



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

1.0. 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 and others 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.

2.0. 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

3.0. **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)

4.0. **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, World Resources Institute, The Access Initiative. (The list of Participants is attached at Annex 2)

5.0. **Summary of Substantive Presentations and Conclusions**

5.1. **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.

5.2. 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 don't 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

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