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PARTICIPATORY APPROACHES FOR SUSTAINABLE DEVELOPMENT
Environmental Policy Making in Peru

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2. The second part outlines the procedures for handling discrepancies between the recorded amounts and the actual cash received. It states that any such variance must be investigated immediately and reported to the appropriate authority.

3. The third part details the requirements for the physical handling of cash. It specifies that cash should be stored in a secure location and that all movements should be documented and signed off by the responsible personnel.

4. The final part of the document provides a summary of the key points and reiterates the commitment to high standards of financial integrity and operational efficiency.

I. INTRODUCTION

Significant shifts in the international economic, social and political agendas have taken place in the last years. Unsolved environmental issues have become targets for policy makers all over the world, as they may threaten the lives of future generations. Deforestation, water depletion and air pollution are examples of controversial problems requiring immediate action. In countries like Peru, the damaging effects of the economic crisis have led the population to exert pressure over natural resources to avoid starvation. Faced by the urgency to develop their economies without losses in their environment, governments are striving for national policies to lessen the impacts of the circle 'poverty-environmental degradation'. In that context, the achievement of a balance among environmental, social and economic concerns, namely sustainable development, is considered difficult to convey despite its general acceptance.

Peru, one of the countries with the largest biological diversity in the world, encounters a situation in which, besides possessing such richness, it needs to manage economic growth in the context of globalisation and the implementation of a structural adjustment program. As most of the population lives under extreme poverty conditions, pressure over natural resources is exerted, as those are for many the only assets available to survive.

The importance of integrating participatory approaches for the achievement of sustainable development had been asserted in the Brundtland Report (1987). The concept of 'sustainable development' refers to social, economic, and environmental factors concurring to improve people's livelihood. In the last years, initiatives to implement such concept at the international, national, regional, and local levels have been strongly encouraged. This is a new experience for countries with top-down and centralised governance approaches, as Peru, which has recently incorporated the sustainable development concept into its national policies.

In developing countries, the integration of environmental concerns has meant a shift of policy making processes, as entailing the adoption of new approaches. One of such is to involve the citizens (i.e.: participatory strategies) in those processes for collecting their opinion and concerns. That implies specific interaction between citizens and government to accomplish objectives in a collaborative way.

The integration of participatory approaches implies opening of new spaces for civil society expression, especially of those groups affected by poverty and environmental degradation in Peru. Moreover, it means the recognition of their needs in a meaningful way, overcoming the practice of their exclusion from sources of power. Furthermore, it can be

taken as a first step for the application of such approaches to other spheres of decision making in the country, especially those that are cross-sectoral, i.e.: health, education and the like. Finally, it can cause a change of practices, from closed decision making procedures to open ones.

In the context of alternative development, the topic is relevant, as participatory approaches mean the implementation of an alternative to traditional policy making processes. Consequently, it is necessary to test the applicability of those new policy instruments and their practical constraints and opportunities for the case of a developing country like Peru.

This research seeks to assess participatory approaches in environmental policy making in Peru. In doing so, elaboration on policy and legal instruments and decision making processes will be done, as they manifest different stages of the environmental policy making process in Peru. Assumptions and implementation will be evaluated, if they include participatory approaches and whether the main actors involved participate, at what stages, and with what kind of motivations. The research contributes to the discussion on the implementation and performance of participatory approaches in political environmental systems like the Peruvian. In the country, tension among economic growth, poverty alleviation and environmental conservation has still not been tackled in a balanced way.

The assumption is that participatory approaches are necessary for achieving effective and efficient environmental policies, and as a mean of enhancing government transparency and accountability, through the involvement of constituents in the policy making process. In that context, the objective is to study the present institutional and regulatory frameworks of environmental policy making in Peru, at the national level, to analyse the participatory approaches that it likely includes. The research questions are:

1. What is the theoretical background that underlies participatory approaches in environmental policies?
2. What are the causes for the incorporation of participatory approaches in the environmental policy making process in Peru?
3. What are the participatory approaches present in the environmental policy making process in Peru?
4. What changes have taken place in the design of environmental policy in Peru as result of the incorporation of participatory approaches?
5. What are the reasons for an effective and efficient civil society's (non) participation in the environmental policy making process in Peru?

6. What are the problems of the implementation of participatory approaches in the environmental policy making process in Peru?

This research is grounded in the present debate on the tension between sustainable development and government top-down approaches. Related research refers to the role of civil society in achieving collective goals corresponding to its own interests, often in an opposite role to the State. Further research is focusing on the process of lobbying and influence-gaining of grassroots organisations and NGOs at different levels. Those topics relate to the theoretical discussions of this research and will not be dealt with, as they are issues for research on their own.

The justification of this research problem lays in the importance of including participatory approaches into systems with a *status quo* of verticalism, top-down approaches and bureaucratic tradition, as experienced at all levels of policy making in Peru. The integration of participation is notable, and can strengthen democratic practices. In the environmental realm, participation could ensure legitimate political decisions for the achievement of sustainable development, integrating both the needs of government and society. The Peruvian case is valuable as it shows how environmental policies (and participation) can be drawn in a constrained political context, dependent of the predominance of economic decision making.

The research renders a theoretical discussion on the integration of participation in environmental policies, having as background its place in the context of sustainable and alternative development. Such framework gives the basis for the analysis of environmental policy making and participatory approaches, including an assessment of the pros and cons and the implications for the design of structures and processes. In the following, it enters in the discussion on the relation between participation and policy making (of which environmental policy making is a type). Then, it describes and assesses the Peruvian case, based on the theoretical elements discussed before. Finally, it presents the conclusions of the research.

The sources for this research paper mainly consist of books and articles collected in the Netherlands, Peru and at the IUCN Environmental Law Centre (Bonn). Besides, there is important material available to the public at electronic sources, as official sites of Peruvian government organisations, including data and policy papers. Likewise, parliamentary documents have been useful for giving information on the debates and standpoints of MPs. They were sufficient to revise the topic, deepen knowledge from a theoretical perspective, and establish a discussion on the research problem.

The main limitation of this paper has been the lack of literature available dealing, at the theoretical level, with participation in the environmental policy making process in Peru. For the Peruvian case, there is material on systematising experiences or participatory planning, but few on abstracting the issue to a theoretical policy ground, discussing the limitations and constraints of participatory approaches.

II. CONTEXTUALISING PARTICIPATION

The purpose of this chapter is to present an analysis of the concept of 'participation', in the context of the discussion of 'alternative development' and 'sustainable development'. The focus will be on the environmental dimension of sustainable development, as it is the most addressed through policy making in recent years. Immediately, the research focuses on the links between 'participatory approaches', 'governance' and 'environmental policy'. The aim is to provide ground for a linkage among those definitions, to understand the place of 'participation' in the environment-development discourse. The place of participation in the context of governance processes will be analysed, as it shows the tension between sustainable development with a civil society base and corporate-technocratic approaches to government management.

The terms 'participation', 'participatory approaches', 'public participation', 'citizen participation' and 'popular participation' are used, regardless, to refer to the same phenomena. The integration of the constituents into all or some stages of the policy making cycle (as problem identification, decision, administration, design, management, implementation, and the like).

2.1. Participation

In the last years, a growing interest on incorporating participatory approaches into development policies has been noticeable. Some of the reasons pointed out have been¹ that participation is no longer perceived as a threat by governments. Participation has become an instrument for legitimisation, providing policies with long-run stability. Additionally, participation is considered a politically attractive slogan.

Participation is also regarded as economically attractive, to the extent that the poor becomes a reliable partner in assistance programs, consequently giving stronger basis for

¹ For a further discussion on the reasons for incorporating participation in development, see Rahnema (1990: 202-204 and 1993: 117-121).

positive outcomes. Therefore, government and development agencies are able to use participation as tool for ensuring good performance. In the same line, participation is perceived as an instrument of greater effectiveness, as well as a new source of investment; in the sense that it brings proximity among the actors in development, i.e. government, intermediary organisations, and civil society. That gives basis for stronger links between projects and peoples. Finally, participation is becoming a good fundraising device for both government and non-government agencies, as the inclusion of such approach in their projects brings credibility. Added to the fact that communities contribute with money and work. On the other hand, the concept of participation serves private sectors (i.e. consulting agencies and corporations, and the like) in their latest drive toward the privatisation of development.

There is still much controversy on the concept of participation. Nevertheless, what it is clear at the present is that it involves an assumption: it is legitimised by the reference to a 'good' cause. It seems that participation can be only considered meaningful if it serves causes which are justifiable on moral, humanitarian, social and economic grounds (Rahnema 1990: 203). In our opinion, this gives space for an ideologisation of the concept as to discuss on moral assertions is thoroughly difficult.

Participation can be understood in two meanings. A first one relates the question with focus on areas as communication, access, basic needs, and decentralisation (Rahnema 1990: 204). A second one relates participation to power: a process through which the stakeholders² influence and share control over development initiatives and the decisions and resources which affect them (World Bank 1996: 3, Rahnema 1990: 204). Here it has to be added that, while ultimately, the allocation of values and resources is an essential function of the state and it underlies its most important decisions, the participation process can be a powerful instrument for redistribution.

Participation can also be a learning process for empowering citizens. It changes their position from one of no or small influence to another one of control of the different elements of the development process (World Bank 1996: 167), especially at the local level. Participation is seen as the most relevant way of involving people in activities affecting their 'development',

² Stakeholders are those affected by the outcome (negative or positive), or those who can affect the outcome of a proposed intervention (World Bank 1996: 125).

and a guarantee that decisions concerning their lives would be taken in their best interest (Rahnema 1990: 209).³

Participation, as a process, would fit more in the 'mean' rather than in the 'end' label.⁴ As a learning process, it has a broader sense, giving the citizenship the opportunity to gain power. We must not confuse the latter sense, as in with the participatory appraisal model, which seeks to empower the poor on the basis of the intervention of a third, coming from the "intellectual" or "formal" world. We disagree with that position and we emphasize the need of a critical standpoint on conceptualising participation as an intervention coming from the outside. We do think that the interaction between government and citizens implies the linkage of different worlds, which have risks, as co-optation. On the other hand, we consider that none 'enlightened' outsider can arrogate a monopoly of bringing awareness to people. Participation must be understood in the context of an internal and collective process, which brings people self-consciousness on their own strengths.⁵

Popular participation is mainly concerned with involving, informing, and consulting the public in planning, management, and other decision making activities, which are part of the political process. It assures that due consideration will be given to public values when decisions are made, providing the existence of available and adequate information (Tolentino 1995: 141). The participation process can measure the intensity of political preferences. Additionally, from an economic standpoint, it can play a more important role in the valuation of externalities. It can identify cases of distributive injustices, provide values for non-priced benefits and costs, and bring new ideas and expertise into the decision process (Hyde 1985: 130-131), particularly, if the community is educated, well informed and well organised.

Furthermore, participation in decision making, implementation and evaluation can be seen as a dimension of the institutional capacity building. The latter also contains the identification and promotion of community needs, problems and priorities; and, the monitoring and evaluation of the social and political trends and tendencies (de Coning and Fick 1995: 28). Participatory approaches can give estimable inputs to such capacity.

Additionally, public involvement can contribute to the creation of a more informed policy, providing a normative justification for governance. Other outcomes can be the

³ This issue is closely linked with the topic of alternative development, which follows in this discussion.

⁴ We consider that in an alternative development perspective participation must be empowering.

⁵ On a discussion of participatory approaches from the perspective of PAR theorists, see Wignaraja (1992: 393). For a critical review of PAR, see Rahnema (1993: 123-125).

fostering of social, psychological, and political empowerment; and, a more effective and efficient use of public agencies' investment (Steelman and Ascher 1997: 73, Samuel 1996: 38).

A first question emerging of these definitions is why participation is necessary for accountability. The answer is that, until now, it is one of the very few approaches, which has helped to integrate citizens' concerns in the elaboration of policies. It does not give the solutions to all conflict situations, but it does give a space for the expression of social groups, which normally can not do so. However, this question leads us to another. In how far serves participation planned in advance, freedom, self-discovery, or creative action? For some, by definition, that kind of participation would only serve its living source.⁶

Ultimately, participation can not be regarded as a panacea for all development problems. Solutions for long-time misleading of the poor can not be solved with mere symbolic open space for expression. Participation can only become empowerment if it brings respect for the multiple expressions of culture, ethnicity, race and gender, which crosscut every level of the relation between people and governments.

2.2. Alternative Development and Participation

The concept of alternative development has been widely discussed since its appearance in the 1970s.⁷ It emerged as a contestation to the mainstream concept of development, which is rooted in unlimited economic growth as the only mean to achieve welfare. Alternative development is characterised as people-centred, gender conscious, participatory, bottom-up, decentralising, empowering, democratic/pluralist, sustainable, and so on.

Alternative development sprang from the disillusion of the results of mainstream development in poverty alleviation (Friedman 1992: 8). Its most important foundations are human rights recognition and moral values. In this sense, social and economic development is not the end, but the mean for achieving significant changes in the livelihood conditions of the poor, looking for the self-development of people as human individuals, and enabling them to fully exercise their rights and capabilities as citizens and members of a social community.⁸ Alternative development stresses the situation of the marginalised and poor groups of the society.

⁶ Rahnema 1990: 222.

⁷ For a history and discussion on the origin of the concept, see Friedman (1992: Chapter 1).

⁸ See also Lindblom and Woodhouse (1993: 109).

For the application of alternative development principles to current policies, the presence of a strong state⁹ is necessary, as catalyst of the political claims of the different social groups, and as allocator of resources in a country (Friedman 1992: 35). That means the recognition of the differences and commonalties of the diversity of social groups, and the assumption that their claims are considered as equal as the ones of the others. This also implies the existence of an accountable state, capable to act with autonomy and, at the same time, legitimised and rooted in the community of citizens.

Thus, the nexus of alternative development and participation is regarded in the context of the presence of the state and its implementation of policies and mandates. Participation offers the citizens an opportunity to influence decision making and to empower themselves through that process, while for the state it is an opportunity to address the demands of its constituents.¹⁰

Discussing empowerment, a definition of power is needed. For Lukes, power has three dimensions (Lukes in Stone 1993: 45). The first one is the ability to influence the outcome of specific decisions. The second relates to the ability to influence the agenda,¹¹ or the menu of choices from which any specific decision is made. The last one refers to the ability to influence consciousness, namely to define core ideas, shape people's wants and tastes, frame issues, and define the standards of proof for evaluating claims to knowledge.

Hence, participation is closely linked to empowerment, as a mean to gain such ability for effectively influence policy making process at all levels. Nevertheless, in the context of alternative development, participation is also regarded as an end in itself, i.e. an ideology. This latter perspective is probably closer to the holistic approach of alternative development, though it is also the more difficult to accomplish, as it implies changes not only in practices, but also in such ideologies.

Thus, participation is a mean and an end for alternative development. As a mean, it can be grounded to a practical level. As an end, it can provide for a comprehensive philosophy and

⁹ As understood by Friedmann, the strong state does not mean a call for authoritarian practices, but a state able to provide all social groups with a space for their claims and most important, for a solution to them.

¹⁰ So far, it is argued that participation in development originates in alternative development, as stated in the Dag Hammarskjöld report ('What now? Another Development, 1975), the Cocoyoc (Mexico) seminar on 'Patterns on Resource Use, Environment and Development Strategies' (1974), and the 'Third System Project' (Swiss International Foundation for Development Alternatives, 1976).

¹¹ On referring to agenda, we agree with Chang (1993: 9) in that the public agenda consists of all issues that are commonly perceived by members of the political community as meriting public attention and as involving matters within the legitimate jurisdiction of existing governmental authority.

view of development. The way in which it can be used will widely depend on the state's political will, and the citizens' claims and capacity.

2.3. Sustainable Development and Participation

The concept of sustainable development was stated in 1987 by the World Commission on Environment and Development Report, 'Our Common Future', created by the United Nations General Assembly to study and give proposals on global environmental and developmental problems. The Brundtland Commission Report assessed the situation, analysing causes, and giving recommendations to the international community for dealing with the issue from a global, national, and regional perspective.

Brundtland Report's concept of sustainable development is rooted in the "multilateralism and the interdependence of nations which require the restructuring of the international economic system of co-operation". It defines sustainable development as "development that meets the needs of the present without compromising the ability of future generations to meet their needs" (WCED 1987:8).

The mainstream interpretation of the concept, provided by some international think tank organisations (IUCN/WWF/UNEP 1990) suggests that, in understanding development as economic growth, the concept is dynamic, because it implies changes in both society and environment for obtaining such growth. Those changes are regarded as any kind of activity for the achievement of economic growth that will lead to development, assuming that the needs of the present generations have been met, and consequently the ability of the future generations to meet their own needs is respected and even improved because of the new (technological and scientific) possibilities achieved in the same process of economic growth. Later, the Earth Summit Agreements added to the picture major developments, tackling not only economical but also, social concerns in the understanding of sustainability.

Nowadays, the definition of development of the Brundtland Report has been questioned because reality has given evidence that economic growth does not necessarily imply the improvement of neither the livelihood conditions of the poor, nor the environmental problems they suffer. In many cases, they are the ones who are most affected by problems of environmental degradation, because of the increasing gap in income distribution between rich and poor members of society.

Moreover, it is necessary to regard the concept of sustainable development as a dynamic one. The changes required to achieve economic growth imply an interaction between

society (human beings), and the environment (nature). Those changes are understood as activities, e.g. transformation, exploitation, or extraction. However, this approach can be discussed when dealing for instance with non-renewable resources, whose exploitation implies not only a change, but also the reduction, or eventually the end of the stockpiles of the Earth. In the case of renewable resources, their exploitation at the current rates and the tendency to monocultivation would reduce also the available stockpile, which leads to the need to preserve such resources in their original form for the future generations. However, what occurs when a specific society needs to exploit such resources for its basic subsistence and survival?

The discussion in the aforementioned paragraph leads us also to focus on the debate on the concept of 'strong' and 'weak' sustainability. In the case of natural resources, for the 'strong sustainability' approach it will never be possible to replace the stockpile of lost resources, although technological or scientific advances which eventually could find substitutes for those. For the 'weak sustainability' approach, it will always be possible to find replacements for lost resources, and for that efforts have to be made at all levels.

As noticed, the 'strong' sustainability approach directly brings us to the issue of consumption patterns, not addressed by the mainstream interpretation of sustainable development¹², being one of the most important in its discussion, and very related to the "needs" problem. However, how can we define the needs of the present generations? Are those ones of the developed or the ones of the developing countries? Moreover, of what social or economic group in the country? The answer is difficult. We can understand that such needs are, for instance, those considered in the United Nations Development Program indicators on Human Development. However, although, we can not measure quantitatively, at the present state of the art, what we understand as the ability of the future generations to meet their needs, because we do not know what those needs will be. Politically, it is still a very difficult issue as those new generations are not-yet-borne. Therefore, they would not have a 'voice', unless law specifically would require that.

We agree with Salih (1998a: 3-4) in that in an alternative development approach, sustainable development requires a political system securing effective citizen participation in decision making. Other characteristics must include an economic system, able to generate surpluses and technical knowledge on a self-reliant and sustainable basis; a production system

that respects the obligation to preserve the ecological base for development; and, a technological system that can search continuously for new solutions; an international system that fosters sustainable patterns of trade and finance. Finally, an administrative system flexible and capable of self-correction is also needed.

In this context, the Brundtland Report (1987) does not directly define the term 'participatory approaches', but it gives a description of what could be referred to by that, when it states:

"governments need to recognise and extend NGOs' right to know and have access to information (...); their *right to be consulted and to participate in decision making* on activities likely to have a significant effect on their environment; and their *right to legal remedies and redress* when their health or environment has been or may be seriously affected."

"NGOs and private and community groups can often provide an efficient and effective alternative to public agencies in the delivery of programmes and projects. (...) At the national level, government, foundations, and industry should also greatly extend their co-operation with NGOs in planning, monitoring, and evaluating as well as in carrying out projects when they can provide the necessary capabilities on a cost-effective basis. To this end, governments should establish or strengthen procedures for official consultation and more meaningful participation by NGOs in all relevant intergovernmental organisations."¹³

The approach given in the citation is limited, as it only refers to NGOs and private and community groups as representatives of civil society. It seems like a corporate view of how the representation of citizens has to be done underlies the definition.¹⁴ Nevertheless, it is remarkable the call to *ex-ante* (right to be consulted and participate) and *ex-post* (right to legal remedies and redress) participation. That is, participation as both preventive and solution mechanism for environmental conflicts.

As showed, the concept of sustainable development is broad and can be filled up with different approaches, and it can be used to support different interests, even those which may oppose one to another, as it happens with the state perspective, in comparison with the multiple ones of civil society, which eventually can merge in a unique one. The date of the Report can explain the scope given to participation, mainly as a consultation process. Later elaboration has led to a more comprehensive view, as in the link of the concept with

¹² As also noticed, the 'weak' sustainability approach is nearer to the mainstream interpretation of sustainable development. In that regard, it is not necessary to stop, diminish or change the present consumption patterns, which mainly deplete the actual base of resources.

¹³ Section marked in italic by the author of this paper.

alternative development. Nevertheless, such scope has to be understood in the context of the limitations of the definition provided by the Brundtland Report. In that sense, such definition is a starting point to build upon new practices which can contribute to the elaboration and implementation of sound environmental policies, bearing in mind citizens concerns. Needless to say that, later, participation has been included in the most important documents elaborated in the Earth Summit in 1992, as the Rio Declaration and Agenda 21, and in the following developments of the conferences under United Nations initiative.

2.4. Policy Making, Participation and Governance

Discussing on participation and the environmental policy making process, in the context of governance, lead us to analyse the role of knowledge and power for achieving government goals and in how far those elements can open or close citizens initiatives. The fact is that the environmental realm can not be separated from scientific evidence. The recognition of environmental problems implies to count with an expertise still very few have. This situation leads to a monopoly of knowledge within a circle of experts, the 'technocrats', who have access to sources of power and essential decision making.

Expert knowledge produces another phenomena. The isolation of decision makers from everyday life in the hands of a group of technocrats and the like, who produce an intermediary vision of reality. The consequences of that situation for democratic processes have been discussed by some scholars,¹⁵ but any concrete conclusion can be taken as definitive. The fact is that in developing countries, knowledge¹⁶ is a scarce resource, which is available for very few, usually technocrats and the political elite.¹⁷ As topics like, the environmental one become more important, expertise becomes also an important asset for sectors that formerly did not have access to sources of power.

Then, the impact in terms of participation spaces can be measured through the following facts. Usually, those technocrats do not recur to people knowledge to increase

¹⁴ This would convert the call of the Brundtland Commission more relevant for institutionalised, pluralistic polity and industrialised countries, but not specific for developing countries, as those characteristics not necessarily would be found.

¹⁵ For a discussion on the issue see Fischer (1993 and 1997: 1-21) and Dryzek (1995: 294-307).

¹⁶ Referring to the knowledge that is relevant for policy making, the so-called Western liberal democracy model.

¹⁷ On the concept of elite, we refer to the discussion pointed out by Lindblom and Woodhouse (1993: 84), in which includes into it, the members of interest groups along with high-level governmental functionaries and business executives. Elite would refer to groups that are small, in relation to the whole citizenry and that

theirs. Secondly, they are not interested in opening spaces for participation, unless they can co-opt or impose their criteria. Technocrats can become both a blockade for the people and a filter for the political elite. Therefore, it is possible that only a small empowered technocratic elite has the major influence in decision making.¹⁸ The more specialised their knowledge, the more possibilities they can have to strengthen themselves in that position.

Nevertheless, scientific and technologic knowledge can also open spaces to participatory approaches when it is used to address people's concerns, as demonstrated in the case of 'popular epidemiology' (Fischer 1997: 14). The important element here is that expertise is used in favour of causes which are normally misled by governments or the academia. Then, science becomes a tool for political struggles, which can lay more ground to sound policy making, as the public becomes better informed. However, the danger again is to fall in the monopoly of expertise.

Another element related to the tension between environmental issues and governance is the predominance of a corporate-technocratic approach for dealing with policy making in the sustainable development field. With that, we refer to the trend in the policy making process to accept only as representatives of civil society intermediary organisations, without considering if those ones are accountable or not to their constituents, whom they are representing and their legitimacy. That attitude has advantages and disadvantages. Among the first, it happens that the approach eases the dialogue for the state, which in that case, has as counterpart very few people with whom it can discuss and decide on policy matters. The disadvantages start when those intermediaries are not really representatives of people, or they have been co-opted by the state. In that case, policy making outcomes would not reflect people's real concerns and there would be more ground for misunderstandings and lost opportunities on building up spaces for further participation.

It is noteworthy to add that, when we refer to the tension between sustainable development and governance, we do not consider that there is contradiction in the values attached to both concepts, as those are ethically pursuable. The problem emerges in applying

exercise greatly disproportionate political influence. Elite policy making goes parallel with corporatist policy making.

¹⁸ For example, in the case of Peru, it will be worthy of analysis the conformation of the group of technocrats, bureaucrats, advisors, consultants and the like who effectively influence and make environmental policy. As in developed countries, in most cases, main posts are occupied by experts coming from the same university or faculty, who were working before in the same NGOs. Additionally, the consultants usually invited to policy meetings come from the same NGOs, universities or faculties. And, the chain continues in that way.

the concept of sustainable development (through environmental policies) to a society with the constraints imposed by the liberal system.¹⁹

Those constraints are mainly focused on facilitating a free market economy, regardless the political system ongoing in a country.²⁰ Thus, environmental policy should not contradict economic policies. Therefore, conflicts emerge when environmental concerns clash with economic interests. Usually, such conflict happens in a two-level perspective. At the ethical level, the majority agrees on the importance of tackling and solving environmental problems. At the implementation level, carried out by a minority, i.e. the technocratic elite or bureaucracy in charge of application, several issues emerge as the former *status quo* is challenged, a redistribution of power occurs, and the like. In that case, government practices could not necessarily convey the compliance with the majority. In how far a balance between those levels is achieved will be a matter of good governance and will provide stability for the policy making process.

2.5. Environmental Policy and Participation

While approaching the practical implementation of the concept of sustainable development on the ground, it is encountered that environmental policy is one of the main tools for achieving that purpose. To that extent, the inclusion (or not) of participation at the environmental policy level, has been recognised as an essential factor for the success or failure of any attempted policy. Participation supposedly helps to design sound policies, to address people's needs, to enhance democratic practices, to prevent the plunder of natural resources (ECLAC 1991: 98) and more. Participation can provide legitimacy to public decision making, important in the case of debated or controversial topics (and decisions) as the environmental realm is perceived. Everybody agrees in the discourse on the need to tackle environmental and developmental problems. Reality shows that is difficult to achieve consensus on how this can be carried in praxis. Different trends, perspectives, and interests complicate the picture. How can these positions be brought together to achieve a wide support for sustainable development tasks? In this context, participatory mechanisms bring new possibilities to face the problem,

¹⁹ For further discussion on the topic, see Dryzek (1995: 300).

²⁰ Usually, it is said that democracy has two facets, a political and an economical one. The latter refers to the fair distribution of economic power, through broad participation in the control of productive assets and the exercise of collective bargaining power (Korten 1990). On the other hand, Fowler (1992:2) considers that political democracy requires a fundamental condition: that 'the people' who comprise the polity are able to control those who rule, or otherwise exercise authority, in their name.

facilitating space for discussion, exchange of ideas, and mutual learning. Nevertheless, they are not the ultimate answer to the environmental risks of our times. More participation can also mean more opinions and interest groups, which might increase the difficulty to achieve consensus.

In recent years, a common starting point for integrating participation in environmental policy making has been the creation of specialised state agencies to foster citizen inputs and create inter sectoral space for discussion, in and out the public realm (Zazueta 1995: 17-19). The assumption is that the inclusion of such mechanisms can help those agencies to encounter public support to their initiatives, *vis-à-vis* the balance of power within the state.²¹ Besides, those agencies can also lay off on the material resources of other sectors of the public administration. The challenge is to convert the in-country and international request for participation into a neutral space, in which different viewpoints can be positively contrasted, effectively enhancing the governance process.

But, participatory approaches cannot only be conceived as a static mechanism for the achievement of some specific goals. If there is a firm political will to advance to a dynamic of collaboration and interaction, they have to be included in every stage of the policy making, from design to implementation, via decision, rule making and evaluation. Thus, participation in environmental policy, as a process, feeds political practices and contributes to the transparency of governments' decisions in that ground. Consequently, the accountability²² of the state increases, and supposedly, good governance²³ practices are disseminated to all levels of the administration related to sustainable development issues.

From a confrontational viewpoint, citizen standing to sue is considered a powerful mean for involving the public in environmental policy too (Tolentino 1996: 141). Mainly, its use implies raising citizen awareness and opinion, usually controversial, on a topic, which could not be solved at other levels. Ultimately, it is for some social groups the last resort for facing damaging environmental policies. Its use also implies the failure of participatory approaches at the initial policy making levels. Nevertheless, the indirect impact that this measure can have on policy making can not be dismissed. In the long-run, it can lead to

²¹ Due to the existence of vested or open interests from other sectors of the public administration as mining, fisheries, or forestry agencies.

²² Accountability is to hold individuals and organisations responsible for their performance, which is measured as objectively as possible (Samuel 1996: 37).

²³ The World Bank concept of good governance refers to a 'public service that is efficient, a judicial system that is reliable and an administration that is accountable' (in Tolentino 1995: 137).

changes in laws or regulations, or in the way policies are designed, decided and implemented, which is one of the main purposes of public involvement in environmental affairs.

So, participation in environmental policies can be conceived in various ways, either from the state point of view, or from the citizens' one. The model or mechanism to be used will depend on the specific circumstances of the environmental problems at stake, and the will of both public sector and people to address and, ultimately, solve them.

III. PARTICIPATION IN THE ENVIRONMENTAL POLICY MAKING PROCESS

This chapter will elaborate on participatory approaches in the context of the environmental policy making process, regarded as a variety of public policy making. Firstly, it will follow an analysis on the assumptions, conditions and types of participation. Following, the pros and cons of participation will be tackled. The aim of this chapter is to discuss on the inclusion of participation in the environmental policy making process from a theoretical perspective, stressing on the linkages such relation entails and, consequently, its contradictions.

3.1. Assumptions

The need to involve citizenship in the process of policy making, namely participation, is hardly disputed in the literature (Renn *et al.* 1993: 189). Public participation may induce governments to move away from traditional ways of governance, which can have an important impact in their accountability (Samuel 1996: 38). In spite of that, there are very different perceptions of what participation is about, as how to structure and implement participatory approaches, and what is the role and the authority of the citizens that are going to take part in those processes. As it can be noted, the stress is more on participation as a mean, rather than as an end.

Some assumptions are made on the integration of participation in environmental policy making processes (Zazueta 1995: 1, ECLAC 1991: 98). (a) that the policy making process will better respond to population's needs; (b) that the citizens will support, politically and materially, the implementation of state policies, because of their interest in improving their livelihood conditions; (c) that the citizens will be more willing to invest in future generations' well-being; and, (d) that it increases the economic effectiveness of physical and financial capital.

Nevertheless, those assumptions must be accompanied by further two, directly related to the character of the population who participate. First of all, that the poor is not a homogeneous interest group,²⁴ and secondly that influence, power, and access to decision making are not equally distributed into social groups (Zazueta 1995: 37-40). Moreover, decision making processes rarely respond to the needs and interests of the less powerful and non-organised. Participatory processes not including those considerations are most likely to fall in misconceptions and non-realistic solutions to tackle conflicts. However, these two assumptions must be carefully taken, as stating them can be interpreted in a discriminatory bias.²⁵

Further, the relation between government and civil society is worthy to be explored, as it is in that interface in which the spaces for participation are open or closed. We agree with Uphoff (1995) in that civil society includes mainly voluntary and self-help oriented people's associations and membership organisations, and not NGOs. Moreover, CBOs are also part of civil society. Therefore, problems emerge when civil society is depicted as NGOs, which is not the case.

The space between government and civil society paves the way for the following attitudes. From the part of the government, the creation of dependency and reduction of autonomy can be promoted. For instance, through clientelist networks or the creation of organisations parallel to the genuinely sprang from the citizens. A second possibility for the government is to control the mushrooming of civil society organisations by tough regulating them with legislation or the like. The form of co-optation is the more usually used, as is the way in which the government can smoothly take control over citizens without contestation. The last and extreme form would be repression, which normally happens when the other approaches have not had results.

Participation in policy making can have two approaches. As the use of co-operative organisational forms for income generation, service delivery and natural resource management.

²⁴ In defining *interest groups* we refer to Lindblom and Woodhouse (1993: 75) for a further discussion. However, we agree with them in that a more accurate definition can be taken from the activities those groups develop, rather than from their characteristics, are those are too heterogeneous to find commonalties in a general way. Therefore: 'interest-group activities are interactions through which individuals and private groups not holding government authority seek to influence policy, together with those policy-influencing interactions of government officials that go well beyond the direct use of their authority.'

²⁵ In the sense that it can be questioning on who can declare if citizens are (or not) organised, and if they really need to be organised. The outer vision of what is a interest group can lead to assert on some grassroots

Or, as the increase in influence that people can assert over the structure and management of 'development interventions in their communities'²⁶. The last one directly relates to the discussion on the inclusion of participation in policy making, as it concerns with the degree of control that the stakeholders²⁷ exercise over agencies which provide them with services, influencing on their external accountability and contributing to good governance practices (Brett 1996: 6).

The participation process can occur at different decision making stages in the development process, from policy formulation and evaluation to sector plans to programs and projects. Such "policy cycle" makes up the work of the public sector, and efforts are necessary to ensure that some degree of participation can occur and, consequently, the right decisions are being made. (Holmes and Krishna 1996: 30).

3.2. Conditions

Participation in policy making occurs in the context of public sector management²⁸, which has as by-products policy development and implementation. For Holmes and Krishna (1996: 29-30) the content, nature, and intensity of participation will depend critically on the institutional environment, the same that should enable the process. An enabling environment includes such issues as the right to information (which allows sharing a vision, making choices and managing activities), the level of available legal information, and the right of social groups to organise and enter into contractual agreements, formalising groups (World Bank 1996: 174). But, it has to be taken into account that, if the institutional environment does not allow or narrows participation, citizens might create their own means of communication, as political demonstration, manifestos, etc.

For fostering that enabling environment, attention should be drawn to four main institutional issues: (a) information and communication (improving communication among internal stakeholders, namely policy makers), (b) participation in management, -i.e. policy formulation, design, implementation- (having beneficiaries with voice, and sharing the costs),

organisations as disordered and chaotic, but maybe that is the way the population find its place to strengthen themselves.

²⁶ See Bhatnagar and Williams in Brett 1996: 6.

²⁷ Stakeholders are those affected by the outcome (negative or positive), or those who can affect the outcome of a proposed intervention (World Bank 1996: 125).

²⁸ Public sector management is the capacity of the public sector to perform its functions. It comprises the structures and agencies, processes and organisational links, individuals and incentive structures, culture and orientation used by the public sector to perform its tasks (Holmes and Krishna 1996: 29).

(c) accountability (making a stakeholder group behave in a manner acceptable to all other stakeholders), and (d) trust, predictability, and reliability (Holmes and Krishna 1996: 30, 32). An additional precedent condition, necessary to enable a sound participation of the stakeholders in policy making processes, is the freedom of association to permit the discussion by all interested groups of the community (Tolentino 1995: 141). Of course, the elements just pointed down are enabling mainly from the perspective of the government and not from the one of civil society. To that extent, civil society interests would not necessarily match with those of government, as citizens might create their own means of communication if the doors are not opened (for instance through demonstrations, political manifestos, and so on).

In that environment, the internal stakeholders (within the organs of the public sector) and the external ones (who in theory own the public sector but are on the outside) are essential elements. From a public sector standpoint, participation is concerned with the roles played by those stakeholders, and with the way the control over public programs is shared among them, legitimising state intervention. Hence, participation, at the same time, can contribute to improve an enabling institutional environment, enhancing effectiveness, efficiency and responsiveness of governments.

The relation between internal and external stakeholders is a dynamic one, in which neither technical expertise is the exclusive ground of internal stakeholders, nor they renounce to any role in decision making (Holmes and Krishna 1996: 31). The internal stakeholders, as public representatives, not only provide information, but also act as negotiators, assessing the feasibility of citizens inputs (Tolentino 1995: 141). The degree of interaction and positive results of the process will depend on the mentioned enabling environment, combined with a firm political will. Thus, the impact of participation will also depend on the effectiveness of the public sector in managing the process, providing that institutional mechanisms were set up to improve the willingness and capacity of the different social groups to participate (Holmes and Krishna 1996: 34-35). To that, it has to be added that usually, in the case of developing countries, those external stakeholders, neither have the same access to power, nor they represent a homogeneous set of interests. Such fact gives to internal stakeholders the opportunity to play power games among them, weakening their claims before governmental bodies.

Participation also requires the provision of legal norms to improve and enforce public service regulations and standards, obtaining the autonomy of the involved state agencies (Samuel 1996: 39). Such autonomy can be helpful at the decision-making level, when the

inputs coming from the citizenship have to be assessed. On the other hand, in the process itself, it can provide a major space of manoeuvre in the negotiations and trade-offs that are part of the political process.

From the perspective of stakeholder groups, Clark (1996: 46-47) considers the provision of some basic policy instruments necessary to support participation. They are state's good governance, regulations and fiscal legislation for strengthening stakeholder groups, operational collaboration and co-ordination with the state, policy debates and formulation, and even governmental funding. The considered elements assume that the state has to provide the material conditions for the integration of citizens into policy making. However, it also starts with an increasingly questioned assumption. That intermediary organisations, like NGOs, are the ones called to represent people before the state, which is not fairly accurate in every case, as those can be co-opted or represent vested interests.

Additional factors influencing the participation of different stakeholders in the decision making process are the willingness of stakeholder groups to take part in the activities of the public sector, their capacity to make a meaningful contribution, and the extent to which the institutional setting is conducive to their participation (Holmes and Krishna 1996: 31). These conditions are important in the context of the meaningful role expected from the citizens.

3.3. Types

For better understanding the place participation can have in policy making, it is meaningful to revise the different typologies, which can be used, that also reflect the diversity of approaches for implementing participation in the policy process. In a project-program oriented concept of participation the following classification can be considered:²⁹

1. Participation through consultation, particularly suited for decisions likely to affect many social groups. Consultation is an opportunity for the expression of external stakeholders, while for policy makers, it is an opportunity to listen.
2. Monitoring and oversight in policy making through permanent bodies, allowing a continued assessment of the outcomes of the process.
3. Community involvement in decision making and implementation of public policies, especially at the local level, in which the process can be directly managed by the constituents.

²⁹ See Zazueta (1995: 22-29).

4. Participation through information production and dissemination, providing that the data is clear, objective and available, factual and sound, and incorporates the standpoints of the parties involved.

It can clearly be noted that this approach to participation falls under the label of 'mean', rather than 'end'. In this sense, the proposed mechanisms are practically oriented, and directly applicable to specific situations. Nevertheless, their impact in an empowerment process is limited as the ideological assumptions of development are not challenged.

Steelman and Ascher (1997: 71) use another typology, closer to a regulatory approach:

1. Standard representative policy making, which involves elected and appointed officials making policy on behalf of their constituents, presumably reflecting some combination of their views, preferences, and interests.
2. Referenda, referring to direct binding policy making by citizens, established through constitutional provisions such as initiative, referendum, and recall.
3. Non-binding direct involvement, which supposes citizens contribute inputs to the deliberative process, the outcome of which is mediated by an administrative or legislative body. The process includes public comment periods, hearings, open meetings, and some citizen advisory commissions.
4. Binding direct policy making by non-governmental representatives, in which citizen's or group's representatives formulating policy are found, but operating within structures overseen by elected or appointed officials.

The above mentioned classification suits much more to the mainstream concept of development (as economic growth), and consequently the sustainable development one as well. The reason is that this typology offer a set of choices which are established by the government body, and participation only could work out in that structure. However, it can be useful in a first or transitional stage because the legalistic perspective in which it stands would not be uneasy to manage by traditional or 'old-fashioned' policy makers. This kind of typology matches better in the case of traditional policy makers not so favourable to change.

On another classification, the approaches and mechanisms of public accountability (understood as participation) at the macro and micro levels are related to public policy, with an economics base which actually seeks to improve performance in terms of efficiency and

effectiveness. Therefore, the division of such levels corresponds respectively to the national and projects-programs level of the decision making process.³⁰

1. At the macro level the following mechanisms can be identified:
 - a. Audit and Legislative reviews for public dissemination, which have as objective to inform and educate the citizens, for understanding, discussing, and internalising accountability-related issues over time.
 - b. Participation in budgetary policy making, in which the exchange of views and the openness of the discussion could contribute to greater macro level accountability.
 - c. Public feedback on policies, which can be used by a government to improve its performance.
2. In the micro level (projects-programs) these are the identified mechanisms.
 - a. Project-level accountability mechanisms.
 - b. Users surveys as an aid to accountability.
 - c. Performance plans and agreements.
 - d. Users charges and participation.
 - e. Public hearings.
 - f. Information as an aid to accountability.

As we can observe, this typology gives policy makers the possibility to open field to receive more valuable inputs, especially when decision making goes to the micro level. Nevertheless, it is still too state biased, to the extent that the initiative for participation depends of government's will rather than citizens' action.

Regardless the model to be adopted for incorporating participation in policy making, such must ensure the clear purpose and aim of the public input. The increase in referenda and non-binding direct modalities of participation has lead to confusion over the goals of public inputs (Steelman and Ascher 1997: 72). The reason is that those approaches have generated an enormous amount of information available to the policy maker, data also representing the different standpoints of a diversity of social groups. Thus, if citizens do not foresee what might be the outcome of their involvement in public affairs, it is less likely that outstanding results can be expected. On the other hand, if the government does not envision the goals of allowing citizens to participate, most probably the process will become decorative or superficial in its results.

³⁰ See Samuel (1996: 38-41).

The set of choices available to the policy maker depends of the specific character of the political system itself, whether it is more or less democratic, bureaucratic or authoritarian. Time and cost also add to the picture. All over, those elements determine the way in which the public input can be used (Steelman and Ascher 1997: 72-73). Ultimately, if public and private interests coincide, the public can participate more intensively in the project design and implementation phases by sharing in, and even taking over, decision making. If public and private interests are potentially or actually opposed to each other, there may be no common ground for shared decision making (Holmes and Krishna 1996: 31).

3.4. Pros and Cons

Participatory approaches in policy making entail some problems and constraints. A first area is the representation of the stakeholder groups (especially the external ones) which can have a diversity of interests.³¹ Therefore, the integration of all interests in the process, recognising plurality as an advantage is important in that context. Besides, another problem is the unawareness or misconceptions on the contents of policies, which cannot only be solved by providing information to the constituents, especially when technical issues are in discussion.

Further, the dissent about facts among the parties can lead to misunderstandings, blockades, confrontations and, consequently, the failure of the process. In that case, external moderation or facilitation for conflict resolution would be needed. Moreover, the scope of evidence available can narrow or broaden the space for discussion, influencing the content of the agenda, and consequently the results of the process.³²

The legitimisation of trade-offs can create problems, complicating the negotiation process when the stakeholders' representatives do not effectively respond to their constituents' claims (Renn *et al.* 1993: 210-211). An identified additional problem is that participatory approaches make project planning slower and more expensive. The reason is that their implementation needs space and time for dialogue, trade-offs, additional negotiations, and mutual learning, rising operative costs for both the state and stakeholders at initial stages.³³

³¹ For instance, the interests of businessmen are different to the ones of grassroots organisations, NGOs, or unions.

³² The Chernobyl case can be an example of this trend.

³³ However, those can be traded-off at later stages when as an outcome of participation, gains are produced in terms of efficiency and overall costs can be lessen.

Furthermore, participation can provoke a high level of expectations among the citizens, which can not necessarily be met, risking the legitimacy of the process itself. Besides, participation entails changes in power relations, which can trigger conflicts between traditionally excluded social groups versus traditionally powerful ones. This is especially the case when the state represents the interests of some specific groups.

Participation can widen internal conflicts within stakeholder groups, commonly coming from uneven distribution of benefits and shares in those communities.³⁴ Furthermore, poverty is a constraint, as is an impediment to access to resources and, consequently, reach power mechanisms. In the same line, illiteracy, is also an impediment for getting the relevant information to participate. Inadequate political mechanisms, which do not consider the aforementioned facts into the analysis, are also constraints to popular participation (Tolentino 1996: 143).

A major problem of all citizen participation models comes from the legitimisation of the citizen recommendations, *vis-à-vis* competing claims by interest groups and elected or appointed decision makers (Renn *et al* 1993: 199-209). Moreover, participation can produce counter-productive results if some groups have stronger access to power (for example through lobbies). In that context, participation must be clearly distinguished from other pseudo-processes, which include the constituents in decision-making to gain legitimacy. Ultimately, any system of legitimisation is clearly linked with due process and public approval through elections. In this perspective citizen participation can be an integral part of that process, but can not replace it. The transparency of the process of legitimisation contributes to the social acceptance of the policy, enhancing also further possibilities for involving the citizenship.

On the contrary, the major benefit of participation is that policy making and implementation are more likely to succeed when the stakeholders are part of the process that leads to policy decisions.³⁵ The assumption is that different stakeholders will seek to bring as much information they can to support their interests. Once a “critical mass” of information is reached, the potential benefits and costs of the various courses of action will be analysed. Participation is also meant to expand the base for decision making and, consequently, contributing to the elaboration of realistic policies and projects, tailored to people’s needs. Additionally, it builds support and reduces opposition to policies and programs, helping to

³⁴ See Zazueta (1995: 12). Examples of this process can be for instance the Ogoni people division in relation to their environmental conflicts with Shell.

build the stakes of the concerned groups, identifying potential negative impacts, and finding alternative ways to reach policy goals in a non-conflictive space. It builds local implementation capacities, helping to increase the community's technical and organisational capacities, as well as ability to negotiate, which is an essential element in a process of empowerment.

Essentially, participation brings to policy making a new *ethos* and practice. That can be defined as a more collaborative and open. In the long-term, participation should provide ground for an involving process of decision making. One in which citizens of all walks of life have the opportunity to express their concerns, and to observe those being addressed by the policy makers, regardless where the claims are coming from.

IV. THE PERUVIAN CASE

In this chapter, the paper will focus on a critical description of the introduction of the sustainable development discourse in Peru, to understand how and why participation in environmental policy making is being implemented. After, it will describe the policy context for participation in environmental policy making in Peru, from the perspective of the policy makers, who represent levels of decision making, as it will be noticed in the Peruvian case. The description will focus on the institutional and regulatory frameworks.

4.1. Sustainable Development Discourse in Peru

Like at the international level, the sustainable development discourse entered Peru in the 1990s, caused by the outcomes of the Rio Earth Summit and its preparation process. Before, the institutional and regulatory framework affecting environmental issues was a huge and disconnected *corpus* of legislation, regulations and institutions, which was set up with other purposes than the environmental ones. With the shift to these new aims, that *corpus* was also given a new meaning. So, it cannot be said that there was no institution or legislation related to the environment in Peru before the 1990s. On the contrary, there was standing a huge bulk of information and data developed with another but parallel purposes, as for instance, preservation, natural resources exploitation, and so on.³⁶

³⁵ See Zazueta (1995: 9-11).

³⁶ For information on the environmental legislation up to 1990, see Andaluz and Valdez, *Derecho Ecologico Peruano*, Gredes, 1987 and Sociedad Peruana de Derecho Ambiental, Project PR5 UNEP. Both compilations account legislation related to environmental topics in Peru from 1904 onwards, mainly starting with mining issues. Similar data is also used by the General Direction of Environmental Health (Dirección General de Salud Ambiental DIGESA) of the Ministry of Health (Ministerio de Salud) and by the Ministry of Justice (Ministerio de Justicia).

In 1992, in Peru, a process of issuing environmental legislation started at all levels. This occurred, primarily, as a consequence of the release of the Code of Environment³⁷ (in spite that it was already existing since 1990) and the recognition of international obligations by signing the Rio Agreements by the Peruvian government. The implementation of those provisions, at the national level, led to an accelerated production of legislation which was influenced, in a first stage, by the work of NGOs and international organisations rather than other actors.³⁸ The reason was that those were the only ones who had the information and knowledge on environmental topics, combining technical and political aspects. After the release of the Law for Private Investment (Law Decree 757)³⁹ in November 1991, the national business⁴⁰ sector became interested in environmental topics, as for the first time, law linked economic and environment issues, putting pressure on their activities as investors.

A first element to be drawn is that the process of setting-up and implementing of the environmental policy in Peru can be characterised as steps-forward-and-backward. For instance, by establishing more protective measures in an initial stage and then reducing the standards for different sakes. The aim has been to find a balance among the different interests at stake, i.e. the ones of the state, citizens and business community. To what extent this has been achieved is still subject to evaluation, because the institutional and regulatory frameworks are still incomplete and in an on-going process of implementation.

³⁷ The Code of Environment of Peru (Codigo del Medio Ambiente y los Recursos Naturales, Decreto Legislativo 613) was passed by the Parliament of Peru in 1990. At that moment, it was considered one of the most advanced in Latin America for including many advanced provisions, as the 'precautionary principle', among others. Its implementation was delayed, until the obligations signed by the Peruvian government in June 1992 (Rio Summit) forced the Executive branch to take concrete measures for compliance. Then, the Code became a useful instrument.

³⁸ Organisations such as the IUCN, WRI, TNC and the like were very influential in the process of preparation of the agreements of the Rio Summit. Their inputs, which were more conservationist sided, were key in the 'green' profile UNCED had.

³⁹ The Law for Private Investment (*Ley Marco para el Crecimiento de la Inversion Privada, Decreto Legislativo 757*) for the first time addressed environmental issues, as part of the economic growth of the nation. It included those issues like requirements for the development of productive activities in the country. However, by introducing that Law, several clauses of the Code of Environment were modified, to make it more suitable to business interests (for instance, allowing private investors to make activities in natural protected areas, when before it was not allowed). In other words, loosening environmental legislation, in accordance to the ongoing structural adjustment program, of which the Law for Private Investment was a substantial part.

⁴⁰ The interest of the business sector should be regarded in the context of the intertwining of the policy making system with the business one (Lindblom and Woodhouse 1993: Chapter 8). To that extent, we consider that is natural that such sector can have such a strong influence in policy making. As those authors point down: 'the problem of how to bend business to better serve society is one of the fundamental challenges facing those who desire more intelligent and more democratic policy making' (1993: 103).

4.2. Sustainable Development Policy Context in Peru⁴¹

The sustainable development policy context in Peru presents particular features (see Box 1). In an initial phase, the Peruvian environmental policy system mainly took as model the Chilean system, with which it still shares some parallels.⁴² Another element to be remarked is that environmental policies in Peru started being made and implemented in the context of the structural adjustment program, applied in the country since 1990. This means that environmental policies are shaped by the developments of the economic program itself and, consequently, those developments determine the path forward and backward which has characterised the policy environment in the last years. Also, it has to be added as a characteristic, the particular development of the Peruvian political system itself, which aggregates instability and constraints to a sound or logical policy making, sustainable in the long-run.⁴³ But, in spite of those constraints, environmental policy makers in Peru have enough space for manoeuvre in the context of a technocratic picture or model of their labour, as it will be described in the following characterisation.

The chosen model for the institutional and regulatory framework of environmental policy in Peru aims at a gradual incorporation of environmental concerns in the economic agenda, while the productive sector smoothly adapts to the new requirements and costs such shift implies. So, it tends to focus on the will of the private sector to assume environmental costs, rather than on a command-control approach.

⁴¹ The following characterisation finds much of its statements in the personal observations of the author of this paper as a researcher and lawyer working on environmental policies in Peru in the last five years.

⁴² The Chilean system for environmental policy making keeps some commonalities with the Peruvian system, as for instance the institutional setting-up for environmental policy, i.e. executive body or Commission in charge of policy elaboration. The Chilean system was in its moment the alternative to the proposed Venezuelan model of establishing a Ministry of the Environment, which in the context of the implementation of the structural adjustment program was considered counter-productive (for expanding the bureaucratic 'establishment' which is meant to be reduced by the SAP).

⁴³ With that, we refer to the instability in the policy making process, as continuous steps forward and backward are taken. This happens in all stages of policy making and at the inter sectoral level too. In general, this is not an exclusive characteristic of the environmental field.

Box 1: Institutional and Regulatory Framework for Environmental Policy Making in Peru

Regulatory Framework

The regulatory framework for environmental policy making in Peru is composed of the Constitution, national general laws, national specialised laws, and sectoral laws and regulations. Both, the Executive and the Legislative can issue those regulations.

Municipal level regulations have also to be taken into account, as those normally, in dealing with local issues, can have strong impact on tackling environmental problems in a community.

Likewise, the Judiciary, without having direct regulatory powers, can influence legislative process by issuing decisions on the way the norms are applied.

Institutional Framework

The Peruvian state is divided in three branches: the Executive, the Legislative and the Judiciary. The three of them have the same weight in the policy making process in Peru. Each is in charge of one function of the state, like to administrate, to regulate, to enforce, and the like.

In the Executive Branch, the head is the President of the Republic. The post is elected every five years, through general suffrage. Following the President is the Cabinet of Ministers (*Consejo de Ministros*), organised according to sectors of production. The Cabinet is chaired by the Prime Minister. For environmental topics, the highest authority is Conam (*Consejo Nacional del Ambiente*), directly depending from the office of the Prime Minister. Conam is in charge of Peruvian environmental policies at the national level. It does not have enforcement faculties. Continuing in the hierarchy are the Ministries. Each has an environmental unit in charge of elaborating the sectoral environmental policies, accompanied with enforcement faculties.

In the Legislative Branch (*Congreso de la Republica*), the Parliament is organised in Committees, dealing each with a specific topic, similar to the organisation of the Ministries. Since 1995, there is a Committee on Environment, Ecology and Amazonia, in charge of tackling environmental issues within the parliamentary work.

In the Judiciary, there is no special court in charge of environmental issues. Environmental cases are streamed in the common proceedings (constitutional, civil or criminal).

Additionally, there is the local (municipal) level, also allowed to elaborate and regulate on environmental issues. This level has a degree of autonomy, in the context of the decentralised organisation of the country.

Sources: Constitution of the Republic of Peru, Law of the Executive Branch, Regulations of the Parliament of Peru, Law of Municipalities.

4.3. Regulatory Framework⁴⁴

Including and implementing public participation mechanisms is relatively new to Peruvian environmental legislation. The trend has been to incorporate such mechanisms into existing legislation without any systematic approach. Peru has a legal framework that includes participation in the environmental field, i.e. policy making and legislative drafting. This framework includes the right of access to information and of participation. Specific procedures

have been established to facilitate participation. These procedures differ from one norm to another; some are permanent, others periodic. Permanent mechanisms are institutional bodies, e.g. Council Boards, which provide opportunities for public participation through representatives. Periodic mechanisms are aimed at public participation with a specific goal, e.g. the election of representatives to institutional bodies, or the right to make representations in relation to a particular topic. The division is not strict, because both tools interact in the public decision making process.

4.3.1. Legal Base

Peruvian environmental legislation related to public participation is based on the 1993 Constitutional Charter (Art. 2 nos. 5 and 17 and Art. 31) and Law No. 26300 (Law on the Rights of Public Participation and Control). The latter establishes a procedure for legislative initiatives by the public (Arts. 8 and 11 through 15), including the presentation of drafts to the electoral authorities (provided a minimum number of signatures), and a procedure for passing such drafts in the Parliament of the Republic.

These public participation mechanisms are of a strictly formal nature and subject to specific procedures before competent authorities. The Peruvian Constitution recognises the right of access to information held by public authorities, the right to participate in the political, economic, social and cultural life of the Nation, and the right to participate in public affairs through legislative initiatives. The right to participate implies the existence of a right to information, which can ensure the necessary public awareness of the policy and law-making process. Authorities are supposedly obliged to inform the public in response to requests. The right of access is limited only by the exceptions specifically mentioned in the Constitution (personal confidentiality, confidentiality as specified by law and national security).

Legislative Decree 613 (Environment and Natural Resources Code) includes the right of every person to participate in policy formulation and implementation of national, regional and local measures for the environment and natural resources (Main Title, Art. VI). It also establishes the right of citizens to be informed of measures or activities, which could affect, directly or indirectly, the health of persons, or the integrity of the environment and natural resources.

Public participation provisions have been included in some new legislation. For example, Art. 5 of Law No. 26821 (Organic Law on the Sustainable Use of Natural Resources) establishes

⁴⁴ For a discussion on this issue, see Vela Vargas (1998: 6-7).

the right of citizens to be informed and to participate in the definition and implementation of policies related to natural resources conservation and sustainable use. It recognises the right to formulate petitions and to bring collective or individual actions before competent authorities. The article includes the right to information and of participation, framing them in the context of the Constitutional Charter and the Environment Code. However, it lacks criteria for defining such participation for the norms related to natural resources, e.g. the Forests Law or the Water Resources Law. Most importantly, it leaves the decision to inform or not to the authorities, provoking contradictions in the application of the norms.

4.3.2. Participation in the Executive Branch Administrative Process

The highest Peruvian authority on environmental matters is the National Council for the Environment, created by Law No. 26410, which provides public participation mechanisms within the decision-making process (Art. 4g, Art. 6d and e, and Art. 13). Among the functions of the Council, the Law lists the promotion of public participation at all levels. In addition, the Council Board includes representatives of the public, namely from the primary (raw material producers) and secondary (industrial) commercial sectors. The appointment procedure is subject to the rules of the bodies, which represent these sectors. The definition of representation is restrictive in that other groups, e.g. non-governmental or community-based organisations, are not included.⁴⁵ Although there is different criteria for participation in the administrative decision making process, advances in the field have been positive, due to the growth of experience among public interest organisations, and in co-ordination and mediation at the government level.

Public participation in the administrative procedures of the Executive has been weak and only implemented at the environmental impact assessment level, with extremely restrictive measures, which do not permit or facilitate the participation of the poor through their representatives. The mechanisms vary from one economic sector to another, and they are hampered by the allegation of other rights (e.g. commercial confidentiality), delayed responses to requests for information and high charges. The general administrative mechanism (established in the General Administrative Law) has been little used, due to its complicated and time-consuming procedure, difficult for lay citizens to understand.

⁴⁵ Law No. 26793 (Law on the Creation of the National Fund for the Environment) provides for representatives of non-governmental and business organisations and academics to sit on the Council Board of the Fund (Art. 4). It also establishes the procedure for their appointment (Third and Fourth Final Dispositions).

A way to improve the situation would be enabling citizens representatives to attend and be informed on projects which can directly affect their environment (mainly for indigenous communities situated in remote areas). Additionally, there is the role of NGOs in facilitating access to power for poor sectors of society, with the dangers those links can represent (in terms of co-optation and the like). However, NGOs can provide in a first stage valuable resources and information to overcome the situation.

4.3.3. Participation in Parliamentary Proceedings

The General Code of Proceedings of the Parliament of Peru (*Reglamento del Congreso*) does not explicitly consider the inclusion of consultations, public audiences or hearings, as part of the legislative decision making process. Notwithstanding, such mechanisms have been included in the day-to-day parliamentary practice. Specially, at the Committees level, the attendance of citizens and experts to public sessions and audiences is a common practice, as a mean to close the gap between policy makers and their constituency.

In the case of the Committee on Environment, internal regulations have been established to allow citizens to participate, especially for receiving their inputs in the law making process. Nevertheless, those regulations are mainly addressed to intermediary organisations such as NGOs, professional and business associations and the like, lacking a more organic approach for involving the large majority of citizens and their representatives.

4.3.4. Participation in Court Proceedings

The Environment Code was the first norm that recognised the right of non-governmental organisations to bring actions in the courts on behalf of the environment. From there, Court experience in the matter has increased both in number and in jurisprudence development. The interest of citizens to seek remedies to environmental problems before the courts has grown. A gradual process has developed thanks to the efforts of environmental NGOs.

The level of expertise and interest on the part of judges in these cases has also increased. At the same time, jurisprudence in the matter has influenced laws and regulations, especially those related to conflicts between commercial activities and the environment. The issue has become a serious one in view of the important decisions taken to promote environmental conservation in Peru.

4.4. Institutional Framework

In Peru, the environmental policy making process is formally divided between the body which makes the policies, and the bodies which implement, enforce and regulate. This is done according to the different clusters in which the public affairs are managed, namely productive sectors or theme areas (i.e.: mining, fisheries, agriculture, and so on).

4.4.1. Executive Branch

The most important policy makers are Conam and the Ministries (known and sectoral authorities). According to the Peruvian environmental institutional framework, the main policy maker is the National Council for the Environment (*Consejo Nacional del Ambiente*) Conam, directly subordinated to the office of the Prime Minister.⁴⁶ Conam is the highest political authority for environmental policy in Peru⁴⁷ and its policies are supposed to be of binding compliance. However, at the same time, Conam does not have regulatory or enforcement powers.

So, Conam is depicted as a “purely” political advisory body, in charge of co-ordination and consensus seeking, *vis-à-vis* stakeholders, as business associations and NGOs. Co-ordination and consensus seeking are the key words used by Conam to describe the core of its initiatives.⁴⁸ Reality tells that the separation is not as strict as it is drawn up in the legislation. In practice, Conam actively participates (and it has to) in the process of negotiation and drafting of legislation, developed in other levels of the political system. The aim is to match such legislation into the broad scheme of Peruvian environmental policies, developed and worked by Conam too.⁴⁹ Such policies are presented to the Prime Minister, who does the same before the Cabinet, which finally approves (or not) such policy plans, regarding the cross-sectoral character of the environmental topic.

Since the setting-up of Conam, the agency has been busy on implementing policy mandates and the regulatory framework related to its functions. One of the most important initiatives to that respect has been to set the National Environmental Agenda, first for the

⁴⁶ See Constitution of the Republic of Peru 1993, Articles 121 through 123, and the Law No. 26410 Law of Creation of the National Council of the Environment. The Prime Minister chairs the Cabinet, which acts as inter sectoral co-ordination body.

⁴⁷ According to the Law of Creation of Conam, it plans, promotes, co-ordinates, controls and foresees for the environment and the natural heritage of the Nation (Article 2, pr. 1).

⁴⁸ See ‘The Action of Conam and the New Environmental Vision’ (*La Accion del Conam y la Nueva Vision Ambiental*) Conam Internet Home Page: <http://www.conam.gob.pe/page06.htm>, accessed on August 03, 1998.

period 1996-1997 and then to the 2000. The establishment of a policy agenda has helped Conam to set priorities, forecast problems and start a process of consultations at the national level. The purpose is to establish a political and institutional framework, incorporating environmental concerns in the general policy agenda.

The agenda includes general and specific goals, which are also divided into "fronts" referring to specific clusters of interest for Conam. The 'green' front for sustainable use of natural resources, the 'brown' front for promotion and control of environmental quality and the 'blue' front for awareness, education and environmental culture. Many of the goals established at the beginning of 1996 have been already achieved, while the ones included in the Agenda to the Year 2000 are still in need of strong political will.

Summarising, Conam has the role of a high level advisory body, rather than an implementation one. Its work copes until now to the elaboration of policies, survey of sectoral environmental policies, and political co-ordinations. In fact, the law for the creation of Conam⁵⁰ gives little space for enforcement powers, as it goes in tune with market policies.⁵¹

At lower administrative levels, the bodies in charge of regulation, execution and enforcement of environmental policies are the sectoral authorities (*autoridades sectoriales*). These are mainly ministries and decentralised bodies with specific powers. A prime issue is that each ministry is obliged to have an environmental unit in charge of the sectoral environmental policy and eventually of its regulation, execution and enforcement. At this level, we also find a separation of powers. The reason is the traditional extractive-oriented logic of some productive sectors (e.g. fisheries or mining). Environmental policies were taken as an additional obligation and a cost for both State and private investors. With the advances in the field, and specially the implementation of the international environmental obligations of Peru at the national level, the sustainable development issues started to be addressed, with a better understanding of its aims. To this extent, normally the environmental unit of a ministry has the competence for policy elaboration, but not regulatory, executive or enforcement powers. The

⁴⁹ See for example, National Action Plan for the Environment for 2000, [http:// www.conam.gob.pe/agen1997.htm](http://www.conam.gob.pe/agen1997.htm)

⁵⁰ See Law for the Creation of the National Council for the Environment (*Ley del Consejo Nacional del Ambiente, Ley 26410*), Chapter I (Andaluz and Valdez 1995: 107-108).

⁵¹ Actually, the Legislative Decree 757, Law for Private Investment (*Decreto Legislativo 757, Ley Marco para el Crecimiento de la Inversion Privada*) gives the most important environmental regulations in relation to economic growth. That shows the political will of the government in relation to the topic. Specifically, the First Final Clause of the Decree derogates the Code of Environment, establishing that the environmental authority in Peru is sectoral.

latter are given to other units of the ministry as, for instance, the one in charge of enforcement or extractive issues.

As in Peru the environmental authority is not national but sectoral, there is a rather extensive division of labour for the topic at the ministerial level. At the intra sectoral level, every ministry has an environmental unit. Usually, that unit has the highest level possible in the bureaucratic hierarchy (under the Minister and the Vice-Ministers), namely General Direction (*Dirección General*). Because of the separation of powers at the national level, a similar situation is reproduced at the ministerial level. Often, such environmental unit only has sectoral policy powers, while the enforcement ones are in charge of another executive unit, normally the one carrying coercive powers (i.e. fines or sanctions).

At the cross-sectoral level, it happens that because of the segmentation of the environmental policy making process in different ministries, each one regards the topic in a different way. Therefore, it can happen that in one ministry, the environmental unit has the level of a General Direction, but in other, it has even a lower level in the bureaucracy (for instance Vice-Direction). Therefore, problems arise when inter-sectoral co-ordinations are needed for the differences in the hierarchy.

Moreover, at the cross-sectoral level, it can also happen that in one ministry the environmental unit receives more powers than in other ministry (for instance in one its opinion is mandatory where in other is not). Therefore, again problems emerge when inter-sectoral co-ordinations are needed for the different criteria each sector can have on a specific environmental issue.

A question emerges on the logic of the separation of powers, at the national and sectoral levels. An explanation is that it is easier to draw policies in the abstract with high objectives and aims. The problem is how to convey those policies to reality, especially as pressure emerges from different groups interested (or not) in the accomplishment of environmental policy objectives. The situation leads to transactional solutions for the short and mid-run. The problems start when there is a need for long-term policies. How this is solved depends on the day-by-day capacity for managing risk and new situations, added to training and background of the policy shift of Conam. Consequently, this case would fit in what Dror describes as characteristic of policy making in developing countries.⁵²

⁵² See Dror (1983: 108) when depicts as a characteristic of the policy making in developing countries the assumption of risk (described as an extra rational factor) for decision making.

Participation in the Executive Branch

As told before, Conam is the political authority for the environment in Peru. Participatory approaches were considered from the beginning in its setting-up and implementation. The aim is to have interest groups represented, rather than facilitating the access of a broad scope of citizens. In its law of creation, the Directive Council, the highest authority of Conam is integrated by representatives of the Executive Branch (three), regional governments (one)⁵³, local governments (one), primary economic sector -production- (one) and secondary economic sector -industry- (one). Therefore, the idea of representation is corporate (important to note in the analysis of the Peruvian system), *vis-à-vis* the policy agenda developed by Conam in the last years. Participation is restricted to those groups which are organised and have access to sources of power, mainly NGOs, business associations and alike, lacking major spaces for inputs coming from grassroots and civil society organisations, as CBOs.⁵⁴

Public participation is not only considered as an open manifestation of political will in the policy agenda, rather it has been included in the methodological approach of Conam to tackle the achievement of environmental goals. For instance, Conam considers important to include in consultations civil society representatives, as intermediary organisations (mainly NGOs or business associations). Such consultation has had some positive outcomes (as the inclusion in the policy agenda of topics of interest for the local and regional level) helping Conam to set priorities in a gradual implementation of the national policy. This process led to the establishment of regional or local environmental policy agendas, framed in the national one managed by Conam, which has very specific goals, set by results.

⁵³ The regionalisation process in Peru was suspended in April 1992 by the National Government of Reconstruction. Until now the process has not been relaunched and the regulatory framework is still waiting approval in the Parliament.

⁵⁴ Here, we assume that NGOs represent only themselves. As intermediary organisations, they are not accountable to a third, namely citizens or grassroots.

Box 2: Conam and the Consultation Process: National Commissions and National Dialogue

National Commissions

Conam has set up two commissions to tackle environmental problems related to Peru: the Commission on Biological Diversity and the Commission on Climate Change. Both were established in the aftermath of the Rio Summit to provide fora of discussion and advice, *vis-à-vis* governmental actions in relation to those topics.

The Commissions gather representatives of public and private sectors, namely ministries, government bodies, NGOs and academic institutions, which are well known for their knowledge and specialisation. In a first period, their action was to follow-up the implementation of those international instruments at the national level, monitoring the approval and the issuing of legislation. Following the ratification of those agreements, the Commissions concentrated on suggesting policies for application at the sectoral and national levels.

The Commissions were handed over to Conam (before they were co-ordinated by the Ministry of Foreign Affairs), as their work was in the scope of the powers assigned to Conam. Nowadays, the Commissions have widened their membership, with the invitation to other bodies, as well as experts. CBOs have also been convoked, which makes the discussions representative of a broad scope of social groups.

National Dialogue

Conam established the process of National Dialogue when it started to carry out its functions. The aim was to collect the opinion of the most important environmental actors in the zones identified as critical for the environmental conflicts that were present. The process was smoothly done, with important inputs and information. However, the process only convoked already known NGOs and experts, as in a corporate-technocratic approach. Notwithstanding, the importance is that experts in the provinces were convoked, which to certain extent gave a wider vision to the bureaucracy in the capital. However, it was still a limited process as citizens as such and, especially through CBOs, were often not present.

Sources: Supreme Decrees of Creation of National Commission for Biological Diversity and Climate Change. Conam Home Page.

At the ministerial level, the participation process has special characteristics. Participation can be included at the administrative process (*proceso administrativo*). In such process, the privates affected (often companies) by a decision of the administrative authority (usually the ministries) can present a complaint for the reversal of that decision. This gives place to a process between such privates and the state, linked by an administrative relation. However, in the case of environmental damage, the affected ones normally do not have such links with the administration (for instance, they are not exploiting a site, but they live nearby and the like). They are third privates who can not enter the process for that reason, despite the impacts they are suffering. Therefore, participation can be granted for those citizens to have voice and action in the administrative process, to defend their rights against both the government and the private.

In the Peruvian case, the only mechanisms included at the present are public hearings (*audiencias publicas*) for tackling issues related to oil and mineral exploitation. The problems emerged are that usually the outcomes of those proceedings are not considered by the authority in a final decision. Further, these hearings are held in the capital city, while normally it happens that some citizen groups as indigenous can not afford to travel to such distant places to express their points of view. Likewise, those proceedings imply costs, which prevents those populations to participate. In addition, finally, the technical knowledge such hearings imply is normally not available for those who suffer the impact of environmental degradation.

4.4.2. Legislative Branch

The Parliament of the Republic of Peru (*Congreso de la Republica del Peru*) is organised as a one-chamber system since 1993. It has one hundred eighty members, elected every five years. Parliamentary elections are normally held jointly with the presidential ones. The Legislative Branch is organised in specialised working groups called 'Committees', each one in charge of specific theme areas.⁵⁵ The Committee on Environment and Amazonia (*Comision de Ambiente y Amazonia*) is in charge of dealing with environmental topics. The committee has to study bill drafts, and elaborate and discuss new ones, in co-ordination with the members of the different political groups represented in the Parliament. The Committee works in permanent co-ordination with the Prime Minister's office and Conam. The purpose is to issue legislation in accordance to the general lines of the policies and programs of the Executive, especially in the economic field. The Committee also brings the discussed drafts to the plenary of the Parliament, steering the debate and contributing with inputs and awareness on the environmental field. The work of the Parliament is only to enact legislation, leaving to the bodies of the Executive the competence of regulating, implementing and enforcing it.

Participation in the Legislative Branch

The Parliament of Peru works in close collaboration with the Executive in its initiatives, especially those referred to the economic program. The Parliament seldom contradicts or amends the decisions of the Executive, as both permanently co-ordinate their political steps.

⁵⁵ See General Regulations of the Parliament of Peru.

The General Regulations of the Parliament (*Reglamento General del Congreso*), which have the level of Law of the Republic, regulate the internal procedures for allowing citizens to participate in the process of law drafting. The procedure is formal and closed, as rarely citizens or experts are invited to participate in debates or discussion. Formerly, the Parliament convoked a group of well-known experts (*grupo de notables*) to give opinion on a particular topic, but this hardly happens anymore.

The parliamentary practice differs from the procedure on paper as, normally, as part of their labour as MPs, they use to receive opinions, advice or consultancy coming from specialised bodies, agencies, think-tank groups, etc. That produces an information flow, which can shape or modify the outcomes of the Legislative. Such situation generates the need to open hearings, public audiences or investigation fieldtrips, as the political context produces a process of isolation in the political body as such (referring to MPs, politicians, technocrats to their service, and the like).

The Committee on Environment and Amazonia was created in 1993, as a working Committee of the then 'Constitutional Democratic Congress' (*Congreso Constituyente Democrático*) in charge of elaborating a new Constitution. That Committee worked hard on introducing, for the first time ever, specific regulations on environment, which as much of the final text were regarded in the context of the economic activities of the country. With the election of a new Parliament in 1995, no specialised committee on the environment was appointed.⁵⁶

In 1996, a Committee on Environment, Ecology and Amazonia (*Comisión de Ambiente, Ecología y Amazonia*) was created, as the opinion on environmental affairs took another trend in the political body. The reason might have been the work of Conam and public debates emerged on the environmental degradation produced by companies operating in Peru. The new Committee worked on completing the regulatory framework ordered by the Constitution of 1993, in which some important legislation was lacking, as on natural resources, biological diversity, among others. The process implemented by the Committee was an example to other bodies, in and outside the Parliament, as it implied a different approach of consultations and hearings to obtain draft bills (see Box 3).

⁵⁶ The reason was mainly that, in the context of the reorganisation of the Parliament, such topic was considered not relevant, in comparison with others. It was considered that the Agrarian Commission could deal with those topics, which also shows how environmental issues were regarded among MPs, as a sector of the

Box 3: The Committee of Environment 1996-1997: Participation in the Process of Bill Drafting

The Committee on Environment of the Parliament of Peru, in the Legislative Period 1996-1997 targeted to complete the regulatory framework on the environment. It can be regarded as an attempt to include stakeholders concerns, enabling a smooth approval in the plenary. During that period, the experiment worked out, having as outcome the most important set of laws, since the Code of the Environment in 1991. The set included a Law of Natural Resources, a Law of Biological Diversity and a Law of Natural Protected Areas. All were largely asked by civil society and intermediary organisations, encountering the political will of policy makers to their claims at that particular moment.

The process included the elaboration of drafts for opinion by NGOs, experts and CBOs; the organisation of audiences and hearings to discuss the final draft, incorporating the concerns of civil society in the provinces. In addition, the organisation of an expert workshop (the technocratic value) with MPs, representatives of the Executive and other government bodies. Finally, a debate in the Parliament with participation of MPs of all benches who, because of the smoothness of the process of elaboration (which did not encounter conflicts), did not oppose major contradictions. MPs of the opposition voted in favour of the bill.

It is necessary to point down the political will of an MP (the Chairman), committed to the process of issuing the bills of the committee. Besides, the interested environmental groups benefited from his attitude, although they did not necessarily match, in a first instance, with the government. The process found a balance between environmental groups and the state (being the latter more concerned for the impacts in the economic program). The process was of learning and gaining knowledge for all involved: MPs, technocrats, citizens or groups of interest. The process of negotiation and bargaining of the bills brought environmental topics to a prime position in the political agenda (taking into account that the Executive, and mainly the Ministry of Economy and Finance, regarded the topic as marginal).

For the first time, it was assumed that to legislate on environmental topics, which affect economic activities, was important and necessary as other pieces of the regulatory framework. That also made possible *consensus formulae* acceptable, in most cases, for all the actors. The bills were the best possible outcome in that context, and received support from all sectors and political parties. Furthermore, the process served as model for the elaboration and approval of subsequent legislation, especially such considered polemic. The process was adopted as working formula for all Committees of the Parliament in the following Legislative Period starting in 1997.

Some elements attached to the Parliamentary work can be regarded as hurdles for a better performance of the Commission in relation to a wider agenda. In first place, for the scarce knowledge on environmental topics among top decision makers, environmental policy making is still subject to the initiative of personalities, rather than reflecting a compact political agenda. Additionally, internal procedures of Parliament, slow in reacting to citizen claims, do not allow innovation and rapid decision making, complicating policy making processes when conflictive issues are at stake.

The content of such legislation was in accordance to Executive policies. Nonetheless, there was space for including clauses, which can be regarded as an advance in conservation policies. That came from the tough process of elaboration, in which constantly there was

exchange of information coming from all sectors (NGOs, government bodies, CBOs, independent experts, and the like).

Sources: 'Ley Organica para el Aprovechamiento de los Recursos Naturales' (ed.) Sandoval Aguirre, O., Congreso de la Republica del Peru, 1997. Archives of the Parliament of Peru for the Legislative Period 1996-1997. Final texts of the bills published in the official newspaper "El Peruano".

4.4.3. Judiciary

In the last years, the role of the Judiciary in shaping environmental policies in Peru has emerged as a very important one. From a subsidiary and marginal role, it has emerged to a key one, offering new trends in interpreting legislation and influencing, either the enactment of legislation, or the shift in the Executive's practices. The Judiciary has issued a range of decisions, changing the perception of the public on the environmental question. Gradually, from 1989 onwards,⁵⁷ environmental defence of public interest was not considered anymore a rare product imported from developed countries inapplicable to the Peruvian reality.

In a first stage, the Code of the Environment included a clause allowing non-profit organisations to sue in favour of environmental interests before the tribunals. After, a more specific one (naming NGOs as such) was included in the Civil Proceedings Code, issued in 1992. With that, the acceptance of environmental defence of public interest was officially accepted at the Judiciary. Before, the Courts usually dismissed such demands alleging that the legislation did not allow NGOs to defend before the Courts, or that environmental topics were not considered as such in the general legislation, only in specific one, consequently, no possibility to sue before Tribunals existed.⁵⁸ At the present, standing to sue for environmental interests has become a usual subject as others in litigation before the Peruvian Courts. Now, it exists a Peruvian jurisprudence on the topic, which has also guided a gradual recognition of rights, especially for the poor. (See Box 4).

⁵⁷ Year in which one of the first important cases on environmental defence of public interest was sued before tribunals, *Protterra vs. Ferroaleaciones San Ramon S.A.*

⁵⁸ Actually, no legislation forbade the possibility of suing for environmental interests before 1989, but the 'interpretation' of the Courts was for not allowing it, until there would exist an explicit recognition in the standing legislation.

Box 4: Proterra vs. Ferroaleaciones San Ramon S.A.

In 1989, Proterra, a Peruvian environmental NGO, sued Ferroaleaciones San Ramon, a mining company, based on the protection of 'diffuse interests'. The company intended to build up a mineral processing plant in the middle of the countryside of Tarma, a well known agrarian zone of Peru, producer and supplier of crops and fruits to the coastal zone (Lima and surroundings).

At that time, the Civil Proceedings Code did not allow a non-profit organisation standing to sue in defence of environmental rights. According to the interpretation of judges, it had to be the direct affected, the one who had to sue a company or the state for those damages. Proterra sued a constitutional action (*Accion de Amparo*) to avoid the building of the plant, as a preventive measure. It supported its arguments with scientific studies coming from the main technical university in Peru (*Universidad Nacional de Ingenieria*) and with basis on the precautionary principle.

However, the Courts, stage by stage, rejected the action, not accepting a NGO as a part in processes on the argument that it was not known which interests they were defending. The action went up the hierarchy because of appeals. Finally, only the Constitutional Tribunal (*Tribunal Constitucional*), the highest and latest possible stage, accepted the claim, ordering the cease of the construction and establishing jurisprudence, allowing non-profit organisations to sue in defence of 'diffuse interests' (which can be not only environmental, but also gender, children, ethnic, and the like).

Source: Proterra, Environmental Law and Policy Program, November 1998.

Participation in the Judiciary

As stated before, the role of the Judiciary in shaping environmental policies in Peru has been important, especially in relation to enforcement of legislation and attendance of claims of the poor sectors of society. The decisions of the Courts have helped to bear in mind the social conflicts caused by environmental degradation, in most cases the reason behind the struggles at the tribunals. To a certain extent, the Judiciary is the 'echo-box' of underrepresented or unorganised groups of society facing environmental conflicts. The reason is that usually political bodies (Conam or Parliament) are not interested in dealing with such situations for various causes (no interest in the constituents, personal stakes, conflictive cases, etc.). Therefore, the affected citizens can only fight for their rights with the legal tools offered by the system, and the support of advocacy organisations or concerned groups as church or human rights organisations.

The space provided to the citizens by the Judiciary is narrow. It only offers the possibility to engage on costly and long proceedings against usually powerful opponents, like companies or state bodies. It does not offer a solution to environmental problems regarded as urgent. Its main advantage lays on the possibility of obtaining a ruling decision from the Courts, which can be used as an example for preventing possible offenders in the future. In

that context, the unveiling of environmental conflicts by the Judiciary (by accepting cases in the Tribunals) forces the Executive to take decisions on the environmental policy agenda, which can be positive for citizens interests if the pressure exerted is strong enough.

However, reality demonstrates that, especially in the last years, the trend of the Executive has been to rule out in favour of economic activities interests, rejecting citizen's claims. That demonstrates a political will, which does not have in mind to strengthen citizen's rights and concerns.⁵⁹ The government aim is to seek for the development of economic and productive sectors, and the environmental topics are often regarded as costs or barriers to such growth.

It can be said that the Judiciary is playing a moral role, in recognising environmental rights as protected by the Constitution, and by establishing jurisprudence with important value for groups of society lacking access to power through other means. Judiciary has been open to receive citizens' claims. Problems has raised in executing the rulings, which has proved to be extremely difficult for the constraints and complexity of the cases (for instance, as administrative delay, facts difficult to undo, etc.)

4.4.4. Local Governments

Being part of the Executive, but having a different origin (elected by suffrage), it is noteworthy to give an overview of the role of Municipalities in fostering participation. Peru has a strong tradition of participation at the local level. It is probably the space in which citizens concerns have been most positively regarded and acted upon. Local governments have often normally clashed with Executive authorities for protecting citizens' rights. That is still the case in Peru, and concerning environmental issues, the local governments have helped to develop a strong sense of community awareness on the topic. When the local government has been involved in environmental care, it has been less likely for the community to find big

⁵⁹ An example was the issue of a law in 1995, by the Parliament of Peru, adding requirements (a declaration of the administrative authority on the existence of environmental damage) to sue for environmental crimes, when before it was sufficient the probation offered by the Police for opening a case. The new requirement does not only discourage to sue for a criminal punishment, but it makes almost impossible to open cases, because the declaration of the administrative authority takes too long (and the environmental damage becomes irresolute) or is expected to be company-biased. The reason for the issuing of that law was a case in which a citizen of Arequipa (south of Peru) denounced and obtained a preventive action against Southern Peru Copper Corporation, the biggest mining company operating in Peru. It can be assumed that the political will was to ensure investors that environmental claims could not complicate or stop the development of projects, as in mining or oil. So, it was a clear demonstration of political will in favour of economic gains rather than environmental care. Source: Proterra, Environmental Law and Policies Program, Project 'Environmental Defence of Public Interest'.

environmental conflicts. When the local government is weak or lacking resources for doing so, private interests have overcome the citizens' ones, creating space for unbalanced power or abuse. (See Box 5).

Box 5: Local Governments, the Environment and Citizen Struggles

The problems local governments face, in dealing with environmental issues, is characteristic of the Peruvian case. The case of the citizens of the left bank of River Rimac (main river in Lima basin) depicts the constraints and limitations of both local governments and citizens to end with environmental conflicts, when both the central government and companies act pursuing other interests. In this case, the weakness of the local government in taking a decision in favour of the citizens led to a further transgression of their rights, regardless the heavy impacts environmental degradation put in their lives.

This case started in 1970 when *Compania Minera Agregados Calcareos*, one of the biggest producers of cement and construction aggregates in Peru was requested by the local government to relocate its productive activities to a zone far away from the Lima centre. The zone in which the company operates was formerly the industrial belt of Lima, but, because of the process of urbanisation, it was finally located in the middle of the city.

The company was granted a period for relocation. At the time the deadline was over, the company obtained from different local governments successive delays, leaving the people of the area no other solution than to sue the company in the tribunals.

In this case, the local government, in spite of being requested by the citizens not to give such extensions, and the growing feeling against the pollution activities of the company, ignored those claims. Afterwards, when it tried to act strongly on the case, it encountered mistrust from the part of the population and a company strengthened in its position of being allowed to stay in the zone without taking environmental protection measures. Moreover, the company obtained support from the environmental authority of the Ministry of Industries to continue its activities, under the excuse that for financial and economical reasons it was impossible to relocate the operations.

A net of cases emerged, in which the citizens sued the company and the local government, the company sued the local government and the citizens, and the local government sued the company. Each of those at different stages and tribunals in the Judiciary. For instance, there are civil, constitutional and criminal cases open on the same issue.

The most important lesson to be drawn from this case is that weak local governments loose before both their constituents (citizens) and the transgressors if they do not take strong measures in combating environmental degradation and show political will, which must mean to recognise citizens' claims. When they show those characteristics, more space is open for improving the situation of the affected by pollution.

Source: Proterra, Environmental Law and Policy Program, Project 'Environmental Defence of Public Interest'. November, 1998.

Local governments are part of the Executive, but because of the origin of their power, they are not subordinated to it⁶⁰ In the scope of their competence, the local governments have

⁶⁰ See Constitution of Peru 1993 and Law of Municipalities.

policy, regulatory, implementation and enforcement powers, which ensure them a broad space for manoeuvre in the environmental affairs that can emerge in their jurisdictions.

Usually, citizens are recognised to have the right to attend the Town Hall Council sessions, and to give opinion on issues likely to affect their neighbourhood, as for instance building projects, cleaning and waste problems, municipal services, etc. At the same time, the Law of Municipalities recognises a specific proceeding for decision making in the case of projects, which includes the gathering of citizens' opinion. Another mean used by the local governments is to convoke to open sessions (*Cabildo Abierto*), practice coming from the Spaniard colonial rule, which allow citizens not only to give opinion, but also to vote on the topics agenda of the meeting. The main problem with the latter has been the political misuse of the sessions for aims different to the community ones, which led to their poor attendance or non legitimisation by the citizens.

In practice, in the case of environmental issues, participation at the local level in such initiatives as commissions, fora, roundtables or advisory boards is very rare. Normally, those are held only in cases of strong opposition from the community. In that stance, a group of experts or well known citizens from the community is convoked. The work with grassroots organisations, in spite of being a good opportunity for improving environmental conditions, is hardly taken into account, unless electoral gains can be obtained.

4.5. Civil Society in the Institutional and Regulatory Framework

According to the definition of civil society previously exposed, it is important to discuss the place civil society has in the Peruvian context. We have defined such as mainly including citizens associations, grassroots and CBOs. Therefore, NGOs, business associations or professional circles are part of the private sector, intermediary organisations, which is not regarded as civil society in this paper. This is important to notice because we have characterised the Peruvian system as corporate-technocratic, and a close revision of the civil society element can confirm that perspective.

The sustainable development policy environment in Peru is characterised by the role played by civil society and intermediary organisations⁶¹ (NGOs, CBOs), which have acted as catalyst of public opinion, expressing the concerns of the conservation community in the

⁶¹ Usually, intermediary organisations are organised as non-profit associations, dedicated to research or project and programs implementation. Often, they are financed by developed countries' funding agencies. In the case of environmental NGOs, those funds come mainly from the USA.

country, and acting as an 'echo-box' of the international environmental movement. The role of those organisations has been important in shaping and setting-up the institutional and regulatory frameworks for the environment in Peru. In a first stage, those organisations, namely NGOs, CBOs, had a lot of influence through research work and lobby. After, other interest groups became involved in the topic and intermediary organisations started playing a role, either as representatives of indigenous groups and citizens groups affected by environmental problems, or as technical NGOs.

In a following stage, intermediary organisations, as technical NGOs, played a more active role, co-ordinating and working hand in hand with government officials. The outcome of this process has been to increase the quality of the by-products of the policy making process, as for instance legislation, lacking major achievements at the level of implementation. The reason is that usually government bodies do not have the expertise accumulated in specialised NGOs, which gives to the latter a big space of manoeuvre.

In the case of intermediary organisations, we have to distinguish the different levels, characteristics and interests those represent. For instance, those coming from the capital city, Lima, have more space for influence, as they are close to decision making sources and top policy makers. This is a general characteristic, regardless the nature of a particular organisation, whether is a NGO or a business association.

The actors playing a role in the environmental field in Peru are the following:

Non-Governmental Organisations

For the Peruvian case, it is dubious if they really represent civil society or not. They are mainly national based and some of them have direct access to power and, at the present, perform as advisors or consultants for government bodies. These are also the ones, which have access to roundtables and callings made by the Executive. The rest of NGOs play a spectator role or do not have any contact with government co-ordinations.

This raises another issue. If the groups called by the government to take part on this public consultations are representative or not of civil society concerns, namely interests of the poor.⁶² This is not the case, because those groups, as NGOs, have vested interests, which not necessarily coincide with the citizens' ones. Mainly, those are technocratic groups with an expertise in the topic that very few have in Peru, and for that reason they win in the process of bargaining and negotiation of policies. NGOs are still, in the majority of cases, not co-opted,

⁶² For Uphoff, NGOs are not representatives of civil society and they are not accountable.

but the impact of their activities is limited. In the case of the ones with access to power, they are mainly interested in widening their influence networks for private purposes. The last assertion is confirmed by the non-existence of a political agenda by these environmental NGOs (expressed through public actions). Those organisations remain 'behind the curtains' and it is likely that they intentionally will continue doing so.

Community-Based Organisations

Because of their grassroots origin, or their specific interest, i.e. defending peasants or indigenous groups, they have limited access to decision makers. If they have a strong position in some specific issues, it may be possible to be attended by the government in their claims. If not, they are simply misled or ignored. At the present, in the case specially of the indigenous groups, they have better organised themselves and have improved their links with the international indigenous and environmental movements, linking both topics in the discussions that are taken place in the country, as in the biological diversity, forests, natural resources, and the alike.

Academia

They have access to decision makers in Peru and, as in the case of NGOs, perform roles also as advisors or consultants. Their space is still limited because in Peru there is not a tradition to hire academic advisors for policy making. However, because in most of the topics of the environmental agenda they are the only ones with the knowledge and expertise, they have been gradually broadening their scope of influence.

Business Associations

They have often direct access to decision makers and use their power to oppose environmental measures, which could have impact in their activities. They are not able to support environmental change, unless time (in scheduling to more ecological technologies) and financial support (as tax paybacks or exemptions) can be offered by the government. In recent years, they have been strongly lobbying the government for delaying the application of environmental measures, mainly the implementation of pollution standards. The reason offered is that the Peruvian industry is not prepared to afford the compliance of those measures and that time has to be given for it. The problem is that they do not offer deadlines or timing and commitment with them. However, the reality is that, without the collaboration of the industry, nothing or very little could be done to improve environmental conditions in some areas of the country. The position of the business community in Peru, at least of the majority of its

members, has been to delay the implementation of environmental measures in the economic sectors.

Political Parties

None of the political parties in Peru has an environmental agenda for the country, which also explains why the topic has resulted clustered in a group of technocrats with knowledge, who act as counsellors and use their power to gain influence. However, when the parties or their members get interested in specific issues and they bring them to the arena, it can have important impact, causing discussion and reflection. Usually, that only occurs when there is a serious danger to citizen's lives or goods.

Technocrats

They have a special value in the Peruvian context, because only very few specialists exist in the environmental policy and law making fields. As they are hired by the state, they usually have a wide range of manoeuvre and power. Most of them come from NGOs, which were the first in introducing environmental topics in Peru. Therefore, they also act in some instances as a compact group, as having the same roots in education, professional experience and the like. In those positions, they continue interacting with their former NGOs fellows, giving the impression of a closed group of connoisseurs.

The rest of citizens

If disorganised (or not organised in a corporate model), they can not shape the political agenda, and in case they are affected by environmental problems, they simply can not do much to find solutions to the problems. Their space for manoeuvre is narrow and this leads to frustration about their political claims.

By now, the role of civil society organisations is different, depending on the interest group. For instance, business associations have a lot of power, as their proposals fit better with the overall intended economic policy of the government, while more conservationist groups do not have the same influence.

V. IMPLEMENTING PARTICIPATION IN ENVIRONMENTAL POLICY MAKING IN PERU

In the following, the paper will focus on analysing the Peruvian case, having as background both the theoretical framework and the case presentation. It will do that, by answering the different research questions stated in the introduction of this research.

5.1 Causes for Incorporating Participatory Approaches

The main causes for incorporating participatory approaches in the environmental policy making process in Peru have been.⁶³ Firstly, the development of a new international agenda by the international development community, in which environmental concerns have been put in foremost place, obliging governments to comply with these new priorities, by implementing at the national level international environmental agreements. To this extent, participation was considered from the beginning a key issue in the international arena (as a component of the sustainable development concept), with the consequent calling for the application of that approach at the national level.

Likewise, the process of economic integration in the region has led the countries to homogenise their legislation to match with future common markets. In the context of the structural adjustment programs applied in Latin America, that means to avoid hurdles hampering competition and free trade. Therefore, environmental issues are at the forefront as usually are the most debatable ones. Therefore, the attempt is to correspond environmental protection with structural adjustment programs. In how far, this has been achieved is subject to discussion and would be a topic for another paper on its own. A preliminary review lead us to assert that, in focusing on the incorporation of natural resources exploitation to a free market economy (for instance granting property rights) has led to a growing number of environmental conflicts, especially among transnational corporations and citizens groups in the provinces.

Another element has been the rising costs of environmental neglect, as for instance private lenders and insurance companies are obliging now private investors to take into account the environmental risks of their purposed investments. This is the main element that has led countries like Peru, embarked in a neo-liberal program, to deal with environmental issues, as those can imply the diminishing or non-entrance of foreign investment in the country.

A specific factor for the Peruvian case is that environmental issues were brought to the national agenda by environmental NGOs and private citizens, deeply concerned or in-tune with the international ecological movement. That also explains that, in a first stage of the introduction of sustainable development issues in Peru, the proposals offered by those groups were mainly linked with conservationist, rather than development oriented approaches, as for

instance, the *vicuna* campaign in the seventies, or the 'parkist-biologist' study of the flora and fauna of Peru.

The former relates with the pressures of international environmental NGOs and groups, which have developed a powerful approach to the international media and citizens in developed countries in relation to the facts in developing countries. So, linkages of national counterparts to them led to a dynamic interaction and information flow, coming and going, obliging governments to consider environmental claims as those groups in the North can influence the decisions of their governments in relation to co-operation with developing countries.

An additional factor is the particularity of the Peruvian environmental situation regarding international co-operation. Peru is one of the nine countries sharing the Amazon River basin, considered the last resort of natural resources for mankind. In fact, Peru has 84 of the 101 climates of the world, and it is ranked among the first countries in diversity of species, genes and resources. From the seventies, when environmental topics came into the arena, international co-operation has been interested in collaborating and supporting the efforts of the government to set up an institutional and regulatory framework for the environment and, in that process of negotiation, developed countries' funding agencies have been concerned about the importance of participatory approaches.⁶⁴

The above mentioned lead us to say that, in an international context, in spite those natural resources are located in Peru, there is concern in the international community as those can be the storage of resources for mankind. Therefore, a process of internationalisation of national or regional environmental issues led governments in the North to pursue collaboration with developing countries, including participation trends for considering the allowance of funds.

5.2. Changes in the Design of Environmental Policy Making in Peru

In a first phase, the main changes experienced in the design of environmental policies in Peru, as a result of the incorporation of participatory approaches, have been the set up of a

⁶³ For a further discussion of this topic in the Latin America context, see MacDonald and Stern (1997: 4-9).

⁶⁴ An example of this is the Project Senrem, funded by Conam and AID, which works in close collaboration with Conam to increase capacity in public and private institutions for identifying and solving environmental problems. The Project has as essential component to strengthen the capacity of those involved through consensus-building and the diffusion of dialogue on environmental policy. See: Conam Home Page <http://www.conam.gob.pe/progres.htm>

new institutional and regulatory framework for the development of further environmental policies. Also, the incorporation of new entities as governing bodies or councils in charge of policies, which include in their organisation space for some kind of corporate representation, as it is understood by the state.

Additionally, there has been inclusion in the national agenda of some topics of importance for the environmental movement in Peru (as biological diversity or genetic resources), because of the pressure they exerted at high decision making levels. On the other hand, but also important has been the change of working style in the bodies related to environmental affairs in Peru, opening doors to debate, especially with NGOs and some indigenous organisations.

In a second stage, the inclusion of participatory approaches has meant the existence of a *status quo* for environmental policies in Peru, which do not contradict, neither question the core of the economic program. Therefore, the general trend is to design environmental policies that do not contradict free-market principles. Therefore, a hierarchy of policies can be noticed.

The reaction of the business community and government to the claims of environmental groups was negative in a first instance. Both did not show political will in taking into account the issue. Lately, the government standpoint shifted, obliged by the advances at the international level, in which environmental topics became important. This new context obliged the business community in Peru to address environmental issues to avoid radical implementation of measures, which could affect negatively in the development of their economic activities. Moreover, it started a process of lobby and influencing, which finally led to adopt many of their concerns at the national level. It can be said that environmental policies in Peru do not contradict business interests. Even more, they do not touch some thorny issues, as industrial pollution or mining and fisheries exploitation, because of the business community explicit action to avoid it. This has created an unbalance in the environmental policy at the national level, where citizens' concerns are only taken marginally.

Another point is that in the context of the application of the structural adjustment program in the country, environmental concerns were put at the end of the queue. Now, with the successive re-negotiations of the program year-by-year, some environmental concerns have came out to the ground, especially those referring to privatisation of natural resources as solution to deal with the environmental problems of the country. Environment meets poverty and because the state does not know how to tackle that problem, is that along environmental degradation problems are consequently dismissed.

5.3. Participation of Civil Society

In evaluating the degree of participation in environmental policy making in Peru, it is necessary to observe the level of power in which the citizens are, in combination with the degree of access one or another group has. The rule is that the highest the level, the more restricted is for common citizens to access.

Another element to take into account is what is the concept of participation handled by the government. From a revision of legislation and practices, the one ruling the idea of participation is a corporate-technocratic vision. So, in this perspective is not possible to state that participation as a bottom-up process is really used. The paths for participation are difficult or not existing at all, or subject to the political will of a specific decision maker, which can change from one stage to another. The priority has been to set up a system from a top-down perspective, and after, for legitimising it, to call the public or specific groups in it, to validate or substantiate or give content to the structure.

It is necessary to add that participation is mainly in the elaboration of environmental policies, but not in the decision making process itself. The closed fora or hearings, which is the kind of participation considered or allowed by the government, do not consider access for the poor, the neediest or those affected by environmental groups. Those groups are dismissed or mislead and considered only as complainers asking for populist measures or seeking protection of the government (rent-seeking groups). They are not considered as representatives or interest groups. Government do not want to deal with them because in doing so it will question the very basis of their overall policies.

In the meantime, the supposedly citizen groups which have access to roundtables and power have been partially co-opted and have access, not only giving inputs to the policy agenda, but also shaping its contents, which mainly comply with the government's. One argument in their defence is that they are doing the best possible in a reverse environment. The counter-argument is that, at the end, they are not addressing people's problems and not bringing solutions to alleviate the situation of the ones affected by environmental degradation.

The issue arising is that the concept managed by the government considers a very limited concept of participation. It is a process that has to be tightly managed. For that reason is not of their interest to accept the participation of groups which are considered radical or which can cause trouble in the setting-up or in the decision making. Participatory approaches for the state have only as goal to keep the waves quiet or boil down the unconformity of some

sectors of the Peruvian society able to provoke disturbances. The poor and the neediest do not have such opportunity, as it happens in the majority of cases in the general political realm.

The state's attitude in relation to environmental issues has been tolerant but has never really embraced those in the broad national policy agenda, as a part of a development strategy. The state shifted its attitude because of international community trends and not for its own will.

In the Peruvian case, very few space has been given to allow citizens to participate in a broad scope. What normally happens is that within the public sector, namely the bureaucracy, it is very difficult to accept participation as a practice, as it has not been used in the policy making process. What the public sector understands as participation is normally self-help in small-scale projects, i.e. public services,⁶⁵ for which they provide assistance in goods and services. Participation in decision making is difficult to set in the image public servants have of policy making. Such is a question of politicians, technocrats and specialists, and people know nothing on how to manage themselves. In countries like Peru, in which there is still a traditional view on governance (i.e. paternalistic), the implementation of participation implies challenges and changes in practices, which not necessarily can be met in the short-run.

In general, civil society partially participates and have access to sources of power in the environmental arena in Peru. Nevertheless, the incorporation of participatory approaches has opened a door, which intelligently used can be useful for the gradual achievement of some of the citizens concerns.

5.4. Problems in Implementing Participatory Approaches

The main problems in implementing participatory approaches in environmental policy making in Peru have been the following. Firstly, there is not still a clear and structured regulatory framework for the inclusion of participation in the design and decision making process for the environment. The legislation is made by bits and pieces, which form an unstructured, non-logical and even contradictory composite, which for its application, depends from the specific political will of the decision maker in power at a particular moment. This situation makes the atmosphere for participation very unstable.

⁶⁵ An example of this was a program called Popular Co-operation (*Cooperacion Popular*), used by the government to help isolated communities in the provision of public services. Under the slogan 'the people did it' (*el pueblo lo hizo*), many small scale projects were implemented during the 80s. However, we can discuss here the clientelist or co-optation trend, to the extent that it happened that popular organisations were also used as a basis for political purposes, i.e. the ones of the government of that time.

Second, the government still needs to form expertise within the bureaucracy, especially at the sectoral level, to create awareness and to facilitate the comprehension of environmental policy making at those levels. There is still a lot to be done at the level of capacity building and training, trying to learn from the comparative experiences of other countries in handling environmental problems. That needs political will for strengthening the institutional capacity. Those reforms should include participatory mechanisms to close officials with citizens', especially with conflicts are likely to emerge.

Another issue is that the state has to build up the condition to enable participation at different levels. That means not only issuing legislation or regulations, but also enforcing them within government's own structures. This has to include interaction with grassroots and civil society organisations as a main feature from the policy design phase. To forecast environmental conflicts and tackle them in a cross-sectoral perspective must be a common practice, rather than isolated attempts.

In relation to the actors taking part in the environmental policy making field in Peru, grassroots and CBOs have to learn to deal with the political constraints of the system in Peru. That means to be firm in terms of claiming and exposing problems, but to avoid the paternal requests to the government. This would not only discredit them before their constituents, but also in the long-term could lead to their extinction as an interest group.

The now broad influence of the business community in the shaping of the policy agenda only shows that the environmental affairs are managed as any other kind in the public realm, namely without considering the interests of the majority of the country, and trying to ease and/or avoid social upheavals. That relates to the economic and poverty problems of the country, and because of the difficulties in tackling those issues, it is likely that the situation will remain like that in the future. However, firm commitment of civil society groups can gradually open spaces for interaction and negotiation.

The most important problem faced by both government and civil society is how to make the environmental policy making system accountable to the citizens and the polity. Nor assessment mechanisms have been established to allow such controls, the same that can give a measure of the efficiency and efficacy of environmental policy.

Additional constraints refer to lack of financial and technical resources in government and civil society. If participatory approaches are regarded as cost-saving and facilitating of processes (instead of obligatory forums which the state try to avoid) those limitations could be partially overcome.

Finally, any problem encountered by the actors in participation can only be solved, ultimately in a process of trade-offs, which cannot give up citizens' concerns. The delicate line such situation offers has to be taken into account, especially for those who are really interested in solving and tackling the problems of the country.

CONCLUSIONS

In this research, we have discussed on the theoretical framework that surrounds 'participation' as a concept. The argument shows that the concept of participation can not be taken for granted, as an ultimate solution for the problems of development. Participation is regarded as a mean for opening spaces and opportunities to people, especially the poor. Notwithstanding, such spaces and opportunities will not be a final solution. People will learn from their own experiences and will decide on their own which way to take for improving their livelihood and gaining self-respect. Any attempt to intervene in that process will finally encounter manipulation.

In the context of alternative development, participation can be envisaged as both a mean and an end. To that extent, it can be, either implemented in practice or conceptualised within the development framework. The choice will depend on the state's political will to include such concerns in the policy field, and the constituents' capacity to open, support and push those participatory processes in a continued feedback. The process can also contribute to state's accountability, while giving a fair "watchdog" function to the citizens.

The relation between participation and sustainable development is a crucial one. We must remember that the equation 'poverty-environmental degradation' is the most difficult to solve nowadays. As a mean or an end, participation can provide for betterment in the implementation of environmental goals, giving the citizens the opportunity to build their own development, conserving their habitat, and improving their livelihood conditions. Ultimately, those are the aims of sustainable development.

Participation, in the context of governance, should imply the break of exclusion practices and the monopoly of knowledge, and consequently of power, at the policy making level. Awareness in the civil society actors involved in those process can help to widen space and prevent situations in which the lack of knowledge can mean discrimination.

Participatory approaches in environmental policies can be tackled in various ways from the standpoints of both, the state and the constituents. Whatever the mechanisms to be used,

those will rely on the capacity and political will of such actors to address and, lastly, find a solution to the environmental problems at stake.

Most importantly, participation in environmental policy can effectively contribute to accomplish development goals, breaking the cycle of poverty as a cause and consequence of environmental degradation. The integration of the citizens in policy making, specially the poor, can oblige governments to rethink and reshape their practices, broadening the range of choices and converting people in actors of their own development. On the other hand, it can lead to pseudo-participatory practices, non-legitimate processes, and civil society weakening, if the process of participation is not carried out in a democratic and neutral environment. To achieve so, political checks and balances, and committed citizens are need to be built upon and formed. Only long-term assessment could tell us in how far, peoples have gained and fairly benefited from participatory processes.

At the policy making level, participation can be suited to the different stages of the development process. Thus, its implementation is possible and contributes to a more open decision making process and policy results, which effectively reflect citizen interest. Moreover, it implies a change in the perception and handling of public affairs from the part of policy-makers, which can contribute to good governance practices and accountability of the state.

For a sound integration of participation in policy making an enabling environment is necessary, providing the conditions for promoting and increasing the level of inclusion of stakeholders in public affairs. A meaningful role of the citizens will depend on such conditions, which will also permit to support the process in the long-run.

The models of participation to be used have to fit with the specific characteristics of the political practices in a given country. Culture, tradition of strong or weak civil society, a democratic or a bureaucratic state can shape those models in different ways, with diverse outcomes at the end. Those factors cannot be dismissed and have to be taken into account in the political analysis of environmental problems.

The legitimisation of the process of participation is an essential element for the acceptance of a proposed policy. That process must be framed in the context of the general mechanisms of democracy within a country (elections and due process) and should not replace them. In the case of environmental issues, legitimacy provides a starting point for building adequate policies, looking for consensus and transparency.

Peruvian legislation related to public participation in environmental decision-making still reflects a vertical State-public approach. The mechanisms of public participation considered include

the right to access information and the right to participate, and demonstrate an attempt to find a balance between these concepts. However, the provisions are general, lacking clear and binding criteria for the development of procedures in future legislation. Moreover, mechanisms are provided in piecemeal fashion, varying from one norm to another. There is no general unified framework covering the procedures in the norms considered. Major efforts are necessary to systematise the existing legislation so as to make effective application possible. It is however evident that there is no need for new laws, but rather a need to apply the existing ones. The situation, in the case of legislation, is one of gradual progress in the field. One may hope that future developments will lead to wider inclusion of the less favoured sectors of the population, the ones mostly affected by environmental problems in Peru.

The institutional framework for environmental policy making needs sharpening and restructuring, especially at the level of distribution of powers and, most important, implementation. In the Executive, major efforts have to be made for avoiding overlapping and for including participation at all levels, giving space for citizens' expression. The Parliament has to tackle the issuing of needed legislation, in spite of other government agendas. The call to civil society organisations must be part of its priorities as a power representing the people. Only continuity can give sense to the overall system. At the same time, the Judiciary must do more to enforce its rulings and to pass from an ethical role to a more active one.

Participation in environmental policy making in Peru is a new process that has been applied with steps forward and backward in the different realms of policy making, as the Executive, Parliament, Judiciary or Local Governments. To that extent, the results have been different and reflect political and, especially, economical constraints which have influenced the decision making for the environment in Peru. The attitude of the government and the circle accessing power is to wait for the trickle-down effects of the general environmental policy, without addressing the urgent needs of peoples'.

Despite the limitations encountered in the implementation of participatory approaches, such models are still valid for improving environmental policy making outcomes. The few attempted experiences illustrate the potential participation can have in people's lives. Moreover, participation is the only way, which can be used by citizens' to make their voices heard, expressing their interests and concerns. Opening space to participation does not mean to give up governing styles, it means to understand political processes and to look beyond day-by-day policy making. It means governing for the future.

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