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# MOVING FROM PRINCIPLES TO RIGHTS: RIO 2012 AND ACCESS TO INFORMATION, PUBLIC PARTICIPATION, AND JUSTICE\*

by David Banisar, Sejal Parmar, Lalanath de Silva, and Carole Excell\*\*

In the 1992 Rio Declaration on Environment and Development (“Rio Declaration”), the international community recognized that sustainable development depends upon good governance.<sup>1</sup> Principle 10 of the Rio Declaration sets out the fundamental elements for good environmental governance in three “access rights”: 1) access to information, 2) public participation, and 3) access to justice.<sup>2</sup> This principle is based on the experience that, where governmental decision-making fails to include these essential tenets of access, the outcomes are more likely to be environmentally damaging, developmentally unsustainable, and socially unjust.<sup>3</sup>

Access rights facilitate more transparent, inclusive, and accountable decision-making in matters affecting the environment and development. Access to information empowers and motivates people to participate in an informed and meaningful manner. Participatory decision-making enhances the ability of governments to respond to public concerns and demands, to build consensus, and to improve acceptance of and compliance with environmental decisions because citizens feel ownership over these decisions. Access to justice facilitates the public’s ability to enforce their right to participate, to be informed, and to hold regulators and polluters accountable for environmental harm.

The access rights in the Rio Declaration have been widely recognized across the world. However, much work remains to ensure that these rights are truly available to empower societies. Commitments made by governments to the principles of good governance under the Rio Declaration,<sup>4</sup> Agenda 21,<sup>5</sup> and the Johannesburg Plan of Implementation<sup>6</sup> need to be strengthened, monitored, and reported upon. Governments that have not already done so must establish legal rights to access to information, public participation, and justice. Finally, all governments must demonstrate their support for the protection of these rights. Once access rights are established, governments and civil society need to focus on developing the capacity to operationalize these rights and make them meaningful for the communities they are intended to support.<sup>7</sup>

The outcome of the United Nations Conference on Sustainable Development (“UNCSD,” also known as the “Rio 2012 Summit” or “Rio 2012”) must include an affirmation of these fundamental access rights and that substantial efforts must be made to establish them and make them enforceable in all countries. At a minimum, national governments must commit to the full implementation of access rights as national law, ensure intergovernmental organizations and institutions incorporate these rights into their own regulation and practices, and develop

international and regional mechanisms to monitor the implementation of these practices. New international instruments are necessary to ensure that these access rights are truly available to everyone.

## THE RIO 2012 PROCESS AND PRINCIPLE 10

The Rio 2012 Summit follows up on the 1992 Earth Summit. The stated purpose of the Rio 2012 Summit is to “secure renewed political commitment for sustainable development, assessing the progress to date and the remaining gaps in the implementation of the outcomes of the major summits on sustainable development and addressing new and emerging challenges.”<sup>8</sup> Within that purpose, there are two specific themes: 1) a green economy in the context of sustainable development and poverty eradication, and 2) the institutional framework for sustainable development.<sup>9</sup>

Although visionary, these themes have been discussed in isolation of each other when they should be considered together. Furthermore, current discussions lack the specificity of what reforms are needed to achieve these objectives, who needs to be involved in decision-making, and how the objectives will be achieved. As UN Secretary General Ban Ki-moon notes, the goals represented by these themes are interdependent, as “improved institutions are crucial to favourable social outcomes of green economy policies.”<sup>10</sup> He calls upon governments to do more to “build on progress made to promote transparency and accountability through access to information and stakeholder involvement in decision-making.”<sup>11</sup> A fruitful approach would be to consider both themes in conjunction with the larger objective of securing political commitments for sustainable development. Finally, both agenda items need to be discussed in light of the principles of transparency, public participation, and accountability. Without these basic changes, the current economic paradigm will prevail, supported by institutions and interest groups that have benefited from restricting citizen access.

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## THE GREEN ECONOMY

There has been an extensive debate around defining the “green economy” and its scope. Some agree that, at the national level, greening the economy will include improving fiscal policy reform, reducing environmentally harmful subsidies, employing new market-based instruments, and targeting public investments to “green” key sectors. However, there has been almost no discussion on the role of citizens and on access rights as an important facet of creating this new economic model.

We should no longer ignore the role citizens must play in determining the success or failure of a global green economy. Ensuring that policies meet their intended aims of economic and environmental sustainability, as well as social equity, requires broad support from empowered civil society actors and a well-informed and engaged public that includes voters, consumers, and shareholders. Disseminating information about what a green economy specifically means for society is essential to motivating social actors’ involvement in the decision-making process. To achieve this broad participation, governments must establish infrastructure for access to this type of information and ensure public participation, with the media acting as a neutral messenger. Without a fundamental shift in the power of interest groups, greening the economy will remain a game of catch up as innovation and industry move ahead without regard to the social and environmental costs.

### REFORMING INSTITUTIONS AT THE INTERNATIONAL AND NATIONAL LEVELS

Meanwhile, discussions of strengthening the institutional framework for sustainable development have focused on international environmental governance (“IEG”). The Nairobi-Helsinki Outcome Document proposes a reform agenda for institutions such as the UN Environmental Programme (“UNEP”), the UN Commission on Sustainable Development (“UNCSD”), and the Economic and Social Council.<sup>12</sup> A second tier of concerns under this theme addresses the fragmentation of Multilateral Environmental Agreements (“MEAs”), funding mechanisms, and Secretariats.<sup>13</sup>

Currently, there are limited and inadequate mechanisms for access to information held by UN bodies, especially relating to trade.<sup>14</sup> There has been more significant progress with the World Bank and International Financial Institutions (“IFIs”).<sup>15</sup> However, current deliberations before the UNCSD have failed to deliver a visionary approach to the creation of a new international environmental governance system that includes mechanisms for accountability.<sup>16</sup> Within the IEG discussions there has been insufficient emphasis on the need to make these international institutions and governments themselves more transparent and accountable to the citizens they are intended to serve.<sup>17</sup>

At the same time, there has also been little effort toward reviewing and reforming national institutions. While international institutions have critical roles in formulating and coordinating policy on international environmental governance, their reform will have little impact on those national level institutions

where citizens are still struggling to participate in decisions affecting their environment.

The Nairobi-Helsinki Outcome Document, for example, does not make any mention of compliance mechanisms to ensure implementation and monitoring of Multilateral Environmental Agreements and environment obligations by citizens.<sup>18</sup> This is a glaring omission. Without mechanisms to ensure a means of government accountability, governments may continue to fail to fulfill their obligations under international environmental law. Possible mechanisms for consideration include:

- Peer review. Since 1992 the Organization for Economic Co-operation and Development (“OECD”) Group on Environmental Performance (“GEP”) has developed and implemented a process to conduct reviews of the environmental performance of OECD member countries with respect to both domestic policy objectives and international commitments.<sup>19</sup>
- Independent evaluation and complaint mechanisms. The North American Commission for Environmental Cooperation has taken a multi-pronged approach to promoting environmental enforcement and compliance.<sup>20</sup> Central to the agreement is a commitment by the parties to effective enforcement of their respective environmental laws, reinforced by two formal procedures: 1) a procedure for citizen submissions asserting ineffective enforcement by a party, to which the secretariat may respond by requesting a response from the party and developing a factual record, and 2) a procedure for claims by a party that another party exhibits a persistent pattern of failure to effectively enforce its environmental law.
- Dispute resolution processes. Under the Kyoto Protocol, states are considering a procedure that would give private investors a right to appeal decisions by the Clean Development Mechanism that go against their interest, and under the World Bank Inspection Panel affected citizens can trigger inspections of alleged failures of the Bank to follow its own policies.<sup>21</sup> Finally, under the WTO dispute settlement process, and under several bilateral investment agreements, civil society organisations have been allowed to submit amicus curiae briefs to influence the outcome of decisions.<sup>22</sup>

In his background paper for Ministerial consultations at the 26<sup>th</sup> session of the Global Ministerial Environmental Forum, Executive Director of UNEP Achim Steiner noted that to deal with the accountability challenge, it would be necessary to make review a key function of the Global Ministerial Environment Forum.<sup>23</sup> He also emphasized the implementation of independent third-party reviews and performance monitoring, the creation of incentives for performance and early action, and the establishment of a global version of the Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters.<sup>24</sup> Thus, IEG discussions need to move away from the current negotiations and refocus on areas that can engender greater transparency and accountability, acknowledging achievements and compliance

with international commitments, and also acknowledging where capacity and political will have been lacking.

### PROGRESS TO DATE ON PRINCIPLE 10

The 1992 Rio Declaration has seen mixed success on the global level in the area of access rights.<sup>25</sup> Unlike many other areas in the Declaration, no global legal instrument — such as a treaty or convention — on access rights in the environment has been developed. It is only recently, mostly in the context of the Rio 2012 process, that this has even been discussed.<sup>26</sup>

UN bodies have also been slow in addressing the issue. In 2010, after nearly twenty years, the UNEP Governing Council finally adopted guidelines (“the Bali Guidelines”) on how governments should develop national laws in relation to Principle 10.<sup>27</sup> The guidelines are intended to assist national governments by “promoting the effective implementation of their commitments to Principle 10 of the 1992 Rio Declaration on Environment and Development within the framework of their national legislation and processes.”<sup>28</sup> However, the guidelines are largely unknown and while there are commitments by UNEP and other bodies to provide assistance and training, the efforts appear currently to be on a very small scale.

The efforts of the UN Economic Commission for Europe (“UNECE”) have been more successful. The UNECE has adopted two ground-breaking treaties based on the Declaration.<sup>29</sup> Of primary interest to this paper, the Declaration was the starting point for development of the first legally binding international treaty on access rights — the 1998 Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters (commonly known as the “Aarhus Convention”). The Aarhus Convention places ratifying nations under a series of important obligations including collecting information held by private bodies and requiring public bodies to affirmatively make information available to the public, respond to requests, and provide strong rights of appeal.<sup>30</sup> It also established rules for public participation, appeals, and access to justice measures.

Additionally, the Aarhus Convention requires that signatories “promote the application of the principles of this Convention in international environmental decision-making processes and within the framework of international organisations in matters relating to the environment.”<sup>31</sup> UN Secretary General Kofi Annan described it as “the most ambitious venture in the area of environmental democracy so far undertaken under the auspices of the United Nations.”

As of November 2011, the Aarhus Convention has been

ratified by forty-five countries from Western Europe to Central Asia and has been incorporated into EU law through a directive. The Compliance Committee has now heard over fifty cases, nearly all filed by the public or civil society organisations.<sup>32</sup> In 2003, a follow-up instrument to the Aarhus Convention, the Kiev Protocol on Pollutant Release and Transfer Registers, was adopted.<sup>33</sup> This Protocol holds corporations accountable for disclosing information on the toxins they release into the environment, and has been ratified by twenty-six countries.<sup>34</sup>

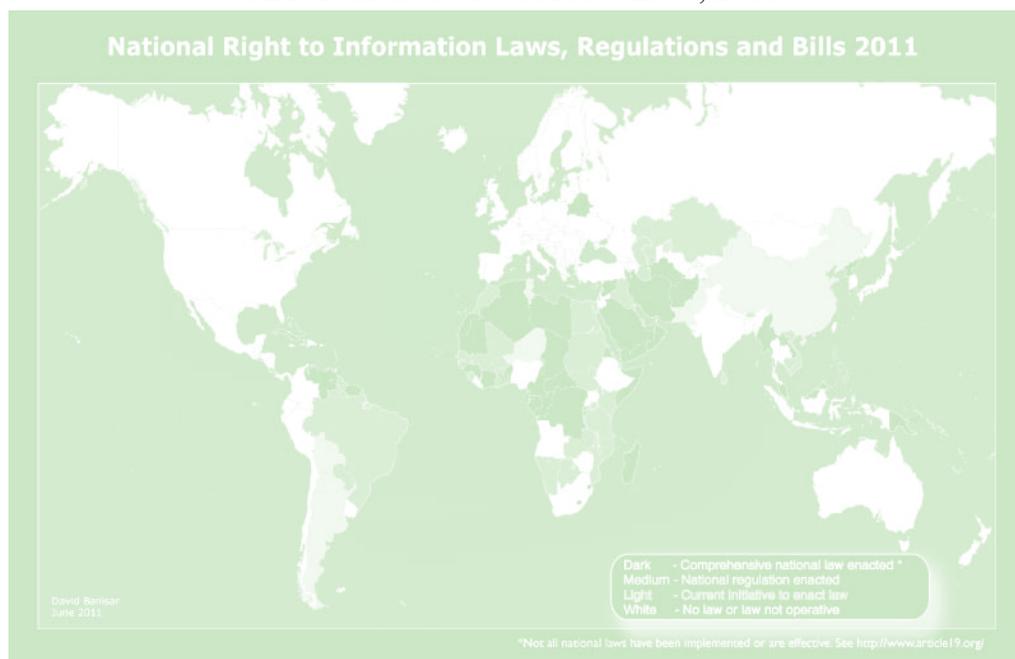
In addition to the Aarhus Convention, Principles 17 and 19 of the Rio Declaration also resulted in the creation of the 1991 UNECE Convention on Environmental Impact Assessment in a Transboundary Context (“Espoo EIA Convention”).<sup>35</sup> This convention creates requirements for state parties to assess the environmental impact of major projects early on and to notify other countries when the project will have a transborder effect.<sup>36</sup> It has been signed by forty-five countries and ratified by thirty countries.<sup>37</sup>

### ACCESS TO INFORMATION

Sustainable development relies on accurate information on a range of environmental matters, including those related to the green economy and climate change. Disclosure of information is therefore clearly in the public interest and serves to enhance the effectiveness of sustainable development programmes.

Since the 1992 Rio Earth Summit, there has been a dramatic increase in recognition of the right to access information by nations. Over ninety countries have adopted framework laws or regulations for access to information, including in the past few years China, Indonesia, Nigeria, Chile and Mongolia.<sup>38</sup> Over eighty countries have the right to information enshrined in their constitutions.<sup>39</sup> Many others including Brazil have adopted specific environmental information access statutes or provisions in general environmental protection laws.<sup>40</sup>

MAP 1: RIGHT TO INFORMATION LAWS, 2011.



As the map above shows, there are significant disparities between regions. While most of the nations of Europe, the Americas, and a significant portion of Asia have the laws in place, individuals in most Middle Eastern, African, Pacific, and Caribbean countries do not yet have this right incorporated into national law. Furthermore, practice lags behind laws in the majority of these countries. Causes for this gap vary, including lack of detailed administrative rules and operational policies, inadequate public capacity to use the laws, and insufficient official capacity to implement laws.

Another positive trend with respect to access to information is the increased adoption of Pollutant Release and Transfer Registers (“PRTR”s), which require governments to collect information on pollution releases and make that information publicly available through databases. PRTRs have been shown to be one of the most effective means of getting pollutant related information out to the public while simultaneously reducing pollution.<sup>41</sup> There has been a steady increase of countries providing registers and it is estimated that the number of national registers is likely to double over the next ten years.<sup>42</sup> There are now single registers covering all of North America<sup>43</sup> and Western Europe.<sup>44</sup>

Outside of these successes, however, there are many gaps remaining for access to information. These include:

- Populations are still being denied access to essential information about climate change and the environment.<sup>45</sup> Denial of access to information stems largely from the absence of freedom of information legislation and the institutional secrecy of numerous state authorities, coupled with legislation in place preventing access to information, including state secret laws, national security laws, and anti-terrorism legislation.<sup>46</sup>
- Globally, few laws exist that require governments to proactively release environmental information, including basic information on air quality and drinking water quality.<sup>47</sup> Meaningful access to environmental information requires governments to proactively gather, analyse, and disseminate this information.<sup>48</sup> Where databases exist at the international level, there are no requirements that this information is disclosed to the public.
- Many countries performed poorly in providing environmental information during and after emergencies.<sup>49</sup> Mandates to produce and disseminate such information are generally weak despite recent international disasters.<sup>50</sup>
- Few countries make attempts to publicize the results of environmental reports through the mass media or in a usable format.<sup>51</sup>

## PUBLIC PARTICIPATION

Progress on public participation is more complex to assess at the policy, planning, and project levels. In many countries, planning processes are now designed to ensure that the public has procedural rights to intervene and to ensure that public bodies have a duty to take this into account when making their decisions. One key aspect of this area is Environmental Impact Assessments (“EIAs”), which require the assessing of the

environmental and social impact of projects prior to their approval. There has also been a substantial up-take of laws requiring Environmental Impact Assessments in recent years. Currently, over 120 countries have adopted legal provisions on EIAs.<sup>52</sup>

However, in practice, there are many gaps remaining in public participation.<sup>53</sup> These gaps include:

- Public participation has not been fully incorporated at the project level through EIA procedures in many countries. Often there are hurdles to meaningful participation, including insufficient lead-time or unavailable project documents, even where there are open participatory processes in place. Consultation is often held too late in the project development cycle to make a significant difference in project design or selecting outcomes.
- Framework public participation laws are still new to many governments despite progress in their adoption in a number of countries, e.g. Thailand and Indonesia.
- Implementation of EIA processes has also been criticized as weak. Often sequencing of EIA and permitting processes excludes participation in the scoping and screening exercise, as well as in the determination of permit conditions. In some countries, copies of EIAs are only provided to citizens at a substantial cost, while restrictions to access based on claims of commercial confidentiality are evident in other countries.
- Conflicts of interest in the public hearing process, the technical nature of EIAs, access to non-technical summaries in local languages, and claims of lack of independence of systems to develop and review EIAs are also evident.

At a higher level, Strategic Environmental Assessments (“SEAs”) are a mechanism for incorporating environmental considerations into policies, plans, and programmes. The World Bank describes SEAs as “including mechanisms for evaluating the environmental consequences of policy, planning, or program initiatives in order to ensure that they are appropriately addressed in decision making on par with economic and social considerations.”<sup>54</sup> The strengths of SEAs include a general availability of documents relating to proposed policies. A recent EU directive attempted to require that all EU member states incorporate SEAs into national law.<sup>55</sup> SEAs have also been incorporated within national legislation in a number of countries in Latin America and the Southeast Asia region.<sup>56</sup>

## ACCESS TO JUSTICE

The access to justice pillar of the Aarhus Convention is arguably an area that has experienced the least improvement. Increasingly, countries have created or enhanced environmental courts and tribunals with specialized functions.<sup>57</sup> In 2010, there were over 300 environmental courts and tribunals in 41 countries.<sup>58</sup> Recently, India established a Green Tribunal and Malawi created an Environmental Tribunal.<sup>59</sup>

However, there remain many bumps in the road to improving access to justice. Issues of timeliness,<sup>60</sup> intimidation, and costs should be highlighted. The risk of seeking injunctive relief is also significant. There are improvements in many countries in

which the rules for legal standing have been relaxed.<sup>61</sup> However, there are still concerns about legal standing in regional legislative processes such as planning.

### CAPACITY BUILDING AND THE MEDIA

Legal mandates are insufficient to ensure the implementation of access rights. Governments need the infrastructure and capacity to *supply* access. Additionally, public and civil society organisations must have the ability to *demand* access and participate. Government officials need knowledge of the legal framework and officials must possess practical skills and financial resources for access across all relevant ministries. To address the needs of indigenous peoples, vulnerable communities, and the poor, governments must be innovative in how they provide and disseminate access to information.<sup>62</sup> These communities in particular continue to be excluded from decision-making, and specific entitlements are needed to facilitate their participation and achieve inclusiveness.<sup>63</sup>

In addition, a free and independent media plays a key role in increasing awareness of environmental protection and sustainable development to those most likely to be effected by these policies. Article 19 of the Universal Declaration of Human Rights declares that everyone has the right to freedom of opinion and expression. This right includes freedom to hold opinions without interference and to seek, receive, and impart information and ideas through any media and regardless of frontiers.<sup>64</sup> Information access effects how and what media covers. With legal protections, a free and independent media can monitor and strengthen the transparent and accountable delivery of funds for environmental goals on a diverse range of issues including climate change, protected areas, species endangerment, and protection of coastal resources. An effective, free, and independent media translates complex information into meaningful, understandable, and actionable formats for public consumption. Media facilitates discussion and debate between citizens and officials about sustainable development and green policies. The media has the ability to relay back key messages from affected communities to officials.

Furthermore, media plays a key role in disaster mitigation through advanced warning systems.<sup>65</sup> Indeed, in many areas affected by natural or other disasters, the mass media are the only means by which crucial information is quickly and widely disseminated.<sup>66</sup> In order to be able to perform this role, the media must be able to access accurate and timely information from credible sources. Local media outlets, including community radios, newspapers, and even television services, have a central role to play not only in disseminating information from official sources but also in ensuring an effective two-way flow of information underpinning effective participation.

### HOW RIO 2012 COULD STRENGTHEN PRINCIPLE 10

There is a compelling need to ensure that Principle 10 of the UN Global Compact is fully implemented in all countries. While UNEP made some progress in 2010 with the adoption of Bali Guidelines on national legislation discussed above,<sup>67</sup> this

development is not sufficient by itself. Bolder action involving the development of new and revised international instruments to promote Principle 10 is needed.

There are a number of approaches at the international level that should be considered to strengthen Principle 10. These approaches are not exclusive but rather complementary and should be considered as part of a package that can be advanced simultaneously:

**1. A New Global Convention on Principle 10:** Drafting and adopting a new, global, legally binding instrument incorporating the access rights of Principle 10, is the most far-reaching option. Such an instrument would be a global platform to engage worldwide discussion on the subject of access rights, as has been done for other environmental issues. It could also ensure that Principle 10 is uniformly adopted worldwide. However, there are a number of challenges associated with the development of a global legally binding instrument such as a convention on access rights. The proposal of such an instrument may encounter resistance from some states and there is a risk that such an initiative would lead to the adoption of minimal standards. Considerable development time would likely be necessary. Finally, there may be difficulties regarding how such an instrument would affect parties to the Aarhus Convention.

**2. Regional Principle 10 Conventions:** A more scaled down approach would focus on the development of new, regional, legally binding instruments similar to the UNECE Aarhus Convention. This approach has the potential to encourage greater involvement of all countries in each region during development of the regional instrument's text. This would differ to the development process of an international agreement, which would limit discussion to major countries. As such, a regional approach would provide the opportunity to take account of regional specificities and create a sense of regional ownership. In addition, countries within a region often share common political, cultural and linguistic ties, potentially simplifying the negotiations and making it easier to reach consensus. Finally, regional conventions would likely strengthen existing regional institutions and processes to reduce resource constraints.

**3. Opening Up the UNECE Convention to All States:** The last option is to encourage accession to the Aarhus Convention by states outside the UNECE region.<sup>68</sup> The Treaty is well respected and has a functioning oversight system, and has already been ratified by 44 countries.<sup>69</sup> However, no states outside the UNECE region have acceded to it. There are political and practical obstacles to accession including the procedure for accession itself and reticence from many governments towards adopting a treaty viewed as "European-centric."

Considering these three options, the best way to strengthen Principle 10 is to begin the process of negotiating regional and sub-regional instruments using the UNECE Aarhus Convention as a model. This approach is guided by a pragmatic belief that a new global convention would be too slow to develop and

is likely to be substantially watered down in the process. The Aarhus Convention has been recognized as a model that should be considered for other regions.<sup>70</sup> However since its adoption in 1998, no other nation outside the UNECE region has signed it. This suggests it is not likely to significantly expand in terms of accession without substantial incentives, which have not yet been forthcoming.

There are risks to a regional and sub-regional approach — some regions may be unlikely to adopt legally binding instruments at the regional level in the foreseeable future. However, the possibility for progress toward agreement on their merits, drafting, and adoption at the sub-regional level remains. The development of regional treaties could further strengthen efforts to create a global instrument in the future as has happened in the field of anti-corruption.<sup>71</sup>

### OPPORTUNITIES IN LATIN AMERICA

Latin America and the Caribbean region are ideal candidates for implementation of a regional approach. In both regions there has been a normative convergence around Principle 10. There have been relevant developments in various areas:

- **Regional Support.** The Declaration of Santa Cruz +10 reaffirmed the commitment of the members of the Organisation of American States (“OAS”) to Principle 10 as well as the importance of public participation in sustainable development decision-making.<sup>72</sup> The Inter American Court of Human Rights recognizes the right of citizens in the region to have access to information and participate in decisions that affect their rights,<sup>73</sup> while the OAS Secretariat recently released a Model Law on Access to Information.<sup>74</sup>
- **Free trade agreements.** Such agreements between several North and South American states recognize the importance of environmental assessments and the need to harmonize environmental regulations and standards.<sup>75</sup> The Central American Commission on Environment and Development (“CACED”) along with the UN Institute for Training and Research developed tools for a national strategy to guarantee access rights in Nicaragua, Honduras, and the Dominican Republic. ECLAC proposed activities in its 2011 programme of work to help states implement Principle 10.
- **National Developments.** A number of countries in the region have already adopted laws improving access rights including Chile, Jamaica, Peru, and Mexico, while Brazil is currently about to adopt one.<sup>76</sup> Jamaica has just undergone an extensive review of its Access to Information Law to improve implementation, proactive disclosure, and development of a mandated public interest test.<sup>77</sup> Mexico has one of the most advanced access to information regulatory systems, with one of the most effective oversight and enforcement agencies in the world, and has developed its own pollutant release and transfer register.<sup>78</sup> Some countries have increased their efforts to promote public participation. For example, Chile is in the process of revising environmental impact regulations that will take public participation to the next level — to proactively include poor

and marginalized groups in decision-making by requiring proponents of projects and the government to adapt their strategies of information dissemination and to adopt methods of citizen participation that take into account the social, economic, cultural, and geographic characteristics of the affected population.<sup>79</sup> Draft regulations require making special efforts to adapt procedures, taking into account vulnerable and geographically/territorially isolated communities, indigenous communities or those with ethnic minorities, and communities with a low educational level.<sup>80</sup> What is particularly exciting about this new draft regulation is that it is the first time a Latin American country has brought the notion of environmental justice in public participation into standard practice within the framework of a law. And last, Brazil leads the way with innovative strengthening of the justice system to provide relief for environmental harms through public prosecutors and environmental courts.

### CONCLUSION AND RECOMMENDATIONS

Experience and research have demonstrated that freedom of expression, access rights (including access to information, public participation, and access to justice), transparency, and civic engagement are fundamental to sustainable development and achieving the Rio Principles. While there has been significant progress over the past twenty years, billions of people around the world still do not have these rights.

If Rio 2012 is to be successful and bring the world closer to building a green economy and ensuring sustainable development, these fundamental principles must be at the heart of the *Outcome Document* and consecutive commitments by governments to advance Principle 10 at the international, regional, and national levels.

This article offers four key recommendations. First, all states should codify Principle 10 of the Rio Declaration in their national laws and commit to improve their laws, institutions, and practices for implementation of Principle 10. Particularly states should establish a legal and regulatory framework to protect freedom of expression, freedom of information, freedom of association, freedom of assembly, access to administrative and judicial remedies, and political freedom. This legal regulatory framework should also enshrine principles of maximum and proactive disclosure of environmental and green economy information as well as the right to broadly participate in environmental and natural resource decision-making. The media, civil society groups, scientists, and members of the general public must not be hindered in their efforts to gain access to information on development and environmental issues and to report and express their opinions. Whistleblowers, especially those reporting environmental hazards, must be afforded adequate legal protection. Further, all obstacles preventing people living in poverty, vulnerable groups (such as women and minorities) and indigenous peoples from accessing information on development and environmental policies must be removed. Proactive measures must also be taken to promote these groups’ participation in the design and execution of development strategies.

Second, the Rio 2012 *Outcome Document* should call for new international instruments to provide global and regional standards for, and oversight of, the implementation of Principle 10 into national law. This would include a resolution by all member states mandating UN regional bodies in Asia, Africa and Latin America and the Caribbean, as well as UNEP regional offices and other regional bodies to take steps to negotiate and conclude legally binding regional or sub-regional conventions modelled on the UNEP Principle 10 Guidelines. The Aarhus Convention Secretariat should intensify its efforts to convince governments in other regions of the world to either adopt the Convention or take it as a model for regional or sub-regional efforts.

Third, the Rio 2012 *Outcome Document* should include a commitment by all international organisations and agencies working on sustainable development to codify Principle 10 of the Rio Declaration in their rules and procedures, including by proactively disclosing information, providing for the

participation of civil society in their decision-making processes, and establishing redress mechanisms for individuals affected by their policies and activities. International financial institutions should adopt comprehensive standards as proposed by the Global Transparency Initiative.

Fourth, the Rio 2012 *Outcome Document* should include specific and time measured information regarding the implementation of the Bali Guidelines recently adopted by the UNEP Governing Council. This programme should identify target countries and specify long term funding sources as well as a timetable for UNEP to provide assistance to developing countries to bring their laws, institutions, and practices in line with the Guidelines. The programme should include capacity building programmes, opportunities for mentoring of public officials, and mechanisms for civil society organisations to share experiences on the development of new legal instruments to create and implement access rights. 

## Endnotes: Moving from Principles to Rights: Rio 2012 and Access to Information, Public Participation, and Justice

<sup>1</sup> In addition to Principle 10, the Rio Declaration Principle 11 asserts that States should “enact effective environmental legislation.” Principle 15 speaks about the precautionary principle. Principle 17 states that “[e]nvironmental impact assessment[s] are a national instrument” and should “be undertaken for proposed activities that are likely to have a significant adverse impact on the environment and are subject to a decision of a competent national authority.” Principles 20 and 22 recognize that women and indigenous people play a vital role in environmental management and that their participation is essential to achieve sustainable development. United Nations Conference on Environment and Development, Rio de Janeiro, Braz., June 3-4, *Rio Declaration on Environment and Development*, U.N. Doc. A/CONF.151/26/Rev.1 (Vol. I), Annex I (August 12, 1992), <http://www.un.org/documents/ga/conf151/aconf15126-1annex1.htm>.

<sup>2</sup> See *id.*

<sup>3</sup> See FOTI J. ET AL., WORLD RESOURCES INSTITUTE, VOICE AND CHOICE: OPENING THE DOOR TO ENVIRONMENTAL DEMOCRACY 1, 78 (2008), [http://www.accessinitiative.org/sites/default/files/voice\\_and\\_choice.pdf](http://www.accessinitiative.org/sites/default/files/voice_and_choice.pdf).

<sup>4</sup> See *Rio Declaration on Environment and Development*, *supra* note 1.

<sup>5</sup> See Agenda 21, U.N. Conference on Environment and Development, U.N. Doc. A/CONF.151/26 (1992).

<sup>6</sup> See U.N. DEPARTMENT OF ECONOMIC AND SOCIAL AFFAIRS, DIVISION FOR SUSTAINABLE DEVELOPMENT, JOHANNESBURG PLAN OF IMPLEMENTATION OF THE WORLD SUMMIT ON SUSTAINABLE DEVELOPMENT 2 (1992), [http://www.un.org/esa/sustdev/documents/WSSD\\_POI\\_PD/English/WSSD\\_PlanImpl](http://www.un.org/esa/sustdev/documents/WSSD_POI_PD/English/WSSD_PlanImpl) (reaffirming a commitment to the principles of Rio and the implementation of Agenda 21).

<sup>7</sup> See FOTI J. ET AL., *supra* note 3, at 78.

<sup>8</sup> U.N. Secretary General, *Objective and Themes of the United Nations Conference on Sustainable Development: Rep. of the Secretary-General*, 4, 7-8, U.N. Doc. A/CONF.216/7 (Dec. 10, 2010), <http://www.unscsd2012.org/files/prepcom/SG-report-on-objective-and-themes-of-the-UNCSD.pdf>.

<sup>9</sup> U.N. Secretary General, *supra* note 8, at 4.

<sup>10</sup> U.N. Secretary General, *supra* note 8, at 25.

<sup>11</sup> U.N. Secretary General, *supra* note 8, at 5.

<sup>12</sup> SECOND MEETING OF THE CONSULTATIVE GROUP OF MINISTERS OR HIGH-LEVEL REPRESENTATIVES ON INTERNATIONAL ENVIRONMENTAL GOVERNANCE, NAIROBI-HELSINKI OUTCOME (Nov. 23, 2010), <http://www.unep.org/environmental-governance/Portals/8/documents/Events/NairobiHelsinkiFinalOutcome.pdf>

<sup>13</sup> See UNEP DIVISION OF ENVIRONMENTAL LAW AND CONVENTIONS, FRAGMENTATION OF ENVIRONMENTAL PILLAR AND ITS IMPACT ON EFFICIENCY AND EFFECTIVENESS 1, 4, <http://www.pnuma.org/forumofministers/18-ecuador/InstitutionalFrameworkforSustainabledevPAPER2.pdf> (discussing the inability of various Multilateral Environmental Agreements inabilities to address environmental issues in a unified approach).

<sup>14</sup> Roberts, *Id.*

<sup>15</sup> See generally ACCOUNTABILITY AND INTERNATIONAL FINANCIAL INSTITUTIONS — DEEPENING TRANSPARENCY AND OPENING POLITICAL SPACE, <http://www.ifitransparency.org/index.shtml> (describing a report from the Centre for Law and Democracy stating that International Financial Institutions have made progress towards access to information).

<sup>16</sup> U.N. Secretary General, *supra* note 8, at 25.

<sup>17</sup> See, e.g., Alasdair S. Roberts, *A Partial Revolution: The Diplomatic Ethos and Transparency in Intergovernmental Organizations*, 64 PUBLIC ADMINISTRATION REVIEW 408-422 (Jul 2004).

<sup>18</sup> See SECOND MEETING OF THE CONSULTATIVE GROUP OF MINISTERS HIGH-LEVEL REPRESENTATIVES ON INTERNATIONAL ENVIRONMENTAL GOVERNANCE, NAIROBI-HELSINKI OUTCOME, *supra* note 12, at 1, 4 (explaining the Nairobi-Helsinki’s failure to include compliance mechanisms for the effective implementation of Multilateral Environmental Agreements).

<sup>19</sup> See ORGANISATION FOR ECONOMIC CO-OPERATION AND DEVELOPMENT, OECD ENVIRONMENTAL PERFORMANCE REVIEWS — A PRACTICAL INTRODUCTION, OCDE/GD(97)35 (1997), [http://www.oecd.org/officialdocuments/publicdisplaydocumentpdf/?cote=OCDE/GD\(97\)35&docLanguage=En](http://www.oecd.org/officialdocuments/publicdisplaydocumentpdf/?cote=OCDE/GD(97)35&docLanguage=En).

<sup>20</sup> See COMMISSION FOR ENVIRONMENTAL COOPERATION, BRINGING FACTS TO LIGHTS: A GUIDE TO ARTICLE 14 AND 15 OF THE NORTH AMERICAN AGREEMENT ON ENVIRONMENTAL COOPERATION 1, 14 (2000), [http://www.cec.org/Storage/41/3331\\_Bringing%20the%20Facts\\_en.pdf](http://www.cec.org/Storage/41/3331_Bringing%20the%20Facts_en.pdf) (discussing the mechanisms for citizens’ submissions of complaints).

<sup>21</sup> Peggy Rodgers Kalas & Alexia Herwig, *Dispute Resolution under the Kyoto Protocol*, 27 ECOLOGY L.Q., 53, 58 (2000).

<sup>22</sup> Kalas et al., *id.*, at 68.

<sup>23</sup> U.N. Governing Council of the United Nations Environment Programme, *Twenty-Sixth Session of the Governing Council/Global Ministerial Environment Forum, Item 4 (b) of the Provisional agenda Policy Issues: Emerging Policy Issues*, UNEP/GC.26/17/Add.2 (Feb. 2011).

<sup>24</sup> *Id.*

<sup>25</sup> The 1992 Rio Declaration was signed by 178 States. There has been notable progress both internationally and nationally since its adoption. However, many gaps remain.

<sup>26</sup> See, e.g., ARTICLE 19, THE LONDON DECLARATION FOR TRANSPARENCY, THE FREE FLOW OF INFORMATION AND DEVELOPMENT (Aug. 2010), <http://www.article19.org/data/files/medialibrary/1798/London-Declaration.pdf> (addressing the commitment of 150 countries to adopt eight millennium development goals and to meet their target by 2015).

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- <sup>27</sup> See UNEP, GUIDELINES FOR THE DEVELOPMENT OF NATIONAL LEGISLATION ON ACCESS TO INFORMATION, PUBLIC PARTICIPATION AND ACCESS TO JUSTICE IN ENVIRONMENTAL MATTERS (Feb. 2010), <http://www.unep.org/DEC/PDF/GuidelinesAccessstoJustice2010.pdf>.
- <sup>28</sup> *Id.*
- <sup>29</sup> See *Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters* (June 1998), <http://www.unece.org/fileadmin/DAM/env/pp/documents/cep43e.pdf> (referring to the Aarhus Convention, an agreement that encourages public access to information and justice on environmental issues) [hereinafter Aarhus].
- <sup>30</sup> Aarhus, *id.* at 5.
- <sup>31</sup> Aarhus, *id.* at 5.
- <sup>32</sup> See United Nations Economic Commission for Europe, *The Aarhus Convention's Compliance Committee Receives 50th Communication* (explaining that the Compliance Committee review cases of alleged non-compliance by a Party to the Aarhus Convention) [http://www.unece.org/press/pr2010/10env\\_p19e.htm](http://www.unece.org/press/pr2010/10env_p19e.htm).
- <sup>33</sup> THE KIEV PROTOCOL ON POLLUTANT RELEASE AND TRANSFER REGISTERS (May 2003), <http://www.unece.org/index.php?id=2948&type=111>.
- <sup>34</sup> See *id.*
- <sup>35</sup> See CONVENTION ON ENVIRONMENTAL IMPACT ASSESSMENT IN A TRANSBOUNDARY CONTEXT (Feb. 1991), <http://www.unece.org/fileadmin/DAM/env/eia/documents/legaltexts/conventiontextenglish.pdf> (referring to the Espoo Convention where parties agreed to prevent, reduce and control adverse transboundary environmental impact).
- <sup>36</sup> Convention on Environmental Impact, *id.*
- <sup>37</sup> United Nations Economic Commission for Europe, Status of Ratification, <http://www.unece.org/fileadmin/DAM/env/eia/ratification.htm>.
- <sup>38</sup> DAVID BANISAR, FREEDOM OF INFORMATION AROUND THE WORLD 2006: A GLOBAL SURVEY OF ACCESS TO GOVERNMENT INFORMATION LAWS (July 2006), [http://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=1707336](http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1707336).
- <sup>39</sup> *Id.* at 17.
- <sup>40</sup> See, e.g., Const. Art. 225 (Braz.).
- <sup>41</sup> Mark Stephen, *Environmental information disclosure programs: They work, but why?*, SOCIAL SCIENCE QUARTERLY 190 — 205 (2003).
- <sup>42</sup> Steve DeVito, US EPA Toxics Release Inventory International Programs Officer. Personal Communication, February 2008.
- <sup>43</sup> NORTH AMERICAN POLLUTANT RELEASE AND TRANSFER REGISTER, <http://www.cec.org/Page.asp?PageID=924&SiteNodeID=596>.
- <sup>44</sup> EUROPEAN POLLUTANT RELEASE AND TRANSFER REGISTER (E-PRTR), <http://prtr.ec.europa.eu/>.
- <sup>45</sup> ARTICLE 19, CHANGING THE CLIMATE FOR FREEDOM OF EXPRESSION AND FREEDOM OF INFORMATION: HUMAN RIGHTS RESPONSES TO CLIMATE CHANGE (Dec. 2009), <http://www.article19.org/data/files/pdfs/publications/changing-the-climate-for-freedom-of-expression-and-freedom-of-information.pdf>.
- <sup>46</sup> ARTICLE 19, ACCESS TO ENVIRONMENTAL INFORMATION IN CHINA: EVALUATION OF LOCAL COMPLIANCE (Dec. 2010), <http://www.article19.org/pdfs/reports/access-to-environmental-information-in-china-evaluation-of-local-compliance.pdf>.
- <sup>47</sup> See FOTI J. ET AL., *supra* note 3, at 57.
- <sup>48</sup> See FOTI J. ET AL., *supra* note 3, at xii.
- <sup>49</sup> FOTI J. ET AL., *supra* note 3, at xii.
- <sup>50</sup> FOTI J. ET AL., *supra* note 3; ARTICLE 19, INFORMATION SAVES LIVES DURING HUMANITARIAN CRISES (Mar. 2011), <http://www.article19.org/pdfs/press/information-saves-lives-during-humanitarian.pdf>.
- <sup>51</sup> FOTI J. ET AL., *supra* note 3, at x.
- <sup>52</sup> JOHN GLASSON, RIKI THERIVEL & ANDREW CHADWICK, INTRODUCTION TO ENVIRONMENTAL IMPACT ASSESSMENT 138 (Routledge, 3rd ed. 2005).
- <sup>53</sup> FOTI J. ET AL., *supra* note 3, at x.
- <sup>54</sup> See WORLD BANK, SEAS OVERVIEW, <http://wbi.worldbank.org/wbi/topic/climate-change> (last visited May 10, 2012).
- <sup>55</sup> Directive 2001/42/EC, [http://www.central2013.eu/fileadmin/user\\_upload/Downloads/Document\\_Centre/OP\\_Resources/04\\_SEA\\_directive\\_2001\\_42\\_EC.pdf](http://www.central2013.eu/fileadmin/user_upload/Downloads/Document_Centre/OP_Resources/04_SEA_directive_2001_42_EC.pdf).
- <sup>56</sup> These include China, the Philippines, Thailand, and Vietnam.
- <sup>57</sup> GEORGE PRING & CATHERINE PRING, THE ACCESS INITIATIVE GREENING JUSTICE: CREATING AND IMPROVING ENVIRONMENTAL COURTS AND TRIBUNALS 9 (2009), [http://www.accessinitiative.org/sites/default/files/Greening%20Justice%20Final\\_31399\\_WRI.pdf](http://www.accessinitiative.org/sites/default/files/Greening%20Justice%20Final_31399_WRI.pdf).
- <sup>58</sup> *Id.* at 1.
- <sup>59</sup> *Id.* at 107-108.
- <sup>60</sup> Timeliness refers to the amount of time taken to obtain a remedy.
- <sup>61</sup> See, e.g., Const., Art. 22 (2010) (Kenya).
- <sup>62</sup> *Voice and Choice*, *supra* note 3, also found that framework laws on access to information had made significant progress while framework laws on and practice on public participation and access to justice lagged behind.
- <sup>63</sup> FOTI J. ET AL., WORLD RESOURCES INSTITUTE, A SEAT AT THE TABLE: INCLUDING THE POOR IN DECISIONS FOR DEVELOPMENT AND ENVIRONMENT 23 (2010), <http://www.wri.org/publication/a-seat-at-the-table>.
- <sup>64</sup> Universal Declaration of Human Rights, Article 19, G.A. Res. 217 (III) A, U.N. Doc. A/RES/217(III) (Dec. 10, 1948).
- <sup>65</sup> Article 19, *supra* note 46, at 20, 61.
- <sup>66</sup> Article 19, *supra* note 46, at 20, 61.
- <sup>67</sup> UNEP Dec. GCSS.XI/11, Environmental Law (Part A), [http://www.unep.org/gc/GCSS-XI/proceeding\\_docs.asp](http://www.unep.org/gc/GCSS-XI/proceeding_docs.asp) (annexed to the proceedings of the special session).
- <sup>68</sup> Non-UNECE States may only accede “upon approval by the Meeting of the Parties.” Convention on Environmental Impact Assessment in a Transboundary Context (the “Espoo Convention”), U.N. ECE, art. 17, ¶3 (Feb. 25, 1991).
- <sup>69</sup> United Nations Economic Commission for Europe, Status of ratification, <http://www.unece.org/env/pp/ratification.html>.
- <sup>70</sup> STEC, ET AL., U.N. ECE, THE AARHUS CONVENTION: AN IMPLEMENTATION GUIDE, v (2000) <http://www.unece.org/fileadmin/DAM/env/pp/acig.pdf> (Secretary-General of the United Nations, Kofi A. Annan, suggesting that Aarhus Convention may serve as a model for “strengthening the application of principle 10 in other regions of the world”).
- <sup>71</sup> See, e.g., United Nations Convention against Corruption, G.A. Res. 58/4 (Oct. 31, 2003).
- <sup>72</sup> ORGANIZATION OF AMERICAN STATES, DECLARATION OF SANTA CRUZ +10 (Dec. 5, 2006), <http://www.oas.org/dsd/Documents/DECLARATION+10.pdf>.
- <sup>73</sup> See, e.g., *Reyes et al. v. Chile*, Inter-Am. C.H.R., Inter-American Court of Human Rights, (Sept. 19 2006), <http://www.elaw.org/node/2546>.
- <sup>74</sup> See generally ORGANIZATION OF AMERICAN STATES, ACCESS TO INFORMATION, [http://www.oas.org/dil/access\\_to\\_information.htm](http://www.oas.org/dil/access_to_information.htm) (last visited May 10, 2012).
- <sup>75</sup> See, e.g., North American Free Trade Agreement, U.S.-Can.-Mex., Dec. 17, 1992, 32 I.L.M. 289 (1993); U.S.-Colom. Trade Promotion Agreement, U.S.-Colom., Nov. 22, 2006 (entry into force May 15, 2012).
- <sup>76</sup> Article 19, *supra* note 46, at 166-167; Lei de Liberdade de Informação, No.12.527, (Braz. Nov. 28, 2011).
- <sup>77</sup> BANISAR, *supra* note 38, at 93-95.
- <sup>78</sup> See FOTI J. ET AL., *supra* note 3, at 48.
- <sup>79</sup> See ORGANISATION FOR ECONOMIC CO-OPERATION AND DEVELOPMENT, UN ECONOMIC COMMISSION FOR LATIN AMERICA AND CARIBBEAN, OECD ENVIRONMENTAL PERFORMANCE REVIEWS — CHILE (Jan. 24, 2005), <http://www.oecd.org/dataoecd/63/44/34856244.pdf>.
- <sup>80</sup> See *id.*