

# THIRD MEETING OF THE FOCAL POINTS APPOINTED BY GOVERNMENTS SIGNATORY TO PRINCIPLE 10

“Access rights and international processes:  
Caribbean Perspectives”

LIMA, PERU  
30–31 October 2013

Mr. Justice Winston Anderson  
Caribbean Court of Justice  
Trinidad and Tobago




# Wider Caribbean – UNEP's CEP



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



# International legal processes and Caribbean law

- ▶ Environmental Treaties have no legal force within Caribbean law unless and until they have been incorporated by passage of domestic legislation by the Legislature:  
*Council of Civil Service Union v Minister for Civil Service* [1985] AC 374
  - ▶ Customary international law apply as common law : *Trendtex Trading Corp v Central Bank of Nigeria*, [1977] 2 WLR 356
- 

# Dualism and environmental treaties

- ▶ *Acting Chief of Police v Bryan* (1985) 36 WIR 207) (High Court of BVI) [fishing agreement]
- ▶ *Seafood and Ting v NRCA* (1999) (Court of Appeal of Jamaica) [CITES]
  - Winston Anderson, “Implementing MEAs in the Caribbean: Hard Lessons from Seafood and Ting” [2001] Vol. 10 No. 2 *Review of European Community and International Environmental Law* 227
- ▶ *Talisman (Trinidad) Petroleum Ltd., v The Environmental Management Authority* (No. EA3 of 2002) [Ramsar]




▶ Recent jurisprudence by CCJ



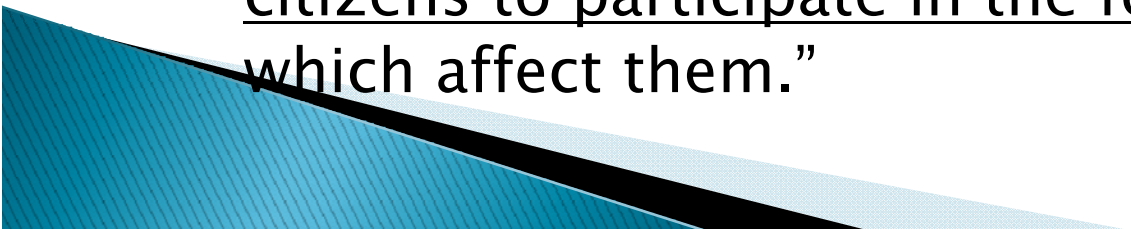
# Access Rights in Port of Spain Accord

## 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:
  - ▶ Affirmed Port of Spain Accord
  - ▶ Adopted 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”
    - “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 (along with China & EC)
- ▶ Developed countries preferred language spelling out 3 categories of access rights to:
  - environmental information
  - participate in decision-making

judicial and administrative proceedings







# Nature of Access Rights

- ▶ Principle 10 uses the language of individual human rights in an environmental context
  - ▶ Some G77 members were uncomfortable with the rights language and softened the language
  - ▶ “... participation of all citizens *at the relevant level...*”
  - ▶ “...*appropriate* access to information concerning the environment ... *held by national authorities..*”  
“... *opportunity* to participate in decision-making...”
  - ▶ “... states shall *facilitate and encourage* public awareness and participation...”
- 


# 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)
  - ▶ Goals/targets to be implemented at the national level through the National Environmental Management 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 SGD 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.
- 

# Int'l policy & Caribbean treaty-law

- ▶ Article 24, Revised Treaty of Basseterre 2010
  - ▶ Obliges OECS Member States to implement the SGD
  - ▶ MS agree to (a) work individually and jointly (b) to incorporate the objectives, perspectives, resources, knowledge and talents of all of society in environmental management
  - ▶ *Attorney-General v Boyce & Joseph* 2008 (CCJ)
  - ▶ *British Caribbean Bank v Attorney-General of Belize* 2013 (CCJ)
- 
- ▶ Revised Treaty of Chaguaramas 2001
  - ▶ Establishes CARICOM and CSME
  - ▶ Balances trade and environment (WTO)
  - ▶ Community organs to have regard to environment
  - ▶ Article 222 Action
- 



# 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)
- 

## : Constitutional provisions relevant to P 10

- ▶ 1980 Constitution of Guyana, (2003 Amendment), Article 149J
- ▶ 2007 British Virgin Islands Constitution, Art 29
- ▶ 2011 Jamaica Charter of Fundamental Rights & Freedoms (Const. Amendment) Act, S. 13(3)(I)
- ▶ 2011 Article 18 of the Cayman Islands Constitution Order, Article 18
- ▶ A constitutional motion: (application if rights infringed or likely to be)
- ▶ *Virgin Islands Environmental Council v. Attorney General* 2007] No. BVIHCV2007/0185, [2007] No. BVIHCV2007/0185 at pp. 145–47 (British Virgin Islands Supreme Court).




# Legislative Developments and P10: Freedom of Information Legislation

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

# Legislative Developments and P10: some environmental statutes

- ▶ 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 of 2001 & No. 3 of 2005 (St. Lucia)
  - ▶ The Physical Planning Act, No. 6 of 2003 (Antigua and Barbuda)
- 

## Part IV, Environmental Management Act, 2000 (Trinidad and Tobago)

- ▶ EMA must compile information relating to the environment and preserve administrative records for not less than 45 days; public has access
  - ▶ 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”.
- 

# Proceedings for judicial review

- ▶ *Spencer v. Canzone Del Mare Ltd. and Attorney General* (1993) H.C. 1 (Antigua & Barbuda)
- ▶ *Scotland District Association Inc. v. Attorney-General of Barbados* (1996) 53 W.I.R. 66 (C.A.)
- ▶ Administrative Justice Act No. 63 (1980), (Barbados)
- ▶ Judicial Review Act No. 60 (2000) (Trinidad and Tobago)
- ▶ *Belize Alliance of Conservation NGOs v. The Dep't of the Environment (No. 2)* (2004) 64 W.I.R. 68
- ▶ *Northern Jamaica Conservation Authority v. NRCA and NEPA (No. 1)* .M. (2006) J.M. S.C. 49



# Capacity building and 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
- ▶ 2014 – OAS?



## 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;



# Caribbean judicial explanation 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.
- 

# Final thoughts

- ▶ *Principle 10 and the Caribbean:*
  - ▶ International and transnational dimensions
  - ▶ Human rights discourse
  - ▶ Economic development
  - ▶ Capacity-building
  - ▶ Reporting obligations (linkages with other reporting responsibilities?)
- 
- A decorative graphic element in the bottom-left corner consisting of overlapping blue and black geometric shapes, including a triangle and a parallelogram.

# Thank you!



- ▶ Mr. Justice Winston Anderson, JCCJ©