# The Environmental Rule of Law and Accountability: Requiring Fair, Clear and Enforceable Laws that Guarantee Procedural Rights such as Access to Information, Public Participation and Access to Justice

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# The Environmental Rule of Law and Accountability: Requiring Fair, Clear and Enforceable Laws that Guarantee Procedural Rights such as Access to Information, Public Participation and Access to Justice

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**Abstract**

*This paper discusses how environmental rule of law can be used as a driver of environmental democracy and Sustainable Development. The paper conceptualises environmental rule of law and discusses its salient elements. It observes that in light of current inadequacies in environmental governance frameworks, environmental rule of law can be used to uphold the tenets of environmental governance towards improving environmental governance for Sustainable Development. In particular, the paper discusses how environmental rule of law can promote environmental democracy by enacting fair, clear and enforceable laws that guarantee procedural rights including access to information, public participation and access to justice.*

## 1.0 Introduction

Sound environmental governance plays a key role in promoting Sustainable Development. For example, by pursuing sound environmental governance, it is possible to achieve effective management of the environment and natural resources in a sustainable and transparent manner for Sustainable Development, peace and justice[1]. Environmental governance has been identified as a key determinant of Sustainable Development since robust governance systems are paramount in protecting and restoring the planet and forging a sustainable tomorrow for both humanity and nature[2]. The United Nations Environment Programme (UNEP) notes that by building robust environmental governance systems, it is possible to safeguard environment and human rights towards achieving Sustainable Development[3].

Democracy plays a key role in strengthening environmental governance systems and processes for Sustainable Development. For example, environmental democracy is grounded in the understanding that active, effective and meaningful participation by the public is critical to ensuring that decisions related to the environment and natural resources adequately and equitably address the interests of all citizens towards sound environmental governance and

[1] Bennett. N., & Satterfield. T., 'Environmental governance: A Practical Framework to Guide Design, Evaluation, and Analysis' Available at https://conbio.onlinelibrary.wiley.com/doi/10.1111/conl.12600 (Accessed on 19/11/2026)

[2] United Nations Environment Programme., 'Environmental Law and Governance' Available at https://www.unep.org/topics/environmental-law-and-governance (Accessed on 19/11/2026)

[3] United Nations Environment Programme., 'About environmental rights and governance' Available at https://www.unep.org/explore-topics/environmental-governance/about-environmental-rights-and-governance (Accessed on 19/11/2026)

Sustainable Development[4]. Environmental democracy captures the principle of equal rights for all stakeholders including the public, community groups, advocates, industrial leaders, workers, governments, academics and other professionals to be involved in environmental governance[5]. It has been observed that environmental democracy gives an opportunity to every individual to participate in environmental decision-making as freely as they do in other public interest matters like health care, education, finance and governance in general[6].

In order to strengthen environmental governance, the idea of environmental democracy seeks to promote the ability for people to freely access environmental information[7]; to participate meaningfully in decision-making relating to the environment[8]; and to seek enforcement of environmental laws or compensation in respect of environmental harms[9]. Environmental democracy is therefore founded on three fundamental procedural rights: access to information; public participation; and access to justice in environmental matters[10]. The tenets of environmental democracy are set out under principle 10 of the *Rio Declaration on Environment and Development*[11] which urges states to enhance access to environmental information, strengthen public participation in environmental decision-making processes, and ensure access to justice in environmental matters towards strengthening environmental governance for Sustainable Development[12].

However, promoting environmental democracy remains a challenge undermining equity, inclusivity and justice in environmental governance. For example, it has been observed that marginalized and vulnerable groups including women, the youth, indigenous peoples and local communities suffer from low levels of representation and participation in environmental policies and decision-making processes[13]. In addition, barriers in access to justice including high costs, geographical barriers, technicalities and case backlog affect the ability of vulnerable and

[4] Worker. J., & Ratte. S., 'What Does Environmental Democracy Look Like?' Available at https://www.wri.org/insights/what-does-environmental-democracy-look (Accessed on 19/11/2026)
[5] Ibid
[6] Lewa. S.K et al., 'Actors in Managing Human-Wildlife Conflict: The Case of Arabuko-Sokoke Forest, Kenya' *International Academic Journal of Arts and Humanities.,* Volume 1, Issue 2 (2017), pp 37-50
[7] Center for International Environmental Law., 'Environmental Democracy and Access Rights' Available at https://www.ciel.org/issue/environmental-democracy-access-rights/#:~:text=Environmental%20democracy%20is%20based%20on,how%20decisions%20should%20be%20made (Accessed on 19/11/2026)
[8] Ibid
[9] Ibid
[10] Worker. J., & Ratte. S., 'What Does Environmental Democracy Look Like?' Op Cit
[11] United Nations General Assembly., 'Report of the United Nations Conference on Environment and Development: Rio Declaration on Environment and Development.' A/CONF. 151/26 (Vol.1)
[12] Ibid
[13] United Nations Development Programme., 'Environmental Governance: Bolstering inclusive and effective governance systems that champion environmental justice and sustainability' Available at https://www.undp.org/nature/our-work-areas/environmental-governance (Accessed on 19/11/2026)

marginalized populations to enforce their environmental rights including the right to a clean, healthy and sustainable environment[14]. Consequently, it is imperative to guarantee procedural rights such as access to information, public participation and access to justice in order to uphold environmental democracy for sound environmental governance and Sustainable Development.

This paper discusses how environmental rule of law can be used as a driver of environmental democracy and Sustainable Development. The paper conceptualises environmental rule of law and discusses its salient elements. It observes that in light of current inadequacies in environmental governance frameworks, environmental rule of law can be used to uphold the tenets of environmental governance towards improving environmental governance for Sustainable Development. In particular, the paper discusses how environmental rule of law can promote environmental democracy by enacting fair, clear and enforceable laws that guarantee procedural rights including access to information, public participation and access to justice.

## 2.0 Environmental Rule of Law as a Driver of Environmental Democracy: Opportunities and Challenges

Environmental rule of law is a framework that integrates environmental needs with the essential elements of the rule of law thus providing a basis for improving environmental governance[15]. It has been observed that environmental rule of law merges the tenets of environmental sustainability with the rule of law principles so that environmental laws are fair, clear, enforced, and backed by accountability and human rights[16]. Environmental rule of law provides a legal framework of procedural and substantive rights and obligations that incorporates the principles of Sustainable Development in the rule of law[17]. Environmental rule of law has also been defined as collective term encompassing all aspects of the law that provide protection to the environment[18]. It covers a set of regulatory regimes and environmental legal principles which focus on the management of specific natural resources, such as land, wildlife and biodiversity, forests, minerals, water, fisheries and coastal and marine resources among others[19].

[14] United Nations Development Programme., 'Environmental Justice and the Right to a Clean, Healthy, and Sustainable Environment' Available at https://www.undp.org/rolhr/human-rights/environmental-justice (Accessed on 19/11/2026)

[15] United Nations Environment Programme., 'Environmental Rule of Law' Available at https://www.unep.org/en/what-we-do/environmental-law-and-governance/promoting-environmental-rule-law/environmental-rule-law (Accessed on 20/11/2026)

[16] United Nations Environment Programme., 'Environmental Rule of Law: First Global Report' Available https://wedocs.unep.org/items/20ec2404-d15a-48a5-9313-05d2b19720be (Accessed on 20/11/2026)

[17] International Union for Conservation of Nature., 'IUCN World Declaration on the Environmental Rule of Law' Available at https://iucn.org/sites/default/files/2022-10/world_declaration_on_the_environmental_rule_of_law_final_2017-3-17.pdf (Accessed on 20/11/2026)

[18] What is Environmental Law: Importance and Components.' Available at https://www.conserve-energy-future.com/environmental-law-and-its-components.php (Accessed on 20/11/2026)

[19] Ibid

Environmental rule of law plays a crucial role in bolstering environmental governance for people and planet. For example, it has been observed that environmental rule of law provides a framework for addressing the gap between environmental laws in text and in practice[20]. Through this, environmental rule of law ensures that environmental laws and policies are widely understood, respected, and enforced and the benefits of environmental protection are enjoyed by people and planet[21]. In addition, environmental rule of law ensures the presence of robust, transparent and effective environmental laws, policies and institutions that are essential in responding to increasing environmental pressures including climate change, pollution, and biodiversity loss that threaten the ecological integrity of the Earth, in a way that respects fundamental rights and principles of justice, inclusivity, equity and fairness[22]. Consequently, environmental rule of law has been described as a key pillar of international law and environmental governance[23].

Promoting environmental rule of law is therefore necessary towards strengthening environmental governance for people and planet. In particular, environmental rule of law provides a practical and enforceable approach towards utilising the principles of environmental democracy to promote Sustainable Development. For example, environmental rule of law is anchored in several elements including development, enactment and implementation of sound and effective environmental laws and policies[24]; respect for environmental rights including the right to a clean, healthy and sustainable environment[25]; and *access to information, public participation and access to justice in environmental matters*[26] (Emphasis added). The ideal of environmental rule of law focuses on robust implementation of environmental laws and policies, *public participation* in environmental governance, *access to information and access to justice* in environmental matters towards improving environmental governance and attaining environmental justice[27] (Emphasis added). It has been argued that strengthening environmental rule ensures robust environmental governance systems including through sound management and access to natural resources, *gender equality* in environmental governance, *access to justice* in

[20] Environment Law Institute., 'Environmental Rule of Law' Available at https://www.eli.org/environmental-rule-law (Accessed on 20/11/2026)
[21] Ibid
[22] International Union for Conservation of Nature., 'IUCN World Declaration on the Environmental Rule of Law' Op Cit
[23] Kreilhuber. A., & Kariuki. A., 'Environmental Rule of Law in the Context of Sustainable Development' Available at https://www.law.georgetown.edu/environmental-law-review/wp-content/uploads/sites/18/2020/08/GT-GELR200021.pdf (Accessed on 20/11/2026)
[24] Ibid
[25] Ibid
[26] International Union for Conservation of Nature., 'IUCN World Declaration on the Environmental Rule of Law' Op Cit
[27] The Access Initiative., 'The Road to Realizing Environmental Rights In Africa: Moving From Principles to Practice' Available at https://accessinitiative.org/wp-content/uploads/2022/10/22.01_rep_access_initiative_v583-4.pdf (Accessed on 20/11/2026)

environmental matters and the *meaningful involvement of all people* including indigenous peoples and local communities in environmental decision-making processes[28].

Environmental rule of law therefore provides a practical tool for promoting environmental democracy through procedural rights such as access to environmental information, public participation in environmental governance, and access to justice in environmental matters. However, it has been observed that challenges such as weak environmental institutions, inadequate implementation of environmental laws and policies, inadequate financial, technical and human capacities, limited access to information, public participation and access to justice in environmental matters, and lack of political incentives to prioritise environmental conservation undermine the role of environmental rule of law in fostering sustainability[29]. These shortcomings in environmental rule of law contribute to environmental threats including the triple planetary crisis of climate change, biodiversity loss and pollution with negative impacts on human and environmental health[30]. Consequently, there is need to strengthen environmental rule of law towards bolstering environmental governance for people and planet.

**3.0 Utilising Environmental Rule of Law to Promote Environmental Democracy for People and Planet**

With the world facing mounting environmental threats including the triple planetary crisis of climate change, biodiversity loss and pollution, environmental democracy provides a set of rights and obligations that can strengthen environmental protection for people and planet. These rights and obligations include the ability of all people to freely *access environmental information*[31]; to *participate meaningfully* in decision-making relating to the environment and natural resources[32]; and to seek enforcement of environmental laws or compensation in respect of environmental harms through *enhanced access to justice*[33] (Emphasis added). Access to information empowers citizens and incentivizes them to participate in environmental decision and policy-making processes in an informed and meaningful manner[34].

In addition, public participation can improve the quality of environmental decision-making by providing decision-makers with additional, unique information on local conditions in the context

[28] International Union for Conservation of Nature., 'IUCN World Declaration on the Environmental Rule of Law' Op Cit

[29] The Access Initiative., 'The Road to Realizing Environmental Rights In Africa: Moving From Principles to Practice' Op Cit

[30] Ibid

[31] Center for International Environmental Law., 'Environmental Democracy and Access Rights' Op Cit

[32] Ibid

[33] Ibid

[34] United Nations Environment Programme., 'Principle 10' Available at https://www.unep.org/civil-society-engagement/partnerships/principle-10 (Accessed on 20/11/2026)

of social, environmental and economic decision-making[35]. Effective, inclusive and meaningful public participation in environmental decision-making processes can improve information flow between communities and government or private sector decision-makers thus strengthening environmental governance[36]. Public participation in environmental governance promotes transparency, accountability, equity and fairness.

On the other hand, access to justice is a fundamental pillar of environmental democracy which facilitates the public's ability to enforce their right to participate, to be informed, and to hold regulators and polluters accountable for environmental harm[37]. Access to justice empowers citizens to hold government and corporations accountable for environmental injustices towards enforcing the right to a clean, healthy and sustainable environment[38]. Access to justice therefore enables citizens to uphold their environmental rights and hold decision-makers and polluters accountable for environmental harm.

Environmental rule of law provides a practical tool towards inculcating the tenets of environmental democracy into the Sustainable Development discourse. It is therefore imperative to promote environmental rule of law by enacting fair, clear and enforceable laws that guarantee procedural rights such as access to information, public participation and access to justice. In particular, there is need for enactment and implementation of laws and policies that uphold civic engagement in environmental governance through promoting access to environmental information and fostering public participation in decision-making processes[39]. Such laws and policies should ensure that all stakeholders including women, the youth, civil society organisations, indigenous peoples and local communities are actively and meaningfully involved in environmental decision-making processes in order to improve the quality of environmental decisions[40]. In particular, enacting and implementing laws and policies that ensure the Free, Prior, and Informed Consent (FPIC) of indigenous peoples and local communities is key towards achieving environmental democracy by supporting inclusive, fair and meaningful public participation[41]. It has been observed that FPIC ensures participation by indigenous peoples and local communities in environmental and development projects in order to ensure that such

[35] Cerezo. L, & Garcia. G., 'Lay Knowledge and Public Participation in Technological and Environmental Policy.' Available at https://scholar.lib.vt.edu/ejournals/SPT/v2n1/pdf/CEREZO.PDF (Accessed on 20/11/2026)
[36] Worker. J., & Ratte. S., 'What Does Environmental Democracy Look Like?' Op Cit
[37] United Nations Environment Programme., 'Principle 10' Op Cit
[38] Ibid
[39] United Nations Environment Programme., 'Environmental Rule of Law: First Global Report' Op Cit
[40] WFD's approach to environmental democracy., Available at https://www.wfd.org/sites/default/files/2021-11/Global-environmental-crises-a-democratic-response_WFD_2020-updated.pdf (Accessed on 20/11/2026)
[41] Muigua. K., 'Maximising the Right to Free, Prior, and Informed Consent for Enhanced Environmental Justice in Kenya.' Available at http://kmco.co.ke/wp-content/uploads/2019/03/Maximising-the-Rightto-FPIC-in-Kenya-Kariuki-Muigua-29th-March-2019.pdf (Accessed on 20/11/2026)

projects are conducted in a sustainable manner taking into account their economic, social and cultural impact[42]. By promoting FPIC, it is possible to ensure effective, meaningful and inclusive participation of indigenous and local communities in environmental governance for environmental democracy while also supporting sound environmental protection and conservation[43].

It is also necessary to design and implement laws and policies that guarantee access to justice in environmental matters. In particular, barriers hindering access to justice including high court filing fees, bureaucracy, complex legal procedures, distance from formal courts, backlog of cases in courts and lack of legal knowhow should be addressed through legal and policy reforms[44]. This can be achieved by reducing court filing fees, expanding standing in environmental matters and establishing specialised courts to foster effective and expeditious resolution of environmental matters[45]. In addition, due to challenges and shortcomings in court processes, embracing Appropriate Dispute Resolution (ADR) processes is necessary towards strengthening access to justice in environmental matters for environmental democracy[46]. In particular, ADR processes such as negotiation, conciliation and mediation can ensure the participation of all stakeholders in environmental decision-making processes while also allowing parties to come up with collaborative and creative remedies that can strengthen environmental democracy and justice[47].

[42] Owen, J.R. and Kemp, D., "'Free Prior and Informed Consent', Social Complexity and the Mining Industry: Establishing A Knowledge Base," *Resources Policy*, Vol.41 (2014): 91-100
[43] Ibid
[44] United Nations Environment Programme., 'Environmental Rule of Law: First Global Report' Op Cit
[45] Kameri-Mbote. P., 'Towards Greater Access to Justice in Environmental Disputes in Kenya: Opportunities for Intervention' Available at https://www.ielrc.org/content/w0501.pdf (Accessed on 20/11/2026)
[46] Muigua. K., 'Attaining Environmental Justice through Alternative Dispute Resolution' Available at https://kmco.co.ke/wp-content/uploads/2023/07/Attaining-Environmental-Justice-through-Alternative-Dispute-Resolution.pdf (Accessed on 20/11/2026)
[47] Ibid

**4.0 Conclusion**

Environmental democracy provides a vital approach towards strengthening environmental governance through access to information, public participation and access to justice in environmental matters. Consequently, it is imperative to utilise environmental rule of law towards attaining the ideal of environmental democracy by designing fair, clear and enforceable laws that guarantee procedural rights such as access to information, public participation and access to justice.

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