

# SEMINARS AND CONFERENCES

## **Regional implementation meeting on access rights and sustainable development in the Caribbean**

Workshop on enhancing access to information  
on climate change, natural disasters and coastal  
vulnerability: leaving no one behind

Summary of presentations and discussions



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This document summarizes the regional implementation meeting on access rights and sustainable development in the Caribbean and the workshop on enhancing access to information on climate change, natural disasters and coastal vulnerability: leaving no one behind held in Rodney's Bay, Saint Lucia, from 24 to 26 August 2015.

The regional meeting and workshop were organized by the Policies for Sustainable Development Unit of the Sustainable Development and Human Settlements Division of the Economic Commission for Latin America and the Caribbean (ECLAC), in its capacity as technical secretariat of the regional process on Principle 10 in Latin America and the Caribbean, in conjunction with the United Nations Environment Programme, the Organisation of Eastern Caribbean States and the World Resources Institute.

Valeria Torres, Economic Affairs Officer, and David Barrio, Legal Officer, of the Sustainable Development and Human Settlements Division, were responsible for the summary, compilation and integration of contents on the basis of the report prepared by Danielle Andrade, facilitator of the meeting and workshop. The work was supervised by Carlos de Miguel, Chief of the Policies for Sustainable Development Unit of the Sustainable Development and Human Settlements Division.

The opinions expressed in this document, which has not undergone formal editorial review, are the sole responsibility of the authors and may not reflect the opinions of the Organization.

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## Summary

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Having timely and adequate access to environmental information, strengthening effective engagement of all stakeholders in environmental decision-making and ensuring access to environmental justice (“access rights”) are important pre-requisites of sustainable development. This was reaffirmed in key milestones of environmental governance such as the Rio Declaration on Environment and Development, the Guidelines for the Development of National Legislation on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters (Bali Guidelines), the Rio+20 outcome document “The Future We Want” and the 2030 United Nations Sustainable Development Agenda.

In view of the above and with the aim of supporting the regional negotiation process for the adoption of an agreement on access to information, public participation and access to justice in environmental matters in Latin America and the Caribbean currently under way with the support of the Economic Commission for Latin America and the Caribbean (ECLAC), a regional implementation meeting on access rights and sustainable development in the Caribbean was organized jointly with the United Nations Environment Programme (UNEP), the Organisation of Eastern Caribbean States (OECS) and the World Resources Institute (WRI). The meeting had as its objectives to take stock and review good practices and the progress made by Caribbean countries in the implementation of access rights, to introduce and discuss the relevance of the Bali Guidelines and review the preliminary document of the regional agreement on access to information, public participation and access to justice in Latin America and the Caribbean so as to identify key challenges, priorities and elements for the Caribbean.

Conscientious of the importance of climate change and natural disasters in the Caribbean, a workshop on enhancing access to information on climate change, natural disasters and coastal vulnerability in the Caribbean was subsequently held.

This document summarizes the presentations, discussions and conclusions of the regional implementation meeting and the climate change and natural disasters workshop. The original presentations are available at: <http://www.eclac.org/en/principle10>. Government and civil society representatives of twelve Caribbean countries participated at both events (Antigua and Barbuda, the Bahamas, Barbados, Belize, Dominica, Grenada, Guyana, Jamaica, Saint Kitts and Nevis, Saint Lucia, Saint Vincent and the Grenadines and Trinidad and Tobago).



## Introduction

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Principle 10 of the Rio Declaration on Environment and Development (“Rio Principle 10”) was adopted at the 1992 Rio Summit by Heads of State and Government with the goal to make progress towards the full access to information, public participation and access to justice in environmental matters.

This was reaffirmed in the Barbados Programme of Action for the Sustainable Development of Small Island Developing States (BPoA) in 1994, the Mauritius Strategy for the Further Implementation of the Programme of Action for the Sustainable Development of SIDS (MSI) (2005) and the Samoa Pathway (2014).

In February 2010 a milestone was achieved in the field of environmental law and the application of Principle 10 when the Special Session of the UNEP Governing Council, Global Ministerial Environment Forum (GMEF) in Bali, Indonesia, unanimously adopted the Guidelines for the Development of National Legislation on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters (Bali Guidelines).

Now that the international community has defined a set of Sustainable Development Goals (SDGs) and the 2030 United Nations Agenda for Sustainable Development, it has been made explicit that good governance, rule of law and resilient institutions are at the same time an expected outcome and drivers to advance in the pillars of sustainable development.

In this context, the full application of Principle 10 is more relevant than ever as it provides a clear, pioneering vision of transparency, justice and access to information as a basis for deepening democracy and eliminating global asymmetries.

Governments at the United Nations Conference on Sustainable Development (Rio+20) underscored that broad public participation and access to information and judicial and administrative proceeding are essential to the promotion of sustainable development and encouraged action at the regional, national, subnational and local levels on these matters.

The above was recognized by Latin America and the Caribbean region in the framework of the Rio+20 Conference, held in June 2012, where the Declaration on the application of Principle 10 of the Rio Declaration on Environment and Development was signed. In this Declaration, signatory countries committed, with the support of ECLAC as technical secretariat, to act jointly and proactively to ensure

the full implementation of the rights of access to information, public participation and access to justice in environmental matters. To this end, and after more than two years of preparatory work, in November 2014, signatory countries launched negotiations for a regional agreement on access rights in environmental matters and established a Negotiating Committee with a view to concluding its functions by December 2016.

The Negotiating Committee met for the first time in Santiago in May 2015. At that meeting, it adopted its organization and work plan which established that countries would continue with their national consultations on the preliminary document of the regional agreement prepared by ECLAC (LC/L.3987) and submit language proposals on the document by 31 August 2015. In October 2015, the Committee will meet for the second time in Panama City, Panama, where negotiations will take place based on the document that gathers the language proposals of countries and compiles them into the preliminary document.

Honouring the Declaration, Member States have placed public participation at the core of the regional process since the beginning, providing opportunities for the significant participation of the public at large.

## **I. Putting Principle 10 of the Rio Declaration into the Caribbean context: remarks delivered by Diane Quarless, Director of the Sub-regional headquarters for the Caribbean of the United Nations Economic Commission for Latin America and the Caribbean**

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The range and diversity of participation in this meeting is extremely important, because sustainable development is a participatory process. It cannot be achieved without the full and effective engagement of all stakeholders. And achieving sustainable development is both the principal objective and the greatest challenge of our time. Ensuring a balanced integration of the economic, social and environmental dimensions of development is not only essential for human development; it is also fundamental to protecting our planet for the benefit of present and future generations.

The Rio+20 outcome document: The Future We Want, in underscoring the need for renewed global commitment to sustainable development called for strengthened international environmental governance and a stronger institutional framework for its monitoring and management. It is within this context that we are here today.

What is Principle 10? For the benefit of the uninitiated, I want to re-state that article of the Rio Declaration adopted at Rio more than twenty years ago: “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 concerning the environment that is held by public authorities, including information on hazardous materials and activities in their communities, and the opportunity to participate in 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.”

So Principle 10 articulates three fundamental “rights of access”: access to information, access to public participation and access to justice, as key pillars of sound environmental governance. The full exercise of these rights is a prerequisite for building communities and citizens that are committed to sustainable development. It is also integral to the preservation and stewardship of the environment. It is about encouraging and ensuring stakeholder participation in environmental decision-making.

Why is this so important? This is a pivotal year in the life of the global community. When the United Nations General Assembly begins in New York in a few weeks, a new, transformative and integrated sustainable development agenda will be formally adopted during the Sustainable Development Summit to be convened on the 25-26 September. This new agenda, known as the post-2015 Development Agenda, reasserts the core development objectives of the Millennium Development Goals (MDGs); but it offers much more. Comprising 17 goals and 169 targets, it seeks to respond to a broader base of needs. It also acknowledges the importance to development of effective consumption and production practices; of resilient infrastructure; energy, industrialization and innovation. There is more specific attention to redressing climate change and to protecting both marine and terrestrial ecosystems. There is recognition of the central importance of reducing inequality both within and among states, if we are to achieve economic growth, poverty reduction and socially sustainable development.

Secretary General Ban Ki-moon describes it as a people's agenda, a plan of action for ending poverty in all its dimensions, irreversibly, everywhere, and leaving no one behind; one that seeks to ensure peace and prosperity, and forge partnerships with people and planet at the core. In this context, the promotion of openness, transparency and accountability, and the effective engagement of all stakeholders in planning and decision-making are important prerequisites for successful implementation of this new development agenda. What we seek is a stronger, more resilient institutional framework for sustainable development, in which enhanced governance and rule of law are both expected outcomes and drivers of the development process.

The peoples' access to environmental information, participation; to recourse and remedy envisioned in Principle 10 is therefore more relevant than ever. It provides a basis for strengthening democracy, while protecting the environment. Access to information empowers citizens and encourages their participation in decision making processes that take into consideration community needs and priorities. Access to justice gives potency to the rights of access since it facilitates the peoples' ability to enforce their right to be involved; to be informed; to make their voices heard; and to hold responsible parties accountable. Moreover, they enhance the ability of governments to respond to public concerns and demands; to build consensus; to establish legitimacy and to improve acceptance of and compliance with decisions impacting the environment.

In order to advance these objectives, governments of Latin America and the Caribbean signed a Declaration on the application of Principle 10 in Rio+20. By this declaration, Member States of the region pledged to adopt a regional agreement on access to information, participation and justice in environmental matters with the significant participation of the public. To date, 20 countries have signed the Principle 10 Declaration in Latin America and the Caribbean, including four English-speaking Caribbean states; Antigua and Barbuda, Jamaica, Saint Vincent and the Grenadines and Trinidad and Tobago. Following two years of preparatory work, a negotiating committee was established in 2014 and should conclude its task by the end of 2016.

The regional agreement on Principle 10 that will emerge from the negotiations will support the implementation in Latin America and the Caribbean of the post-2015 agenda, creating opportunities for collective action. In addition to contributing to the implementation of specific environmental-related goals such as 6 (water and sanitation), 11 (cities and human settlements) and 13 (climate change), it will boldly contribute to the fulfilment of broader goals such as 16 (promoting peaceful and inclusive societies, provide access to justice for all and build effective, accountable and inclusive institutions) and 17 (means of implementation, particularly in multi-stakeholder partnerships and data, monitoring and accountability). The Principle 10 agreement will also assist countries in complying with Multilateral Environmental Agreements (article 6 of the United Nations Framework Convention on Climate Change for example on access to information and participation on climate change matters and the Lima Ministerial Declaration on Education and Awareness-raising).

The regional process is also geared towards capacity-building and cooperation, based on national demands and needs, specific regional considerations, flexibility and a progressive approach. It also is intended to facilitate concerted action and strategies, promoting dialogue, the provision of technical

assistance, and the creation of a regional agenda on access rights based on the exchange of national experience and good practice.

Given the unique challenges that the Small Island Developing States (SIDS) of the Caribbean face, considering in particular our environmental fragility and vulnerability to the effects of climate change and natural disasters, there is no doubt that the member states of the Caribbean can benefit significantly from this process and what it offers through South-South cooperation to strengthen legal, institutional and policy frameworks. Although the countries of the Caribbean are at different levels of implementation and development of access rights, important strides have been made in the subregion that should be recognized and applauded. For example, Antigua and Barbuda recently enacted an Environmental Protection and Management Act (2015); Jamaica has a Freedom of Information Act and has created an Access to Information Unit in the Office of the Prime Minister; and Trinidad and Tobago has established an Environmental Commission. These clearly demonstrate steps in the right direction. I hope you will use this forum as an opportunity to share what other efforts are being taken.

The second meeting of the negotiating committee will be held in Panama 27-29 October 2015, when countries will begin negotiating the substantive provisions of the agreement. The current state of the negotiations offers an unparalleled opportunity for you to ensure that their particular concerns and interests are reflected in the text; that your needs and priorities are taken into account.

This is the right time for the Caribbean as a whole to get involved in the Principle 10 regional process. I call for the active engagement of Caribbean countries in the Principle 10 process and encourage all countries that have not done so already to sign the Principle 10 Declaration in Latin America and the Caribbean.



## **II. Stocktaking and review of the implementation on access to information, participation and justice in environmental matters in the Caribbean**

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The Caribbean sub-region has been at the forefront of the implementation of the rights access to information, public participation and justice in environmental matters since these were enshrined in the Principle 10 of the 1992 Rio Declaration on Environment and Development. In addition to developing such rights in key regional milestones such as the Port of Spain Accord on the Management and Conservation of the Caribbean Environment, the Port of Spain Consensus of the Caribbean Regional Economic Conference, the St. George's Declaration of Principles for Environmental Sustainability and the Treaty of Basseterre of the Organization of Eastern Caribbean States (OECS), Caribbean countries have made great strides in their implementation at the national level.

To take stock and review the progress made on the implementation of access rights in the Caribbean sub-region and identify challenges faced by Caribbean countries, two sessions were organized in the framework of the meeting: Session 1 entitled "Current status of the implementation of Principle 10 in the Caribbean and recent international and regional developments" and Session 2 entitled "Good practices, challenges and lessons learned in the Caribbean on access to information, public participation and justice in environmental matters".

Session 1 aimed to introduce the discussion on the current status of the implementation of Principle 10 in the Caribbean as well as analyze recent international and regional developments of interest. Session 2 was, in turn, devoted to present good practices from the Caribbean region on each pillar of the Principle 10. To this end, the session was divided into four panels (one to discuss each pillar and an additional panel to review missing elements in the Caribbean for the full application of access rights).

A non-exhaustive summary of the main ideas and discussions for each session and panel are outlined below. The original presentations are available at: <http://www.eclac.org/en/principle10>.

## A. Session 1: Current status of the implementation of Principle 10 in the Caribbean and recent international and regional developments

This session was designed to establish the international and regional context for the implementation of Principle 10 in the Caribbean. The speakers traced the regional and international commitments made by Caribbean countries to implement Principle 10 beginning as early as 1989 with the Port of Spain Accord on the Management and Conservation of the Caribbean Environment and including among others, the 1992 Rio Declaration on Environment and Development, the 2001 Revised Treaty of Chaguaramas establishing the Caribbean Community and the 2001 St. George's Declaration of Principles for Environmental Sustainability in the OECS.

### 1. Carlos de Miguel, Chief, Policies for Sustainable Development Unit of the United Nations Economic Commission for Latin America and the Caribbean

Mr. de Miguel highlighted the importance of access rights to achieving sustainable development as well as the virtuous circle between human rights, access rights and the environment. The following challenges and advancements on access rights in the Caribbean at the national and regional level were noted:

- Access to environmental information assists in the formulation of sound policy-making. Although several countries are interested in developing Pollution Release and Transfer Registers (PRTRs), few countries have implemented these types of registers;
- Requirements for public participation in projects can facilitate informed decision-making. Most countries have a discretionary requirement during the environmental impact assessment process for projects; and,
- Access to justice is important for ensuring that people have the opportunity to challenge decisions that affect their environment and health. Specialized environmental tribunals have been introduced in a few countries such as Chile and Trinidad and Tobago.

In addition, a brief overview of the Principle 10 regional process for the adoption of a regional agreement on access to information, public participation and access to justice was provided. The presenter also summarized the current status of negotiations:

- National consultations are being held among signatory countries to the 2012 Declaration on the application of Principle 10 of the Rio Declaration on Environment and Development;
- Signatory countries and the general public had until 31 August 2015 to submit comments to the technical secretariat on articles 1 to 10 of the Preliminary Document for the Regional Agreement on Access to Information, Public Participation and Access to Justice in Environmental Matters in Latin America and the Caribbean;
- Challenges in implementing access rights can be addressed through capacity building initiatives which are part of the process; and,
- Participants were invited to register on the Regional Public Mechanism<sup>1</sup> on ECLAC's website (<http://www.eclac.org/en/principle10>) to receive updates on the process.

<sup>1</sup> In the Plan of Action to 2014 adopted in Guadalajara, Mexico, on April 2013 by the signatory countries of the Declaration on the application of Principle 10 of the Rio Declaration on Environment and Development in Latin America and the Caribbean, a Regional Public Mechanism was established for those interested who could subscribe by completing a short form available on the ECLAC website. The main objectives of this Mechanism are to keep all those interested in the process informed and facilitate their involvement; to coordinate public participation in international meetings; and to contribute to the transparency of the process. The Mechanism may also serve as a complement for participation actions carried out at the national level.

**Box 1****Principle 10 of the Rio Declaration on Environment and Development (1992)**

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

Source: Economic Commission for Latin America and the Caribbean.

**Box 2****The Principle 10 process for the adoption of a regional agreement on access to information, public participation and access to justice in environmental matters in Latin America and the Caribbean**

At the United Nations Conference on Sustainable Development (Rio+20), held in Rio de Janeiro in June 2012, the Declaration on the application of Principle 10 of the Rio Declaration on Environment and Development was signed. In this Declaration, signatory countries committed, with the support of the Economic Commission for Latin America and the Caribbean (ECLAC) as technical secretariat, to advance the implementation of a regional agreement for the full application of the rights of access to information, public participation and access to justice in environmental matters. In November 2014, the countries launched the negotiation phase of the regional agreement and established a Negotiating Committee with a view to concluding its functions by December 2016.

Thus far, the Declaration has been signed by 20 countries: Antigua and Barbuda, Argentina, Brazil, Chile, Colombia, Costa Rica, Dominican Republic, Ecuador, El Salvador, Guatemala, Honduras, Jamaica, Mexico, Panama, Paraguay, Peru, Plurinational State of Bolivia, Saint Vincent and the Grenadines, Trinidad and Tobago and Uruguay.

Open to all Latin American and Caribbean countries, the process has been making progress through regular meetings and the adoption of documents. Between 2012 and 2014, four meetings of the focal points of the signatory countries and fourteen meetings of working groups were held. In addition, during this period the Road Map, the Plan of Action, the Lima Vision and an annotated index of topics of the instrument (San José Content) were adopted.

In November 2014, the signatory countries requested ECLAC to prepare a preliminary document of the regional agreement. The preliminary document was distributed in March 2015 and presented at the first meeting of the Negotiating Committee held in Santiago in May 2015. At that meeting, the Committee adopted its organization and work plan which established that countries would continue with their national consultations on the preliminary document of the regional agreement prepared by ECLAC and submit language proposals on the document by 31 August 2015. Negotiations will continue on the basis of the compilation text including the language proposals of countries into the preliminary document.

The process is coordinated by the Presiding Officers, comprising Chile and Costa Rica as co-chairs and Argentina, Mexico, Peru, Saint Vincent and the Grenadines and Trinidad and Tobago.

Source: Economic Commission for Latin America and the Caribbean.

**2. Winston Anderson, Judge, Caribbean Court of Justice**

Justice Anderson stated that there have been long-standing regional and international commitments on Principle 10 in the Caribbean region:

- The 1989 Port of Spain Accord on the Management and Conservation of the Caribbean Environment signed by Ministers of Environment of the Caribbean identified 14 priority areas for action including the promotion of public education and awareness and the collection and dissemination of environmental information;
- The 1992 Rio Declaration on Environment and Development is affirmed in the Barbados Programme of Action for Sustainable Development of Small Island Developing States which emphasized increased participation by the public and non-governmental organisations;

- The Caribbean Community Civil Society Charter, adopted by the Heads of State or Government, includes provisions on participation (articles 23 and 24) and is referenced in the Revised Treaty of Chaguaramas establishing the Caribbean Community. It can be argued that this gives rise to the legitimate expectation among Caribbean citizens and therefore can be considered as legally binding; and,
- The St. George's Declaration of Principles for Environmental Sustainability in the OECS with its 21 key principles with clear provisions for participation is enshrined in the 1981 Treaty of Basseterre which gives it enhanced legal position as binding on signatory states.

Furthermore, he also stressed that the Caribbean has evolved and become more sophisticated in its regional policy-making on environmental matters:

- Articles 65 and 226 of the Revised Treaty of Chaguaramas include provisions on environmental rights. The treaty gives individuals the right to access the Caribbean Court of Justice where they consider their rights have been infringed once they satisfy the requirements under article 222 of the Treaty; and,
- There are several multilateral environmental agreements which have been signed and ratified by most Caribbean states including the Convention on Wetlands of International Importance especially as Waterfowl Habitat (Ramsar Convention) and the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES Convention) although there have been challenges with implementation.

Developments at the national level in the Caribbean include the introduction of the following:

- Constitutional rights to a healthy environment in Guyana and Jamaica;<sup>2</sup>
- Specialized courts in Trinidad and Tobago and possibly Guyana,<sup>3</sup> and,
- Environmental management legislation in Trinidad and Tobago, Jamaica and recently in Antigua and Barbuda which include provisions on access rights including the rights to access courts for redress.

Sensitization of the judiciary on environmental law has been occurring through seminars and other forums. There has been a noticeable shift in the treatment of environmental cases by judges. Cases were cited that interpreted and applied Principle 10 and showed the standing requirements for applicants for judicial review has been relaxed allowing a number of NGOs to access Caribbean courts with no costs being ordered against unsuccessful applicants.

Highlights concerning the regional agreement on Principle 10 in Latin America and the Caribbean:

- This is a good time for Caribbean countries to join in the negotiation process since it has only recently begun; and,
- The preliminary document for the regional agreement, which aims to introduce minimum standards for access rights recognizes peculiarities and needs of Caribbean states:
  - References are made in the document to Caribbean materials noting significant developments on access rights in the region.
  - There are provisions for capacity building including Article 10 and Article 17 which speaks to consideration of the requirements of Caribbean states in implementing the agreement.

<sup>2</sup> Article 149J of the Constitution of Guyana states that "Everyone has the right to an environment that is not harmful to his or her health or well-being. The State shall protect the environment for the benefit of present and future generations [...]" For its part, after the 2011 amendment, Section 13(3) of the Constitution of Jamaica ensures "the right to enjoy a healthy and productive environment free from the threat of injury or damage from environmental abuse and degradation of the ecological heritage; [...]"

<sup>3</sup> Guyana's Environmental Protection Act of 1996 provides for the establishment of the Environmental Assessment Board and the Environmental Appeals Tribunal.

Some challenges include:

- Interpretation of new concepts included in the document such as the concept of traceability and the principle of non-regression, the definition of disadvantaged groups;
- Requirements for setting up environmental information systems; and,
- Reporting obligations on signatory countries. Justice Anderson proposed exploring ways of dealing with this challenge through regional reporting.

### Box 3

#### From principles to obligations: timeline of the main Caribbean and international instruments on access rights

- 1989 – Port of Spain Accord on the Management and Conservation of the Caribbean Environment
- 1991 – Port of Spain Consensus of the Caribbean Regional Economic Conference
- 1992 – Rio Declaration on Environment and Development and Agenda 21
- 1994 – Declaration of Barbados and Programme of Action for the Sustainable Development of SIDS
- 1998 – UNECE Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters (Aarhus Convention)
- 2001 – St. George's Declaration of Principles for Environmental Sustainability of the Organisation of Eastern Caribbean States
- 2010 – UNEP Guidelines for Development of National Legislation on Access to Information, Public Participation and Access to Justice in Environmental matters (Bali Guidelines)
- 2010 – Revised Treaty of Basseterre establishing the Organisation of Eastern Caribbean States Economic Union
- 2012 – Rio+20 outcome document: The Future We Want. United Nations Conference on Sustainable Development (Rio+20)
- 2012 – Declaration on the application of Principle 10 of the Rio Declaration on Environment and Development in Latin America and the Caribbean and beginning of preparatory phase
- 2013 – First Summit of the Latin American and Caribbean Community (CELAC)
- 2014 – First United Nations Environment Assembly
- 2014 – Small Island Developing States Accelerated Modalities of Action (Samoa Pathway)
- 2014 – Signatory countries to the Declaration on the application of Principle 10 of the Rio Declaration on Environment and Development in Latin America and the Caribbean begin negotiation phase of the regional agreement on access to information, public participation and access to justice in Latin America and the Caribbean.
- 2015 – Adoption of the 2030 United Nations Sustainable Development Agenda
- 2015-2016 – Negotiation of the regional agreement on access to information, public participation and access to justice in Latin America and the Caribbean.

Source: Economic Commission for Latin America and the Caribbean.

### 3. Maureen Hyman-Payne-Hyman, Junior Minister of Justice and Legal Affairs, Antigua and Barbuda

Senator Maureen Hyman-Payne underlined the importance of the environment for the tourism industry in the Caribbean. The following areas to promote access to information and public participation were highlighted:

- Methods such as non-technical language and translations into the languages of indigenous peoples to ensure that the public has an understanding of the information provided;
- Affordable reasonable costs for reproducing information;
- Decentralized locations for information to ensure that the public can easily access information;
- Providing sources for information disclosed to ensure that biases are discoverable;
- Vibrant and active non-governmental organizations are able to receive training;
- The ability to obtain injunctions to prevent environmental damage; and,
- Specialized environmental tribunals with staff trained through organisations such as UNEP.

The recently enacted Antiguan Environmental Protection and Management Act of 2015 is progressive and includes 114 sections to regulate the environment and grant access rights to the public. Significant provisions were highlighted, including:

- Section 111 of the Act focuses on Environmental Information, Research, Education and Training;
- The Objects of Act in section 3 includes objectives related to Principle 10 (e.g. section 3(b) speaks to the involvement of NGOs in the decision-making process);
- The Act binds the Crown (section 3);
- There are provisions for the Chief Environmental Officer to plan and organise training courses for persons involved in environmental management and encourage and facilitate public participation, to conduct public awareness campaigns, develop draft environmental policies and develop mechanisms for public comment on draft laws and policies;
- Section 77 of the Act establishes an environment registry for all environmental permits and policies;
- Section 71 of the Act establishes community rights. It creates a duty on the government to recognise and protect the rights of local communities to the collective benefit of their knowledge, innovations and practices for the present and future generations and to receive compensation for the conservation of biological resources. The Act states that communities shall be the sole custodians of the relevant knowledge, innovations and practices associated with the genetic resources in their communities in perpetuity;

Antigua and Barbuda also passed a Freedom of Information Act in 2004 granting citizens the right to access public information and created an Information Commissioner to oversee compliance.

#### **4. Turkessa Benjamin Antoine, Senior Legal Officer, Organisation of Eastern Caribbean States**

Significant improvements in the Eastern Caribbean in implementing Principle 10 were highlighted including:

- The work of the OECS in harmonising legislation, policies and initiatives; and,
- The history of implementation on Principle 10 beginning with the St. George's Declaration.

Mrs Benjamin-Antoine noted that Caribbean countries have already committed to Principle 10 and encouraged OECS member countries to join the Declaration on the application of Principle 10 in Latin America and the Caribbean.

#### **5. Questions and comments from participants**

**With reference to articles 4 and 5 of the Preliminary Document of the Regional Agreement, participants asked whether the agreement would be mandatory or whether States would have the flexibility to determine when they will have to accede and comply by introducing legislation.**

Mr. de Miguel: Most countries are in favour of a legally binding document noting that the region already has many soft law instruments on Principle 10. The countries have decided to discuss the content and delay the decision as to whether it will be legally binding. The Agreement will have strong provisions on capacity building to ensure implementation and to take into account the needs of Caribbean countries.

**How has the regional inclusion of access rights in the St. George's Declaration, the Treaty of Basseterre, the Caribbean Community Civil Society Charter and Revised Treaty of Chaguaramas changed the rate of implementation of Principle 10 in Caribbean countries?**

Justice Anderson: The Caribbean Court of Justice (CCJ) has indicated that they have moved beyond a voluntary system. However, CCJ cases have dealt with exclusively economic integration, freedom of movement, common and external tariffs and there has not yet been an environmental case before it. On the

CARICOM Civil Society Charter, it would be difficult to argue that it is automatically binding based on its reference in the Preamble of the Revised Treaty of Chaguaramas. The Treaty of Basseterre has obligations for national implementation and it is therefore arguable that this is legally binding.

**One of the challenges ahead is ensuring compliance with these multi-lateral agreements which have not been ratified in national laws. How do we deal with this challenge for the Regional Agreement?**

Justice Anderson: The Regional Agreement should be enforced through the passage of legislation in Parliament as a first step to ensure implementation and highlighted issues in Jamaica with implementation of the CITES Convention. Other things to consider are institutions and procedures that need to be created. If the treaty affords rights on individuals then it can be argued that they have a legitimate expectation that the government has a duty to implement the treaty and gave an example of a death penalty case which came before the CCJ. Given the challenges with legislative drafting in the Caribbean, he also suggested using means other than the courts such as mediation and forums such as the current meeting to encourage implementation of treaty obligations.

Senator Hyman-Payne: Having a decentralized system of access to information such as provided for in the Antigua and Barbuda Environmental Protection and Management Act is important to ensure that the public and NGOs can obtain information. We need to ensure that the accompanying regulations are passed and that these deal with issues such as costs. However, the lack of regulations does not prevent enforcement of the legislation. It should be noted that access to information should include more than placing information online as there are people who do not have access to Internet.

**Can NGOs apply for relief under Article 222 of the Revised Treaty of Chaguaramas?**

Justice Anderson: Article 222 has been interpreted to mean that nationals can apply to the CCJ for redress. Although no NGO has applied for redress, this would include NGOs.

## **B. Session 2: Good practices, challenges and lessons learned in the Caribbean on access to information, public participation and justice in environmental matters**

This session was designed to highlight good practices in access rights in the Caribbean with presentations and panels on access to information, public participation and access to justice. The session was divided into four panels. The first three panels were aimed at learning more about Caribbean experiences on Principle 10 implementation and promote sharing and replication. The fourth panel sought to analyze the elements that are missing in the Caribbean for the full application of access rights. Each panel closed with a session of questions and answers and an open discussion.

### **1. Panel on good practices on access to information in environmental matters**

#### **a) Damian Cox, Director of the Access to Information Unit, Office of the Prime Minister, Jamaica**

A Jamaican case was highlighted where the Access to Information Act was used to achieve environmental protection. This case involved a malfunctioning State-owned sewage treatment plant which for 30 years had been discharging untreated sewage into the Harbour View community in Jamaica. An NGO was able to use the Access to Information Act to obtain documents which showed that the regulatory body which operated the plant had received JMD\$56 million in from charging a higher rate for water and sewerage collection from the community for the purpose of fixing the plant. The information collected was used as evidence in a court case to challenge the failure to fix the plant and in 2010 a consent order was reached where the regulator was required to construct an interim and permanent sewage treatment plant.

A solid access to information regime supports transparency, accountability and good governance. Implementation at some level is possible even where countries face challenges such as budgetary constraints and poor records management.

The main provisions of a good regime include:

- A strong proactive framework for disclosure;
- Ongoing public education and communication about access rights;
- Balancing the right of access to information with other rights through exemptions; and,
- Leadership throughout all levels of the public sector and civil society;

Key actions that can be taken to ensure a strong access to information regime are:

- Develop an implementation plan for the access to information regime (the legislation inclusive of regulations, guidelines for public officer on the procedure to follow, a strong oversight body to review the plan and coordinate actions across government);
- Training in records and information management, including transition to new formats of record keeping, storage and collection of data;
- Promoting openness among the public sector to address the culture of secrecy;
- Monitoring progress and challenges through continuous review of implementation;
- Identifying appropriate information and communication technologies (ICT) systems to support implementation of access rights depending on the circumstances and capacity of the country including equipment and software;
- Conducting training for access to information officers on an ongoing basis including decisions made by the access to information tribunal that might affect how public officers should comply with the law;
- Consulting and seeking input from stakeholders including media, private sector and NGOs including the kinds of information and formats desired;
- Developing comprehensive guidelines for access;
- Engage international stakeholders and partners in access rights. Jamaica had a memorandum of understanding with the Carter Centre which assisted the country in establishing its Access to Information Act;
- Establish a coordinating body. In Jamaica this is the Access to Information Unit which, since the passage of the Act, does monitoring and compliance, acts as secretariat for the Access to Information Appeal Tribunal, trains public sector staff, and conducts public education on access rights; and,
- Consider evolving best practices e.g. Open Data, the Organization of American States model law on access to information.

Key components for access to information legislation includes:

- No justification required for access;
- Scope of Act is clearly indicated;
- Limited and specific exemptions;
- Set time period for responses;
- Application and procedures for access to information should be transparent including the giving of reasons;

- Offences and penalties for persons who intentionally prevent access. In Jamaica the penalty is JMD\$500,000 or 6 months imprisonment; and,
- Enforcement models and mechanisms with an independent oversight body (Information Commissioner or Tribunal as in the case of Jamaica), clear and easy to follow appeals procedures and an affordable appeals mechanism.

**b) Samantha Robertson, Secretary, Saint Vincent and the Grenadines Human Rights Association, Saint Vincent and the Grenadines**

The main provisions of the Saint Vincent and Grenadines Freedom of Information Act of 2003 which provides a right of access to official documents held by public authorities were highlighted. The Act has not been implemented due to the lack of accompanying regulations.

The Saint Vincent and the Grenadines Human Rights Association has conducted public awareness sessions in 2005, 2007 and 2010 on freedom of information. There is concern about the state of record keeping in offices of public authorities. A significant difference in the Act as compared to freedom of information legislation in Jamaica and Trinidad and Tobago is that there is no Tribunal, Information Commissioner or Ombudsman to hear appeals for refusal to provide information and instead applicants have a right to judicial review before a judge in single chambers.

**c) Questions and comments from participants**

**How does the Jamaican Access to Information Unit deal with requests?**

Mr. Cox: Requests are made to the relevant public authority. The Access to Information Unit may assist applicants in obtaining information and it also publishes a list of relevant authorities and their contact information.

**How does the Saint Vincent and the Grenadines Human Rights Association deal with record keeping and are there best practices that can be applied?**

Ms. Robertson: Each lawyer in the association is responsible for maintaining records for their own clients. They have challenges.

**What is the modality in place to deal with sharing of information among agencies in Jamaica?**

Mr. Cox: There needs to be a policy framework for sharing among agencies and a monitoring process. There is also a process of standardizing records management across government entities.

**What is the legal competency of the Jamaican tribunal as it concerns information especially in cases where the government does not desire its release?**

Mr. Cox: Jamaica has a five-member independent tribunal which can take a decision to overturn any decision of a public authority. If a public authority disagrees with the decision they can take the tribunal before judicial review. The tribunal includes a retired Supreme Court Judge and is chaired by a senior lawyer. There have been about 60 appeals to date and no government entity has challenged a decision of the tribunal albeit there is currently a judicial review case before the court which was brought by a private company which as third party to an appeal.

**What is Mr. Cox's view of Article 6(2)(c) of the preliminary document of the regional agreement which speaks to the nature of the request for information and the extent to which the government must provide access to that information?**

Mr. Cox: A Jamaican working group was formed to provide input into the preliminary document. The guidance given by the Access to Information Unit is that the public authority should provide all information that is necessary to respond to the request and to assist the requestor in identifying the information needed to fulfil his request.

**Are there sanctions if Jamaican authorities go over the timeline?**

Mr. Cox: There are no offences but the requestor can go to the tribunal or the Access to Information Unit can intervene.

### **Are the Jamaican tribunal members paid or is it voluntary? How big is the ATI Unit?**

Mr. Cox: The Access to Information Unit is comprised of six persons and the government is currently restructuring the Act so that there are more lawyers. The tribunal members are paid a stipend. There are guidelines issued by the Ministry of Finance for quasi-judicial bodies but it is essentially a voluntary service. It is not a full time tribunal.

### **What are the categories of exemption in Jamaica? Who determines whether something falls within the exemption and is there any appeal on this determination within the context of a Certificate of Exemption (reference to the draft Access to Information Act in Grenada)?**

Mr. Cox: The public authority is responsible for determining whether information falls within an exempt category. The Appeals Tribunal can overturn this decision. Jamaica foresees Certificates of Exemptions but this only applies to four categories e.g. Cabinet (Executive), national security, effect on economy and law enforcement. The certificate must be validly issued and there are guidelines that the Attorney General must be consulted to provide advice.

## **2. Panel on good practices on public participation in environmental matters**

### **a) Melinda Janki, Executive Director, The Justice Institute of Guyana, Guyana**

Notable provisions of Guyana's Environmental Protection Act (EPA) of 1996 which give good examples of public participation include:

- The requirement for public participation at all stages of the decision-making process for all projects that have a significant impact on the environment;
- If the EPA decides that a project will not have an impact on the environment, any member of the public can appeal that decision;
- Public meetings must be held to discuss the environmental impact assessment for these projects;
- Anyone can get copies of the Environmental Impact Assessments (EIA). The EPA states that the Environmental Protection Agency cannot charge more than the reasonable cost of photocopying; and,
- Where any policies or programmes may have an impact on the environment, anyone can demand an EIA. The EIA must comply with the requirements for public information and public participation.

Challenges in implementing the EPA include:

- Environmental protection depends on citizens who are willing to challenge government and the private sector but this does not happen;
- A culture of fear with the result that the Guyanese public do not use the remedies which are available to them; and,
- Amerindian communities living in the interior of Guyana are sometimes excluded from public participation because of their inability to attend public meetings if those meetings are held in the capital in Georgetown. Information also needs to be presented orally in Amerindian languages with long time periods for discussion in order to take into account Amerindian cultures and their consensus based community decision-making.

An example of good practice in public participation was provided. The Justice Institute held meetings with three Amerindian communities (Crashwater, Rewa and Apoteri) and explained to them about a proposed timber concession. The Justice Institute work was translated in Macushi and Wapichan to ensure full understanding by the communities. As a result the communities demanded to be heard and were successful in having the Environmental Protection Agency hold meetings in Apoteri, to consult the

villages on the proposed timber project. Another result of this access to information about the environment was that all three Amerindians filed claims with the Ministry of Amerindian Affairs for title to their traditional lands.

The Amerindian Act of 2006 includes provisions to recognise and protect Amerindian land rights:

- Mining on Amerindian land cannot take place without permission from the community. This is termed “free prior informed and conditional consent.” The aim is to protect Amerindians by ensuring that they know to impose conditions to protect their environment and communities. They do not simply say yes and suffer the consequences;
- The Act requires proponents to give Amerindians any information they request on proposed projects to be located on their land so that Amerindians can make an informed decision including saying no; and,
- Amerindians can make land claims under the Act. In determining the demarcation of land, the government must take into account occupation, use, traditions and culture, and spiritual relationship to the land.

The following provisions in the Constitution of Guyana support access rights:

- Article 36 of the Constitution states that “the well-being of the nation depends upon preserving clean air, fertile soils, pure water and the rich diversity of plants, animals and eco-systems.” This provision was not thought to be enforceable but following a recent decision by the Chief Justice in which he relied on Article 1, it means that this part of the Constitution is no longer simply declaratory but gives rise to rights of some kind; and,
- Article 149J of the Constitution provides the right to a healthy environment.

Provisions in the Protected Areas Act of 2011 that support access rights include:

- The principle of ecological sustainable development which includes precautionary principle, intergenerational equity and protection of natural capital base. This could provide the public with a basis for judicial review if they want to challenge decisions e.g. mining projects; and,
- The public can submit a proposal to establish a protected area. There must be public consultation on the management plan with a public hearing.

Examples were provided of experiences in using the Act including Amerindian communities that had submitted applications for land claims and a community that turned their land into a protected area. Challenges include the rapid growth of the Amerindian population which may exceed the carrying capacity of the land, a decrease in awareness and practices of traditional knowledge and lack of awareness of the laws that provide these access rights.

#### **b) Questions and comments from participants**

**Should we encourage greater political interference in the participatory process? An example was provided of the involvement of an Amerindian woman as a former Minister of Amerindian Affairs.**

Ms. Janki: Minister Rodrigues Birkett was very active to protect Amerindian rights. There is a need to engage youth who will inherit problems created by the current generation.

**Traditional public participation is reactionary and concerned with allowing challenges to activities.**

Ms. Janki: In Guyana the public has a right to be involved in the screening and scoping of EIAs as well as participating. For protected areas the public can lead, not simply wait on the State to initiate the process and should be interpreted as involving the public from the beginning in the design, implementation, monitoring and evaluation of an activity. This means consultation on all levels of society.

Amerindian decision-making is based on consensus among the community and not majority voting. In the case of the WaiWai decision to create a protected area, the decision took several months. One meeting between the community and their lawyer lasted for an entire week and took place at

different locations in the territory. The discussions took place on the move as it is not part of WaiWai culture to sit in a room to discuss matters, although increasingly they are being forced to do so by conservation organisations.

**In other countries in South America, agreement with communities was not reached and this has delayed projects e.g. a dam was delayed for two years and costs were much higher. In South America there are limited opportunities for people to approach the President of their country and in many cases the decision is not with him but with institutions. Can the participatory process taken into account in the EIA process described in Guyana be applied?**

Ms. Janki: In Guyana, legal challenges can be made for abuse or misuse of power for example if a Minister does not do his job, or if the President intervenes in a decision-making process. If a Minister is not doing his job, one can also bring political pressure to bear and ask the President to tell the Minister to act. In the case of Sawariwau the Minister failed to demarcate the community's land. The Toshao, his deputy and their lawyer complained to the President. Within months the demarcation was completed.

**If the matter had gone to court, could it be enforced and what would have been the recourse?**

Ms. Janki: It is likely that the judge would have given an order requiring the Minister to comply with the law and failure to comply with the court order could be considered a contempt of court. Avoiding the court prevented embarrassment to the government. It is good that the President acted. But in other cases where political pressure does not work, it is a pity that Amerindians do not use the law to enforce their rights.

**When the EPA was first passed in the 1990's there was concern that it would impede development because it is too rigid. Has this occurred?**

Ms. Janki: There was a school of thought that this would stop progress and development. Guyana is moving in the right direction. The Protected Areas Act includes the precautionary principle and a principle on correcting market failure.

**The EPA Act sets out a good governance system for consultation but we are not seeing the civil society advocacy that we would like to see. What is being done to support greater civil society engagement?**

Ms. Janki: Conservation NGOs have not used the public participation provisions and have not brought any cases. The people on the ground need to be engaged. The Justice Institute of Guyana is doing this. I hope that Guyana can learn experiences of vibrant civil society organisations that have brought cases across the Caribbean. We do need to reach out to the legal profession to become interested in taking these cases.

### **3. Panel on good practices on access to justice in environmental matters**

#### **a) Chateram Sinanan, Chairman, Environmental Commission, Trinidad and Tobago**

The Environmental Management Act of 1995 was the result of the 1992 Rio Declaration. The Act was replaced by the Act of 2000 and is currently under review and stakeholder consultation. The objective of the Act is the protection, conservation, enhancement and wise use of the environment.

Many people do not know about the existence and purpose of the Environmental Commission and assume that it is not a court because of its name. The Commission was the first environmental court established in the Western Hemisphere and is one of seven in Organization of American States countries. A proposed amendment to the Act is to change the name of the Commission to the Environmental Court of Trinidad and Tobago to ensure that the court gets respect from the public. It is recommended that this be done in other countries seeking to introduce an environmental court.

Features of the Environmental Commission of Trinidad and Tobago:

- The Commission is a court of record similar to a High Court of Trinidad and Tobago and can grant injunctions as well as enforce judgements through contempt of court proceedings;

- The Commission has the jurisdiction to resolve environmental disputes including appeals from the grant of a Certificate of Compliance and for civil and administrative breaches of provisions in the Environmental Management Act where they are not investigated by the authority within a period of time;
- New planning legislation is contemplated which will give the Commission jurisdiction to hear planning appeals;
- The Commission has the power to use alternative dispute resolution and mediation is one of the main forms of alternative dispute resolution used. All Commissioners are trained in mediation;
- The Commission is comprised of a Chairman and Deputy Chairman who must be an Attorney of at least 10 years;
- There are four other Commissioners who are not Attorneys but are experts in other areas including marine affairs, engineering, and botany;
- The Chairman determines the composition of the Tribunal based on the nature of the matter before the Commission and the particular expertise required. Where there is no expert on the panel then the claimant must bring his own expert and prove its case. The Commission can get its expert to assist in assessing the evidence provided by the claimant's expert;
- There is an equal right of access to the Commission: anyone can access the Commission including NGOs, multinationals;
- There are no filing fees to ensure affordability and access;
- Claimants can appear on their own behalf or have an expert or Attorney appear on their behalf; and
- Legal aid is granted for persons who wish legal services to bring actions before the Environmental Commission.

The overcrowding of cases before the courts is a problem in the Caribbean. Speciality courts can help to expedite matters. Matters before the Environmental Commission are completed within days. The speed of determination of cases depends on the parties and their ability to prepare their cases.

There is a cost factor in setting up these specialty courts and we should consider the possibility of establishing a regional Caribbean environmental court with a panel of Caribbean judges. The court can have the power to sit in any Caribbean country and use video-conferencing to hear matters.

**b) Cristina Coc, President of the Board of Directors,  
Maya Leaders Alliance, Belize**

There are six million in Belize, El Salvador, Guatemala, Honduras and Mexico. There are three types of Maya in Belize. The speaker works with 38 Mayan communities. There is a high degree of autonomy: an Alcalde system of governance with Maya leaders and all decisions are taken by consensus.

The legal struggle of the Maya in Belize to protect their land rights was summarized. In the mid-1990s the Maya filed a land claim in the Supreme Court of Belize. The case was stalled and did not come to a hearing. As a result of the delay they petitioned the Inter-American Commission of Human Rights which decided in 2004 that the Government of Belize had violated their right to property as set out in the American Declaration of Human Rights by not recognising their communal right to property and by granting numerous oil concessions without their free and prior informed consent. The Government was requested to demarcate their land as well as refrain from actions to infringe on their territory. No action was taken by the Government of Belize and the Maya filed a claim in the Supreme Court in 2007. The Court affirmed the ruling of the Inter-American Commission.

In 2008 another claim was filed on behalf of the other Maya villages that were not a part of claim. In 2010 the Supreme Court held in favour of the Maya again. The Government appealed the judgement in 2010 and the Court of Appeal issued its decision in 2013. The Court of Appeal affirmed Maya rights but lifted the injunction against interference with Mayan lands. The judgement was appealed before the Caribbean Court of Justice in January 2015 which sat in Belize for the matter. A consent order was made in April 2015 requiring the Government of Belize to undertake demarcation and land titling for Maya land.

In another case in 2014, the Supreme Court found in favour of Maya communities in a claim for challenging the grant of oil exploration permits over Maya land without their consent.

Without recognition of indigenous peoples' traditional forms of governance it is difficult if not impossible for the Mayans to protect their land and natural resources. The Maya have developed a Maya Consultation Framework outlining their consultation policy and continue to advocate for rights for benefit sharing of natural resources and compensation.

### **c) Questions and comments from participants**

**How big is Trinidad and Tobago's Commission and how many cases are heard annually? Who uses the Commission more often-NGOs or ordinary persons?**

The Hon. Mr. Sinanan: The Commission is comprised of 35 staff and six Commissioners. There are approximately 24 matters taken before the Commission each year which will be increased to 150 matters per month with implementation of new planning legislation.

**Is there a time frame for compliance for judgements of the CCJ or is this a matter left to the discretion of the parties?**

Mrs. Coc: The matter is still before the courts. If there is not progress in compliance then the parties can make an application for compliance before the CCJ

Justice Anderson: A distinction should be made between cases in the original jurisdiction and domestic law cases (appeals). There is a general difficulty in enforcing cases in international courts having original jurisdiction e.g. the International Court of Justice. A management structure can be made for the enforcement of judgements where the parties have to report to the CCJ on progress made in compliance. In the Maya case, the CCJ is exercising this supervisory role over the implementation of the judgement. The Maya have filed for clarification of terms used in the settlement and this is under discussion. Issues outstanding are damages and costs.

**How was the case refiled in the Supreme Court of Belize? Was this the same matter?**

Mrs. Coc: The same matter was taken before the courts because the first time it was filed the case was not heard. The Maya were better prepared the second time and had legal support.

**To what extent have judgements of the Trinidad and Tobago Commission been applied in other Caribbean courts? Has the Commission applied or referenced other Caribbean cases?**

The Hon. Mr. Sinanan: There has not been a full trial in the last two and half years as they were all settled or withdrawn. One judgement has been written.

**On participant suggested that a Caribbean Environmental Coalition for not only lawyers but environmental advocates be established to support protect these rights.**

**Squatting has led to problems such as flooding or increased mosquitoes. Can cases be taken before Trinidad and Tobago's Environmental Commission for actions such as squatting that cases these environmental problems?**

The Hon. Mr. Sinanan: A direct private party action can be taken before the Environmental Commission where a complaint is made before the Environmental Management Authority and it fails to act. The Commissioner of State Lands can also intervene.

#### **4. Panel on the missing elements for the full application of access rights in the Caribbean**

##### **a) Carole Excell, Project Director, World Resources Institute, United States**

An overview of the Environmental Democracy Index (EDI) tool and website was provided. The EDI website was launched in May 2015. It ranks countries laws in relation to “Environmental Democracy” in three areas:

- Whether environmental information is publicly available, accessible, and relevant;
- Participation whether the law ensures that there is provided meaningful opportunities for the public to shape decisions that have environmental impacts; and
- Justice whether the laws ensure that there are accountability and grievance mechanisms to enforce laws and compensate for environmental harms.

Based on the Bali Guidelines, 75 legal indicators are used to assess major laws and score countries. The laws assessed are freedom of information laws, constitutions and laws relating to air and water quality, extractives, forestry and biodiversity as well as practice indicators (a total of 24). The EDI assessments were completed by 140 lawyers in 70 countries, including Jamaica, St. Lucia and Trinidad and Tobago. The objective was to identify specific gaps in legislation and challenges to help countries in reforming their laws. Panama and Colombia are among the top ten countries in the world.

Trinidad and Tobago performed the best in terms of the Bali Guidelines and have the least gaps across the three pillars in terms of their national laws. In terms of practice Trinidad and Tobago performs the best of the three Caribbean countries as well. Trinidad and Tobago scored well on the transparency and justice pillars, but poorly on the participation pillar. The Freedom of Information Act provides the public with the right to access environmental information on request, and the law requires some agencies to collect and disclose environmental information to the public. However, the government is not obligated to disclose timely information to the public during environmental emergencies. As for the participation pillar, the public is granted the opportunity to comment on legally binding rules that affect the environment, but the government is not obligated to proactively seek public input. For the justice pillar, the public can appeal decisions to deny information requests, and can challenge decisions by the government or private sector that impact the environment. However, there are no legal mechanisms to remove gender-based barriers to justice. Trinidad and Tobago could expand legal rights to environmental democracy by building on its strengths and addressing these areas for improvement.

Jamaica scored well on the justice pillar, fair on the transparency pillar, and poor on the participation pillar. In transparency, the public is granted the right to access environmental information on request, but only a limited amount of environmental and public health information must be proactively disclosed to the public. Regarding the participation pillar, the score was low because the public is provided with only limited opportunities to participate in environmental decision making, and the government has discretion to seek public input during the preparation of environmental regulations and projects. For the justice pillar, there are review procedures that apply to decisions on environmental information requests, but the law does not provide legal assistance mechanisms to help the poor and marginalized seek redress in courts when their environmental rights are violated. By addressing these issues, Jamaica could provide the public with comprehensive information pertaining to the environment, opportunities to participate in environmental decision making, and an ability to access courts to address environmental harms.

Saint Lucia received a fair score for the justice pillar and scored poorly on the transparency and participation pillars. While the constitution grants a broad right to access information on request, the government is not obligated to proactively make environmental information available to the public. As for the participation pillar, Saint Lucia scored poorly because there are very few opportunities where the public has the right to participate in environmental decision-making. The government is also not obligated to account for public comments when making decisions. Regarding the justice pillar, the law does not provide an appeal procedure when environmental information requests are denied. Furthermore,

the law does not ensure that court decisions on environmental matters will be enforced promptly. On the positive side, the public can challenge the implementation and enforcement of environmental laws. Saint Lucia could do much to expand national legal rights to environmental democracy.

**b) Amrikha Singh, Senior Project Officer, Sustainable Development, Caribbean Community (CARICOM) Secretariat**

Data collection and statistics are important for access to information. Some countries are gathering environmental statistics e.g. housing, transport, etc. Data for some of these goes back to slavery e.g. agriculture. Generally, air quality data is not collected on an ongoing basis in the Caribbean due to high costs.

Challenges include:

- National Governance Mechanism (can address issues relating to “turfdom”, overlapping responsibilities, multi-disciplinary nature of sustainable development);
- Human, technical and financial resources. There are a lack of statisticians;
- Awareness/attitudes towards information use;
- Formats, frequency, accuracy; and,
- Continuity (especially as it relates to projects) especially as it relates to the ‘newer’ statistics.

Belize, Jamaica and Suriname were producing publications on environmental statistics more than 15 years ago. Between 2000 and 2003 the United Nations Statistics Division (UNSD) and the CARICOM Secretariat carried out a project entitled “Strengthening Capacity in the Compilation of Statistics and Indicators for Conference Follow-up in the CARICOM Region”, to support collection of social/gender and environment statistics in the Caribbean. Several other countries (including Grenada, Dominica, Saint Lucia, Saint Vincent and the Grenadines and Suriname) in the region have also started producing environment statistics compendia.

Several Member States in the region have organized workshops or seminars at the national level in environment statistics, increased inter-agency collaboration and have published environment statistics compendia on a regular basis.

In terms of public participation, mechanisms exist:

- Multi-sectoral and multi-stakeholder committees with representatives from the Major Groups included in national planning and policy groups e.g. farmers, women, fishers, academia, business sector, unions;
- Principle of participation has been incorporated into National Development Strategies and National Sustainable Development Policies; and,
- MEAs implementation as well as EIA legislation require participation and multi-stakeholder representation.

Challenges include:

- Resources and capacity remain problematic (small pool to draw from). Need for specific services to allow civil society to engage as fully as they would like to-legal administrative etc.;
- Strong institutions are critical as they ensure a level playing field. However they must be allowed to do their jobs impartially;
- Knowledge and agility of laws are required. Citizens are not aware of their rights and privileges until something goes wrong; and,
- Meaningful participation can negate the need to resort to the courts of law which can be costly and time consuming.

Possible solutions include:

- Continued support for regional statistical systems;
- Collaboration with Mexico (cooperation agreements with CARICOM Member States currently exist). The work being done by the Secretary of the Environment and Natural Resources of Mexico (SEMARNAT) is considered a best practice in Latin America and the Caribbean;
- Cooperation among the Member States e.g. Trinidad and Tobago's experience with Environmental Police, Jamaica, Belize and Suriname success with Environmental Statistics;
- Documenting of best practices; and,
- Training and study tours.

**c) Danielle Andrade, Attorney-at-Law, Jamaica**

An overview of the status of national laws on access rights in the Caribbean was provided. Some challenges in implementation and capacity building needs were highlighted.

Seven Caribbean ECLAC member countries have enacted such a freedom of information law, five countries have draft legislation, two countries remain without any legislation (but have a constitutional provision for freedom to receive information) and one country has neither legislation nor constitutional provision regarding this right. The first Caribbean country to introduce this law was Belize in 1994.

Fourteen Caribbean countries have enacted legislation relating to public participation during the approval process for projects, plans, programmes or legislation relating to the environment. Five countries have legislation providing the discretion to require public participation in the EIA process; four have legislation requiring mandatory public participation during the EIA process; and six have no legislation relating public participation and rely on guidelines or practice. Six countries have draft legislation relating to public participation in the EIA process. There are also a few countries which have laws that involve some form of participation in plans or policies as well.

Twelve Caribbean ECLAC members are Commonwealth countries which inherited the English legal system. These countries have similar access to justice rights including a right to bring an action (*locus standi*) to challenge decisions of public authorities (judicial review). Generally, however, only persons directly affected can bring an action against private corporations for breach of environmental laws. There are similar barriers to access to justice across the Caribbean, including high, prohibitive costs of litigation and lack of financial assistance mechanisms for persons and public interest groups to facilitate access to justice in environmental matters. Only a few countries have specialized courts for environmental matters.

In terms of implementation of access to information, in some countries such as Belize, practitioners have noted that the freedom of information law is underutilized and very few requests have been made since its inception. While in the case of Jamaica, the public has made hundreds of requests for information since the Act was passed over 10 years ago. This has been attributed to an extensive sensitization campaign with civil society groups and the general public and a dedicated Unit focused on public awareness. Trinidad and Tobago has interpreted provisions on access to information restrictively in view of other laws that seemingly conflict e.g. copyright laws. In Jamaica, there has been an increased use of Certificates of Exemption which are absolute prohibitions on the release of specified information. For example, four Certificates of Exemption were issued in relation to one request made in 2014 for information on a proposed transshipment port in Jamaica's largest protected area. In most countries, legal requirements specifically relating to the proactive release and dissemination of environmental information are very limited.

While many countries are implementing public participation laws, there is an overreliance on discretionary practice. Even in countries such as Jamaica where there is no legal requirement for public participation the courts have held as in the Pear Tree Bottom case, that public authorities are held to a standard when voluntarily consulting the public on projects. In general while the Caribbean has been

progressive in the area of EIAs, there is a lack of laws requiring participation in other environmental matters: projects, environmental plans and policies.

The Caribbean is progressive in the area of access to justice but a common problem, which is a barrier to access to justice, is the high costs of litigation and lack of mechanisms to make judicial process accessible and affordable for the public.

Advantages to full implementation of access rights:

- Informed and active citizenry;
- Reduction in social conflicts over natural resource use; and,
- Better environmental decisions.

Capacity building needs to fully implement access rights:

- Sharing of technical expertise and technology transfer (e.g. UNEP Bali Guidelines);
- Financial resources;
- Legislative drafting support;
- Sensitization on access rights to encourage improvements in law and practice and increase use by the public; and,
- The Regional agreement on Principle 10 promises to bring with this process – capacity building and increased public awareness.

#### **d) Questions and comments from participants**

**What is the general reaction from the countries that scored poorly?**

Ms. Excell: They have had different kinds of reactions. Governments were given the opportunity to comment on the scores prior to the launch of the EDI website. Some governments have indicated that they do not agree with the scores and have given detailed reasons. Other countries stated that their practice is better than their legal framework and this should be taken into account. While others also pointed out the fact that the index only assesses laws at the federal level and not the local/state level.

**Are there plans to have more Caribbean countries participate in EDI?**

Ms. Excell: The World Resources Institute / The Access Initiative would like to include more Caribbean countries in the next index if interested researchers and reviewers can be found.

**There is a concern that this could negatively affect countries that are just beginning to make changes to their laws. How does the EDI measure changes in behaviour and attitudes?**

Ms. Excell: This index does not measure changes in behaviour and attitudes but only laws. Some practices assessed include: has there been published an EIA for a large development in practice either in a library or on a Government website? We see the index as promoting a race to the top to improve environmental democracy even for countries that have done well on the index.

**Most people get information through the newspapers. How do we get the media to provide us with better information?**

Ms. Singh: In the last few years UNEP has provided support for journalists. There is also a need to ensure that Caribbean journalists participate in international events. We can provide incentives for them to provide good pieces on environmental justice.

**One participant commented that participatory environmental decision-making should be a recommendation and government and civil society need training in participation procedures.**

**Leadership in the judiciary is important. What can be done to empower these players?**

Ms. Andrade: Sensitization of judiciary is important because they are the final arbitrators but they cannot advocate for rights to be passed. Politicians need to be sensitized as they are the ones that pass the laws and ensure their implementation. We need to introduce access rights in high-level forums such as the Council of Ministers.

**Environmental prosecutors exist in some Latin American countries. Does this exist in the Caribbean and if not how can we get this accomplished?**

Ms. Andrade: In Jamaica there is a designated prosecutor for environmental crimes. I do not know if there are others in the Caribbean.

**There are circumstances where the Freedom of Information Act has been abused in Trinidad and Tobago. Is it also costly to provide copies of documents.**

Ms. Andrade: If public authorities follow the law by either providing information or having a justifiable reason for refusal, they will not open themselves up to abuse.



### **III. Discussions on the preliminary document of the regional agreement on access to information, public participation and access to justice in Latin America and the Caribbean: the Caribbean perspective**

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After taking stock and reviewing the state of the art of access to information, public participation and access to justice in environmental matters, participants were invited to review and discuss the preliminary document of the regional agreement prepared by ECLAC (LC/L.3987). These discussions had as an objective to raise awareness among participants of the regional Principle 10 process in Latin America and the Caribbean so as to increase the involvement of Caribbean Governments and relevant stakeholders as well as identifying key elements of the preliminary document from a Caribbean perspective. In addition, the discussions vowed to reach common ground on the priorities, challenges and needs shared by the sub-region and that should be considered in the regional negotiation process.

Prior to the discussion, two presentations were delivered to frame the visioning exercise. The first presentation focused on the 2010 Guidelines for the Development of National Legislation on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters (Bali Guidelines). The second presentation gave an overview of the preliminary document of the regional agreement prepared by ECLAC.

To review each one of the three pillars of the preliminary document, participants were divided into four working groups comprising six to eight members from Governments and civil society organizations. All working groups reviewed articles 6 to 9 of the preliminary document during three sessions (one for articles 6 and 7, one for article 8 and another one for article 9).

To guide discussions, the groups were asked the following questions: (i) which provisions would be challenging to implement from a Caribbean perspective?; (ii) which existing provisions were considered critical for Caribbean countries?; and, (iii) what was considered to be missing in the preliminary document and should be included in the discussions? After each session, a rapporteur for each group presented the main findings and conclusions of their respective group. These are summarized below.

## **A. Presentation of the Guidelines for the Development of National Legislation on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters (Bali Guidelines)**

### **1. Andrea Brusco, Regional Coordinator of Environmental Law, United Nations Environment Programme**

An overview of the Bali Guidelines was provided. The Guidelines were agreed in 2010 and was the result of consultative process with government and civil society representatives and legal experts. It is a voluntary document which represents the common understanding among countries of what should be done to implement Principle 10 of the Rio Declaration in national legislation.

The Guidelines state that where countries have higher standards in their national laws the Guidelines would not apply.

There are 26 guidelines divided into three sections: access to environmental information, public participation and access to justice. The elements of these sections was described:

#### **a) Guidelines 1-7: Access to information**

- Right to have affordable, effective and timely access to information without proving a legal or other interest;
- Environmental information in the public domain: information about environmental quality, environmental impacts on health and factors that influence them, in addition to information about legislation and policy, and advice about how to obtain information; and,
- Grounds for refusal define in the law and to be interpreted narrowly, taking into account the public interest served by disclosure.

States should:

- Regularly collect and update environmental information;
- Periodically disseminate up to date information;
- Disseminate information immediately in case of imminent threat of harm to public health; and,
- Provide means for capacity-building, both among public authorities and the public, to facilitate effective access to environmental information.

#### **b) Guidelines 8-15: Public participation**

- States should ensure opportunities for early and effective public participation in decision-making related to the environment;
- Public Participation is to be sought in a transparent and consultative manner, providing adequate opportunities for members of the public to express their views;
- Information for decision making available;
- Comments of the public to be taken into account;
- Publicity of the decisions;
- Participation of the public in review processes; and,
- Public input into the preparation of legally binding rules, policies, plans and programmes.

**c) Guidelines 15 -26: Access to justice**

- Any person principle;
- Broad interpretation of standing;
- Effective and timely procedures (fair, open, transparent and equitable);
- Removal or reduction of financial and other barriers;
- Prompt, adequate and effective remedies;
- Timely and efficient enforcement of decisions;
- Adequate information to the public about the procedures;
- Public availability of decisions;
- Capacity building programmes; and,
- Alternative dispute resolution mechanisms.

**B. Presentation of the preliminary document of the regional agreement on access to information, public participation and access to justice in environmental matters in Latin America and the Caribbean**

**1. David Barrio, Legal Officer, United Nations Economic Commission for Latin America and the Caribbean**

A brief overview of the process for the preparation of the Preliminary Document was provided. The basis for the provisions in the document come from a variety of sources:

- Input from the Governments and the public;
- Outcomes of the process to date;
- San José Content (LC/L.3970): annotated index of contents adopted by the signatory countries of the Principle 10 Declaration in Latin America and the Caribbean in November 2014;
- Regional assessment prepared by ECLAC;
- National laws, practices and institutions of the 33 Latin American and Caribbean countries; and,
- Region's challenges and needs.

The key sections of the document were highlighted in particular Articles 6 – 9 on access to information, public participation and access to justice.

**a) Access to Information - Passive transparency:**

- Accessibility of environmental information;
- All environmental information in possession of, under the control of, or in the custody of competent authorities is public and presumed to be relevant;
- Right to freely request information, without demonstrating special interest;
- Creation and updating of an environmental information system;
- Facilitation of disadvantaged groups;
- Exceptions regime;

- Limited, interpreted restrictively and duly justified;
  - Circumstances to refuse total or partial access;
  - Divisibility of information, tests of public interest and mediation;
  - Conditions applicable to the delivery of information;
  - Format, as quickly as possible (maximum of 30 days);
  - Possibility of extending the deadline;
  - Free access. No fees other than the cost of reproducing the information;
  - Independent review mechanisms; and,
  - Autonomous, independent and impartial entity.
- b) Access to information - Active transparency:**
- Generation and dissemination of environmental information;
  - Periodic reports on the state of the environment;
  - Emergencies and disasters;
  - Pollutant Release and Transfer Registers;
  - Information on contracts, authorizations and permits;
  - Use of information and communication technologies;
  - Information of private entities (information for consumers, sustainability reports, among others); and,
  - Management and archiving.
- c) Participation in decision-making:**
- Implement open and inclusive participation mechanisms, including in processes associated with conservation, use and management of natural resources;
  - Opportunity to have an impact;
  - Access to relevant information;
  - Reasonable periods;
  - Presentation of observations;
  - Autonomy and characteristics of communities;
  - Consideration of observations;
  - Re-examination or updating;
  - Notification of decision / result;
  - Guides and guidelines on participation;
  - Participation in international forums; and,
  - Formal spaces for consultation.
- d) Special consideration of specific or vulnerable groups:**
- Efforts to identify communities in vulnerable situations;

- Consider best media and formats to supply information to vulnerable communities, ensuring respect for cultural characteristics;
  - When individuals or groups belonging to an indigenous people are affected, the Parties shall ensure that the applicable national and international standards on this matter are observed;
  - Additional measures for activities and projects;
  - Mandatory public participation procedures for all projects and activities subject to environmental assessment in accordance with national law;
  - Efforts to identify the public directly affected and to facilitate their participation; and,
  - Access to specific information and notification.
- e) Access to justice:**
- Right to access justice (justice and equity);
  - Appeal mechanisms when access to information has been denied;
  - Appeal mechanisms when participation has been denied;
  - Appeal mechanisms to deal with infringement of environmental rules and claims relating to environmental damage and compensation;
  - Specialized entities;
  - Broad active legal standing;
  - Measures to facilitate the determination of environmental damage;
  - Environmental defenders;
  - Facilitating access to justice;
  - Disadvantaged groups;
  - Decisions adopted;
  - Capacity-building in access to justice;
  - Environmental legal cooperation; and,
  - Alternative dispute resolution.
- f) Capacity-building and cooperation:**
- Based on national demands and needs, specific regional considerations, flexibility, efficiency and effectiveness, results-based management and consideration of the target audiences; and,
  - Objective: to establish a framework for peers to share experiences and carry out activities of common interest, particularly in those Parties that are least developed countries or Caribbean Small Island developing States.
- g) Modalities of cooperation:**
- Discussions, workshops, exchanges of experts, technical assistance, observatories;
  - Development, exchange and implementation of educational materials and programmes;
  - Voluntary codes of conduct, guidelines, best practices and/or standards;
  - Sharing of experiences at all levels;
  - Use of committees, councils and public-private platforms;

- Clearinghouse on access rights;
- Cooperation between authorities at the national level and education and awareness raising of the public; and,
- Cooperation with institutions and organizations at the global, regional, sub-regional and national level.

There are no sanctions for failure to comply. The preliminary document proposes to establish a Facilitation and Follow-up Committee to help countries address implementation challenges on the basis of capacity-building and cooperation. The Committee would be non-adversarial, non-judicial and of a consultative nature to review compliance and formulate recommendations, with special attention to the national capacities and circumstances of the Parties. As a result, the focus of the agreement is in implementation, capacity-building and progressive realization, allowing countries to improve the application of access rights at the national level.

## **C. Working group discussions on the preliminary document**

### **1. General comments, definitions and principles**

#### **a) General comments on the preliminary document**

Participants were generally supportive of the principles and goals of the preliminary document recognizing that the provisions were, to a great extent, already in practice in some Caribbean countries. In addition, they were highly cognizant of the various considerations made for Caribbean countries, such as in article 10 (capacity-building) and article 17 (implementation, monitoring and evaluation). They coincided in the fact that many commitments were framed using non-binding language. Where words such as “promote”, “encourage” and “best endeavours” are used, these commitments should be reviewed to make the language stronger.

Capacity-building for Caribbean countries should be emphasized as resource constraints are a limiting factor in implementation, in particular concerning the establishment of environmental information systems. This will also be a factor in determining whether more Caribbean countries will sign on to the future agreement. It should be indicated whether resources and support will be forthcoming.

#### **b) Definitions (article 2 of the preliminary document)**

In terms of definitions, the word “competent authority” should be used consistently throughout the document. In some articles, other terms such as “public authority” were used. Generally, the term “petitioner” should also be replaced with the word “applicant”, as it offers a more neutral language.

Furthermore, participants discussed extensively the reference to “disadvantaged groups”. In general terms, participants agreed that the term “vulnerable” was more suitable than “disadvantaged”. However, there was a greater difficulty in reaching consensus on a definition of vulnerable groups. Two perspectives were discussed to define the individuals or groups included in the definition: one based on the conditions and/or capacities that make people vulnerable or exclude the exercise of access rights (e.g. disability, illiteracy, poverty and health) and another one focused on the groups that are, generally speaking, vulnerable and at a disadvantage (e.g. indigenous peoples and youth).

Although in some Latin American countries Afro-descendants could be considered a vulnerable group, participants expressed the concern of including them in this category as this would include large parts of their population in their countries. In addition, citing the case of the Inter-America Court on Human Rights on the Maroons in Suriname, participants stated that the term should be expanded to include “tribal groups”. In the listing of the groups included, some groups were missing such as migrants, lesbian, gay, bisexual and transgender people (LGBT) and minorities.

Likewise, the definition of environmental information should include traditional knowledge.

### **c) Principles (article 3 of the preliminary document)**

Suggestions were made with respect to the terms precaution and intergenerational equity. As for the precaution principle, it was said that the language does not follow standard concepts such as “serious harm or loss”, “threat” and inclusion of the term “cost-effective measures”. The term “full scientific certainty” was preferred over the term “absolute scientific certainty” as it is not as categorical. One of the participants suggested to use the definition in the Guyana’s Protected Areas Act: “if there are threats of serious or irreversible loss of biodiversity, or serious or irreversible harm to habitats or ecosystems, lack of full scientific certainty should not be used as a reason for postponing measures to prevent such loss or harm.”

As for the principle of intergenerational equity, participants indicated that the words “appropriate use and enjoyment” were not clear. The language used in Guyana’s Protected Areas Act was suggested: “the present generation should ensure that the health, diversity and productivity of the environment is maintained or enhanced for the benefit of future generations”.

## **2. Provisions on access to information in environmental matters (articles 6 and 7 of the preliminary document)**

### **a) Article 6(1) – Access to environmental information**

This provision was considered important for Caribbean countries, as it offers a good premise and a broad-based approach for the right. The requirement to provide information regardless of format, medium and origin, among others, was deemed comprehensive.

### **b) Article 6(2) – Access to environmental information**

The participants were of the opinion that the scope of information that should be provided would pose challenges due to human resource constraints and difficulties in cross-referencing information. The assistance provided by Jamaica’s Access to Information Unit was considered useful in this regard.

Although the right to request information without having a special interest or providing a reason would encourage the use of this mechanism by the requestors, concerns were raised with regard to the misuse and abuse of such system. On this, some participants pinpointed the need to know the use of the information requested in case it affects the removal or exploitation of natural resources against the public interest (e.g. Nagoya Protocol). Another participant raised the point of repetitive and unreasonable requests. Participants, however, concluded that these cases could be provided for under the exceptions regime of article 6(6).

There was consensus on the fundamental nature of the right to be informed on the right to appeal if the information was not provided.

### **c) Article 6(3) – Environmental information systems**

Considering the current capacity and resources, and contingent on capacity-building and cooperation, this article would be challenging to implement in the Caribbean in terms of the establishment of the system and its regular updating.

With respect to the content of such environmental information systems, several suggestions were made such as indicating the source of the information published (to prevent biases), the need of publishing a list of government agencies dealing with environmental issues and the inclusion of information on the disposal of hazardous materials, substances and activities.

### **d) Article 6(4) – Access for disadvantaged groups**

Even though fundamental, cost challenges were identified in some cases, such as providing information to disabled (e.g. putting information in braille). For this reason, it was suggested to frame this obligation as making “best efforts” or “where practicable”.

### **e) Article 6(6) – Exceptions regime**

Concerns were raised on how to treat the disclosure of Cabinet documents and draft documents which were generally considered as sensitive information. An additional circumstance could be added for repetitive, unreasonable or vexatious requests of information (e.g. where the request is voluminous and places a stress on human resources to locate and provide the information).

**f) Article 6(9) – Severability/partial disclosure**

This section provides that authorities can create a “public version” of a document where exempt information is redacted. It was suggested that reference to the creation of a public version should be taken out since this could lead to abuse. As a result, it was suggested that the original document with sections redacted should be disclosed.

**g) Article 6(10) – Tests of public interest and mediation**

The term “mediation” ought to be replaced with “alternative dispute resolution” mechanisms, given that it encompasses broader options.

**h) Article 6(12) – Delivery of environmental information**

The public authorities should acknowledge receipt of requests of information. In addition, it was considered that thirty business days was too long and that this should be replaced with thirty calendar days. The participants felt that the establishment of specific institutions to intervene and facilitate access (such as Jamaica’s Access to Information Unit) should be encouraged in all countries.

**i) Article 6(18) – Cost to access environmental information**

Having regard to administrative costs in providing the information, countries should consider requiring the costs of reproduction to be based on the means (financial ability) of the applicant.

**j) Article 6(19) – Independent review mechanisms**

Having independent review mechanisms with sanctioning powers is essential to protect the right to information. Instead of “may”, the text should say that the independent review mechanisms “shall” have sanctioning powers. Such review mechanisms should also include the participation of civil society representatives in the spirit of transparency.

**k) Article 7(1) – Generation and dissemination of environmental information**

This obligation was considered to be challenging to fully implement because of resource constraints. Perhaps using best endeavours could be more consistent, in line with article 7(5).

**l) Article 7(3) – Emergencies and disasters**

The Caribbean is particularly vulnerable to disasters and having information readily available about emergencies and disasters is critical. This provision is of utmost importance.

**m) Article 7(4) – Access to disadvantaged groups**

Although critical, this may be costly due to the amount and nature of groups that might have to be provided with information.

The requirement to disclose relevant environmental information in the language of indigenous peoples should be expanded to include tribal groups and community groups where applicable (e.g. communities that speak primarily creole/patois, among others).

**n) Article 7(5) – Reports on the state of the environment**

The publishing and dissemination of reports on the state of the environment could be a challenge depending of the standards that are adopted. Some suggestions were made with regard to the requirement of stating the source of information/data and the need to include quantitative as well as qualitative data, baseline data and trends. It was further considered that the reports should be done in a minimum of three years instead of five.

**o) Article 7(7) – Pollutant Release and Transfer Registers**

Considered highly desirable but challenging to implement. Water quality tests are done frequently but many tests are either not done at all or are done possibly every five to ten years.

**p) Article 7(8) – Information on contracts, authorizations or permits**

It is recommended to include the words “or likely to affect the environment” after “subject to environmental assessment”.

**q) Article 7(9) – Open data**

The word “encourage” should be replaced with “ensure”.

**r) Article 7(10) – Consumer information**

Instead of consumers and users, the term used should be “the public” to ensure consistency. The information provided should be non-deceptive and not biased. For hazardous materials, the terms “sustainable production, disposal and consumption patterns” should be added. There is a need to have consumer information that is accurate, precise and relevant but this may result in delays in providing information.

**s) Article 7(11) – Management and archiving of environmental information**

There should be penalties or sanctions for destroying information to prevent access and provision for remedies. This should only be done when authorized by law, policy or guidelines and should not be arbitrary.

**t) Articles 7(12) and 7(13) – Information generated by private entities and right to information on companies’ activities**

This is important as these activities may have significant impacts on the environment. There is a need for clarification of what is a “sustainability report” as the meaning is not clear. There will be costs implications to train staff and bring in experts to assist. While this is possible, this may be challenging for countries to implement.

**3. Provisions on public participation in environmental decision-making (article 8 of the preliminary document)**

**a) Article 8(1) – Open and inclusive public participation mechanisms for environmental decision-making**

Participants coincided in the fact that public participation in environmental matters was essential and that it should be meaningful. In order to institutionalize and ensure such participation, financial resources and capacity-building are needed to guarantee that different groups are able to participate.

Public participation should include the concept of co-management of natural resources. The processes listed in the provision should also include the “extraction of natural resources”. The words “not limited to” should be included to indicate that the list is not exhaustive.

**b) Article 8(2) – Early public participation**

Early public participation was considered key to successful policy-making and environmental governance.

There was concern regarding the vague language (i.e. the term “real influence”) and, as such, it was suggested that more concrete and specific wording be adopted. For example, it should be specified that Parties shall adopt measures “prior to the decision being made”. In addition, participation should be present during all phases of decision-making (concept, project design and implementation) to be clear of the intention to have early engagement of the public.

**c) Article 8(3) – Access to relevant information for active and effective participation**

The public shall have access to all relevant information to allow for full participation in the decision-making process. The adjective “timely” was deemed to be excessively vague and could be used as a delay tactic, reason for which the establishment of an outer time limit should be explored. The limited capacity can be a barrier to implementing fully this provision.

**d) Article 8(4) – Periods to participate**

The language used should be more precise. For example, the terms “reasonable periods and “participating effectively” are subjective. The comment period should consider the traditional process for decision-making for some communities which may not be standard e.g. indigenous groups.

**e) Article 8(5) – Form of comments**

Any person should also be allowed to make comments and observations through oral submissions.

**f) Article 8(6) – Overcoming of barriers for participation**

The wording “intended to overcome any barrier” should be replaced with “intended to overcome barriers to participation”.

**g) Article 8(7) – Consideration of comments**

Instead of “take into consideration”, it was suggested to use the term “take into account”. The reasons for not taking into account the recommendation should be disclosed to the general public in an appropriate medium (e.g. newspaper). This provision is closely connected with article 8(9) and needs to be consistent with it. A time frame should be specified for a response to be provided.

Providing an individual response to each commentator could be challenging. Alternatives that could be explored include the issuing of draft and final recommendations to the public.

**h) Article 8(8) – Re-examination and updating of decisions**

Reference should be made to the public authority “and/or a designated agent”, so that the provision covers public-private partnerships and contractors.

**i) Article 8(9) – Notification of the decision**

The term “promptly” should be defined. In addition, the word “observations” should be changed with “recommendations”.

**j) Article 8(10) – Manuals and guidelines**

The adoption of manuals and guidelines will be fundamental to interpret and determine the scope of the provisions under public participation. The provision should specifically state that the Conference of the Parties shall develop minimum standards of participation.

As some Caribbean countries already have guidelines or are following international guidelines (e.g. those of the World Bank), these should be considered. Furthermore, consideration should be given to the standards that some indigenous peoples and communities have adopted (e.g. the Maya in Belize).

**k) Article 8(11) – Public participation in international forums**

There can be a challenge with funding. It is worthwhile noting that some Caribbean countries are already including civil society and youth as part of their delegations.

**l) Article 8(12) – Permanent formal spaces**

The use of the words “permanent formal spaces” is ambiguous and alternatives should be explored. For example, it is not clear if it refers to a physical space, a platform or a Commission.

**m) Article 8(13) – Participation of disadvantaged groups**

The reference to “additional efforts” should be based on the individual circumstance of the disadvantaged group or individual at the national level.

**n) Article 8(14) – Participation of indigenous peoples**

This provision was considered critical for the Caribbean. Special consideration should be given to indigenous peoples.

**o) Article 8(15) – Participation in activities and projects**

It is not clear why additional measures should be adopted for activities and projects as these measures should apply to all types of environmental decision-making.

The list of projects and activities included should not be exhaustive. As a result, the words “but not limited to” should be added. “Mining” should be replaced with “extractive resources” and the word “certain” should be removed. The provision would thus read as follows: “[...] In all cases, public participation shall be guaranteed in projects and activities related, but not limited to, mining, extractive resources, electricity generation, production activities and ~~certain~~ uses of hazardous substances and treatment and disposal of waste. [...]”

**p) Article 8(16) – Participation of public directly affected**

The provision of technical and financial assistance to facilitate the involvement of the public directly affected is a challenge for most Caribbean countries.

**q) Article 8(17) – Access to information by the public directly affected**

The provision should apply to the general public and not just to the public directly affected.

Participants suggested that the impacts to livelihoods and the wellbeing of people and a description of alternatives be added to the list. Access to draft documents would also be important. The requirements indicated in Environmental Impact Assessments and Strategic Environmental Assessments at the national level should be considered.

**r) Article 8(18) – Notification of decision to the public directly affected**

The words “public directly affected” should be changed to the general public.

**4. Provisions on access to environmental justice  
(article 9 of the preliminary document)**

**a) Article 9(1) – Access to environmental justice**

This article could be challenging to implement and should be based on the national context of each country.

Several suggestions were made to rephrase this provision: “reasonable period” should be changed to “expedient period” and “right to access justice” should be replaced with “right of access to justice”, as it has a slightly different meaning and is in keeping with fundamental objectives.

The sentence could be rephrased to state that “Each Party shall guarantee access to justice in environmental matters within a reasonable period of time through administrative, legal and judicial means guaranteeing due process based on the principles of [...]”

**b) Article 9(2) – Scope of access to justice**

This provision is critical and useful. The reference to “in the framework of its national laws” should be removed as it is only through a national law that the public can have this entitlement.

In addition to any person, reference should be made to “any group of persons” as well.

**c) Article 9(3) – Guarantees for access to justice**

In 9(3)(a), for greater clarity, it was recommended to change “jurisdictional or non-jurisdictional entities” with “judicial or non-judicial entities”. The establishment of specialized entities, could, in certain countries pose a challenge due to resource constraints.

As for the procedures (article 9(3)(b)), some words were deemed to be repetitious. The words “open” and “rapid” could be removed.

With regard to redress mechanisms, in addition to the restitution, compensation and other suitable measures, it was recommended to add “rehabilitation and restoration” and, for some cases, even “apology”. The term “affected persons” should be used instead of “victims”.

The precautionary, interim and oversight measures to safeguard the environment and public health should encompass also the wellbeing of people. Further clarity was needed on the reversal of onus of proof. Standards of review should, in addition to judicial and administrative, include the term “legal”.

**d) Article 9(4) – Measures to safeguard the exercise of rights**

This clause was considered essential to democratic societies and rule of law. The term “victims” should be replaced with “affected persons”. Those affected should also be entitled to other forms of redress.

It should be made clear that the protection of victims and the pursuit of damages are two separate processes.

**e) Article 9(5) – Measures to facilitate access to justice**

The requirement to ensure that procedures should not have costs or restrictions of any kind is restrictive. This could result in abuse and provision and could be reworded to provide that costs can be awarded for frivolous and vexatious claims. Another option could be to add that procedures will have no costs other than “as necessary for the proper administration of justice”.

New mechanisms could include other forms of communication technologies.

#### **f) Article 9(6) – Consideration to disadvantaged groups**

Some participants were of the opinion that a qualification should be introduced to “economically” disadvantaged groups. Perhaps the provision could be reworded to leave room for all cases where persons are at a disadvantage. For example, assistance should also be provided to people with disabilities (e.g. the blind).

#### **g) Article 9(7) – Notification of decisions**

The role of the judiciary as well as its independence and impartiality needed to be considered in the provision. There should be a requirement to provide decisions electronically and in hard copy, as relevant.

#### **h) Article 9(9) – Regional cooperation**

There was a strong support for a regional approach to cooperation given the limited capacity of Caribbean countries. By way of example, a regional ad hoc task force on environmental law could be established to assist countries in the investigation of environmental crimes. Training should be included.

#### **i) Article 9(10) – Alternative dispute resolution**

This is a fundamental provision and should be non-negotiable.

#### **Box 4**

#### **Provisions on access to information, public participation and access to justice of the preliminary document considered critical for the Caribbean**

- 1) Access to environmental information (articles 6 and 7 of the preliminary document)**
  - Requirement to provide information regardless of the format, medium, origin, classification or processing - art. 6(1);
  - The right to request information without having a special interest or providing a reason - article 6(2)(a);
  - The right to be informed of the right to appeal if information is not provided – article 6(2)(c);
  - Facilitate access for disadvantaged groups – article 6(4);
  - Severability/partial disclosure – article 6(9);
  - Response by the competent authorities as quickly as possible – article 6(12);
  - Having an independent review mechanism which has sanctioning powers to protect the right to information – article 6(19);
  - Generation of environmental information (active transparency) – article 7(1);
  - Emergencies and disasters – article 7(3);
  - Open data policies – article 7(9);
  - Information for consumers – article 7(12); and,
  - Right to information on private companies’ activities – article 7(13).
- 2) Public participation in environmental decision-making (article 8 of the preliminary document)**
  - Open and inclusive mechanisms that allow for meaningful participation – article 8(1);
  - Early public participation, prior to the decision being made – article 8(2);
  - Access to relevant information and adequate procedures for active and effective participation – articles 8(3) and 8(4);
  - Taking into account the observation and recommendations of the public – article 8(7);
  - Re-examination or updating of projects, activities, policies, plans, rules, regulations, programmes or strategies – article 8(8);
  - Elaboration of manuals and guidelines on public participation provisions – article 8(10);
  - Special consideration of the rights of indigenous peoples – article 8(14); and,
  - Additional measures for activities and projects, which should apply to all types of decision-making and should be accessible not only to the public directly affected but to the general public – articles 8(15) to 8(18).
- 3) Access to environmental justice (article 9 of the preliminary document)**
  - Expedient access to justice, providing due process and right of appeal to superior body– article 9(1);
  - Right of any person to have access to judicial or non-judicial body in case of denial of rights to information and participation and to seek environmental justice – article 9(2);
  - Establishment of specialized judicial or non-judicial bodies, effective and timely procedures, execution mechanisms, mechanisms for redress and attention to affected persons, precautionary and oversight measures – article 9(3);
  - Measures to safeguard the exercise of rights – article 9(4);
  - Consideration to disadvantaged groups in the exercise of access to justice – article 9(6);
  - Regional co-operation for investigation, prosecution and punishment of environmental crimes – article 9(9); and,
  - Alternative dispute resolution mechanisms – article 9(10).
- 4) Transversal issues**
  - Capacity-building and cooperation and resources, technical assistance and support.

Source: Economic Commission for Latin America and the Caribbean on the basis of the working group discussions.

**Box 5**  
**Main challenges on access to information, public participation**  
**and access to justice in the Caribbean**

- Education and awareness-raising on access rights;
- Collection, generation and management of environmental information and statistics;
- Creation of environmental information systems;
- Establishment and implementation of systems to deliver access rights;
- Consideration of disadvantaged groups;
- Establishment of legal standards for public participation in environmental decision-making, including Environmental Impact Assessments and Strategic Environmental Assessments (i.e. enactment of laws, adoption of policies, etc.).

Source: Economic Commission for Latin America and the Caribbean on the basis of the working group discussions.



## **IV. Workshop on enhancing access to information on climate change, natural disasters and coastal vulnerability in the Caribbean: leaving no one behind**

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Given the linkages between Principle 10 and climate change, emergencies and natural disasters, a one-day workshop was held to address access to information on climate change, natural disasters and coastal vulnerability in the Caribbean, stressing inclusiveness and the consideration of those that are most vulnerable to their effects and consequences. Hence, the overall framework theme was “leaving no one behind.”

The workshop was structured around two sessions. Whereas the first session focused on access to information on climate change and coastal vulnerability, the second session explored in greater detail disaster management, measurement and preparedness. In each session, a space for questions and answers was also provided for.

### **A. Session on access to information on climate change and coastal vulnerability**

#### **1. Carlos de Miguel, Chief, Policies for Sustainable Development Unit of the United Nations Economic Commission for Latin America and the Caribbean**

Mr. de Miguel delivered a presentation on the effects of climate change on the coasts of Latin America and the Caribbean, with a special emphasis on its impact on Small Island Developing States (SIDS).

He explained that ECLAC, in partnership with other organisations under took a project to compile the information required to analyze the modifications and impacts of climate change in the coastal areas

of Latin America and the Caribbean to determine areas most at risk.<sup>4</sup> Analytical and parametric models were used to map the historical data on pressure, waves, winds and sea levels during hurricanes. Long-term trends of the coastal dynamics were assessed including the mean trend in sea level for 2010-2040 and 2040-2070.

Among the risks assessed were the following:

**(a) Coastal flooding by sea level rise:**

The distribution of the population and the territory is the main factor in assessing impact caused by floods along the coastal strip. The Caribbean islands and the Atlantic coast are of particular concern regarding the mean sea level.

The impact of hurricanes to vulnerable countries will change significantly as a result of a rise of one meter in sea level (e.g. Costa Rica, Honduras, Panama or Venezuela). In other countries the variation in the impact is not as significant compared to the current level impact.

**(b) Port activity and infrastructural protection:**

Under mean conditions, the probability of the occurrence of a significant wave height of over 3 m will increase, navigation conditions for ships wishing to enter ports in the region will worsen.

The reliability of existing maritime structures and of those designed in the near future without factoring in the effects of long-term changes will be reduced by around 60% (in mean terms as of 2070) in a large part of the region (other than the inner portion of the Caribbean Sea, where tropical storms are the main design actions taken into account).

For the most part, except in some areas of the Caribbean, any maritime structure is going to need to be shielded with heavier components in the future. Generally speaking, the ability of maritime structures to withstand the effects of climate change is expected to decline. However, in the southern Caribbean, there will be gains in the reliability of maritime structures due to the foreseen reduction in the design wave height.

**(c) Beach erosion:**

The worst affected areas will be the northern Caribbean and the coastlines to the south of Brazil down to the Río de la Plata. Erosion is, in any case, generalized throughout the region, especially in the event of sea level rise.

The largest changes from beach planform rotation are likely to occur on the southern coasts of Brazil (more than one meter per year), the Caribbean coasts (especially eastern Cuba and the easterly islands), part of the coast of Chile and the north-east coast of Mexico; in the last case again at rates of over one meter of erosion per year on average.

**(d) Surface temperature and coral reefs bleaching**

It is probable that the current impacts being seen in the Caribbean will spread to islands where there are virtually no such impacts at present. Finally, for the Caribbean islands where the probability of exceeding the threshold value is currently below 0.1, the probability will rise to 0.2 by 2070.

## **2. Asha Singh, PhD, Head, Oceans Governance Unit, Organisation of Eastern Caribbean States**

Climate change impacts in the OECS include:

- Coral bleaching;
- Ocean acidification;

<sup>4</sup> See: <http://www.cepal.org/es/efectos-cambio-climatico-la-costa-america-latina-caribe>.

- Sea level rise;
- Increased sea surface temperature;
- Change in frequency and intensity of storms or storm like event;
- Increase dry season leading to drought and drought like conditions;
- Ecological upset;
- Changing land use which are exacerbating the impacts from climate change; and,
- Increase prevalence of invasive species.

Access of the public to Information on e.g climate change can encourage community level participation in climate change mitigation and adaptation. Further, building greater scientific input into policies allows for better mainstreaming of climate change thereby reducing vulnerability, building resilience and managing uncertainties. Principle 10 is important in serving as a platform for providing public access to information which improves advocacy and empowers society leading to more effective civil society engagement. Greater empowerment and access to justice can foster good environmental governance systems which can lead to transformation change.

#### **Activities to Support Principle 10 - Access to Information**

##### **(a) Regional initiatives:**

- Rallying the region to adaptation to Climate Change (RRACC);
- Sustainable land management;
- Eastern Caribbean Management Area Network;
- Sustainable Oceans Governance – Eastern Caribbean marine research platform for information access; and,
- Disaster preparedness, risk reduction and management.

##### **(b) National initiatives:**

- National climate change reports; and,
- Regional assessments on climate change.

#### **Activities to Support Principle 10 – Public Participation**

- Civil society in climate change toward COP 21 –Working Partnership on Climate Change;
- National climate agenda – RRACC, GCCA & ECMAN; and,
- Awareness and advocacy – media, OECS and youth.

#### **Activities to Support Principle 10 – Access to Justice**

- Environmental agreements – international, regional and diplomatic; and,
- UNFCCC COP 21 in Paris – civil society.

#### **Challenges:**

- Access to climate data and information;
- Understanding of climate data and information and mainstreaming it for policy effectiveness;
- Assessing risk and vulnerability and how this can be translated to better adaptation to climate change; and,
- Integrating climate risks and opportunities into national and regional development plans.

### **3. Ruth Viola Spencer, Global Environment Facility (GEF) National Focal Point, Antigua and Barbuda**

An overview of the GEF programmes in Antigua and Barbuda was provided. The important of building the capacity of communities to address the impacts of climate changes was emphasized. Information was given on various GEF projects to assist communities to reduce vulnerabilities to climate change. These included assistance to install solar panels and water catchment systems.

## **B. Session on disasters and the measurement of their effects and impact in the Caribbean**

### **1. Omar Bello, Coordinator, Sustainable Development and Disaster Unit, Sub-regional headquarters for the Caribbean, United Nations Economic Commission for Latin America and the Caribbean**

Mr. Bello started his presentation by making reference to some facts: 445 disasters have taken place in the Caribbean between 1970-2014; 85% of disasters have been either storms or floods; 28 storms have affected Cuba and 23 floods have affected the Dominican Republic; and, the most lethal event in the region was the Port-au-Prince earthquake in 2010.

On the economic impacts of disasters, he also noted that these have been greater in the Caribbean than in Latin America. ECLAC has taken part in more than 90 assessments of the social, environmental and economic effects and impacts of disasters in 28 countries in the region. These assessments include:

- Estimation of effects: damage, losses, and additional costs;
- Estimation of impacts: macro-economic and household level; and,
- Estimation of financial needs: (i) Recovery: it is partially estimated with the additional costs; and, (ii) Reconstruction: identify opportunities to incorporate disaster risk reduction (DRR) in this process.

Estimations of loss and damage is done by sector:

#### 1. Affected population

#### 2. Social

- Education;
- Health;
- Housing; and,
- Culture and cultural assets.

#### 3. Infrastructure

#### 4. Transportation

- Water and sanitation;
- Power sector; and,
- Economic sectors (agriculture sector, manufacturing, commerce and tourism).

There are four progressive stages for a country to achieve the successful integration of DRR into reconstruction: a) Integrating DRR into disaster assessments; b) Sustained commitment to DRR during recovery planning; c) Incorporating DRR in the design and implementation of recovery programs; and, d) Translating the gains of resilient recovery into sustainable development.

The technical assistance provided by the Sustainable Development and Disaster Unit of the ECLAC Sub-headquarters for the Caribbean focuses on the following areas:

1. Disaster assessment;
2. Quality control for disaster assessment done by national or local governments; and,
3. Training courses on disaster assessment methodology.

## **2. Karetta Crooks Charles, Communications and Advocacy Officer, Saint Lucia National Trust, Saint Lucia**

World Wide Views (WWViews) on Climate and Energy is a global participatory initiative held in 75 countries on 6 June 2015. It involved seven Caribbean countries, two of which were from the Eastern Caribbean and a total of 10,000 participants were involved.

The Saint Lucia National Trust and the Caribbean Youth Environment Network organized sessions in St. Lucia and Grenada respectively.

The main objectives:

- To give citizens an opportunity to learn more about climate & energy issues;
- To share their views with fellow citizens at the day-long consultation; and,
- To pass on citizens' views to policymakers heading to the 21 Conference of the Parties of the United Nations Framework Convention on Climate Change (COP21) in December 2016.

The five thematic sessions explored:

- The importance of tackling climate change;
- Tools to tackle climate change;
- United Nations negotiations and national commitments;
- Fairness and distribution of efforts; and,
- Making and keeping climate promises.

WWViews is a good example of access to information & access to public participation at work. This model can be used to educate our citizens on a wide range of issues and provides a platform for meaningful participation. What's even more critical is the fact decision-makers now get a clearer understanding of citizens' views and as such can shape their deliberations to include the voice of the people who are being or will be affected by the specific issue.

## **C. Questions and comments from participants for both sessions**

**Is there any intention to put the data presented in a user friendly format so that the average lay person can understand this information?**

Mr. De Miguel: We try to use graphs and charts to explain information but this could be put in other forms that are easily understood. The media can also be engaged.

**What causes acidification of the oceans?**

Dr. Singh: Increases in CO<sup>2</sup> in the atmosphere corresponds to increases in dissolved CO<sup>2</sup> with the surface oceans. This dissolved CO<sup>2</sup> reacts with the seawater to form carbonic acid (H<sup>2</sup>CO<sup>3</sup>). Carbonic acid nearly completely dissociates to form bicarbonate ions (HCO<sup>3-</sup>) and hydrogen ions (H<sup>+</sup>). The increase in the concentration of hydrogen ions from these reactions causes the seawater to become more acidic and hence the term "ocean acidification". This affects coral reefs, and integrity of the shells of crustaceans such as conch and mussels.

**The population needs ought to be addressed because this has a big impact on climate change. Many populations sit in low lying areas.**

Dr. Singh: Small island states are vulnerable because there is limited land, but also because majority of the economic and critical infrastructures resides in the coastal area

**Participants stated that regional cooperation in data gathering should be encouraged. In the spirit of access to information and in the absence of a tool to ensure translation of data, the language used to communicate impacts should be clear. E.g. 1 mm rise in sea level will impact areas differently.**

**Has there been any studies of the impact on archipelagic fisheries?**

Mr. De Miguel: There have been studies on the fisheries in the Pacific Ocean. Climate change studies on coral reefs will have implications on fish because this is their habitat and ecosystem. Rising sea level temperatures will also impact fisheries.

**Can Sargassum seaweed be used to highlight climate change impacts on the Caribbean and to appeal to young people?**

Dr. Singh: This is possible. Preliminary studies from a University in Miami showed that increased growth of Sargassum is caused by increased carbon dioxide concentration in the oceans. Having localized examples in climate change conversations can help to build awareness and foster a climate consciousness especially among the young citizens.

**What definition of sustainable development is used?**

Mr. Bello: The definition used in the document is wide. It is important to take into account environmental impact assessments and restoration.

**Do you assess the impact of climate change on animals?**

Mr. Bello: The focus is on human beings. If there is environmental damage, ECLAC could suggest that a separate assessment should be done for these areas (e.g. damage to trees).

**Does ECLAC have a strategy to correct market failure?**

Mr. Bello: As a matter of opinion, climate change is one of the biggest externalities related to the environment and is a market failure.

**How did voting of the WWViews exercise take place?**

Mrs. Crooks Charles: There were group discussions followed by voting using a form.

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## **Annex**

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## Agenda of the meeting and workshop

### Monday, 24 August 2015

8:00 a.m. – 8:30 a.m. Participant registration

8:30 a.m. – 9:00 a.m. **Opening remarks**

- Diane Quarless, Director, ECLAC Sub-regional headquarters for the Caribbean
- Turkessa Benjamin Antoine, Senior Legal Officer, Organisation of Eastern Caribbean States
- Karetta Crooks Charles, Saint Lucia National Trust, Saint Lucia

9:00 a.m. – 11:00 a.m. **Session 1: Current status of the implementation of Principle 10 in Latin America and the Caribbean and recent international and regional developments**

- Carlos de Miguel, ECLAC
- Winston Anderson, Judge, Caribbean Court of Justice

Panellists:

- Maureen Payne, Junior Minister, Ministry of Justice and Legal Affairs, Antigua and Barbuda
- Turkessa Benjamin Antoine, Senior Legal Officer, OECS

11:00 a.m. – 11:30 a.m. Coffee break

**Session 2: Good Practices, challenges and lessons learned in the Caribbean region on access to environmental information, public participation and justice in environmental matters**

11:30 a.m. – 12:30 p.m. **Panel 1: Good practices on access to information in environmental matters**

Featured speaker:

- Damian Cox, Director, Access to Information Unit, Prime Minister's Office, Jamaica

Panellist:

- Samantha Robertson, Saint Vincent and the Grenadines Human Rights Association

Dialogue with the participants

12:30 p.m. – 2:00 p.m. Break

2:00 p.m. – 3:00 p.m. **Panel 2: Good practices on access to participation in environmental matters**

Featured speaker:

- Melinda Janki, Executive Director, The Justice Institute Guyana

Dialogue with the participants

3:00 p.m. – 3:30 p.m. Coffee break

3:30 p.m. – 4:30 p.m. **Panel 3: Good practices on access to justice in environmental issues**

Featured speaker:

- Chateram Sinanan, Chairman, Environmental Commission, Trinidad and Tobago

Panellist:

- Cristina Coc, President of Board of Directors, Maya Leaders Alliance

Dialogue with the participants

**4:30 p.m. – 5:30 p.m. Panel 4: What is missing in the Caribbean Region for full application of access rights**

- Carole Excell, World Resources Institute / The Access Initiative
- Amrikha Singh, Caricom
- Danielle Andrade, Attorney at Law, Jamaica

Dialogue with the participants

5:30 p.m. Closure of the day

### **Tuesday, 25 August 2015**

**8:30 a.m. – 8:45 a.m. Summary and wrap up of day one and presentation of objectives and methodology of the session**

**8:45 a.m. – 9:45 a.m. Presentation of the Bali Guidelines and the Preliminary document of the regional agreement**

- Andrea Brusco, UNEP
- David Barrio, ECLAC

**9:45 a.m. – 12:45 p.m. Review of preliminary document (access to information)**

12:45 p.m. - 2:00 p.m. Break

**2:00 p.m. - 3:30 p.m. Review of preliminary document (public participation)**

**3:30 p.m. - 5:00 p.m. Review of preliminary document (access to justice)**

**5:00 p.m. - 6:00 p.m. Conclusions**

**Wednesday, 26 August 2015****Workshop on enhancing access to information on climate change, natural disasters and coastal vulnerability in the Caribbean: leaving no one behind**

**8:30 a.m. – 10:00 a.m. Session 1: Access to information on climate change and coastal vulnerability in the Caribbean region**

- Carlos de Miguel, Sustainable Development and Human Settlements Division, ECLAC

Panellists:

- Asha Singh, Head, Oceans Governance Unit, OECS
- Ruth Spencer, GEF National Focal Point, Antigua and Barbuda

Open discussion

10:00 a.m. – 10:30 a.m. Coffee break

**10:30 a.m. – 12:30 p.m. Session 2: Disasters and the measurement of their effects and impact in the Caribbean region**

- Omar Bello, ECLAC Subregional Headquarters for the Caribbean

Panellist:

- Karetta Crooks-Charles, Saint Lucia National Trust

Open discussion

12:30 p.m. – 1:00 p.m. Closing of the workshop



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