

Legislating for Public Participation and Environmental Justice: Whether It Solves or Prevent Disputes

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Abstract : The key tenets associated with 'environmental justice', were first articulated in a global context in Principle 10 of the United Nations Declaration on Environment and Development at Rio de Janeiro in 1992 (the Rio Declaration). The elements can be conflated to require: public participation in decision-making; the provision of relevant information to those affected about environmental hazards issues; access to judicial and administrative proceeding; and the opportunity for redress where remedy where required. This paper examines the legislative and regulatory arrangements in place for the implementation these elements in a number of industrialised democracies, including Australia. Most have, over time made regulatory provision for these elements - even if they are not directly attributed Principle 10 or the notion of environmental justice. The paper proposes, that of these elements the most critical to the achievement of good environmental governance, is a legislated recognition and role of public participation. However, the paper considers that notwithstanding sound legislative and regulatory practices, environmental regulators frequently struggle, where there is a complex decision-making scenario or long-standing enmity between a community and industry to achieve effective engagement with the public. This study considers the dilemma confronted by environmental regulators to given meaningful effect to the principles enshrined in Principle 10 - that even when the legislative expression of Principle 10 is adhered to - does not prevent adverse outcomes. In particular, it considers, as a case study a prominent environmental incident in 2014 in Australia in which an open-cut coalmine located in the regional township of Morwell caught fire during bushfire season. The fire, which took 45 days to be extinguished had a significant and adverse impact on the community in question, but compounded a complex, and sometime antagonistic history between the mine and township. The case study exemplifies the complex factors that will often be present between industry, the public and regulatory bodies, and which confound the concept of environmental justice, and the elements of enshrined in the Principle 10 of the Rio Declaration. The study proposes that such tensions and complex examples will commonly be the reality of communities and regulators. However, to give practical effect to outcomes contemplated by Principle 10, the paper considers that regulators will may consider public intervention more broadly as including early interventions and formal opportunities for "conferencing" between industry, community and regulators. These initiatives help to develop a shared understanding and identification of issues. It is proposed that although important, options for "alternative dispute resolution" are not sufficiently preventative, as they come into play when a dispute has arise. Similarly "restorative justice" programs, while important once an incident or adverse environmental outcome has occurred, are post event and therefore necessarily limited. The paper considers the examples of how public participation at the outset - at the time of a proposal, before issues arise or eventuate to ensure, is demonstrably the most effective way for building commonality and an agreed methodology for working to resolve issues once they occur.

Keywords : environmental justice, alternative dispute resolution, domestic environmental law, international environmental law

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