

IMPLEMENTING PRINCIPLE 10 AND THE BALI GUIDELINES in AFRICA

Issue Paper to Support UNEP and Other Stakeholders

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EXECUTIVE SUMMARY

Principle 10 of the Rio Declaration sets out three fundamental rights: access to information, access to public participation and access to justice, as key pillars of sound environmental governance. The “access rights” have emerged to be very important in promoting transparent, inclusive and accountable environmental governance. Access to information empowers citizens and incentivizes them to participate in decision and policy making processes in an informed manner. Public participation is increasingly being seen as a vital part of addressing environmental problems and bringing about sustainable development by allowing governments to adopt policies and enact laws that take community needs into account. Access to justice provides the foundation of the other “access rights” as it facilitates the public’s ability to enforce their right to participate, to be informed, and to hold regulators and polluters accountable for environmental harm.

In February 2010, 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). This presented a significant milestone in the field of environmental law and application of Principle 10. Since their adoption, the Bali Guidelines have increasingly been recognized by international organizations, regional organizations, and civil society groups. And there has been considerable progress towards their implementation, through a number of international, regional and national initiatives. A number of such initiatives have been taken in Africa mainly through declarations, and organizations that include provisions encouraging or mandating public access to information, participation, and justice.

The United Nations Environment Programme (UNEP) has endeavoured to promote the use of the Bali Guidelines, including through a joint initiative with the United Nations Institute for Training and Research (UNITAR) to build the capacities of mainly developing countries to implement the principles. Many countries in Africa have also made great strides towards implementing the Rio Principle 10. This has mainly been achieved through constitutional provisions, legislative reforms and establishment of special institutions. Despite the strides, implementation in Africa has been difficult and

significant gaps still exist. Gaps include: lack of national legislative and policy tools in some countries; lack of adequate capacity on the part of governments; lack of adequate capacity on the part of civil society and citizens; impunity and lack of institutionalised democracy; institutional weaknesses; and weaknesses related to the processes towards implementing the principles.

In order to enhance success in implementing the Rio Principle 10 and the Bali Guidelines in Africa, there is need for all African countries to enhance integration of Principle 10 and the Bali Guidelines in their national laws. The African Governments should also prioritize the rights to access to information, public participation and access to justice in their development processes. Thirdly, development partners should increase efforts towards supporting governments and civil societies in implementation of Principle 10 and the Bali Guidelines. Fourth, African governments and non-governmental organizations should work towards a binding Africa-wide or regional convention on implementation of Principle 10. Lastly, effective mechanisms for monitoring implementation of Rio Principle 10 and the Bali Guidelines should be established.

LIST OF ACRONYMS

AMCEN	African Ministerial Conference on the Environment
AU	The African Union
CELAC	Community of Latin American and Caribbean States
CSO	Many Civil Society Organizations
DRC	Democratic Republic of Congo
EAC	East African Community
ECLAC	Economic Commission for Latin America and the Caribbean
ECOWAS	Economic Community of West African States
EDI	Environmental Democracy Index
EIA	Environmental Impact Assessment
E-PRTR	European Pollutant Release and Transfer Register
EU	European Union
GMEF	Global Ministerial Environment Forum
JPOI	Johannesburg Plan of Implementation
MDGs	Millennium Development Goals
NGO	Non-Governmental Organizations
OAS	Organization of American States
OGP	Open Government Partnership
PRTR	Pollutant release and transfer registers
RCM	Regional Consultation Meeting
SADC	Southern Africa Development Community
SDGs	Sustainable Development Goals (SDGs)
SEA	Strategic Environmental Assessments
TAI	The Access Initiative
UDHR	United Nations Charter and the Universal Declaration of Human Rights
UN	United Nations
UNCED	United Nations Conference on Environment and Development
UNEP	United Nations Environment Programme
UNITAR	United Nations Institute for Training and Research
WSSD	World Summit on Sustainable Development

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INTRODUCTION AND BACKGROUND

1.1. About this Issue Paper

In early 2012, UNEP and UNITAR agreed to develop a joint initiative to support capacity development for the implementation of Principle 10 of the Rio Declaration and the “UNEP Guidelines for the Development of National Legislation on Access to Information, Public Participation and Access to Justice in Environmental Matters” (Bali Guidelines). Activities planned included joint development of guidance and training materials, regional workshops and national capacity development projects. The joint initiative *inter alia*, envisaged Regional Consultation Meetings (RCMs) on P10 and Bali Guidelines. Based on the understanding that successful implementation of P10 and the Bali Guidelines requires political good will, UNEP and UNITAR intend to hold one of the regional consultative meetings in the sidelines of the African Ministerial Conference on the Environment (AMCEN) to be held in early 2015.

This Issue paper on the Rio Principle 10 and the Bali Guidelines in the context of Africa is an information document for the Regional Consultative Meeting (RCM). The issue paper starts by giving definition and history of principle 10 of the Rio Declaration (P10) and the Bali Guidelines, and the role of governments, regional organizations, and Major Groups and Stakeholders in the implementation process. It then describes the importance of the Principle 10 and the Bali Guidelines in Africa, the progress made in its implementation and the existing gaps in the implementation in Africa.

1.2. Rio Principle 10 and Sustainable development

Twenty years after the first global environment conference¹, the United Nations (UN) sought to help governments rethink economic development and find ways to halt the destruction of irreplaceable natural resources and pollution of the planet. This gave rise to the United Nations Conference on Environment and Development (UNCED) held in Rio de Janeiro, Brazil from 3-14 June 1992. UNCED was a global conference, with 177 countries represented, 108 by their heads of state, and 2400 NGO representatives.

¹ The United Nations Conference on the Human Environment (UNCHE), held in Stockholm, Sweden from June 5 to June 16, 1972 was the first major international gathering focused on addressing environmental issues. It laid the corner stone for environmental action at an international level. The Conference adopted the United Nations Declaration on the Human Environment, also known as the Stockholm Declaration.

Simultaneous to UNCED, a large gathering of non-governmental organizations (NGOs) under the umbrella title of the Global Forum was held in Rio about 40km from the conference site. Including the parallel Global Forum, more than 17,000 persons attended the conference. The formal intergovernmental UNCED process yielded five documents signed by heads of state: the "Rio Declaration"; treaties on climate change and biodiversity; a statement of forest principles; and "Agenda 21".²

The Rio Declaration³ is a statement of 27 broad principles upon which nations agreed to guide national conduct on environmental protection and development. Building on the 1972 Stockholm Declaration⁴, the Rio Declaration stands out as the clearest expression to date of the obligation of the international community to work in good faith to solve environmental problems. Principle 10 of the Rio declaration outlines one of the most important sets of considerations. It sets out three fundamental rights as key pillars of sound environmental governance: access to information; access to public participation; and access to justice. It thus acknowledges the key role of information, participation and justice in achieving environmentally sound and sustainable development.

Rio Declaration Principle 10

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.

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