

**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.

The importance of the three “access rights” in promoting transparent, inclusive and accountable environmental governance cannot be gainsaid. Access to information empowers citizens and incentivizes them to participate in decision and policy making

² Parson, E. A., P. M. Haas, and M. A. Levy. 1992. A summary of major documents signed at the earth summit and the global forum. *Environment* 34 (4): 12-15, 34-36.

³ U.N.G.A., A/CONF.151/26 (Vol. I), 12 August 1992, Annex I.

⁴ See *supra* note 1

processes in an informed manner. Thus apart from being important on its own right, access to information also plays a role in facilitating and enabling meaningful participation. General information rights are increasingly recognized since the adoption of the United Nations Charter⁵ and the Universal Declaration of Human Rights (UDHR)⁶. Article 19 of UDHR gives every human a “right to... receive and impart information and ideas through any media and regardless of frontiers”. The right to information on the environment became critically apparent with disasters such as the Bhopal gas incident in 1984 and the Chernobyl accident in 1986.

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.⁷ Public participation establishes the necessary sense of ownership, contributes to the sustainability of development initiatives; and improves the outcomes of policy and decision making by bringing information, analysis and considerations to bear.⁸ For public authorities, public participation allows access to information not otherwise available, and helps the authority to diagnose problems and needs, develop alternative solutions, and evaluate the consequences of alternatives. Public participation also builds capacities, empowers citizens, legitimizes the authority’s role and the role of stakeholders, and develops confidence and trust. Finally, public participation depolarizes conflicting interests and may lead towards consensus.

Access to justice can be seen as 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

⁵ The United Nations Charter is the treaty that established the United Nations. It was signed at the San Francisco War Memorial and Performing Arts Center in San Francisco, United States, on 26 June 1945, by 50 of the 51 original member countries.

⁶ UDHR is a declaration adopted by the United Nations General Assembly on 10 December 1948 at the Palais de Chaillot, Paris. The Declaration arose directly from the experience of the Second World War and represents the first global expression of rights to which all human beings are inherently entitled

⁷ Nazrul Islam, Nazrul Isable Martinez and Wang Xi, "Environmental Law in Developing Countries: Selected Issues, IUCN, 2002, pg.7

⁸ André, P., B. Enserink, D. Connor and P. Croal 2006 *Public Participation International Best Practice Principles. Special Publication Series No. 4*. Fargo, USA: International Association for Impact Assessment.

hold regulators and polluters accountable for environmental harm. It ensures that standards for implementation of Principle 10's information and participation provisions will be fostered and upheld in a fair, judicious and effective manner. The remedy and redress component of Rio Principle 10 promotes accountability and the rule of law. It recognizes that the achievement of sustainable development depends upon the judicious use of fair and impartial administrative and judicial mechanisms to establish enforceable norms.

Access to information, public participation and access to justice were important elements of sustainable development even before their entrenchment in international law through the Rio Principle 10. The Brundtland Commission Report, the official document coming out of the World Commission on Environment and Development, set forth the policy framework and laid the groundwork for the political outcomes of the 1992 Rio Conference on Environmental and Development. Specifically, the report recognized the key role of Non-governmental Organizations (NGOs), independent scientists and the public in identifying evidence of negative human impacts on the environment; and creating public awareness and political pressures for governments to act.⁹

Brundtland Report Paragraph 72

In many countries, governments need to recognize and extend NGOs' right to know and have access to information on the environment and natural resources; their right to be consulted and to participate in decision making on activities likely to have a significant effect on their environment; and their right to legal remedies and redress when their health or environment has been or may be seriously affected.

Principle 10 was reconfirmed in 2002 when the World Summit on Sustainable Development (WSSD) was held in Johannesburg, South Africa. The summit reaffirmed international commitment to the Rio principles and the full implementation of Agenda 21, and adopted the Johannesburg Plan of Implementation (JPOI), which sets out new commitments and priorities for action on sustainable development. JPOI commits the international community to "ensure access, at the national level, to environmental

⁹ "Our Common Future," Ch. 12, Part III, para. 66, 67 and 68.

information and judicial and administrative proceedings in environmental matters, as well as public participation in decision -making, so as to further principle 10 of the Rio Declaration on Environment and Development...”. Principle 10 again came into the limelight during the 2010 UN Conference on Sustainable Development (Rio+20). Several governments and stakeholders at the conference pointed to the need for global, regional and national steps to enhance its implementation. The conference outcome document, “The Future We Want”, stated the need for renewed commitments in order to achieve full implementation of Principle 10 of the Rio Declaration. The report significantly added a new dimension by encouraging action not only at the national level but also at the regional level, suggesting that efforts should also be made across borders.

1.3. Rio Principle 10 in National Law

It is important to note that the role of actual implementation of the Rio Principle 10 rests with individual states. International and regional processes can only provide specific frameworks for exchange of experience, technical assistance and progress monitoring. Implementing Principle 10 at the national level may involve establishment of enforceable rights and procedures in law, designation of responsible authorities, training of public officials, and development of legal cultures of enforcement. In jurisdictions with more than one level of government, each level may have responsibilities and authority in relation to the application of the Principle. Overall, Principle 10 can greatly boost national efforts to transition towards sustainable development through integrated decision-making.

Benjamin & Scott¹⁰ identifies seven core precepts that should define an effective national environmental governance system. These include that: (1) Environmental laws should be clear, even-handed, implementable and enforceable; (2) Environmental information should be shared with the public; (3) Affected stakeholders should be afforded opportunities to participate in environmental decision-making; (4) Environmental decision-makers, both public and private, should be accountable for their decisions; (5)

¹⁰ Antonio Herman Benjamin and Scott Fulton, “Effective National Environmental Governance – A Key to Sustainable Development,” draft paper presented at the First Preparatory Meeting of the World Congress on Justice, Governance and Law for Environmental Sustainability,” Kuala Lumpur, 12-13 October 2011.

Roles and lines of authority for environmental protection should be clear, coordinated, and designed to produce efficient and non-duplicative program delivery; (6) Affected stakeholders should have access to fair and responsive dispute resolution procedures; and (7) Graft and corruption in environmental program delivery can obstruct environmental protection and mask results and must be actively prevented. The authors reiterate that identification and reinforcement of these core precepts can assist countries seeking to strengthen their environmental governance systems so that they are better able to address their environmental problems by making and implementing sound, science-based decisions.

There has been considerable progress towards making the Rio Principle 10 a reality. A recent study by Banisar *et al*¹¹ revealed that a substantial number of countries have adopted new legal frameworks on access rights, especially relating to access to information. However, the adoption of laws has not been uniform. Africa and the Middle East are particularly lagging behind in terms of the frequency of legislation on access to environmental information. The report further says that even countries that have made progress in adopting and implementing Principle 10 are often limited by internal structural and political fights. A number of tools have been applied to facilitate implementation of Principle 10. For instance, Pollutant release and transfer registers (PRTRs)¹² is spreading globally among states, beginning with the advanced industrialized economies. Tools such as PRTRs demonstrate that regional initiatives can also grow in a bottom-up fashion. There are now integrated regional PRTR systems for North America and the European Union.

Another important tool is the Environmental Impact Assessment (EIA) and Strategic Environmental Assessments (SEA). Although both have been adopted in many countries,

¹¹ Banisar, David, Sejal Parmar, Lalanath de Silva, and Carole Excell, "Moving from Principles to Rights: Rio 2012 and Access to Information, Public Participation, and Justice" (October 20, 2012). *Sustainable Development Law & Policy*, Vol. XII, No. 3, Spring 2012. Available at SSRN: <http://ssrn.com/abstract=2164685> or <http://dx.doi.org/10.2139/ssrn.2164685>

¹² PRTRs are systems to collect and disseminate information on environmental releases and transfers of toxic chemicals from industrial and other facilities. They were established in several countries after the 1984 Bhopal Disaster, and the 1992 United Nations Conference on Environment and Development in Rio de Janeiro, which affirmed the "right-to-know" of communities and workers about toxic chemicals and other substances of concern.

not all EIA and SEA laws incorporate standards for access to information and public participation.¹³ Progress has been made with regard to access to justice too, with judicial institutions in several countries responding to environmental challenges in innovative ways over the last three decades. For instance, India established the Green Bench of the Supreme Court that hears public interest environmental cases filed by citizens. In other countries, Governments have set up specialized environmental courts and tribunals e.g. The Land and Environment Court of New South Wales, Australia, and in Kenya. By 2010, over 350 specialized environmental courts and tribunals had been established in 41 countries.¹⁴

1.4. Rio principle 10 in International Law

Regional groupings have played an important role in calling upon national governments to apply Rio Principle 10 as a priority. European Union established its own PRTR, the European Pollutant Release and Transfer Register (E-PRTR) which provides easily accessible key environmental data from industrial facilities in European Union Member States and in Iceland, Liechtenstein, Norway, Serbia and Switzerland. The new register contains data reported annually by more than 30,000 industrial facilities covering 65 economic activities across Europe.¹⁵ But the most significant and influential tool in terms of shaping national legislation in the pan-European region is the Aarhus Convention. All European Union (EU) member states and the European Union itself are parties to the Convention. Several pieces of EU legislation have been amended or even adopted in order to implement the Aarhus Convention. A number of the Bali Guidelines are covered by binding EU legislation, which can serve as useful models for applying Rio Principle 10 and the Bali Guidelines in the national context.¹⁶ In Africa, over 200 delegates

¹³ Leonard Ortolano & Anne Shepherd, *Environmental Impact Assessment: Challenges and Opportunities*. Published online: 06 Feb 2012.

¹⁴ George (Rock) Pring and Catherine (Kitty) Pring, *Greening Justice: Creating and Improving Environmental courts and Tribunal*, 2009. World Resources Institute. The Access Initiative.

¹⁵ <http://prtr.ec.europa.eu/>

¹⁶ For example, Directive 2003/4/EC of the European Parliament and of the Council of 28 January 2003 on public access to environmental information; Directive 2003/35/EC of the European Parliament and of the Council of 26 May 2003 providing for public participation in respect of the drawing up of certain plans and programmes relating to the environment.

attending the Pan-African Conference on Access to Information¹⁷ signed the African Platform for Access to Information. The platform's paragraph 6 under Application of principles states thus:¹⁸

Environmental Information: Governments and inter-governmental organisations should increase their efforts in implementing Principle 10 of the 1992 Rio Declaration on the Environment and Development on the right of access to information, public participation and access to justice on environmental issues. Governments should adopt appropriate legislation and regulations to promote access and proactive release of environmental information, guarantee openness, fight secrecy in institutional practices, and repeal that which hinders public availability of environmental information. Governments' capacity to supply environmental information and civil society organisations' demand for such information, as well as engagement in decision-making processes and the ability to hold governments and other actors accountable for actions affecting the environment should be strengthened.

In the Americas, the Organization of American States (OAS)¹⁹ undertook a massive collaboration effort up to 2008 with the aim of establishing regional standards for access to information, without specific reference to environmental information. One of the outcomes of this effort was a set of recommendations on access to information issued by the Committee on Juridical and Political Affairs of the OAS Permanent Council.²⁰

Another multilateral initiative that aims to encourage countries to realize the Rio principle 10 is the Open Government Partnership (OGP).²¹ The OGP holds summits to

¹⁷ The Pan African Conference on Access to Information (PACAI) was convened by the Windhoek + 20 Working Group, in commemoration of the 20th anniversary of the Windhoek Declaration. The Conference gave way to the signature of the African Platform for Access to Information

¹⁸ <http://www.pacaia.org/wp-content/uploads/2012/09/apai-declaration-english.pdf>

¹⁹ The Organization of American States is an inter-continental organization founded on 30 April 1948, for the purposes of regional solidarity and cooperation among its member states. Headquartered in Washington, D.C., United States the OAS's members are the 35 independent states of the Americas.

²⁰ OEA/Ser.G, CP/CAJP-2599/08 (21 April 2008).

²¹ The Open Government Partnership is a multilateral initiative that aims to secure concrete commitments from governments to promote transparency, empower citizens, fight corruption, and harness new technologies to strengthen governance. Since its launch in 2011, OGP has grown from 8 countries

take stock and mark progress. In its 2013 summit, it was noted that 1115 commitments had been made. Although these are general open governance commitments, a handful of countries have made environment-specific commitments, 29 in total. These environmental commitments span environmental democracy, environmental and natural resource management, extractive industries, and corporate sustainability. For example, Chile has spear-headed a regional commitment to Rio Principle 10 throughout the Latin American and Caribbean Region, and 17 governments have now committed to engage in a process to improve the principle 10 rights through national and regional action. Indonesia has made an impressive commitment to develop the “One Map Portal”, an initiative that will digitize data and information related to forests on a single portal base map for the use of all sectoral ministries dealing with land tenure, land concessions, and land-use licensing. Finally, Ghana has committed to continue building a strong, legislative framework to manage oil revenues and to promote the independence of the committee that will monitor the use of such revenues.²²

At the international level, a number of efforts have been made to support national authorities to implement Rio Principle 10. The applicability of such efforts will vary depending on countries’ legal and policy regime and other unique characteristics. However, regional and international instruments can favour the implementation of Principle 10 by consolidating these efforts as State policy. For instance, regional organizations may develop model laws or other sets of standards that provide a template for national legislation.²³ Moreover, regional instruments have the ability to open

to 65 participating countries. In all of these countries, government and civil society are working together to develop and implement ambitious open government reforms. See more at:

<http://www.opengovpartnership.org/about#sthash.4fKzveFq.dpuf>

²² Carole Excell and Consuelo Fernandez, 2013, Open Government Partnership: It’s Time for Deeper Engagement with the Environment Sector. World Resources Institute

²³ E.g. the Model Inter-American Law on Freedom of Information; the model EIA law on the level of the Cooperation Council for the Arab States of the Gulf; and . Model Law on Access to Information for Africa

See OAS, General Assembly, Model Inter-American Law on Access to Information, AG/RES. 2607 (XL-O/10), June 8 2010, available at: http://www.oas.org/dil/AG-RES_2607-2010_eng.pdf, pp. 4

opportunities for intraregional cooperation. In general, international standards on Rio Principle 10 have been elaborated through “soft law,” international jurisprudence, and state practice. There is no global convention so far in respect of the Rio Principle but a number of regional initiatives, some of which are pointed above have served as drivers towards making the Principle a reality.

The Aarhus Convention, adopted under the auspices of the United Nations Economic Commission for Europe, is the first international, legally-binding instrument specifying detailed obligations of parties aimed at effective implementation of Rio Principle 10. The convention, which entered into force on 30 October 2001, establishes a number of rights of the public with regard to the environment. The Parties to the Convention are required to make the necessary provisions so that public authorities (at national, regional or local level) will contribute to these rights to become effective. Specifically, the Convention provides for: the right of everyone to receive environmental information that is held by public authorities; the right to participate in environmental decision-making; and the right to review procedures to challenge public decisions that have been made without respecting the two aforementioned rights or environmental law in general. As of November 2014 there were 47 parties to the Convention, including 46 states and the European Union. In addition to being important on its own right, as the most ambitious venture in the field of environmental democracy, the Aarhus Convention has given rise to other important Principle 10 initiatives²⁴ and a valuable body of state practice and legal interpretation.

Another important regional initiative, the Declaration on the Application of Principle 10 of the Rio Declaration on Environment and Development, was signed by the Governments of Chile, Costa Rica, Dominican Republic, Ecuador, Jamaica, Mexico, Panama, Paraguay, Peru and Uruguay. The declaration is a reaffirmation by the signatory countries to comply, with the support of the Economic Commission for Latin America and the Caribbean (ECLAC), with the Rio Principle 10. The signatory countries committed to develop and implement a Plan of Action for 2012-2014, in order to advance the implementation of a regional instrument for the Principle 10 rights. So far, the

²⁴ E.g. the first international legal instrument on pollutant release and transfer registers (PRTR) – the Kyiv Protocol on PRTR

Declaration has been signed by 9 more countries: Argentina, Brazil, Colombia, El Salvador, Guatemala, Honduras, Plurinational State of Bolivia, St. Vincent and the Grenadines, and Trinidad & Tobago, making a total of 19 signatories.

Through regular meetings of focal points, the 19 signatory countries have adopted a Plan of Action to 2014 and the common vision for a regional instrument on access rights relating to the environment. In January 2013, the Community of Latin American and Caribbean States (CELAC) held its first summit. The CELAC-EU summit was held in the same month. The outcome documents of both summits acknowledged the importance of access rights. And in October of the same year, government-designated focal points agreed upon the “Lima Vision for a Regional Instrument on Access Rights Relating to the Environment”. Under the Lima vision, signatory countries agreed on six values and principles to inspire and guide the regional instrument. They are: equality, inclusion, transparency, proactivity, collaboration, progressive realization and non-regression.²⁵

3. THE BALI GUIDELINES

3.1. About the Bali Guidelines

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).²⁶ This was a significant milestone in the field of environmental law and application of Principle 10. The Guidelines are voluntary, and are meant to demonstrate a willingness by Governments to more thoroughly engage the public at all levels to protect and manage the environment and related resources. They also underline recognition of the need to fill gaps in legal norms and practices so as to encourage broad

²⁵ Technical Secretariat of the Declaration - Sustainable Development and Human Settlements Division, ECLAC, Declaration on Principle 10 in Latin America and the Caribbean: Towards a regional instrument for the full exercise of the rights of access to information, participation and justice in environmental matters. http://www.cepal.org/rio20/noticias/paginas/0/49480/Principle_10_general_fact_sheet_ENG.pdf

²⁶ Guidelines for the Development of National Legislation on Access to Information, Public Participation and Access to Justice in Environmental Matters. *Adopted by the Governing Council of the United Nations Environment Programme in decision SS.XI/5, part A of 26 February 2010.* United Nations Environment Programme. http://www.unep.org/civil-society/Portals/24105/documents/Guidelines/GUIDELINES_TO_ACCESS_TO_ENV_INFO_2.pdf

access to information, public participation and access to justice in environmental matters within the framework of national legislation and processes.

The Guidelines start with an explanation of the purpose of the Guidelines. It states that the Guidelines provide general guidance, upon request by States, (mainly developing countries), on promoting implementation of their commitments to Principle 10 within the framework of their national legislation and processes. The “purpose clause” however stresses that the Guidelines are not recommendations to amend national legislation or practice in cases where existing legislation or practice already have adequate provisions on implementation of Rio Principle 10. The remainder of the Guidelines comprise 26 Guidelines divided into 3 sections corresponding to each of the three Rio Principle 10 rights: access to information; access to public participation; and access to justice. Guidelines 1-7 are on access to information, 8-14 on access to public participation and 15-26 on access to justice.

Although the Guidelines are broken into three sections, the interrelated nature of the Guidelines across the three sections is easily discernible. Free and easy access to information is necessary for the public to participate effectively in decision and policy making processes. Access to justice supports and guarantees access to information and public participation. And when proper mechanisms for access to information and public participation are in place, there will be less demand for recourse to access to justice. For instance, if the public are properly informed and involved throughout the life cycle of a project, the likelihood that projects will be challenged through judicial process will be minimum. Following below is a review of the Guidelines’ provisions under each of the three sections.

3.2. Access to information (AI)

On AI the guidelines requires that every person should have affordable, effective and timely access to environmental information held by public authorities upon request without having to prove a legal or other interest. The guidelines defines the type of environmental information which is required to be made available. They include: 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. It requires states to clearly define in their law the specific grounds on which a request for environmental information can be refused. The grounds for such refusal should be interpreted narrowly, taking into account the public interest served by disclosure.

The guidelines also require states to establish relevant systems to ensure adequate flow of information, and to periodically prepare and disseminate at reasonable intervals, up-to-date information on the state of the environment, including information on its quality and on pressures on the environment. And in the event of an imminent threat of harm to human health or the environment, States should ensure that all information that would enable the public to take measures to prevent such harm is disseminated immediately. Finally, the guidelines require states to provide means for and encourage effective capacity-building, both among public authorities and the public, to facilitate effective access to environmental information.

3.3. Public Participation (PP)

States are required to ensure opportunities for early and effective public participation; inform the concerned public of the opportunities; and facilitate public participation in a transparent and consultative manner. All information relevant for decision-making related to the environment should be made available by the state in an objective, understandable, timely and effective manner, to the members of the public concerned. The comments of the public in the decision-making process should be taken seriously and the decisions be made public. When preparing legally binding rules that might have a significant effect on the environment, states should, at an appropriate stage, ensure public input

3.4. Access to Justice (AJ)

To advance implementation of access to justice rights, the guidelines require states to ensure that any person who considers that their environmental information has been unreasonably refused, has access to a review procedure before a court of law or other independent and impartial body to challenge such a decision, act or omission by the public authority in question. States should also facilitate this by ensuring access to a court of law or other independent and impartial body. Further, states should provide broad

interpretation of standing in proceedings concerned with environmental matters with a view to achieving effective access to justice. States are also required to establish effective procedures for timely review of issues relating to the implementation and enforcement of laws and decisions, and that the concerned public have access to such review procedures. States are also required to provide a framework for prompt, adequate and effective remedies in cases relating to the environment, and to consider the use of compensation and restitution and other appropriate measures.

The guidelines also address enforcement of judicial decisions. They require states to ensure timely and effective enforcement of decisions in environmental matters taken by courts of law, and by administrative and other relevant bodies. Adequate information about the judicial procedures should be provided to the concerned public, and also made publicly available, as appropriate and in accordance with national law. The guidelines encourage states to promote appropriate capacity-building programmes in environmental law for judicial officers, other legal professionals and other relevant stakeholders. Finally, they require states to encourage the development and use of alternative dispute resolution mechanisms where such are appropriate.

3.5. General Progress towards Implementation of the Bali Guidelines

Since their adoption in 2010, the Bali Guidelines have increasingly been recognized by international organizations, regional organizations, and civil society groups. For instance, the first Eye on Earth Summit²⁷ held in Abu Dhabi in 2011 adopted the Eye on Earth Declaration; established the Eye on Earth Community; and committed to eight special initiatives addressing major environmental issues. The declaration made specific reference to the Rio Principle 10, resolving to support the development of adequate institutional and legislative enabling conditions for furthering its implementation, inter alia based on the Bali Guidelines. The Eye on Earth Community, is a stakeholder community made up a of full range of environmental, economic and societal interests –

²⁷ Eye on Earth is a convergence of a series of initiatives by several organizations that collectively address the global challenge of increasing access to information to support sustainable development. In December 2011, the Environment Agency – Abu Dhabi (EAD) through the Abu Dhabi Global Environmental Data Initiative (AGEDI) in partnership with the United Nations Environment Programme (UNEP), convened global leaders, innovators and decision-makers to an inaugural Eye on Earth Summit. See more at: <http://www.eoesummit.org/about-eye-on-earth/#sthash.T7f2eE96.dpuf>

Government, UN system, non-governmental, private sector, academia, and multilateral and bilateral donor agencies in all parts of the world²⁸. One of the eight initiatives, is the Access for All Special Initiative. Through the initiative, partnership of intergovernmental organizations and NGOs has developed a portfolio of projects aimed at promoting Rio Principle 10.

The Access Initiative (TAI)²⁹ is currently developing another significant initiative aimed at building capacity and political will to implement Principle 10 and the Bali Guidelines – the Environmental Democracy Index (EDI). EDI which will be launched in May 2015 will be an interactive platform and tool that allows users to track their countries' progress in protecting the public's rights to information, participation, and justice in environmental decision-making. It aims to empower citizens and environmental advocates with a credible and independent source to understand what rights they have to participate in decisions about their environment. EDI will also allow governments to benchmark their progress against an international standard, while learning about model laws and practice from around the world. The platform will allow stakeholders to view and download data, make comparisons, and rank countries' performance at any level of detail.

EDI is composed of 75 legal indicators that benchmark legislative progress at the national level. In addition, 24 indicators that look at performance provide a snapshot of how these laws are faring in practice. These performance indicators will help users assess, for instance, which capital cities are proactively making air and water quality data available on a regular basis. By establishing a centralized hub of legal analysis and implementation data on procedural rights, EDI will help governments and advocates identify gaps and prioritize reforms.³⁰

²⁸ See more at: <http://www.eoesummit.org/blog/initiative/eye-on-earth-community-2/#sthash.pQ11xJ6r.dpuf>

²⁹ <http://www.accessinitiative.org/>

³⁰ World resources institute. Measuring, mapping, & strengthening rights: The Environmental Democracy Index. http://www.wri.org/sites/default/files/Environmental_Democracy_Index_0.pdf

3. PRINCIPLE 10 AND BALI GUIDELINES IN AFRICA

3.1. Africa's challenges and the importance of principle 10 and Bali guidelines in addressing them.

Sustainable development is now widely accepted as a global objective and has been amply recognized in international and national legal instruments. Sustainable development revolves around the concept of integrating socio-economic development and environmental considerations. For this to happen requires the public to participate in decision making over natural resource management. And they can only participate effectively if they have access to all the necessary information, and a fair, effective and comprehensive justice systems. For countries to attain sustainable development is therefore greatly dependent on implementation of Rio Principle 10 and the Bali guidelines.

While many countries of the world face significant challenges in attaining sustainable development, certain unique characteristics make a good majority of African countries more vulnerable to these challenges. These unique characteristics include: centralised political systems; poverty and inequality; fragile democratic institutions; renewed interest in Africa's extractive resources; and cultural practices that negate the rights of minorities.³¹ The importance of Principle 10 and Bali Guidelines for Africa is discussed below in the context of each of these characteristics.

3.1.1. Centralised political systems

Despite considerable widening of democratic space, the African continent is still largely characterised by centralised systems of governance. These tend to give rise to a monopoly of power and authority, with less accountability to the people. The assertion by Wunsch and Dele³² that nearly every African country has developed a centralized approach to political order and economic development remains largely true. This approach breeds a ruler-ruled relationship which permits little or no unsupervised,

³¹ While these challenges are almost common to all African countries, different countries in Africa experience them with relative intensities

³² James S. Wunsch and Dele Olowu (Eds), 1990. *The Failure of the Centralized State: Institutions and Self-Governance in Africa* (p3). Boulder, Colo.: Westview Press

independent participation by ordinary people. In such circumstances, leadership tends to be prone errors of judgment and policy including administrative bureaucracies and inefficiencies; and misappropriation or misallocation of public resources. The authors further point out that "there is a vast reservoir of energy and potential untapped at Africa's grass roots" which, because of the centralized state, has been left out of the development process. While significant progress is being made towards, decentralization in many African states³³, effective implementation of Rio Principle 10 and the Bali Guidelines provide a solid foundation for addressing the attendant challenges highlighted above.

3.1.2. Poverty and inequality

Poverty and inequality seem to be the other common denominator of many African countries, particularly in Sub-Saharan Africa. According to a 1996 Human Development Report by UNDP³⁴, the newly independent African states of the 1960s and 70s experienced steady economic growth and striking improvements in social welfare provisions for the people. However, the socio-economic crisis of the late 1970s brought stagnation, decline and impoverishment. The crisis has been attributed to inappropriate national policies; inadequate investments in education, health and infrastructure; and discrimination against agriculture and export production. In many countries, these were compounded by political instability and civil strife and also external causes related to unfavourable terms of trade and rising debt burdens.³⁵

Poverty in the African context therefore not only refers to a lack of income and consumption, but also includes deprivation in health, education, nutrition, security,

³³ Many African countries have started a transfer of power, resources and responsibilities to their subnational governments, although the pace of transformation is uneven across countries. A few countries such as Ethiopia, South Africa and Uganda are proceeding fast. A number of others e.g. Kenya have just started the process and are presently creating new units and/or transferring responsibilities and revenues to them. A large group has only adopted legal texts that engage the central government to proceed towards a more decentralized system, while in a few countries decentralization is still at the stage of the announcement of the policy. *See*, Giorgio Brosio, 2000. Decentralization in Africa <https://www.imf.org/external/pubs/ft/seminar/2000/fiscal/brosio.pdf>

³⁴ UNDP (1996) Human Development Report 1996. UNDP, New York.

³⁵ African Development Bank (1992) Poverty Alleviation Strategy and action Programme. African Development Bank, Abidjan

empowerment and dignity. Vulnerability constitutes a further dimension. Without effective coping mechanisms, excessive exposure to shocks – such as drought and sudden price swings – creates further environmental degradation and the risk of future poverty. All of these dimensions interact with and reinforce one another. Furthermore, alleviation of poverty in the continent is made difficult by the extent of inequality in Africa because a high inequality country might need twice as much economic growth as low-inequality countries to meet a poverty target. Addressing the problem of poverty and inequality in Africa requires the poor, their representatives and their organisations to actively and effectively engage and collaborate with government and those who hold economic and political power. For to succeed, there is need for sufficient access to information, public participation and access to justice. This makes implementation of the Rio Principle 10 and the Bali guidelines very relevant and necessary.

"the paths to development are different for different countries, depending upon their histories, cultures, and politics, but for the poorest countries the paths are well hidden. Nowhere are the paths to development more obscure than in Africa." ~ Richard J. Barnet

3.1.3. Fragile democratic institutions

In the late 1980s and early 1990s, Africa experienced a wave of democratic transitions that saw most of the 48 countries in sub-Saharan Africa legalizing opposition parties and holding competitive, multiparty elections. However, those elections have often not met the minimal democratic criteria of freeness and fairness. Many incumbent parties have exploited institutional advantages to deny the opposition any chance of winning power in the new multi-party regimes.³⁶ Some Authors (e.g. Rakner and Rocha³⁷) have argued that only a few African political systems that launched democratic institutions in the

³⁶ Larry Diamond, *Developing Democracy in Africa: African and International Imperatives*. <https://democracy.stanford.edu/Seminar/DiamondAfrica.htm>

³⁷ Lise Rakner, Alina Rocha Menocal and Verena Fritz, 2007. *Democratisation's Third Wave and the Challenges of Democratic Deepening: Assessing International Democracy Assistance and Lessons Learned*. Good Governance, Aid Modalities and Poverty Reduction: Linkages to the Millennium Development Goals and Implications for Irish Aid Research project (RP-05-GG) of the Advisory Board for Irish Aid. <http://www.odi.org/sites/odi.org.uk/files/odi-assets/publications-opinion-files/241.pdf>

early 1990s have so far developed into institutionalised, consolidated democracies. This has given rise to democratic regimes where the freedom, civil rights/liberties of the people are suppressed, and where elections are mere formalities to legitimize the power of the president or head of states.

These challenges have caused unease and clamour for regime changes in many countries in Africa. The most notable evidence of this clamour is the Arab Spring, a revolutionary wave of demonstrations and protests (both non-violent and violent), riots, and civil wars in the Arab world that began on 18 December 2010 and spread throughout the countries of the Arab League and surroundings.³⁸ Replacing these fragile democratic systems with constitutional democracies where the rule of law, tolerance and democratic values are present require a citizenry that is actively and effectively involved in the governance process, and in an informed manner. Moreover, establishing effecting justice systems for providing redress whenever citizen rights are violated is of utmost importance. This provides another strong foundation for implementing the Rio principle 10 and the Bali guidelines in Africa.

3.1.4. Renewed interest in Africa's extractive resources

As mineral and petroleum resources decline in other continents, Africa is seeing renewed interest in resource extraction, with many foreign mining companies falling over themselves to have a piece of the pie. As new African sources come into production, resource-rich African nations are earning rising profits from their natural wealth. However, due to lack of transparency, accountability, and community participation, people living in the extraction areas have in general, not benefitted from the exploitation of the natural resources. In such areas, including the oil rich areas of Nigeria, there has been endemic poverty amid plentiful natural resources that have been exploited for over half a century. Poverty is exacerbated in part by weak or corrupt institutions, government mismanagement of revenues, and a failure to re-invest in projects that benefit the public–

³⁸ By January 2015, rulers had been forced from power in Tunisia, Egypt (twice) Libya, and Yemen (twice); civil uprisings had erupted in Bahrain^[7] and Syria,^[8] major protests had broken out in Algeria, Iraq, Jordan, Kuwait, Morocco, Israel and Sudan; and minor protests had occurred in Mauritania, Oman, Saudi Arabia, Djibouti, Western Sahara, and Palestine. Weapons and Tuareg fighters returning from the Libyan Civil War stoked a simmering conflict in Mali which has been described as "fallout" from the Arab Spring in North Africa.

such as infrastructure, education, and healthcare. This paradox of poverty amid plenty has been termed the “resource curse”.

Often, citizens are not able to hold their governments, or transnational corporations accountable for this abuse of power because they lack information about their country’s revenues and expenditures, and the deals it has made with those extracting the resources from their territories. Lack of information is also an impediment to informed citizen participation. Moreover, exploration and extraction of the resources as well as the attendant infrastructural developments often have many negative environmental and social impacts on the people. Yet many countries in the continent lack effective justice systems to respond to these changes. Fully implementing the Rio Principle 10 and the Bali Guidelines in Africa will therefore greatly contribute to turning the continent’s resource wealth into blessing rather than a curse.

3.1.5. Cultural practices that negate the rights of minorities

Many African countries still have cultural practices that negate the rights of minorities especially women and children. Women –particularly young women and women from marginalized groups in Africa have difficulty engaging in or influencing the policy process in their countries. This is caused by a variety of factors including discriminatory political structures, as well as social, economic, and cultural barriers. For instance many countries in Africa lack secure land tenure regimes for indigenous communities, often leading to dispossession. When communities are dispossessed of their land, women are often disproportionately affected because of their traditional role in procuring water, fuel or trading goods for their families. Moreover, laws in some African countries still do not allow women and children to own land on their own. Giving women, children and all minority groups a voice through access to the rights to information, public participation and justice will go a long way in addressing this challenge.

3.2. Progress in implementation of principle 10 and Bali guidelines in Africa, and the role of UNEP

3.2.1. General status of Principle 10 and Bali Guidelines Implementation in Africa

Significant progress has been made in the African continent towards implementing the Rio Principle 10 and the Bali Guidelines. Several of the African charters, declarations, and organizations now include provisions encouraging or mandating public access to information, participation, and justice.

The African Ministerial Conference on the Environment (AMCEN) that was established in 1985 was one of the earliest African initiatives focused on environmental issues. AMCEN aims to assist in adopting Agenda 21, and its objectives closely mirror those of the 1992 United Nations Conference on Environment and Development (UNCED). AMCEN has made several notable strides with regard to access to information, access to public participation and access to justice. For instance, the eighth and ninth sessions of AMCEN held in Abuja-Nigeria and Kampala-Uganda respectively both recognized the importance of the three “access rights”.

The medium term plan adopted at the Abuja session addressed *inter alia*, environmental information, access to justice, early warning, and environmental security. The 9th meeting approved “The Environment for Development” (Kampala Declaration) which recognized that “success in achieving global sustainable development will ultimately depend upon development and implementation of sound and cost-effective national response policies and measures; good environmental governance, effective participation by civil society and collection and exchange of quality data and information on the environment for use by national decision-makers.” The Kampala meeting endorsed a proposal to establish a comprehensive information network to promote access and harmonization of data in the continent and to act as a basis for tracking environmental changes using quantitative indicators focusing on national needs.³⁹ Such a network will facilitate the access to information on environmental issues and improve good governance and public participation in decision-making.

³⁹ See, paragraph 13 of the Declaration

The main challenge with AMCEN is that it has not reached independence from institutional and technical support from external agencies. For instance, the initial support of UNEP's secretarial services has continued, and AMCEN depends on UNEP for both expertise and funding. Dependence on external and lack of donor funding is a serious restraint on the implementation of AMCEN's program.⁴⁰

The African Union (AU) has advocated that the right of access to information is essential for the promotion of human rights, democracy, transparency and accountability, all of which are at the heart of the shared values of the African Union and form the building blocks of the African Governance Architecture. In 2013 the African Commission on Human and Peoples' Rights⁴¹ adopted the Model Law for Access to Information for Africa⁴². The Model Law aims at promoting transparency and accountability, as factors contributing to human rights, democracy and development across the continent. It provides a template for all African countries to write access-to-information laws. Africa's regional economic blocks have called on African States to apply all possible means to protect the environment and ensure its sustainable utilization.

Many Civil Society Organizations (CSOs) working in the continent are increasingly playing an important role by sustaining pressure on governments and enlightening citizens on the need for countries to implement Principle 10 and the Bali guidelines. In May 2012, African CSO Dialogue on preparations towards the Rio+20 Conference, Sustainable Development Goals (SDGs) and post-2015 process was held in Dakar, Senegal. The Dialogue aimed to discuss African civil society organizations' engagement in the process towards a new global development framework – when the deadline for the MDGs comes to an end in 2015. It also looked at ways to ensure citizens' voices – including those of millions of women, men, and young people in Africa – will be adequately incorporated in this process. The African Dialogue brought two important

⁴⁰ Collins Odote and Maurice O. Makoloo, 2002. AFRICAN INITIATIVES FOR PUBLIC PARTICIPATION IN ENVIRONMENTAL MANAGEMENT. In Carl Bruch (Ed). THE NEW PUBLIC" The Globalization of Public Participation. Environmental Law Institute

⁴¹ The Commission is an organ of the African Union

⁴² African Commission on Human and Peoples Rights, 2013. Model Law on Access to Information for Africa.

outcome documents: The Dakar Declaration “Strengthening Citizens Voices in the Rio+20 and Post 2015 Processes” and the Advocacy Report.

Article 10 of the Dakar Declaration captures the conference’s recognition of the importance of accelerating implementation of Principle 10 and the Bali Guidelines. It states thus:

“That African governments should accelerate the implementation of Principle 10 of Rio Declaration first by implementing the UNEP Guidelines and also by adopting an African Convention on Principle 10 to ensure meaningful improvements in citizens’ participation, access to information, transparency and accountability.” Dakar Declaration, 14 May 2012

While significant progress has been made generally, the progress has not only been slow but also non-uniform in different countries. This may be attributed to the diversity of African countries with regard to political regimes and the other characteristics discussed in section 3.1. As for the regional organizations, despite the fact that they recognized the importance of implementing the environmental rights, they often lack the resources and in some circumstances, good will from governments to make those rights implemented.

Africa’s regional economic blocks have also contributed to advancement of environmental principles. The Southern Africa Development Community (SADC), the East African Community (EAC) and the Economic Community of West African States (ECOWAS) have each developed protocols on natural resources. These protocols contain, to varying degrees, environmental governance principles including the Rio Principle 10 rights.

3.2.2. The role of the United Nations Environment Programme (UNEP) in Implementation of Principle 10 and Bali Guidelines in Africa

Responding to the generally slow progress, some stakeholders including international development partners have taken some actions to address the issue. For instance, UNEP has been fairly consistent in promoting the use of the Bali Guidelines. UNEP and the Institute for Training and Research (UNITAR) are cooperating organizations within the Eye on Earth Community. One of the projects under the Access for All Special Initiative

involves the promotion of the Bali Guidelines on global, regional and national levels. UNEP and UNITAR have come together to implement a multi-year, global initiative to promote the application of the Guidelines through a series of regional workshops, national assessments and a guidance material in developing countries.⁴³

Under the global initiative, UNEP will focus on the development of substantive guidance, awareness raising at the regional level, and providing technical support for strengthening national legislation. UNITAR will focus on training material development and supporting national capacity development projects to support development of National Principle 10 Profiles and National Action Plans through a multi-sectoral and multi-stakeholder process, including a legal reform component, and development of a guide to the Bali Guidelines.

Already the initiative has conducted a series of pilot projects including in Africa starting in 2008. Botswana, Democratic Republic of Congo (DRC) and Mali started National Profile and Action Plan Projects in 2009. All the three countries organized a national planning workshop the same year. Botswana and Mali prepared their national profiles in the course of 2010 and organized priority setting workshops, bringing together more than 120 participants from both government and non-governmental organizations. According to UNITAR⁴⁴, achievements of the pilot projects include high-level participation; enhanced collaboration between governmental and non-governmental stakeholders; consensus on national priorities in seven African and Central American countries; local level capacity building activities; and development of a methodology and guidance document to assist countries in assessing and strengthening national capacities for participatory environmental governance.

Botswana is amongst the three African countries where the pilot project was implemented⁴⁵. The exercise was successfully carried out from 2010-2011. Under the

⁴³ UNEP and UNITAR, 2013. Strengthening Capacities for Participatory Environmental Governance: Country Projects to support Implementation of the Rio Declaration and the UNEP Bali Guidelines. Information Note

⁴⁴ <http://www.unitar.org/egp/rio-principle-10-projects>

⁴⁵ The others are the Democratic republic of Congo (DRC) and Mali

project, the Government of Botswana undertook a National exercise to assess national situations and capacities for implementation of Principle 10. The National Profile provided an overview and documented strengths and weaknesses of national access to information, public participation in decision-making and access to justice schemes related to environmental matters. A survey was conducted to establish general public opinion on issues of public access to information, participation in the environment decision making and access to environmental justices. The survey was designed with the guidance of UNITAR guidance document and carried in Seven out of Ten districts in Botswana.

The project revealed that Botswana Government has been implementing Rio Principle 10 by default. The public was accessing information related to environmental issues at a national level through media (Government gazette, daily news, and radio stations), traditional gatherings consultation (kgotla) and Environmental Impact Assessment (EIA). Based on those results, an action plan has been developed. At the moment the activities have not been budgeted for due limited funds. Nonetheless, Botswana has an Environmental Management Act (Bill) that deals with access to environmental information. There is also the Environmental Assessment Act of 2011, which repeals the previous Environmental Impact assessment Act of 2005.

The component of developing a guide to the Bali guidelines under the UNEP/UNITAR initiative was implemented by the World Resource Institute (WRI), with assistance from a global Advisory Group. A draft guide is ready and was available for public comments up to 25th September 2014. UNEP called on States and Governments, Stakeholders, Academics and Major Groups to comment on the DRAFT, working title: "Putting Rio Principle 10 into Action"). The Guide seeks to offer assistance to governments towards the implementation of Rio Principle 10 by collecting case examples and jurisprudence from a wide range of national and international practice. The Guide is expected to be published by the end of 2014 and will be translated into official UN languages and widely distributed.⁴⁶

⁴⁶ The draft Guides can be downloaded here: <http://www.unep.org/civil-society/Portals/24105/documents/Major%20Groups/Draft%20Implementation%20Guide%20Bali%20Guidelines%2020140812%20for%20commenting.docx>

3.3. Analysis of selected African countries

Successful strategies for implementation of Rio Principle 10 and the Bali guidelines at the national level requires certain legislative and institutional changes, as well as changes in practice. These changes are meant to guarantee rights and opportunities for access to environmental information, public participation in decision-making and access to justice in environmental matters. The changes may include, for instance, promulgation of administrative law provisions which define participation rules in policy and decision-making processes, public information disclosure regimes and rights to legal redress or standing rights (*locus standi*) for public interest environmental litigation.

With regard to access to information, countries may enact an access-to-information law or regulations. Such laws/regulations should have clear deadlines and charges, and define the scope of information (and the exemptions). Countries may also need to prepare and update public registers, and set up environmental information offices. This may include the use of electronic databases and the internet, and product labelling systems. Regarding public participation, countries should develop the necessary rules and procedures of participation. This may be done through amendment of existing laws and regulations, or creating new ones. Environmental Impact Assessment (EIA) is another example of effective tools for ensuring public participation. It is important to note however that public participation requirements go further than EIA.

Other tools may include regular and reliable vehicles for publishing drafts of laws and secondary legislation as well as policies, plans and programmes. Tools for ensuring access to justice may include creating institutions and procedural mechanisms for access to justice in environmental affairs. These may include establishing impartial tribunals, courts, rules on *locus standi*, and efficient remedies such as injunctive relief.

The instruments discussed above offer good opportunities for implementing Principle 10 and the Bali Guidelines. This cannot be done, however, without taking into consideration the existing infrastructure and traditions on which the instruments will be based. Countries need to *inter alia*, determine and coordinate their priorities, and evaluate national and external financial resources. Moreover, the capacities of government

officials at national and sub-national levels, and of Civil Society Organizations (CSOs) should be strengthened.

Based on these precepts, some individual states have made substantial progress in applying Principle 10 and the Bali Guideline. Specifically, this has been achieved through enactment of freedom of information laws; environmental legislation that ensures public participation; Environmental assessments (EIA) laws; enhanced access to legal systems, environmental remedies and jurisprudence; and better institutions. Moreover, majority of African countries have recognized the right to a safe, clean and healthy environment, and have integrated environmental measures in their national legal systems. It must not be forgotten that the three “access rights” (access to information, participation and access to court) are central to the realization of a safe, clean, healthy environment. Still some countries have been too slow in embracing these principles. Below is an analysis of some selected countries in Africa.

3.3.1. Access to Justice, Access to Public Participation and Access to Information in Kenya

One of the hallmarks of the Constitution of Kenya⁴⁷ passed in 2010 is its inclusion of a right to a clean and healthy environment. This effectively recognized environmental procedural rights (to information, participation and access to justice).

Access to justice

Kenya enacted the Environmental Management and Coordination Act (EMCA) 199, as the framework environmental law. EMCA contributed towards advancing access to justice in two ways: it established the Public Complaints Committee (PCC) and the National Environmental Tribunal (NET). The purpose of PCC is receive complaints directly from members of the public, determine the scope of facts on an environmental issue and recommend public action to redress the complaint. PCC has continued to provide an easy mechanism for dealing with environmental disputes due to the informal nature of its operations. It is not hamstrung by technical rules of procedure and an inquisitorial approach to dispute resolution. Its main shortcomings relate to the structure of its operations, being established as a Committee of the National Environmental

⁴⁷ Republic of Kenya, 2010. The Constitution of Kenya, 2010. Government Printer.

Management Authority (NEMA), the statutory body responsible for coordinating environmental management in the country. This limits the Committee's operational and legal autonomy, since part of its mandate relates to investigating the actions of NEMA.

The role of the National Environment Tribunal (NET) is to hear technical disputes relating to the administration of EMCA. As such it hears appeals relating to decisions of the NEMA. As Collins Odote⁴⁸ rightly states, despite NET's limited mandate, it provided avenues for expeditious and cost-effective resolution of environmental disputes. The challenge with NET is that its decisions from NET are still subject to appeals to the High Court, which has had challenges in addressing environmental issues. These challenges include: the technical nature of most environmental cases; the fact that many current longstanding members of the judiciary have no training in environmental law; and *locus standi* limitations. These challenges have meant that Kenya's regular courts are not suited to deal with environmental litigation.

Kenya's 2010 Constitution made fundamental reforms to the Judiciary. One of the far reaching reforms it brought is that it provided for Parliament to establish a specialized court by to hear and determine disputes relating to land and environment. Consequently, the *Environment and Land Court was enacted in August 2011*. The Act established the Environment and Land (ELC) as a specialized court with the same status as the High Court. This means that the decisions of the ELC are of equivalent value to that of a High Court and consequently can only be appealed to the Court of Appeal.

The challenges with the ELC include low staffing as the sixteen judges that currently serve the court is way too low considering that the Constitution also requires judicial function to be devolved to all the 47 counties of Kenya. There is also the issue of jurisdiction as some legal experts⁴⁹ have warned that the ELC will be clogged if all cases touching on land (even if the main legal issue is not land) are heard at the court. Moreover the few judges cannot comprehensively handle all such cases. Furthermore,

⁴⁸ Collins Odote. Country report: Kenya- The new environmental and land court. 4 IUCNAEL E Journal

⁴⁹ E.g. Collins Odote. Country report: Kenya- The new environmental and land court. 4 IUCNAEL E Journal

when NET was established, it was supposed to be a specialized tribunal. In light of the establishment of the ELC, questions remain regarding the utility of having both a specialized court and the NET since both are specialized. For instance, appeals from the NET lie to the High Court in accordance with EMCA; while under the Environment and Land Court Act, the High Court has supervisory jurisdiction over tribunals, which would include NET.

More generally, all courts in Kenya are required to be guided by the general principles of environmental management including: sustainable development; public participation; international cooperation; intergenerational equity; intra-generational equity; polluter pays principle; precautionary principle; and the social and cultural principles traditionally applied by communities to manage the environment in Kenya. In addition, the courts must apply the constitutional principles governing land policy, national values and principles of governance, values and principles of public service and principles of judicial authority. The courts are also required, in accordance with the *Constitution*, to promote the use of alternative dispute resolution (ADR) mechanisms. This is important due to the reliance of

ADR by many communities to resolve environmental matters. Specifically, the Constitution provides for enforcement of environmental rights.⁵⁰ If a person alleges that a right to a clean and healthy environment recognised and protected under Article 42 has been, is being or is likely to be, denied, violated, infringed or threatened, the person may apply to a court for redress in addition to any other legal remedies that are available in respect to the same matter. The Constitution also makes Environmental Impact assessments mandatory.

Access to Public Participation

Before 1996, public participation in Kenya occurred generally in the context of community development projects. Public participation was however not entrenched in law. The enactment of the Physical Planning Act in 1996 marked a major milestone in terms of entrenching participatory development planning in law. The Act provides for community participation in the preparation and implementation of physical and

⁵⁰ Art 70

development plans. Its major shortfall however is that it lacks the critical element of community sensitization on their roles. Moreover, physical planning is mostly a subject of major towns, making communities in remote areas to remain side-lined in participatory planning.⁵¹ Subsequently, enactment of the Local Authority Transfer Fund (LATF) Act in 1998 and a similar initiative, the Constituency Development Fund (CDF) Act in 2003 brought major changes in terms of promoting public participation in local development. However, the institutional foundations for both LATF and CDF has been very weak, and there is no clear implementation plan for community participation as required.

The Constitution of Kenya 2010 provides a strong legal framework for citizen participation. It vests all sovereign power in the people of Kenya, and states that the sovereign power thus vested is exercised either directly through citizen participation or indirectly through democratically elected representatives. The Constitution includes public participation as one of the values and principles of governance.⁵² It also requires public servants to include citizens “in the process of policy making.”⁵³ While establishing a devolved system of governance, the Constitution includes, as one of the objects of devolution, to enhancement of public *participation*⁵⁴ Article 184(1)(c) further requires that mechanisms “for participation by residents” be included in national legislation to urban areas and cities governance and management. It also provides for citizen participation in legislative processes. It directs the national and county legislatures to “facilitate public participation” in their work.⁵⁵

Other than the Constitution, a number of sectoral legislation particularly those relevant to environment and natural resources provide for public participation. The Environmental Management and Coordination Act (EMCA) 1999 provides for mandatory

⁵¹ Okello, M. Oenga, I. and Chege P (2008) Participatory Urban Planning Toolkit Based on the Kitale Experience: A guide to Community Based Action Planning for Effective Infrastructure and Services Delivery. Nairobi: Practical Action

⁵² Art 10(2)

⁵³ Art 232(1)

⁵⁴ Art 174 (c)

⁵⁵ Specifically, Articles 118(1)(b) and 196(1)(b) directs

Environmental Impact assessments (EIAs). Globally, EIAs are some of the most effective tools for public participation. The challenge however is that under Kenya's current EIA practice, public participation has not been able to significantly influence project decisions, rather than being used to satisfy the requirement of public involvement. The Water Act 2012, the Forest Act 2005 and the Wildlife management and Conservation Act 2012 all promote public participation by establishing community natural resource users associations. Ant the country is in the process of drafting and reviewing a number of laws on natural resources to align them to the requirements of the constitution. Including provisions on access to public participation has increasingly become a key component of this process. There has however been very slow progress in their establishment. But even the ones that are established suffer acute lack of resources to effectively implement their roles. There are also fears that some national government institutions control or interfere with their work, which beats the purpose for their establishment. The other challenge is capacity gaps in terms of knowledge and skills to effectively participate in natural resource governance.

Access to information

The Constitution of Kenya supports access to information by all citizens. Article 35 of the Constitution stipulates that citizens have the right to access all information held by the State or public officials. Public servants must also share information with citizens. Article 232 (1) (f) states that the values and principles of public service include "transparency and provision to the public of timely and accurate information." Apart from the Constitution, there is no Freedom of Information law in Kenya, and therefore no proper framework exists in which to access information from public bodies as of right. Certain legislations in fact allow for the continued refusal of public bodies to disclose information/deny access to it.

There have been attempts to enact a Freedom of Information Bill. The last attempt (before the current draft) was in Parliament in 2007 as a private members Bill. The Bill however lapsed in the 1st reading, being that 2007 was an election year that could have contributed to the Bill not getting adequate debate time. Since then, there have been persistent calls for a freedom of information law. Currently, the Freedom of Information

Bill is among the many Bills that the country is in the process of drafting. It is hoped that this time the discussions will be completed and the bill adopted.

3.3.2. Access to Information South Africa

Section 32 of the Constitution of the Republic of South Africa states that everyone has the right of access to 'any information held by the state' and 'any information held by another person and that is required for the exercise or protection of any rights'. In 2000 the Promotion of Access to Information Act (PALA) was enacted to give effect to these rights. The two main objectives of PAIA are: to give South Africans and non-South Africans a legal right to access information held by public and private bodies, enabling them to more fully exercise and protect their rights; and to foster a culture of openness and accountability in South Africa. In order to make the Act a reality, the South African Human Rights Commission (SAHRC) developed a user-friendly guide⁵⁶ that offers citizens a simple, easily understandable guide to the law and how to use it.

The guide tells the reader how to make a request for access to information, what assistance is available from the information officer of a public body, when access to information may legally be refused, and what legal remedies there are in cases where information is illegally withheld. The guide also lists public bodies from whom information can be requested, along with contact details of their information officers. The Act represented a landmark in South African history, addressing for the first time the pre-1994 culture of secrecy in state and private institutions, seeking instead to foster a culture of transparency and accountability in South Africa. The Act also acknowledged the need to educate South Africans on their rights, to enable them to participate in decision-making that affects their lives. Even though Access to information laws are gaining momentum globally, South Africa's freedom of information law is unique being the only such law that permits access to records held by private as well as public bodies.⁵⁷

⁵⁶ The Guide is available at: <http://www.sahrc.org.za/home/index.php?ipkContentID=25&ipkMenuID=45>

⁵⁷ <http://www.southafrica.info/services/rights/information-030305.htm#.VM0Cmen9nIU#ixzz3QPvc8oel>

3.3.3. Right to Public Participation and Access to Information in Egypt

The principle of public participation and access to information is enshrined in Egypt's 2014 Constitution. The constitution making process was itself participatory with people being consulted all the way to the referendum. The Constitution recognizes that "the participation of citizens in public life is a national duty"⁵⁸. It however limits participation to "the right to vote, run in elections, and express their opinion in referendums." Although elections and referendums are cornerstones of the right of participation in public life, participation should extend well beyond the ballot box.

Despite the Constitutional provisions, some human rights activists⁵⁹ decry that the country's local administrative structure is not conducive to supporting public participation. They opine that despite the democratic spaces that the recent revolution has forced open, there are powerful undercurrents that are resistant to change and may continue to drag Egypt back into an authoritarian system unless the people are actively participating to ensure their demands are met. Secondly, the government is still too highly centralized to ensure citizen participation. Despite these challenges, the country has a number of success stories at the community level, showing active and effective citizen participation.

On access to information, the Constitution guarantees citizens the right to communicate with public authorities⁶⁰ although it does not obligate the authorities to respond to these communications with the public in a timely manner and there are no consequences for ignoring them. This essentially negates the right to information. Furthermore, Egypt has no law for information, and some researchers have pointed out that the country lacks the political will put essential information in the public domain, hence no political will to put such a law in place. Consequently, the culture of secrecy continues to dominate the government and there is still lack of the public's access to information. Two years after the revolution, Egypt is still struggling with its draft of a Right to Information (RTI) law.

⁵⁸ Art 87

⁵⁹ See e.g. <http://www.tadamun.info/2013/12/05/the-right-to-public-participation-2/?lang=en#.VM7-sen9nIV>

⁶⁰ Art 85

This has been attributed to the implicit resilience and restrictions different parts of the Egyptian government are imposing in the drafting process.⁶¹

3.3.5. Right to Information in Tunisia

Tunisia's Constitution obligates the state to guarantee the right to information and the right to access to information. To make this right a reality, Tunisia government in May 2011 made a Decree on Access to the Administrative Documents of Public Authorities of Tunisia. The Decree represents an important milestone in Tunisia's transition to democracy and has a great potential to play an important role in abolishing the culture of secrecy in the country. Article 3 of the decree law states “ *Any individual person or legal entity shall have right of access to the administrative documents defined in Article 2 above, by means of voluntary and direct circulation or at the request of the person interested, unless in exceptional cases provided for by the present decree law*”.

The law further makes it mandatory for public authorities to respond to requests for information. Article 10 states: “*All public authorities are required to answer a request for services within fifteen (15) days...*” With the adoption of the Decree, Tunisia became only the second country in the region to adopt access to information legislation. Despite this milestone, Tunisia still has a long way to go before the government can fully satisfy international standards of accountability and transparency. According to Article 19⁶², much of the language used in the Decree is unduly restrictive and many important issues - e.g. the protection of whistleblowers - are left out entirely. Furthermore, there is no independent oversight mechanism for properly implementing the Decree. Concerns have also been raised about the quality and accuracy of information, leading to problem of trust between citizens and government. In addition, even though the law provides for legal action against government officials who refuse to give information, there are no provisions for compensation and responsibility when information is not provided.

⁶¹Sarah El Marsy, 2013. Egypt's right to information law. Daily News.

<http://www.dailynewsegypt.com/2013/06/26/egypts-right-to-information-law/>

⁶² Article 19, 2011. Tunisia: Freedom of information law. Tunisia: Freedom of information <http://www.article19.org/resources.php/resource/2945/en/Tunisia:%20Freedom%20of%20information>

Another outstanding thing with Tunisia's freedom of information framework is its fairly successful E-government programme. According to a 2014 United Nations e-government survey⁶³, Tunisia is ranked 1st in Africa and 75th globally in terms of adoption and effectiveness of E-Governance. The post-revolutionary context in Tunisia created a new impetus for the Tunisian e-Government program. The programme, the government has been able to provide information to the public. Challenges with E-governance initiative include lack of adequate ICT infrastructure, human resource and funding.

There is also the Tunisian Observatory for the Environment and Sustainable Development (TOESD). TOESD is regarded as the dashboard for monitoring sustainable development activities in the country. It aims to establish a permanent system for the collection, production, analysis, management and dissemination of information on the state of the environment and sustainable development, and to help planners to make decisions in accordance with the requirements for environmental protection and development. The TOESD collects data/relevant information which has been collected by competent ministerial departments.⁶⁴

4. CHALLENGES FACING AFRICAN COUNTRIES IN THE IMPLEMENTATION OF PRINCIPLE 10 AND BALI GUIDELINES

4.1. Legislative and Policy weaknesses

As has been highlighted through this document, a number of countries in Africa lack the requisite legislations and detailed administrative rules and operational policies for advancing realization of the Principle 10 rights. In such cases state and/or industry objectives tend to cloud environmental concern and community voices. Consequently, communities face a huge struggle to secure or practice their rights in line with Principle 10. But even in some countries that have enacted freedom of information, public

⁶³ United Nations, 2014. UNITED NATIONS E-GOVERNMENT SURVEY 2014: E-Government for the Future We Want. http://unpan3.un.org/egovkb/Portals/egovkb/Documents/un/2014-Survey/E-Gov_Complete_Survey-2014.pdf

⁶⁴ Habiba Oueslati, Yassine Marzouki P), Chiha Mohamed and Salah Karim, 2012. EUROPEAN NEIGHBOURHOOD AND PARTNERSHIP INSTRUMENT: Towards a Shared Environmental information System "SEIS". TUNISIA COUNTRY REPORT.

participation and access to justice laws, the practice of implementing such laws have progressed very slowly.

4.2. Lack of adequate capacity on the part of governments

The positive examples of Principle 10 and Bali Guidelines implementation noted in this paper have required a vast amount of work and infrastructure reforms at State level. This requires significant capacity in State administrative infrastructure which many African countries simply do not have. This has seen a number of countries relying on technical and institutional support from foreign development partners such as UNEP.

Success of Principle 10 and Bali Guidelines implementation also requires adequate capacity on the part of legislature, civil society and citizens themselves. Most legislatures in the continent are charged with the role of legislation, oversight and representation. Many countries in the continent still do not have the relevant laws to effect the principle 10 rights. This is attributable in part to lack of adequate knowledge and understanding of the importance of such laws. Some parliaments have also enacted laws that do not meet the international threshold of the Principle 10 rights. Parliaments therefore also need technical support to enable them not only to fast-track, but also to make laws that can effectively advance access to information, access to public participation and access to justice.

4.3. Lack of adequate capacity on the part of civil society and citizens

In addition, civil society organizations and citizens themselves in some countries have not been able to effectively contribute towards realization of the environmental rights. This is also attributable to lack of adequate knowledge, skills and resources. Citizens in many African countries are still unaware of their environmental rights including the right to access to information, public participation and access to justice. Many also barely know how to use Information, Communication and Technology (ICT) tools such as internet and computers. Costs has been a significant hurdle to the ineffective implementation of Principle 10. As an example, access to justice requires that citizens have the opportunity to challenge a state or corporate decision in a court of law. In many African countries it is often expensive for members of the public to bring a case to court,

especially in jurisdictions where ‘costs follow the event’⁶⁵. Moreover, the continent lacks sufficient legal experts to represent the public (especially pro bono legal representation). Marginalization of some groups in the society such as women and children in policy and decision making processes is also a significant hurdle to effective participation of citizens.

4.4. Impunity and lack of institutionalised democracy

Despite the wave towards democratization in the continent, very few African political systems have so far developed into institutionalised, consolidated democracies. In the absence of a functioning democracy, civil rights such as those envisaged by Principle 10 are suppressed, and are very difficult to enforce even if they are embedded in law. Such states are often characterised by highly centralized system, dictatorship and corruption. In situations like that it is highly unlikely that citizens will be provided access to information or open and independent justice systems. It is also unlikely that citizens will be consulted on issues relating to the environment, let alone hold government to account over planning- and industrial decisions. Impunity is still a big hindrance to effective implementation of environmental rights. There are many cases in Africa where despite existence of freedom of information laws, authorities still fail to proactively release environmental information.

4.5. Institutional weaknesses

There are institutional weaknesses in many countries that have affected the implementation of principle 10 and the Bali Guidelines. For instance, many of the reforms that would be required to effectively implement Principle 10 rely not just on a thriving democracy, but also a healthy and independent judiciary. Even States attempting to reform their judiciaries to fully comply with Principle 10 and the Bali guidelines are derailed with the vast amount of work and resources required. Many countries lack adequate, accessible, affordable court facilities. Some countries may also require autonomous entities to oversee the implementation of the laws in place and education of the public on their right of access to information may be required. Moreover, even where

⁶⁵ ‘Costs follow the event’ is a legal phrase that means the losing party in a court case must not only pay their own legal fees, but those of the defendant too

specialized institutions exist, many lack special expertise on environmental matters⁶⁶. Other institutional weaknesses include lack of established Alternative Dispute Resolution (ADR) mechanisms.

4.6. Processes weaknesses

There are a number of process-related hurdles to the implementation of the Rio Principle 10 and the Bali guidelines in Africa. For example, in some countries there are deficiencies in the production and dissemination of reliable information. These deficiencies may relate to technical and language complexity of the information; ambiguity in the minimum content of environmental information; delays in the provision of the information; fragmentation of public information and lack of coordination among public entities. Other process-related weaknesses may include deficiencies in the presentation, processing and disclosure of environmental offenses; *locus standi* restrictions, and slow processes in cases of refusal of access to information and participation.

5. CONCLUSION AND RECOMMENDATION

5.1. Conclusion

This paper has reviewed the history and progress of implementation of Principle 10 and the Bali Guidelines. It has also assessed the importance and challenges of implementing Principle 10 and the Bali Guidelines in the African Continent, highlighting few specific countries. In summary, some strides have been made but implementation has been difficult and significant gaps still exist. Profound institutional and societal transformations are necessary to achieve a level of openness in which governments and civil societies share a commitment to environmental democracy. Many countries that have been able to make progress in adopting and implementing Principle 10 are still limited by capacity gaps and institutional and political weaknesses.

At the continent level, efforts have been led by the African Union (AU), regional economic blocks, development partners notably UNEP, and civil society. National level efforts have been made in many countries through constitutional provisions, and

⁶⁶ E.g the Environment and Land Court in Kenya which for a long time was served by judges without special training in environment and land matters

legislations that aim to promote access to information, public participation and access to justice. Other notable tools that have been employed include Environmental Impact Assessment and Audit laws and specialized environmental courts and tribunals. Gaps that exist and that threaten the success of implementing the Rio Principle 10 and Bali Guidelines 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.

5.2. Recommendations

Recommendation 1: All African countries should integrate Principle 10 and the Bali Guidelines in their national laws

All African countries that have not already integrated Principle 10 and the Bali Guidelines in their national laws either through constitutional provisions or legislations should do so. And where such laws exist but are inadequate, the countries should make measurable and time bound commitments to improve them. The laws should comprehensively cover freedom of access to information, public participation and access to justice, and should include non-discrimination clauses. In addition, the establishment of any regulations, institutions and practices required to enforce such laws should be fast-tracked.

Recommendation 2: African Governments should prioritize the rights to access to information, public participation and access to justice

One of the hindrances to the implementation of the Rio Principle 10 rights and the Bali Guidelines is lack of adequate capacity and resources for their implantation. This is attributable to the fact that many governments in the continent have not adequately prioritized them. Due to low prioritization, there has been insufficient budget set aside for them. Going forward governments should realise that any country's sustainable development is linked to how well these environmental governance principles are implemented. They should thus consider them as priority issues not only when they draw their national budgets but also when they seek development assistance.

Recommendation 3: Development partners should increase efforts towards supporting implementation of Principle 10 and the Bali Guidelines

Inadequate capacity on the part of governments, civil society and citizens is a major hindrance to the full implementation of Principle 10 and the Bali Guidelines. There is therefore need for development partners such as UNEP to enhance their support in this area by supporting not only African initiatives but also supporting individual countries' efforts to implement the Guidelines. The support should be both in terms of technical support and resources. More initiatives to support civil societies to play a more focused role in sustaining pressure on governments and enlightening citizens on their environmental rights should also be rolled out. For instance the UNEP/UNITAR capacity building initiative should be rolled out in more African countries.

In addition, international organizations and agencies working in Africa (especially on environmental issues) should integrate Rio Principle 10 in their rules and procedures. This should include by proactively disclosing information, providing for public participation in their decision-making processes and establishing redress mechanisms for citizens affected by their policies and activities. Specifically, international financial institutions should adopt comprehensive environmental standards.

Recommendation 4: Work towards a binding Africa-wide or regional convention on implementation of Principle 10

The Aarhus Convention is perhaps the most successful story with regard to implementation of the Rio Principle 10. African governments should learn from Aarhus Convention success and negotiate and conclude an African initiative modelled on the UNEP Principle 10 Guidelines.

Recommendation 5: Establish effective mechanisms for monitoring implementation of the Bali Guidelines

Countries implementation plans should include specific and time measured information regarding the implementation of the Bali Guidelines. Such a programme should specify long term funding sources and a timetable for establishing laws, policies, regulations or practices in line with the Guidelines. The program should include capacity building

programs, opportunities for mentoring of public officials, mechanisms for civil society organizations to share experiences on the development of new legal instruments to create and implement the Rio principle 10 rights.