

# THE PRINCIPLE 10 DEBATE

## Current Status and Future Prospects in the Caribbean

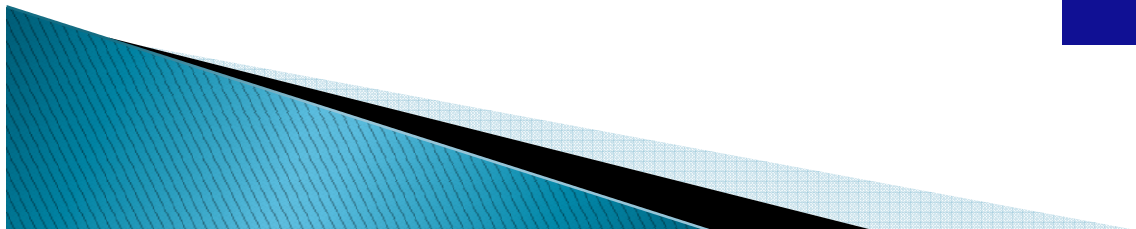


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Professor of Environmental Law  
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# WIDER CARIBBEAN- UNEP's CEP



# THE CARIBBEAN COMMUNITY



# The Caribbean Community: Treaty of 1973, Revised in 2001





# OVERVIEW

## TAKING OWNERSHIP



## POLICY INITIATIVES



## JURIDICAL INITIATIVES



## PARTICIPATION



# 1. TAKING OWNERSHIP



# TAKING OWNERSHIP

Caribbean countries have signed the Declaration on the Implementation of Principle 10 of the Rio Declaration on Environment and Development

- ☐ Jamaica
- ☐ St. Vincent & the Grenadines
- ☐ Trinidad & Tobago



# OWNERSHIP: ROOT OF TITLE

- ▶ Port of Spain Accord 1989
- ▶ Port of Spain Consensus 1991
- ▶ Rio Declaration Principle 10
- ▶ 1992
- ▶ Barbados Programme of Action 1994



# Port of Spain Accord 1989

- ▶ First Meeting of the Caribbean Ministers of the Environment
- ▶ 14 Priority Areas for “urgent” action
- ▶ Strategic Approach
  - ❑ Public education and awareness to enhance respect for the environment
  - ❑ Collect and disseminate environmental information



# Port of Spain Consensus 1991

- ▶ Caribbean Regional Economic Conference
- ▶ Four central pillars for sustainable development
- ▶ Democratization and Social Partnership:  
“The democratic process enshrines the right of all citizens to participate in the formulation of policies which affect them.” (fore-Runner to 1992 Rio Decla.)





# Rio Declaration Principle 10

- ▶ Caribbean part of G77 which helped formulate Rio Declaration. Principle 10 formulated largely by the G77 and China and the EC.
- ▶ Components:
  - Citizen Participation
  - Access to Information
  - Participation
  - Redress

The Rio Declaration:  
**Principle 10**  
What it Means to You





# Barbados Programme of Action

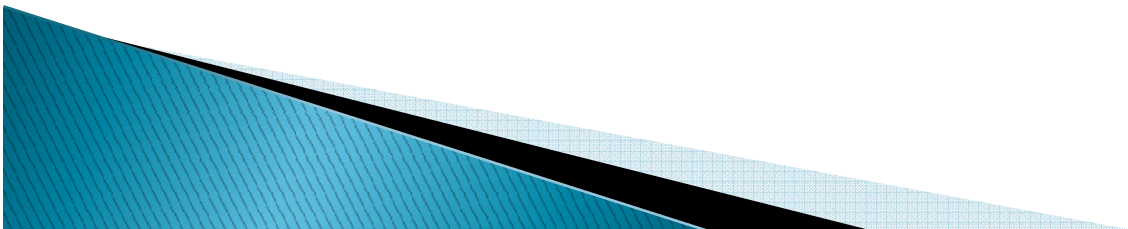
- ▶ UN SIDS Conference
- ▶ Reaffirmed Rio Declaration and Agenda 21
- ▶ Public Awareness and Participation:
  - NGOs
  - Women Groups
  - Local community Groups
  - Networks for Information Dissemination



## 2. CURRENT POLICY INITIATIVES

- ▶ St George's Declaration

Of Principles for Sustainable  
Development, 2001



# St George's Declaration 2001

- ▶ Signed by OECS Ministers of the Environment
- ▶ 21 Key Principles for environmental sustainability
- ▶ Implementation through the National Environmental Strategies (NEMS)

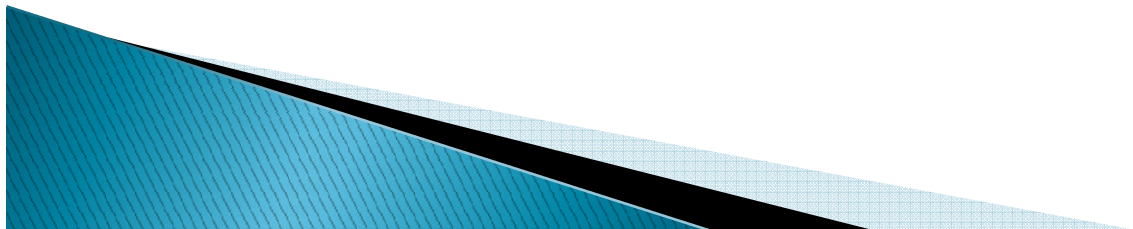
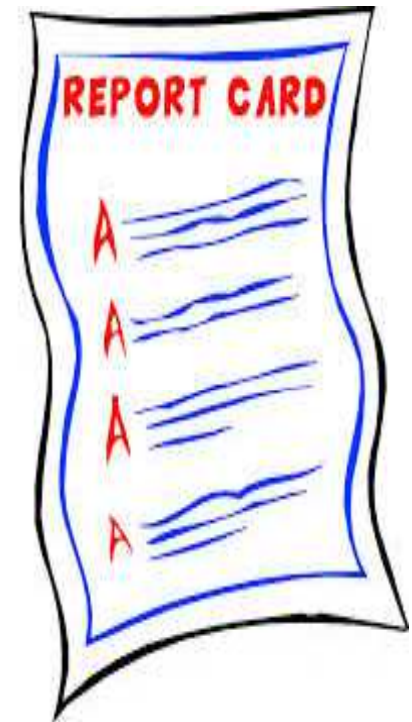


# St George's Declaration (SGD)

- ▶ Principles 4 and 5: Participation by Civil Society and Private Sector:
- ▶ Principles 20, 21: Reporting requirement to OECS EC:
  - National implementation
  - Environmental education activities
  - Capacity building initiatives
- ▶ Revised Treaty of Basseterre, 2010
  - Article 24: Environmental Sustainability

# Country Reports on Achievements of SGD Goals

- ▶ Anguilla 2009 (5)
- ▶ Antigua & Barbuda 2008 (4)
- ▶ British Virgin Islands 2009 (5)
- ▶ Grenada 2006 (8)
- ▶ Montserrat 2007 (7)
- ▶ St Lucia 2006 (8)
- ▶ St. Kitts & Nevis 2009 (5)
- ▶ St. Vincent & Grenadines 2008 (6)





### 3. CONSTITUTIONAL DIMENSIONS

- ▶ Constitution of Guyana, Section 25:

“Every citizen has a duty to participate in activities intended to improve the environment and protect the health of the nation.”



# : Constitutional Dimension

- ▶ Constitution of Guyana, Article 149
- ▶ British Virgin Islands Constitution, Article 29
- ▶ Jamaican Charter of Fundamental Rights and Freedoms Act, Section 13(3)(I)
- ▶ Cayman Islands Constitution Order, Article 18





## 4. LEGISLATIVE DIMENSION:

### (1) Freedom of Information Acts

- ▶ Access to Information Act, 2002 (Jamaica)
- ▶ Freedom of Information Act, 1999 (Trinidad & Tobago)
- ▶ Freedom of Information Act, 1994 (Belize)



# LEGISLATIVE INITIATIVES: (2)

## Environmental Protection Legislation

- ▶ A. Environmental Protection Act, Belize
- ▶ B. Environmental Protection Act, Guyana
- ▶ C. The Physical Planning and Development Act, St. Lucia
- ▶ D. The Physical Planning Act, Antigua and Barbuda
- ▶ Trinidad & Tobago



# E. Environmental Management Act (Trinidad and Tobago)

- ▶ Duty of EMA:
  - compile environmental information
  - preserve administrative records
  
- ▶ Environmental Commission
  - Civil Action: section 69
  - Appellate process re EMA statutory duties



# LEGISLATIVE INITIATIVES:

## (3) Judicial Review Legislation


- ▶ Administrative Justice Act No. 63 (1980), (Barbados)
  - review of government action
  - public interest litigation
- ▶ Judicial Review Act No. 60 (2000) (Trinidad and Tobago)



## 5. THE JUDICIARY



## The Old Order

- ▶ *Spencer v Canzone Del Mare* (1993): challenge to order by Executive to ignore EIA requirement dismissed for lack of standing
  - ▶ *Spencer v. A.G.* (1994): challenge re tourist development. Applicant failed “relevant interest” test under Constitution.
  - ▶ *Scotland District Association v. A.G* (1996): landfill in a protected area. Applicant, NGO, lacked standing under AJA.
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# PARADIGM SHIFT





# The Modern Approach

- ▶ *Belize Alliance of Conservation NGOs v Dep't of the Environment* (2004): environmental organizations could challenge Gov't decision to construct a dam
  - ▶ *Northern Jamaica Conservation Authority v. NRCA and NEPA* (2006): environmental NGO successfully challenged construction of hotel in ecologically sensitive area; access to information breached
  - ▶ *Belize Institute for Environmental Law & Policy v Chief Environmental Officer* (2008): Applicant NGO seeking to protect the environment in its totality
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# The Modern Approach

- ▶ *PURE v EMA (2009)*: legality of construction of bauxite smelter to be decided according to “environmental jurisprudence”
- ▶ *Virgin Islands Environmental Council v. A.G.:* (2007) NGO lost BUT no costs order
- ▶ *Ya’Axche Conservation Trust v. Chief Forest Officer* (2014) : Trust lost BUT no costs order



## 6. BENEFITS OF PARTICIPATION



## IT'S IN OUR HANDS

# Benefits of Participation

- ▶ *Talisman (Trinidad) Petroleum Ltd. v. EMA* (2002) (Trinidad & Tobago) per Justice Hosein
  - Improved understanding of issues
  - Identifying common ground
  - Highlights trade-offs
  - Improves overall decision making



# 7. CONCLUSION

- ▶ Cultivate ownership culture
- ▶ International commitments
- ▶ Good governance
- ▶ Linkage to judiciary



# CONCLUSION

- ▶ Piggy back policy & other initiatives
- ▶ Coordination of regional reporting?
- ▶ NGO involvement
- ▶ Synergies with related initiatives: 30–31 March 2015?



# Thank you!



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  - ▶ Professor of Environmental Law

