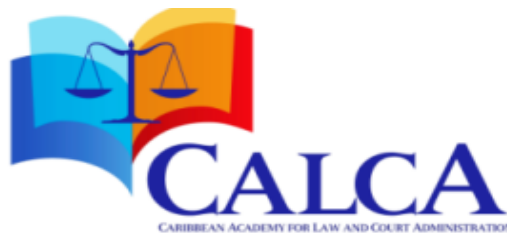


# CARIBBEAN REVIEW OF PRINCIPLE 10 DEVELOPMENTS

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

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

Mr. Justice Winston Anderson, JCCJ



# Objectives

- ▶ Session to provide an overview of Principle 10 developments since 1992 Rio Declaration
- ▶ This presentation to focus on developments with respect to Access Rights in the context of the Caribbean region
- ▶ Presentation limited to 15–20 minutes

# Access Rights in Port of Spain Accord

## 31 May – 2 June 1989

- ▶ First Meeting of the Caribbean Environment Ministers
- ▶ Adopted the Port of Spain Accord on Management and Conservation of the Caribbean Environment
- ▶ Recognized contribution of 1972 Stockholm Conference on the Environment
- ▶ Identified 14 priority areas for “urgent” action
- ▶ Strategic approaches to solution:
  - (a) “the promotion of public education and awareness at all levels in our societies to enhance respect the environment...”
  - (d) “the collection, management and dissemination of [environmental] information...”

# Access Rights in Port of Spain Consensus

## 27 February – 1 March 1991

- ▶ Caribbean Regional Economic Conference (social partners)
- ▶ Port of Spain Consensus adopted four central pillars for sustainable development including:
  - “Preservation and enhancement of the democratic traditions and processes, especially through the consultative involvement of all the social partners in policy formulation and implementation”
- ▶ Democratization and Social Partnership
  - “ The democratic process enshrines the right of all citizens to participate in the formulation of policies which affect them.”

# Caribbean Acceptance of Principle 10

- ▶ Part of G77 which helped formulate Rio Declaration
- ▶ Principle 10 formulated by the G77 and China and the EC. Developed countries preferred language spelling out 3 categories of access rights
- ▶ “Environmental issues are best handled with the participation of all concerned citizens, at the relevant level. At the national level, each individual shall have appropriate access to information concerning the environment that is held by public authorities... and the opportunity to participate in decision-making processes... Effective access to judicial and administrative proceedings, including redress and remedy shall be provided.”

# Nature of Access Rights

- ▶ Principle 10 uses the language of individual human rights in an environmental context
- ▶ The G77 had members that were uncomfortable with the rights language.
- ▶ Qualifications: participation is “at the relevant level”; individuals shall have “appropriate access to information”.
- ▶ US requested that access to information be limited to those held by “national authorities” (no right of citizens to access to information held by industry).

# Caribbean Acceptance of Principle 10 (Barbados Programme of Action)

- ▶ UN SIDS Conference, Barbados, 25 April – 6 May 1994
- ▶ Declaration of Barbados: reaffirmed principles & commitments in Rio Declaration and Agenda 21
- ▶ Specific reference to the need for increased public awareness and participation, and the involvement and participation of NGOs in relation to specific priority areas e.g., use of coastal and marine resources (paragraph 26 (vii)); planning and decision-making (paragraph 48).

# IMPLEMENTATION, MONITORING AND REVIEW OF BPOA

- ▶ **Information and participation**
- ▶ “81. Efforts should be made to increase the awareness and involvement of non-governmental organizations, women, local communities and other major groups in national planning, the development of environmentally sound and sustainable technologies, and the implementation of sustainable development programmes... [Including] establishing or strengthening networks for the dissemination of information to assist effective participation in the planning and implementation of sustainable development activities.”



# St George's Declaration of Principles for Environmental Sustainability in the OECS

- ▶ SGD signed by OECS Ministers of the Environment, April 2001
- ▶ Structured around 21 Principles (Revised 2006)
- ▶ Basically goals/targets to be implemented at the national level through the National Environmental Strategies (NEMS)
- ▶ Principle 4: Ensure meaningful participation by civil society in decision making
- ▶ Principle 5: Ensure meaningful participation by the private sector

# St. George's Declaration: Reporting and Review

- ▶ Principles 20, 21: Must prepare and submit to the OECS EC “each year” a report on progress made to implement the Declaration at the national level
- ▶ Countries to indicate extent to which “the perspectives, resources, and talents of the region’s peoples and institutions” have been incorporated in environmental management and decision making
  - Environmental education activities
  - Capacity building of non-governmental partners
  - Activities undertaken in implementing NEMS in support of the SGD and other regional and international agreements.

# Constitutional provisions on access for environmental rights

- ▶ Constitution of Guyana, Section 25
- ▶ “Every citizens has a duty to participate in activities intended to improve the environment and protect the health of the nation.”
- ▶ Compare
- ▶ Constitution of Ukraine (1996), Article 50:  
“Everyone is guaranteed the right of free access to information about the environmental situation . . .”
- ▶ Law on Information (1992) – criminal responsibility for withholding information (followed the Chernobyl nuclear incident)

# Freedom of Information Legislation

- ▶ Access to Information Act, 2002 (Jamaica)
- ▶ Freedom of Information Act, 1999) (Trinidad & Tobago).
- ▶ Freedom of Information Act, 1994 (Belize)
- ▶ Right in “every person” to obtain access to official documents held by public authorities, including all government ministries, agencies, statutory bodies, and others exercising governmental functions.
- ▶ There is a List of exempt documents

## Constitutional provisions on environmental rights

- ▶ 1980 Constitution of Guyana, (2003 Amendment), Article 149J
- ▶ 2007 British Virgin Islands Constitution, Article 29
- ▶ 2011 Jamaican Charter of Fundamental Rights and Freedoms (Constitutional Amendment) Act, Section 13(3)(I)
- ▶ 2011 Article 18 of the Cayman Islands Constitution Order, Article 18
- ▶ Activated by a constitutional motion? (may apply if rights are infringed or likely to be)

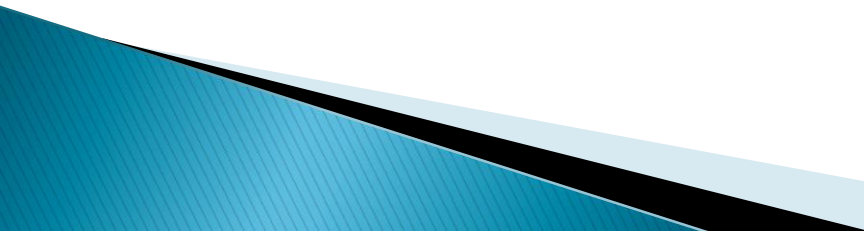
# Legislative Developments Relating to Principle 10

- ▶ Environmental Protection Act, No. 22 (1992), as amended by No. 2 (1998) (Belize)
- ▶ Environmental Protection Act, No. 11 (1996) (Guyana)
- ▶ Environmental Management Act, No. 3 (2000) (Trinidad and Tobago);
- ▶ The Physical Planning and Development Act No. 29, Ch. 5.12 (2001); No. 3, Ch. 5.12 (2005), St. Lucia
- ▶ The Physical Planning Act, No. 6 of 2003, Antigua and Barbuda

# Part IV, Environmental Management Act, (Trinidad and Tobago)

- ▶ EMA must compile information relating to the environment and preserve administrative records for not less than 45 days
- ▶ Appellate process enables persons to petition the EC that the EMA failed in its statutory duty
- ▶ Sect. 69 any party person may take a direct party action to institute a civil action in the EC claiming violations of environmental requirements in sect. 62
- ▶ Any person or group expressing a general interest in the environment “shall be deemed to have standing”.

# Judicial review legislation

- ▶ Administrative Justice Act No. 63 (1980), (Barbados) allows application for judicial review of government action by “any person if the Court is satisfied that that person’s application is justifiable in the public interest in the circumstances of the case.”
  - ▶ Judicial Review Act No. 60 (2000) (Trinidad and Tobago)
- 



# Developments involving the Caribbean judiciary

- ▶ Caribbean judges part of global fraternity of environmental judges
  - ▶ 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
- 

# The Johannesburg Principles, 2002

- ▶ We recall the principles adopted in the **Rio Declaration** on Environment and Development and affirm adherence to these principles which lay down the basic principles of sustainable development
- ▶ ...
- ▶ [We call for] improvement in the level of **public participation in environmental decision-making, access to justice** for the settlement of environmental disputes ... and public access to relevant information

# World Congress, Rio de Janeiro, 2012

- ▶ **Recalling** the importance of the first Global Judges Symposium convened by the United Nations, Johannesburg, 2002
- ▶ **We recognize** that environmental laws and policies ... should be ... predicated on:
  - (b) **public participation** in decision-making, and access to justice and information, in accordance with Principle 10 of the Rio Declaration, including exploring the potential value of borrowing provisions from the Aarhus Convention in this regard;

# Judicial explication of the Benefits of public participation

- ▶ *Talisman (Trinidad) Petroleum Ltd. v. EMA* (2002) (Trinidad & Tobago)
- ▶ Justice Hosein (pp. 19–20)
- ▶ 1. improves the understanding of issues among all parties;
- ▶ 2. finds common ground and determines whether agreement can be reached on some of the issues;
- ▶ 3. highlights trade-offs that must be addressed in reaching decisions; and
- ▶ 4. improves the general understanding of the problems associated with a project, as well as the overall decision-making process.

# Thank you!



- ▶ Mr. Justice Winston Anderson, JCCJ©