



Report of the Regional Workshop on the Implementation of Rio Principle 10 in the Caribbean Region

Hyatt Regency Trinidad Hotel,
Port of Spain, Trinidad and Tobago, 16-17 September 2013

The workshop was financially supported by



Background and Context

Governments and stakeholder groups, alike, have recognized the need for global, regional and national steps to enhance implementation of Principle 10 of the Rio Declaration on Environment and Development. Consequently, during the 2012 UN Conference on Sustainable Development (Rio+20) a number of Member States from Latin America and the Caribbean signed *The Declaration on the implementation of Principle 10 of the Rio Declaration on Environment and Development in Latin America and the Caribbean*. As of September the signatory countries to the Declaration stood at 15, committed to developing a Plan of Action to advance the achievement of a regional instrument on the rights of access to information, participation and environmental justice, which enshrines Rio Principle 10. The signatory countries are Argentina, Brazil, Chile, Colombia, Costa Rica, Ecuador, Honduras, Jamaica, Mexico, Panama, Paraguay, Peru, Dominican Republic, Trinidad and Tobago, and Uruguay. The Economic Commission for Latin America and the Caribbean (ECLAC) supports this process and serves as the Technical Secretariat

To advance this process, UNEP, UNITAR, ECLAC, CALCA of the Caribbean Court of Justice, WRI and TAI joined forces to cooperatively support the development of Principle 10 and the application of Guidelines for the Development of National Legislation on Access to Information, Public Participation and Access to Justice in Environmental Matters (the Bali Guidelines) in Latin America and the Caribbean, hence the convening of the “**Regional Workshop on the Implementation of Rio Principle 10 in the Caribbean Region**” Port of Spain, Trinidad and Tobago, 16-17 September 2013. This workshop presented a joint effort to

- Raise awareness among countries in the region on Principle 10,
- Encourage Governments and stakeholders to engage in the Regional LAC P10 Process
- Build capacity to use the UNEP Bali Guidelines to promote the adoption of P10 national law

As a follow-up to the regional workshop, co-organising partners will explore with interested and committed countries opportunities for capacity development to implement the Bali Guidelines at the national level.

In February 2010 the Special Session of the UNEP Governing Council, Global Ministerial Environment Forum (GMEF) meeting in Bali, Indonesia, unanimously adopted the ‘**Guidelines for the Development of National Legislation on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters**’ (the Bali Guidelines). This marked the achievement of a milestone in the field of environmental law and the implementation of Principle which informed the recent workshop in Trinidad and Tobago. In addition, UNEP and UNITAR have launched a 2-year joint global capacity development initiative, including a regional workshop component as a means of responding to country requests for capacity development for Principle 10 implementation and implementation of the Bali Guidelines. This global capacity development initiative is part of the “Access for All” Special Initiative that has been endorsed at the 2011 Eye on Earth Summit in Abu Dhabi.

1. Aims and Objectives and Learning Outputs

The aims and objectives of the Regional Workshop included, *inter alia*,

- Review progress made 10 years after the Mauritius Strategy for the Further Implementation of the Programme of Action for the Sustainable Development of Small Island Developing States (MSI) and 20 years after the Barbados Programme of Action (BPoA) with regard to public participation, access to information and access to justice in the Caribbean region and identify challenges being faced by Caribbean SIDS;

- Take stock and identify key issues for effective implementation of Principle 10 in the region;
- Introduce and discuss the relevance of the *Guidelines for Development of National Legislation on Access to Information, Public Participation and Access to Justice in Environmental Matters* (Bali Guidelines);
- Introduce and discuss the relevance of the LAC Principle 10 Declaration for regional Principle 10 application;
- Exchange good practices and lessons learned for the three pillars of Principle 10 (public participation, access to information, access to Justice);
- Identify opportunities for action, capacity development and networking, and
- Identify countries needs for the implementation of the Bali Guidelines

The specific learning outcomes of the Regional Workshop included, inter alia, Concerning specific learning objectives, by the end of the workshop participants were expected to be able to:

- Cite good practices of Principle 10 implementation in the region.
- Understand the advantages of a Regional Principle 10 Instrument.
- Analyze key provisions of the Bali Guidelines and their relevance for national legislation
- Initiate steps and support action for national follow-up
- Participate effectively in international processes related to Principle 10 implementation

2. Structure of the Meeting

Following the Official Opening, the Regional Workshop was structured into four substantive sessions. The Meeting was declared opened by Mr. Peter Mitchell the representative of the Government of Trinidad and Tobago who spoke on the behalf of the Hon. Dr. Bhoendradatt Tewarie, Minister, Ministry of Planning and Sustainable Development, Trinidad and Tobago.

Each Session was introduced with a number of technical presentations which provided the context for the substantive consideration of the three pillars of Principle 10. In the case of Session 1 and 2, technical presentations on the three pillars of Principle 10 were followed by three working group sessions which were convened concurrently. This enabled the participant to reflect on the three

pillars of Principle 10 in more detailed. The results of the Working Groups were presented in plenary followed by open discussion. In the case of Sessions 3 and 4 the technical discussions were followed by open discussion in plenary.
(The Agenda of the meeting is attached at Annex 1)

3. Participants

The meeting attracted the participation of 40 persons from Caribbean SIDS Member States, Civil Society groups and organizations, the youth and international organisations. Representatives from these groups came from Antigua and Barbuda, Barbados, Belize, Chile, Cuba, Grenada, Guyana, Jamaica, St. Kitts and Nevis, St. Lucia, St. Vincent and the Grenadines, Suriname, and Trinidad and Tobago. Representatives from international organisation, present came from UNEP, ECLAC, UNITAR, UNECE, OECS Secretariat, World Resources Institute, The Access Initiative. (The list of Participants is attached at Annex 2)

4. Summary of Substantive Presentations and Conclusions

4.1. Placing Principle 10 in Its Global and Regional Context

Prior to the specific consideration of the three pillars of Principle 10 an overview of the International and Regional Context of Principle 10 Implementation was given under the theme of “Principle 10 of the Rio Declaration on Environment and Development within the Context of the Implementation of the Barbados Programme of Action and the Mauritius Strategy for the Further Implementation of the BPOA.”

The overview comprised several technical presentations based on relevant themes which provided a comprehensive description of the international and regional context within which Principle 10 is being implemented. The presentations touched a wide range of issues including inter alia, a summary of the social and economic characteristics and trends of Latin America and the Caribbean, regional and international commitments made by Caribbean SIDS Member States which have relevance for the implementation of Principle 10. In this regard specific reference was made to Principle 10 within the context of the BPOA and the MS/BPOA where specific emphasis is placed on effective participation as a central and indispensable tenet of sustainable development.

Reference was also made in the presentations to the report prepared by ECLAC entitled “Access to Information, Participation and Justice in Environmental Matters in Latin America and the Caribbean Situation, Outlook and Examples of Good Practice”

In the area of trade relations, particularly in the form of bi-lateral agreements, the issue was raised with respect to private access to “judicial quasi-judicial and administrative proceedings” This, as it was underscored, requires further consideration within the regime and in the context of a national/regional discourse on Principle 10.

At the regional level, it was observed that the consideration of access rights in the region is not a completely new activity. In this context, reference was made to the Port of Spain Accord adopted by the Members of Environment of the Caribbean Community in 1989, the Port of Spain Consensus of 1991. Specific reference was also made to the “St Georges Declarations of Principles for Environmental Sustainability in the OECS” signed by OECS Minister of the Environment in April 2001. These principles were subsequently given the force of law in the Revised Treaty of Basseterre.

Developments involving the Caribbean judiciary

- ▶ 2001 – Gros Islet, St. Lucia Symposium
- ▶ 2002 – Johannesburg, Global Symposium*
- ▶ 2004 – CJs’ Meeting, Braco, Trelawny, Jamaica
- ▶ 2011 – Workshop, Montego Bay, Jamaica,
- ▶ 2012 – World Congress, Brazil*
- ▶ 2012 – Symposium, Bay Gardens, St. Lucia

In considering the legal framework of Principle 10 at the national level reference was made to the constitutional provisions in both the Constitutions of Guyana and Suriname. Reference was also made to the evolution of Freedom of Information Legislation in the region, as well as the provisions made under the Judicial review legislation in Caribbean states.

The presentations highlighted on-going efforts being made to create and improve greater awareness among the Caribbean

judges on general environmental issues including access rights. It was explained that this is being achieved by the participation of Caribbean judges in international training workshops designed specifically for the judiciary.

4.2. Pillar 1: Access to Information

This topic was introduced by two technical presentations. The first presentation consisted of a brief introduction of the relevant provisions (see Box 1.) of the Bali Guidelines; and a summary of the Guideline Implementation Handbook. This was followed by an assessment of the legal basis for accessing information on environmental matters in the Caribbean Working Group Sessions followed by a plenary discussion focusing on the outcomes of the Working Groups conclusion. An explanation was provided on the various Bali principles dealing with information which are summarized in Box 1.

I. Access to information

Guideline 1

Any natural or legal person should have affordable, effective and timely access to environmental information held by public authorities upon request (subject to guideline 3), without having to prove a legal or other interest.

Guideline 2

Environmental information in the public domain should include, among other things, information about environmental quality, environmental impacts on health and factors that influence them, in addition to information about legislation and policy, and advice about how to obtain information.

Guideline 3

States should clearly define in their law the specific grounds on which a request for environmental information can be refused. The grounds for refusal are to be interpreted narrowly, taking into account the public interest served by disclosure.

Guideline 4

States should ensure that their competent public authorities regularly collect and update relevant environmental information, including information on environmental performance and compliance by operators of activities potentially affecting the environment. To that end, States should establish relevant systems to ensure an adequate flow of information about proposed and existing activities that may significantly affect the environment.

Guideline 5

States should periodically prepare and disseminate at reasonable intervals up-to-date information on the state of the environment, including information on its quality and on pressures on the environment.

Guideline 6

In the event of an imminent threat of harm to human health or the environment, States should ensure that all information that would enable the public to take measures to prevent such harm is disseminated immediately.

Guideline 7

States should provide means for and encourage effective capacity-building, both among public authorities and the public, to facilitate effective access to environmental information.

The main legal framework governing access to information on environmental matters is the Freedom of Information (FOI) legislation. Of the 16 Caribbean SIDS Member States, only 7 member states (Antigua and Barbuda, Belize, Dominican Republic, Guyana, Jamaica, St. Vincent and the Grenadines, and Trinidad and Tobago) have enacted FOI Acts. Another 5 countries (The Bahamas, Barbados, Grenada, St. Kitts and Nevis and St. Lucia) have draft bills.

It was observed that none of the countries have a very broad right to environmental information such that would allow for requests for multiple types of environmental information subject only to specific exemptions.

However, narrow rights to access specific documents exist in the legislation of some countries (Guyana, Jamaica, Grenada, Belize, and Dominican Republic). In terms of the implementation of access rights to environmental information, it was observed that regular reporting of statistics on environmental matters is not the norm.

Best Practices

The Working Group Session identified a number of areas which they considered to be best practices. These are summarised below as follows:

1. Timelines

Many countries have statutory timelines on the provision of information.

- In Jamaica public authorities must provide a response within 30 days.

2. Use of Technology:

There is the proactive use of technology to provide for the release of information.

- Jamaica publishes data on air emissions surrounding mining plants online
- Brazil publishes real time satellite imagery for forest cover of the Amazon online
- Trinidad and Tobago's Ministry of Environment has developed a blogspot on what information they have and what they are doing in terms of policies
- Trinidad and Tobago publishes all its laws online
- Most Caribbean countries have Clearing House Mechanisms which provide certain types of environmental information to the public
- St. Vincent and the Grenadines proactively releases information on major projects to the public using media (e.g. television)

3. Dedicated Officers:

In Jamaica all Ministries and many agencies have a dedicated officer responsible for dealing with Access to Information requests.

4. Information Availability and Access:

The Information Commissioner of Antigua and Barbuda is required under their law to provide a guide to Access to Information for the public.

- Public Service Regulations require all agencies to record information and retain records. There is a commission that oversees this practice.

- FOI law in Belize reformed in 2006 allow for the opening of records on demand by the public.
- Trinidad & Tobago FOI law allows for the opening of records and allows for access upon request
- ATI Unit formed and responsible for training public officers, addressing queries from members of the public, public education events and still carrying on this role
- In Trinidad and Tobago the Environmental Management Authority (EMA) maintains a repository of all EIA's
- Belize has put environmental compliance plans for each development online
- EIA's are placed in libraries and post offices for access to the public prior to decision-making (Belize)
- Laws provide for the keeping of registers by public authorities (Jamaica)
- Release of enforcement information online in Jamaica including the publication of companies failing to comply with decisions (Jamaica)
- Environmental laws are available online in Jamaica and Trinidad whereas Belize has a compendium of environmental laws
- Belize releases a number of reports that document the state of natural resources, including the State of the Coast Report, and the Environmental Outlook report on a regular basis.
- Trinidad also release a periodic State of the Environment Report
- Grenada has established a public private partnership to give rural persons access to the internet to provide government information
- Access to weather and emergency information is sent by mobile phones (Grenada)
- Belize NGO's act as intermediaries to provide information to indigenous communities
- Government provides support to local communities to act as reporters and disseminators of information on government actions in local languages (Suriname)
- Local community radio stations provide information affecting people in smaller communities (Suriname)

Challenges

A number of challenges to the access to information were identified. These are summarized as follow:

- **Quality of Environment Data and its Availability:** The question was raised as to whether it can be said that environmental information really exist in many of the Caribbean Member States. This issue was raised against the background of the observation that Statistics Acts in Member States do not require the routine collection of environmental data to facilitate government decision-making.

In addition, many agencies do not have responsibility to collect and release environmental information on air and water quality. It's often very difficult to get this type of information which may be treated as sensitive information or may be poorly collected.

- **Transformation of data into information:** Often, data is not converted to information and this limits the public's ability to understand the particular issue under consideration.
- **Capacity to Collect Environmental Data:** The Capacity of government to collect environmental data is weak and release is limited in cases where it may be collected. Generally, there is no standard system for the collection, record keeping and analysis of environmental data and information across Ministries and agencies in most Member States.
- **Quality of Data released:** Environmental information being proactively released may not be current. For example, in Trinidad and Tobago the most recent State of the Environment Report was produced in 2005. In Jamaica the most recent information relating to air emissions surrounding mining plants in Jamaica that are released online is dated 2011. There is no consistent publication of environmental enforcement information done across government. A critical question therefore is "How to build public interest?"
- **Public Awareness:** Generally public awareness of the provisions in the Freedom of Information Act is low among civil society and the public in general. In Antigua and Barbuda the media are the users of the Freedom of Information Act while other members of civil society do not use it. Laws providing a right to release of information to the public are non-existent or weak. In the case of indigenous people the information is usually presented in a language with which they are not familiar as their functional language is usually not the same as the official language.
- **Secrecy:** In most member States there is a culture of secrecy regarding the release of information. For example, in Trinidad and Tobago a government agency had to resort to the Freedom of Information Act in order to obtain information from another agency. The Public Service Regulations prohibit the disclosure of certain information including talking with the media. Public Service Regulations also govern which officials are authorised to release information. Public Officials do not know what information can be released to the public, and have not implemented requirements for classification of records in FOI Act. Consequently, the implementation of the FOI Acts in the region has not been consistent. Many requests are ignored; timelines are not met; public authorities do not follow the requirements of the law; and information may have been sanitized before release.
- **Non-Written Requests:** There are problems in implementing the provisions of the Freedom of Information laws. The option to make requests by telephone is not accepted although it maybe stated in the law. In Trinidad and Tobago – there is a 10% rule (whereby members of the public can only get access to 10% of a document at a time). There are language problems in granting access to indigenous people who do not speak the official language
- **Legislative gaps:** There are examples of gaps within the legislation. For example in St. Vincent and

the Grenadines there are no regulations to the FOI Act and this inhibits the implementation and interpretation of the parent act. In Jamaica the timeline for appeals is not specified in the Act and appeals can take a long time. There is difficulty proving information exists when public authorities refuse to provide information.

- **Lack of monitoring:** There is a lack of monitoring of FOI progress and implementation. Monitoring statistics on FOI requests in the country are not collected for all agencies.
- **Accessibility of Available Information:** In cases where information exists, difficulty is experienced in accessing the information. Documents cannot be downloaded in some instances and are only available online.

Needs

A number of specific needs were identified by the meeting with respect to access to information held by public authorities. These include, *inter alia*,

- **Institutional Strengthening:** Institutional strengthening is required for Freedom of Information Implementation Units where they exist as well as for the Independent Enforcement arm of FOI law e.g. Ombudsman office or Information commissioners.
- **Training, Education and Public Awareness:** Training is needed in a number of areas including *inter alia*, for standardized record-keeping across government Ministries and agencies; legislative drafting, in the implementation and interpretation of Freedom of Information Legislation for public officials; EIA practitioners as well as in the preparation of EIA's in non-technical language

In the area of education, it was emphasised that there is the need to build the capacity of government to implement public education programmes recognizing the need for sustainability of education programmes. It was also highlighted that Civil Society need to be educated to utilize the law and monitor and use rights before enforcement bodies

- **Enhancement of Regional Cooperation:** there is a need to put in place mechanisms which support the facilitation and sharing of experiences among countries. Practice needs to be shared across jurisdictions on how to provide access to this type of information. Sustainability in this regard could be encouraged through partnerships with civil society.
- **Systematic Collection, Analysis and Dissemination of Environmental Data:** It was observed that there is the need for the development of environmental statistics and data that can be utilized by the public and policy makers to help decision making processes. However standards for the collection of these types of data are necessary. In this regard, the capacity of Government agencies to collect environmental data and information at low cost was raised. It was concluded that there is a need to put mechanisms in place to facilitate the systematic collection of environmental data in the region. Issues relation to the establishment of Data Repository and Data Analysis (through collaboration of public authorities with universities, research institute and private sector).

- **Accountability of the various entities:** The issue of accountability was also raised. In this regard, the call was made for the establishment of a framework that will also oblige the private sector to report. Also the need for mechanisms to support tracking and monitoring of Freedom of Information requests from agencies was underscored. It was also felt that there is the need to evaluate registers, use, accessibility, and how to make data available online. An annual or periodic review of the performance of agencies as well as the improvement of procedures for transparency on the passage of bills and legislation were highlighted as being needed.

Pillar 2: Public Participation

Two technical presentations provided the context for the consideration of this pillar. First a brief overview and explanation of the Bali Guidelines dealing with public participation was provided (see Box2). The second technical presentation addressed the legal basis for public participation in Caribbean Member States.

Participants suggested that national laws governing Environmental Impact Assessments represent the main legal framework that facilitates public participation in environmental matters.

II. Public participation

Guideline 8

States should ensure opportunities for early and effective public participation in decision-making related to the environment. To that end, members of the public concerned² should be informed of their opportunities to participate at an early stage in the decision-making process.

Guideline 9

States should, as far as possible, make efforts to seek proactively public participation in a transparent and consultative manner, including efforts to ensure that members of the public concerned are given an adequate opportunity to express their views.

Guideline 10

States should ensure that all information relevant for decision-making related to the environment is made available, in an objective, understandable, timely and effective manner, to the members of the public concerned.

Guideline 11

States should ensure that due account is taken of the comments of the public in the decision-making process and that the decisions are made public.

Guideline 12

States should ensure that when a review process is carried out where previously unconsidered environmentally significant issues or circumstances have arisen, the public should be able to participate in any such review process to the extent that circumstances permit.

Guideline 13

States should consider appropriate ways of ensuring, at an appropriate stage, public input into the preparation of legally binding rules that might have a significant effect on the environment and into the preparation of policies, plans and programmes relating to the environment.

Guideline 14

States should provide means for capacity-building, including environmental education and awareness-raising, to promote public participation in decisionmaking related to the environment.

Best Practices

A number of best practices were highlighted by the participants. These are summarised as follows:

1. During the discussion the issue of what constitutes a best practice was raised. One suggestion which resonated with the group is that it could be considered at different levels, namely
 - i. The nature of the law. Can the legislation be considered as good law?
 - ii. The application of the law. Is this being done properly in accordance with the law?

- iii. Analysis of a range of the projects to see the extent to which the law has been followed.
- iv. A critical examination of who participated in the EIA process. Was it an inclusive process?

It was suggested that this framework could be used for the identification of best practices. The following is an overview of best practices which were highlighted.

2. Various elements in the process were highlighted which could be considered as best practices. These include, inter alia,

- Existence of a spatial plan
- Focus group meetings are being held
- Public participation in drafting of TORs of EIAs
- Review body of EMA includes CSO (in practice)
- Public participation at the scoping stage
- Public can request EIAs to be conducted on projects
- TORs of EIAs are sent to co-managers of national parks
- Composition of Nat'l Environmental Appraisal Committees (NEACs) includes 2 CSOs representatives (by law)
- Public notice on EIAs
- LFMCS involved in forest management – can provide advice, they are being consulted in practice
- Consultation on draft policies
- Guidelines on public participation in policy development
- Consultation for designation of fish sanctuaries

3. A number of specific processes were highlighted which were considered as best practices.

These include, inter alia,

The St. Vincent Referendum for Constitutional Reform

Factors:

- Open Meetings,
- Radio,
- Open Parliament(Select Committee)
- All Issues were considered

➤ Barbuda Land Act 2007

- Act Outlines Beginning of Process
- Procedures are Clear
- Concerned Parties Clear

➤ EIA in Trinidad and Tobago

- Wide Announcements
- Impersonal Writings

4. Legislative Provisions: Legislative provisions are available supporting public participation. In this regard specific reference was made to the legislation of a number of countries :

- Cuba: Many mechanisms exist in current legislation with respect to public participation. Two main mechanisms are used: EIA and SIA i.e. the elaboration of law under Strategic

Environmental Assessment (SIA). In addition, the public participate in any environment related process and procedure along with the relevant authority.

- Dominican Republic: Provision made for public participation in the EIA legislation. The results are published in a National Journal and made available to the public. A Public announcement is placed on the sight being subject to the EIA.
- Guyana: Public participation is emphasized in the constitution. Generally implementation seems to be good. However, public participation is patchy. Not enough outreach control. There is a need for the public to be more alert on these issues.

Challenges

A number of challenges were identified, including:

- **Indigenous Peoples:** With respect to indigenous peoples, they are not sufficiently well recognized and as a result might not be included in the various public participation processes. There is also an issue of **accessibility** both in terms of reaching them physically (i.e. Guyana) as well as arriving at a decision (i.e. traditional methods of arriving at decisions on issues are used and this could take some time).
- **Timely Responses to Issues Raised by the Public:** Time frame for interested parties to provide comments on TORs is not adopted. Even when provision is made to facilitate public participation, the response for the public might not be adequate enough. A number of reasons were advanced to explain such situations, namely,
 - ❖ Culture of fear seems to exist
 - ❖ Deference to technical persons
 - ❖ Lack of confidence in the process and the decision makers
 - ❖ Citizens do not know and use their rights
 - ❖ Daily survival and their immediate economic issues are more important than environment
 - ❖ Big projects are not understood by the public (Guyana)
- **Inadequate Time and Timing for Effective Participation:** The Public at times is invited to the process of consultations too late giving rise to conflicts with huge economic ramifications due to opposition. Advertisements for public involvement are limited to notices in the newspaper. Additional and alternative approaches could be utilized such as for example using social media. Public participation is only invoked at a late stage and in some cases the law does not provide specifics about public participation. The focus tend to be placed on economic and social development without due consideration on the impact on the environment. There is a need to simplify EIA's and add a social impact component.
- **Language Constraints:** There is a need to translate documents to relevant dialect or languages where indigenous people exist in communities and ensure that the relevant Government Department

or Village Group Leader is involved to get the message across. The fact that the language used in the EIAs is often complex/technical-scientific serves as a disincentive to public participation.

Needs

A number of needs were identified with respect to facilitating effective public participation in environmental matters. These are summarized as follow:

- **Capacity building and education on the issues covered in Principle 10.** However, there was general consensus that the nature of the capacity building is important. This should include relevant and targeted capacity building and education as well as the development of a long term programme to build appropriate institutional capacity. This should target multiple groups including civil society, the private sector, government representatives etc. Capacity-building for CSOs to participate in the EIA review process; and a need to enable CSOs to understand the legislation e.g. for advocacy. Legislative drafting, scientific and technical expertise and skills are needed .
- “Experts” need to develop different approaches to facilitating public participation with a focus at the grass root level. In particular, attention needs to be paid to the type and mode of messaging, such as the language used, etc. There is a need to develop or strengthen mechanisms for public participation to take the most vulnerable members of the communities into account. Giving the voice to the voiceless, those who have little opportunity to articulate their views.
- In addition, politicians and the relevant civil servants need to be trained in approaching the public and relaying the appropriate message which speaks to institutional strengthening and capacity building.
- Training for public officials to sensitise them on how to conduct public participation, and on the value of it. Mechanisms are also needed to notify the public when a decision has been made e.g. in the case where a permit has been granted.
- Research needs to be undertaken to determine why people are not using the existing laws and the rights contained therein. This would probably help identify the barriers and enable the design of interventions to overcome them.
- Consideration should be given, to the extent practicable, of the delivery of technical assistance, training etc. within the framework of regional cooperation (i.e. the framework provided by the CARICOM Single Market and Economy). Allowance would however need to be made for Member States which are not members of the CSME.

Pillar 3: Access to Environmental Justice

III. ACCESS TO JUSTICE

Guideline 15

States should ensure that any natural or legal person who considers that his or her request for environmental information has been unreasonably refused, in part or in full, inadequately answered or ignored, or in any other way not handled in accordance with applicable law, has access to a review procedure before a court of law or other independent and impartial body to challenge such a decision, act or omission by the public authority in question.

Guideline 16

States should ensure that the members of the public concerned have access to a court of law or other independent and impartial body to challenge the substantive and procedural legality of any decision, act or omission relating to public participation in decision-making in environmental matters.

Guideline 17

States should ensure that the members of the public concerned have access to a court of law or other independent and impartial body or administrative procedures to challenge any decision, act or omission by public authorities or private actors that affects the environment or allegedly violates the substantive or procedural legal norms of the State related to the environment.

Guideline 18

States should provide broad interpretation of standing in proceedings concerned with environmental matters with a view to achieving effective access to justice.

Guideline 19

States should provide effective procedures for timely review by courts of law or other independent and impartial bodies, or administrative procedures, of issues relating to the implementation and enforcement of laws and decisions pertaining to the environment. States should ensure that proceedings are fair, open, transparent and equitable.

Guideline 20

States should ensure that the access of members of the public concerned to review procedures relating to the environment is not prohibitively expensive and should consider the establishment of appropriate assistance mechanisms to remove or reduce financial and other barriers to access to justice.

Guideline 21

States should provide a framework for prompt, adequate and effective remedies in cases relating to the environment, such as interim and final injunctive relief. States should also consider the use of compensation and restitution and other appropriate measures.

Guideline 22

States should ensure the timely and effective enforcement of decisions in environmental matters taken by courts of law, and by administrative and other relevant bodies.

Guideline 23

States should provide adequate information to the public about the procedures operated by courts of law and other relevant bodies in relation to environmental issues.

Guideline 24

States should ensure that decisions relating to the environment taken by a court of law, or other independent and impartial or administrative body, are publicly available, as appropriate and in accordance with national law.

Guideline 25

States should, on a regular basis, promote appropriate capacity-building programmes in environmental law for judicial officers, other legal professionals and other relevant stakeholders.

Guideline 26

States should encourage the development and use of alternative dispute resolution mechanisms where these are appropriate.

Best Practices

In terms of access to environmental justice two specific cases were referred to as highlighting access to environmental justice issues. These are :

- Trinidad: Fishermen and Friends of the Sea vs The State case (Currently in the court and deals with seismic surveying destroying fish habitat)
- Charlottesville Beachfront Movement vs Tobago House of Assembly (Development project)

1. Standing (Locus Standi)

•Direct Private Party Action

In Belize any member of public that suffers loss or damage as a result of any conduct that is contrary to the Environmental Protection Act or regulations can bring a civil action for compensation and an injunction.

•Section 40 of the Environmental Protection Act of Belize

•Trinidad's Environmental Commission has been empowered to hear complaints by any individual who claims a breach of the Environmental Management Act. No attorney-at-law is needed. – Environmental Management Act of Trinidad and Tobago

•Constitutional Rights

Jamaica has a Constitutional Right to a Healthy Environment which allows civil society groups to bring constitutional actions on behalf of affected people

•Suriname has a Constitutional Right to a Healthy Environment – Art. 6

2. Specialised Environmental Court/Tribunal

• Trinidad has received funding to help NGOs litigate

• Trinidad's Environmental Commission which hears appeal cases from the Environmental Management Authority comprises of technical experts including lawyers.

(Standing - Direct Private Party Action)

• The Environment Commission allows for arbitration. They prefer arbitration and other forms of dispute settlement

3. Costs

• In Jamaica costs are generally not awarded against the claimant in an administrative law action–Civil Procedure Rules 2002

4. Training Programmes

• Programmes for training judges in Belize

Challenges

1. Lack of Knowledge:

• Lack of knowledge of rights (to clean water, air etc.) by NGOs and citizens. Quality of rights not emphasized

• Lack of social consensus on environment value/rights

• Tension between environment vs development

2. Lack of Public Awareness

Lack of awareness about the rights of public to obtain environmental redress – process is unclear

3. Lack of Enabling Legislation

- In Suriname there is a lack of environmental laws and focus on use of guidelines
- Outdated environmental laws with low fines
- Difficulty enforcing subsidiary legislation in Trinidad and Tobago
- No protection for NGOs from Strategic Litigation Against Public Participation suits which has happened in Jamaica (SLAPP)

4. Cost Barriers

- Requirement for parties to give an undertaking for damages if they wish an injunction
- Financing litigation generally is expensive
- Funding for litigation scarce

5. Lack of Trained Judges

- There is no institutionalised sustainability training programme for judges in Caribbean countries on environmental law
- Lack of environmental legal specialty for lawyers in a number of countries

Needs

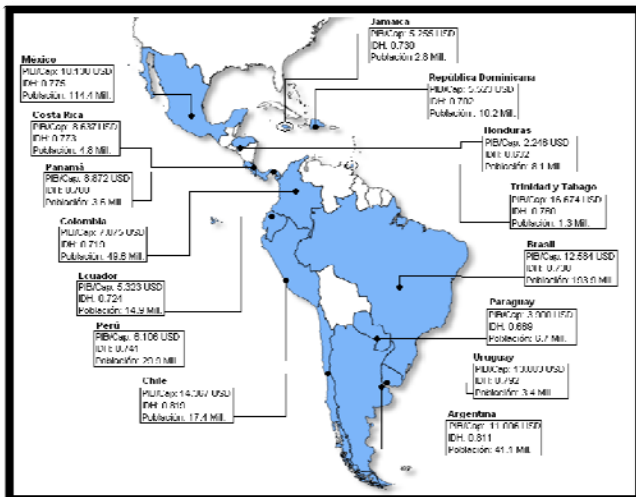
1. Education and Training

- For individuals and NGOs on how to use the law to achieve environmental justice
- For judges and lawyers on environmental law and human rights
- Training on environment justice for the legal profession
- Specialised courses on the environment in regional law schools
- Special Fund for Environment litigation by Government and NGO

2. Legal Reform

- To provide for funds/ financing for litigation e.g. widening of State granted Legal aid to include environmental cases
- Provide for exception to the rule that the loser pays the costs in the case of public interest litigation
- Remove the requirement that an undertaking for damages has to be given in order to obtain an injunction in the case of public interest litigation
- Ratification of Multilateral Environmental Agreements (MEAs) and incorporation in domestic law.
- Court should seek to ensure that costs are not borne by NGOs

Regional cooperation on Principle 10 Implementation



ECLAC, 2013 (Updated as of August 2013)

Two technical presentations were made under this theme, namely “Latin America and the Caribbean for Environmental Democracy: Towards a Regional Instrument” and “Experiences with a Regional Convention: The Aarhus Convention”

The history of the events which led to the signing of the “Declaration on the Implementation of Principle 10 of the Rio Declaration on Environment and Development and the Caribbean” was addressed by the first presentation.

The meeting was informed that 15 countries had signed the convention.

In addition, the arguments for the development for a Regional Instrument on Principle 10, an overview was provided in what the process entails (See Box 3) and what it is not.

Box 3.

What this process is not	What is this process
<ul style="list-style-type: none"> Just another political declaration The negotiation of another Multilateral (regional) Environmental Agreement. <ul style="list-style-type: none"> “Too many MEAs” A mechanism for sanctioning States An exclusive process: for developed countries with full implementation of environmental democracy 	<ul style="list-style-type: none"> A democratic process for a democratic instrument. <p>Time (urgency) for all on board.</p> <ul style="list-style-type: none"> A path towards an instrument that will benefit compliance of national and international commitments like MEAs. <p>Sustainability through democracy</p> <ul style="list-style-type: none"> Process of dialogue and regional cooperation that will benefits countries An initiative to ensure the full exercise of rights of access through mutual support. <p>A learning process.</p> <ul style="list-style-type: none"> An open process to all Latin America and Caribbean countries without any condition. Parallel to national process. <p>Recognition of the particular conditions in each signatory country.</p>

The meeting was also informed of the achievements thus far in this regards

- 1) From 10 original signatories, to 15 members
- 2) Two focal points meetings and virtual meetings of working groups
- 3) Instruments that reaffirm commitment and channel process (Declaration, Road Map and Action Plan)
- 4) Agreement on main tasks:
 - i. Promoting the Declaration and incorporating new signatories
 - ii. Strengthening and highlighting the progress made in the region

- iii. Actions to promote public participation at the national level
- iv. Establishment of working groups for advancing towards the formulation of a regional instrument:
 - Identify strengths and weaknesses in the region, especially for capacity building.

- Discuss the nature and content of the regional instrument.

5) International and public recognition

"Appreciate initiatives for regional implementation of the 10th Principle of the 1992 Rio Declaration, regarding the rights of access to information, participation and environmental justice, as a significant contribution to the participation of organized community committed to Sustainable Development". **Declaration of the first CELAC Summit, Santiago; January 27-28, 2013.**

"...The importance of implementing Principle 10 of the 1992 Rio Declaration at the Earth Summit, and reiterate the importance of advancing initiatives in this matter." They reiterated the right of citizens to participate in the formulation, implementation and monitoring of public policies."

Declaration of the CELAC-EU Summit, Santiago; January 26-27, 2013.

6) Baseline: ECLAC document: "Access to information, participation and justice in environmental matters in Latin America and the Caribbean: Situation, outlook and examples of good practice".

The second technical presentation under this theme provided an example of the practical implementation of the Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters (Aarhus Convention). Specific attention was placed in the conversation on the Aarhus Convention on the Compliance with the convention. In particular the role of the Compliance Committee which it was explained does not impose sanctions and is not confrontational. Consideration was also given to the ways in which the Compliance Committee can be triggered.

Advancing National Action and Capacity Development

A number of presentations were made under this theme. These included presentations on "Knowledge-Sharing for Principle 10 Capacity Development Initiatives in the Region," "Participatory Governance of Natural Resources in the Caribbean" and "Opportunities for Capacity Development support."

With respect to the Plan of Action to 2014 of the Declaration on Principle 10 in Latin America and the Caribbean, a number of activities were highlighted, including, inter alia,

- The establishment of the Work Group on capacity-building and cooperation for advancing the formulation of a Regional instrument open to all Member States, and the convening of meetings in October and November, 2013.
- The main objective.
 - The main objective of the working group is to make a proposal to intensify regional and international cooperation with regards to training and financing needs and operations, both for the public sector and for the public in general.
 - Actions To Be Taken
 - Review and analyse the ECLAC questionnaire and report;
 - Identify needs;
 - Compile a list of training resources available;
 - Prepare a proposal for the consideration of the Focal Points.

- Expected Outcome
 - Training and cooperation proposals and a list of opportunities in this connection.
- Establishment of Focal Points for the Declaration.
- Review and analysis of the ECLAC questionnaire and report.
- Consolidation of identified needs, available training resources and preparation of project proposals.

In terms of identifying opportunities, an overview was provided of the UNEP and UNITAR Principle 10 and Bali Guideline Capacity Development Initiative. This Initiative, consists of

- Series of regional workshops on P 10 and Bali Guidelines
- Bali Guideline Implementation Guide
- Global Joint Programme to Support National P10 Implementation
 - National Capacity Development and Legal Reform Projects
 - Global Support Services
- Engagement with countries in programme design
- Partnership with United Nations Development Partner (UNDP)
- Global programme document and joint fund-raising

Program Area 1

- Output 1: Fast Track Learning Support and Legal Advice
 - Skills development linked to institutional objectives
 - On demand legal analysis and advice
- Output 2: National Capacity Assessments and Strategy Development
 - National Principle 10 Profiles
 - Priority Setting Workshops
 - National Action Plan Development
 - Output 3: Principle 10 Implementation Action
 - Legal reform (e.g. support of regulation development)
 - Implementation action in key sectors/thematic areas (e.g. forestry, green economy)

Annex 1 – Agenda

Preliminary Program

Day 1:

9.00h – 9.40h: Welcome Remarks and Inauguration of the Workshop

- Alexander Juras, Chief of the Major Groups and Stakeholders Branch, Division of Regional Cooperation, United Nations Environment Programme (UNEP) (on behalf of UNEP and UNITAR)
- Diane Quarless, Director, Economic Commission for Latin America and the Caribbean (ECLAC) subregional headquarters for the Caribbean
- Carole Excell, Senior Associate, The Access Initiative, World Resources Institute (WRI)
- Hon. Dr. Bhoendradatt Tewarie, Minister, Ministry of Planning and Sustainable Development, Trinidad and Tobago (TBC)

9.40h – 10.30h: Workshop Objectives and Methodology and Introduction of Participants

- Achim Halpaap, Associate Director, Training Department, Head Environment Unit, UNITAR

10.30h – 10.45h: Coffee break

Session 1 : International and Regional Context of Principle 10

Objective: Provide an overview of Principle 10 relevant international and regional developments and related perspectives of governments and key stakeholders (1992 Rio Declaration, Bali Guidelines, Aarhus Convention, Principle 10 LAC Declaration)

10.45h – 12.30h: Panel discussion: Principle 10 of the Rio Declaration of 1992 within the context of implementation of the BPoA and MSI

- Presentation by Carlos de Miguel (ECLAC) and Mark Griffith (UNEP)
- Presentation by Hon. Justice Winston Anderson, Caribbean Court of Justice

Panellists:

Peter Mitchell, Socio-Economic Policy Planning Division, Ministry of Planning and Sustainable Development, Trinidad and Tobago

Danielle Andrade, Jamaica Environmental Trust

Peter A. Murray, Organization of Eastern Caribbean

- Open discussion

12.30h – 14.00h Lunch Break

Session 2 : Identifying Good Practices and Lessons in the Region

Objective: For the key pillars of Principle 10 - information, participation, justice - provide case

illustration, identify good practices and implementation challenges in countries in the region and introduce legal guidance contained in the Bali Guidelines

14h – 16.00: Theme 1: Access to Information

- Brief introduction to relevant provisions of the Bali Guidelines and the Bali Guideline Implementation Handbook (Stephen Stec)
- The Legal basis for access to information on environmental matters in the Caribbean (Carolle Excell, WRI)
- Open Discussion
- Working groups to identify good practices and implementation challenges , with the objective to define key elements of regional benchmarks

16.00h – 16.15h: Coffee break

16.15h – 18.00h Theme 2: Public Participation

- Brief introduction to relevant provisions of the Bali Guidelines (Stephen Stec)
- The legal basis for public participation in environmental matters in the Caribbean (Melinda Janki, Justice Institute Guyana)
- Open Discussion
- Working groups to identify good practices and implementation challenges, with the objective to define key elements of regional benchmarks

18.00h – 18.30h: Reporting to Plenary (Summary of Working Group Discussion, Theme 1 and Theme 2)

Day 2

Session 2 (cont.)

9.00h – 11.00h: Theme 3: Access to Justice

- Brief introduction to relevant provisions of the Bali Guidelines and the Rio + 20 Declaration on Justice, Governance and Law for Environmental Sustainability (Andrea Brusco, UNEP)
- The Legal basis for access to justice in environmental matters in the Caribbean and effective access to judicial and administrative proceedings, including redress and remedy judicial and administrative proceedings (Hon. Justice Winston Anderson, Caribbean Court of Justice)
- Open discussion
- Working groups to identify good practices and implementation challenges , with the objective to define key elements of regional benchmarks

11.00h – 11.15h Reporting in Plenary

11.15h – 11.30h: Coffee break

11.30h – 13.00: Theme 4: Regional Cooperation on Principle 10 implementation

- The LAC Principle 10 Declaration (Constance Nalegach, Government of Chile, President of the Presiding Officer of the Principle 10 Declaration)
- The Aarhus Convention: Experiences with a regional instrument in the ECE region (Theodore Koukis, Aarhus Convention Secretariat, UNECE)
- Open discussion

13.00h – 14.00h Lunch Break

Session 3: Advancing National Action and Capacity Development

Objective: Explore opportunities for national action and capacity development to effectively implement Principle 10 at the national level, addressing also regional synergies

14.00h – 15.45h Panel Discussion: Knowledge-sharing from Principle 10 Capacity Development Initiatives in the Region

Facilitator: Derrick Odersson

- Princess Gordon, focal point of the Government of Jamaica and coordinator of the working group on capacity building and cooperation , Principle 10 Declaration
- Loïza Rauzduel, CANARI, Trinidad and Tobago

- Open Discussion

16.00h – 17.30: National Implementation of the Bali Guidelines: Opportunities for Capacity Development Support (Achim Halpaap/UNITAR and Alexander Juras/UNEP)

- Presentation by UNITAR (Achim Halpaap)
- Questions and Answers

Session: 4: Conclusion and Follow-up Action

17.30h – 18.00h: Review key outcomes of the workshop discussion and identify recommendations for follow-up/Workshop Closure

- Open discussion in plenary
- Workshop evaluation
- Workshop closure

Annex 2 – List of Participants

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