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## **Submission of ARTICLE 19, Global Campaign for Free Expression, on Incorporating Principle 10 and the Right to Information in the Rio 2012 Outcomes**

### **Summary**

The rights of access to information, public participation, and access to justice are essential to sustainable development. The 1992 Rio Declaration fostered these rights in Principle 10. Now renewed commitment is needed for the full recognition of the rights in all countries. The Rio 2012 Summit provides an opportunity for governments to transform Principle 10 from aspirational goals into actionable rights. In particular, the Outcome Document should include strong commitments from all nations to improve their legal structures on national environmental governance based on Principle 10 and the Bali Guidelines, agree to the development of an international instrument giving legal force to Principle 10 based on the Aarhus Convention, and ensure that the principles are incorporated into all UN bodies decision-making processes.

### **The Interest of ARTICLE 19**

ARTICLE 19 is an independent human rights organisation that works around the world to protect and promote the right to freedom of expression and information. It takes its name from Article 19 of the Universal Declaration of Human Rights, which guarantees freedom of expression and freedom of information.

ARTICLE 19 has worked on numerous environment and development-related human rights projects around the world, managed through our offices in London, Mexico, Brazil, Senegal, Kenya, and Bangladesh. In 2010, ARTICLE 19 brought together civil society groups, government officials and experts to develop the *London Declaration for Transparency, Free Flow of Information and Development*, which sets a clear agenda for transparency in the promotion of development (see appendix 1). In 2011, ARTICLE 19 worked with groups across Africa to set a development-focused agenda on access for African states and assisted in the development of the *African Platform on Access to Information* (see appendix 2). For the upcoming Rio 2012 Summit, ARTICLE 19 is working closely with other civil society groups around the world, including development and environmental groups, and has recently released a report with The Access Initiative (TAI) on the progress since Rio 1992 and needed outcomes to make Rio 2012 meaningful (see appendix 3).

### **The Importance of Access to Information and Rio 1992**

We believe that one of the largest problems standing in the way of sustainable development and a clean environment is the lack at both the national and international level of operational and effective rights of access to information, public participation and access to justice. These access rights facilitate more transparent, inclusive, and accountable decision-making in matters affecting 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 encourages the public's ability to enforce their right to participate, to be informed, and to hold regulators and polluters accountable for environmental harm.

Principle 10 of the 1992 Rio Declaration recognised the crucial importance of these rights and proposed that access to information, public participation and access to justice be adopted into law in all nations. We believe that the outcome of the Rio 2012 Summit 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.

### **Need for Full implementation of Principle 10**

These demands are necessary because Principle 10 has not yet been fully embraced in many nations. There has been substantial improvements in many national legal frameworks, particularly in areas of access to information and environmental impact assessments. A substantial number of countries have adopted new legal frameworks on access rights, especially relating to access to information. However, the adoption of laws has not been uniform. There remains much needed to be done to ensure that these rights are truly available to empower societies and citizens.

This is particularly noticeable in the area of access to information. Over 90 countries have now adopted framework laws or regulations for access to information, including in the past few years China, Indonesia, Nigeria, Liberia, Mongolia and Brazil. Many countries have also adopted specific environmental information access statutes or included access provisions in general environmental protection laws. Many nations have also created Pollutant Release and Transfer Registers (PRTs), which require governments to collect information on pollution releases and make that information publicly available through databases. These PRTs have been shown to be one of the most effective means of making pollutant related information available to the public while simultaneously reducing pollution. The 1992 Rio Declaration and Agenda 21 were instrumental in promoting the adoption of these laws.

However, there are many countries who have not adopted these laws and 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, most Middle Eastern, African, Pacific and Caribbean countries do not yet have the right incorporated into national law. Thus, much work remains to ensure that the citizens of the other 100 nations without adequate legal rights are empowered to ensure that they are informed so they can participate and ensure development and a clean environment is enjoyed by all in an equitable and fair manner.

Furthermore, practice lags behind laws in many countries. Research by ARTICLE 19 and other human rights and environmental organisations across the world demonstrates that many people are still being denied access to essential information about climate change and the environment 20 years after Principle 10 was signed by the world's leaders. Some of the problems include a lack of detailed administrative rules and operational policies, inadequate public capacity to use the laws, and insufficient official capacity to implement laws. There are also problems with governments failing to proactively release environmental information, including basic information on air quality and drinking water quality. Emergencies also raise problems. As the recent disasters in Japan and Burma revealed, the public is often not informed of serious hazards.

International institutions have also not fully adopted Principle 10 into their practices. The international bodies of the UN, including UNEP and UNDP, do not have adequate mechanisms for access to information that obligate them to provide information and have working mechanisms for appeals of denials for access. Important discussions are held and decisions are made at the World Trade Organisation and other bodies without adequate public participation.

There has been somewhat more progress with the global financial institutions. The World Bank's recent revision of their Policy on Access to Information is a significant improvement but it remains to be seen if it fully provides information that communities need. The other regional development banks are also revising their public information policies but so far, the revisions have been mostly unsatisfactory. The newly revised Public Information Policy of the European Bank of Reconstruction and Development mentions confidentiality more than transparency. Thus any discussion of institutional reform should firmly establish that the international bodies are accountable and transparent also.

The role of the international bodies in promoting Principle 10 has also been mixed. The UNECE Convention on Access to Information, Public Participation and Access to Justice (The Aarhus Convention)

has been a notable success as the first legally binding international treaty on access rights. The Convention places ratifying nations under a series of important obligations including the collection of 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. It also established rules for public participation, appeals, and access to justice measures. It has now been ratified by 44 countries from Iceland to Turkmenistan. The 2003 EU Directive which firmly implements the Convention into EU law should also be noted. We believe that this is a model that should be widely followed. Unfortunately, this model has not been widely adopted elsewhere. No other UN regional body has adopted or even begin negotiations on a similar instrument and non-UNECE countries have joined the Convention.

The UNEP Guidelines for the Development of National Legislation on Access to Information, Public Participation and Access to Justice in Environmental Matters (“the Bali Guidelines”) on how governments should develop national laws in relation to Principle 10 are also a welcome development, even if it was nearly 20 years after Rio 2012. Unfortunately, the Guidelines are only voluntary, 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.

### **Growing Consensus on Principle 10**

There is a growing agreement both in civil society and in governments that enhancing Principle 10 rights is an essential element in making further progress on sustainable development and environmental protection. The Declaration of the 64th Annual UN DPI/NGO Conference, representing the consensus of over 1,400 civil society representatives included numerous references and demands relating to Principle 10 and many individual and joint CSO submissions make similar demands. There is also significant government support. The Economic Commission for Latin America and the Caribbean (ECLAC) submission states that “Rio+20 could produce a mandate to negotiate international agreements (at the global or regional level) to promote the enactment of legislation pertaining to Principle 10 of the Rio Declaration and its implementation, to be possibly, but not necessarily, based on the Aarhus Convention.” The European Committee of the Regions is calling for “promotion of environmental democracy globally” through extension of Aarhus, regional conventions or starting negotiations on a new global convention. Similarly, the European Parliament resolution of 29 September 2011 on developing a common EU position on Rio+20 calls for “ensuring the effective global implementation of Rio Principle 10” and creating a new global convention or extension of the Aarhus Convention. Based on our discussions with other officials, we expect many government submissions to mirror these recommendations.

### **Recommendations**

We believe that there needs to be a significant effort to ensure that Principle 10 is reaffirmed and extended in the Rio 2012 progress. We urge governments and negotiators to include these three major areas in the Outcome Document.

- All nations should make tangible and identifiable commitments for adopting Principle 10 into national law based on the Bali Guidelines by 2017. This includes laws on access to information, public participation, and mechanisms to ensure that access to justice to enforce these rights are implemented. These should be included in Sustainable Development Goals. Additional assistance should be provided by UNEP and other parties to assist nations into fully implementing the UNEP guidelines into national law.
- All parties should commit to begin negotiations on a new international convention on Access to Information, Public Participation and Access to Justice to be completed by 2017 based on the Bali Principles and the Aarhus Convention model. The other UN regional bodies should be encouraged to adopt in the meanwhile regional mechanisms for access to information following the model of the Aarhus Convention. The members of the Aarhus Convention should also be encouraged to open up the Convention to members outside of the UNECE.
- Any reform of the institutional framework of governance for sustainable development should include the creation of a Council on Sustainable Development, and a World Environmental Organisation or UN Environmental Organisation should also ensure that the Principle 10 rights are incorporated into their structures. This includes all other UN and regional bodies.

## Appendix 1. The London Declaration for Transparency, the Free Flow of Information and Development

**We, as members of the global human rights, development and transparency communities and participants in the ARTICLE 19 conference on “Transparency, Free Flow of Information and the Millennium Development Goals” held in London on 24-25 August 2010, adopt the following Declaration.**

In September 2000, leaders from 150 countries adopted the Millennium Declaration and agreed eight Millennium Development Goals (MDGs) each with targets to meet by 2015.

Since 2000, a number of countries have succeeded in achieving some targets, for instance in combating hunger, and improving school enrolment and child health.

However, progress has been uneven and several MDGs are likely to be missed in many countries. Large differences remain between regions, across countries in the same region, and even within countries.

It has been repeatedly acknowledged that progress is off track, not because the MDGs are unreachable or because time is short, but rather because of unmet commitments, inadequate resources, and lack of focus and accountability. Development efforts are hampered by corruption, mismanagement, improper allocation of resources and their inefficient and ineffective use.

There is mounting evidence that transparency of financial flows, including of budgets, aid assistance and revenues from natural and other resources, is insufficient and ineffective. The environment and space for civic engagement and civil society organisations are increasingly restricted, preventing active participation and monitoring, and weakening demands for accountability. Both the free flow of information and transparency, including through a free and independent media, have largely been sidelined in the debate on the MDGs and the fight against poverty.

Yet, as is broadly recognised, transparency and the free flow of information reduce corruption and play a vital role in ensuring accountability at all levels. The availability and accessibility of information empowers people to demand their rights and public services. Free, independent and professional media and civil society organisations are essential to the global fight against poverty, and facilitate citizen participation in development programs.

*We are convinced that all efforts towards achieving the MDGs by 2015 must be considerably and urgently stepped up and should encompass the following interconnected principles:*

*First, the free flow of information, transparency and civic engagement* are fundamental to the achievement of the MDGs, and the global fight against poverty

*Second, the free flow of information* includes protecting and strengthening the right of all to seek, receive and impart information and ideas related to the MDGs and development, and the existence of a free, diverse and professional media

*Third, transparency* requires collecting, producing, and disclosing accessible, credible and disaggregated data on MDG indicators and targets, as well as on budgets, aid assistance and revenues from natural and other resources

*Fourth, civic engagement* requires establishing and protecting an enabling environment for civil society organisations (CSOs) and the media, and active participation by all, in particular people living in poverty and those discriminated against, or marginalised.

We urge all States to take immediate action on the following priorities:

To promote the free flow of information and civic engagement:

1. Respect, protect and fulfil the right to freedom of expression, including the right to information, as well as the right to freedom of association, in accordance with international human rights law

2. Adopt and effectively implement national laws, regulations and policies on access to information. This includes promoting access to, and proactive disclosure of, information related to development and the MDGs
3. Establish an enabling legal, regulatory and public policy framework for the media, including new media, which promotes their independence, diversity and pluralism, and thus allows for independent investigation and reporting on MDG implementation and poverty alleviation
4. Establish an enabling legal and regulatory environment for CSOs which recognises their independence and right to carry out their peaceful work without fear of harassment, reprisal, intimidation and discrimination
5. Take all necessary measures to ensure that all sectors of society –including women and vulnerable groups– are able to exercise their right to impart and access information without discrimination, including through the media and information and communication technologies (ICTs)
6. Remove all obstacles preventing people living in poverty from accessing information on development policies and take proactive measures to promote their effective participation in the design and execution of development strategies
7. Ensure that national, sub-national and local bodies make available and accessible all development-related information, including information on development assistance received and expended, strategies for development, MDG targets and indicators.

To promote transparency:

8. Ratify and fully implement the UN Convention against Corruption
9. Implement the Paris Declaration and the Accra Agenda for Action; recognise that national development strategies require ownership by governments as well as parliaments, citizens, civil society organisations, and communities
10. Implement the International Aid Transparency Initiative (IATI) and ensure that IATI delivers an international standard that aligns with the information needs of governments and their citizens
11. Publish accessible and comprehensive information on budgets, expenditures and revenues in relation to development and the MDGs, such as on development assistance, social, economic and financial activities, and natural resources, including the extractive industries, forestry, fisheries and land
12. Fully comply with the International Monetary Fund's Code of Good Practices on Fiscal Transparency
13. Join or support relevant multi-stakeholder initiatives, such as the Extractive Industries Transparency Initiative (EITI), the Construction Sector Transparency Initiative (CoST) and the Medicines Transparency Alliance (MeTA). Donor governments should also support developing countries' transparency measures in planning, licensing and contracting for natural resource management and establish benchmarks for all development assistance programming in resource-rich countries
14. Implement the UN Environment Programme's (UNEP) Guidelines for the Development of National Legislation on Access to Information, Public Participation and Access to Justice in Environmental Matters
15. Adopt legal rules to require that all publicly-traded companies in natural resources and other relevant sectors publish all information on contracts with and payments to governments.
16. Ensure that all intergovernmental organisations adopt comprehensive, effective access to information policies, such as those developed by the Global Transparency Initiative (GTI) for international financial institutions (IFIs)
17. Establish participatory and transparent local government institutions to ensure equitable and quality service delivery.

We also call on all other partners in the development and MDGs process to take the following actions:

18. Intergovernmental organisations should adopt and effectively implement comprehensive access to information policies based on the principles of voluntary, maximum and proactive disclosure, such as those developed for IFIs by the Global Transparency Initiative

19. Non-governmental donors should support governments in adopting laws, regulations and policies that will ensure the free flow of information and transparency, including on MDGs and development strategies, and the receipt and expenditure of development assistance

20. Private sector bodies should adopt corporate social responsibility standards which recognise the importance of transparency and the free flow of information. They should join multi-stakeholder initiatives, such as the Extractive Industries Transparency Initiative (EITI), the Construction Sector Transparency Initiative (CoST) and the Medicines Transparency Alliance (MeTA) and publish all information on contracts with and payments to governments, particularly in relation to the extractive industries and other natural resources

21. Civil society organisations, including international and national non-governmental organisations, should join and support international and national self-regulatory initiatives to strengthen their reporting, transparency and accountability, including accountability to the people they serve. They should publish detailed information on their funding and expenditure as well as on the impact of their development activities.

22. Media organisations should provide a platform for an inclusive public debate about development and achievement of the MDGs with the participation of people living in poverty by, among other things, reporting on issues that are of particular concern to them. They should also actively and fairly investigate and report on the implementation of strategies on the MDGs and the delivery and use of development assistance, including by governments, CSOs and IFIs

23. All MDG partners should champion efforts at national and international levels, to enable citizens to access information and hold authorities to account, including by supporting and strengthening CSOs and civic engagement. They should support and make use of relevant accountability mechanisms at the national, regional and international levels, including parliaments, courts, ombudspersons, UN Charter and treaty bodies and regional bodies to scrutinise MDG implementation and strengthen accountability.

*London 25 August, 2010*



## **African Platform on Access to Information**

### **19 September 2011**

#### **Preamble**

We, participants at the Pan African Conference on Access to Information, organised by the Windhoek+20 Campaign on Access to Information in Africa in partnership with the United Nations Educational, Scientific and Cultural Organisation (UNESCO), the African Union Commission (AUC) and the Special Rapporteur on Freedom of Expression and Access to Information of the African Commission on Human and Peoples' Rights in Cape Town, South Africa, September 17 – 19, 2011:

**Reaffirming** the 1991 Windhoek Declaration on Promoting an Independent and Pluralistic African Press and viewing the significant progress that has been made in the past 20 years on freedom of expression, access to information and the free flow of information;

**Stating** that access to information (ATI) is the right of all natural and legal persons, which consists of the right to seek, access and receive information from public bodies and private bodies performing a public function and the duty of the state to provide such information;

**Emphasising** that access to information is an integral part of the fundamental human right of freedom of expression, essential for the recognition and achievement of every person's civil, political and socio-economic rights, and as a mechanism to promote democratic accountability, good governance;

**Acknowledging** that access to information is instrumental to fostering access to education and health care, gender equality, children's rights, a clean environment, sustainable development and the fight against corruption;

**Recalling** Article 19 of the Universal Declaration of Human Rights of 10 December 1948, which guarantees 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", Article 19 of the International Covenant on Civil and Political Rights and the UN Human Rights Committee General Comment No. 34 adopted in 2011 which states that Article 19(2) of the ICCPR includes the right of access to information held by public bodies; and Article 1.2 of the UNESCO Constitution;

**Underlining** Article 9 of the African Charter on Human and Peoples' Rights adopted by the Organisation of African Unity (OAU) on 27 June 1981, which provides that, "Every individual shall have the right to receive information";

**Reaffirming** Article IV(1) of the Declaration of Principles on Freedom of Expression in Africa, adopted by the African Commission on Human and Peoples' Rights at its 32<sup>nd</sup> Ordinary Session held in October 2002, which provides that "Public bodies hold information not for themselves but as custodians of the public good and everyone has a right to access this information, subject only to clearly defined rules established by law";

**Cognisant** of the African Union Convention on Preventing and Combating Corruption, the African Charter on Values and Principles of Public Service and Administration, the African Charter on Democracy, Elections and Governance, the African Youth Charter and the African Statistics Charter, all of which promote transparency in public life.

**Welcoming** the efforts of the African Commission on Human and Peoples' Rights Special Rapporteur on Freedom of Expression and Access to Information in developing a Model Law for AU Member States on Access to Information, aimed at assisting Member States in formulating, adopting or reviewing access to information legislation and its implementation;

**Mindful** of the efforts of international organisations and others to develop principles and declarations on the right of access to information and freedom of expression including the 2010 Brisbane Declaration "Freedom of Information: The Right to Know", the Atlanta Declaration and African Regional Findings, the Accra Agenda for Action, the Lagos Declaration on the Right of Access to Information, the Johannesburg Principles on National Security, Freedom of Expression and Access to Information, and the Declaration of Table Mountain;

**Aware** that the World Summit on the Information Society (WSIS) brought to the forefront the importance of access to information in the modern world through the Geneva Declaration of Principles and Tunis Commitment and that the Internet Governance Forum (IGF) plays a crucial role in bringing together all of the stakeholders to facilitate an international internet governance debate that includes issues of access and openness;

**Recognising** the work of the African Union Commission to give practical expression to the various instruments of the African Union on freedom of expression and access to information, through such initiatives as the Pan African Media Network and portal, the new AU website, social networks, the media center, training programmes, ensuring media access to the AUC leadership, and publication of other information materials among others; as well as its efforts in promoting Information and Communications Technology (ICTs) in Africa;

**Encouraged** that over 90 countries around the world have adopted comprehensive national access to information laws or regulations including ten in Africa; that many countries in Africa have joined the Extractive Industries Transparency Initiative, the International Aid Transparency Initiative and the Open Government Partnership; and that the Economic Community of West African States is moving towards adoption of a binding Supplementary Act for a Uniform Legal Framework on Freedom of Expression and Right to Information;

**Concerned** that most African nations have not yet adopted comprehensive ATI laws or regulations and that significant problems remain with both the substantive provisions of many of those that have adopted laws and the full implementation of the laws;

**Acknowledging** that civil society organisations and government bodies around the world have adopted 28 September as International Right to Know Day;

**Convinced** that it is of critical importance that clear and comprehensive principles are established to guide the promotion and protection of the right of access to information in Africa through the adoption and effective implementation of appropriate national laws and regulations;

Resolve to adopt the following Principles on The Right of Access to Information:

### **Key Principles**

1. **Fundamental Right Accessible to Everyone.** Access to information is a fundamental human right, in accordance with Article 9 of the African Charter on Human and Peoples' Rights. It is open to everyone, and no one should be privileged or prejudiced in the exercise of this right on account of belonging to a class or group howsoever defined, and whether in terms of gender, class, race, political association, occupation, sexual orientation, age, nationality, HIV status, and other bases as cited in many African constitutions. It is not required that anyone must demonstrate a specific legal or personal interest in the information requested or sought or otherwise required to provide justification for seeking access to the information.

2. **Maximum Disclosure.** The presumption is that all information held by public bodies is public and as such should be subject to disclosure. Only in limited circumstances set out in these principles below may disclosure be denied.
3. **Established in Law.** The right of access to information shall be established by law in each African country. Such law shall be binding and enforceable and based on the principle of maximum disclosure. The law shall take precedence over other conflicting laws that limit access to information.
4. **Applies to Public Bodies and Private Bodies.** The obligations of ATI shall apply to all public bodies, as well as to private bodies that are owned or controlled by the government, utilise public funds, perform functions or provide services on behalf of public institutions, or have exclusive contracts to exploit natural resources (with regards to said funds, functions, services or resources), or which are in possession of information which is of significant public interest due to its relation to the protection of human rights, the environment or public health and safety, or to the exposure of corruption or illegal actions or where the release of the information may assist in exercising or protecting any right.
5. **Clear and Unambiguous Process.** The law shall include procedures for the exercise of the right. The process to obtain information should be simple and fast and take advantage of new information and communication technologies where possible. Bodies falling under the scope of the ATI law should provide assistance to requesters in order to ensure that they receive the information they need. The information provided should be provided in a form understandable to the requestor. Information should be disclosed within a clear and reasonable deadline provided for by law. It should be available at low or no cost.
6. **Obligation to Publish Information.** Public and relevant private bodies shall be obliged to proactively release information in a timely manner about their functions, powers, structures, officials, decisions, expenditures, budgets, and other information relating to their activities that is of public interest. The dissemination should use all reasonable means of communications, including ICTs, to maximise access to all communities and sectors of society.
7. **Language and Accessibility.** To the greatest extent possible, information should be available in the language of the person seeking it, in an accessible location, in a format that is as accessible as possible, and, in particular, ensures that it is accessible to those who may be particularly affected by the subject matter of the information.
8. **Limited Exemptions.** The right of access to information shall only be limited by provisions expressly provided for in the law. Those exemptions should be strictly defined and the withholding of information should only be allowed if the body can demonstrate that there would be a significant harm if the information is released and that the public interest in withholding the information is clearly shown to be greater than the public interest in disclosure. Information can only be withheld for the period that the harm would occur. No information relating to human rights abuses or imminent dangers to public health, environment, or safety may be withheld.

9. **Oversight Bodies.** Independent bodies such as an ombudsperson or information commissioner should be established to monitor and hold government bodies and relevant private entities to account on their access to information disclosure practices, to receive and decide upon complaints, and generally oversee the implementation of the access to information legislation. The oversight body should be adequately funded.
10. **Right to Personal Data.** All persons have a right to access and correct their personal data held by third parties.
11. **Whistleblower Protection.** To ensure the free flow of information in the public interest, adequate protections against legal, administrative and employment-related sanctions should be provided for those who disclose information on wrong-doing and other information in the public interest.
12. **Right of Appeal.** Everyone has a right to appeal administratively any action that hinders or denies access to information or any failure to proactively disclose information. They have a right to further appeal to an independent body and to finally seek judicial review of all limits of their right of access to information.
13. **Duty to Collect and Manage Information.** Public and relevant private bodies have a duty to collect information on their operations and activities on behalf of their citizens. They also have a duty to respect minimum standards in relation to the management of this information to ensure that it may easily be made accessible to citizens.
14. **Duty to Fully Implement.** Public and relevant private bodies have an obligation to ensure the law is fully implemented. This includes internal procedures and processes and the designation of responsible officials.

### **Application of Principles**

These principles are essential to development, democracy, equality, and the provision of public service, and are applicable to, amongst others, the following:

1. **Enabling Environment.** Governments should ensure that the legal frameworks create an enabling environment allowing individuals, civil society organisations including trade unions, media organisations, and private businesses to fully enjoy access to information, thus fostering active participation in socio-economic life by all, in particular people living in poverty and those discriminated against or marginalised.
2. **Elections and Electoral Processes:** Governments and election management bodies have a positive obligation to provide the public with information before, during and after elections, not to interfere with media coverage, to encourage public participation and proactively publish campaign spending and contributions.
3. **Disadvantaged Communities:** Governments have a particular obligation to facilitate access to information by disadvantaged minority groups and minority language speakers, as well as

marginalised groups including women, children, rural people, the poor and persons with disabilities. Information should be available at no costs to these groups. This especially applies to information that contributes to the long-term empowerment of the groups. Governments also have an obligation to ensure equitable and affordable access to ICTs for those with special needs and for other disadvantaged persons and groups.

4. **Women:** Governments, civil society and the media have an obligation to facilitate women's equal access to information, so that they can defend their rights and participate in public life. Civil society organisations should be encouraged to make the best use of access to information mechanisms to monitor governments' fulfilment of commitments to further gender equality, to demand the enhanced delivery of services targeted at women and to ensure that the public funds they are entitled to actually reach them. The collection, management and release of information should be gender disaggregated.
5. **Children and Youth:** Governments have an obligation to encourage the mass media to disseminate information and material of social and cultural benefit to children and the youth. Governments are further encouraged to facilitate the exchange and dissemination of such information and material from a diversity of cultural, national and international sources as well as the production and dissemination of information specifically for children and youth and wherever reasonably possible facilitate and encourage access to such information by children and youth.
6. **Environmental Information:** Governments and inter-governmental organisations should increase their efforts in implementing Principle 10 of the 1992 Rio Declaration on the Environment and Development on the right of access to information, public participation and access to justice on environmental issues. Governments should adopt appropriate legislation and regulations to promote access and proactive release of environmental information, guarantee openness, fight secrecy in institutional practices, and repeal that which hinders public availability of environmental information. Governments' capacity to supply environmental information and civil society organisations' demand for such information, as well as engagement in decision-making processes and the ability to hold governments and other actors accountable for actions affecting the environment should be strengthened.
7. **Education:** Taking into account the close connection between the right of access to information and the right to education, governments have the duty to make publicly available information about educational policies and assessments of their impacts, school performance data, and budgets for education at all government levels. Governments also have a positive obligation to provide information for each school, in particular, schools' admission policies and admission lists, information on management practices, school governance, and other relevant aspects.
8. **Health:** Governments have a duty to provide access to information with a view to ensuring and improving access to health care services and enhancing accountability regarding their provision. Civil society actors should be encouraged to implement actions to expand the reach of this type of information to all sectors in society, promote the exercise of the right to information to advance the right to health and counter its violations, undertake advocacy and monitoring actions and directly involve individuals in them. Enhanced access to health-related information shall not preclude the protection of individuals' right to privacy.

9. **The Fight Against Corruption:** By contributing to openness and accountability, access to information can be a useful tool in anti-corruption efforts. Besides ensuring that access to information legislation is effectively implemented, governments have a duty to guarantee a broader legal and institutional framework conducive to preventing and combatting corruption. Civil society organisations and plural media independent of powerful political and commercial interests are critical actors in unveiling and fighting corrupt practices, and their use of access to information laws and other mechanisms enhancing transparency should be encouraged.
10. **Aid Transparency.** Governments, donors and recipients have a duty to make all information relating to development assistance including grants, loans and transfers to public and private bodies, and assessments on the use and effects of such assistance fully public in a proactive manner based on the principles of the International Aid Transparency Initiative.
11. **Natural Resources Transparency.** Governments should proactively publish all information including policies, impact assessments, agreements, subsidies, licenses, permits and revenues relating to the exploitation of natural resources including the extractive industries, water, fisheries, and forests. Private bodies which are exploiting natural resources should be required to publicly disclose the terms of such agreements and payments made to governments based on the principles developed by the Extractive Industries Transparency Initiative (EITI).
12. **Media and Information Literacy.** Governments, civil society, education institutions, and the media have an obligation to promote media and information literacy, to assist individuals and communities to ensure that all members of society can understand and take advantage of new technologies, and to be able to participate intelligently and actively in public matters, and enforce their right of access to information. Citizens should be empowered to be able to consume information critically and express their views on such information, as well as be enabled to seek corrections where applicable.
13. **Access to Information and Communications Technologies.** Governments have an obligation to (i) use ICTs and other media to ensure maximum disclosure and dissemination of information; (ii) promote and facilitate unhindered public access to such technologies for all citizens and especially for disadvantaged minority groups and minority language speakers, as well as marginalised people such as women, children, rural people, the poor and persons with disabilities.
14. **Apply in Other Spheres.** The principles stated above on the right of access to information also apply to various spheres that have not been listed.

### **Call to Action**

In light of the above, the Conference calls on:

#### **UNESCO to:**

- Endorse, through its General Conference, the “African Platform on Access to Information” and the proclamation of 28 September as International Right to Information Day, also recommending

the endorsement of this International Day by the United Nations General Assembly, as a date to raise awareness about the importance of the right of access to information throughout the world;

- Develop and implement internal policies facilitating access to information held by UNESCO in line with this Declaration, and to encourage the adoption of similar policies by other UN agencies.

#### **UN Economic Commission for Africa:**

- Develop as part of the RIO +20 Earth Summit a regional convention on access to environmental information, public participation and access to justice based on Principle 10 of the 1992 Rio Declaration and the UNEP Bali Guidelines.

#### **The African Union, its Organs and Institutions:**

- The African Commission on Human and Peoples' Rights to promote 28 September as African Right to Information Day;
- The African Commission on Human and People's Rights to adopt ~~use this Declaration for~~ a resolution authorising the Special Rapporteur on Freedom of Expression and Access to Information to expand Article IV of the Declaration of Principles on Freedom of Expression in Africa to incorporate the principles of this Declaration.
- The African Commission on Human and Peoples' Rights to complete and approve the proposed Africa Model Law for AU Member States on Access to Information;
- The African Union Commission to take forward this Declaration by (1) proposing to the next AU summit in January 2012 to adopt 28 September as African "Right to Information Day"; and (2) initiate an Experts Group to develop further instruments on access to information;
- The Pan-African Parliament (PAP) to endorse this Declaration;
- All African Union bodies to promote the respect of the principles in this Declaration by national governments and provide assistance in implementing them;
- The New Partnership for African Development (NEPAD) to adopt the revised African Peer Review Mechanism (APRM), which includes transparency and access to information;
- The African Union should develop and implement internal policies on access to information held by AU bodies based on this Declaration.

#### **Other African Regional Organizations and Institutions:**

- All Regional Economic Communities (RECs) should develop internal policies on access to information held by those bodies based on this Declaration;
- ECOWAS to review and adopt the Supplementary Act for a Uniform Legal Framework on Freedom of Expression and Right to Information in West Africa;
- The Southern African Development Community (SADC) to revise the Protocol on Culture, Information and Sport to include principles on access to information;
- Inter-governmental Agency on Development (IGAD) to develop and adopt a Protocol on access to information based on this Declaration;

- The East African Community (EAC) to develop and adopt a Protocol on access to information based on this Declaration;
- The African Development Bank (ADB) to adopt a revised public access policy based on the Transparency Charter for International Financial Institutions.

**National Governments of AU member states to:**

- Adopt or revise existing comprehensive laws on access to information in line with the principles in this Declaration and the proposed AU Model Law, and fully implement them;
- Harmonise legal frameworks to ensure access to information including repealing or revising antiquated laws which restrict access and ensuring that new laws are compatible with the ATI principles;
- Engage with civil society and other stakeholders to ensure widespread information demand and effective implementation of laws and policies to advance access to information by all persons, especially marginalised groups.
- Join and implement multi-stakeholder efforts including the Extractive Industries Transparency Initiative (EITI), the Construction Sector Transparency Initiative (CoST) and the Medicines Transparency Alliance (MeTA) to further transparency;
- Promote availability of public domain information through ICTs and public access to ICTs;
- Support AU efforts to adopt an instrument on access to information;
- Officially recognise 28 September as International and African “Right to Information Day”;
- Adopt and effectively implement legislation and policies ensuring whistleblower-protection.

**Civil Society to:**

- Engage with governments in developing, enhancing and implementing ATI laws;
- Monitor progress on the implementation of ATI laws including sectoral laws;
- Create awareness on ATI and provide assistance to facilitate information access by the general public as well as by specific audiences (including women, minority groups and minority language speakers, children, rural communities, individuals with disabilities or living in poverty);
- Ensure transparency in their own activities;
- Promote September 28 as African and International Right to Information Day and, in particular, carry out activities on that date every year to advance the recognition, awareness and enjoyment of the right of access to information by all sectors of society.

**Media to:**

- Respect editorial independence, professional ethics and journalism standards in their provision of information;
- Recognise the need for transparency and accountability with regard to their own output and institutions, while safeguarding the principal of protecting sources;
- Respect and promote equality, and provide equitable representation within their information output;
- Promote the widest possible access to their information output;
- Enhance mechanisms for audience participation and response;
- Recognise and be responsive to gender differences in regard to audience and market research;

- Popularise the importance of, and issues around, access to information.
- Make optimum use of ATI laws to access information for the public interest.

**Business Sector Companies and Corporations to:**

- Join multi-stakeholder initiatives promoting transparency including EITI, CoST and MeTA;
- Adopt corporate and social responsibility (CSR) policies that promote transparency and accountability, including access to information and protection of whistleblowers;
- Proactively disclose information of public interest including on pollution releases and other environmental issues;
- Support government and CSO efforts to improve access to information in society.

**Public and Private Donors to:**

- Ensure that all information relating to the use of development assistance and its effects are made public;
- Ensure that all information relating to development assistance is made available in conformity with the International Aid Transparency Initiative (IATI) standards;
- Encourage and support governments in the adoption and full implementation of access to information laws and policies;
- Support civil society and governments' efforts to promote access to information.



# Moving from Principles to Rights

Rio 2012 and Ensuring Access to Information, Public Participation,  
and Access to Justice for Everyone

July 2011

# Moving from Principles to Rights

## Rio 2012 and Access to Information, Public Participation, and Access to Justice for Everyone<sup>1</sup>

### ARTICLE 19 and The Access Initiative

July 2011

#### **Synopsis**

The rights of access to information, public participation, and access to justice are essential to sustainable development. The 1992 Rio Declaration provided for these rights in Principle 10 and Agenda 21 moved them into reality in many countries. Now renewed commitment is needed for the full implementation of the rights in all countries. The Rio 2012 Summit provides an opportunity for governments to transform Principle 10 from aspirational goals into actionable rights. Governments and civil society should use the opportunity to commit together in adopting, implementing, and exercising these rights in support of sustainable development. The 2012 Summit's focus on the theme of improving institutional frameworks should galvanize nations to improve their national environmental governance, develop international instruments giving legal force to Principle 10, and implement these principles into international bodies' decision-making processes. This paper reflects insights from the research, on the ground experiences, and core beliefs of over 250 non-governmental organisations (NGOs) working in 50 countries within The Access Initiative Network together with ARTICLE 19 - a human rights organisation that promotes freedom of expression and freedom of information all over the world.

#### **Principle 10 of the 1992 Rio Declaration**

*Environmental issues are best handled with participation of all concerned citizens, at the relevant level. At the national level, each individual shall have appropriate access to information held by public authorities concerning the environment, including information on hazardous materials and activities in their communities and the opportunity to participate in decision-making 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.*

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<sup>1</sup> This paper was written by David Banisar and Sejal Parmar from ARTICLE 19, and Lalanath de Silva and Carole Excell from the Access Initiative, World Resources Institute. This paper reflects the views of ARTICLE 19, The Access Initiative, and the authors.

## 1 Introduction

In the 1992 Rio Declaration on Environment and Development, the international community recognised that sustainable development depends upon good governance.<sup>2</sup> Principle 10 of the Declaration sets out the fundamental elements for good environmental governance in three “access rights”: access to information, public participation, and access to justice. These are based on the experience that governmental decision-making failing to include these essential tenets of access will produce outcomes 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 recognised across the world. However, there is much work remaining 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, Agenda 21, and the Johannesburg Plan of Implementation<sup>4</sup> need to be

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<sup>2</sup> In addition to Principle 10 above, 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 recognise that women and indigenous people play a vital role in environmental management and that their participation is essential to achieve sustainable development. Report of the United Nations Conference on Environment And Development, A/CONF.151/26 (Vol. I). <http://www.un.org/documents/ga/conf151/aconf15126-1annex1.htm>.

<sup>3</sup> Foti J. et al, *Voice and Choice: Opening the Door to Environmental Democracy*, World Resources Institute, (2008). <http://www.accessinitiative.org/resource/voice-and-choice-opening-door-environmental-democracy>.

<sup>4</sup> *Johannesburg Plan of Implementation of the World Summit on Sustainable Development*, August 26-September 4, 1992. [http://www.un.org/esa/sustdev/documents/WSSD\\_POI\\_PD/English/POIToc.htm](http://www.un.org/esa/sustdev/documents/WSSD_POI_PD/English/POIToc.htm).

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 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>5</sup>

The Access Initiative (TAI) aims to bridge the gap between international commitment to P10 and national-level implementation of the policies and systems that support these access rights. Over the 10 years since its formation, partner NGOs have carried out evidence-based indicator assessments of their governments’ implementations of Principle 10. ARTICLE 19 has worked on supporting the development and implementation of laws guaranteeing and implementing rights to freedom of expression for over 20 years in over one hundred countries around the world. TAI and ARTICLE 19’s work supports the belief that sustainable development cannot succeed when citizens are sidelined and decisions are made in secret behind closed doors.

We believe that the outcome of the Rio 2012 Summit 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 into national law, ensure intergovernmental organisations and institutions incorporate these rights into their own regulation and practices, and develop international and regional mechanisms to ensure support across regions for tracking and monitoring of implementation. We believe that new international instruments are necessary to ensure that these access rights are truly available to everyone.

## 2 The Rio 2012 Process and Principle 10

The United Nations Conference on Sustainable Development, the Rio 2012 Summit, follows up on the 1992 Earth Summit. Its stated purpose 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.” Within that context, there are two

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<sup>5</sup> Foti J. et al, *Voice and Choice*, *ibid*.

specific themes emphasised: (1) A green economy in the context of sustainable development and poverty eradication; and (2) The institutional framework for sustainable development.

Overall, these themes have been discussed in isolation from each other and there has been insufficient discussion on what reforms are needed to achieve these objectives, who needs to be involved in decision-making, and how the objectives will be achieved. Both agenda items need to be discussed in light of the principles of transparency, public participation, and accountability. A fruitful approach would be for the two themes to be considered together in conjunction with the larger objective of securing political commitments for sustainable development that could have a greater impact at the Summit.

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>6</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>7</sup> Without these basic changes the current economic paradigm will prevail, supported by institutions and interest groups that have benefited from restricting citizen access.

## 2.1 The Green Economy

There has been an extensive debate on creating a definition for a “green economy” and determining its scope. There is some agreement 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. 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 dressed as green meet their intended aims of economic and environmental sustainability and social equity requires broad based public participation and support from empowered civil society actors, well-informed and

<sup>6</sup> Preparatory Committee for the United Nations Conference on Sustainable Development, Second session, Item 2 of the provisional agenda, p. 25, 7-8 March 2011, <http://www.unctd2012.org/files/prepcom/SG-report-on-objective-and-themes-of-the-UNCSD.pdf>

<sup>7</sup> Ibid, p. 5.

engaged voters, consumers, stakeholders, and shareholders. Disseminating information about what specifically a green economy entails for society is essential to motivating social actors’ involvement in the decision-making process of policies intended for developing and protecting sustainability. Governments must establish infrastructure for access to this type of information and ensure public participation. The media must act 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.

## 2.2 Reforming Institutions at the International and National Levels

Meanwhile, discussions on the sustainable development governance theme have focused on International Environmental Governance (IEG). The Nairobi-Helsinki Outcome Document proposes a reform agenda for institutions, the UN Environmental Programme (UNEP), the UN Commission on Sustainable Development (UNCSD), and the Economic and Social Council.<sup>8</sup> A second tier of concerns addresses the fragmentation of Multilateral Environmental Agreements (MEAs), funding mechanisms, and Secretariats.

The 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.

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. Currently, there are limited and inadequate mechanisms for access to information held by UN bodies, especially relating to trade.<sup>9</sup> There has been more significant progress with the World Bank and International Financial Institutions (IFI’s).<sup>10</sup>

At the same time, there has been little effort toward reviewing and reforming national institutions. While international institutions have critical roles in

<sup>8</sup> Consultative Group of Ministers or High-level Representatives, Nairobi-Helsinki Outcome, 23 November 2010. <http://www.unep.org/environmentalgovernance/Portals/8/documents/Events/NairobiHelsinkiFinalOutcomeEdited.pdf>.

<sup>9</sup> See e.g. Roberts, Alasdair S., *A Partial Revolution: The Diplomatic Ethos and Transparency in Intergovernmental Organizations*, Public Administration Review, Vol. 64, No. 4, pp. 408-422, July-August 2004. Available at SSRN: <http://ssrn.com/abstract=1307710>.

<sup>10</sup> See <http://www.ifitransparency.org/index.shtml>.

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. This is a glaring omission. Without mechanisms to ensure a means of government accountability, governments will continue to fail to fulfill their obligations under international environmental law. Some possible mechanisms which may be put forward for consideration include:

- *Peer review* - The OECD Group on Environmental Performance (GEP) has developed a process to conduct reviews of the environmental performance of OECD member countries with respect to both domestic policy objectives and international commitments.<sup>11</sup> It has been in place since 1992.
- *Independent evaluation and complaint mechanisms* - The North American Commission for Environmental Cooperation takes a multi-pronged approach to promoting environmental enforcement and compliance. 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 allow private investors a right to appeal decisions by the Clean Development Mechanism that go against their interest while under the World Bank Inspection Panel affected citizens can trigger inspections of alleged failures of the Bank to follow its own policies. Finally, under the WTO dispute settlement process, and under several bilateral investment agreements, civil society organisations have been allowed to submit amicus

<sup>11</sup> See "OECD Environmental Performance Reviews - A Practical Introduction", 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).

curiae briefs to influence the outcome of decisions.

In his background paper for Ministerial consultations at the 26<sup>th</sup> session of the Global Ministerial Environmental Forum,<sup>12</sup> the Executive Director of UNEP noted that to deal with the accountability challenge, it would be necessary to make review a key function of the Global Ministerial Environment Forum, to implement independent third-party reviews and performance monitoring, to create incentives for performance and early action, and to establish a global version of the Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters. The IEG discussions clearly need to move away from the current negotiations and refocus in areas that can engender greater transparency and accountability, acknowledging achievements and compliance with international commitments but also acknowledging where capacity and political will have been lacking.

### 3 Progress to Date on Principle 10 and What is Missing?

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.

#### 3.1 International Progress

In the area of access rights, the 1992 Rio Declaration has seen mixed success on the global level. 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>13</sup>

UN bodies have also been slow in addressing the issue. In 2010, after nearly 20 years, the UNEP Governing Council finally adopted guidelines ("the Bali Guidelines") on how governments should develop national laws in relation to Principle 10.<sup>14</sup> The

<sup>12</sup> UNEP/GC.26/17/Add.2 Twenty-sixth session of the Governing Council/Global Ministerial Environment Forum, Item 4 (b) of the provisional agenda-Policy issues: emerging policy issues, Nairobi, 21–24 February 2011.

<sup>13</sup> See e.g. The London Declaration for Transparency, the Free Flow of Information and Development, September 2010.

<http://www.right2info-mdgs.org/declaration/>.

<sup>14</sup> UNEP Guidelines for the Development of National Legislation on Access to Information, Public Participation and Access to Justice in Environmental Matters, 2010.  
<http://www.unep.org/DEC/PDF/GuidelinesAccesstoJustice2010.pdf>.

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.” 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.

More successful has been the efforts of the UN Economic Commission for Europe (UNECE). The UNECE has adopted two groundbreaking treaties based on the Declaration. 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 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. It also established rules for public participation, appeals, and access to justice measures.

The Convention also 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.” 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 June 2011, the Aarhus Convention has been ratified by 44 countries from Western Europe to Central Asia and has been incorporated into EU law through a directive.<sup>15</sup> The Compliance Committee has now heard over 50 cases, nearly all filed by the public

or civil society organisations.<sup>16</sup> In 2003, a follow-up instrument to the Aarhus Convention, the Kiev Protocol on Pollutant Release and Transfer Registers, was adopted. This Protocol holds corporations accountable for disclosing information on the toxics they release to the environment. It has now been ratified by 26 countries.

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 (the Espoo EIA Convention).<sup>17</sup> It 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. It has been signed by 45 countries and ratified by thirty.

To date, no other regions have moved forward on developing binding legal instruments similar to the Aarhus and Espoo Conventions. As we discuss later in the paper, there is an opportunity for them to do so.

### 3.2 National Progress

There have also been substantial changes in legal frameworks at the national level since 1992, particularly in areas of access to information and environmental impact assessments. A substantial number of countries have

adopted new legal frameworks on access rights, especially relating to access to information.

However, the adoption of laws has not been uniform. Few African countries have adopted legal frameworks and significant gaps remain in the Asia Pacific region and in Latin America and the Caribbean.

Implementation has been difficult. Profound institutional and societal transformations are necessary to achieve a level of openness in which governments and civil society share a commitment to environmental democracy. Even countries that have made progress in adopting and implementing Principle 10 are often limited by internal structural and political

#### The Access Initiative Assessment Toolkit

The Access Initiative (TAI) has developed a comprehensive tracking indicator toolkit on Principle 10. It uses a 148 indicator web-based toolkit to assess the performance of governments on Principle 10 of the Rio Declaration. Working in their respective countries, TAI partners form national coalitions to assess the performance of their governments in providing the public with (a) access to information about government decisions, (b) public participation in decision-making, and (c) access to justice when their rights to information, participation, and a clean environment are violated. TAI currently has CSO partners in 50 countries and assessments for over three dozen countries are available on the web. It is available at <http://www.accessinitiative.org/resource/the-access-initiative-assessment-toolkit>.

<sup>15</sup> <http://www.unece.org/env/pp/>.

<sup>16</sup> [http://www.unece.org/press/pr2010/10env\\_p19e.htm](http://www.unece.org/press/pr2010/10env_p19e.htm).

<sup>17</sup> <http://www.unece.org/env/eia/>.

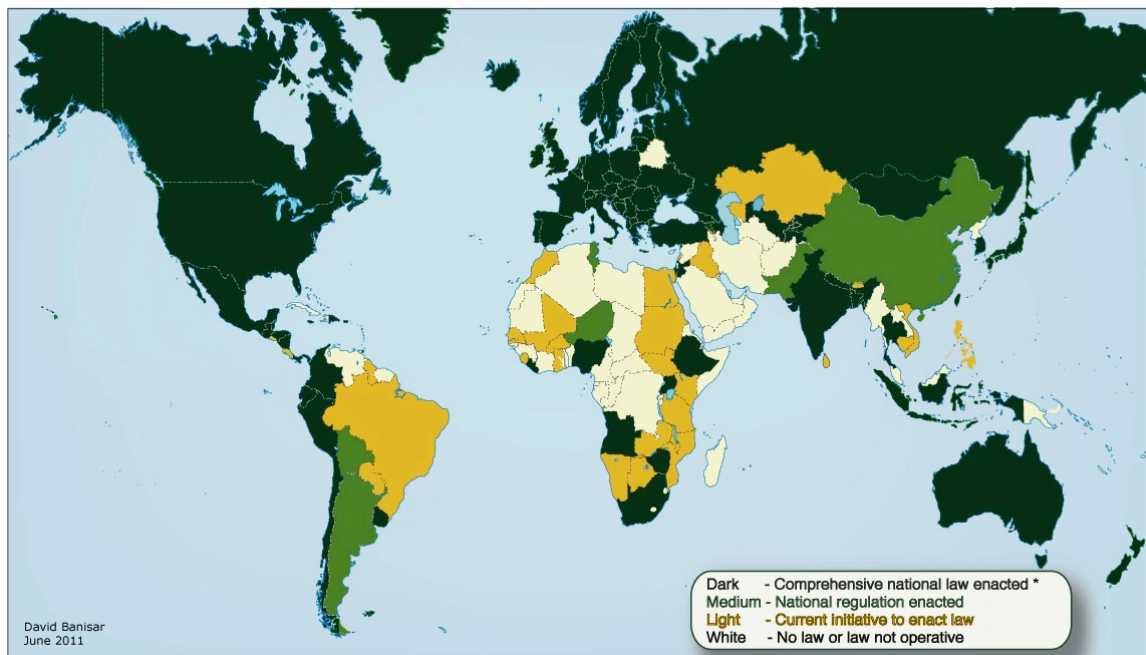
fighters. In many countries, efforts have been led by the Ministries of Environment and other agencies dealing with environmental conservation. Simultaneously, in other areas of decision-making that impact the environment, secretive and closed door routines continue to remain the norm. For example, access to information and public participation decision-making in Ministries relating to macroeconomic policies or energy planning is minimal.<sup>18</sup> Rio 2012's broader sustainable development framing and its emphasis on the green economy present an opportunity for governments to commit to a synchronization of

### 3.2.1 Access to Information

Sustainable development relies upon 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 Rio 1992, there has been a dramatic increase in recognition of the right to access information by

## National Right to Information Laws, Regulations and Bills 2011



\*Not all national laws have been implemented or are effective. See <http://www.article19.org/>

polycymaking with opening up a wider range of processes to public scrutiny.

There is considerable evidence that many governments now recognise the need for addressing good governance in achieving sustainable development and fulfilling the Rio commitments. The UN Development Programme, for example, found that the vast majority of 119 countries recently identified capacity development in governance related issues as their top priority for sustainable development improvements.<sup>19</sup> There is a real need for Rio 2012 to be the impetus for addressing these challenges.

nations. Over 90 countries have adopted framework laws or regulations for access to information, including in the past few years China, Indonesia, Nigeria, Chile and Mongolia.<sup>20</sup> Over 100 countries have the right to information enshrined in their constitutions. Many others including Brazil have adopted specific environmental information access statutes or provisions in general environmental protection laws. The Rio Declaration and Agenda 21 played an important role in the adoption of these laws.

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

<sup>18</sup> <http://electricitygovernance.wri.org/publications>.

<sup>19</sup> UNDP, UNEP, & GEF, National Capacity Self-Assessments: Results and Lessons Learned for Global Environmental Sustainability, August 2010. <http://thegef.org/gef/sites/thegef.org/files/publication/NCSA-SR-web-100913.pdf>.

<sup>20</sup> See 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), ARTICLE 19 web site, <http://www.article19.org>.

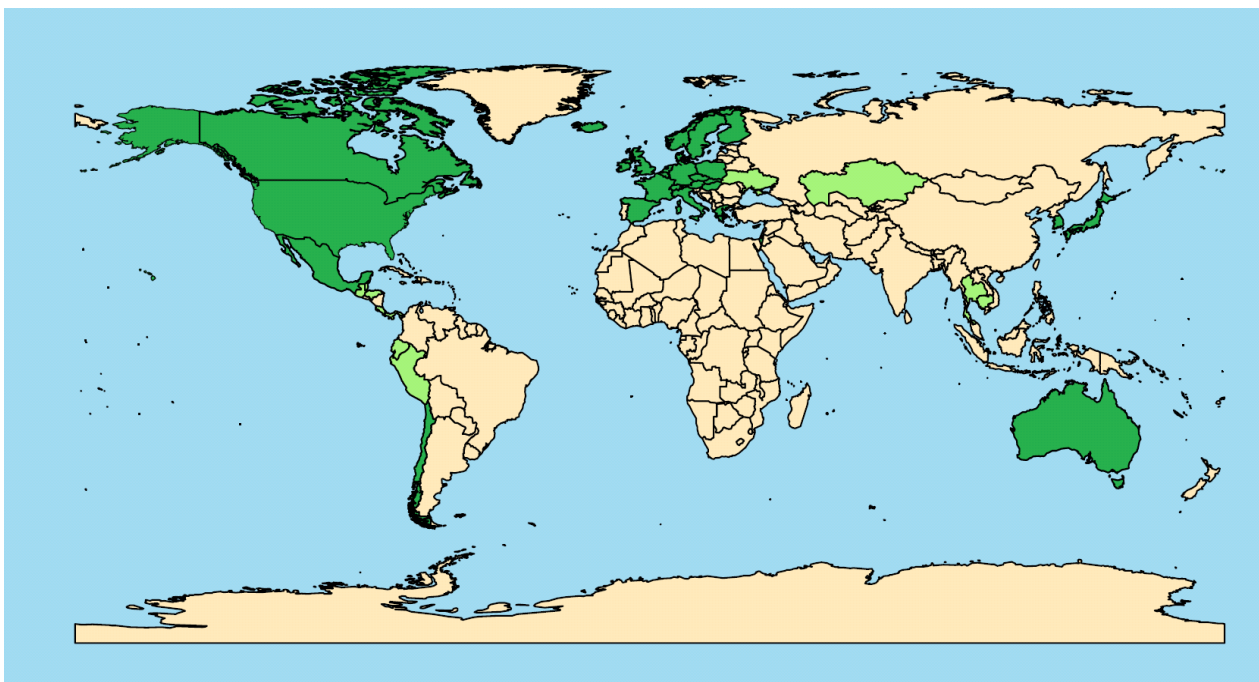
not yet have this right incorporated into national law. Furthermore, practice lags behind laws in the majority of these countries. Causes for this gap vary, including lack of detailed administrative rules and operational policies, inadequate public capacity to use the laws, and insufficient official capacity to implement laws.

Another positive trend with respect to access to information is the increased adoption of Pollutant

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

- Research by ARTICLE 19 and other human rights and environmental organisations across the world demonstrates that populations are still being denied access to essential information about climate change and the environment.<sup>25</sup> Denial of access to information stems largely from the

### Countries with Pollution Release Transfer Registers



Source: US EPA 2010

Release and Transfer Registers (PRTRs), 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>21</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 10 years.<sup>22</sup> There are now single registers covering all of North America<sup>23</sup> and Western Europe.<sup>24</sup>

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>26</sup>

- Around the world, few laws exist that require the government to proactively release environmental information, including basic information on air quality and drinking water quality. Meaningful access to environmental information requires governments to proactively gather, analyse, and disseminate this information.<sup>27</sup> Where databases exist at the international level, there are no

<sup>21</sup> Stephan, Mark. 2003. Environmental information disclosure programs: They work, but why? *Social Science Quarterly*. (1): 190 – 205.

<sup>22</sup> DeVito, Steve. Personal Communication. USEPA Toxics Release Inventory International Programs Officer. February 2008.

<sup>23</sup> North American Pollutant Release and Transfer Register. <http://www.cec.org/Page.asp?PageID=924&SiteNodeID=596>.

<sup>24</sup> European Pollutant Release and Transfer Register (E-PRTR). <http://prtr.ec.europa.eu/>.

<sup>25</sup> ARTICLE 19, *Changing the Climate for Freedom of Expression and Freedom of Information: Human Rights Responses to Climate Change*, December 2009.

<sup>26</sup> ARTICLE 19, *Access to Environmental in China: Evaluation of Local Compliance*, Article 19, December 2010.

<http://www.article19.org/pdfs/reports/access-to-environmental-information-in-china-evaluation-of-local-compliance.pdf>

<sup>27</sup> Foti, *Voice and Choice*. *ibid*.

requirements that this information is disclosed to the public.<sup>28</sup>

- Many countries performed poorly in providing environmental information during and after emergencies. Most countries fail to release relevant environmental information on emergencies at all. Mandates to produce and disseminate such information are generally weak despite recent international disasters.<sup>29</sup>
- Most countries produced state of the environment reports of generally good quality, but publicity is particularly weak; few countries make attempts to publicize the results through the mass media or in a usable format.<sup>30</sup>

### 3.2.2 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 have 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 uptake of laws requiring Environmental Impact Assessments in recent years. Over 120 countries have adopted legal provisions on EIAs.<sup>31</sup>

However, in practice, there are many gaps remaining in public participation. These include:<sup>32</sup>

- 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>33</sup> SEA strengths include a general availability of documents relating to proposed policies. There is an EU directive requiring that all EU member states incorporate SEAs into national law.<sup>34</sup> SEAs have also been incorporated within national legislation in a number of countries in Latin America and the Southeast Asia region.<sup>35</sup> Some development assistance from international financial institutions and donor agencies is increasingly tied to the conduct of SEAs. However, to date public participation in SEA processes is still rudimentary and needs improvement.

### 3.2.3 Access to Justice

The access to justice pillar is arguably one of the most difficult areas in which to see improvement. Increasingly, countries have created or enhanced environmental courts and tribunals with specialized functions.<sup>36</sup> The belief that these institutions enhance access to justice and provide more effective means of resolving environmental disputes has been a primary reason for these interventions. In 2010, there were

<sup>28</sup> See UNEP GEMS program- although information on water quality may be placed on the register by Governments and made accessible to members of the public, this scheme is entirely voluntary [http://www.gemswater.org/global\\_network/index-e.html](http://www.gemswater.org/global_network/index-e.html).

<sup>29</sup> Foti, *Voice and Choice*, ibid; ARTICLE 19, *Information Saves Lives During Humanitarian Crises*, March 2011.

<http://www.article19.org/pdfs/press/information-saves-lives-during-humanitarian.pdf>.

<sup>30</sup> Foti, *Voice and Choice*, ibid.

<sup>31</sup> John Glasson, Riki Therivel & Andrew Chadwick, *Introduction to environmental impact assessment*, 3<sup>rd</sup> edition (Routledge, 2005).

<sup>32</sup> Foti, *Voice and Choice*, ibid.

<sup>33</sup> See World Bank, SEAs Overview

<http://web.worldbank.org/WBSITE/EXTERNAL/WBI/WBIPROGRAMS/ENR/0,,contentMDK:20797418~pagePK:64156158~piPK:64152884~theSitePK:460957,00.html>.

<sup>34</sup> Directive 2001/42/EC.

<sup>35</sup> These include China, the Philippines, Thailand, and Vietnam.

<sup>36</sup> Pring, G. and Pring C., *Greening Justice: Creating and Improving Environmental Courts and Tribunals*, The Access Initiative, 2010.

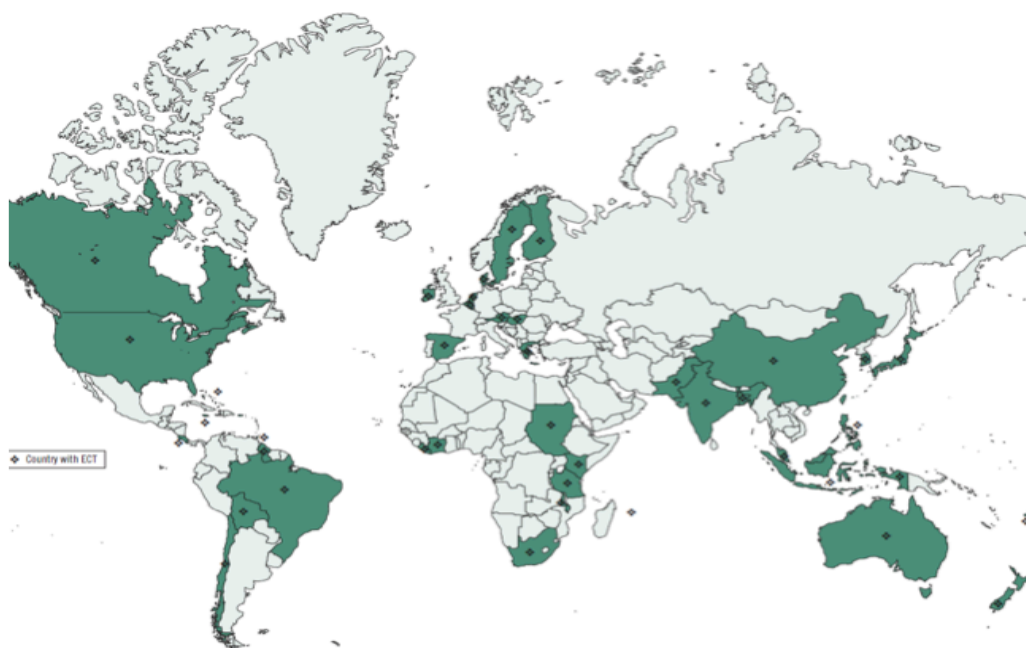
[http://www.accessinitiative.org/sites/default/files/Greening%20Justice%20Final\\_31399\\_WRI.pdf](http://www.accessinitiative.org/sites/default/files/Greening%20Justice%20Final_31399_WRI.pdf).

over 300 environmental courts and tribunals in 41 countries. Recently, India established a Green Tribunal and Malawi created an Environmental Tribunal.

However, there remain many gaps in the road to improving access to justice. Issues of timeliness (time taken to obtain a remedy), intimidation, and costs (litigation, loser pays principles, payment into court and costs to hire attorneys) should be highlighted, including in countries party to the Aarhus Convention.

framework and officials must possess practical skills and financial resources for access across all relevant ministries. Often, only the national ministry of environment has sufficient training in implementing access while other parallel and sectoral ministries and agencies do not.<sup>38</sup> To address the needs of indigenous peoples, vulnerable communities, and the poor, government must be innovative in how it provides and disseminates access to information.<sup>39</sup> These communities in particular continue to be excluded

### Countries with Environmental Courts and Tribunals



Source: Access Initiative 2011

The risk of seeking injunctive relief is also significant. There are improvements in many countries relaxing rules for legal standing;<sup>37</sup> however, there are still concerns about legal standing in sectoral legislative processes such as planning. Meanwhile, public interest cases taken by civil society organisations against corporations and governments for causing environmental harm are almost exclusively supported by donors and foundations.

### 3.3 Capacity Building

Legal mandates are insufficient to ensure the implementation of access rights. Governments need the infrastructure and capacity to *supply* access and the public and civil society organisations must have the ability to *demand* access and participate. Government officials need knowledge of the legal

from decision-making, and specific entitlements are needed to facilitate their participation and achieve inclusiveness.<sup>40</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 everyone has the right to freedom of opinion and expression; this right includes freedom to hold

<sup>37</sup> See e.g. the new Constitution of Kenya.

<sup>38</sup> ARTICLE 19, *Access to Environmental in China: Evaluation of Local Compliance*, Ibid.

<sup>39</sup> *Voice and Choice* 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>40</sup> Foti, Joseph et al., *A Seat at the Table: Including the Poor in Decisions for Development and Environment*, World Resources Institute (2010). <http://www.wri.org/publication/a-seat-at-the-table>.

opinions without interference and to seek, receive, and impart information and ideas through any media and regardless of frontiers. 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 a meaningful, understandable, and actionable format 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 an effective advanced warning system, particularly in relation to the dissemination of warnings, developments, and disaster mitigation. 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. 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.

#### **4 From Principles to Enforceable Rights: How Rio 2012 Could Strengthen Principle 10**

There is a compelling need to ensure that Principle 10 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>41</sup> this development is not sufficient by itself. Voluntary implementation of guidelines, coupled with resource and budgetary support, country-by-country, decreases the usefulness and potential impact of these guidelines.

Bolder action at the global level, 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 including the drafting and adoption of a new legally binding global instrument, adoption of legally binding instruments at the regional level, and new sustained efforts to bring additional parties into the Aarhus Convention. Such proposals are not exclusive but rather complementary and should be considered as part of a package which can be advanced simultaneously.

#### **4.1 Options for international instruments**

Possible options for international instruments:

**1. A new global convention on Principle 10.** The most far-reaching option is the drafting and adoption of a new global legally binding instrument adopting the access rights in Principle 10. This would be based on a commitment by the national leaders at Rio 2012 to adopt such an instrument. This approach would create a global platform to engage worldwide discussion on the subject, as has been done for other areas on environment. It could ensure that P10 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 real risk that such an initiative would lead to the adoption of minimal standards. It would also likely take a considerable time to develop. Finally, there are possible difficulties on how this would affect parties to the Aarhus Convention.

**2. Promoting 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. A significant positive aspect to this approach is the potential greater involvement of all countries in each region in developing and shaping the text of the regional instrument from the start, rather than the discussion being limited to major countries at the international level. This 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. It would also likely be a quicker process than a global debate. Finally, regional conventions would likely strengthen existing regional institutions and processes

<sup>41</sup> UNEP Governing Council decision GCSS.XI/11: Environmental law (part A), annexed to the proceedings of the special session: [http://www.unep.org/gc/GCSS-XI/proceeding\\_docs.asp](http://www.unep.org/gc/GCSS-XI/proceeding_docs.asp).

to reduce resource constraints.<sup>42</sup> However, this approach is not without risks, set out below.

### 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>43</sup> The treaty is well respected and has a functioning oversight system. It has already been ratified by 44 countries. However, no states outside the UNECE region have acceded to it to date. 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.”

## 4.2 Developing a Regional Convention Approach

We believe that the best approach is to begin the process of negotiating regional and sub-regional legally binding instruments on Principle 10 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 recognised as a model that should be considered for other regions. 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 some risks to this approach – some regions may be unlikely to adopt legally binding instruments at the regional level in the foreseeable future. But there remains the possibility for progress toward agreement on their merits, drafting, and adoption at the sub-regional level. Moreover, the development of regional treaties could further strengthen future efforts to create a global instrument in the future as has happened in the field of anti-corruption.

### 4.2.1 Opportunities in Latin America

We are particularly hopeful that this approach will be successful in the Latin American and Caribbean region as a first mover region, where there is a normative

convergence around Principle 10. Some developments include:

- **Regional Support.** The Declaration of Santa Cruz +10 reaffirmed the commitment of the members of the Organisation of American States (OAS) to Principle 10 and the importance of public participation in sustainable development decision making.<sup>44</sup> The Inter American Court of Human Rights recognises the right of citizens in the region to have access to information and participate in decisions that affect their rights,<sup>45</sup> while the OAS Secretariat recently released a Model Law on Access to Information.<sup>46</sup>
- **Free trade agreements** between several North and South American states recognise the importance of environmental assessments and the need to harmonize environmental regulations and standards. 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. 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. 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. 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 the poor and marginalized groups in decision-making by requiring both the project proponent and the government to adapt their strategies of information dissemination and adopt methods of citizen participation that take into account the social, economic, cultural, and geographic

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<sup>42</sup> Jeremy Wates, Options for strengthening the international legal framework protecting procedural environmental rights, including a global convention on access rights, 2010.

<sup>43</sup> Article 19, paragraph 3, of the Convention provides that non-UNECE States may only accede ‘upon approval by the Meeting of the Parties.’

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<sup>44</sup> <http://www.oas.org/dsd/Documents/DECLARATION+10.pdf>.

<sup>45</sup> Judgement in *Claude Reyes et al. v. Chile*, Inter-American Court of Human Rights, 19 September 2006.

<sup>46</sup> [http://www.oas.org/dil/access\\_to\\_information.htm](http://www.oas.org/dil/access_to_information.htm).

characteristics of the population in question. The draft regulations require the authority to make special efforts to adapt these procedures, taking into account vulnerable and geographically/territorially isolated communities, indigenous communities or those with ethnic minorities, and communities with a low educational level. 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. Brazil leads the way with innovative strengthening of the justice system to provide relief for environmental harms through public prosecutors and environmental courts.

## 5 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 the achievement of the Rio Principles. While there has been significant progress over the past 20 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.

ARTICLE 19 and The Access Initiative have the following specific four recommendations:

**Recommendation One:** That all states that have not yet done so, codify Principle 10 of the Rio Declaration in national laws, and for all states to make measurable and time bound commitments to improve laws, institutions, and practices for implementing Principle 10.

In particular, states should provide for:-

### A legal and regulatory framework:

1. To establish a legal and regulatory framework to protect the right to freedom of expression and the right to freedom of information, including freedom of the media, as well as the right to freedom of association, freedom of assembly, the

right of all to access administrative and judicial remedies, and the right to effective political participation. This legal framework should recognise and insist upon the principle of non-discrimination.

2. To enshrine and implement in domestic law the principles of maximum and proactive disclosure on environmental and green economy information.
3. To enshrine the right of the public, communities, and stakeholders to participate in decision-making that affects the environment and natural resources.
4. To ensure that the media, civil society groups, scientists, and members of the general public are not hindered in their efforts to gain access to information on development and environmental issues and to report and express their opinions.
5. To protect the right of whistleblowers, especially related to environmental hazards, and take necessary measures to ensure that whistleblowers should benefit from legal protection.
6. To remove 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, and to take proactive measures to promote their effective participation in the design and execution of development strategies.

**Recommendation Two:** 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, such as SAARC, SACEP, ECOWAS, ASEAN, OAU, and OAS<sup>47</sup> to take steps to negotiate and conclude legally binding regional or sub-regional conventions modeled 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.

**Recommendation Three:** The Rio 2012 *Outcome Document* should include a commitment by all

<sup>47</sup> South Asian Association for Regional Cooperation (SAARC), South Asia Co-operative Environment Programme (SACEP), Association of Southeast Asian Nations (ASEAN), Organization of African Unity (OAU), and Organization of American States (OAS).

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.

**Recommendation Four:** 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.

## 6 Additional Resources

The Access Initiative, *Greening Justice: Creating and Improving Environmental Courts and Tribunals* (2010) [http://www.accessinitiative.org/sites/default/files/Greening%20Justice%20Final 31399 WRI 0.pdf](http://www.accessinitiative.org/sites/default/files/Greening%20Justice%20Final%2031399%20WRI%200.pdf)

The Access Initiative, *Seat at the Table: Including the Poor in Decisions for Development and Environment*, (2010). <http://www.accessinitiative.org/resource/a-seat-table>

The Access Initiative Assessment Toolkit, (2006) <http://www.accessinitiative.org/resource/the-access-initiative-assessment-toolkit>

The Access Initiative, *Voice and Choice: opening the Door to Environmental Democracy*, World Resources Institute, (2008). <http://www.accessinitiative.org/resource/voice-and-choice-opening-door-environmental-democracy>

The London Declaration for Transparency, the Free Flow of Information and Development, September 2010. <http://www.right2info-mdgs.org/declaration/>

ARTICLE 19, *Changing the Climate for Freedom of Expression and Freedom of Information* (2009). <http://www.article19.org/pdfs/publications/changing-the-climate-for-freedom-of-expression-and-freedom-of-information.pdf>

UNEP Guidelines for the Development of National Legislation on Access to Information, Public Participation and Access to Justice in Environmental Matters, 2010. <http://www.unep.org/DEC/PDF/GuidelinesAccesstoJustice2010.pdf>

UNECE Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters. <http://www.unece.org/env/pp/>

### ABOUT THE ACCESS INITIATIVE AND ARTICLE 19

The Access Initiative is the world's largest network of civil society organisations working to ensure that people have the right and ability to influence decisions about the natural resources that sustain their communities ([www.accessinitiative.org](http://www.accessinitiative.org)).

ARTICLE 19, the Global Campaign for Free Expression, is an international human rights organisation focused on protecting and promoting the right to freedom of expression and right to information. ARTICLE 19 is a registered UK charity (No. 32741) with headquarters in London and field offices in Kenya, Senegal, Bangladesh, Mexico and Brazil ([www.article19.org](http://www.article19.org)).