

## The Key to Engaging with the SDGs: Utilizing Rio Principle 10 to Successfully Implement the U.N. Sustainable Development Goals

Taís Ludwig

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# THE KEY TO ENGAGING WITH THE SDGs: UTILIZING RIO PRINCIPLE 10 TO SUCCESSFULLY IMPLEMENT THE U.N. SUSTAINABLE DEVELOPMENT GOALS

By Tais Ludwig\*

## INTRODUCTION

For many who are not familiar with this field, right to information laws (RTI) and access to justice do not appear to have anything to do with environmental law. However, these are actually the most critical tools for environmental protection and sustainable development. The Rio Declaration on Environment and Development<sup>1</sup> established the guiding principles of international environmental law, with Principle 10 being considered one of the most important of these principles. Rio Principle 10 is perhaps the most well-known and internationally recognized expression of the right to information concept.<sup>2</sup> Since the adoption of the Rio Declaration in 1992, regional agreements have been created to implement the principle,<sup>3</sup> and one-hundred countries now have national right to information laws in place.<sup>4</sup> The United Nations Sustainable Development Goals (SDGs)<sup>5</sup> themselves even focus on access to information as the key to success for creating a more sustainable global society.

For the reasons discussed below, this Article argues that the only way to ensure a full and successful implementation of the SDGs is to invoke reliable governance practices. This means that all States must fully embrace the concept of access to information and public participation in governance laid out in Rio Principle 10. Access to information and civic engagement is crucial to successful governance and policy implementation—especially in the environmental and development context.

## PRINCIPLE 10 OF THE RIO DECLARATION ON ENVIRONMENT AND DEVELOPMENT

Since 1992, it has been widely acknowledged that the challenges of sustainable development “can only be met with the engagement of an informed and empowered public.”<sup>6</sup> Principle 10 is the embodiment of the effort to create a more informed and empowered public. It establishes the “fundamental elements for good environmental governance” through the three ‘access rights’: 1) access to information, 2) public participation, and 3) access to justice.<sup>7</sup> These access rights allow for more transparency in government decisions, as well as more inclusive and accountable decision making processes.<sup>8</sup> While these concepts have been widely recognized around the world, many governments—particularly in developing countries—have yet to implement the laws and proper legal framework necessary to incorporate Principle 10.

Although many nations have adopted some RTI laws since the adoption of the Rio Declaration, many still have not fully

implemented Principle 10, making it crucial for the United Nations to focus on access rights. Accurate information and the disclosure thereof, is fundamental to the success of sustainable development. It permits for and enables a way for the public to ensure government accountability and effectiveness in development efforts. The access rights are crucial to good governance, which is why the United Nations included them as Target 16.10 of SDG 16.<sup>9</sup>

## ACCESS TO INFORMATION IN THE CONTEXT OF THE SDGs

In September of 2015, the United Nations (UN) adopted the SDGs—a set of seventeen aspirational goals with 169 targets.<sup>10</sup> These goals form a key part of the UN’s new sustainable development agenda,<sup>11</sup> with each goal establishing specific targets that are to be achieved over the next fifteen years to create a more sustainable society.<sup>12</sup>

Two of these seventeen goals, Goals 12 and 16, touch on governance and the access rights, but they make little headway in addressing what should be the key element to success in the implementation of the other SDGs.<sup>13</sup> Specifically, Targets 12.8 and 16.10 focus on access to information,<sup>14</sup> but these vague Targets are not as specific as Rio Principle 10. Principle 10, while also quite general, uses substantive language that establishes who should provide information, what information to disclose, and who should have access to this information.<sup>15</sup> The only tangible aspect of target 12.8 is the target date of 2030; the rest of the Target is just as aspirational as the Goal itself.<sup>16</sup> Target 16.10 is slightly more specific than Target 12.8, but still does not clearly refer to the kind of information that should be made available to the public. Also, the phrase “in accordance with national legislation” can actually limit the application of this Target, especially in countries that lack access to information and public participation laws.<sup>17</sup>

## PUBLIC PARTICIPATION IN GOVERNANCE

Access to information is key for allowing individuals and communities to better understand and participate in governance decisions.<sup>18</sup> Without access to information, public engagement and participation is extremely limited. Engagement is crucial because it provides civil society, and particularly disadvantaged

\* Tais Ludwig is a J.D. candidate 2016 at American University Washington College of Law.

and marginalized groups, a voice in decision-making processes.<sup>19</sup> Information affords these people the ability to understand the impacts of proposed laws and policies, and it helps facilitate participation in decision-making processes. Principle 10 states that each individual shall have “the opportunity to participate in decision-making processes” and that “States shall facilitate and encourage public awareness and participation by making information widely available.”<sup>20</sup> Participation includes the important concepts of stakeholder consultation and Free, Prior, and Informed Consent (FPIC).<sup>21</sup>

### ACCESS TO JUSTICE

A proper access framework would not be complete without a mechanism for people and communities to access legal redress and remedy. Access to justice encompasses more than just access to courts; it involves normative legal protection, legal awareness, legal aid and counsel, adjudication, enforcement, and civil society and parliamentary oversight.<sup>22</sup> Without access to justice,<sup>23</sup> people are unable to have their voices heard, exercise their rights, challenge discrimination, or hold decision makers accountable.<sup>24</sup> Although each country’s situation is unique, making the assurance of proper access to justice complicated and

difficult, this final element of Rio Principle 10 is essential to successfully adopting and utilizing an access framework.

### IMPLEMENTATION OF THE SDGs

Nations within the UN are currently working to develop a series of indicators that will be used to monitor the implementation of the SDGs.<sup>25</sup> To accomplish this, the UN Statistical Commission created an Inter-agency and Expert Group on SDG Indicators (IAEG-SDGs).<sup>26</sup> Although still in the initial stages of creating the monitoring framework, the IAEG-SDGs has crafted proposed indicators with the understanding that at the very least, indicators for gauging of national, regional, global, and thematic components are necessary.<sup>27</sup> The proposed framework establishes a list of the indicators that should be used, and provides a public online reporting forum for easy access to the information and transparency in SDG implementation. This creates a virtual report card for each State’s implementation of the SDGs.<sup>28</sup> For the proposed indicators and monitoring framework to successfully monitor the implementation of the SDGs, individual nations must ensure a robust domestic access rights framework based on Rio Principle 10 exists.



## ENDNOTES: THE KEY TO ENGAGING WITH THE SDGs: UTILIZING RIO PRINCIPLE 10 TO SUCCESSFULLY IMPLEMENT THE U.N. SUSTAINABLE DEVELOPMENT GOALS

<sup>1</sup> Also known as the Rio Declaration. United Nations Conference on Env. & Dev., RIO DECLARATION ON ENVIRONMENT AND DEVELOPMENT, U.N. Doc. A/CONF. 151/26/Rev.1 (Vol. 1), annex I (Aug. 12, 1992) [hereinafter RIO DECLARATION].

<sup>2</sup> *Id.* at 2-3 (discussing Principle 10).

<sup>3</sup> See UNECE, CONVENTION ON ACCESS TO INFORMATION, PUBLIC PARTICIPATION IN DECISION-MAKING AND ACCESS TO JUSTICE IN ENVIRONMENTAL MATTERS, DONE AT AARHUS, DENMARK (June 25, 1998); ECLAC PRINCIPLE 10, <http://www.cepal.org/en/topics/principle-10> (last visited Mar 9, 2016); CIEL CAMPAIGN UPDATE LATIN AMERICA AND CARIBBEAN PRINCIPLE 10 (LAC P10), <http://www.ciel.org/project-update/latin-america-caribbean-principle-10-lac-p10/> (last visited Mar 9, 2016).

<sup>4</sup> Paraguay was the 100<sup>th</sup> nation to pass a RTI law. Toy McIntosh, *Paraguay is 100<sup>th</sup> Nation to Pass FOI Law, But Struggle for Openness Goes On*, THE GUARDIAN, (Sept. 19, 2014), <http://www.theguardian.com/public-leaders-network/2014/sep/19/paraguay-freedom-information-law-transparency>. ARTICLE 19, NATIONAL LAWS AND REGULATIONS ON THE RIGHT TO INFORMATION <https://www.article19.org/maps/> (last visited Mar 2, 2016) [hereinafter ARTICLE 19 MAP].

<sup>5</sup> The Sustainable Development Goals were created to build upon the Millennium Development Goals, and are designed to balance the three dimensions of sustainable development: economic, social, and environmental. UNITED NATIONS SUSTAINABLE DEV. KNOWLEDGE PLATFORMS, TRANSFORMING OUR WORLD: THE 2030 AGENDA FOR SUSTAINABLE DEVELOPMENT, <https://sustainabledevelopment.un.org/post2015/transformingourworld> (last visited Mar 2, 2016).

<sup>6</sup> Elena Petkova, et al., *Closing the Gap: Information, Participation, and Justice in Decision-Making for the Environment*, WORLD RESOURCES INSTITUTE, i., ix (2002).

<sup>7</sup> David Banisar, et al., *Moving from Principles to Rights: Rio 2012 and Access to Information, Public Participation, and Justice*, SUST. DEV. L. & POL’Y, Vol. XII, No. 1, 8. (Fall 2011).

<sup>8</sup> *Id.*

<sup>9</sup> *Indicators and a Monitoring Framework, Target 16.10*, SDSN, <http://indicators.report/targets/16-10/> (last visited Mar 2, 2016).

<sup>10</sup> UNITED NATIONS KNOWLEDGE PLATFORM, SUSTAINABLE DEVELOPMENT GOALS, <https://sustainabledevelopment.un.org/?menu=1300> (last visited Mar 2, 2016) [hereinafter UNITED NATIONS KNOWLEDGE PLATFORM].

<sup>11</sup> UNGA Res. 70/1 Transforming Our World: the 2030 Agenda for Sustainable Development, U.N. Doc. A/Res/70/1 (Sept. 25, 2015) [hereinafter 2030 Agenda].

<sup>12</sup> See UNITED NATIONS KNOWLEDGE PLATFORM, *supra* note 10.

<sup>13</sup> UNITED NATIONS, SUSTAINABLE DEVELOPMENT GOALS, GOAL 12: ENSURE SUSTAINABLE CONSUMPTION AND PRODUCTION PATTERNS, <http://www.un.org/sustainabledevelopment/sustainable-consumption-production/> (last visited Mar. 2, 2016); UNITED NATIONS, SUSTAINABLE DEVELOPMENT GOALS, GOAL 16: PROMOTE JUST, PEACEFUL AND INCLUSIVE SOCIETIES, <http://www.un.org/sustainabledevelopment/peace-justice/> (last visited Mar 2, 2016).

<sup>14</sup> Target 12.8 states “By 2030, ensure that people everywhere have the relevant information and awareness for sustainable development and lifestyles in harmony with nature.” SUSTAINABLE DEVELOPMENT SOLUTIONS NETWORK, INDICATORS AND A MONITORING FRAMEWORK FOR THE SUSTAINABLE DEVELOPMENT GOALS: LAUNCHING A DATA REVOLUTION FOR THE SDGs—A REPORT TO THE SECRETARY-GENERAL OF THE UNITED NATIONS 58 (June 12, 2015) [hereinafter SDSN INDICATORS AND MONITORING FRAMEWORK REPORT]; Target 16.10 states “Ensure public access to information and protect fundamental freedoms, in accordance with national legislation and international agreements.” *Id.* at 64.

<sup>15</sup> The Rio Declaration on Environment and Development, Principle 10 states “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, including information on hazardous materials and activities in their communities, and the opportunity to participate in decisionmaking processes. States shall facilitate and encourage public awareness and participation by making information widely available. Effective access to judicial and administrative proceedings, including redress and remedy, shall be provided.” RIO DECLARATION, *supra* note 1.

<sup>16</sup> 2030 Agenda, *supra* note 11 at 23.



## ENDNOTES: THE KEY TO ENGAGING WITH THE SDGs: UTILIZING RIO PRINCIPLE 10 TO SUCCESSFULLY IMPLEMENT THE U.N. SUSTAINABLE DEVELOPMENT GOALS

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- <sup>17</sup> Countries currently lacking Right to Information laws include: Cuba, Venezuela, Paraguay, Libya, Kenya, Tanzania, Madagascar, Saudi Arabia, Iran, Cambodia, Malaysia, and Papua New Guinea. ARTICLE 19 MAP, *supra* note 4.
- <sup>18</sup> David Banisar, *The Role of the Right to Information in Sustainable Development*, in *Governance for Sustainable Development—Ideas for the Post-2015 Agenda 3* (Friends of Governance for Sustainable Development ed., 2015).
- <sup>19</sup> *Id.*
- <sup>20</sup> RIO DECLARATION, *supra* note 1.
- <sup>21</sup> There is no internationally agreed upon definition of FPIC, but a general description of it is “the right to participate in decision making and to give, modify, withhold or withdraw consent to an activity affecting the holder of this right. Consent must be freely given, obtained prior to implementation of such activities and be founded upon an understanding of the full range of issues implicated by the activity or decision in question; hence the formulation free, prior and informed consent.” FOREST STEWARDSHIP COUNCIL, FSC GUIDELINES

FOR THE IMPLEMENTATION OF THE RIGHT TO FREE, PRIOR AND INFORMED CONSENT, 11 (FSC International Center GmbH, Version 1, Oct 30, 2012).

- <sup>22</sup> UNITED NATIONS DEV. PROGRAMME, ACCESS TO JUSTICE—PRACTICE NOTE 7 (2004).
- <sup>23</sup> This is usually accomplished through legal court systems or other forms of informal institutions of justice and grievance mechanisms.
- <sup>24</sup> UNITED NATIONS DEV. PROGRAMME, ACCESS TO JUSTICE AND RULE OF LAW, [http://www.undp.org/content/undp/en/home/ourwork/democraticgovernance/focus\\_areas/focus\\_justice\\_law.html](http://www.undp.org/content/undp/en/home/ourwork/democraticgovernance/focus_areas/focus_justice_law.html) (last visited Mar. 24, 2016).
- <sup>25</sup> SDSN INDICATORS AND MONITORING FRAMEWORK REPORT, *supra* note 14 at 2.
- <sup>26</sup> See, UNITED NATIONS SUSTAINABLE DEV. GOALS, IAEG-SDGs, <http://unstats.un.org/sdgs/iaeg-sdgs> (last visited Mar 2, 2016).
- <sup>27</sup> SDSN INDICATORS AND MONITORING FRAMEWORK REPORT, *supra* note 14 at 2.
- <sup>28</sup> *Id.* at 7.

## ENDNOTES: DEVELOPING AN INTERNATIONAL CARBON TAX REGIME

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- at [http://www.wri.org/sites/default/files/pdf/navigating\\_numbers.pdf](http://www.wri.org/sites/default/files/pdf/navigating_numbers.pdf); see also, *Sources of Greenhouse Gas Emissions*, U.S. ENVTL. PROT. AGENCY, <http://www.epa.gov/climatechange/ghgemissions/sources.html> (noting that transportation (not including the grid to support such transportation), accounts for twenty percent of U.S. Greenhouse Gas emissions) (last visited Apr. 14, 2016).
- <sup>17</sup> See *Atmospheric CO<sub>2</sub>*, CO<sub>2</sub>.EARTH, <https://www.co2.earth/> (last visited Apr. 14, 2016) (referencing Keeling Curve monthly).
- <sup>18</sup> See Andrew Freeman, *The Last Time CO<sub>2</sub> Was This High, Humans Didn't Exist*, CLIMATE CENT., <http://www.climatecentral.org/news/the-last-time-co2-was-this-high-humans-didnt-exist-15938> (last updated May 2, 2013).
- <sup>19</sup> See HERZOG ET. AL., *supra* note 16, at 3 (showing that in 2004 Atmospheric Carbon Dioxide measured at about 380 PPM).
- <sup>20</sup> Freedman, *supra* note 18.
- <sup>21</sup> Gavin A. Schmidt & Thomas R. Karl, *Annual Global Analysis for 2014: 2014 was Warmest Year on Record*, NASA/NOAA (Jan. 2015), <http://www.ncdc.noaa.gov/sotc/briefings/201501.pdf>. Measurements go back as far as 1880. Methodology varies slightly overtime, but by all accounts, the warmest 10 years since or. growth over the past 30 years on, .ext (indicating that emtn l threat on their own lands, while abusing the environment of devganized measurements began have occurred since 1998. *Id.*; Freedman, *supra* note 18.
- <sup>22</sup> James Hansen et al., *Target Atmospheric CO<sub>2</sub>: Where Should Humanity Aim?*, NASA/GODDARD INST. FOR SPACE STUDIES 1 (2008), <http://arxiv.org/ftp/arxiv/papers/0804/0804.1126.pdf>.
- <sup>23</sup> *Id.* at 12.
- <sup>24</sup> David P. Vincent, *Internalizing Externalities: An Economic and Legal Analysis of an International Carbon Tax Regime*, 92 OR. L. REV. 163, 167 (2013), available at <https://scholarsbank.uoregon.edu/xmlui/bitstream/handle/1794/13577/Vincent.pdf?sequence=1> (citing Brad Plumer, *When Do We Hit the Point of No Return for Climate Change?*, WASH. POST (Nov. 10, 2011), [http://www.washingtonpost.com/blogs/wonkblog/post/when-do-we-hit-the-point-of-no-return-for-climate-change/2011/11/10/gIQA4rri8M\\_blog.html](http://www.washingtonpost.com/blogs/wonkblog/post/when-do-we-hit-the-point-of-no-return-for-climate-change/2011/11/10/gIQA4rri8M_blog.html)).
- <sup>25</sup> Stephen Sewalk, *Europe Should Dump Cap-And-Trade in Favor of Carbon Tax with Reinvestment to Global Emissions*, 5 WASH. & LEE J. OF ENERGY, CLIMATE & ENV'T 355, 361 (2014) (citing Junjie Zhang, ASIA SOCIETY POL'Y INST., DELIVERING ENVIRONMENTALLY SUSTAINABLE ECONOMIC GROWTH: THE CASE OF CHINA 2 (2012) (“China has achieved miraculous economic growth over the past 30 years.... However, growing the gross domestic product (GDP) at any cost has created a series of social and environmental problems.”)).
- <sup>26</sup> Steven Specht, *Dispute Resolution in the Transpacific Partnership: Pillar or Pitfall*, SSRN, Apr. 16, 2016, [http://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=2765750](http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2765750).
- <sup>27</sup> Vincent, *supra* note 24, at 166-67.
- <sup>28</sup> The Gross World Product has increased from ~\$7 trillion in 1960 to more than \$75 trillion today. See J. BRANDFORD DELONG, ESTIMATING WORLD GDP, ONE MILLION B.C.-PRESENT 8-9, available at [http://delong.typepad.com/print/20061012\\_LRWGDP.pdf](http://delong.typepad.com/print/20061012_LRWGDP.pdf). Adjusting the 1960 number for inflation brings

the 1960 number to \$55 trillion. This is a thirty six percent increase compared with a twenty seven percent increase in the same time period for measuring atmospheric CO<sub>2</sub> from 1958 to the present.

- <sup>29</sup> Chlorofluorocarbons were the primary culprit in the weakening of the ozone layer above the South Pole. This will be discussed in more depth in the section dealing with the problems of alternatives to a carbon tax.
- <sup>30</sup> See DAVID L. ALLES, ASIAN AIR POLLUTION 23 (David L. Alles ed. 2013), available at <http://fire.biol.wvu.edu/trent/alles/AirPollution.pdf> (last updated April 24, 2013).
- <sup>31</sup> See *id.* at 52, 55, 56, 65.
- <sup>32</sup> See Marzia Sesini, *The Garbage Patch in the Oceans: The Problem and Possible Solutions* (Aug. 2011) (unpublished M.S. thesis, Columbia University) (on file with Columbia University), available at [http://www.seas.columbia.edu/earth/wtert/sofos/sesini\\_thesis.pdf](http://www.seas.columbia.edu/earth/wtert/sofos/sesini_thesis.pdf) (noting that while the Great Pacific Garbage Patch in the northern portion of the Pacific Ocean is commonly mentioned in media, similar concentrations of plastic particles also coalesce in gyres of the South Pacific, North and South Atlantic, and the Indian Ocean).
- <sup>33</sup> See *Desertification: The Invisible Front Line*, UNITED NATIONS CONVENTION TO COMBAT DESERTIFICATION 10 (2014), [http://www.unccd.int/Lists/SiteDocumentLibrary/Publications/Desertification\\_The%20invisible\\_frontline.pdf](http://www.unccd.int/Lists/SiteDocumentLibrary/Publications/Desertification_The%20invisible_frontline.pdf) (highlighting that some forty percent of conflicts have been disputes over resources and eighty percent of conflicts have occurred in areas with resource shortages. It is also a reasonable correlation to link a rise in Islamic fundamentalism gripping the central Africa to the slow creep of the Sahara. Now Nigeria, one of the largest oil suppliers in the world is gripped in a desperate fight with Boko Haram.)
- <sup>34</sup> See generally *Multilateral Environmental Agreements 1950 through 2012*, INTERNATIONAL ENVTL. AGREEMENTS (IEA) DATABASE PROJECT, [http://iea.uoregon.edu/page.php?query=summarize\\_by\\_year&yearstart=1950&yearend=2012&inclusion=MEA](http://iea.uoregon.edu/page.php?query=summarize_by_year&yearstart=1950&yearend=2012&inclusion=MEA) (last visited April 15, 2016) (according to the IEA, which tracks MEAs and Bi-Lateral Environmental Agreements (BEAs), there are currently 1248 MEAs and 1598 BEAs. The number of MEAs in 2007 was 972 meaning an average of more than 39 agreements per year.).
- <sup>35</sup> These were the words of the Russian delegate who declined to sign the Universal Declaration of Human Rights. See Nick Fraser, *Dignity and Hope: Too Much to Ask For?*, GUARDIAN (Sept. 20, 2008, 7:01 P.M.), <http://www.theguardian.com/world/2008/sep/21/humanrights>.
- <sup>36</sup> See DR. SEUSS, THE LORAX (1971); see also Rhona Lyons, *How the Lorax Can Save the Truffula Trees: The Environmental Remedies Available to the Individual*, 51 MO. L. REV. 1013 (1986), available at <http://scholarship.law.missouri.edu/cgi/viewcontent.cgi?article=3359&context=mlr> (discussing how an individual affected by pollution of natural resources should have standing to bring claims against the polluter in Court, similar to the story in The Lorax).
- <sup>37</sup> While the Supreme Court did not specifically cite to Dr. Seuss, they did reject arguments by the Sierra Club on behalf of the environment, and greatly