, at 4, U.N. Doc. A/46/632 (1991).

¹²⁴ "Promotion of a greater environmental awareness as a dimension and omnipresent function of education, from an interdisciplinary standpoint, in the member states of the Inter-American system. Promotion of the

Convention was adopted by a regional organization, the UNECE; nevertheless, it is a universal convention because it is open to any country.¹²⁵

coordinated participation of non-governmental organizations and other sectors of society in the regional effort to improve the environment and quality of life in the region.” General Assembly of the Org. of American States, §§ (g), (u).

¹²⁵ Århus Convention, art. 19, sec. 3.

IV. PUBLIC PARTICIPATION IN KOREA

A. Public Participation in South Korean Environmental Laws

Although South Korea has not signed the Åarhus Convention, the South Korean environmental legal system provides for public participation in various forms. Public participation in environmental planning was introduced in Korea through the BEPA of 1990 and developed by the EIAA of 1993. In addition, the AIDA of 1996 brought more improvements with regard to access to information. However, the public interest lawsuit, otherwise known as the citizen suit system, a key element of access to justice, does not have a legal basis in the South Korean legal system. Moreover, environmental NGOs' standing issue has been debated as one of problems in Korean environmental laws. This chapter compares the public participation system in South Korean environmental law with equivalent US statutes as well as the Åarhus Convention to clarify problems within South Korean laws and identify possible routes to overcoming the problems of not signing the Åarhus Convention.

1. *Access to Information*

Generally speaking, information is valuable today, both in maintaining privacy and as a product in the marketplace. For these reasons, access to information is considered a value to be legally protected. Access to environmental information has value in that seriously damaged environments can adversely affect people's health;¹²⁶ thus, the public has a right to know about environmental situations that concern them. For this reason, governments are legally required to report information on hazardous chemicals and wastes.¹²⁷ Moreover, environmental information is an economic factor in the course of conducting business. For example, because of the adverse effects of environmental damage, the US Securities and Exchange Commission currently requires disclosure of

¹²⁶ See Ian Clyde, *Ignorance Is Not Bliss: The Importance of Environmental Information*, 2 ASIA PACIFIC JOURNAL OF ENVIRONMENTAL LAW 253 (1997).

¹²⁷ See Emergency Planning and Community Right-to-Know Act of 1986 42 U.S.C.A. §§11001-11050.

information regarding a company's social and environmental impact¹²⁸ if the information is in the public interest or for the protection of investors.¹²⁹

Access to information in environmental law refers to citizens' rights to obtain environmental information possessed by the government.¹³⁰ Citizen access to environmental information is an essential prerequisite of effective access to process and justice in practice. According to the Århus Convention, the definition of environmental information, applauded by the NGOs,¹³¹ includes the following:

Any information in written, visual, aural, electronic or any other material form on the state of elements of the environment, such as air and atmosphere, water, soil, land, landscape and natural sites, biological diversity and its components, factors, such as substances, energy, noise and radiation, and activities or measures, including administrative measures, environmental agreements, policies, legislation, plans and programs, and cost-benefit and other economic analyses and assumptions used in environmental decision-making; and the state of human health and safety, conditions of human life, cultural sites and built structures, inasmuch as they are or may be affected by the state of the elements of the environment.¹³²

This broad definition makes it difficult for governments to avoid disclosure on the grounds that the information is irrelevant.¹³³

Public access to information in environmental law began to be of international interest in the 1990s. Several international agreements have access-to-environmental-information provisions: the Convention on the Protection of the Marine Environment of the Baltic Sea Area of 1992;¹³⁴ the Convention on the Protection and Use of Transboundary Watercourses and International Lakes of 1992;¹³⁵ the Convention on Civil

¹²⁸ Securities Act of 1933 §§ 7, 10, 15 U.S.C. §77g (1994) (outlining the SEC disclosure requirements).

¹²⁹ Sections 7 and 10 of the Securities Act of 1933 and section 12(b) of the Securities Exchange Act of 1934 empower the SEC to require information "necessary or appropriate in the public interest or for the protection of investors." 15 U.S.C. §77g 77j, 781(b)(3) (1994).

¹³⁰ See the Århus Convention Preamble. There might be arguments on the range of environmental information; however, it is reasonable to understand environmental information as any information possessed by the government that affects environmental situations. Some international environmental conventions regulate the range of the environmental information in definition sections.

¹³¹ See NGO Conference, NGO Resolution on the Public Participation Convention (last modified June 22, 1998) available at http://www.participate.org/Arhus/ngo_resolution.htm (hereinafter NGO Resolution).

¹³² The Århus Convention, art. 2.3.

¹³³ *Environment Law: Environment Law in Public Hands*, Lawyer, Oct. 20, 1998, available in 1998 WL 9168514.

¹³⁴ Convention on the Protection of the Marine Environment of the Baltic Sea Area, 1992 (entered into force Jan. 17, 2000), available at <http://www.helcom.fi/convention/conven92.html> (last visited May 20, 2002).

¹³⁵ Convention on the Protection and Use of Transboundary Watercourses and International Lakes, March 17, 1992, 31 I.L.M. 1312

Liability for Damage Resulting from Activities Dangerous to the Environment of 1993;¹³⁶ the Convention on Cooperation for the Protection and Sustainable Use of the Danube River Basin;¹³⁷ the Convention on the Transboundary Effects of Industrial Accidents of 1993;¹³⁸ the Convention for the Protection of the Marine Environment of the North-East Atlantic of 1993;¹³⁹ and the Århus Convention. Besides the comprehensive Århus Convention, other agreements regulate citizens' rights of access to information in specific fields.

The Århus Convention regulates the issue of access to environmental information under two separate articles: Article 4 regulates passive disclosure of information while Article 5 addresses active disclosure of information. Article 4 describes each country's requirements regarding the release and dissemination of environmental information.¹⁴⁰ It provides that any member of the public may request information covered by the Convention from a governmental entity without having to "state an interest."¹⁴¹

Under the Århus Convention, requests can be refused when the public authority to which the request is addressed does not hold the environmental information requested or the request is manifestly unreasonable or formulated in too general a manner. They may also be rejected when the request concerns material in the course of completion or concerns internal communications of public authorities, where such an exemption is provided for in national law or customary practice, taking into account the public interest served by disclosure.¹⁴² In addition, the release of information is not always required if it would have an adverse affect; such instances may include the confidentiality of public proceedings, international relations, national defense, public security, the fair administration of justice, intellectual property rights, or confidential commercial information.¹⁴³ All request refusals must be in writing, normally within one month of the

¹³⁶ Convention on Civil Liability for Damage Resulting from Activities Dangerous to the Environment June 21, 1993, 32 I.L.M. 1228

¹³⁷ Convention on Cooperation for the Protection and Sustainable Use of the Danube River Basin, June 29, 1994, *reprinted in* 19 Int'l Env't Rep. (BNA) 997 (Oct. 30, 1996);

¹³⁸ Convention on the Transboundary Effects of Industrial Accidents, Mar. 17, 1992, 31 I.L.M. 1330.

¹³⁹ Convention for the Protection of the Marine Environment of the North-East Atlantic, Sept. 22, 1992, 32 I.L.M. 1069

¹⁴⁰ The Århus Convention, art. 4.

¹⁴¹ *Id.* art. 4.1.

¹⁴² *Id.* art. 4.3.

¹⁴³ *Id.* art. 4.4.

request.¹⁴⁴ Finally, the Århus Convention explains that these exemptions should be narrowly construed “taking into account the public interest served by the disclosure.”¹⁴⁵ Even though the public interest test is beneficial, some countries could abuse the list of exemptions, which have been called “vague and circular,” to avoid complying with the agreement.¹⁴⁶ Provisions in Article 5, however, may prevent abuse of those exemptions. Article 5 requires that public authorities periodically release written reports and periodicals about “proposed or existing activities which may significantly affect the environment.”¹⁴⁷ National reports on the state of the environment are required at intervals of no more than three or four years.¹⁴⁸ Moreover, the Convention requires signatories to make environmental information increasingly available in electronic databases, such as the Internet.¹⁴⁹ Nonetheless, it has been criticized for not establishing clear categories of information that must be released on the Internet.¹⁵⁰

Finally, the Århus Convention requires signatories to create nationwide systems of pollution inventories, which may include “inputs, releases and transfers of a specified range of substances and products.”¹⁵¹ While this type of inventory, known as a Pollution Release and Transfer Register, is already common practice in some countries,¹⁵² the Convention extends the requirement to all signatories.¹⁵³ However, NGOs complain that this provision is insufficient because it fails to require signatories to implement the Register quickly, “despite their proven effectiveness as a powerful indirect tool for reducing pollution.”¹⁵⁴

Some countries have provisions on citizens’ right to access environmental information in their constitutions. For example, the Albania Constitution of 1998,¹⁵⁵ the

¹⁴⁴ *Id.* art. 4.7.

¹⁴⁵ *Id.* art. 4.4.

¹⁴⁶ NGO Resolution, *supra* note 131, para. 5.3.

¹⁴⁷ The Århus Convention, art. 5.1.b.

¹⁴⁸ *Id.* art. 5.4.

¹⁴⁹ *Id.* art. 5.3.

¹⁵⁰ *Id.* art. 5.4.

¹⁵¹ NGO Resolution, *supra* note 131, para. 5.9.

¹⁵² *See, e.g.*, Emergency Planning & Community Right to Know Act etc

¹⁵³ Jerzy Jendroska, *supra* note 118 at 32.

¹⁵⁴ NGO Resolution, *supra* note 131, paragraph. 5.1.

¹⁵⁵ Art. 56 “Everyone has the right to be informed for the status of the environment and its protection.”

Azerbaijan Constitution of 1995,¹⁵⁶ the Latvia Constitution of 1998,¹⁵⁷ and the Russian Federation Constitution of 1993¹⁵⁸ all recognize the importance of access to environmental information. However, rather than putting environmental information provisions in their constitutions, most countries that provide access to environmental information have conferred this right legislatively as a general right in administrative process. Since the *Tryckfrihetsförordningen* (the Freedom of Press and Information Act) of Sweden in 1949, which states in chapter 2.1 that “every Swedish citizen shall have the right to inspect public documents”,¹⁵⁹ Finland (1951),¹⁶⁰ Denmark (1964)¹⁶¹ and the US (1966)¹⁶² have established legal systems for disclosure of information from government authorities; furthermore, more countries enacted administrative information disclosure acts after the 1970’s.¹⁶³

In the US, the primary method of gaining access to environmental information in federal agency files is through the FOIA.¹⁶⁴ The FOIA is potentially one of the most valuable tools of inquiry available to the general public, journalists, scholars, and others who want to know what the federal government is doing. Passed by Congress in 1966 and subsequently amended four times,¹⁶⁵ the FOIA creates a judicially enforceable policy that is based on the general philosophy of full disclosure. The Act applies to records held by

¹⁵⁶ Art. 39 [Right to live in healthy environment]

(1) Everyone has the right to live in healthy environment.

(2) Everyone has the right to gain information about true ecological situation and to get compensation for damage done to his/her health and property because of violation of ecological requirements.

¹⁵⁷ Art. 115 [Environment]

The State shall protect the right of everyone to live in a benevolent environment by providing information about environmental conditions and by promoting the preservation and improvement of the environment.

¹⁵⁸ Art. 42

Everyone shall have the right to a favorable environment, reliable information about its condition and to compensation for the damage caused to his or her health or property by ecological violations.

¹⁵⁹ Staffan Westerlund, *Chapter 16. Sweden*, in *ACCESS TO ENVIRONMENTAL INFORMATION IN EUROPE* 301 (ed. Ralph E. Hallo, 1998).

¹⁶⁰ The Documents Act of 1951.

¹⁶¹ Beginning in 1964, access to information has periodically been expanded with the adoption of the General Access to Information Act in 1971. See Benet Hermind and Ulla Erikard, *Chapter 3 Denmark*, in *ACCESS TO ENVIRONMENTAL INFORMATION IN EUROPE* 59, *supra* note 159.

¹⁶² Freedom of Information Act of 1994 5 U.S.C. §552

¹⁶³ Norway (1970), Denmark (1970), France (1978), Canada (1982), Australia (1982); see DONG-HEE KIM, *ADMINISTRATIVE LAW I* (1999).

¹⁶⁴ 5 U.S.C. §552 (1994).

¹⁶⁵ Congress revised the FOIA in 1974, 1976, 1986 and 1996.

agencies within the executive branch of the federal government,¹⁶⁶ such as the Environmental Protection Agency, making Agency records available to the public upon request¹⁶⁷ and placing the burden of justifying nondisclosure on the government.¹⁶⁸ FOIA does not include records maintained by state or local governments, by the courts, by Congress, or by private citizens.

In crafting the FOIA, Congress recognized that it is crucial for citizens in a democracy to have access to government information to make informed decisions.¹⁶⁹ The FOIA prevents politicians and bureaucrats from being the exclusive judges of what the public can know. Congress also recognized rightful reasons to keep some information secret. A 1965 Senate report, which accompanied the original FOIA, declared that the public's statutory "right to know"¹⁷⁰ must be balanced against the government's need to keep some information confidential.¹⁷¹ For this reason, Congress created exceptions under which federal agencies may refuse to disclose information. For example, the FOIA does not apply to matters that fall under the categories of classified information and national security, information exempted by other Congressional statutes, trade secrets and other confidential business information, disclosures that invade personal privacy, and reports from regulated financial institutions.¹⁷²

As noted, Congress has amended the FOIA four times since the law was enacted. An interesting amendment that relates to advanced technology is the Electronic Freedom of Information Act Amendments of 1996.¹⁷³ These amendments established that the rules for public access under the FOIA apply equally to electronic records and paper records, and a search request for electronic records using software is to be treated the same as a

¹⁶⁶ It includes the Executive Office of the President and independent regulatory agencies such as the Federal Communications Commission and the Securities and Exchange Commission; FOIA, art. 552(f)(1)(2).

¹⁶⁷ *Id.*, art. 552(a).

¹⁶⁸ *Id.*, art. 552(a)(4)(B)(b).

¹⁶⁹ See 142 Cong. Rec. S10713-03 (daily ed. Sept. 17, 1996) (statement of Sen. Leahy).

¹⁷⁰ The term *right to know* has been attributed to a 1945 speech by Kent Cooper, Executive Director of the Associated Press.

¹⁷¹ "At the same time that a broad philosophy of 'freedom of information' is enacted into law, it is necessary to protect certain equally important rights of privacy with respect to certain information in Government files, such as medical and personnel records. It is also necessary for the very operation of our Government to allow it to keep confidential certain material, such as the investigatory files of the Federal Bureau of Investigation." S. Rep. No. 89-813, pt. 1 (1965).

¹⁷² See 5 U.S.C. § 552(b)(1)-(9)(1994).

¹⁷³ See Electronic Freedom of Information Act of 1996, Pub. L. No. 104-231, 110 Stat. 3048, §§ 1-12 (1996) (codified as amended in various sections of 5 U.S.C. § 552 (1994)).

paper search.¹⁷⁴ The law states that a *record* subject to the FOIA comprises information maintained by an agency in any format, including an electronic format.¹⁷⁵ Under these amendments, agencies must make reasonable efforts to provide a record in any form or format requested by the person if the record is readily reproducible by the agency in that form or format¹⁷⁶ and to maintain records in forms or formats that are reproducible so that requests for the information can be honored.¹⁷⁷

South Korea's AIDA provides citizens' with access to environmental information¹⁷⁸ based on the legal right to know. The constitutional basis of the right to know arguably can be found in the expressed rights of free speech, popular sovereignty, dignity, and the right to pursue happiness. The South Korean Constitutional Court took the position that the right to know is based on free speech, including the right to access administrative information (i.e., reading and copying administrative documents).¹⁷⁹

According to AIDA, after receiving an application for disclosure of certain information, the public authority has to decide whether it will disclose the information within 15 days and must inform the applicant of the decision. The scope of the term "administrative information" includes any information in possession of the government. The form of the information is not limited to written documents but includes the following: pictures, films, tapes, slides, and electronic information. Therefore, it paves a way to access information via the Internet.¹⁸⁰ However, this public access to information is also limited by the exclusion of information which raises concerns about national defense, privacy, and trade secrets. Any applicant denied access to information is entitled to an administrative hearing or court action.¹⁸¹

¹⁷⁴ § 552(a)(2).

¹⁷⁵ § 552(f).

¹⁷⁶ § 552(a)(3).

¹⁷⁷ *Id.*

¹⁷⁸ One interesting fact in the history of this Act is that it was established after the legislation of the Local Decree on Administrative Information Disclosure by a local government. Even though there was much hesitation to enact public access to information at the central government level, the local Congress of Chong-Ju passed the Local Decree on Administrative Information Disclosure in 1991; Dong Hee Kim, ADMINISTRATIVE LAW 145 (1999).

¹⁷⁹ Korean Constitutional Court, 1989.9.4, 88 *Hun-Ma* 22.

¹⁸⁰ AIDA, art. 3(i).

¹⁸¹ AIDA, art. 18.

Generally speaking, the access to information aspects of the Aarhus Convention, US FOIA, and South Korean AIDA have significant structural similarities. The similarities include general expression of citizens' right to access related environmental information; the range of environmental information; auxiliary conditions such as reasonable time, charges, and facilities to obtain the information; and prohibitions and limitations of information disclosures. Most of them, utilizing the Internet as database of information is one of the similarities. The positive impact of the Internet on access to information is a major advantage for the promotion of public participation. The Internet, when used by governmental agencies and the public, can potentially increase technology's advantages for environmental protection regarding access to information. The Internet provides citizens with easy alternatives for the exchange of information that once was tedious and difficult to obtain. Although currently the Internet is used as a means of researching databases, in the future it will be a useful source of interaction between the decision-makers and the public in all stages of environmental protection. However, the usefulness of the Internet is limited for those without Internet access or knowledge of modern technology.

3. *Access to the Environmental Administrative Decision-Making Process*

Access to process is vital to public participation. Unlike access to information, access to process has a more active significance because it allows the public to participate directly. Generally speaking, access to process includes public participation in law-making and administrative decision-making. However, this topic is so broad that this article will limit its scope to examine only public participation in the administration decision-making process of EIA, which includes public hearings, notices, and comment systems.¹⁸²

¹⁸² The Aarhus Convention provides a way for the public to participate in executive regulations and other generally applicable legally binding rules making process in article 8 although it is very brief and ambiguous to apply. According to the Convention, Party of the Convention shall strive to promote effective public participation at an appropriate stage, and while options are still open, during the preparation by public authorities of executive regulations and other generally applicable legally binding rules that may have a significant effect on the environment. To this end, the following steps should be taken; time-frames sufficient for effective participation should be fixed; draft rules should be published or otherwise made publicly available; and the public should be given the opportunity to comment, directly or through representative consultative bodies. Moreover, its result of the public participation shall be taken into account as far as possible. As NGO criticized its feasibility in implement and discretion of domestic government, its

A large share of the public participation in the administrative decision-making process arises in the governmental permitting process for various projects. This is the decision-making structure (formal or informal, sometimes virtually nonexistent) through which environmentally significant projects and activities are addressed in the EIA system. The EIA, which plays a central role in bringing the public into the environmental decision-making loop, controls development by requiring appropriate environmental planning, a proven method of achieving sustainable development.¹⁸³ The EIA originated from the US National Environmental Policy Act of 1969 (NEPA) and is established as a routine decision-making technique in more than 75 countries¹⁸⁴

Moreover, many regional and international instruments that address environmental protection specifically provide for EIA. A typical EIA provision calls for national-level assessment of the environmental impact of proposed activities “likely to have a significant adverse impact on the environment.”¹⁸⁵ EIA has become one of the general legal principles at the international level. The UNEP’s Goals and Principles of EIA include 13 principles that describe the fundamentals of EIA and public participation therein. These principles provide for comprehensive EIA of any activity likely to significantly affect the environment.¹⁸⁶ Under the UNEP scheme, an EIA should include descriptions of the proposed activity and the potentially affected environment, alternatives to the proposed activity, assessment of the likely environmental impact of the proposed activity, mitigation measures, uncertainties and gaps in knowledge, and an estimation of cross-border effects.¹⁸⁷ The UNEP also called for impartial examination of EIA information; an opportunity for comment by the public, government agencies, and experts; adequate time

fulfillment is in doubt; however, it is also pointed that this is the first international environmental convention which makes source of law of public participation in rule-making process; NGO Resolution *supra* note 131.

¹⁸³ Nicholas A. Robinson, *The Law of Sustainable Development*, 13 Pace Envtl L. Rev. 507, 508 (1996).

¹⁸⁴ NICHOLAS A. ROBINSON, *EIA ABROAD: THE COMPARATIVE AND TRANSNATIONAL EXPERIENCE* 1 (1992).

¹⁸⁵ Rio Declaration principle 17; *See also* IUCN Draft Covenant article 16; *The Assessment of Projects with Significant Impact on the Environment*, Organization of Economic Cooperation and Development, Recommendation C(79)116 (May 8, 1979); *Environmental Assessment of Development Assistance Projects and Programs*, Organization of Economic Cooperation and Development, Recommendation C(85)104 (June 20, 1985); *Community Directive 85/337 on the Assessment of the Effects of Certain Public and Private Projects on the Environment*, 1985 O.J. (L 175/40); *Convention on Environmental Impact Assessment in a Transboundary Context*, 30 I.L.M. 802(1991).

¹⁸⁶ *Environmental Law Goals and Principles, Environmental Impact Assessment*, U.N. Environment Programme, principles 1-3, U.N.Doc. UNEP/Z/SER.A/9 (1987).

¹⁸⁷ *Id.*, principle 4.

to consider comments; and on-the-record, written decisions.¹⁸⁸ The UNEP also called for post-decision supervision and for transboundary communication of relevant EIA information.¹⁸⁹ The basic principles of EIA provide a framework for public participation in environmental decision-making by ensuring access to information, opportunity to be heard, transparency in decision-making, and mechanisms for implementation and enforcement. The environmental impact report that emerges from EIA should address, at least, the purpose and need for the proposed activity, a description of the activity, a description of the existing environment, descriptions of reasonable alternatives (including doing nothing), and assessment of environmental impacts of the project and of alternatives.¹⁹⁰ In addition, the EIA process should require formal consideration of the environmental impact report and public comments thereon so that government decision makers cannot ignore issues raised in environmental impact reports or by the public.

Public participation in environmental decision-making may presently be considered a well-established concept in international law.¹⁹¹ On an international soft law level, Agenda 21 gives certain guidance while recommending (particularly in provisions referring to environmental protection against factors that may have a significant adverse impact on the environment) the need for active public participation at all different levels of environmental decision-making.¹⁹² As a binding instrument, the Desertification Convention of 1994¹⁹³ requires participation of NGOs and local individuals in policy-making and public participation in concrete decision-making as currently required by a number of international instruments.¹⁹⁴ Several environmental conventions regulate EIA, such as the 1991 Espoo Convention on EIA in Transboundary Context,¹⁹⁵ the Biological Diversity Convention,¹⁹⁶ the Framework Convention on Climate Change,¹⁹⁷ and the

¹⁸⁸ *Id.*, principle 6-9.

¹⁸⁹ *Id.*, principle 10-12.

¹⁹⁰ Application of Environmental Impact Assessment—Highways and Dams, Economic Comm'n for Europe, U.N.Doc. ECE/ENV/50/SER.B, at ix (1987) [hereinafter Highways and Dams]. That is not to say, however, that an EIA of a given project must propose alternative projects, such as a dam on river Y instead of the proposed dam on river X.

¹⁹¹ See Jendroska, *supra* note 118.

¹⁹² *Id.*

¹⁹³ United Nations Convention to Combat Desertification in those Countries Experiencing Serious Drought and/or Desertification, Particularly in Africa, 33 ILM 1332 (1994).

¹⁹⁴ *Id.* Art.10. 2. (f)

¹⁹⁵ Convention on Environmental Impact in a Transboundary Context, Feb. 25, 1991, 30 ILM 800 (1991)

¹⁹⁶ Convention on Biological Diversity, *opened for signature* June 5, 1992, 31 I.L.M. 818.

Convention on Transboundary Effects of Industrial Accidents.¹⁹⁸

The Århus Convention invites the Annex Signatories to provide two ways of public participation: the right to be informed and the right to present public opinion to the government. The government must inform its citizens of potential governmental decisions that fall under Annex I either by public or individual notice, where appropriate, and early in the decision-making process.¹⁹⁹ Notification must include the proposed activity, the nature of possible decisions or the draft decision, the public authority responsible for making the decision, and the fact that the activity is subject to a national or transboundary EIA procedure.²⁰⁰ Moreover, when this information can be provided, the envisaged procedure should be provided.²⁰¹ Further, the Convention requires signatories to allow the public to submit at a public hearing “any comments, information, analyses or opinions that it considers relevant to the proposed activity”.²⁰²

The key is to provide opportunities for the public to participate early in the environmental decision-making process.²⁰³ This means that the public should be consulted before the actual decision has been made. This issue is particularly well regulated in the Convention by requiring the government to establish reasonable time-frames for the different phases, allowing sufficient time for informing the public in accordance and for the public to prepare and participate effectively during the environmental decision-making. Moreover, it states that parties shall provide for early public participation, when all options are open and effective public participation can take place.²⁰⁴

According to the NEPA, the preparation of the EIS undergoes two stages; the draft and the final. Public participation consists of written comments and/or the opportunity to

¹⁹⁷ Kyoto Protocol to the 1992 U.N. Framework Convention on Climate Change (FCCC) U.N. Doc. FCCC/CP/1997/L.7/Add.1 (1998), *reprinted in* 37 I.L.M. 22 (1998).

¹⁹⁸ Convention on the Transboundary Effects of Industrial Accidents, Mar. 17, 1992, 31 I.L.M. 1330.

¹⁹⁹ The Århus Convention art. 6.2.

²⁰⁰ *Id.*

²⁰¹ It includes the following: the commencement of the procedures, the opportunities for the public to participate, the time and venue of any envisaged public hearing, an indication of the public authority from which relevant information can be obtained and where the relevant information has been deposited for examination by the public, an indication of the relevant public authority or any other official body to which comments or questions can be submitted and of the time schedule for transmittal of comments or questions, and an indication of what environmental information relevant to the proposed activity is available; *Id.*

²⁰² The Århus Convention art. 6.7

²⁰³ *See* Jendroska, *supra* note 118.

testify at a public hearing during the process of making the draft EIS and final EIS.²⁰⁵ After the draft is prepared, as part of the scoping process,²⁰⁶ the lead agency, which has the discretion to hold early scoping meetings, must invite the participation of all agencies (federal, state, and local with special expertise), any affected Indian tribe (for environmental effects on reservations), the proponent, and any other interested persons (including environmental opponents).²⁰⁷ For public comments, solicitations must be affirmatively made of “those persons or organizations who may be interested or affected.”²⁰⁸ Agencies must circulate the draft and final EISs to the applicant and any persons or agencies requesting them.²⁰⁹ NEPA requires the responsible government agency to take a “hard look” at the record of evidence and arguments before it and to demonstrate “adequate consideration” of public comments in its decision. An agency responds to comments by modifying or reexamining the alternatives, making corrections where needed, or explaining why further agency responses are not needed.²¹⁰ More specific public consultation is provided by NEPA regulations. For example, agencies must “make diligent efforts to involve the public in preparing and implementing their NEPA procedure.”²¹¹ Further, public notice of “NEPA-related hearings, public meetings, and the availability of environmental documents” must be given to all interested persons.²¹² Where the project is large enough to produce effects of national concern (*e.g.*, establishing a National Wildlife Refuge), notice must include publication in the Federal Register. When effects are local, proper notice, such as publication in newspapers of general circulation, the local media, or another form of direct notice, is required.²¹³

The EIA system was introduced in South Korea by the Environmental Preservation Act of 1977;²¹⁴ however, the right of the public to participate in the process was not

²⁰⁴ The Århus Convention art. 6.2

²⁰⁵ 40 C.F.R. §§1501.7, 1503

²⁰⁶ 40 C.F.R. §§1501.7

²⁰⁷ 40 C.F.R. §1501.7(a)(1)

²⁰⁸ 40 C.F.R. §1503.1(a)(4)

²⁰⁹ 40 C.F.R. §1502.19

²¹⁰ 40 C.F.R. §1503.4

²¹¹ 40 C.F.R. §1506.6(a)

²¹² 40 C.F.R. §1501.6(b)

²¹³ 40 C.F.R. §1501.6(b)(3)

²¹⁴ The act established a “prior consultation” provision that the Minister responsible for a project, which has an adverse impact on the environment, must consult with the Minister of Health and Social Affairs (MOHSA).

provided until 1990 through the BEPA. Until 1993, the EIA law was one chapter of the BEPA; then the EIAA was enacted. The regulatory basis for public participation is found in Article 26 of the BEPA and Article 9 of the EIAA Regulation and a decree of the Minister of Environment. When project applicants prepare an EIA, the applicants collect public opinions by holding either an explanatory meeting or a public hearing.²¹⁵ However, when more than 30 citizens opt for a public hearing, the proponent shall provide such a public hearing.²¹⁶ When a public hearing is held, proponents shall provide a draft EIA to the Ministry of Environment, regional agencies, regional Environmental Administration, and lead agency.²¹⁷ In the public announcements of the draft EIA, regional agencies should announce the project overview, review period, and presentation method in two or more Korean newspapers within 10 days of receiving a draft EIA.²¹⁸ At least five copies of the draft EIA are to be placed in easily accessible locations in the area affected by the project.²¹⁹ The leading agency should post notices of possible opinions to project proponents when omitting the public review procedure.²²⁰ Public comments on the draft EIA deal with environmental impact and mitigation measures.²²¹ The regional agency arranges explanatory meetings or public hearings after reviewing the opinions and presents opinions to the lead agency. The lead agency calls a meeting, as necessary, and notifies project proponents of the final opinion.

²¹⁵ EIAA, art. 9. According to the NEPA, agencies must sponsor or hold public hearings/meetings whenever “appropriate or in accordance with statutory requirements applicable to the agency.” Criteria to determine the need for public meetings include substantial environmental controversy or public interest and requests from other agencies with jurisdiction over the project; 40 C.F.R. §1506.6(c) One of the criteria for determining “significance” under the CEQ regulations is “intensity” which includes, inter alia, “the degree to which the effects on the quality of the human environment are likely to be highly controversial.” 40 C.F.R. §1508.27(b)(4)

²¹⁶ Or more than 5 and less than 30 where half of the residents equals 5 to 30. EIA decree, art. 7.

²¹⁷ EIA decree, art. 4.

²¹⁸ The following standard format for draft EIA should be followed: (a) overview or summary of a project, (b) setting up affected area, (c) present environment condition and affected environment, (d) analysis and evaluation of alternatives, (e) analysis of environmental impact and mitigation, and (f) impact to residents’ living condition and property damage from environmental impact. *Id.*

²¹⁹ Review hours are 9:30 a.m. to 5:30 p.m. (4:30 p.m. in winter).

²²⁰ Ministry of Environment, 1991, Specific Guidelines for Operating of New Environmental Policy Act and its Implementation Order, art. 13.

²²¹ In-goo Kang, Myung-jin Kim, Kyu-chul Bang, *Public Participation in Environment Impact Assessment of Korea*, 2 *Environment Impact Assessment* 33(1998).

Figure 2 explains the South Korean EIA process as specified by the guidelines for implementing public participation under the BEPA.²²²

²²² Ministry of Environment, 1991, Specific Guidelines for Operating of New Environmental Policy Act and its Implementation Order.

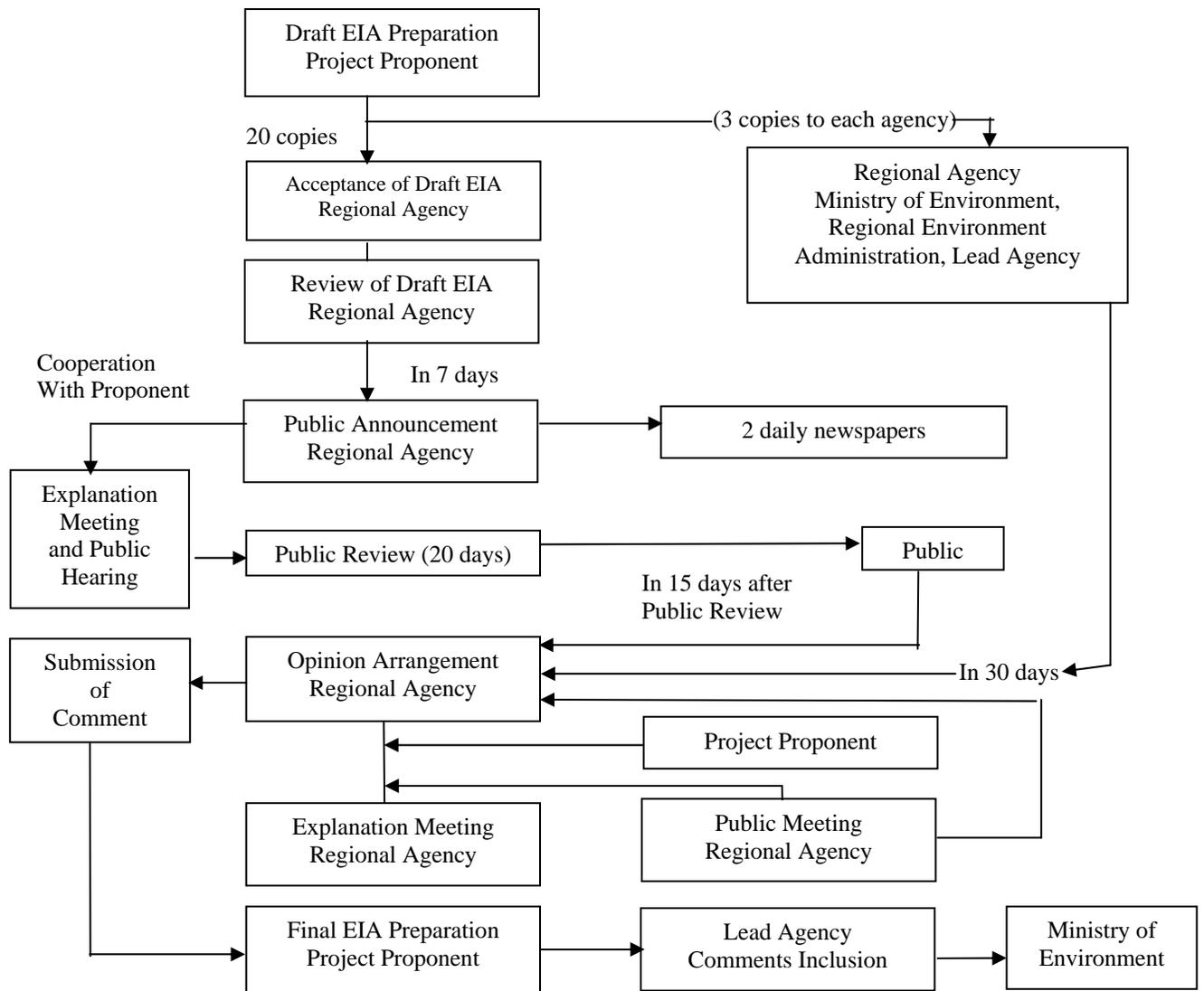


Figure 2. EIA Procedure in South Korea

As seen in the Figure 2, the BEPA EIA procedure and public participation system are basically similar to that of the NEPA and the Åarhus Convention; but it has some different aspects and problems to overcome as well. First, in scope, the EIAA takes a similar position to the Åarhus Convention by providing a required project list. The Åarhus Convention allows the public to participate in certain governmental decisions regarding the granting of permits to authorize certain activities.²²³ Annex I sets out the 22 activities covered, including energy production, waste management, paper and pulp production, transportation infrastructure development, water resource transfers, and other activities that could have a significant effect on the environment.²²⁴ The following projects, regulated by administrative decree according to size and potential to pollute, are subject to the EIA process: urbanization development, construction of industrial complexes, energy projects, port projects, water resource projects, development of watercourses, waste management, and sewage projects.²²⁵ In contrast, the US NEPA requires "a major federal action that significantly affects the quality of the human environment"²²⁶ for preparation of an EIS. The Council on Environmental Quality, which oversees the implementation of NEPA, broadly defines actions under federal control and responsibility as projects and programs entirely or partly financed, assisted, or approved by the federal government.²²⁷ Moreover, the NEPA encompasses adoption of official policies while the South Korean EIAA only enumerates physical projects. Therefore, NEPA comments and public hearings comprise public participation in both the rule-making and administrative decision-making processes.

Next, in South Korea, only residents living in the area affected by the proposed project can participate in the process or make comments. However, in the US, "those persons or organizations who may be interested or affected"²²⁸ may participate in the process. The Åarhus Convention goes further and allows the "public" or "public concerned" to be informed and to submit written comments to project applicants. The

²²³ The Åarhus Convention, art. 6.1 (a).

²²⁴ *Id.* Annex I.

²²⁵ EIAA, art. 9.

²²⁶ 42 U.S.C.A. §§4332

²²⁷ 40 C.F.R. § 1508.18(a).

²²⁸ 40 C.F.R. §1503.1(a)(4).

public refers to one or more natural or legal citizens and, in accordance with national legislation or practice, their associations, organizations, or groups; and the “public concerned” refers to the public affected by, likely to be affected by, or having an interest in the environmental decision.²²⁹ Moreover, the Convention gives definite standing to NGOs by adding that NGOs promoting environmental protection and meeting any national legal requirements shall be deemed to have an interest.²³⁰ Therefore, more participation is available under the Convention.

The South Korean EIA system must allow all people who have an interest in the matter to participate. Additionally, public opinion about the need to protect the environment must be changed from not only being concerned when one’s own interests are at stake but also to having a general interest in the environment. A change in public perception and opinion about the environment is the first step to greater public participation. Thus, if South Korea signs the Åarhus Convention, the scope of participants will be broadened and environmental NGOs will be allowed to have standing in court to further their activities.

Another major difference between South Korea and the US is the scope of the comments. In the US, participants are allowed to access to and an opportunity to influence the decision-making process at the early stages. This participation allows them to comment in favor of or against the project, or argue for a “no action” alternative, which stops action on the project altogether. However, in South Korea, participants are only allowed input after the initial decision to proceed with the project is rendered by the project proponents; thus, they are not given a “no action” alternative. Participants may only comment on the mitigating factors of the proceedings.

Presently, public participation announcements in South Korea are usually published in newspapers.²³¹ A more effective way would be to have a direct mailing to those affected. Another problem dealing with the draft EIA is that it is long and difficult for average people to understand. Thus, it would be beneficial if the report were written in non-technical language. Moreover, times for review are scheduled to conflict with the

²²⁹ Åarhus Convention, art. 2.4. and art. 2.5.

²³⁰ *Id.*

²¹⁴ Decree of EIA, art. 4 (2).

working hours of salaried employees;²³² therefore, providing draft EIAs via the Internet would allow for increased accessibility. In addition, it would be beneficial to extend the times of the public participation meetings since the turnout would be greater if the meetings were held on weekends, because in South Korea traffic and the stressful life of the average salaried worker would prevent those most affected from attending such meetings. To improve the environment, every citizen should have access to participate; thus, the government should take steps to ensure those affected are given every possibility of access. (Table 1 compares the public participation systems in the EIA systems of South Korea, the US, and the Aarhus Convention.)

Table 1: System Comparison of Public Participation in Environmental Impact Assessments

Contents	Korea	US	Åarhus Convention
Lead Agency	Regional Agency	Lead Agency	Domestic Legislation
Stages	Draft EIS	Scope and Review	Before Preparation
Method	Public Review, Explanation Meeting, Public Hearing	Public Hearing, Notice and Comments	Public Review, Public Examination, Public Hearing
Period	30 days	15 days before draft EIA	Domestic Legislation
Area	Affected resident	Affected resident	Public Concerned
Project	EIA Project on the List	Major Federal Action	Projects in Annex I
Public Hearing Participants	Public, Lead agency Ministry of Environment, Regional Environment Administration	Public, Lead agency, Related agency	Domestic Legislation
Public Hearing Process	Submission of Application Form 3 days in Advance	Explanation by Lead Agency, Comment By Public	Comment and Opinion Presentation in Writing
Opinion Scope	Mitigation Measure	No Action Alternative, Mitigation Measure	Domestic Legislation

²³² See *supra* note 219

On-the-record decision-making, or transparency, can play an important role in facilitating public participation. But for participation actually to affect the quality of the environment, the EIA process must also place substantive limitations on the decision-maker's discretion.²³³ This protects against arbitrary disregard of public comments and against capture of the process by real or apparent popular majorities that favor environmentally destructive courses of action.²³⁴ To avoid environment-blind adherence to public input, the EIA process should require that the government meaningfully consider and respond in writing to public comments, but not that the government necessarily follow the participating public's recommendations.²³⁵ A tyrannical majority can be as harmful to the environment as it can be to the rights of minorities in other contexts.²³⁶ Accordingly, although EIA is understood as procedural, ie, we are entitled to an informed decision, not a good one, rather than substantive, ie, the decision-maker should make the most environmentally sound decision;²³⁷ public participation should fit into an environmental scheme that includes substantive baselines.

Even though the current public participation system is reasonably effective, South Korean participation in the Åarhus Convention would broaden public participation and improve NGO standing without causing drastic conflict with the current system; thus, the benefits would outweigh the burdens. Moreover, as mentioned previously, wide implementation of public participation through the Åarhus Convention would transform South Korea's vertical hierarchy into a more open and transparent system.

4. *Access to Justice*

Access to justice usually means the right to be heard and to appeal decisions because of injury to person, property, reputation, or other rights. The right to obtain judgements from independent tribunals regarding rights and obligations is a well-recognized fundamental human right.²³⁸ It includes not only the right to be heard but also related rights, such as a fair and speedy trial, equal access, and non-discriminatory

²³³ Neil A.F. Popovic *supra* note 98

²³⁴ *Id.*

²³⁵ *Id.*

²³⁶ *Id.*

²³⁷

treatment in court. Therefore, the comprehensive definition of access to justice is, "All courts shall be open, and every person shall have an adequate remedy by due process of law and justice, administered without denial, partiality, or unreasonable delay, for injury to him in his person, property, reputation, or other rights."

Access to justice has two meanings in environmental jurisprudence: First is a right to legal remedy in relation to personal environmental injury, and second is a right to legal remedy in relation to environmental damage to the community, in other words, *actio popularis*, a public interest lawsuit. While general access to justice is a well-recognized fundamental human right,²³⁹ access to environmental justice is not. However, public participation in environmental matters is useless if citizens lack the right to seek effective judicial review for environmental harms. Even though laws provide citizens with access to information and participation, if the government were free to refuse the request of information without legal basis and ignore public comments, the public participation system would be a sham.²⁴⁰ Access to justice should serve as a mechanism for civil society to challenge government actors who fail to follow the rules that govern how development should be pursued as well as the rules that govern how the public is to be consulted.²⁴¹ Access to justice is also, in some cases, a remedy for citizens to challenge private parties or businesses that have failed to comply with environmental laws.²⁴² For these reasons, access to justice in environmental law has been recognized in the international realm. For example, the Rio Declaration,²⁴³ Lugano Convention,²⁴⁴ and Åarhus Convention have adopted access to justice in environmental law.

The Åarhus Convention is considered the most fundamental convention for public

²³⁸ Universal Declaration of Human Right, art. 7,8 and 10, The United Nations International Covenant on Civil and Political Rights, art. 14.

²³⁹ Universal Declaration of Human Rights, art. 7, 8, and 10, The United Nations International Covenant on Civil and Political Rights, art. 14.

²⁴⁰ Peter H. Lehner, *The Efficiency of Citizens Suits*, 2 ALB. L. ENVTL OUTLOOK 4 (1995).

²⁴¹ Eric Dannenmaier, *supra* note 93 at 31.

²⁴² *Id.*

²⁴³ Rio Declaration Principle 10 established general access to justice by proclaiming "effective access to judicial and administrative proceedings, including redress and remedy in environmental matters."

²⁴⁴ Lugano Convention art. 18 allows environmental organizations in national law of the Party to request: (a) the prohibition of a dangerous activity which is unlawful and poses a grave threat of damage to the environment; (b) that the operator be ordered to take measures to prevent an incident or damage; (c) that the operator be ordered to take measures, after an incident, to prevent damage; or (d) that the operator be ordered to take measures of reinstatement.

access to justice in environmental matters. It addresses two basic issues: the right to legal remedies in relation to access to information and the right to file public interest lawsuits. Article 9 gives citizens the legal remedy to seek review of information previously denied to them. Party countries must ensure that any person who has been wrongfully denied environmental information by a public agency has “access to a review procedure before a court of law or another independent and impartial body established by law.”²⁴⁵ Moreover, the Åarhus Convention allows citizens to judicially challenge any action by a public authority or private party that violates national environmental laws.²⁴⁶ Namely, the Convention asks the signatories to use a citizen suit system to accomplish public participation in court.²⁴⁷ This Article is the most far-reaching accomplishment of the Åarhus Convention’s access to justice provisions.

Next, the three legal mechanisms which provide access to justice in South Korea are presented: the personal environmental suit, the legal suit for refused access to information, and the public interest citizen suit. First, personal environmental suits are similar to those cases in the US that are handled as a nuisance in tort. The problem in South Korea is that environmental issues are new to the courts; thus, many judges are unfamiliar with environmental laws and rules. Therefore, judges and lawyers in the field of environmental law need training to develop an awareness of the rights of access to justice. Arising problems have created a need to establish a special Environmental Court with newly trained judges and lawyers. A number of environmental courts already exist outside Korea. For instance, some countries have independent environmental courts, such as the Land and Environmental Court in New South Wales, Australia, and Brazil’s first Federal Justice Court exclusively for environmental issues in Corumba City, Matto Grosso do Sul.²⁴⁸ In the United States, several states have established such courts. For example, the State of Vermont has an Environmental Court,²⁴⁹ the Shelby County Environmental

²⁴⁵ Åarhus Convention, art. 9(1).

²⁴⁶ *Id.*, art. 9(3).

²⁴⁷ In addition and without prejudice to the review procedures referred to in art. 9(1), each Party shall ensure that, where they meet the criteria, if any, laid down in its national law, 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. Remedies for refusals by public or private entities include injunctions and other forms of equitable relief that are effective and not excessively expensive; art. 9(3) and 9(4).

²⁴⁸ Available at <http://www.forests.org/archive/brazil/brinfirs.htm>

²⁴⁹ See <http://www.state.vt.us/courts/environ/envcrt.htm>

Court in Memphis, Tennessee, was founded in 1983;²⁵⁰ and Westchester County announced the opening of new environmental court on March 15, 2001.²⁵¹ South Korean law also provides for the establishment of special courts for environmental jurisdiction in the Court Organization Act. Establishment of a special Environmental Court in South Korea would be a major breakthrough for environmental protection and public participation.

The next issue is access to justice for redress of a refusal by the government to provide access to information. As mentioned previously, access to justice is implemented through the AIDA, which provides a remedy for refusal of information. The three remedies are petition, adjudication, and administrative action. If access to information is refused by a governmental agency, a person may petition that government agency within 30 days of the refusal. The governmental agency has seven days within which to respond to the petitioner in writing. If the agency rejects the petition, it must give written notice to the petitioner. The petitioner may either opt to adjudicate the refusal or to bring administrative action. If petitioner opts to adjudicate, the head of the governmental agency will decide the matter; if petitioner brings an administrative action, the Administrative Court has jurisdiction.

The final mechanism is the public-interest lawsuit system, which South Korea does not currently have. The preeminent example of the public interest lawsuit may be found in the citizen suit provisions of most US environmental laws. Professor Joseph Sax first developed the idea of the modern citizen suit system over 30 years ago.²⁵² He pointed out two factors, budgetary constraints and political forces, which tend to impair the ability of governmental agencies to enforce environmental laws.²⁵³ He argued that courts should play a role in providing a neutral forum to decide environmental conflicts, and advocated granting citizens the authority to sue both those whose actions degrade the natural resources of the public trust and those who violate specific environmental laws.²⁵⁴

²⁵⁰ Available at http://www.co.shelby.tn.us/county_gov/court_clerks/gen_sessions_court/envirocourt/

²⁵¹ Available at <http://www.globest.com/RMI72O4N8KC.html>

²⁵² Peter H. Lehner, *supra* note 240 at 4-5.

²⁵³ *Id.*

²⁵⁴ Peter H. Lehner, *supra* note 240 at 5.

The citizen suit system was introduced in Section 304 (a) of the US Clean Air Act of 1970.²⁵⁵ This section provides for two types of suits. First, citizens can sue the Environmental Protection Agency for failing to perform non-discretionary duties, such as failing to promulgate regulations by the deadlines specified in the legislation.²⁵⁶ Second, the Act allows citizens to sue air pollution emitters for violating the statute as embodied in source-specific limitations in the State Implementation Plan.²⁵⁷ The 1990 Clean Air Act Amendments provide for permit limitations and monitoring requirements that are more easily enforced in citizen suits.²⁵⁸

This citizen suit system gives the public the ability to facilitate the citizen's role in the enforcement of the Act, by renouncing those concepts that make federal jurisdiction dependent on diversity of citizenship and jurisdictional amount, and by lowering the barrier to citizen suits that might be presented by general standing requirements.²⁵⁹ At the same time, because of the obvious danger that unlimited public actions might disrupt implementation of the Act and overburden the courts, Congress restricted citizen suits to actions seeking to enforce specific requirements of the Act and conditioned their commencement on the provision of a 60-day notice to the Administrator, the local enforcement agency, and the polluter.²⁶⁰ The notice requirement was intended to further encourage and provide for agency enforcement that might obviate the need to resort to the courts.²⁶¹

According to legislative history, the citizen suit was designed to provide a procedure permitting any citizen to bring an action directly against polluters violating the

²⁵⁵ 42 U.S.C. §7604 (1988 & Supp. V 1993).

²⁵⁶ See, e.g., *NRDC v. EPA*, 797 F.Supp 194 (E.D.N.Y. 1992) (suit to require promulgation of automobile inspection and maintenance guidance).

²⁵⁷ 42 U.S.C. §604(a)(1)(A) (Supp. V 1993). Because the Clean Air Act sets ambient air quality goals, rather than specific emission limitations, dischargers cannot literally violate any provision of the Act. However, the Act does require states develop State Implementation Plans that establish source-specific emission limitations. See *Coalition Against Columbus Center v. City of New York*, 967 F.2d 764, 769 (2d Cir. 1992) (holding citizen suits must allege a violation of a specific source's limitations under the NAAQS or requirements set in an accepted State Implementation Plan).

²⁵⁸ 42 U.S.C. §7414 (1988 & Supp. V 1993).

²⁵⁹ *NRDC v. Train*, 510 F.2d 692, 700.

²⁶⁰ *Id.*; See Jeffrey G. Miller, *Private Enforcement of Federal Pollution Control Laws: The Citizen Suit Provisions*, Environmental Litigation, June 21, 1999; See also Jeffrey G. Miller, *Private Enforcement of Federal Pollution Control Laws: The Citizen Suit Provisions*, SD88 ALI-ABA 819 (1999).

²⁶¹ S. Rep. No.1196, 91st Cong., 2d Sess., 36 (1970), reprinted in *Environmental Policy Division of the Congressional Research Service, A Legislative History of the Clean Air Amendments of 1970*, Vol. I, at 436 (1974) (remarks of Senator Muskie).

performance standards and emission restrictions imposed under the law or against the Administrator, grounded on his failure to discharge his duty to enforce the statute against polluters.²⁶² The legislative history of the Clean Air Act Amendments reveals that the citizen suit provision reflects a deliberate choice by Congress to broaden citizen access to the courts as a supplemental and effective assurance that the Act would be implemented and enforced.²⁶³

The citizen suit was a useful tool to protect environment, especially in the standing of environmental organizations to sue; and nonprofit organizations had to be institutionally ready to take advantage of the opportunity.²⁶⁴ Over the last decade, by contrast, federal courts restricted citizen suits through both their interpretations of citizen suit provisions and their rulings on constitutional standing.²⁶⁵ However, the citizen suit still plays an important role in developing and protecting environmental law because it provides citizens with access to judicially challenge a broad range of acts by a public authority or private party. They provide the citizen a final opportunity to protect the environment. Citizen suits vindicate the right of access to justice, and are an admirable example of participatory democracy.

Some doubt that the US' experience with environmental citizen suits, which allow citizens to act as private attorneys, would work in other countries; but there is substantial evidence to the contrary. In Chile in 1997, an environmental NGO sued under a constitutional provision guaranteeing a healthy environment and halted a major timber concession because the state environmental agency had not issued a legal environmental impact permit.²⁶⁶ In fact, no implementation regulations were ever issued for the process under Chile's 1995 Basic Environmental Law; and the Supreme Court found the permit was de facto illegal.²⁶⁷ The regulations had been overdue for two years after the law was

²⁶² *Id.*; Senate Consideration of the Report of the Conference Committee, Dec. 18, 1970 (remarks of Senator Muskie).

²⁶³ *Id.*

²⁶⁴ See Sam Kalen, *Standing on Its Last Legs: Bennett v. Spear and Past and Future of Standing in Environmental Cases*, 13 J. LAND USE & ENVTL L. 1 (1997).

²⁶⁵ *Id.* Moreover, Congress did not fling the courts' door wide open. The new provision for citizen suits, section 304(a), was hedged by limitations, the confinement to clear-cut violations by polluters or defaults by the Administrator; and the accompaniment, set section 321 forth in section 304(b), of a condition of notice; See Clean Air Act sections 304(a) and 304(b), 42 U.S.C. §§ 1857h--2(a), 2 (b) (1970).

²⁶⁶ See Eric Dannenmaier, *supra* note 93.

²⁶⁷ *Id.*

passed; yet, they were issued within weeks of the Supreme Court ruling invalidating the concession.ⁱ

Similar to Chile, South Korea has problems with its environmental law. First, South Korea has no comprehensive theory for protecting and preserving the environment like the US Public Trust Doctrine, except for a constitutional right to a healthy and clean environment.²⁶⁸ However, the Korean Supreme Court has consistently stated that the constitutional environmental right is not self-executing.²⁶⁹ The second problem is a standing issue. As far as environmental protection is concerned, the most important issue in access to justice is to have standing without having to state an individual interest.²⁷⁰ Just as the US courts did prior to the *Data Processing Service*²⁷¹ decision, South Korean courts presently apply a “legal interest” test for prudential standing, thereby prejudicing environmental interests. In other words, a plaintiff seeking redress for environmental harm must demonstrate injury to a legally protected interest in order to obtain judicial review of governmental agency action. Unless an interest is founded in a statute interpreted to protect the interest of a private individual, the individual cannot seek judicial review of governmental agency action,²⁷² meaning that individuals affected by a project cannot sue the government when it grants the permit for the project because statutes are not interpreted to take into account the interests of local residents or the public.²⁷³ Such obstacles must be overcome for environmental victims to command substantial protection from environmental degradation. Given the high level of public awareness of the significance of environmental protection, the courts’ activism and creativity may make a difference in Korea’s environmental quality by filling a void in the law.²⁷⁴

One of the achievements of the Åarhus Convention is the establishment of environmental NGO’s standing. Article 9(2) of the Åarhus Convention obligates the parties to provide access to justice to members of the public having either a “sufficient

²⁶⁸ Hong Sik Cho, *An Overview of Korean Environmental Law*, 29 ENVTL L. 501, 510 (1999).

²⁶⁹ *Id.*

²⁷⁰ Jendroska, *supra* note 118.

²⁷¹ *Association of Data Processing Service Organization, Inc. v. Camp*, 397 U.S. 159, 90 S.Ct. 827, 25 L.Ed.2d 184.

²⁷² Hong Sik Cho, *supra* note 268.

²⁷³ *Id.*

²⁷⁴ *Id.*

interest” in a matter or “maintaining impairment of a right.”²⁷⁵ Parties must determine whether an applicant has sufficient interest, or maintains that a right has been impaired, in accordance with the requirements of national law and consistent “with the objective of giving the public concerned wide access to justice within the scope of the Convention.”²⁷⁶ Many environmental NGOs will meet the definition of “the public concerned” in Article 2(5) of the Convention.²⁷⁷ Moreover, NGOs may also have rights capable of being impaired for the purposes of invoking Article 9(2).²⁷⁸

Consequently, to address these legal problems, South Korea should sign the Åarhus Convention and implement its provisions by establishing a citizen suit system. Moreover, for civil society, access to justice is a powerful tool and a fundamental element of public participation. Adoption of the Åarhus Convention would be advantageous to the development of a more efficient environmental law system in South Korea. As people choose the court as an appropriate medium for resolving environmental rights claims, the basic environmental rights of the individual will be successfully protected.

²⁷⁵ Åarhus Convention, art. 9(2).

²⁷⁶ *Id.*

²⁷⁷ Article 2(5) defines “the public concerned,” which includes “non-governmental organizations promoting environmental protection and meeting any requirements under national law.” It is not clear what national legal requirements are intended by this paragraph, though it may refer to nationally prescribed requirements for the formation of such organizations.

²⁷⁸ *Id.* art. 9(2).

B. Application of Public Participation in North Korea

1. Introduction

This chapter discusses how environmental law, including public participation, could be implemented in North Korea. While the previous section discussed South Korean public participation in environmental law and the potential benefits of ratifying the Aarhus Convention, this chapter addresses the possibility of developing a viable public participation system in North Korea through an examination of environmental issues that may arise during the process of unification. This thesis focuses on how to bring about improved environmental laws in North Korea rather than discussing that nation's public participation system because of the lack of information regarding public participation and the belief that existing environmental laws and regulations are not implemented adequately due to North Korea's economic situation. Therefore, in the author's opinion it is more useful to discuss how North Korean environmental laws work and how the environment can be protected rather than to discuss just legal systems.

During the Korean unification process,²⁷⁹ some adverse effects to the environment are anticipated, resulting primarily from economic development measures in the North Korea. South Korea learned by experience, which it could share with the North, that environmental laws, such as those requiring environmental assessment and public participation, can reduce the adverse effects of development. The economic development in North Korea can be divided with two categories: economic development in cooperation with South Korea or foreign countries and domestic economic development. It is believed that foreign development would begin first, with domestic development to follow using accumulated capital from the former.

After the two Koreas began trade with each other in the 1990s, their trade volume increased rapidly; moreover, since the first summit meeting between Kim Dae-jung and Kim Jong-il in 2000, the peaceful relationship established under the Sunshine Policy has

²⁷⁹ There are three possible scenarios to reunification—namely, absorption; accession, which is from the old art. 23 of Western German Constitution; and reunion—in step by agreement. Both governments have similar reunification policies, in stages by agreement. They learned from observing the adverse effects, including high reunification costs and culture shock, of Germany's sudden absorption method of reunification. The process of reunification by stages advocates reconciliation by peaceful talks, confederation system, federalization, and one government by national poll. Jang-Hie Lee, *Legal Study to Prepare the North-South Confederation Stage*, 3 LAW REVIEW OF ASIAN SOCIAL SCIENCE RESEARCH INSTITUTE 44 (1995).

supported more economic cooperation between two Koreas. Already cooperation between the two economies has progressed rapidly. The total volume of intra-Korea trade for the first quarter of 2001 was \$76 million, and it is expected the total volume of intra-Korea trade for 2001 will exceed \$350 million.²⁸⁰ Such figures prove that South Korea is slowly becoming a major economic trade partner of North Korea. The trade volume with South Korea is extremely high for North Korea, whose major trade partners to date have been China and Russia. At the end of 2000, 41 South Korean firms had earned “cooperation partnership status” and 15 had earned “cooperation project status” from the South Korean government.²⁸¹

Thus far, major economic cooperation has been limited to the trade of goods; however, once direct investment is more freely attainable, many South Korean manufacturers will move their plants into North Korea for economic reasons, including cheaper land prices, low labor costs, and favorable cultural conditions such as a common language. Fewer environmental regulations will also be an attractive factor. Environmental issues might arise from this economic cooperation. Of special concern, many environmental injustices will arise if South Korean businesses relocate to North Korea because of North Korea’s inferior environmental regulation standards. For example, South Korean companies might move to North Korea because South Korean air pollution laws are stricter. Another environmental injustice concern would be the practice of South Korean industries of exporting hazardous waste to North Korea to save money. North Korea already imported nuclear waste from Taiwan in 1997 for economic reasons. Although North Korea needs the foreign currency and has attracted South Korean industry, environmental degradation is expected.

Improving public participation and environmental laws in North Korea would have other benefits besides providing protection of its natural resources. Poverty, an issue of human rights, would decrease in response to economic development. In addition, adopting public participation in the environmental protection process would benefit North Koreans by improving governmental accountability and transparency in the decision-making process and encouraging a Western democratic style of government. Any North Korean

²⁸⁰ Available at <http://www.unikorea.go.kr/cgi-kr/body.cgi?39C39/C396.htm>

²⁸¹ *Id.*

movement toward a more democratic form of government would contribute to easing political tensions in the Korean peninsula.

In brief, this section discussed environmental law issues that might arise during North Korean economic development. As an initial step in cooperation between North and South Korea on environmental matters, this thesis proposes a possible project, the Ecological Peace Park in the Korean Demilitarized Zone. Its establishment would not only preserve the natural areas surrounding the DMZ but also reduce the military tension between the two Koreas. Further, it could help build a basis for public participation across the DMZ and secure the environment of the DMZ as a natural heritage of all Korean people, fulfilling one aspect of their environmental right to a sound environment.

2. Implementing Public Participation in North Korea

The first legal issue to consider is whether the relationship between North and South Korea is international or domestic. The two Koreas have their own constitutions and forms of government and became members of the United Nations separately in 1992. However, neither government recognizes the other as a separate nation. The Constitutional Law of South Korea still defines its territory as a unified Korean peninsula.²⁸² The article interprets the division of the northern part of Korea that is occupied by North Koreans as illegal. However, in 1991 North and South Korea agreed upon reconciliation.²⁸³ In the agreement, North and South Korea agreed to recognize and respect the other's systems and pledged to exert joint efforts to achieve peaceful unification.²⁸⁴ According to the preamble to the agreement, their relationship, not being a relationship as between countries, is a special one constituted temporarily for the process of unification.²⁸⁵ Therefore, even though North and South Korea act and are treated as independent countries on the international level; when dealing with strictly inter-Korean matters, they employ a split domestic/international approach. For example, in its official government response to the World Trade Organization regarding the favorite treatment of

²⁸² South Korean Constitution, art. 4.

²⁸³ Agreement on Reconciliation, Nonaggression, and Exchanges and Cooperation between South and North Korea, (Signed on December 13, 1991, and entered into force on February 19, 1992) (hereinafter, Agreement).

²⁸⁴ Preamble and art. 1 of the Agreement

inter-trade between North and South Korea, South Korea requested that the World Trade Organization regard this relationship as special, falling within the exemptions of General Agreement on Tariffs and Trade rules.²⁸⁶

Since the legal relationship between the north and south falls between a domestic and international one, where the issue pertains to South Korean businesses in North Korea, South Korean environmental laws, including public participation, could be applied. Even though North Korea has recognized the necessity of environmental law and public participation and has legal regulations on public participation,²⁸⁷ it is uncertain whether North Korea implements a viable EIA program due to its poor economic situation. It is still unclear whether North Korea will implement EIA and public participation in a joint economic program with South Korea. Thus, when enforcement of North Korean environmental law is doubtful, the South Korean government could enforce South Korean environmental laws and regulations upon any South Korean industry operating in North Korea. Moreover, when South Koreans wish to do business in North Korea, they must earn “cooperation partnership status” or “cooperation project status” from the South Korean government to begin operations.²⁸⁸ In order to reduce environmental pollution in the North, the South Korean government could require that South Korean businesses planning to operate facilities in North Korea obey South Korean environmental laws as a prerequisite to obtaining cooperation status. Likewise, applying domestic South Korean hazardous waste transaction regulations could resolve the issues surrounding the export of hazardous wastes from South to North Korea.

Even though environmental degradation and injustice issues that occur as a result of economic cooperation in North Korea could be resolved by applying South Korean environmental laws, environmental problems that arise in North Korea due to independent development could not be reduced this way. Such problems could only be solved with the application of North Korean environmental law and enforcement. It would not be easy unless many fundamental aspects of an environmental infrastructure are provided: environmental education to the public; environmental training for environmental experts,

²⁸⁵“Recognizing that their relationship, not being a relationship as between states, is a special one constituted temporarily in the process of unification;” paragraph 6 of preamble of Agreement.

²⁸⁶ Available at <http://www.unikorea.go.kr>

²⁸⁷ See Chapter II. B.2. Environmental laws in North Korea.

judges, and government officers; and strict government enforcement. In establishing an environmental infrastructure, North Korea could benefit from cooperation with South Korea and the international community. First, financing from multi-national development banks (MDBs), such as the World Bank or Asian Development Bank, to North Korea could be an opportunity for North Korea to apply environmental law to the financing of economic development projects in North Korea. Second, joint management of the DMZ between the Koreas as an ecological park could be another opportunity for environmental cooperation. The first is examined in this sub-section, and the second one is introduced in the next sub-section.

Today, it is accepted as sound banking practice that MDBs should take into account non-economic factors resulting from an international financial project. When proposed projects entail economic consequences, the World Bank and Asian Development Bank consider non-economic factors when giving loans (*e.g.*, social and cultural consequences, including the environment).²⁸⁹ The Asian Development Bank's Operations Manual on governance noted, "it is not prohibited that the Bank from taking into account the demonstrable and direct economic effect from non-economic factors as part of 'economic consideration' on which it must base its decision."²⁹⁰ MDBs have considered purely and simply the promotion of "sustainable development" rather than "economic development."²⁹¹ In any event, in practice, MDBs routinely make investment decisions based, *inter alia*, on sensitive "non-economic" considerations, such as environmental protection, transparency of public participation in decision making, governmental accountability, and, increasingly, distribution of income and public corruption. Many of these reflect basic human rights concerns; and there is no denying that certain human-rights-related conditions have undeniably become part of MDBs' routine loan considerations.²⁹² These human rights concerns are represented by poverty reduction, disclosure of information, and public participation requirements.

²⁸⁸ The Act of Exchanges and Cooperation between North and South Korea, art. 16.

²⁸⁹ Ibrahim F.I. Shihata, *Democracy and Development*, 46 INT'L & COMP L. Q. 635 (1997).

²⁹⁰ Asian Development Bank, Operations Manual-Bank Policies (BP): Governance, OM 5/BP, para. 12 (1997).

²⁹¹ Gunther Handl, *The Legal Mandate of Multilateral Development Banks as Agent for Change Toward Sustainable Development*, 92 AM. J. INT'L L. 642,720 (1997).

²⁹² *Id.*

Moreover, MDBs require their borrowers to conduct EIAs for proposed projects that may have significant adverse effects on the environment.²⁹³ The assessment is designed to minimize the adverse environmental effects of the project, improve its design and implementation, and ensure that World Bank-financed projects comply with relevant international environmental laws.²⁹⁴ In 1989, the World Bank codified requiring the completion of an Environment Assessment before appraising a project for financing; the code was further refined in 1991.²⁹⁵ Since then, any project that “may have diverse and significant environmental impacts” (category A) requires full-scale environment assessment. Projects that may have specific impacts deemed insignificant (category B) still require environmental analysis. Only projects with no discernible environmental impacts (category C) are exempt from such requirements.

There are also strict procedures on the early timing of the preparation of the required reports and, more recently, on their availability to the public at large.²⁹⁶ These detailed assessments enable the borrower and the World Bank to identify the environmental impact of a proposed project at an early stage and to devise appropriate measures to minimize the adverse effects and enhance the benefits to the environment that could result from the project. Moreover, since 1989, the World Bank has required borrowing governments “to take the views of affected groups and local NGOs fully into account in project design and implementation, and in particular in the preparation of Environment Assessments.”²⁹⁷ In 1991, it was clarified that this consultative process

²⁹³ World Bank, World Bank Operational Policy, Environmental Assessment (January 1999), available at <http://www.worldbank.org/html/extdr/projects.htm>

²⁹⁴ Moreover, for some projects, financing is conditioned on the development of environmental management plans (EMPs) that outline the measures and actions that are required during the project's implementation in order to minimize and mitigate the adverse environmental impacts. These EMPs should include a description of what the anticipated environmental impacts are, how institutional responsibilities will be apportioned, where the funding for implementation will come from, and what types of external assistance will be available to the host country, if requested. (*Id.* Annex C) The EMP is then incorporated into the project agreement and depends upon the host country to monitor its implementation. Over the last decade, the World Bank has been expanding its strategy to include looking beyond the environmental concerns from specific projects. It plans to continue this expansion and systematically include environmental analyses in the economic analyses it conducts before it approves loans. See John Horberry, *Monitoring and Environmental Management Plans in the EA Process Applied to Development Aid Projects*, 12 EIA NEWSLETTER 2 (1996), available at <http://www.art.man.ac.uk/eia/newslet.htm>

²⁹⁵ *Id.*

²⁹⁶ *Id.*

²⁹⁷ Operational Directive 4.01: Environment Assessment, October, 1991, at para. 19.

should take place both during the preparation of the assessment report and after the issuance of the report in draft form (prior to finalization). The more recent requirement of making the final reports available to the public gives other interested parties, such as foreign NGOs, the opportunity to discuss their comments with the borrower and the World Bank.

In addition to the World Bank's own initiatives to foster EIA, the US House of Representatives has introduced a bill that would reduce US funding to the World Bank if it approves projects that are likely to have a significant adverse environmental impact, as determined by the US Environmental Protection Agency or the US Agency for International Development. The bill would also require the US executive director at the World Bank to oppose any project for which the World Bank has not made the EIA, feasibility studies, and other information available for at least 120 days prior to a final decision by the World Bank Board.²⁹⁸

In brief, MDBs could help implement environmental laws, including public participation, and protect the North Korean environment from the adverse effects of reckless development. Through the MDB requirements for public participation and EIA for financing projects, the North Korean government would be able to slowly integrate such laws into its own infrastructure, which would promote economic development, human rights, and environmental protection. Moreover, this would be a major opportunity for North Korea to reduce its level of poverty and other inter-country problems, so long as the use of the funds is regulated and enforced for the use of the proposed developmental projects. Therefore, MDB financing could contribute not only to the development of North Korean environmental law but also to economic development. Moreover, this support from the international community would be good opportunity to induce North Korea to join the international community.

If this concept works, benefits would come in three areas—economic, environmental, and democratic development—thus meeting the purpose of sustainable development because the notion of sustainable development, as introduced in *Our*

²⁹⁸ *Bill Would Cut Funding if World Bank Ok's Environmentally Harmful Projects*, Daily Env'l Rep. (BNA), Oct. 4, 1999, at A-1, n. 191.

Common Future in 1987,²⁹⁹ presupposes simultaneous development between environmental protection and economic development. Sustainable development may be maintained through the careful management of the environment for intergenerational equity. Its ultimate purposes are to redress the adverse effects of development and to simultaneously complete the goal of economic development—a rise of quality of life. Therefore, MDB financial assistance for the infrastructure of North Korea, which would raise the quality of life and environmental protection, would meet the requirements for sustainable development. Moreover, when *development* is understood by its broader meaning, which includes not only economic development but also all forms of human progress and quality of life, the formation of a democratic system would also be considered development.³⁰⁰ Public participation might further democracy in North Korea because it would contribute to the development of a democratic form of government by allocating to citizens the opportunity to make decisions and be heard on issues relating to their welfare. Therefore, MDB financing in North Korea would bring development in the economy and government as well as environmental protection because public participation is critical not only for sustainable development but also for governmental accountability and transparency.

3. *A Joint Project in the Korean DMZ*

a. Introduction

This section introduces the International Ecological Peace Park in the Korean DMZ as a joint project between North and South Korea that could be a model for cooperation in environmental law through joint management. This study is prepared by the author and Nicholas A. Robinson, chairman of the Commission on Environmental Law of the IUCN. The IUCN is working on this project with both Koreas; and the South Korean government announced its willingness to establish the Ecological Peace Park in the DMZ in October, 2001. The IUCN has arranged a seminar on this project with North Korean participation for late in 2002.

²⁹⁹ UNITED NATIONS WORLD COMMISSION ON ENVIRONMENT AND DEVELOPMENT, *OUR COMMON FUTURE* (1987). It is the report of the World Commission on Environment and Development also known as the Brundtland Commission.

³⁰⁰ Ibrahim F.I. Shihata, *supra* note 289.

This project would play a critical role in not only preserving the natural environment in the DMZ but also providing an opportunity for North Korea to learn from South Korean environmental experience in the field of environmental law through joint management of the park. Ultimately, it would strengthen environmental protection and regulations in North Korea, including the public participation system. Moreover, it would contribute to peace between the Koreas by dissolution of tensions through cooperation in maintaining the DMZ.

The DMZ has become a flourishing nature reserve that is home to numerous animals and plants since nature was restored to its primitive state by the non-interference of man after the signing of the Armistice Agreement in July 1953. The 155-mile DMZ, which has separated the Korean peninsula from east to west for the past 48 years, could either become a target for some form of development or become a place of national unity and nature conservation during the process of unification. Preservation of the DMZ is necessary not only because of its ecological value but also because of its symbolic value for peace. The South Korean government is considering the designation of the DMZ as a Transboundary Biosphere Reserve under UNESCO or as a Protected Area Category I of the IUCN with international cooperation.

b. Geological and Ecological Conditions in the DMZ

The 155-mile long, 2.5-mile wide DMZ³⁰¹ is located in the middle of the Korean peninsula with an area of around 98,400 hectares. To the south of the DMZ, an additional Civilian Control Zone (CCZ) of varying width, averaging 5.4 kilometers comprising 133,850 hectares, has also remained relatively undeveloped. A similar CCZ is assumed to be to the north. If there is a CCZ of similar size to the north of the DMZ, the combined area of the DMZ plus the associated CCZs could be 366,100 hectares. The estimated combined area, a well-preserved greenbelt, would constitute 4% of the Korean peninsula.

The ecosystems in the DMZ have been preserved without interference for 48 years; therefore, it has become an important refuge for a substantial number of flora and fauna. The South Korean government and scientists have carried out systematic biodiversity surveys in the CCZ since 1967. International efforts also went into wildlife research,

³⁰¹ 246 kilometers, 4 kilometers

especially on cranes around the DMZ. Rare species of swans (*Cygnus bewickii jankowskii*), cranes (*Grus japonensis*), and white-naped cranes (Natural Monument No. 203 or *Grus uipio* and *Aquila chrysaetos japonica*) live in Taesong-dong and P'anmunjom.³⁰² Table 2 shows the various habitants and endangered species in Korean DMZ.

³⁰² *Accidental Sanctuary*, 4 Audubon 98 (1996); see also Hiroyoshi Higuchi et al., *Satellite Tracking of White-naped Crane Migration and the Importance of the Korean Demilitarized Zone*, 3 Conservation Biology 10 (1996); How Korea's Demilitarized Zone Became a Lush Wildlife Sanctuary, 5 International Wildlife 1 (1975).

Table 2. Habitants of the DMZ

<p>Vertebrates:</p>	<p>Fishes – 83 species (18 endemic species) (61% of 135 species Korean fauna) Amphibians – 10 species (66% of 15 species Korean fauna) Reptiles – 13 species (48% of 29 species Korean fauna) Birds – East with 51 species (67% Korean fauna); Coast 34 species; Central 56 species; West Coast 101 species (383 species Korean fauna) Endangered species: Chinese egret (<i>Egretta eulophotes</i>) Black-faced spoonbill (<i>Platalea minor</i>) Red-crowned crane (<i>Grus japonensis</i>) White-naped crane (<i>Grus vipio</i>) Swan goose (<i>Anser cygnoides</i>) Spotted greenshank (<i>Tringa guttifer</i>) White stork (<i>Ciconia boyciana</i>=<i>C. ciconia</i>). Mammals – 51 species (67% of 76 species Korean fauna); Endangered or extirpated species: Black bear (<i>Selenarctos thibetanus ussuricus</i>) Musk deer (<i>Moschus moschiferus caudatus</i>) Mountain goat and flying squirrel Unconfirmed sightings of those reported to be extirpated include Korean (Siberian) tiger, leopard, and leopard cat.</p>
<p>Vascular plants:</p>	<p>1,170 species; 353 species (37% of 3161 species Korean flora); 41 endemic species; 40 rare species.</p>
<p>Arthropods:</p>	<p>Insects: <i>Mantodea</i> (mantids) – 4 species; <i>Phasmida</i> (phasmids) – 2 species; <i>Dermaptera</i> (earwigs) – 9 species; <i>Blattaria</i> (cockroaches) – 4 species; <i>Isoptera</i> (termites) – 1 sp.; <i>Neuroptera</i> – 13 species; <i>Orthoptera</i> – 65 species; <i>Diptera</i> (true flies) – 38 species; <i>Hymenoptera</i> (bees, wasps) – 158 species; <i>Lepidoptera</i> (butterflies, moths) – 78 species</p>

c. The Legal Status of the DMZ

The DMZ was established as a buffer to prevent the occurrence of incidents that might have led to a resumption of hostilities after the Korean Armistice Agreement of 1953.³⁰³ According to the Agreement, the DMZ is under the joint control of North Korea, China, and the United Nations Command (UNC).³⁰⁴ In the current de facto situation, North Korea controls the northern part of the DMZ; and the southern part is under joint control of the UNC and South Korean Army. Recently new general-level negotiations have been initiated at UNC suggestion, at which four general-level officials will represent the UNC and four the Communist side. UNC representatives from South Korea, the US, Britain, and a UNC member country have been covering armistice and other issues, such as control of the DMZ, for five years instead of the Military Armistice Commission.³⁰⁵ Therefore, even if Armistice Agreement is legal, it is currently not being fully implemented.

The most fruitful avenue for discussions on DMZ matters is direct negotiations between North and South Korea. Both nations signed the Agreement, which proclaims that a South-North Joint Military Committee shall implement peaceful use of the DMZ and that the two parties shall cooperate in diverse fields, including protecting the environment.³⁰⁶ Therefore, the legal status of the DMZ created by the Armistice Agreement and controlled by the Armistice Agreement Commission has evolved, and the DMZ is now under the control of North and South Korea, with the support of the UNC. Recently, South Korea's Minister of National Defense, Cho Seong-tae, held the first round of talks with his North Korean counterpart Kim Il-chul. The two agreed to set up a working committee to deal with issues related to the clearance of land mines in the

³⁰³ Korean Armistice Agreement in 1953, art. 1.

³⁰⁴ The bilateral peace negotiations between North and South Korea may be seen as a forum in which to examine the future status of the DMZ more usefully than the structures of the Armistice. For instance, the parties to the Armistice Agreement are the UNC (with the United States speaking on its behalf), North Korea, and China while South Korea severely opposed the truce negotiation. Therefore, formally in a narrow legal sense, it is only these three parties that are now in a position to decide the disposition of the DMZ. However, North Korea has chosen not to attend the Military Armistice Commission (MAC) meeting since 1991 when a South Korean major general was named senior representative to the MAC as a UNC participant. Moreover, North Korea announced it would give up its exercise of joint control of the DMZ on April 5, 1996, because of its disagreements with the functioning of the Military Armistice Commission.

³⁰⁵ 3/13/98 Korea Herald (Pg. Unavail. online), 1998 WL 7565119 The Korea Herald *North Korea Accepts UNC Proposal for General-Level Talks*.

³⁰⁶ The Agreement, art. 12 and 16.

corridor through which the Seoul-Shinuiju railroad and Munsan-Kaesong highway will pass. Peaceful use of the DMZ and the establishment of a military committee were on the negotiating table.³⁰⁷ Thus, the establishment of a protected DMZ is the subject of current talks between the two governments; and the future of the DMZ's biodiversity depends entirely on the political decisions of South and North Korea.

d. Designation for the Ecological Peace Park

Originally a rice-farming area, the DMZ is unique in that the animals and plants and the forest revived during complete human absence. While other ecosystems are being destroyed worldwide, the DMZ is a flourishing ecosystem that will provide valuable research about restoring damaged ecosystems. As mentioned above, the DMZ is not only valuable as a refuge to wildlife, including endangered species, but also as a symbol of peace.

The protection of the DMZ is, of course, not a novel idea. Both Koreas have at one time or another supported the notion of setting aside at least a portion of the DMZ as a nature reserve. North Korea approached the United Nations Secretary-General in early 1991, requesting that he explore the possibility of a DMZ-centered nature reserve.³⁰⁸ The South Korean government also prepared an environmental preservation policy on the DMZ area. Moreover, the South Korean government is considering nomination of the DMZ as a Transboundary Biosphere Reserve of UNESCO or as a Protected Area Category I of the IUCN, with a view to ecological protection.

A Transboundary Biosphere Reserve is established across international borders as designated by UNESCO. The requirements of Transboundary Biosphere Reserves include the following: geographical condition across more than two countries' borders, areas qualify under Biosphere Reserve requirements,³⁰⁹ areas available for economic and cultural cooperation between transboundary countries, and availability of establishment of

³⁰⁷ 9/25/00 Korea Herald (Pg. Unavail. Online), 2000 WL 27393228 The Korea Herald, *Inter-Korean Military Talks*.

³⁰⁸ Arthur H. Westing, *A Transfrontier Reserve for Peace and Nature on the Korean Peninsula*, 10 *International Environmental Affairs* 1,11, (1998).

³⁰⁹ Requirements to be designated as a Biosphere Reserve follow: (a) ecosystems that represent biogeography, (b) areas that require conservation of biodiversity, (c) areas available to be applied by sustainable development, and (d) areas available for participation of public authority, local community and citizens.

joint management mechanism.³¹⁰ UNESCO has designated five Transboundary Biosphere Reserves so far: Tatra National Park (between Poland and Slovakia), the Danube Delta (Romania and Ukraine), Krkonose National Park (Czech Republic and Poland), Vosges Du Nord Park (France and Germany) and East Carpathians Natural Park (Poland, Slovakia, and Ukraine). (The five existing Transboundary Biosphere Reserves are exhibited in Table 3.) Moreover, the IUCN has protected valuable areas in biodiversity or wilderness by designating them Category I – Category VI.³¹¹ According to these categories, the DMZ area qualifies under Category I (in both a and b) for its outstanding or representative ecosystems or characteristics of a large area of unmodified or slightly modified land.

³¹⁰ Available at <http://www.me.go.kr:9999/DEPTDATA/200102/13175646/DMZ.htm>

³¹¹ Category Ia: Strict nature reserve/wilderness protection area managed mainly for science or wilderness protection - an area of land and/or sea possessing some outstanding or representative ecosystems, geological or physiological features and/or species, available primarily for scientific research and/or environmental monitoring;

Category Ib: Wilderness area: protected area managed mainly for wilderness protection - large area of unmodified or slightly modified land and/or sea, retaining its natural characteristics and influence, without permanent or significant habitation, which is protected and managed to preserve its natural condition.

Category II: National park: protected area managed mainly for ecosystem protection and recreation - natural area of land and/or sea designated to (a) protect the ecological integrity of one or more ecosystems for present and future generations, (b) exclude exploitation or occupation inimical to the purposes of designation of the area and (c) provide a foundation for spiritual, scientific, educational, recreational and visitor opportunities, all of which must be environmentally and culturally compatible.

Category III: Natural monument: protected area managed mainly for conservation of specific natural features - area containing specific natural or natural/cultural feature(s) of outstanding or unique value because of their inherent rarity, representativeness or aesthetic qualities or cultural significance.

Category IV: Habitat/Species Management Area: protected area managed mainly for conservation through management intervention - area of land and/or sea subject to active intervention for management purposes so as to ensure the maintenance of habitats to meet the requirements of specific species;

Category V: Protected Landscape/Seascape: protected area managed mainly for landscape/seascape conservation or recreation - area of land, with coast or sea as appropriate, where the interaction of people and nature over time has produced an area of distinct character with significant aesthetic, ecological and/or cultural value, and often with high biological diversity. Safeguarding the integrity of this traditional interaction is vital to the protection, maintenance, and evolution of such an area.

Category VI: Managed Resource Protected Area: protected area managed mainly for the sustainable use of natural resources - area containing predominantly unmodified natural systems, managed to ensure long-term protection and maintenance of biological diversity, while also providing a sustainable flow of natural products and services to meet community needs. Available at <http://iucn.org/themes/forests/6/notitle.html>

Table 3. Five Existing Transboundary Biosphere Reserves (TBRs)

Title (Countries)	Year to design	Scale (ha)	Management	Main Research Activities
Tatra (Poland/ Slovakia)	1992	Total: 123,566 P: 17,906 S: 105,660	P: Tatra National Park S: Tatra National Park	Wild animal (P) Geological information system (S)
Danube Delta (Romania/ Ukraine)	1992 (R) 1998 (U)	Total: 626,403 R: 580,000 U: 46,403	R: Danube delta Bio- Diversity Preservation Office U: Danube delta Bio-diversity Preservation Office	Sea and inland water estuary Human's activity effects
Krkonoše (Poland/ Czech)	1992	Total: 60,362 P: 5,575 C: 54,787	P: Karkonosze National Park Office C: Krkonose National Park Office	Air pollution (C/P) Forest (C/P) Agriculture (C)
Vosges Du Nora Park (France/ Germany)	1988 (F) 1992 (G) 1998 (designation as TBR)	Total: 301,800 F: 122,000 G: 179,800	F: Vosges du Nord Natural Park Office G: Pfalzerwald Natural Park Office	Ecosystem (F/G) Forest (F/G) Effects of tourism (F/G)
East Carpathians (Poland/ Slovakia/ Ukraine)	1992 (P/S) 1998 (U)	Total: 271,620 P: 113,845 S: 40,601 U: 58,587	P: Bieszczady National Park Office S: Poloniny National Park Office U: Nadsans'ki National Park Office	Wild animal (P/S) Environmental contamination (P/S) Land property (U)

If the DMZ were established as a Transboundary Biosphere Reserve or IUCN Protected Area Category I, it would contribute to connecting the northern and southern

ecosystems and preserving the DMZ as a sample region for research. If North and South Korea decide to protect the DMZ, it is likely that international recognition would follow; and the Koreans would receive significant support for their leadership in sustaining the unique biodiversity of the DMZ. Several types of authority are possible within the DMZ protected areas. Due to its unique situation, park management would be best situated under joint jurisdiction of the North and South Korean governments. International assistance, both with expertise and financial support, would be possible through cooperation with international organizations, such as UNESCO, IUCN, or the UNEP.

Future research should include the preparation of a parallel law that could be enacted in both North and South Korea to begin joint authority for administering the DMZ as a protected area and a study of international assistance for further scientific research in the DMZ. The IUCN and its Korean members are preparing a seminar on a joint ecological survey within the DMZ with international cooperation.³¹² This seminar would present an opportunity to discuss this project and study the options for further agreements between the two Koreas.

It is not easy for neighboring countries to reach agreement on Transboundary Biosphere Reserve or IUCN Protected Area Category I, as demonstrated by the fact that there are only a few jointly managed areas worldwide. Furthermore, given the fact that the DMZ and the CCZ result from the division of the Korean Peninsula, there will certainly be a bumpy road ahead before the two Koreas jointly designate their border as the Transboundary Biosphere Reserve or IUCN Protected Area Category I. Nevertheless, if this project becomes reality, it will contribute not only to the preservation of biodiversity in the DMZ but also to the promotion of peace between the two nations by reducing political tension and hostility. Joint control or management of the DMZ by South and North Korean environmental experts would contribute to legal, scientific, and technical cooperation between the two sides. In addition, the joint-management body could implement a public participation system as an environmental development procedure.

³¹² There are 16 species of cranes in the world. The *Grus japonensis* are commonly referred to as the aristocrat of birds. The most beautiful and rare species among them spend winter at the DMZ. Cranes are an important symbol for the Korean people, and they are designated and protected as Natural Monument No. 202. This field research would be a good foundation upon which to explain to the leaders in both North and South Korea why the DMZ and its rich biodiversity deserve permanent protected-area status.

V. CONCLUSION

This thesis examined public participation in South and North Korean environmental laws. Even though systematic environmental regulation was not actively enforced in South Korea in the 1970s and 1980s due to priority on economic development rather than environmental protection, South Koreans' concern for the environment and desire for active participation in decision-making processes have made Korean environmental laws more vigorous as demonstrated by the Tong River incident. The Korean people's aspiration for healthy environment would be firmly guaranteed with development of a public participation regulatory system, and ratification of the Åarhus Convention could provide the impetus for more effective public participation in South Korea. The Åarhus Convention would provide opportunities to further develop access to justice by introducing a citizen's suit system, which is not provided in South Korean environmental laws. Ratification would provide an opportunity to enhance the standing issue in environmental public law suits. Its adoption would also be advantageous to civil society by appointing the court as an appropriate medium for resolving environmental rights claims because access to justice is a powerful tool. Moreover, wide implementation of public participation through the Åarhus Convention would transform the traditional Korean vertical hierarchy toward a more open and transparent system.

Although the Åarhus Convention would also benefit North Korea, by helping to improve its underdeveloped economy and environmental regulatory system, North Korea is not yet ready to sign. Adoption of the Convention would give North Koreans the opportunity to learn advanced environmental laws as well as how to implement them. In the unification process, some adverse effects to the environment are anticipated, especially during economic development. South Korea has learned environmental lessons from previous development that would benefit North Korea during unification. With cooperation, North Korea could reduce the adverse effects on the environment and obtain sustainable development without bearing the cost of reckless development by adequate application of environmental laws. When problems occur during economic cooperation with South Korea, application of South Korean environmental laws including public participation could be one solution. Ultimately, the development of environmental laws will allow sustainable development in North Korea; however, this will be possible only

when North Korea has adopted an environmental infrastructure, including environmental education for the public; environmental training for environmental experts, judges, and government officers; and strict enforcement. South Korea and international organizations are in a position to help in this matter.

Generally speaking, North Korea is one of the most underdeveloped countries with regard to economics and politics. Its poor level of economic development often results in difficulty accessing adequate necessities, such as clean water, sanitation, and food. When North Korea strives to achieve economic development, it will be very difficult to expect sustainable development due to its economic situation and lack of environmental experience. MDBs' requirements for implementing EIAs and public participation as a mandatory requisite of a development loan will provide North Korea with a route to adopt environmental laws and to abate poverty. Public participation with international financing agencies will bring environmental protection; moreover, poverty will be addressed by economic development. Sustainable development by public participation will be beneficial for North Korea, not only for environmental protection but also for helping North Koreans adopt a Western style of government. In addition, if public participation plays a role in laying the foundation for the development of democracy in North Korea, it would be a triple win situation—economic, political, and environmental protection development. In fact, the public participation system plays a critical role in developing democracy, largely due to the fact that public participation contributes to sustainable development by effective environmental management. In addition, it improves accountability and transparency in the decision-making processes of governmental agencies as a complementary measure. Therefore, if a democratic form of government in North Korea is brought about through public participation, it would also release tension in the Korean peninsula. In brief, public participation would provide many advantages to both Koreas. It would help Koreans accomplish sustainable development in both the environmental and socio-political arenas.

APPENDIX I ENVIRONMENTAL PROVISIONS IN NATIONAL CONSTITUTION

Seventy-one nations have included a variety of environmental provisions in their constitutions. The five major types of provisions are identified below, with the nations indicated. The list is followed by a description of the provisions adopted by each nation:

A. Types of provisions.

- 1) Constitutions which establish state's general obligations or responsibilities to protect environment (23)

Afghanistan, Andora, Bahrain, Chad, China, El Salvador, German, Greece, Guatemala, Honduras, Islamic Republic of Iran, Mexico, Mozambique, Namibia, Nepal, Netherlands, North Korea, Panama, Saudi Arabia, Seychelles, Sweden, Taiwan, United Arab Emirates

- 2) Constitutions which establish individual environmental rights (23)

- a) In general section (13)

Belarus, Brazil, Chechnya, Chile, Congo, Ecuador, Hungary, Nicaragua, Peru, Portugal, South Africa, Thailand, Turkey

- b) In basic right section (5)

Angola, Azerbaijan, Belgium, Mongolia, Paraguay.

- c) In economic, social, and cultural section (5)

Albania, Costa Rica, Croatia, Ethiopia, Latvia

- 3) Constitutions which establish individual environmental obligations but not rights(13)

Colombia, Cuba, Estonia, Guyana, Haiti, India, Laos, Madagascar, Papua New Guinea, Poland, Tanzania, Vanuatu, Viet Nam.

- 4) Constitutions which establish both rights and obligations (12)

Argentina, Bulgaria, Burkina Faso, Finland, South Korea, Macedonia, Russia, Spain, Slovakia, Slovenia, Sri Lanka, Yugoslavia.

- 5) Constitutions that have express provisions regarding public participation or rights to environmental information (6)

Albania, Azerbaijan, Latvia, Portugal, Russia, Thailand

B. National Provisions

1. Afghanistan Constitution of 1990

Article 32

The State shall adopt and implement the necessary measures for the protection of nature, natural wealth and reasonable utilization of natural resources, improvement of the living environment, prevention of pollution of water and air, and the conservation and survival of animals and plants.

2. Albania Constitution of 1998

Article 56

Everyone has the right to be informed for the status of the environment and its protection.

Article 59

1. The state, within its constitutional powers and the means at its disposal, aims to supplement private initiative and responsibility with:

e. -- a healthy and ecologically adequate environment for the present and future generations;

f. -- rational exploitation of forests, waters, pastures and other natural resources on the basis of the principle of sustainable development;

2. Fulfillment of social objectives may not be claimed directly in court. The law defines the conditions and extent to which the realization of these objectives can be claimed.

3. Andorra Constitution of 1993

Article 31

The State has the task of ensuring the rational use of the soil and of all the natural resources, so as to guarantee a befitting quality of life for all and, for the sake of the coming generations, to restore and maintain a reasonable ecological balance in the atmosphere, water and land, as well as to protect the autochthonous flora and fauna.

4. Angola Constitution of 1992

Article 9

The Government of Angolashall seek to protect and preserve the unique environmental heritage of Angola in order to ensure the quality of the human environment for all

Article 24

1. All citizens shall have the right to live in a healthy and unpolluted environment.
2. The State shall take the requisite measures to protect the environment and national species of flora and fauna throughout the national territory and maintain ecological balance.
3. Acts that damage or directly or indirectly jeopardize conservation of the environment shall be punishable by law.

5 Argentina Constitution of 1994

Section 41

(1)All inhabitants are entitled to the right to a healthy and balanced environment fit for human development in order that productive activities shall meet present needs without endangering those of future generations; and shall have the duty to preserve it. As a first priority, environmental damage shall bring about the obligation to repair it according to law.

(2) The authorities shall provide for the protection of this right, the rational use of natural resources, the preservation of the natural and cultural heritage and of the biological diversity, and shall also provide for environmental information and education.

(3)The Nation shall regulate the minimum protection standards, and the provinces those necessary to reinforce them, without altering their local jurisdictions.

(4) The entry into the national territory of present or potential dangerous wastes, and of radioactive ones, is forbidden.

Article 20a

The state, also in its responsibility for future generations, protects the natural foundations

of life in the framework of the constitutional order, by legislation and, according to law and justice, by executive and judiciary.

6. Azerbaijan Constitution of 1995

Article 39 Right to live in healthy environment

- (1) Everyone has the right to live in healthy environment.
- (2) Everyone has the right to gain information about true ecological situation and to get compensation for damage done to his/her health and property because of violation of ecological requirements.

7. Bahrain Constitution of 1973

Article 11

All natural resources shall be the property of the state. It shall ensure their preservation and proper utilization, due regard being given to the requirements of the State's security and national economy.

8. Belarus Constitution of 1994

Article 46 [Environment]

Everyone shall be entitled to a pleasant environment and to compensation for loss or damage caused by the violation of this right.

9. Belgium Constitution of 1993

Article 23 [Dignity]

- (1) Everyone has the right to lead a life in conformity with human dignity.
- (2) To this end, the laws, decrees, and rulings alluded to in Article 134 guarantee, taking into account corresponding obligations, economic, social, and cultural rights, and determine the conditions for exercising them.
- (3) These rights include notably:
 - 1) the right to employment and to the free choice of a professional activity in the framework of a general employment policy, aimed among others at ensuring a level of employment that is as stable and high as possible, the right to fair terms of employment

and to fair remuneration, as well as the right to information, consultation and collective negotiation;

2) the right to social security, to health care and to social, medical, and legal aid;

3) the right to have decent accommodation;

4) the right to enjoy the protection of a healthy environment:

5) the right to enjoy cultural and social fulfillment.

10. Brazil Constitution of 1988

Article 225 [Environment Protection]

(0) All persons are entitled to an ecologically balanced environment, which is an asset for the people's common use and is essential to healthy life, it being the duty of the Government and of the community to defend and preserve it for present and future generations.

(1) In order to ensure the effectiveness of this right, it is incumbent upon the Government to:

I. preserve and restore essential ecological processes and provide ecological handling of the species and ecosystems;

II. preserve the variety and integrity of Brazil's genetic wealth and supervise entities engaged in research and handling of genetic material;

III. determine, in all units of the Federation, territorial spaces and components which are to receive special protection, any alteration and suppression only being allowed by means of a law, and any use which adversely affects the integrity of the attributes which justify their protection being forbidden;

IV. demand, according to the law, for the installation of works or activities which may cause significant degradation of the environment, a prior environment impact study, which shall be made public;

V. control the production, marketing, and use of techniques, methods, and substances which represent a risk to life, to the quality of life, and to the environment;

VI. promote environmental education at all school levels and public awareness of the need to preserve the environment;

VII. protect the fauna and the flora, all practices which jeopardize their ecological

function, cause the extinction of species or subject animals to cruelty being forbidden according to the law.

(2) Those who explore mineral resources shall be required to restore the degraded environment according to the technical solution required by the proper government agency, according to the law.

(3) Conduct and activities considered harmful to the environment shall subject the individual or corporate wrongdoers to penal and administrative sanctions, in addition to the obligation to repair the damages caused.

(4) The Brazilian Amazon Forest, the Atlantic Woodlands, the "Serra do Mar", the "Pantanal Mato Grossense" and the Coastline are part of the national wealth, and they shall be used, according to the law, under conditions which ensure preservation of the environment, including the use of natural resources.

(5) Vacant governmental lands or lands seized by the States through discriminatory actions, which are necessary to protect natural ecosystems, are inalienable.

(6) Power plants operated by nuclear reactor shall have their location defined in a federal law and may otherwise not be installed.

11. Bulgaria Constitution of 1991

Article 55 [Environment]

Citizens shall have the right to a healthy and favorable environment corresponding to the established standards and norms. They shall protect the environment.

12. Burkina Faso Constitution of 1991

Article 30

People has...the right to a healthy environment

Article 31

The protection, defense and promotion of the environment shall be the duty of all.

13. Chad Constitution of 1989

Article 1

The fundamental responsibilities of the State isto preserve the environment and natural resources.

14. Chechnya Constitution of 1992

Article 34

- (1) The citizens of Chechen Republic have the right to favorable environment.
- (2) The damage caused to citizen, his health or property by wrongful actions in the area of nature utilization is liable to compensation.

15. Chile Constitution of 1980

Article 19 Section 8

Everyone has the right to live in an environment free from contamination. It is the duty of the State to watch over the protection of this right and the preservation of the environment.

16. China Constitution of 1982

Article 26 [Environment]

- (1) The State protects and improves the living environment and the ecological environment, and prevents and remedies pollution and other public hazards.
- (2) The state organizes and encourages afforestation and the protection of forests.

17. Colombia Constitution of 1991

The 1991 Constitution obliges the government authorities and the people to protect the cultural and natural assets of the nation. It establishes a link between public health and protection of the environment (arts. 8, 49, 79, 80, 86 and 88).

18. Congo Constitution of 1992

Article 46 [Environment]

Each citizen shall have the right to a healthy, satisfactory, and enduring environment and the duty to defend it. The State shall strive for the protection and the conservation of the environment.

19. Costa Rica Constitution of 1994

Article 50.

Every person has the right to a healthy and ecologically balanced environment, being therefore entitled to denounce any acts that may infringe said right and claim redress for the damage caused.

20. Croatia Constitution of 1990

Article 69 [Health, Environment, Nature]

- (1) Everyone has the right to a healthy life.
- (2) The Republic ensures citizens the right to a healthy environment.
- (3) Citizens, government, public and economic bodies, and associations are bound, within their powers and activities, to pay special attention to the protection of human health, nature, and the human environment.

21. Cuba Constitution of 1992

Article 11 (B)

The State shall protect the environment and the country's natural resources, over which it shall exercise sovereignty. The State also recognizes the close link between the environment and sustainable economic and social development, which ensures the survival, well-being and security of present and future generations.

Article 27

Citizens have a duty to contribute to the protection of nature's rich potential.

22. El Salvador Constitution of 1983

Article 69

The State shall maintain permanent control over the quality of pharmaceutical, chemical and food products and over ... atmospheric conditions which may affect health and well-being.

23. Ecuador Constitution of 1983

Article 19(2)

Every citizen has ...the right to live in an environment free of contamination.

24. Estonia Constitution of 1992

Article 53 [Preservation of Human and Natural Environment]

Everyone shall be obligated to preserve human and natural environment and to compensate for damages caused by him or her to the environment. The procedures for compensation shall be determined by law.

25. Ethiopia Constitution of 1994

Article 44 Environmental Rights

- (1) All persons have the right to a clean and healthy environment.
- (2) All persons who have been displaced or whose livelihoods have been adversely affected as a result of State programs have the right to commensurate monetary or alternative means of compensation, including relocation with adequate State assistance.

26. Finland Constitution of 1999

Section 20 Responsibility for the environment

- (1) Nature and its biodiversity, the environment and the national heritage are the responsibility of everyone.
- (2) The public authorities shall endeavor to guarantee for everyone the right to a healthy environment and for everyone the possibility to influence the decisions that concern their own living environment.

27. Germany Constitution of 1990

Article 34

It is the responsibility of the legislature to protect the natural bases of man's existence, with due regard for prevention, the polluter-pays principle and cooperation, and to promote uniform ecological conditions of a high standard.

28. Greece Constitution of 1975

Article 24 [Environment]

- (1) The protection of the physical and cultural environment constitutes an obligation to the State. The State must take special preventive or repressive measures for the conservation

thereof. A law shall regulate matters relating to the protection of forests and forest areas in general. Any change in the land uses of public forests or public forest areas shall be prohibited, unless the agricultural use thereof or any other use be beneficial to the national economy or dictated by the national interests.

(2) The regional restructuring of the country, the configuration, development, planning, and extension of cities and housing areas in general shall be placed under the regulatory competence of and control by the State with a view to achieving the best possible living conditions and enhancing the functionality and development of the said housing areas.

(3) The properties contained in a given area shall compulsorily participate, without receiving any compensation from the local agencies, in making the necessary land available for the construction of roads, squares, and communal units and spaces, and in covering the cost of the construction of basic town planning works for public use, as the law provides, with a view to recognizing the said area as housing area and revitalizing the same.

(4) A law may provide for the participation by the property owners of a given area designated as residential in the overall development and planning on the basis of an approved plan, through an exchange of their real estate property in blocks of flats not extending to the land underneath (horizontal property), sited in the parts of the area which shall finally be designated as building land or structures in the said area.

(5) The provisions of the foregoing paragraphs shall apply to the rehabilitation of already existing housing areas. The areas cleared as a result shall be used for the creation as communal spaces or the construction of communal units or sold in order to cover the cost of the town redevelopment, as the law provides.

(6) Monuments and historical sites shall be protected by the State. A law may determine the measures necessary for such protection which may restrict the rights of the owners therein, and the mode and kind of compensation payable to the said owners.

29. Guatemala Constitution of 1985

Article 97

The State shall promote social, economic and technological development which will prevent pollution of the environment and maintain the ecological balance.

30. Guyana Constitution of 1980

Article 25

Every citizen has to participate in activities to improve the environment and protect the health of the nation.

Article 36

In addition, the interests of present and future generations are taken into account, and the use of natural resources must be rational.

31. Haiti Constitution of 1987

Article 253

Every citizen has to...to respect and protect the environment.

Article 258

Practices that are liable to disturb the ecological balance are strictly prohibited, as is the importation of wastes or residues ... from foreign sources.

32. Honduras Constitution of 1982

Article 145

The State shall maintain a satisfactory environment for the protection of the health of all.

33. Hungary Constitution of 1987

Article 18 [Healthy Environment]

The Republic of Hungary recognizes and shall implement the individual's right to a healthy environment.

34. India Constitution of 1977

Article 48 (A)

The State shall endeavor to protect and improve the environment and to safeguard the forests and wildlife.

Article 51 (A)

Every citizen has to protect and improve the natural environment.

35. Islamic Republic of Iran Constitution

Article 50 [Preservation of the Environment]

The preservation of the environment, in which the present as well as the future generations have a right to flourishing social existence, is regarded as a public duty in the Islamic Republic. Economic and other activities that inevitably involve pollution of the environment or cause irreparable damage to it are therefore forbidden.

36, 37. Korea (North Korea and South Korea)

South Korea Constitution of 1987

Article 35 [Environment, Housing]

(1) All citizens have the right to a healthy and pleasant environment. The State and all citizens shall endeavor to protect the environment.

(2) The substance of the environmental right is determined by law.

1998 Constitution of North Korea Constitution of 1998

Article 57.

The State shall prepare environmental protection policy before production and shall protect natural environment in order for better living and working condition.

38. Lao People's Democratic Republic Constitution of 1991

Article 17

All organizations and all citizens has the duty to protect the environment and natural resources.

39. Latvia Constitution of 1998

Article 115 [Environment]

The State shall protect the right of everyone to live in a benevolent environment by providing information about environmental conditions and by promoting the preservation and improvement of the environment.

40. Macedonia Constitution of 1991

Article 43

- (1) Everyone has the right to a healthy environment to live in.
- (2) Everyone is obliged to promote and protect the environment.
- (3) The Republic provides conditions for the exercise of the right of citizens to a healthy environment.

41. Madagascar Constitution of 1992

Article 39 [Environment]

Everyone shall have the duty to respect the environment; the State shall assure its protection.

42. Mexico Constitution of 1987

Article 27

The State shall have the right to regulate the use of natural resources which are susceptible of appropriation, in order to ensure a more equitable distribution of public wealth, to achieve well-balanced development and to improve the living conditions of the urban and rural population. A link is established between the preservation of the ecological balance, human settlements and the protection of natural resources.

43. Mongolia Constitution of 1992

Article 16 [Citizen's Rights]

The citizens of Mongolia are enjoying the following rights and freedoms:

The right to healthy and safe environment and to be protected against environmental pollution and ecological imbalance.

Article 17 [Citizen's Obligations]

Citizens has the duty to protect nature and the environment.

44. Mozambique Constitution of 1990

Article 37

The State shall promote efforts to guarantee the ecological balance and the preservation of the environment for the betterment of the quality of life of its citizens.

45. Namibia Constitution of 1990

Article 95 [Promotion of the Welfare of the People]

Maintenance of ecosystems, essential ecological processes and biological diversity of Namibia and utilization of living natural resources on a sustainable basis for the benefit of all Namibians, both present and future; in particular, the Government shall provide measures against the dumping or recycling of foreign nuclear and toxic waste on Namibian territory.

46. Nepal Constitution of 1990

Article 26 State Policies

(4) The State shall give priority to the protection of the environment and also to the prevention of its further damage due to physical development activities by increasing the awareness of the general public about environmental cleanliness, and the State shall also make arrangements for the protection of the rare wildlife, the forests and the vegetation.

47. Netherlands Constitution of 1989

Article 21 [Environment]

It shall be the concern of the authorities to keep the country habitable and to protect and improve the environment.

48. Nicaragua Constitution of 1987

Article 60

All people has the right to live in a healthy environment, which the State has the duty to preserve, develop and restore.

Article 102

Natural resources, which form part of the national heritage, must be exploited in a rational way (title IV, chap. III, art. 60 and title VI, chap. I, art. 102).

49. Panama Constitution of 1980

Article 110

It is a fundamental duty of the State to see to the preservation of ecological conditions and to prevent pollution of the environment and imbalance in ecosystems, with a view to ensuring economic and social development.

50. Papua New Guinea Constitution of 1984

The States has promotes the conservation of the environment and the rational use of natural resources for the benefit of future generations.

All persons have the basic obligation to protect and to safeguard the national wealth, resources and environment (chap. IV).

51. Paraguay Constitution of 1992

Article 7 About the Right to a Healthy Environment

- (1) Everyone has the right to live in a healthy, ecologically balanced environment.
- (2) The preservation, recovery, and improvement of the environment, as well as efforts to reconcile these goals with comprehensive human development, are priority objectives of social interest. The respective laws and government policies will seek to meet these objectives.

Article 8 About Environment Protection

- (1) Those activities that are likely to cause environmental changes will be regulated by law. The law may also restrict or prohibit those activities that are considered hazardous.
- (2) The manufacturing, assembly, import, commerce, possession or use of nuclear, chemical, or biological weapons, as well as the introduction of toxic waste into the country are hereby prohibited. The law may be extended to other hazardous elements. It will also regulate the trafficking of genetic resources and related technologies to protect national interests.
- (3) The law will define and establish sanctions for ecological crimes. Any damage to the environment will entail an obligation to restore and to pay for damages.

52. Peru Constitution of 1979

Article 118

Everyone has the right to live in a healthy environment

Article 123

It is the obligation of the State to prevent and control environmental pollution.

53. Poland Constitution of 1997

Article 86

Everyone shall care for the quality of the environment and shall be held responsible for causing its degradation. The principles of such responsibility shall be specified by statute.

54. Portugal Constitution of 1997

Article 66 Environment and quality of life

1. Everyone has the right to a healthy and ecologically balanced human environment and the duty to defend it.
2. In order to guarantee the right to such an environment, within the context of sustainable development, it is the duty of the State, acting through appropriate bodies and with the involvement and participation of the citizens:
 - a. To prevent and control pollution, and its effects, and harmful forms of erosion;
 - b. To organize and promote national planning with the objectives of establishing proper locations for activities and a balance between economic and social development, while enhancing the landscape;
 - c. To establish and develop nature reserves and parks and recreation areas, and classify and protect the countryside in order to guarantee nature conservation and the preservation of cultural assets of historic or artistic interest;
 - d. To promote the rational use of natural resources, while safeguarding their capacity for renewal and ecological stability, respecting the principle of solidarity between generations;
 - e. To promote, in conjunction with the local authorities, the environmental quality of populated areas and urban life, specifically with regard to architecture and the protection of historical zones;
 - f. To promote the inclusion of environmental objectives in the various sectors of policy;
 - g. To promote environmental education and respect for environmental values;

h. To ensure that tax policy achieves compatibility between development and protection of the environment and quality of life.

55. Russian Federation Constitution of 1993

Article 42

Everyone shall have the right to a favorable environment, reliable information about its condition and to compensation for the damage caused to his or her health or property by ecological violations.

Article 58

Everyone shall be obliged to preserve nature and the environment, and care for natural wealth.

56. Saudi Arabia Constitution of 1992

Article 32 [Environment, Nature]

The state works for the preservation, protection, and improvement of the environment, and for the prevention of pollution.

57. Seychelles Constitution of 1992

Article 40

The State shall protect, preserve and improve the environment and natural resources.

Article 41

It is the duty of every citizen to protect, preserve and improve the environment and natural resources.

58. Slovakia Constitution of 1992

Article 44

- (1) Everyone has the right to an auspicious environment.
- (2) Everyone is obliged to protect and enhance the environment and the cultural heritage.
- (3) No one must endanger or damage the environment, natural resources, and the cultural heritage beyond the extent established by law.

(4) The state looks after an economical use of natural resources, ecological balance, and effective environmental care.

Article 45

Everyone has the right to timely and complete information about the state of the environment and the causes and consequences of its condition.

59. Slovenia Constitution of 1991

Article 72 Healthy Living Environment

(1) Each person shall have the right in accordance with statute to a healthy environment in which to live.

(2) The State shall be responsible for such an environment. To this end, the conditions and the manner in which economic and other activities shall take place shall be regulated by statute.

(3) The conditions under which any person damaging the environment shall be obliged to make compensation shall be determined by statute.

(4) The protection of animals from cruelty shall be regulated by statute.

Article 73 Protection of the Natural and Cultural Heritage

(1) Each person shall be obliged, in accordance with statute to protect rare and precious natural areas, as well as structures and objects forming part of the national and cultural heritage.

(2) State and local government bodies shall be responsible for the preservation of the natural and cultural heritage.

60. South Africa Constitution of 1996

Section 24 Environment

Everyone has the right -

- (a) to an environment that is not harmful to their health or well-being; and
- (b) to have the environment protected, for the benefit of present and future generations, through reasonable legislative and other measures that -
 - (i) prevent pollution and ecological degradation;
 - (ii) promote conservation; and

(iii) secure ecologically sustainable development and use of natural resources while promoting justifiable economic and social development.

61. Spain Constitution of 1992

Article 45 [Environment]

(1) Everyone has the right to enjoy an environment suitable for the development of the person as well as the duty to preserve it.

(2) The public authorities shall concern themselves with the rational use of all natural resources for the purpose of protecting and improving the quality of life and protecting and restoring the environment, supporting themselves on an indispensable collective solidarity.

(3) For those who violate the provisions of the foregoing paragraph, penal or administrative sanctions, as applicable, shall be established and they shall be obliged to repair the damage caused.

62. Sri Lanka Constitution of 1977

Article 27

The State shall protect, preserve and improve the environment for the benefit of the community.

Article 28

Every person has to protect nature and conserve its riches.

63. Sweden Constitution of 1978

Article 2

It shall be incumbent on the community to guarantee the right to work, housing and education, and to promote social care and security, as well as a favorable living environment.

64. Taiwan Constitution of 1947

Article 169

The State shall actively undertake and foster the development of education, culture, communications, water conservancy, public health, and other economic and social enterprises among the various ethnic groups in the frontier regions. With respect to land

utilization, the State shall, in the light of climatic conditions, nature of the soil, and the life and habits of the people, adopt measures for its protection and assist in its development.

65. Tanzania Constitution of 1984

Section 2, 9.1

.....Natural resources will be preserved, developed and used for the benefit of all citizens.

Section 2, 27.1

....everyone has the responsibility of conserving natural resources.

66. Thailand Constitution of 1997

Section 56

The right of a person to give to the State and communities participation in the preservation and exploitation of natural resources and biological diversity and in the protection, promotion and preservation of the quality of the environment for usual and consistent survival in the environment which is not hazardous to his or her health and sanitary condition, welfare or quality of life, shall be protected, as provided by law.

Any project or activity which may seriously affect the quality of the environment shall not be permitted, unless its impacts on the quality of the environment have been studied and evaluated and opinions of an independent organization, consisting of representatives from private environmental organizations and from higher education institutions providing studies in the environmental field, have been obtained prior to the operation of such project or activity, as provided by law.

The right of a person to sue a State agency, State enterprise, local government organization or other State authority to perform the duties as provided by law under paragraph one and paragraph two shall be protected.

Section 79

The State shall promote and encourage public participation in the preservation, maintenance and balanced exploitation of natural resources and biological diversity and in the promotion, maintenance and protection of the quality of the environment in accordance

with the persistent development principle as well as the control and elimination of pollution affecting public health, sanitary conditions, welfare and quality of life.

67. Turkey Constitution of 1982

Article 56

Every person has the right to live in a healthy, balanced environment.” It is the duty of the State to protect the environment.

68. United Arab Emirates Constitution of 1971

Article 23

The natural resources and wealth of each Emirate shall be considered the public property of that Emirate. Society shall be responsible for the protection and proper exploitation of such natural resources and wealth for the benefit of the national economy.

69. Yugoslavia Constitution of 1992

Article 52

- (1) Man shall be entitled to a healthy environment and timely information about its condition.
- (2) It is everyone's duty to protect the human environment and make use of it in a rational manner.
- (3) The state shall be charged with maintaining a healthy human environment and to this end shall prescribe the conditions and manner of the performance of economic and other activities.

70. Vanuatu Constitution of 1980

Article 7

Every person has the duty to protect Vanuatu and to safeguard the national wealth, resources and the environment in the interests of the present generation and future generations.

71. Viet Nam Constitution of 1980

Article 19

The wealth and natural resources of the State are the property of the people.

Article 36

Everyone has the duty to protect and improve the environment.

APPENDIX II ENVIRONMENTAL PROVISIONS IN STATE CONSTITUTIONAL LAWS OF USA

Alaska Constitution

Article VIII Natural Resources

Section 1. Statement of Policy.

It is the policy of the State to encourage the settlement of its land and the development of its resources by making them available for maximum use consistent with the public interest.

Hawaii Constitution

Article XI Conservation, Control and Development of Resources

Section 1. For the benefit of present and future generations, the State and its political subdivisions shall conserve and protect Hawaii's natural beauty and all natural resources, including land, water, air, minerals and energy sources, and shall promote the development and utilization of these resources in a manner consistent with their conservation and in furtherance of the self-sufficiency of the State. All public natural resources are held in trust by the State for the benefit of the people.

Section 9. Each person has the right to a clean and healthful environment, as defined by laws relating to environmental quality, including control of pollution and conservation, protection and enhancement of natural resources. Any person may enforce this right against any party, public or private, through appropriate legal proceedings, subject to reasonable limitations and regulation as provided by law.

Article IX Public Health and Welfare

Section 8. Preservation of a Healthful Environment

The State shall have the power to promote and maintain a healthful environment, including the prevention of any excessive demands upon the environment and the State's resources.

Illinois Constitution

Article XI. Section 1. Public Policy - Legislative Responsibility

The public policy of the State and the duty of each person is to provide and maintain a healthful environment for the benefit of this and future generations. The General Assembly shall provide by law for the implementation and enforcement of this public policy.

Section 2. Rights of Individuals

Each person has the right to a healthful environment. Each person may enforce this right against any party, governmental or private, through appropriate legal proceedings subject to reasonable limitation and regulation as the General Assembly may provide by law.

Louisiana Constitution

Article IX. Natural Resources

Section 1. The natural resources of the state, including air and water, and the healthful, scenic, historic, and esthetic quality of the environment shall be protected, conserved, and replenished insofar as possible and consistent with the health, safety, and welfare of the people. The legislature shall enact laws to implement this policy.

New York Constitution

ARTICLE XIV--Conservation

§ 4. Conservation of natural resources and scenic beauty; pollution abatement; acquisition and preservation of lands as state nature and historical preserve

The policy of the state shall be to conserve and protect its natural resources and scenic beauty and encourage the development and improvement of its agricultural lands for the production of food and other agricultural products. The legislature, in implementing this policy, shall include adequate provision for the abatement of air and water pollution and of excessive and unnecessary noise, the protection of agricultural lands, wetlands and shorelines, and the development and regulation of water resources. The legislature shall further provide for the acquisition of lands and waters, including improvements thereon

and any interest therein, outside the forest preserve counties, and the dedication of properties so acquired or now owned, which because of their natural beauty, wilderness character, or geological, ecological or historical significance, shall be preserved and administered for the use and enjoyment of the people. Properties so dedicated shall constitute the state nature and historical preserve and they shall not be taken or otherwise disposed of except by law enacted by two successive regular sessions of the legislature.

North Carolina Constitution

Article XIV Miscellaneous

Section 5. Conservation of natural resources.

It shall be the policy of this State to conserve and protect its lands and waters for the benefit of all its citizenry, and to this end it shall be a proper function of the State of North Carolina and its political subdivisions to acquire and preserve park, recreational, and scenic areas, to control and limit the pollution of our air and water, to control excessive noise, and in every other appropriate way to preserve as a part of the common heritage of this State its forests, wetlands estuaries, beaches, historical sites, openlands, and places of beauty.

Pennsylvania Constitution

Article I, Section 27

The people have a right to clean air, pure water, and to the preservation of the natural, scenic, historic, and esthetic values of the environment. Pennsylvania's public natural resources are the common property of all the people, including generations yet to come. As trustee of these resources, the Commonwealth shall conserve and maintain them for the benefit of all the people.

Rhode Island Constitution

Article I. Declaration of Certain Constitutional Rights and Principles

Section 17 Fishery rights -- Shore privileges -- Preservation of natural resources.

The people shall continue to enjoy and freely exercise all the rights of fishery, and the privileges of the shore, to which they have been heretofore entitled under the charter and

usage of this state, including but not limited to fishing from the shore, the gathering of seaweed, leaving the shore to swim in the sea and passage along the shore; and they shall be secure in their rights to the use and enjoyment of the natural resources of the state with due regard for the preservation of their values; and it shall be the duty of the general assembly to provide for the conservation of the air, land, water, plant, animal, mineral and other natural resources of the state, and to adopt all means necessary and proper by law to protect the natural environment of the people of the state by providing adequate resource planning for the control and regulation of the use of the natural resources of the state and for the preservation, regeneration and restoration of the natural environment of the state.

Virginia Constitution.

Article XI Conservation

Section 1. Natural resources and historical sites of the Commonwealth.

To the end that the people have clean air, pure water, and the use and enjoyment for recreation of adequate public lands, waters, and other natural resources, it shall be the policy of the Commonwealth to conserve, develop, and utilize its natural resources, its public lands, and its historical sites and buildings. Further, it shall be the Commonwealth's policy to protect its atmosphere, lands, and waters from pollution, impairment, or destruction, for the benefit, enjoyment, and general welfare of the people of the Commonwealth.

APPENDIX III INTERNATIONAL ENVIRONMENTAL AGREEMENT THAT SOUTH KOREA SIGNED

	Category	Title of Treaty	Signed Day
1.	Air/Climate	United Nations Framework Convention on Climate Change	1994/3/21
2.		Vienna Convention for the Protection of the Ozone Layer	1988/9/22
3.		Montreal Protocol on Substances that Deplete the Ozone Layer	1989/1/1
4.		The London Amendment to the Montreal Protocol	1992/8/10
5.		The Copenhagen Amendment to the Montreal Protocol	1994/6/14
6.		The Montreal Amendment to the Montreal Protocol	1999/11/10
7.	Sea/Fishery	International Convention for the Regulation of Whaling	1978/12/29
8.		International Convention for the Conservation of Atlantic Tunas	1970/8/28
9.		Convention on the Conservation of the Living Resources of the Southeast Atlantic	1981/1/19
10.		Convention on the Conservation of Antarctic Marine Living Resources	1985/3/29
11.		International Convention for the Prevention of Pollution of the Sea by Oil	1978/7/31
12.		Convention on the Prevention of Marine Pollution by Dumping of Wastes and Other Matter	1993/12/21
13.		International Convention on Civil Liability for Oil Pollution Damage	1978/12/18
14.		Protocol to the International Convention on Civil Liability for Oil Pollution Damage	1992/12/8
15.		International Convention on the Establishment of an International Fund for Compensation for Oil Pollution Damage	1995/12/8
16.		International Convention for the Prevention of Pollution from Ships.	1984/7/23
17.		Convention on Future Multilateral Cooperation in the Northwest Atlantic Fisheries	1993/12/21
18.		United Nations Convention on the Law of the Sea	1996/11/29
19.		Agreement Relating to the Implementation of the Part XI of the United Nations Convention on the Law of the Sea	1996/1/29
20.	Hazardous Wastes	Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and their Disposal	1994/2/28
21.	Natural/Wildlife	Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES)	1993/7/9
22.		Convention on Biological Diversity	1994/10/3
23.		Convention on Wetlands of International Importance Especially as Waterfowl Habitat (RAMSAR)	1997/3/28
24.		International Plant Protection Convention	1953/12/8
25.		Plant Protection Agreement for the South East Asia and Pacific Region	1981/1/4
26.		International Tropical Timber Agreement	1985/6/25
27.		International Tropical Timber Agreement	1995/9/12
28.	Nuclear	Treaty Banning Nuclear Weapons Tests in the Atmosphere, in Outer Space and Underwater	1964/7/24
29.		Convention on the Physical Protection of Nuclear Material	1982/4/7
30.		Convention on Early Notification of a Nuclear Accident	1990/6/8

31.		Convention on Assistance in the Case of a Nuclear Accident or Radiological Emergency	1990/6/8
32.		Convention on Nuclear Safety	1995/9/19
33.		Treaty on the Prohibition of the Emplacement of the Nuclear Weapons and Other Weapons of Mass Destruction on the Sea Bed and the Ocean Floor and in the Subsoil Thereof	1987/6/25
34.	The Others	The Antarctic Treaty	1986/11/28
35.		Protocol to the Antarctic Treaty Environmental Protection	1996/1/2
36.		United Nations Convention to Combat Desertification in Those Countries Experiencing Serious Drought and Desertification, Particularly in Africa	1999/1/7
37.		Convention for the Protection of the World Cultural and Natural Heritage	1988/9/14
38.		Treaty on Principles Governing the Activities of States in the Exploration and Use of Outer Space, including the Moon and Other Celestial Bodies	1967/10/31
39.		Convention on the Prohibition of Military or Any Other Hostile Use Of Environmental Modification Techniques	1986/12/2
40.		Convention on the Prohibition of the Development, Production and Stockpiling of the Bacteriological (Biological) and toxic Weapons, and on Their Destruction	1987/6/25

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