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**ACCESS TO ENVIRONMENTAL JUSTICE FOR
THE URBAN POOR**

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ACCESS TO ENVIRONMENTAL JUSTICE FOR THE URBAN POOR

INTRODUCTION

Cities in the Third World¹ countries have grown rapidly during the last three decades. "Along with the process of urbanisation, poverty is also increasingly being urbanised. In 1950, there were only 10 cities with populations of five million or more; in 1993, there were 33 - six of which had 15 million or more" (Sweetman, 1996, p.2).

Coupled with rapid growth of population and urbanisation, developing countries in the last decade or so have experienced a deepening economic crisis related to the international debt problem, increasing inflation and unemployment. Austerity programmes, advocated by the neo-liberal policies of the IMF and the World Bank, have resulted in the state cutting back social expenditure. This has not only led to an increase in poverty and marginalisation of those that have a long-term, near-absolute lack of resources, the "structural poor", but has also widened poverty to take in the "new poor", those women and men for whom poverty is a relatively recent state caused by economic reforms. Research carried out by the United Nations Development Programme (UNDP) in 1995 showed that: "The deepening and widening of poverty is increasing social stratification; evidence is growing that women are disproportionately over-represented among those whose long-term poverty is deepening, and those for whom poverty is a relatively recent state" (ibid.).

One of the key problems facing poor and marginalised women and men in these burgeoning cities of developing countries is access to clean and healthy living and working conditions. As cities became more and more acknowledged as centres of growth, the drive to increase investment to spur economic growth leads to turning a blind eye to environmental standards. The poor are disproportionately exposed to environmental risks and rarely do they have: 1) access to the means to prevent situations that result in poor and inadequate environmental conditions; 2) access to information concerning the environment; 3) access to knowledge of environmental rights; and, 4) access to avenues to demand redress when those rights are abused. Women, apart from experiencing the same problems of accessing environmental justice that all poor people face, also have additional

gender-related barriers to cope with, reducing their degree of access even further.

The paper is organised into six sections. Section I looks at urbanisation in the Third World and how it relates to poverty, gender and the environment. Section II introduces the concept of Environmental Justice and presents a theoretical framework. Section III demonstrates that the urban poor in their neighbourhoods and work places have no effective right and access to a clean, secure and healthy environment, and to redress when these rights are contravened or unfulfilled. Section IV portrays the many complex and inter-related barriers that make it difficult or impossible for the urban poor to gain access to environmental justice. Section V presents approaches and opportunities to improving access to environmental justice for the urban poor. Section VI draws conclusions.

URBANISATION

The world's urban population increased more than threefold from 730 million to 2.3 billion between 1950 and 1990. It is projected that by the year 2020, it will have increased to 4.6 billion with 93 per cent of the increase occurring in the Third World. Currently, approximately 43 per cent of the world's population is urban. In developed countries, the proportion of urban population averages around 73 per cent, and in the Third World, 34 per cent (Devas and Rakodi, 1993). Such figures, however, are misleading in that they conceal the huge variations between and within regions. Furthermore, in actual numbers, the total number of people living in cities in the Third World overtook that in developed countries in the 1970s. In 1993, the total Third World urban population stood at 1.4 billion while that of developed countries was 900 million.

While cities in developed countries grew gradually from in-migration during the industrial revolution with little or no natural increase (excess of births over deaths), cities in the Third World are growing both from in-migration and natural increase in equal proportions. This is largely due to better medical facilities in the post-war period leading to low death rates (compared to developed countries during periods of high urbanisation) and traditionally high birth rates

(Potter, 1992). The pace of urbanisation in the Third World is much faster than that in developed countries and has been accelerating until recently, whereas it has been slowing down in developed countries. "In 1985 eight of the 12 cities with 10 million or more inhabitants were in developing countries, and it is expected that, by the year 2000, there will be about 23 cities of that size, of which 17 will be in developing countries" (Beckerman, 1995, p.31).

The Heterogeneity of Urbanisation in Asia, Africa and Latin America

Latin America, including the Caribbean, is the most urbanised region in the developing world. Although there are variations within the region, approximately 70 per cent of the population is urbanised and still growing albeit at a declining rate - 3.6 per cent per year between 1970-1985 (Devas and Rakodi, 1993). In this region, where rapid urbanisation has a longer history, half or more of the people living in cities are likely to have been born there, unlike the situation in Sub-Saharan Africa and some parts of Asia, where large proportions of the people in cities are migrants. Another differentiating characteristic of Latin American urbanisation is that large proportions of the cities' populations are permanent, while in Sub-Saharan Africa and parts of Asia, most city dwellers return to their rural areas within a few years (Nelson, 1979). More recent trends show this situation as gradually changing as more and more people are born in cities and ancestral land available for descendants is gradually reduced by general population increase. Whether urban residents perceive themselves as permanent dwellers or merely sojourners has a bearing on how they view their lives in the city and their levels of participation in city life.

Africa's urban population represents only 31 per cent of the total population and only 15 per cent of the developing world's population. However, this is the continent with the highest rate of growth (five per cent from 1970-1985). Devas and Rakodi (1993, p.6) note that "if this rapid growth continues, the urban population in Africa will treble before the year 2020..."

South and South East Asia are the most populated regions in the developing world and they have the highest urban growth, accounting for 33 per cent of the total urban population in the Third World. Between 1970-1985, these regions experienced a high population growth rate, almost as high as Africa (over four per cent). These figures should be viewed with caution as they mask the fact that high urban growth of some countries such as China and India impact greatly on the global figures. It is thus impossible to generalise about Third World urbanisation or the problems and opportunities associated with it as these

will be context specific.

Urbanisation and Poverty

"The nature of social structures and relations in confluence with the larger (inter) national macro-economic structure and historical development of metropolitan areas has generated a heterogeneous set of groups that can be regarded as the urban poor" (Thomas, 1994, p.10). Urbanisation in itself does not necessarily foster poverty and in many cases has been accompanied by economic growth and social development (Rothermel, 1995). Thus the increase of the urban poor with urbanisation in Third World countries cannot be attributed to urbanisation per se but to the lack of institutional, administrative and financial capacity of governments in the Third World to cope with the pace (Devas and Rakodi, 1993). Although the reason for the problems facing different urban areas are context specific, there are certain broad commonalities.

Persistent National Poverty

The poor countries of Africa, Latin America and Asia are only gradually accumulating the human physical capital, organisational strength and appropriate institutions to permit their people to produce and earn at high levels. Furthermore, inappropriate institutions at the national and local level, political or otherwise, often maintain or exacerbate maldistribution of available resources. Matters are made worse by the past and current structure of relations between the more advanced and the developing nations which tends to perpetuate and heighten poverty and inequity in the latter (Nelson, 1979). One example is the imposition of protectionist barriers in the markets of advanced countries and general unfavourable terms of trade for exporters of primary goods. Global economic crises, such as the oil crisis of the 1970s and the global recession in the 1980s led many Third World nations to borrow heavily, increasing their national debts and balance of payments problems necessitating structural adjustment of their economiesⁱⁱ.

Structural Adjustment Policies and Urban Poverty

Almost all Third World countries have had to implement during the 1980s, the IMF and World Bank advocated Structural Adjustment Programmes (SAPs). Although it is generally agreed that there is a need for adjustment, the manner of adjustment forced on indebted Third World countries is what has been widely criticised. Under SAPs, governments, among other things, have had to reduce their role in the economy, allow markets to function and cut back public expenditure. In most cases, as portrayed in UNICEF's publication *Adjustment with a Human Face*

(Cornia et al., 1987), the desired government expenditure reduction has been mostly achieved by cutting funding for services such as health and education. These services had been heavily subsidised during the 1970s, when the "basic needs approach" to development was dominantⁱⁱⁱ.

The effects of SAPs on the social well being of peoples of Third World countries has been phenomenal. These measures affect the poor disproportionately reducing their access to basic social services considerably. With respect to Africa, the number of children enrolled in schools decreased in the 1980s and the number of people per doctor and per nurse increased significantly (Lensik, 1996). Various studies have proven without doubt that urban poverty increased with SAPs^{iv}. It is clear that those least able to cope are bearing the largest burden - the poor and most vulnerable, especially women and children.

[The urban poor] have borne the brunt of agricultural price liberation, currency devaluation, reductions in basic service expenditure and cuts in basic subsidies for water, fuel and transport. The consequences have been varied; urban prices particularly of food have increased sharply; unemployment and underemployment has risen; urban economic activity has been constrained due to the cuts in public expenditure; household budgets have been further stretched by user-fees for both economic and social services (Thomas, 1994, p.4).

George (1992), emphasises that the export-oriented World Bank and IMF policies lead to an increase in income inequality. She argues that export-oriented strategy is profitable for a small group while the masses become increasingly poorer. We are, however, cautioned by Lensink (1996, p. 119) that:

...it is impossible to generalise the consequences of the adjustment programmes: in some countries the programmes did not affect income distribution adversely whereas in other countries income distribution has grown more inequitable due to the adjustment programmes.

Definition of the Urban Poor

The scale and nature of urban poverty differs greatly from place to place and even within any place over time so as to make global theories illusory. As put by Nelson, (1979, p. 4), "the contrasts among the urban poor in different cities and nations, and the differing political, economic, and social contexts that shape their opportunities and behaviour, are at least as extensive as the uniformities".

We regard urban poverty not only in terms of income

and consumption measurements that are conventionally used, but as resulting from the "interrelationship of a range of determinants operating contemporaneously at the levels of the individual, household and community " (Thomas, 1994, p.10). Examples of determinants are income, tradable property, skills, knowledge and access to education, health and psychological dispositions, shelter status, organisational capacity, and social and gender status.

The level of determinants referred to by Jenkins (1996) as a person's or groups' "endowments bundle" is what ultimately determines one's access or control over resources. This access is referred to as "entitlement" by Amartya Sen (1981) in his seminal work *Poverty and Famines: An Essay on Entitlement and Deprivation*. Sen demonstrated that during most famines, there were no significant national shortages of food. People suffered starvation and acute malnutrition because they had no access to food because of a variety of economic and political factors.

Applying Sen's approach, it follows then to improve the poor's entitlement, that is to say, their access to resources, the poor must improve their "endowments bundle" and reduce their vulnerability, powerlessness and isolation. This according to Sen will depend on the range of options available or "entitlement mapping" (E-mapping). These options could be community projects, use of common property resources and various livelihood strategies^v, informal processes of bargaining or mediation, effective claims for state provision or redistribution of aggregate endowments (through political or legal channels), private economic exchange options between agents or state enforced laws and regulations (Jenkins, 1996).

Urbanisation and Gender

Gender refers to the socially-constructed roles and responsibilities that women and men have and the social relationships between them in a particular historical and social-cultural context. These roles and responsibilities are accorded different values by society which influences the status of men and women^{vi}, which in turn influences their "endowment bundles" and access to control over resources (entitlement) and decision-making power. Because of their different roles, status, entitlement levels and endowment bundles, women and men are affected differently by the changes in social, cultural, political and economic structures and processes that accompany urbanisation. Some of the factors influencing women's low entitlement and poverty, which are detailed below, are: their "triple role"; inappropriate development intervention policies; and the effects of Structural Adjustment Programmes.

Women's "Triple Role"

Women in low-income households perform reproductive work, such as child bearing and primary responsibility for child rearing. They also carry out productive work as income earners, either as sole earners or as supplementary earners. In addition, they are often involved in community management work such as organising and performing voluntary jobs at the neighbourhood level, a role which becomes critical in the absence of income and resources. Women's reproductive and community management roles are rarely ever valued as work, it is regarded as their "natural role" (Moser 1992). Because of this triple burden, women's income earning opportunities are highly constrained, which reduces their endowment bundle and bargaining power. Furthermore, women generally have fewer opportunities than men to acquire skills due to their demands on time and energy. The jobs they obtain are mainly poorly paid or part-time and insecure.

Inappropriate Development Intervention Policies

In the first two post-colonial decades (1950s and 1960s), women were more or less ignored in development intervention on the assumption that all productive work was performed entirely by men, and that families consisted of a nuclear family of husband, wife and two or three children. This assumption was based on, "Western patriarchal patterns of ownership, work and control, which although assuming the modernity of Western women, in the sense of the developed, still relegated them to a subordinate role in society, particularly in regard to economic and political matters" (Parpart, 1995, p.257).

Contrary to the above assumption, household structures are not homogeneous. An increasingly common structure in developing and developed countries, which is related to urbanisation and economic and structural transformation in society, is that of women-headed households, who although not always among the poorest are doubly constrained in income earning opportunities by their triple role. Despite the preponderance of women within the informal economy, promotional policies for productive activities such as small-scale businesses are targeted at men while interventions for women have a welfare rather than a productivity bias curtailing their command of assets and resources.

Structural Adjustment Programmes

While the urban poor in general are most adversely affected by structural adjustment programmes, it is women among them who are doing the most to compensate for declining real incomes (Beall, 1993). For example, the cutbacks in health and child care mean that women assume greater responsibility for

these areas. Female children who often help with household chores have less education opportunities especially when parents must pay school fees. Some parents believe that a girl is likely to find a husband without education, boys are seen to have no other opportunities. Although the effects of adjustment have impacted different groups of women differently, a UNICEF study concluded that "there is a gender bias in the distribution of social costs of adjustment policies; for example, consumption, nutrition and health levels of women are lower than men" (Vickers, 1991, p.17). Nzomo (1992) argues that since women are hardly represented in legislative and other political decision-making organisations, they have little influence on the development of the adjustment programmes.

The World Bank and IMF-led policies demand a shift from producing for domestic markets to export markets to earn foreign exchange for debt servicing. This has implications for women's work conditions. Examples especially from Asia show that women are more likely to produce for the export markets within export processing zones where working conditions are generally appalling because: 1) their wages are lower than those of men, 2) they are seen as more capable of doing monotonous work and, 3) they are less likely to be involved in trade unions (Lensik, 1996). However, as Nzomo argues, referring to Kenyan women, women were disadvantaged even before the onset of SAPs due to a dominant male ideology. A combination of this ideology and the exploitative tendencies of capitalism are likely to spell doom for women (Nzomo, 1992).

Urbanisation and the Environment in the Third World

Urbanisation is a double-edged sword in that, "cities can provide healthy and stimulating environments for their inhabitants without imposing unsustainable demands on natural resources and ecosystems" (Hardoy et al. 1992, p.15). On the other hand, urbanisation can be a key contributor to environmental damage. Beckerman (1995, p.30) describes urbanisation as "one of the most striking mechanisms by which economic growth contributes to environmental degradation". Engels, commenting on the situation in a number of British industrial towns at the onset of mass urbanisation and industrialisation in the 1840s, shows "how widespread urban environmental degradation was, how closely it was associated to industrial development and how damaging it was to health" (Main, 1994).

In Third World countries currently undergoing rapid urbanisation in a period of recession and economic adjustment, environmental problems involving pollution problems, environmental hazards, and

poverty, known as the 'brown agenda'^{viii} are of critical concern (UNDP, 1993). Sao Paulo demonstrates, according to a World Bank report, the negative results of rapid growth and industrialisation.

Water pollution in Sao Paulo, as elsewhere, is the result of a combination of increasing industrial effluents and raw domestic sewage discharged into local rivers and other water bodies. Air pollution, in turn, is associated with the rapidly growing number of motor vehicles and the emission of a variety of substances by industrial sources...Although water and air pollution are probably the most serious urban environmental problems...they are by no means the only ones. Other areas of concern are solid waste - including hazardous industrial and non-industrial waste collection, storage, and/or disposal, and frequently associated soil and subsoil contamination, storm water drainage and related phenomena such as flooding, erosion and land or mud-slides, as well as noise and pollution (World Bank, Operations Evaluation Department, 1990b, p.iv).

The pictures painted in the case of Sao Paulo above and

the example from the British industrial towns in the 1840s may seem to imply that there is a direct relationship between rapid urbanisation, industrialisation and environmental degradation. But this relationship does not always hold true, while as Williams (1994, p. 241) notes, although there are "broad conformities in the sequencing of events, such that urban growth creates physical changes in the urban environment which in turn impact on the human population, the broader (both national and international) political, economic and social structures and inequalities have a profound effect in determining the nature of specific outcomes in particular localities".

Thus different cities in the Third world will experience different combinations of "brown agenda" problems and to varying degrees of scope and gravity.

ENVIRONMENTAL JUSTICE: A THEORETICAL FRAMEWORK

The Environment: A Global Issue

There has been a realisation for at least 30 years that the world is faced with serious environmental problems. There is, however, a difference between environmental problems faced by developed and developing countries. In developed countries, environmental problems are generally those caused by high growth and economic development. These include urban air pollution, traffic congestion, pollution of beaches and rivers, disposal of radioactive waste and enormous piles of every day affluent-society garbage. Seminal works such as

Schumacher's "Small is Beautiful" and Mishan's "The Costs of Economic Growth" highlighted the relationship between growth and the environment. In developing countries, the reverse is true, their environmental problems are those that reflect the very lack of economic development and poverty in those societies. As Beckerman puts it "[these are] problems in other words, of both rural and urban poverty. In both towns and in the countryside, not merely the 'quality of life' but life itself is endangered by poor water, housing, sanitation and nutrition, by sickness and disease" (1995, p. 25).

The last decade has seen renewed vigour^{viii} in environmentalist circles to predict environmental disaster as a result of global warming, damage to the ozone layer and the apparent loss of biodiversity and to call for "sustainable development" but with "sustainability" (or greening the earth) gaining a much higher profile than development. The fashionable "green issues"^{ix} have been somewhat exaggerated by comparison with the acute environmental problems facing the burgeoning Third World cities today (Ibid.)

Hardoy et al., (1992) observe that interest in urban environmental problems is overwhelmingly based on Northern perceptions and precedents. It seems to be biased towards tackling environmental problems which Third World cities have in common with cities in Europe and North America. Due to this, attention is biased towards dealing with chemical agents in the air, ignoring biological agents in water, food, air and soil, including those responsible for diarrhoeal diseases, dysentery and intestinal parasites. This preoccupation persists even though a report by the WHO Commission on Health and the Environment (1992) points out "it is biological pathogens in the human environment plus the high proportion of people who lack access to fresh water and other essential natural resources which represent far more serious environmental problems than chemical contamination, both in urban and rural areas" (ibid.).

This divergence of interests and the refusal of developed countries to consider to any significant extent environmental problems which impact most directly on citizens of developing countries poses the danger of global environmental concerns being dismissed by governments and environmental groups in the Third World. Furthermore, there is no compelling reason why developing countries should divert attention from their immediate concerns when certain Western multinational corporations are seen as major contributors to the problem (Hardoy et. al., 1992).

This then is an issue of justice as perceived by different parties, which if not solved has the potential

for greatly exacerbating the issues that are of concern to developed countries and threatens the sustainability of the earth - both in terms of security (as discussed later in the section, *The Case for Environmental Justice*) and in ecological terms. Those advocating strongly for sustainability in the interest of the future while present life-threatening problems are not addressed are missing the point. As Nobel Laureate Robert Solow puts it:

Once you think about sustainability, you are almost forced logically to think about equity, not between periods of time but equity right now. There is something inconsistent about people who profess to be terribly concerned about the welfare of future generations but do not seem to be terribly concerned about the welfare of people today (Beckerman, 1995, p. 19).

There are increasing calls for the issues of social justice and environmental protection to be addressed together, both at global, regional and local levels.^x

On Justice

The pocket Oxford Dictionary defines justice as "fairness, exercise of authority, and maintenance of right". The concept of justice is problematic because there is no agreement of what "right" or "fair" entails. People have different concepts of justice which are informed by often unexamined, unconscious ideas^{xi}, what one person considers just may be considered unjust by another depending on philosophical or political convictions.

Coming from a philosophical perspective, Wenz (1988) argues that issues of justice (including environmental justice) arise in situations where people want more than they can have and there is limited benevolence^{xii}. Since people are concerned about getting their fair share (and there is no agreement as to what a "fair" share is!) this necessitates the creation of institutions to allocate the scarce things among those wanting or needing them, or just to define what might be an acceptable moral, right, and just code. In today's world, such institutions are global, regional, national and local. Examples of global institutions are; The World Bank and the United Nations. Although it can be argued that their capacity to arrive at just decisions is greatly hampered by their unequal structure that allows certain countries more power than others, the United Nations, and to a lesser extent, the World Bank are still some of the most representative global institutions and help define what an acceptable view of justice is (i.e. in the UN Declaration of Human Rights).

Social Justice and Environmental Protection:
Environmental Justice

The relationship between protecting the environment and social justice is dealt with extensively by the philosopher, Peter S. Wenz (1988) in his book *Environmental Justice*^{xiii}. Environmental Justice is the concept that brings together concerns for social justice and environmental protection. Because the term justice is so subjective, the concept of Environmental Justice suffers from definitional problems. It can be compared to a term like sustainable development, which different users would mean different things for different circumstances. For example, in the SOAS Environmental Justice Project guidelines it is stated: "In order to avoid the adoption of any a priori definition of what 'environmental justice' is, or should be, the guiding criterion should be whether any actors in the system regard a situation relating to the environment as unjust, or as a basis for a potential claim for state action". Although these guidelines are useful for the purpose of a legal project where the emphasis is whether a claim arises or not, the weakness here is the implication that as long as no actors in the systems voice their perception of injustice, or make a claim, it must be accepted then the situation is just. This is despite the fact (now widely shown in access to justice literature) that groups such as the urban poor might not make claims about what they perceive as injustice. Furthermore, many poor people have a fatalistic attitude that makes it difficult or impossible to differentiate injustice from natural misfortune.

Holfrichter (1993) in the book *The Theory and Practice of Environmental Justice* defines access to justice as a series of radical reforms that go well beyond the fine-tuning of the legal system. Others such as Grimeaud (1996) define access to environmental justice as the capacity of people to participate in policy and decision-making, in the implementation of environmental actions, decisions and monitoring mechanisms.

Generally speaking, environmental justice addresses a multiplicity of issues such as: 1) people's participation in the distribution of benefits and burdens that result from environmentally related actions and decision; 2) people's access to healthy living and working conditions; 3) people's access to environmental information and monitoring mechanisms; and, 4) access to redress when exposed to environmental hazards. It also addresses: 5) issues of division of burdens of environmental protection within and between nations; 6) between current and future generations; and, 7) between human and non-human species.

Environmental Justice: Theoretical Background

The theoretical roots of the Environmental Justice movement are to be found in the United States of America. The evidence that urban communities and especially people of colour bear disproportionate share of environmental risks led to the elevation of environmental issues on the civil rights agenda and empowered communities to influence local development decisions. Although there were various research findings since 1971 documenting the relationship between race, class, and degree of exposure to environmental hazards, two studies released in the mid to late 1980s in particular raised the public consciousness in the United States about the scope of environmental injustice. These were a 1983 study by the United States General Accounting Office (GAO) and a 1987 study by the United Church of Christ Commission for Racial Justice (UCC) (Foster, 1993). These two studies became major catalysts for activists seeking justice in environmental policy making and in how environmental costs are distributed. Armed with the evidence and increased consciousness of the issue, concerned citizens, lawyers and academics continue to mobilise to reduce the environmental threat to poor and minority communities. Commenting on the situation after the studies, McWilliams (1994, p. 757) observes that,

"Communities have responded to the mounting evidence of environmental injustice with impressive grassroots organizing feats and have successfully resisted the siting of environmental risks in predominantly minority neighbourhoods. In 1991, at a summit meeting, these communities and the growing ranks of environmental justice activists officially christened a movement and adopted principles to guide their actions^{xiv} ... communities that used to be politically passive, unassuming leaders from inauspicious backgrounds are leading new community groups in battles against the Goliaths of the development world. More importantly, the community groups are often winning...one of the by-products of organised community resistance is a sense of empowerment."

Although the Environmental Justice Movement was given life in the USA and consequently the country has contributed vast amounts of research to the subject, issues of justice, equity and the environment have been occupying activists all over the world. The Florence Project (Cappelletti and Garth, 1978) on Access to Justice, which brought together lawyers, anthropologists, economists and policy makers, was driven by "the need to make justice more accessible to all persons and to new rights (i.e. the 'diffuse interests' of consumers and the environment in particular)" (ibid.). The Florence Project addresses all the legal issues facing the poor and the excluded.

Organisations such as Amnesty International and Greenpeace are increasingly working together on issues of Human Rights and Environmental Protection albeit with tensions concerning what should be given a higher profile (Boyle and Anderson, 1996). In South Africa

for example, there exists an Environmental Justice Networking Forum. The SOAS Law Department is for example at the point of publishing extensive research carried out in Asia, Latin America and Africa on Environmental Justice.

The Case for Environmental Justice

A Matter of Survival

Wenz (1988) demonstrates that the earth would become uninhabitable without environmental protection. Similarly, without access to justice, the social environment would become equally hostile, at global, regional and local levels. He puts forward a case that access to environmental justice is not only desirable for moral reasons, but a practical necessity for global security. He demonstrates how vulnerable modern society is to disruptive activities of a few dissidents whose behaviour cannot be controlled completely by force. Under such circumstances, it is in everybody's self interest that the social order is perceived by the majority to be tolerably just. When people perceive environmentally-related policies as consistently biased in favour of some groups and against others, there is a danger that their voluntary cooperation which is necessary for the maintenance of social order will be undermined. On the other hand, history has shown us that many governments, time and again have ignored considerations of justice and have effectively, at least in the short term, used force or threat of force to ensure compliance with their policies and maintain the status quo. But as Wenz argues convincingly, and as history has also shown, complete replacement of justice by force is not possible among human beings at least in the medium to the long term.

As technology makes it possible for information to flow easily, and as people's aspirations and expectations around the world continue to rise, it will be even more difficult for politicians to use force as a viable instrument even in the short term. There is thus a need for public policies and actions to embody principles of environmental justice that the vast majority of people consider reasonable.

The issue of environmental justice takes even greater importance in the context of a rapidly urbanising world since cities are where the majority of the world's population will live in the future and where the drama of political, economic, cultural and social life will be played. As countries - and cities within them which are considered engines of economic growth - compete in the global market for investment and trade

opportunities, there is a potential danger of increased social inequalities and environmental degradation. In the interest of the sustainability of a rapidly urbanising world, the issue of environmental justice is of urgent concern.

Environmental Justice: A Human Right

Wenz (1988) differentiates between moral and legal rights. Legal rights are determined by the government when laws are created. As the laws change, so do legal rights. Moral rights on the other hand are what the Western theorist John Locke referred to as natural rights. These according to him were life, liberty and property. For Thomas Jefferson, natural rights are rights to life, liberty and pursuit of happiness. These moral rights, which exist whether recognised by law or not, belong to people by nature, because they are human. These rights according to Locke and Jefferson are self evident. Immanuel Kant, according to Wenz (1988, p. 121), comes to a similar conclusion that "the welfare of human beings is an important goal of morality, people have special dignity, no person should be ever used merely as a means, each must be respected as an end-in herself". To Kant because human beings have reason and freedom, this makes it possible for them to "envisage and choose among alternate courses of action, thereby making them responsible and morally accountable for what they do".

According to contemporary theorists, (Locke and Jefferson^{xv} might not be in agreement), moral rights belong to all human beings equally, regardless of race, religion, gender, nationality, or geographic origin and their respect is commanded morally, whether the law acknowledges it or not.

History has shown the weakness of the argument of self evidence of moral rights in situations such as apartheid South Africa, Nazi Germany, colonialism, slavery and women's rights, to name but a few. Because in the real world people have limited benevolence and do not always respect each other's human rights, in order to protect them, it becomes necessary to organise and establish institutions such as - in the modern world - governments or in more traditional societies, Council of Elders, etc. It would then follow that a government that fails to ensure people's human rights should be abandoned. But why is it then that in reality this is not usually the case? Wenz suggests that this could be because human rights are both positive and negative and that people in modern society are more inclined to observe negative rights as opposed to positive rights.

Positive and Negative Human Rights

Negative rights are rights to non-interference, that is to say, they prevent other people from interfering with one's right to life, liberty and property (especially

property in a capitalist society). Positive rights on the other hand require that people assist one another as opposed to just leaving one another alone (many traditional societies such as the Kikuyu society in Kenya were organised under positive rights). An example of positive rights is Article 25 of the United Nations' Universal Declaration of Human Rights:

Everyone has a standard of living adequate for the health and well-being of himself and of his family, including food, clothing, housing and medical care and necessary social services, and the right to security in the event of unemployment, sickness, disability, widowhood, old age or other lack of livelihood in circumstances beyond his control.

Those arguing that only negative human rights should be observed say that respect of their right to property means they should not, for example, be taxed for purposes of ensuring that others have a right to life. They consider that such human rights to poor people should be ensured on a voluntary basis, out of benevolence (Wenz, 1988). This argument could be somehow compelling if the world was a level playing field in the sense that one's comforts and affluence did not depend on historical and current exploitation of others. The interdependence of people within a country and between countries and regions makes it morally wrong to view the right to property as separate from all other moral rights. In any case, the property that one acquires is connected directly or indirectly to the efforts of other people and does not only depend on the property owner's efforts although they may be considerable.

Wenz (1988) argues convincingly that positive and negative human rights cannot be separated. If one is recognised, then the other must be also recognised. Thus, if justice is about giving people what they have a right to, then allowing people to live in environmentally life-threatening situations, for example lacking clean water, is profoundly unjust and everyone has a moral obligation to do something about it. Thus, how the earth's most important natural resources are shared out between countries and within countries has central importance to environmental justice. There is thus a moral obligation for the earth's resources to be shared such that everyone's natural and human rights are respected. But since a right that is not protected is liable to be violated or ignored when times got hard as was the case with SAPs. It is important that moral rights are also enshrined in legal human rights and that means of enforcement exist. This could take the form of formal political institutions as well as informal channels such as the press and other networks of influence.

Towards a Rights-Based Approach to Environmental

There has been a move since the 1980s, at least in rhetoric, by some in the development community from a needs-based approach to a rights-based approach to development^{xvi}. A needs-based approach to development is top down and hierarchical and assumes that those at the top of the hierarchy, professionals, some NGOs and governments know what the poor need, and are benevolent and rational. Kant, as discussed in Section III, contends that all human beings have reason and freedom which makes it possible for them to envisage and choose among alternate courses of action and to be responsible and morally accountable for what they do. Unlike Kant's contention, a needs-based approach seems to assume that some groups of people such as the poor are somehow less human since they cannot be trusted to be responsible and morally accountable for what they do and require that those higher on the hierarchy make decisions on their behalf.

A rights-based approach on the other hand is concerned with justice and equity. It aims to increase the influence of low income groups^{xvii} in the political process and within the market. A rights-based approach is bottom up^{xviii} and places emphasis on community organisation and systematic empowerment where the poor and weak gain self-confidence to make their views known, gain information on available resources and their rights to them and use political, social and legal mechanisms (international, national and local) to ensure that their needs are met and rights upheld. A rights-based approach to environmental justice is based on "the belief that individuals and groups as Kant would put it, are ends in themselves having a certain dignity. They thus should have "basic rights to a decent living environment and must be in a position to claim justice when these rights are abused or left unfulfilled" (SOAS, 1996, p. 5).

The basic needs approach to development, (an example of a needs based approach) although widely criticised for being top down, has nevertheless had many positive results in many developing countries. The 1970s for example saw huge improvements in literacy levels and health conditions, leading to dramatic declines in maternal and infant mortality rates. The basic needs era saw a concentration of efforts to meet people's basic needs. It could be argued that what was happening during this time was a general recognition by those in power, of people's natural or moral rights to life and property^{xix}. But as is the case with all moral or natural rights, when they are not protected and enforced they are liable to be violated or ignored when times got hard as was the case during Structural Adjustment Programmes of the 1980s.

The Case for a Human Rights Approach to

Environmental Justice

A human-rights approach to development is compelling. If, for example, during the implementation of Structural Adjustment Programmes (SAPs) the basic human rights of people in developing countries had been somehow protected^{xx} and effectively enforced, the World Bank and the IMF would have had to prove to the world community before any decision was taken that any measures that they promote will not affect negatively poor and vulnerable peoples' basic human rights to life. The goal of growth or increasingly a country's GNP (and property increase for some) would in such a situation have had to be subordinated to that of ensuring that no individual or groups' basic rights to life was threatened. If a decision was taken in ignorance of the repercussions - as one cannot always know whether a decision will impact negatively on peoples' moral rights - then those affected would have had access to redress.

As it happened, however, in the developing countries in the 1980s, the poor and the most vulnerable people, especially women and children, were made destitute and exposed to life-threatening conditions. For example, in Sao Paulo, cuts in the health budget due to adjustment led to delays in the implementation of the Expanded Programme of Immunisation leading to outbreak of deadly communicable diseases among children (Vickers, 1991). But because moral human rights were not strongly protected and enforced, those affected could not as a matter of right access means to redress. Some poor people were however targeted with aid or through programmes for mitigating the effects of adjustment after UNICEF^{xxi} and aid agencies made an outcry. But the help was inadequate, ad hoc and administered in a top-down manner where the poor are seen as requiring charity and benevolence instead of what they deserve, justice!

ACCESS TO ENVIRONMENTAL JUSTICE FOR THE URBAN POOR

Access to Justice assumes a goal called justice and assumes that some group or type of person living in society is either partially or fully excluded from justice.

The group or person usually is poor, or belongs to the lower class or a minority group. Access to environmental justice for the urban poor implies a situation whereby the poor in their homes, neighbourhoods and work places have a right and access to a clean, healthy and secure environment; and access to redress when these rights are contravened or unfulfilled.

The first part of the section will demonstrate that the urban poor have limited or no access to a clean, secure and healthy environment and the second section looks

at the problems of securing redress.

Access to a Clean, Healthy and Secure Environment

The poor in developing countries are far from having access to environmental justice. As noted by Olpadwala and Goldsmith (1992, p. 630), "the evidence today is overwhelming that the poor in cities suffer disproportionately from environmental problems". Environmental problems that the poor experience can be classified into two broad headings which comprise the "brown agenda". The first relates to traditional environmental health issues and the second refers to problems that arise from rapid industrialisation that include toxic and hazardous wastes, water and air pollution, noise pollution and industrial accidents.

Environmental Health Issues Traditionally Associated with Developing Countries

Traditional environmental health issues include limited availability of land suitable for low income groups, inadequate shelter, infrastructure and services such as access to fresh water, sewage and waste disposal facilities that would prevent the transmission of pathogens in the environment.

Inadequate Shelter

There is a strong relationship between inadequate shelter and health problems. Until the 1970s, Third World housing issues were preoccupied with ensuring adequate supply of housing units of a particular modern or Western style and quality. But the modern housing was prohibitively expensive for the majority of the poor since wealth was not "trickling down" as promised. Attention was turned to a redefinition of what adequate quality was. This led to consideration of pre-fabricated houses, sites-and-services schemes and housing co-operatives, to name some. But these alternatives tended to benefit the better off among the urban residents and in most circumstances excluded women^{xxii}. As urbanisation increased, urban populations greatly exceeded the houses constructed. Large numbers of the urban poor were excluded from formal housing and squatter settlements proliferated. These were often located in areas not wanted for commercial development, such as hillsides and flood plains. These are also areas that are usually heavily polluted where for example waste dumps are site and watercourses are contaminated. The density of the population in such settlements is so high as to increase the risk of disease transmission and accidents (Hardoy et al., 1992).

For example, Misra (1994) says that in the city of Allahabad, India, one or two room houses shelter five

to seven people with rooms not measuring more than nine to twelve square metres. Potts (1994) quotes a newspaper article in Zimbabwe (Herald, 1990) on psychosocial stresses caused by overcrowding which described cases such as that of a man, his wife and five children renting a room not much bigger than a double bed!

Problems of Water Supply and Sanitation

Water supply and sanitation are major problems of most Third World countries. At least one billion people in developing countries have no access to safe drinking water, and approximately two billion have no access to proper sanitation. Since population increase has been fastest in urban areas, it is in such areas that the absolute number of people lacking water supply and sanitation has increased most. An absence of readily available drinking water, sewage connections or other systems to dispose hygienically of human wastes, and garbage collection results in many debilitating and easily preventable diseases becoming endemic among poorer households (Hardoy et al., 1992). Most low income settlements in Asia, Africa and Latin America, have no access to sanitation systems, although the gravity of the problems varies with the regions. For example, "African cities are somewhat better off in this regard than many Asian cities. In 1985, 27 per cent of African urban dwellers had no sanitation coverage, compared to 67 per cent in South-East Asia and 33 per cent in India" (Potts, 1994, p.208). Although adequate supply of clean drinking water does not necessarily ensure immunity against water related diseases, it is nevertheless a necessary condition. Examples of diseases related to lack of sanitation are: cholera, typhoid, dysentery, the diarrhoeal diseases, intestinal parasites and viral diseases such as hepatitis. Hardoy et al (1992, p. 106) write that: "Women are often more at risk than men because of the particular tasks they undertake - for instance from their role in caring for the sick and laundering and cleaning soiled clothes where water supplies and sanitation facilities are inadequate." Research shows that the above diseases are much higher in low income settlements without adequate sanitation than in better off neighbourhoods. "Many health problems are linked to water, its quality, the quantity available, the ease with which it can be obtained and the provisions made for its removal, once used" (Hardoy et al., 1992, p. 40). The urban poor have not only disproportionately less access to water supply for example, but what is more, they have to pay from about four to 100 times more from vendors than richer groups with access to piped water (ibid.).

Problems Arising from Rapid Industrialisation

Problems that arise from rapid industrialisation include: toxic and hazardous wastes, water and air

pollution, noise pollution and industrial accidents. These problems are currently much less widespread than the above set of problems. But as Chan (1994) shows, for an increasing number of Third World cities, the overlap between the two sets of problems is reaching critical levels resulting in poor people experiencing more advanced pollution problems, before any effective solutions have been found to pollution and health problems that stem from their lack of basic needs such as clean water, sanitation and shelter. They are thus suffering from problems related to both underdevelopment and development.

Industrial Accidents

In Bhopal (India), 1984, the release of 30 to 35 tonnes of highly toxic gas from a Union Carbide pesticide plant led to a major disaster. Figures, which are often disputed as underestimates, show 3,300 people dead, 86,000 permanently injured and 60,000 seriously injured with a much larger group of people affected, directly or indirectly by immediate and long-term impacts of the disaster. The Centre for Social Medicine in Delhi recorded that: "Those who died are the poorest. More than half the affected people belong to an income group - about 150 rupees per month - which cannot afford two meals a day around the year. Those who died were even more disadvantaged than the overall affected population" (Walker, 1994, pp. 51-52).

The poor were the most affected because of their vulnerability. They lived in high density, poor quality housing that could not keep out the dangerous cloud even when all windows and doors were shut. Tachakra (1989) quoted by Walker (1994), says that people living in better off suburbs with lower densities and better housing were apparently little affected. Evacuation was made difficult by the density of the population, access problems to the squatter settlement, poor communication system and general low state of preparedness of the emergency services. The same type of vulnerability problems of the poor is mentioned in the case of the Mexico City disaster in the same year. As Walker (1994, p.57) concludes concerning the two disasters, "what happened was less important than where it happened and to whom it happened".

The relationship between industrialisation, urbanisation and marginalisation of low income people is well documented by Susman et al. (1983). Industrial activity is normally located within or close to urban areas in order to take advantage of infrastructure, work force and market economies. Industrial plants and activity attract migrants seeking work and income. Since land around industrial sites is not attractive to those who can afford to live in leafier neighbourhoods, those that have no choice occupy such land since it is accessible and empty.

Vulnerability to Natural Disasters

Problems related to housing, sanitation, health and industrialisation in turn make the poor disproportionately more vulnerable to natural disasters such as floods, earthquakes etc. Analysis of the vulnerability of the urban poor to environmental

hazards has been extensive in the last decade since Susman et al. (1993) put forward the seminal, marginalisation theory of disaster demonstrating the nature of society in which disaster occurs and more particularly the differential vulnerability of social classes (Main, 1994). For example in 1976 in Guatemala, an earthquake killed 22,000 people with damage being almost exclusively in the slum areas, resulting to the coining of the phrase, classquake (Susman et al., 1983). This is not to imply that middle income and richer people are unaffected by natural disaster, for example in the Mexico City earthquake disaster of 1985, the most tragedy was wrought among lower- middle class families in high-rise buildings. On the whole however, because of the urban poor's lack of access to adequate housing and infrastructural facilities, it is they who suffer most from environmental hazards and disasters (Main, 1994).

Siting of Toxic Wastes

Hazardous or toxic wastes are classified as such because of the special care that is necessary in handling, storing, transporting and disposing them to ensure that they are isolated from contact with humans and the natural environment. It is only recently, in the last 15 years or so, that the gravity and scale of toxic waste has been recognised (Hardoy et al., 1992). Many countries, especially the developed countries are now having to deal with problems resulting from years of inadequate controls of toxic wastes. They are now charging polluters who are finding new ways of evasion such as siting in developing countries where there are lower environmental standards and urgent need for economic growth. Some companies in developed countries attempt and some manage to export toxic wastes to developing countries. Hardoy et al., (1992, p. 71) observe,

"... more attention needs to be given to the disposal of hazardous wastes by branches of multinational firms or by domestic industries within Third World nations. In most nations, there is little or no control of the dumping of hazardous wastes and little or no provision for special facilities needed to safely store or treat such wastes. Most hazardous wastes are currently dumped with other wastes on open land and sites with no provision to ensure these remain isolated from contact with plants, animals and humans."

The urban poor are the most vulnerable to toxic waste poisoning as they are to exposure to all other hazards, although their richer neighbours are certainly not immune to such problems.

Access to Redress

It is clear from the above section that the urban poor have little or no access to a clean, secure and healthy environment. Both their negative and positive human rights as protected under international instruments and most domestic constitutions have either not been fulfilled (positive rights) or have been abused (negative rights). When these rights are abused effective access to environmental justice requires that the urban poor have a possibility of seeking and getting a remedy. The right to legal redress is protected by international institutions and most domestic constitutions under first generation rights which are non-derogable and also include rights to life and equality. But because of many barriers faced by the poor in accessing formal justice (discussed in the next section) their right to redress is rarely fulfilled if at all. In the case of Bhopal

discussed above, where it was obvious that the victims' rights to life and a healthy environment were violated, the poor had little possibility of seeking compensation or remedy. Shrivastava (1992, p. 119), writing about one of the victims of the Bhopal tragedy, vividly makes this point:

"The terror she felt on seeing her dead child in her arms on the night of December 3, 1984, did not leave Ganga Bai till her own death last year. She lost three children and her husband in this accident. She was left penniless and injured with MIC poisoning. Thus incapacitated to work for a living she was reduced to begging. Fibrosis of the lungs diminished her capacity for hard manual labour, the only work she was qualified for. Her only hope of surviving lay in receiving adequate financial compensation for damages."

The compensation that victims such as Ganga Bai sought in 1985 was very modest and reasonable. They had only asked for compensation for dead victims according to standards in India and the seriously injured to be given \$100 to \$150 per month to meet their food and medical needs while victims with minor injuries would be paid a one-time compensation for medical costs and economic hardship. This would have cost Union Carbide anything from \$600 million to \$1.2 billion dollars. Victims continued to die as the political and legal battles continued to be fought in court. It is ironic that although Union Carbide paid \$470 million in 1989, by the time of her death, Ganga and other poor victims had not received a penny (ibid.).

BARRIERS OF ACCESS TO ENVIRONMENTAL JUSTICE FOR THE URBAN POOR

The urban poor face many and complex barriers that make it difficult or impossible for their legal, moral and political human rights to be respected. But as discussed in section 2, the urban poor are not a homogeneous category and the degrees of poverty differ according to their entitlements which are modified by social cultural determinants such as gender, ethnicity and age. Although discussed below in a general sense, it should be borne in mind that social cultural determinants will make barriers of access to environmental justice relative.

Generally, when people refer to justice, what comes to mind is the legal system of courts, judges and lawyers.

But justice is much more than this. In situations of highly skewed distribution of power and wealth, access to justice takes a much wider meaning than legal justice. As Friedman (1978, p. 7-8) notes, access to justice "has to be part of a general redistribution of legal, political, social and economic power ... otherwise ...it may be creating expectations that are betrayed when they come up against reality". Barriers of access to environmental justice that the poor face are dealt with under the following broad categories: political, legal and exogenous barriers. As Friedman implies, these are interrelated and cannot completely be isolated one from the other, so there will inevitably be overlaps in the following discussion.

Political Barriers

Hardoy et al., (1992, p. 23) assert that "most environmental problems are political problems. They arise not from some particular shortage of an environmental resource such as land or fresh water but from economic or political factors which deny poorer groups access to it and the ability to demand changes".

Williams (1994) arrives at a similar conclusion when he notes that inappropriate, or non-existent economic, legislative and institutional arrangements leads to non achievement of relatively modest goals.

Lack of Political Will

In the case of fresh water supply, for example, the denial of poor people's rights to life and health is usually a result of lack of political will on the part of governments to give a higher priority to water supply and not lack of the water resource. There are, however, exceptions, such as Mexico City, which have a natural and critical shortage of water. But even in such situations, if there was political will, modest improvements would greatly improve poor people's access. The same problem applies in the

case of other infrastructure and especially land. Most cities in the developing world have ample unused or under-utilised land sites within currently built up areas which could be used for accommodation by low income households currently residing in overcrowded areas. Nyong'o (1996, pp. 4-5), referring to the major problem in implementing reforms in Nairobi to make provision of services more effective, states that: "the major

constraint is political rather than financial. It lies in the lack of political will or resolve among major political actors: Central Government, the City Councillors and various groups with interests well entrenched in the way things have been run in the past and to date". Potts (1994, pp. 208-209), describing accessibility of land to the urban poor in African cities, arrives at a similar conclusion. "Availability of land for the urban poor is influenced by the nature of the ownership of peri-urban land and government attitudes towards unplanned settlements." She emphasises, however, that the gravity and nature of the problem is not homogenous in the African continent. In certain cases, one finds small urban areas surrounded by land under traditional communal tenure where access to land can be negotiated with traditional elders and where local governments either have no capacity to follow up on planning regulations or knowingly ignore them. At the other end of the spectrum though, one finds large cities such as those in South Africa, Zimbabwe and Namibia where most land tenure is private, and the government has an interest and commitment to upholding rights of private land owners and staying within planning regulations. The government in this case lacks the political will and interest to ensure that land for the urban poor is planned for.

Of all the many environmental problems associated with low-income groups, Williams (1994) singles out the issue of land and how governments manage it as having paramount importance. McAuslan (1985, p.13) argues that: "Land - its use, abuse, control and ownership - is the central problem of the city". He, (McAuslan,1992), among others such as Linden, (1990) and Mattingly (1993), demonstrate the relationship between environmental quality and urban land-use decisions. Factors such as land markets and land-management policies and practices that are ineffective influence the degradation of fragile lands, air pollution, occupation of hazardous locations, congestion and loss of open space and agricultural land. The lack of political will by both politicians and bureaucrats to manage urban land to take into account the needs of the urban poor is a key constraint in their access to environmental justice.

Powerlessness of Urban Government

Stren (1989), referring to the problem of lack of adequate sanitation in African cities, attributes it partly to the poverty and relative powerlessness of urban governments. For example in Nigeria, explanations for the low and irregular level of urban water supplies can be attributed to the relationship between the local authorities and the central government. In the late 1960s, the powers for the water supply function were, in almost all cases, transferred from the local authorities to state or government parastatals. The state not only appointed the chairmen and board members, but it also underwrote capital and recurrent expenditures. Some of the reasons given for unsatisfactory services rendered were the long delays that local authorities faced in getting expenditure approved from higher levels of government. The same situation applied for other infrastructure and utilities such as electricity. This problem of centralisation of power in central government has been widespread since independence in most developing countries, but some countries have moved towards policies of decentralisation.

Although all urban residents are affected by these problems, the poor suffer the most for various reasons.

First, the fact that when a service is short supply the little that there is goes to those with economic power and political influence. Secondly, the wealthy "exit" from the system by, for example; purchasing imported generators to power their factories and compounds or by buying large water storage tanks for their houses. This reduces the incentive of those that have a powerful voice to improve the system through political pressure on urban and other levels of government, leaving those with a weak voice such as the poor, with little prospects for improved efficiency.

Local Government Poverty

Although all local governments have unique structures of finance, in a broad sense, they have inadequate own resources to finance existing expenditure functions and few countries allow local governments to levy economically sensible taxes which will yield enough revenue. The staff in local governments are normally de-motivated, under paid and lacking in training making administrative functions and management weak, which in turn inhibits central governments from giving them more responsibility. The issue of better municipal

financing, administration and management must be addressed if the local governments are to meet even in a modest way the basic needs of their poor populations.

The Urban Poor's Lack of Political Influence

Good governance demands that officials better meet their responsibilities and create representative,

political and administrative systems allowing for the views and priorities of citizens to influence policies and actions. It is primarily the poor's lack of representation and access to decision making processes that result in their problems failing to be prioritised and hence diminished entitlement to borrow Sen's (1981) expression. If the poor had influence they would be able to challenge decisions, demand their rights are respected and when contravened, gain effective redress and increase their bundle of endowments.

The poor's access to political influence has also been hampered in the past by inappropriate, development interventions. As discussed earlier, the dominance of a needs based, top down approach to development sidelined the poor in decision making and instead targeted them with development projects where the poor were objects rather than the subjects of development. Many Non Governmental Organisations (NGOs) that presumably act in the interests of the poor have done little to advance the cause of the poor's access to political influence, rarely questioning the status quo or the root causes of poverty and thus wittingly or have unwittingly created dependency on the part of the poor.

Fowler (1995) commenting on research on NGOs expresses surprise at how many of them lack the theory and analysis why poverty exists as a global or national phenomenon. According to him, relatively few development NGOs have a coherent and well articulated understanding of why the problems they seek to address actually arise, or what the structural nature of impoverishment and social relations is. Issues of justice (environmental or otherwise), respect for human rights of poor people and their access to political and decisional making powers have only recently began to emerge in NGO and other discussions.

Legal Barriers

The legal barriers that the urban poor face in their quest for environmental justice can be classified into two broad headings: a) substantive legal barriers and b) procedural barriers. Substantive legal barriers here refers to political, economic and social factors that make the rule of law ineffective. These are distinguished from technical legal procedures that make it difficult or impossible for the poor to access the formal legal court system.

Substantive Legal Barriers

As noted earlier, the body of human rights and norms which are already technically protected under international instruments and most domestic constitutions are detailed and comprehensive (Anderson, 1996).

Boyle (1996) argues that the importance of civil and political rights such as - life, liberty, legal redress, political participation and equality - is their capacity to create political space whereby concerned groups can voice their concerns on environmental justice. However, attempts to mobilise such rights in pursuit of environmental justice claims have been rare and when applied have had mixed success. Harding (1996) demonstrates the barriers to effectiveness of such rights in the case of Malaysia where he observes that, although important political rights are protected under the Malaysian constitution, they are however, also subject to statutory restrictions. Examples of such restrictions are: public gatherings, publishing activities and control of NGO activities.

In 1987, the Malaysian government cracked down on environmental NGOs leading to a climate of fear and repression. Existence of laws including environmental laws in Malaysia have been ineffective since in the absence of democracy and an accountable government, enforcement of such laws is difficult. Thus removing barriers to access to environmental justice may require an overhaul of the whole political structure in Malaysia.

Formal Law Favours the Wealthy

Law, as McAuslan (1993, p. 236) puts it "is not a neutral instrument... the implementation of law, the legal culture of a society, all are value-laden, part of social struggles within society". Galanter (1974), in his essay *Why the "Haves" Come Out Ahead*, demonstrates how "the basic architecture of the legal system creates and limits the possibilities of using the system as a means of redistributive justice (that is systemically equalising)". The legal system favours those who are wealthy because of among other things: the court rules favour older, culturally and economically dominant groups; and the rich have access to legal institutional facilities and services since they do not suffer from barriers of cost, skills or passivity.

Even the existence of democratic structures and the "rule of law" as is said to exist in developed countries such as the United States of America has not guaranteed environmental justice for the poor and minority groups. This is because even though under the federal legislation there is equal environmental protection, the rich and influential are able to use political and economic leverage to ensure that the law works in their favour. "In spite of claims of broad-based protection by federal legislation, laws like the Federal Insecticide, Fungicide, and Rodenticide Act leave farm workers unprotected in the interest of economic efficiency and industry preferences" (Foster, 1993, p.730).

Procedural Legal Barriers

Procedural legal barriers imply factors that make it difficult or impossible to access existing legal systems in order to ensure that their rights to environmental justice are respected and demand redress when they are contravened^{xxiii}.

Barriers of Cost

Most modern justice systems can only be accessed by the urban poor through trained legal professionals. The cost of lawyers and their services are high. One normally must employ an attorney, pay various fees and meet other expenses directly connected with dispute resolution. There are also opportunity costs incurred, for example the income lost when preparing for a case, especially when the stakes are low and when cases are likely to be protracted. In India for example, a civil case for monetary damages might take more than five years in the trial court with a comparable period consumed in appeals. In the Indian court fees act of 1870, the "act provides that if a citizen wants to bring a civil case, he must pay a fee, typically by putting stamps on the complaint. In suits for money damages, the fee is calculated ad valorem on a regressive scale" (Galanter, 1985, p. 274). Apart from paying the court fees, the client must pay the lawyer's fee as well. Economic considerations thus make it difficult for an aggrieved party existing at the margin to prosecute or defend a case in court. Since most courts are not sited in poor neighbourhoods, this presents problems of distance and added cost of transport even if legal fees are not involved.

Psychological Barriers

The court due to its formalities and mysterious legal machinations, provokes anxiety and intimidates the poor who cannot afford lawyers to guide them through. Those thrown into the courts without choice as defendants have to participate as best as they can with differing degrees of effectiveness. The language of the court often is one that a poor person with little education cannot understand. The poor avoid the courts for these reasons at all costs, even though that might be the only way to right a grievance. For the urban poor, there also exists the problem of recognising that a legally enforceable right exists and differentiating misfortune from contravention of their rights. Even when a right is recognised, the knowledge of how to enforce a claim may be lacking. This is referred to as "legal competence" (Cappalletti and Garth, 1978), which is related to their endowments, such as financial resources, education, background and social status.

Bias by Magistrates

Cole (1990, p.305), illustrates the judicial misconduct

by Nigerian magistrates "in a judicial system where the working class are virtually incapacitated economically in challenging judicial abuse of power". In the Nigerian system, like in many others, the poor are assumed guilty before trial because of the stereotype in which criminals are associated with the poor. The stereotype of the poor, as somewhat undeserving and undignified, justifies what Cole refers to as "degradation ceremonies" where the credibility of the accused is undermined in a ritual of laughter (induced by magistrates' jokes and sarcastic comments), intimidation, abuse, disgrace, all of which are designed to affirm guilt.

Lack of Influence of the Poor on the Judicial System

Judges and magistrates are only accountable to the law in how they choose to interpret or enforce the law and as discussed above, normally favour the interests of the powerful. In most developed countries, pressure groups representing different sectors of the populace exist and due to relatively open, democratic systems allow space or a platform where issues of the rule of the law in society are constantly debated. Although the courts are not accountable to these institutions, their existence may provoke public resentment as regards specific attitudes. In many developing countries, such as Kenya, no such institutions exist. The marginalised sector of the Kenyan populace are yet to become actively politicised enough to arouse a great deal of political pressure in respect of the maltreatment of the underprivileged by the police, the administrators and the courts. In the Nigeria case study illustrated by Cole, even if procedural barriers of cost and proximity were absent, or for that matter that their existed laws and regulations governing environmental justice, the poor will still not have effective access to justice in the courts.

The Right of Standing - Locus Standi

Locus standi describes the ability of a person to show a sufficient legal interest in a matter to allow her or him to bring a case to court. Thus what case can be brought to court is dependent on what constitutes a sufficient legal interest. As Harlow and Rawlings (1984, p. 289-90) note, "the courts have used the doctrine of locus standi to **select** from the variety of possible interests those which they will protect". Litigation on behalf of the urban poor by NGOs or other public interest bodies is often made difficult by rules of standing. In the case of Malaysia for example, NGOs cannot represent a community in court, meaning the community or group of poor experiencing environmental injustice has to litigate itself. With the many procedural barriers that the poor face, some discussed above, it would be very difficult for them to gain effective access to justice.

Exogenous Barriers

Exogenous barriers refer to obstacles presented by the structure of the international economic and political system. Even countries and urban governments with the most democratic political structures, best political will and open legal systems are constrained in what they can achieve to bring environmental justice to the poor by forces beyond their control.

Debt, SAPs and the Integrity of the International Institutions

The 1980s saw the diversion of resources in many developing countries from infrastructure needs of their citizens to repayment of debts. Efforts of governments to manage the domestic economy have been affected by exogenous factors such as increases in the price of petroleum, general global recession and especially unfavourable terms of trade for their exports. For example in Kenya, since 1964, the purchasing power of a tonne of coffee has fallen by 50 per cent and that of a tonne of tea by 68 per cent. Considering that these are Kenya's largest foreign exchange earners, it is not surprising that the nation and the cities are finding it increasingly difficult to meet their obligations for environmental justice for the citizens and especially the poor who are most vulnerable. Some countries in the developing world have experienced even worse declines in their terms of trade (Ndegwa, 1985).

The above factors have led many developing countries to incur large national debts, a negative balance of payments and shortage of foreign exchange to pay for imports of capital goods whose prices have been continuously rising. Even nations that are committed to democratic principles and have progressive laws and rights in their constitutions have found themselves lacking the means to fulfil any obligations to low income groups. Structural adjustment conditions imposed by the IMF and the World Bank, have led to deep cuts into poor countries capability to fund services such as water, sanitation, public health and education. As one analyst has put it "in a context of national and international economic restructuring, it might well be that local initiatives can do little to relieve urban poverty... regions have become increasingly dependent on decisions and forces outside the country as well as outside the region" (Tomlinson, 1994, p.9).

The same lack of economic and political influence that results in the urban poor's lack of access to environmental justice in a country or city, means that on an international level a poor country has little hope in influencing the world trade and economic conditions. Just as local laws are made and

controlled by the elites, so are laws governing international trade and economic institutions made and controlled by the powerful developed countries. The same way that certain local legal and other institutions lack integrity and fairness, so do their international counterparts regard people in poor countries as less human and deserving of access to basic moral, natural and legal human rights. Increased protectionism of the industrial countries' markets from products of developing countries, which are struggling with the threat to their poor citizens' human rights to life, is a reflection of such an attitude.

Overemphasis of aid in international discussions on development detracts attention from the crucial matter of justice in world trade, power sharing and equitable economic relations between countries. Aid, according to a World Bank study, significantly falls below the costs of protectionism borne by developing countries' economies (Vickers, 1991). Good governance at an international level is as absent as governance in many national and local levels.

Global Economic Change and Environmental Justice for the Urban Poor

Since the 1980s, the transnationalisation of the global capitalist system has accelerated considerably. One of the consequences of this phenomenon has been "the consolidation of a multitude of transnational corporations engaged in manufacturing, often of the export-processing variety, in low-wage countries" (Sklair, 1994, p. 101). The promise of jobs and foreign currency during periods of economic hardship and adjustment, as well as the threat to move investments to other regions or countries, leads to environmental protection and social justice issues being ignored. In the case of Mexico, for example, Sklair notes that the maquila industry, established by US manufacturers to escape strict US environmental regulations, including expensive toxic waste regulations - although not wholly responsible for environmental problems affecting the urban poor in the northern frontier, - has no doubt been responsible for the pollution of drinking water, illegal dumping of toxic wastes and inadequate protection of the work force. Mexico has now more than 2,000 maquilas, employing half a million workers mainly female operatives, meaning that women are disproportionately more directly exposed to industrial hazards (Sklair, 1994).

The Culture-Ideology of Money, Consumerism and Inequality

Sklair in his book, *Sociology of the Global System* (1991), argues that global capitalism in the current era

uses the "culture-ideology of consumerism" to achieve its end. The lure of a "US standard of living" for all the world's poor, and the prospects that those with a high standard of living could get an even higher standard of living leads many countries to pursue economic models that promise growth but foster inequality and subordinate poor peoples' basic human and moral rights.

A study carried out by the Inter American Bank notes that while many Latin American economies after applying the "Washington Consensus^{xxiv}" economic model have grown and inflation has subsided, much of the populace has not shared in the prosperity. One in every three Latin Americans lives in poverty, meaning that 86 million people try to survive on incomes of less than \$1 per day (Lerner, 1996).

Worse still, is the erosion of any business or other ethics that the culture of money fosters. The much publicised case of Shell in Nigeria is a case in point. Woollacott and Vidal (The Guardian, November 19, 1995, p. 27) are of the opinion that "there is evidence that right-wingers in the US are trying to redefine business ethics to accord with strict monetarist theories" They quote a former businessman and professor of marketing at Miami University, Lewis Pringle as saying, "In many, if not all, emerging markets, it is simply impossible to make significant **money** (my emphasis) without overt violation of normal Western ethical principles" (ibid.).

APPROACHES AND OPPORTUNITIES TO IMPROVING ACCESS TO ENVIRONMENTAL JUSTICE FOR THE URBAN POOR

Barriers of access to environmental justice as demonstrated in the last section are many and multifaceted. Improving access to environmental justice for the urban poor will thus also require a multifaceted approach, that is to say, it requires solutions as diverse as those involving good governance, a rights-based approach to environmental justice, restructuring of the legal system, and international political and economic change.

Good Governance: An Opportunity

Good governance comprises a cluster of ideas that Western governments claim constitute a "a model for good economic and political management" (Archer, 1994, p.7). These ideas were influenced by the World Bank's report on poverty in 1990. The end of the Cold War challenged Western politicians to "find new, positive ideas to replace the negative agenda of that conflict... they needed to declare what 'the West'

would stand for in the world, beyond plastic credit and consumer malls" (ibid. p.11). Development in developing countries was diagnosed as having been hampered by weaknesses such as inefficient use of resources, inappropriate policies, undemocratic governments and a corrupt elite.

The good governance model has three main corner stones: the role of competitive markets (the economy), government responsibility to manage (the state), and the importance of private rights and individual initiatives (civil society). Good governance, whose ideas have been taken up so widely "that they now have the status of an international orthodoxy" (Archer, 1994, p.7), makes an important departure from neo-liberalism in that it recognises that the market is not the whole answer and gives the government the responsibility to manage and regulate other actors in the economy, while promoting democracy, human rights and the rule of law. The rule of law is enforced through judicial institutions which make it possible for the principles of democracy and human rights to be entrenched and applied (ibid.).

The good governance approach thus seems to present an opportunity in the pursuit of environmental justice.

The approach's strength is that it recognises that any sustainable development and prosperity is dependent on an organic relationship between the civil society, the state and the economy. As Archer (1996, p.11) notes,

"A wealth-producing economy and well-run government will help sustain the vigour of civil society; a well-run government and a vigorous civil society will give impetus to economic growth; a strong efficient economy and a well-organised civil society are likely to produce efficient government."

The weakness of the good governance approach, and the danger it poses when looked at from an environmental justice perspective, is its market centredness. In a world that is increasingly led by what Korten (1996) describes as the "money imperative" it is not surprising the other two axes, the state and civil society are basically intended by those promoting good governance to ensure the market is enabled to function. A free market and high economic growth seems to be the ultimate goal of the good governance agenda (Archer, 1994) and will subordinate the interests of environmental justice of the poor to those of the money imperative. As Korten (1996, pp. 38-39) notes,

"A free market allocates fairly and efficiently only when market players have equal economic power. When extreme economic inequality is combined with market deregulation, the rich invariably win the competition for scarce resources - with results that are

neither fair nor efficient. The wealthy become even more powerful, gain control of the rule-making system and rewrite the rules in their own favour with increasing impunity."

Towards a Civic-Centred Approach to Governance

If environmental justice is to be assured, today's international orthodoxy of market-centred good governance must be reversed. The civil society must be at the centre of governance holding both markets and governments accountable for environmental justice. The civil society must as Korten puts it "reclaim the political institutions that set and enforce the rules" (ibid., p. 40).

There have been in recent times signs that civil society is awakening around the world to the need to influence political institutions, albeit to varying degrees between regions and countries. Local Agenda 21 initiatives, that came out of the United Nations Conference on Environment and Development (UNCED), are expressions of "political and spiritual awakening of civil society to the reality that national and global institutions are pursuing agendas at odds with the needs of people and other living things" (ibid., p. 46). It was also a manifestation of the desire of local people to reclaim the governance of their cities, that is to say, that they regain the power from central governments to identify their specific environmental problems and their causes, and decide on the best use of their limited resources.

Reclaiming Local Political Institutions - The Case of Belo Horizonte, Brazil

The changes in Belo Horizonte, Brazil begun when the poor exercised their democratic rights by electing a mayor and a new local government formed by a group of people who had a programme based on "a radical new agenda to support the poor and promote people's participation...One of their first actions was to divide the city's investment budget into two, with half of the investment priorities being determined through 'a participative budget' " (Bretas, 1996, p. 213). The communities have managed to ensure that proportionately more development work is carried out in low income settlement areas. The community representatives have also succeeded in overturning an investment decision to fund road improvement in favour of their priority for environmental justice - provision of sanitation and drainage infrastructure.

A Rights-Based Approach to Environmental Justice

There is a need in many developing countries for better environmental laws that balance social justice and environmental protection. Although having a right does not mean that one has effective access to it,

protection of people's rights through laws is essential because laws provide a means of mobilisation of the poor and their supporters by providing a lever for lobbying and for insisting that groups, states and companies behave in a certain way. For example, a right to environmental impact assessment, consultation and participation on environmental matters gives the poor and those working with them an important lever.

Enforcement of Environmental Rights at an International Level

As discussed in the previous section, the poor's access to justice is limited by legal barriers, in that although the law offers a nominal level playing field, it offers no guarantee that the teams will be equal in experience or skill or number. It claims thus "not to level privilege, but contain its abuse... the rule of law operate[s] in a way very similar to the market: in both cases, conditions of equal opportunity and perfect competition privilege the experienced, the well informed, the clever, the rich and the well-connected. Those that do not have such attributes tend to perish" (Archer, 1994, pp. 21-22). This is true of legal disputes and enforcement of environmental laws at the international level - i.e. poor countries fighting against toxic hazards from rich countries - as it is for poor people fighting in local courts for environmental justice. Thus mechanisms for accessing environmental justice at an international level are as necessary as restructuring of the formal justice system at a local level.

Enforcement of human rights to a clean, secure and healthy environment may take various forms. The most

obvious one is that through the International Human Rights Commission. This commission has a well established set of procedural mechanisms available for implementation. But as Anderson (1996) notes:

"International supervision may be clumsy with respect to environmental rights ...the commissions, committees and courts charged with supervising international human rights are frequently overworked with more conventional human rights issues and it is not clear that they possess either the technical competence or institutional structures to address often complex environmental questions."

When one considers the above point made by Anderson, the use of institutions set up exclusively for environmental matters are likely to be more successful in ensuring environmental justice.

Enforceability of Environmental Rights: The Role of

Civil Society

The enforceability of an environmental right does not depend entirely on supervisory procedures and institutions, such as those mentioned above. A human rights approach is attractive for precisely the reason that it "fosters multiple enforcement strategies.

The global campaign against torture, for example, draws upon both national and international legal procedures, but it also operates through aid conditionality, mass demonstrations, publicity drives, education programmes, investigative journalism, letter-writing tactics, and artistic expression" (ibid.). In other words, a strong civil society well organised locally and globally is possibly the most powerful force in enforcing environmental justice.

The World Bank in recent years has shown that even powerful organisations are not immune to such strategies in the case of, for example, the shift from marginalisation to actively embracing and advocating the Brown Agenda (Leitmann, 1994). Evidence from comparative studies has shown that it is the environmental movements and activism, such as the environmental justice movement in the USA, as opposed to generous legal measures that have led to effective enforcement of rights. Strategies adopted by NGOs and activists such as campaigning and lobbying, information gathering, public protests and assistance to local communities have been instrumental in successful implementation of people's rights.

Civil Society and Enforcement of Environmental Justice: The Case of Madhya Pradesh (India)

The citizens of Madhya Pradesh sued their local government for failing their statutory duty to: install public lavatories and proper drainage thus subjecting the citizens to mosquito-infested, foul-smelling pools of waste. The local magistrate ordered the local authorities to end the nuisance, invoking their statutory duty to do so. The local authorities appealed on the grounds that they lacked resources. In 1980, there was victory for the residents when the local authority's appeal was rejected by Justice Krishna Iyer on the grounds that:

A responsible municipal council constituted for the precise purpose of preserving public health and providing better finances cannot run away from its principal duty by pleading financial inability. Decency and dignity are non-negotiable facets of human rights and are a first charge on local self-governing bodies (SOAS, 1996, p.6).

Restructuring the Formal Urban Justice System

The formal justice system as it exists in most countries does not provide effective access to justice for the

urban poor who are, as discussed in the last section, cut off from the system by many and complex barriers.

For the urban poor to access environmental justice, the justice system must be restructured. Restructuring the justice system can take many forms depending on the level of existing access, the legal culture, political structures and economic development. In some countries, for example, "real" as opposed to "formal" access to justice has barely appeared on the political map.

Three broad ways of restructuring the justice system can be identified: access to the existing formal justice system (that is bringing law to the people); use of alternative or traditional systems; and reform of the current justice system in a way that affects the power and wealth distribution. The extent of reform or restructuring of the justice system will depend on how far the barriers to access are perceived to be substantive (requiring total redistribution and revolution) or procedural (the justice system perceived to have slight errors and oversights), as discussed in the previous section.

Access to the Present Legal System

In recent welfare states, the right of effective access to justice has gained currency, due to recognition that existing formal rights were inadequate since they left out large proportions of populations. Three waves of reform are identified by Cappelletti (1978):

1. Traditional legal services attempt to narrow the gap between how law is written and practised and to give the means to the poor to utilise the system. Access to the existing legal system can be made more effective through: greater access to information to the public (explanation of procedural requirements, the way in which and the time within which a decision can be challenged); simplification of the justice system (use of simple documents and provision of interpretation facilities); acceleration (minimisation of time to reach a determination of matters and cost); and access to monetary aid for the poor.
2. The movement to give representation to "diffuse" collective interests through such mechanisms as class actions, public interest lawyers, and the granting of standing to consumer and environmental groups to sue.
3. There has also been a renewed focus on less formal decision-making. Examples of these are discussed below under the following headings: Ombudsman and Social Conciliatory Commissions.

Ombudsman

An ombudsman is a trouble-shooter, who people complain to when they think they have suffered from

some maladministration. The ombudsman investigates the matter and produces a report. Some are empowered to order that redress be given, some only make recommendations. The advantages of an ombudsman system is that costs are borne by the public purse and it is quicker than the judicial process (McAuslan, 1995). The investigation burden is also shifted from the disputants to the government. The effectiveness of this system in aiding the urban poor will depend on the degree to which they are targeted with relevant information. For example Rojas (1988, p. 215) asserts that "ignorance about the most elementary rights, lack of confidence in the state apparatus, and lack of self confidence are among the most widely shared characteristics of Latin American low income communities." Availability of facilities such as those described above will not necessary mean that the poor can or will use them.

The Social Conciliatory Boards and Commissions (Sri Lanka, Poland)

In Sri Lanka, conciliatory boards are chosen from citizens through community nominations. The members are uncompensated and proceedings are informal and aim to obtain a voluntary settlement between the parties. All civil conflicts must be presented to one of these boards for an attempted solution before a formal court can hear the case (Johnson, 1979). Sri Lankan Boards, make access to justice for the poor easier in that they are geographically dispersed among the communities meaning that the poor are more likely to be aware of them and use them. Because lay people as opposed to professionals provide the service, this reduces psychological barriers that the poor would otherwise experience. They also have the advantage of being quick since there are no backlogs because disputes are distributed widely so that each panel only hears a small number of cases.

Change of the Current System

The reforms discussed so far accept more or less the social and political status quo. They consider the legal system to be essentially just with procedural errors and oversights.

Friedman (1978) identifies a further category of legal reform, the power approach, where reformers dissatisfied with the way power and wealth are distributed in their societies think that only by changing this distribution can one affect reform.

Rojas (1988), in his paper "A comparison of change oriented legal services in Latin America with legal services in North America and Europe", describes the "new" change-oriented legal services in Latin America.

These differ from the three waves of reforms described above in that although there are different degrees of radicalism, they all agree that legal services must promote social and political change. They challenge the existing capitalist system to bring about a new order rather than just providing an entry to the established system. It is not surprising then that unlike in western countries, change oriented legal systems have not taken root within the state apparatus since governments will not promote ideas that threaten its social, political and economic status quo. Thus "new" legal services are provided through NGOs, churches and trade unions, which is itself an advantage and a disadvantage. It is an advantage in that they can be creative and challenging since they are not dependent on government funding, but it is a disadvantage in that their long term sustainability is questionable since they depend on money from well wishers who are normally foreigners.

Alternative/Traditional Systems

Street Courts

In the apartheid system in South Africa, there was failure of justice in a substantive sense. The indigenous population was completely shut out of the legal system which led to the development of parallel structures. Burman and Sharf (1990) describe street committees that were constituted by the older generation of black South Africans, existing uncomfortably alongside formal apartheid authorities and the more problematic youth-run peoples courts, which attempted to redefine community values. The street committees, although not devoid of problems, performed an extremely important role in settling disputes and advancing the values in which their members believed. The street courts were accessible to the people and utilised traditional forms of justice. Although the political climate in South Africa is now different with the end of apartheid and a legitimately elected ANC government, the informalism of street committees and use of traditional methods can still be incorporated in the new legal structure.

Integration of modern and traditional systems

Since attainment of independence in many African countries, there has been an attempt to integrate the traditional and the modern resulting from a tension

"between the profound desire for a unitary justice based on universal procedural guarantees; and the recognition of the need for, and the value of, a pluralistic structure of justice responsive to the pluralistic character of society" (Bush, 1979, p.263).

Saltman (1979), in his paper "Indigenous Law among the Kipsigis of South western Kenya", describes how

the western and traditional systems can complement each other. The magistrate in the case studied insisted that all cases (excluding criminal cases) go through a traditional hearing before being heard in the formal court, and that the representatives from the traditional court be present to state their decision in the case. This greatly reduced the number of cases brought to court as decisions were more often than not reached outside the court thus reducing backlogs and thus making justice quick. It was also interesting to note that the magistrate often cited traditional law or accepted judgement of elders while elders began to use precedent more often and were able to convince parties to accept their decisions since they were upheld by the magistrates court.

Advantages of integrating the traditional systems into modern ones are that they diminish structural legal barriers and psychological barriers and hasten conflict resolution. Traditional systems also provide justice as defined by a particular culture as opposed to imported "alien" values. In traditional societies characterised by stability and the consequent need of life-long coexistence of people within the extended family, the village and the group, conflict settlement took the form of negotiation, mediation, conciliation and arbitration other than adjudication. One, however, cannot transplant piecemeal any one traditional system to cities which are more characterised by pluralism of ethnic groups and thus different traditions and cultures. In some cases, the value systems of people in an urban setting might differ from those of traditional rural society making a complete transfer of traditional systems undesirable. Nevertheless, certain characteristics of different traditional systems could be borrowed or modified to make justice, simpler, more informal, intelligible and accessible to the urban poor. A lot can be learned from traditional African systems, in which many of the barriers faced by the urban poor are absent, as illustrated below by Bush.

While there are many versions of customary procedure in Africa as there are tribal groups and cultures, in a typical customary procedure: 1) Justice was popular. The people could understand the machinery... and in many places participated directly in judicial proceedings. 2) Justice was local and speedy... the (regular) courts require proof of facts that would have been well known without special proof to a traditional African tribunal. 3) Justice was simple and flexible. There were no elaborate codes of procedure or evidence (Bush, 1978, p. 268).

International Economic and Political Change

Although better urban governance, a rights-based approach and legal solutions discussed in the above sections can go a long way to improve access to environmental justice for the urban poor, there is a

limit to the extent such policies will succeed if the economies cannot sustain the costs as a result of exogenous pressures. There is thus a need for international economic and political change that complements local and regional reforms to ensure environmental justice is successful and sustainable.

The Role of Developing Countries

Developing countries must maintain pressure for economic and political change at the international level. Justice, and not charity (foreign aid) must be the driving force in international development discussions. Countries in Africa, Asia and Latin America must ensure that the overwhelming focus on foreign aid does not deflect attention from discussing real development issues, that is the sharing of power and establishment of equitable economic relations between nations. Trade and debt issues should guide the agenda on development. In order to do this, however, developing countries must co-operate at regional and at global levels, realising it is to their mutual benefit and probably a matter of survival for them. There needs to emerge a leadership in developing countries that has credibility in the eyes of their populace and the international community. In order to make real impact in international negotiations and campaigns, such a leadership must be democratic, transparent and accountable to the civil society. Leadership qualities such as those possessed by Nelson Mandela in South Africa and his high moral standing in the eyes of the world community contrast sharply with the corrupt, unscrupulous, self-seeking attitudes of many leaders in developing countries^{xv}. Nelson Mandela's personal standing has led not only to encouragement of foreign investment in South Africa, but has opened up some of the developed markets to South African goods.

The developed countries are unlikely to easily give up some, or any of the political power, and recognition that economic dependence of developing countries assures them. Some developed countries, if not most, will continue to fight to maintain this power and are probably only likely to change if the populace in their countries demand that they do. But the populace will not demand this change unless they acquire information on the facts of international economics and politics.

Facts on Global Economic Recovery

The World Bank, the Brandt Commission, UNCTAD and other national and international organisations have consistently put forward the argument that the continued prosperity of developed countries and general stability in the international economy depends on the rapid development of the developing countries. But growth in developing countries will depend on

their resolving accumulated debt problems and increasing exports to developed countries that is - sell more, so they can buy more from developed countries creating a badly needed expansion of markets for goods such as refrigerators, televisions sets, agricultural goods, etc. These are goods whose capacity of acquisition has been reached in developed countries. Thus, on the supply side of economics, there is excess supply for certain goods on which the developed countries economies and stability depends - as demonstrated by the high degree of protection in these industries (Ndegwa, 1985). On the demand side are 75 per cent of the world's population, with low per capita consumption levels, and thus high potential for consuming products made in developed and developing countries, and vast amounts of undeveloped resources. Thus the developing countries are certainly the frontier of further global development. Political greed and hunger for power for just a minority in governments of developed countries makes them prefer to incur great costs - i.e. in terms foregone national incomes, employment for their citizens and exports - by deliberately placing barriers on more equitable and more rapid international economic development (Ibid., UNCTAD, 1981, The Society for International Development (SID) 1983).

Information and Justice: The Role of the Development Community

If the populace in developed countries who are absorbed by day-to-day issues of employment and job creation had access to economic facts discussed above, one would expect that they would exert sufficient pressure on their politicians for global economic change in the pursuit of; a) self interest for some, and for others, b), respect for basic human rights to environmental justice.

Information is thus the key to any change, and it is no doubt one of the reasons why most politicians are keen to withhold it. Real democracy and participatory development in developed as well as developing countries requires that people are given all relevant information, and their views are listened to carefully and any decisions explained as fully as possible. The development community - that is, NGOs, universities, people in governments and international institutions committed to promotion of real development and human rights - can play a significant role in ensuring that information in developed and developing countries is made available. After all, a right to information is one of the protected human rights.

NGOs in particular, whether in developed and developing countries would serve the interest of the poor if they shifted their resources from charity and paternalistic, dehumanising "benevolence" to the fight

for justice. There is little evidence to show that in the last 10 years, NGOs giving "charity" have had significant impact on the lives of the poor. As Edwards and Hulme (1993, p.1) put it,

"... yet despite the increasing scale of this sector, and the growing reputation that NGOs have won for themselves and for their work over the last 10 years, their contribution to development on a global level remains limited. Many small-scale successes have been secured, but the systems and structures which determine the distribution of power and resources within and between societies remain largely unchanged. As a result, the impact of NGOs on the lives of poor people is highly localised, and often transitory...one of the most important factors underlying this situation is the failure of NGOs to make the right linkages between their work at micro-level and the wider systems and structures of which they form a small part."

Yet there are a number of examples of NGO initiatives that have had considerable impact in levelling the international playing field through the fight for justice. A debt campaign by Christian Aid along with other organisations was influential in persuading the UK government to implement the "Trinidad Terms", an agreement that reduced the debts of the poorest countries. UK banks also came to recognize that their customers in the UK were concerned about the way which banks treat Third World countries^{xxvi}. A lawsuit by the World Development Movement forced the British government to abandon an aid project for the Pergau Dam in Malaysia, which broke its own aid guidelines by linking it to arms sales.

CONCLUSION

The poor and marginalised women and men in burgeoning cities of the Third World are disproportionately exposed to environmental risks and hazards within their neighbourhoods and work places.

They have no effective right and access to a clean, healthy and secure environment; and to redress when these rights are contravened or unfulfilled. They thus have no access to environmental justice. Poor women because of their socially determined low levels of endowment bundles and entitlement have even less access to resources and to environmental justice. The urban poor face many complex barriers that make it difficult or impossible to access environmental justice.

Because barriers to access to justice are many and multifaceted, improving access to environmental justice for the urban poor also calls for a multifaceted approach. A civic-centred good governance approach to development presents an opportunity for

achieving environmental justice for the urban poor. The civil society must be at the centre of development, holding both markets and governments accountable for environmental justice. A rights-based approach to environmental justice and to development has the advantage of providing a means of mobilisation of the poor and their supporters by providing a lever for lobbying and for insisting that groups, states and companies behave in a certain way. It also has the advantage of bringing in an unpredictable group of actors into the development equation - development lawyers and judges. As has been shown earlier in the case of Madhya Pradesh in India, an independent judiciary can be a powerful instrument for environmental justice for the poor.

The effectiveness of a rights-based approach requires, however, that the rule of law is respected, which is not always the case. A well-organised local and international civil society can bring pressure to bear on governments to respect the rule of law. The complexity of the barriers and their linkages means that there can be no simple solutions. For example, removal of legal barriers is only possible when there is local political will to do so and when there are sufficient resources to make this possible. Levelling the international political and economic playing field will be useless to the urban poor if the local economic and political situation is tilted against the poor. Changing the local and international economic and political power relations is a medium-term to long-term action.

On the other hand, many of the life threatening environmental justice problems that the urban poor face are problems of life and death requiring immediate action.

There is thus need for a dual approach which deals with both medium to long-term structural problems as well as action that improves the immediate situation for the poor. Both levels of actions are equally important. In development circles, too much attention is given to dealing with the symptoms and the short-term problems, which is normally in the form of charity and depends on benevolence. This is well illustrated by the following quotation by Korten (Edwards and Hulme, 1993, p.1), "If you see a baby drowning you jump in to save it; and if you see a second and third, you do the same. Soon you are so busy saving drowning babies

that you never look up to see that there is someone there throwing these babies in the river".

Not enough attention is paid to levelling the field or justice. Justice brings forth empowerment and self esteem while charity and benevolence create dependency, apathy and loss of self confidence. Justice whether at the local or international level will only be achieved when a well organised and informed local and international civil society - to use Korten's words - reclaims the political institutions that set and

enforce
the rules.

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NOTES

i. The term 'Third World' though deficient and outdated is used as shorthand to refer to countries of Asia, Africa, Latin America and the Caribbean excluding Hong Kong, Israel, Japan and Singapore and South Korea.

ii. It is ironic that some of the most heavily indebted countries, Mexico and Nigeria, are those that benefitted from the oil boom. Their failure to manage their newly-found wealth led them to a highly indebted position when the prices collapsed.

iii. See Kolstee et al, 1994 for the different development approaches pursued by the Third World in the last four decades.

iv. See Moser, Caroline O.N., Alicia J. Herbert and Roza E. Makonnen (1993), *Urban Poverty in the Context of Structural Adjustment; Recent Evidence and Policy Responses*, TWU discussion Paper DP 4, Urban Development Division, World Bank, Washington DC, 140 pages.

v. See Chambers (1995) "Poverty and livelihoods: whose reality counts?" in *Environment and Urbanisation*, Vol. 7, (1).

vi. Women are accorded low status ... see Beall 1993 *The Gender Dimension of Poverty* Paper prepared for Division for the Advancement of Women, United Nations Office at Vienna 22-25 Nov. 1993.

vii. The brown agenda refers to dirty, unsafe sites and contrasts with the green agenda or natural resources use and management beyond urban boundaries. See Main H, 1994 "introduction" in Main H., and S.W. Williams in *Environment and Housing in Third World Cities*.

viii. "Environmental pressures eased off in the 1970s, when the sudden rise in the oil price led to deflationary policies in most Western countries, so that the public was more concerned with the lack of economic growth than the fear that economic growth was harmful" (Beckerman, 1995, p. 1). The issues came back in a big way in the 1980s. Green parties were formed in the European Union and while in the USA the influence of Al Gore, the current Vice President, was significant.

ix. This contrasts with "brown issues" discussed in the last section.

- x. See for example, Hardoy et al., 1992, Beckerman 1995.
- xi. Wenz (1988) demonstrates how various principles and theories of justice such as Libertarian, Utilitarian and Virtue, influence how people perceive whether an action is just or not. For example, according to the Virtue Theory (influenced by Protestant theology), wealthy people deserve their wealth -- since they are favoured by God - and poor people deserve their poverty.
- xii. An example is given whereby there is a shortage of water in a town, since one is not acquainted personally to most people in the town, there is no benevolence in those who are better off to want those who are worse off to be given more water.
- xiii. Although mostly addressing concerns of the developed world and the United States in particular, his thesis could be also applied to an extent to developing countries, since burdens of environmental risks and hazards are disproportionately borne by the poor and/ or minority communities. The perceptions of justice however are culturally informed while environmental issues and concerns are "green" in developed countries while they are overwhelmingly "brown" in developing countries.
- xiv. The people of colour Environmental Leadership Summit was convened in Washington D.C. on October 27, 1991 and adopted the Principles of Environmental Justice.
- xv. To Jefferson, all "men" were created equal meant literally "men" and not women. He did not believe that men and women were endowed by their creator with the same moral rights (Wenz, 1988). The "all" bit of the statement was, however, not taken literally and included white men only.
- xvi. A rights-based approach to development is not without controversy as manifested by the strong opposition to a right to housing during the negotiations leading up to the Habitat II conference in Istanbul 1996. The US and some other countries opposed a right to housing very strongly since they figured that a right to housing might mean that the poor would claim that governments had to do something about their lack of housing. But the fact that the motion of a right to housing was tabled and debated was a significant step in the right direction.
- xvii. The same situation applies to poor countries within the international arena.
- xviii. The basic human needs approach was also sold as bottom-up. The same situation applies to poor countries within the international arena.
- xix. The right to liberty is not under consideration here. It could be argued that right to liberty may not be of primary relevance when life is threatened since liberty can only be achieved by those alive. Maslow's hierarchy of human needs supports this contention. Only after the very basic needs of security and survival are met can one consider needs higher up in the hierarchy such as liberty.
- xx. The Universal Declaration on Human Rights (1948) can be seen as a way of protecting moral rights where it says "Everyone has a right to a standard of living adequate for the health and well-being of himself and his family including food, clothing, housing and medical care and necessary social services". However, enforcing such rights is difficult.
- xxi. See UNICEF's *Adjustment With a Human Face*.
- xxii. For the relationship between gender and housing in developing countries, see Beall, 1993, Moser, 1992, Falu et.al, 1991.
- xxiii. Some material in this section has been adopted from a paper by the author (Onstad, 1996) *The Poor, Access to Justice and the Role of Urban Managers* presented for the DPU course Law in Urban Policy and Management.
- xxiv. This is an economic model designed to subdue inflation and boost production by deregulating markets, privatising state firms and stimulating exports.
- xxv. Although there are also corrupt, unscrupulous, self-seeking leaders in developed countries, there are more checks and balances in such countries and the effect of such leadership is not as damaging as that in poor countries.
- xxvi. Other campaigns by Christian Aid include "Trade for Change", to promote fairly traded goods and bring about improvements in international trading relations for Third World countries. One success in the UK was the spread of fairly traded coffee, Cafedirect, from alternative trade shops to the shelves of all the major British

and Irish supermarkets.