

SEMINARS AND CONFERENCES

Workshop on public participation in international negotiations on environmental matters

Panel on environmental justice and access rights
for sustainable development in Latin America
and the Caribbean



UNITED NATIONS

ECLAC



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PANAMÁ

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This document provides a summary of the presentations and discussions that took place during the capacity-building workshop for the public and civil society organizations on participation in international negotiations on environmental matters held in Panama City on 26 October 2015. The workshop included a special panel on environmental justice and access rights for sustainable development in Latin America and the Caribbean. It took place prior to the second meeting of the negotiating committee of the regional agreement on access to information, participation and justice in environmental matters in Latin America and the Caribbean, as part of the initiative seeking to enshrine Principle 10 of the Rio Declaration on Environment and Development in a regional instrument (referred to hereinafter as the “Principle 10 process”).

The workshop and panel were organized by the Policies for Sustainable Development Unit of the Sustainable Development and Human Settlements Division of the Economic Commission for Latin America and the Caribbean (ECLAC), in its capacity as technical secretariat of the Principle 10 process, in conjunction with the United Nations Environment Programme (UNEP) and the Ministry of the Environment of the Government of Panama.

Valeria Torres, Economic Affairs Officer, and David Barrio, Legal Officer, of the Sustainable Development and Human Settlements Division, were responsible for summarizing and compiling the contents of this document. The work was supervised by Carlos de Miguel, Chief of the Policies for Sustainable Development Unit of the Sustainable Development and Human Settlements Division. Valuable comments were received from Márcia Tavares, Economic Affairs Officer of the Sustainable Development and Human Settlements Division.

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Summary

Broad, open and inclusive public participation has become a hallmark of recent international negotiation processes related to sustainable development. Public participation has been a salient characteristic of the negotiation process of the regional agreement on access to information, public participation, and access to justice in environmental matters in Latin America and the Caribbean (Principle 10 regional agreement, in reference to Principle 10 of the Rio Declaration on Environment and Development) that stemmed from the 2012 United Nations Conference on Sustainable Development (Rio+20). The participation of the public is not only at the core of the rights of access rights themselves, but has also been included by the countries in the documents agreed to date during the negotiation process.¹ Countries have, therefore, acknowledged the participation and the fundamental role of the public in environmental protection and the effective implementation of access rights and have recognized its significant participation in the negotiations.

To provide an opportunity for the interested public and civil society actors from Latin America and the Caribbean to learn about this ongoing negotiation process and strengthen their capacities to actively engage in it, the Economic Commission for Latin America and the Caribbean (ECLAC), the United Nations Environment Programme (UNEP) and the Government of Panama organized a workshop on the margins of the Second Meeting of the Negotiating Committee of the Principle 10 regional agreement held in October 2015 in Panama City. Given the importance of the access to justice pillar, renowned legal experts from the region were invited to provide their views on environmental justice and its links with access rights for sustainable development in a special panel.

¹ Declaration on the Declaration on the application of Principle 10 of the Rio Declaration on Environment and Development; Road map for the formulation of an instrument on the application of Principle 10 in Latin America and the Caribbean; Plan of Action to 2014 for the implementation of the Declaration on the application of Principle 10 of the Rio Declaration on Environment and Development in Latin America and the Caribbean and its road map; Lima Vision for a regional instrument on access rights relating to the environment; San José Content for the regional instrument; Santiago Decision; and, Organization and Work Plan of the Negotiating Committee of the regional agreement on access to information, participation and justice in environmental matters in Latin America and the Caribbean. All available at: <http://www.cepal.org/en/background-principle-10>.

This document summarizes the presentations, discussions and conclusions of the capacity-building workshop for the interested public and civil society organizations on participation in international negotiations on environmental matters. Additional information can be found at: <http://www.eclac.org/en/principle10> and <http://negociacionp10.cepal.org>.

Introduction

At the United Nations Conference on Sustainable Development (Rio+20), governments underscored that broad public participation and access to information and judicial and administrative proceedings are essential to the promotion of sustainable development and encouraged action at the regional, national, subnational and local levels on these matters. This builds on Principle 10 of the Rio Declaration on Environment and Development:

“Environmental issues are best handled with participation of all concerned citizens, at the relevant level. At the national level, each individual shall have appropriate access to information concerning the environment that is held by public authorities, including information on hazardous materials and activities in their communities, and the opportunity to participate in decision-making processes. States shall facilitate and encourage public awareness and participation by making information widely available. Effective access to judicial and administrative proceedings, including redress and remedy, shall be provided.”

In line with the above, in the framework of Rio+20, ten Latin American and Caribbean countries signed the Declaration on the application of Principle 10 of the Rio Declaration on Environment and Development (Declaration on Principle 10). Signatory countries committed, with the support of the Economic Commission for Latin America and the Caribbean (ECLAC) as technical secretariat, to launch a process to explore the feasibility of adopting a regional agreement to ensure full implementation of the rights of access to information, participation and justice in environmental matters. The process is open to all countries in the region and provides for meaningful public participation. There are currently 20 signatory countries. In November 2014, after two years of preparatory work, signatory countries launched negotiations for a regional agreement on access rights in environmental matters, and established a negotiating committee with significant participation by the public and with a view to concluding its functions by December 2016.

In support of this process, ECLAC, UNEP and the Government of Panama hosted, in October 2015, a workshop intended to build capacity among representatives of the public and of civil society organizations from Latin America and the Caribbean to actively participate in the ongoing Principle 10 process and other intergovernmental processes focusing on the environment. It

also provided an opportunity for networking amongst people and organizations working on access rights. With the workshop, relevant stakeholders from the region had the opportunity to dialogue with international and regional experts on techniques and methodologies to actively engage in international environmental negotiations.

The workshop also offered a panel on environmental justice in the context of sustainable development in Latin America and the Caribbean, where legal professionals and experts also provided comments on the preliminary document of the regional instrument on access to information, public participation and access to justice (LC/L.3987) prepared by ECLAC at the request of the countries.

I. Opening remarks

The workshop was opened by Carlos de Miguel, Chief, Policies for Sustainable Development Unit, Sustainable Development and Human Settlements Division, United Nations Economic Commission for Latin America and the Caribbean (ECLAC); Félix Wing, Secretary General of the Ministry of Environment of Panama; Mara Murillo, Deputy Regional Director, Regional Office for Latin America and the Caribbean, United Nations Environment Programme (UNEP); and, Brooke Alfaro, Chair of the Executive Board, Center for Environmental Influence (*Centro de Incidencia Ambiental - CIAM*), Panama.

Mr. Carlos de Miguel welcomed participants and thanked the other organizing entities for their collaboration and support. He stressed that public participation had been at the core of the Principle 10 regional process from the outset. The main documents adopted in the process so far, such as the Roadmap, the Plan of Action, the Lima Vision and the Santiago Decision all contained extensive references to public participation. He also recalled that capacity-building and cooperation was a fundamental aspect of the Principle 10 regional negotiation process and that, in accordance with its mandate as technical secretariat, ECLAC stood ready to support all stakeholders.

Mr. Félix Wing was thankful for the holding of the workshop prior to the second meeting of the negotiating committee of the Principle 10 agreement as it would serve as a platform for civil society coordination and enhance public participation in the process. He recalled the important role played by the public in environmental negotiations given that it is a key actor for sound environmental policy and management. Partnerships must, therefore, he said, be built between governments and civil society in favour of sustainable development.

Ms. Mara Murillo summarized UNEP's programme of activities in environmental governance, which is strongly focused on providing technical guidance and assistance as well as capacity-building in environmental law and policies. She also underscored the work undertaken with civil society organizations in the region which aimed to strengthen their capacities in environmental matters. She noted that the workshop would assist in fostering partnerships for sustainable development. As outlined in the Bali Guidelines for Development of National Legislation on Access to Information, Public Participation and Access to Justice in Environmental Matters, public participation is crucial to ensure environmental governance and adopt innovative, sustainable and forward-looking policies.

Mr. Brooke Alfaro highlighted the importance of environmental civil society organizations in ensuring transparency, accountability, implementation and compliance of environmental frameworks. He called for a transition towards more transparent and inclusive societies, which will be fundamental to tackle climate change and achieve sustainable development. Guaranteeing access to information, public participation and access to justice to every person would greatly contribute to this end, he said.

II. Keynote address by Patricia Madrigal, Vice-minister of the Environment of Costa Rica

The Vice-minister delivered the following keynote address:

“When the technical secretariat invited me to provide some thoughts on environmental governance, participation and Principle 10, I first thanked them for the invitation and then started to think how to address this select audience where all are experts in these matters. So I took up the word “thoughts” and began a reflection exercise on the construction of what we now call the regional agreement on Principle 10.

The first thing I should say is that in 2012 at Rio+20, ten countries of Latin America and the Caribbean signed the Declaration on the application of Principle 10. At that time, we could never have imagined that three years later the number of signatory countries would have doubled. Today there are twenty countries of the region that have expressed their willingness to participate in the adoption of a process to develop, protect, safeguard and guarantee the rights of access to environmental information, participation and justice. This is a paramount task, because it is a diverse and homogenous region at the same time that has decided to craft access rights according to its own social, cultural, political and environmental characteristics. And it is a brave decision. Its steps have been firm. We began with the Roadmap, a Plan of Action, a Common Vision and the beginning of the negotiations for the regional agreement. Then, one asks him or herself, what has managed to make this convening process that has been so quick and successful. For an international negotiation, the process has been quick and has been successful due to its characteristics, the steps taken and the countries that have been joining it. And this process has focused on the application of those rights to information, participation and justice in environmental matters because these rights are the foundations of democracy.

In Costa Rica, which has an almost centennial democracy—in 2021 we will celebrate two hundred years of our independence—, when article 9 of the Constitution was amended, the word “participatory” was added to the definition of democracy. This reform which took place in the early 2000s has made my country reflect about the meaning of participatory democracy. Up to now, we believed that democratic systems were representative. And from there came the discussion on whether the representation was legitimate or not and if we felt truly represented. This amendment tells us that

democracy is not only representative but also participatory. This shifts the exclusive responsibility of the Government to a wider concept of the State where civil society has a crucial role, where it leads social processes, expresses its ideas and vision for the country and for the region. And I specifically refer to civil society because it is them who have been at the forefront of the social transformation processes in Latin America and the Caribbean.

In fact, this proactive characteristic of civil society obliges the State also to respond to their demands. It is through this process that we all build respect for the rights that strengthen environmental governance and protect the rights of present and future generations to live in a healthy and ecologically balanced environment.

And this means that this process targets people. It does not only target the political and administrative systems; it targets them insofar as they can better safeguard the exercise and enjoyment of these rights. And when the process focuses on human dignity, it gains power beyond mechanisms and procedures. We must not lose sight of this. We are talking about improving respect of these human rights in our region, and honouring human dignity. This is the center of the concept of environmental governance.

Several questions arise from the use of the term “environmental governance”. Many other words can be associated with this term such as: accountability, transparency, rule of law, human rights, because it is a concept that is still developing. In fact, it is quite new. Some people have minimized the importance of this concept because they do not have clarity on its definition; they consider that its limits are not well established. This happens because the concept of environmental governance is a living concept that is changing and is built from experience. Access rights are at its heart.

Transparency, accountability, rule of law and institution-building are at times confused with governability. However, I believe that we now understand that governability and governance are different, inasmuch as governability refers to Government and its capacities to exercise its mandate and institutional power. The concept of governance refers to participation, to the relationship between the State as facilitator of spaces for decision-making, spaces where all interested parties participate and more effective agreements are negotiated, precisely due to this participation. This is why we believe they prevent socio-environmental conflicts by opening spaces for participation, by involving all actors that are affected or that could likely be affected. By offering these spaces we are preventing socio-environmental conflicts.

All these processes are what we have been calling for the last 23 years sustainable development. This is why the negotiation of this regional agreement gives us the opportunity to define our values. Based on our social, economic and political context, we can, as we did in Guadalajara in 2013, consider as public any natural, legal or organized person that has the right to participate in an open process.

This is what was established in the Plan of Action since 2013 and the Lima Vision that sets the values and principles of this process: equality, inclusion, transparency and collaboration, among others. It has taken us a long way to understand access rights and Principle 10 of the Rio Declaration, which establishes that the best way to deal with environmental matters is with the participation of the interested public. We have come a long way since then. This is why this process emerges from civil society in search for environmental governance in Latin America and the Caribbean. We, those who are part of this process, cannot but honour this historic and beautiful obligation. I coincide with Felix Wing in that this negotiation process needs to be proactive, constructive, positive, progressive and shall lead and exceed the expectations that have been created at the international level. The negotiating table must be frank, transparent and open. When we close this meeting, we must feel with our heart that the time we have dedicated to this process was worthwhile to build a better region for all”.

III. Towards a regional agreement on access to information, participation and justice in environmental matters in Latin America and the Caribbean

Below are the transcriptions of the statements made during the session:

A. Brief outline of the Principle 10 regional process: Constance Nalegach, Head of International Affairs, Ministry of the Environment of Chile

“The aim of this presentation is to provide a brief overview of the process, mainly for those that are joining or have joined it recently. The Principle 10 regional process has two clearly marked phases: (i) a preparatory phase; and (ii) the negotiation phase, which is currently taking place.

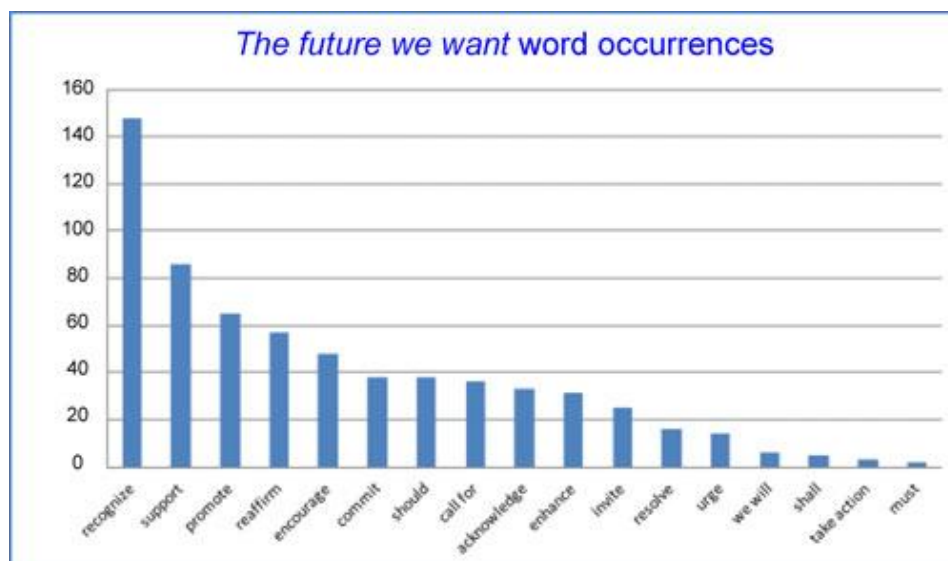
The preparatory phase began in the run up to the United Nations Conference on Sustainable Development (Rio+20), with the meetings and conversations that took place prior to the signing of the Declaration on the application of Principle 10 of the Rio Declaration on Environment and Development in Latin America and the Caribbean. Principle 10 of the Rio Declaration on Environment and Development was, in fact adopted in 1992. Thereby, the world recognized that the best way to deal with environmental challenges is with the significant participation of the public. Countries have since incorporated these guidelines in their national legislation, through access to information laws, laws on public participation or sectoral laws on the environment. The foundations of Principle 10 are also embedded in multilateral environmental agreements. As mentioned already, information and participation are instrumental to curb climate change, as outlined in article 6 of the United Nations Framework Convention on Climate Change (UNFCCC). Principle 10 is also present in non-environmental instruments such as free trade agreements and, at the international level, it has been developed further by the Aarhus Convention.

I would like to expressly recognize and thank the secretariat of the Aarhus Convention, held by the United Nations Economic Commission for Europe, and its Member States as they have been respectfully supporting the Latin American and Caribbean process from the outset. Our region decided to begin its own path in 2012, considering our own characteristics and circumstances and their experience and continuous support has provided an invaluable source of guidance and reference for us.

Twenty years on from the Earth Summit, at Rio+20, the Chilean government promoted this process with nine other governments and the significant participation of the public, especially The Access Initiative. It was, indeed, an initiative that was pushed by civil society, whose representatives knocked on our doors and proposed that we take on this strategic partnership honouring our commitments. ECLAC was also extremely supportive and gracefully accepted the mandate given by the countries to host the secretariat of the Declaration and later the process.

I would like to stress that this process did not start from scratch and has come a long way. By these same standards, the participating countries and public have assumed a commitment and this obliges us to make even greater and more ambitious strides to reach our common goal: having an effective and ambitious regional agreement. If one takes the outcome document of the Rio+20 Conference, one would be amazed at the type of language used. Civil society and some governments have acknowledged the fact that very few “hard” verbs (e.g. ensure, guarantee and fulfill) are used and the “soft” wording (e.g. recognize, support and promote) predominate. When speaking about access rights, it is important to keep in mind that we are talking about human rights, about people, peace, dignity, quality of life, and even subsistence. This obliges all governments and civil servants to assume greater responsibilities.

FIGURE 1
Word Occurrences in General Assembly Resolution 66/288,
“The Future We Want” (A/RES/66/288)^a



Source: Organisation for Economic Co-operation and Development (OECD) [online] <http://oecdinsights.org> (revised in December 2015).

^a Outcome document of the United Nations Conference on Sustainable Development, Rio+20, adopted on 27 July 2012.

Principle 10 of the Rio Declaration gained a new momentum in the outcome document of the Rio+20 conference. Fundamental concepts such as sustainable development, public participation, justice, partnerships, accountability, rule of law and informed decision-making are reflected therein, and perhaps even more important, regional and South-South cooperation are vividly encouraged. It is in this setting that the Principle 10 regional process was born.

The ten original signatory countries that began this journey and all those that have joined afterwards have a common understanding of the final goal: the full implementation of access rights. From the very beginning, all signatory countries have understood that this process is a transformative one. The process aims to transform, improve and fully implement access rights, which means that “business as usual” is no longer accepted. And the countries also realized that this instrument would be different than all that has been adopted up to now as it will consider the diversity and richness of our region while incorporating the values and principles that characterize it. One of its distinctive characteristics is its openness, both in terms of the countries that can participate and the public. It is a process open to all countries of Latin America and the Caribbean and which fosters the significant participation of the public. In addition, the process is not only about another instrument. It is also about human rights, governance and democracy. This is why the negotiation process cannot but be participatory and democratic, open and transparent.

The difference with other declarations in international summits is that the signatory countries went a step further, and specified that a Plan of Action was going to be adopted. Therefore important commitments were established in a relatively brief period of time. The declaration also included the assistance of ECLAC as the technical secretariat. This has allowed the process to be successful and relatively quick for international standards. National ownership, leadership and commitment are the key elements here as well as the adoption of common documents that have moved the process forward. The latter were crafted, negotiated and agreed by the countries, on the basis of their inputs, views and common understandings, and with the significant participation of the public. There has been an atmosphere of cooperation, collaboration, respect and good faith. Most importantly, there is ambition.

Generally, it is said that international negotiations have to be long to achieve an instrument that makes sense to the countries and that, on the contrary, with a tighter schedule only an instrument that is brief and simple can be achieved. But we can overcome this apparent contradiction between times and ambition. What is needed is political will, high-mindedness and hard work. The region is mature for this agreement, as the progress made to date demonstrates. In addition, international bodies are supporting our efforts and we have other successful experiences to learn from. There is also technical expertise to back our political will. The public has been an indispensable partner in this endeavour as well. At the intersessional meetings of the negotiating committee, the public came extremely well prepared, made invaluable contributions and contributed important inputs. Cooperation within our governments is also essential. In this process, Ministries of Foreign Affairs, the Environment, Social Affairs and Justice, among others, have to work collaboratively as their joint perspective will define national positions and be key in the future implementation of the agreement. Having an ambitious, effective agreement by 2016 is, thus, possible with political will and technical support.

In terms of the signatory countries, when Rio+20 started Chile had only managed to obtain the support of three countries (Costa Rica, Jamaica and Peru) but by the end of the conference, ten countries backed the process. And now, there are 20 signatory countries and the list is growing. The process is not only about including more countries, but fundamentally, about reaching more people and improving their quality of life. This agreement is an agreement between governments and their citizens and the potential here is great: 500 million people.

The process has made progress by means of the common documents adopted such as the Roadmap, the Plan of Action, the Lima Vision, the San José Content and the Santiago Decision. Moreover, in the first negotiation round, which concluded in May 2015, the committee adopted its Organization and Work Plan. The countries also mandated ECLAC to prepare a preliminary document of the regional agreement, which includes a high number of references to our national and international commitments. Now, there is a text compiled by the Presiding Officers including the language proposals

sent by countries by 31 August 2015, complemented with the compilation of inputs from the public. Our ambition is set in the deadlines we set ourselves and the negotiating committee. The nature of the future agreement has yet to be decided, however, more than half of the signatory countries have expressly said that they are negotiating for a binding treaty.

There are a number of points in the agenda for the second round: the modalities for public participation, national actions carried out in the countries, and the negotiation of the substantive aspects of the agreement (preamble and articles 1 to 10). And, as has been the case up to now, the participation of the public in the process is key. In this sense, I would like to invite you to join the Regional Public Mechanism², to become actively involved and to work collaboratively towards greater transparency and accountability. Beyond the fact that each one is working in different capacities in this process, whether it be as government officials, members of the public or representatives of international organizations, above all we are all persons and we are working for the rights of everyone in this region. Let us never forget this”.

B. Future outlooks in the process and how can the public participate: Joana Abrego, Head of Legal Affairs, Ministry of the Environment of Panama

“Panama, as host of the second meeting of the Negotiating Committee, and Chile and Costa Rica, as co-chairs of the process, have shared their expectations of the meeting with all other countries and stakeholders in a note. I would like to recall some of the main points raised by the three countries in preparation for the second meeting of the negotiating committee.

With a view to concluding the negotiations on the regional instrument by December 2016 as agreed in the Santiago Decision, we have urged all delegations to work collaboratively and efficiently on the basis of the convergences in order to move forward in the substantive aspects of the negotiation. In this sense, the three countries hope to be able to review and adopt, within a short period of time, the proposal on the modalities of participation of the public, which was presented by the co-chairs. This proposal was extensively reviewed during the two intersessional meetings held on 28 July and 3 September. Furthermore, the basis of the negotiations will be the compilation text prepared by the Presiding Officers. Therefore, specific wording alternatives, favouring positions backed by more than one country to reach agreements, are expected.

It is also important to note that the secretariat has provided a specific webpage for the meeting (<http://negociacionp10.cepal.org>), which includes a section for additional input for the meeting (<http://negociacionp10.cepal.org/en/additional-input-for-the-meeting>). All stakeholders were encouraged to actively use this section by sending, prior to or during the meeting, their contributions and statements.

The Governments of Chile, Costa Rica and Panama have reiterated the importance of using the valuable time of the meeting. The cooperative and facilitative approach that guided the discussions so far will allow the process to reach its goals. Given the great expectations placed on the negotiations, it is the responsibility of the countries to do all that is within their reach to fulfill them.

I would like to reiterate that Panama, like the co-chairs, has the expectation to start negotiating substantive matters. The background and methodology of this process are favourable to achieve results, especially the collaborative work undertaken by civil society. Their support has been invaluable and has enriched the discussions.

² In the Plan of Action to 2014 adopted in Guadalajara, Mexico, on April 2013 by the signatory countries of the Declaration on the application of Principle 10 of the Rio Declaration on Environment and Development in Latin America and the Caribbean, a Regional Public Mechanism was established for those interested who could subscribe by completing a short form available on the ECLAC website. The main objectives of this Mechanism are to keep all those interested in the process informed and facilitate their involvement; to coordinate public participation in international meetings; and to contribute to the transparency of the process. The Mechanism may also serve as a complement for participation actions carried out at the national level. The registration form for the Mechanism is available at: <http://www.cepal.org/en/regional-public-mechanism>.

Time is short in this process, as it happens most of the time in international negotiations. But this should inspire us to use it wisely, to make the most of this opportunity to make progress. A lot of work and efforts have been dedicated already and it is important to keep the momentum and achieve the deadlines we set ourselves. For this reason, countries are expected to make concrete proposals, to favour joint positions and engage in a frank and collaborative dialogue. Panama remains highly committed and has high hopes that the process will achieve concrete and successful results”.

IV. Successful public participation in environmental negotiations

In the session entitled “Successful public participation in environmental negotiations” a panel of select regional and international experts with significant experience in environmental negotiations shared their strategies and methodologies with participants. The session was structured around three main topics, corresponding to the key phases of a negotiation process: (i) before the negotiation meeting; (ii) during the negotiation meeting; and, (iii) after the negotiation meeting and follow-up. In each of the aforementioned phases, several panelists were asked specific questions to guide the discussions. The floor was then opened to participants for additional questions and/or clarifications. It was hoped that a joint analysis of the three phases and the exchanges that followed with participants would allow to devise an effective negotiation strategy that could be applied by the interested public and civil society organizations in international negotiations.

The panelists of this session were:

- Sylvia Bankobeza, Lawyer, Division of Environmental Law and Conventions, United Nations Environment Programme;
- Gordon Bispham, Caribbean Policy Development Centre, Barbados;
- Rubens Born, *Fundação Grupo Esquel*, Brazil;
- Jerzy Jendrośka, Member of the Compliance Committee and former Chair of the Bureau of the Meeting of the Parties of the Aarhus Convention, United Nations Economic Commission for Europe;
- Nicole Leotaud, Executive Director, Caribbean Natural Resources Institute (CANARI), Trinidad and Tobago;
- Andrés Napoli, Executive Director, *Fundación Ambiente y Recursos Naturales*, Argentina;
- Magdolna Toth Nagy, Senior Adviser, Regional Environmental Center, Hungary; and,

- Félix Wing, Secretary-General, Ministry of the Environment of Panama.

The discussions were facilitated by the moderators of the session: Danielle Andrade, Attorney-at-law (Jamaica) and Andrea Sanhueza, public participation expert (Chile).

Below are summaries of the statements.

A. Before the negotiations

1. How does civil society conduct advocacy at the national level while preparing for negotiations?

Answer by Gordon Bispham, Caribbean Policy Development Centre, Barbados

Civil society organizations have been conducting advocacy for many years and it is sometimes taken for granted. However, there are lessons to be learned through the process. One of them is to do the research, in terms of who is the target actor and what are the issues at hand. This allows civil society representatives to be very clear and identify the appropriate point of entry. One needs to know who he or she is talking to and what he or she are going to talk about. How one enters into the dialogue is critical and may have an impact on the outcome and level of success.

It is also fundamental to build and develop a relation of respect and trust with the negotiators or with the discussants. What can be very helpful with that is to give them some background information of either yourself or the organization as it can build a basis for continuing dialogue. Care should be taken not to be overwhelming and to present points or ideas clearly, concisely and comprehensively. Establishing points of connection and monitoring the reaction of the listener are key. Knowing the position and concerns of the government or the negotiating party on the point at hand is also important as it will allow to guide discussions and help to reach common ground.

It may sometimes be necessary to point out some of the highlights or some of the benchmarks or successes that civil society or the government have been able to achieve. Governments change but civil society transcends political cycles, facilitating constant and long-term contributions. At times it is useful to recall the institutional history and breakthroughs. It is very important for civil society organizations (CSOs) to establish the basis for relationship and identify some of the areas of common concern based on present or past best practices and experiences because this can generate trust and respect. In the advocacy process, the messages have to be very clear. Often, negotiations are more qualitative than quantitative. However, empirical data is crucial, can help support a point and make even a government official favour a certain position.

2. How is a civil society organization negotiation team organized and what are its requirements? What are the tasks and different roles of its members?

Answer by Jerzy Jendrośka, Member of the Compliance Committee and former Chair of the Bureau of the Meeting of the Parties of the Aarhus Convention, United Nations Economic Commission for Europe

A general remark about the specificity of the Aarhus Convention negotiation process—and that of the Latin American and Caribbean region—should be made before answering these questions. Generally, in the United Nations system there are some rules for participation of civil society, including special rules for environmental organizations, that have a status of observers. In the Aarhus case, however, the participation of the public was significantly different fundamentally because of the very nature of the matters being negotiated. The governments were aware of this and argued that the standard rules for public participation should not apply in this case. The representatives of civil society organizations in the Aarhus negotiations thus sat at the table as another negotiator, with the same rules as countries and not as observers, although the final decisions were obviously made by the governments. Civil society could present its views and make proposals on equal grounds.

An interesting fact about civil society in this case was that there were a limited number of civil society representatives at the table, allowing for a structured and ordered participation of the public. These representatives were elected on a regional basis, stood for the interests of the public as a whole and for this they collected the views of other organizations and interested public and served as point of interaction between the governments and the public.

In terms of their organization, there was a head of the civil society delegation and supporting the four delegates, there was a group of resource persons specializing in specific matters. There would be separate persons dealing with access to information, public participation and access to justice, each with vast experience in each field. They were on-call experts, so to speak, and would be ready to step into the negotiations at the request of the civil society delegates and with the permission of the Chair. The head of delegation could, in this sense, request to the Chair that the floor be given to a support person on a specific issue.

It is important to underscore that the NGOs collectively were treated as any other country, with the same rights. Since negotiations were based on consensus, all efforts were also made to have the agreement of the representatives of civil society and avoid any voting. Civil society had also the right to nominate a representative to participate in small groups or contact groups created to deal with outstanding or more complex issues. Normally, a few countries were more interested in establishing these contact groups and so they would meet with other interested countries and there would always be a representative of civil society in these groups as well. These negotiations were considered as being a dialogue between the governments and the public, going beyond environmental matters. This facilitated the negotiations and contributed to their success.

3. What is the role of the members of the public that are not part of the negotiating team?

Answer by Andrés Napoli, Executive Director, *Fundación Ambiente y Recursos Naturales, Argentina*

Firstly, it is important to identify the type of process one is involved in. For example, in the climate change negotiations, which are already widely known, established and global, the governments and civil society that participate do not have to spend time explaining what climate change is, but rather dedicate their efforts to linking the local concerns with the global agenda and vice-versa. In a different process, the Convention on Biological Diversity, actors are much more specific and focused or have more technical issues that need to be explained in simpler terms to a wider audience. Therefore, it is important to know each negotiation process well in order to take the most appropriate actions.

Notwithstanding the above, a few key points can be identified. Knowing who are the allies is essential, both within the civil society world and the governments. It is perhaps more important to find allies in the governments as they can open doors, facilitate comprehension with other government officials and provide insights as to the best actions to take. In climate change, for example, many authorities are involved such as energy, agriculture and land management authorities. One needs to reach out to many stakeholders and help them understand that their priorities and concerns are linked.

This also applies to the Principle 10 regional process. There are many issues involved in these negotiations such as transparency, openness, participation, the environment, access to justice, which means that the interested public has to be able to identify who the key contacts are in each government. The relation with the media and press is also important, as they can be facilitators. In climate change matters, the *Fundación Ambiente y Recursos Naturales* has, for example, achieved this with the two main newspapers of Argentina with whom it has a close relation. They are central to the work this organization does.

Likewise, it is important to create a critical mass of non-governmental organizations and partners that are willing to work together and network. Networking is crucial. Perhaps only the biggest NGOs are able to act alone, but more often than not, this is not the case. In climate change issues, the Climate Action Network (CAN) —which has a Latin American chapter— is a worthy example. At the Latin

American level, the Latin American Climate Platform should be noted. Therefore, it is fundamental to establish networks and work collaboratively.

Another challenge is linking the national and local reality to the international sphere and, more specifically, to the negotiation process. For this, embedding the negotiation within the local and national priorities has proven to be useful. Engaging with local actors and explaining to them that their local problems can be tackled also internationally, that their conflicts can be solved and that international support can be gained for their local concerns is pivotal. Local progress is not limited to local action as there are other opportunities at other levels.

Finally, a negotiation has different actors, not only those that sit at the negotiating table. If one looks at climate change, there are international negotiators, observers, organizations that can participate in the negotiation, parallel summits, and even protests. There are a variety of ways and methods that can be explored, and this is why collaboration and networking are essential.

4. How are the public support for the position of the negotiating team and the interventions during the negotiation process managed?

Answer by Sylvia Bankobeza, Lawyer, Division of Environmental Law and Conventions, United Nations Environment Programme

The example of the United Nations Environment Assembly (UNEA), which is the current Governing Body of the United Nations Environment Programme (UNEP)³, is worth noting. Initially, the UNEP Governing Council had limited membership, but this was changed after the United Nations Conference on Sustainable Development (Rio+20) strengthened UNEP with universal membership.

UNEA was born in 2014 with universal membership and in recent years, there has been a discussion on the rules of procedure. The rules of procedure are the ones that determine the participation of major groups, including NGOs. The major groups are representatives of farmers, businesses, trade unions, among others, and include NGOs of different kinds.

For a long time, only international NGOs were being accredited. A civil society organization in a national jurisdiction was not expected to be accredited within UNEP, meaning that some international identity was needed.

The rules of procedure of UNEA were supposed to be adopted in its first meeting, held in 2014. However, these were not adopted because consensus was not reached in some parts. The governments are the ones that decide on the participation of observers, including civil society participation, through the rules of procedures. The next UNEA meeting will be held in May 2016.

UNEP experience has been that whenever there is a Governing Body meeting there is also a forum for civil society which precedes the opening of the meeting. In that forum, the civil society and other representatives of major groups will be discussing the same agenda that is going to be discussed in the Governing Body meeting. For example, last time the theme was green economy and the Sustainable Development Goals (SDGs). As a result, in the major group's forum, civil society had an opportunity to discuss that and present some points that fed into the main Governing Body meeting.

Another way that has been used to encourage public participation in the meetings is through the participation in the plenary, as selected representatives of major groups do represent the large group that participates in the pre-session. Organizations organize themselves and decide on who will speak on their behalf. A few participants are invited to represent others at the main meeting. Normally, in the way the meetings are managed, government officials have five minutes to make their presentations and NGOs always have to intervene after the government officials. In the UNEA Governing Body, NGO interventions are limited to three minutes. Within this framework, selected representatives of accredited

³ For better insight, see <http://www.unep.org>.

major groups including the civil society are invited to make comments on any agenda item and are recorded as part of the meetings. This is how the input from civil society is gathered.

In addition, there is also a Committee of Permanent Representatives, which meets intersessionally with great frequency. NGOs are allowed to participate therein and this is important because it is where the agenda is set and where follow-up actions are decided. It is also a platform for dialogue with governments, meaning that they could influence governments to propose or vote for a given decision or resolution. As a result, there are channels for public participation. However, it is important to note that it is governments who decide the rules of procedure and how civil society can participate.

5. How is additional support, such as funding or external expertise, leveraged towards civil society in a negotiation?

Answer by Magdolna Toth Nagy, Senior Adviser, Regional Environmental Center, Hungary

As already mentioned by Jerzy Jendroška, in the Aarhus Convention process, civil society organizations had strategies associated to three layers of participation. One was the four-member negotiating team supported by experts. Some of these experts were also sitting in the negotiating room while others were providing advice before or after the negotiation meetings, either on-line or by making comments. This expert group was the second layer consisting of resource people, NGO or academic experts. There was also a broad network of NGOs that participated, following the negotiations or the preparation of negotiations and essentially involved at the country or national level. Therefore, when additional expertise and assistance was needed and it was not present in the room, there were usually different NGOs with different backgrounds ready to provide support. Some of them were experts in access to environmental information, others in public participation, and many of them were environmental lawyers who had a vast experience in litigation.

This was a dynamic process as well, meaning that if decisions were being taken on specific issues in which the experts were not as experienced (such as genetically-modified organisms or the Pollutant Release and Transfer Registers), then additional experts were brought to the negotiations. In addition, specific workshops and meetings were organized to develop texts for the zero draft, for example, to prepare the negotiations of the PRTR Protocol and Strategic Environmental Assessment Protocol. These experts were both governmental and non-governmental as well as regional and international.

Moreover, it is crucial to have networking meetings for CSOs. Nowadays, this has become easier with virtual tools and electronic platforms, but it is still extremely important to have face-to-face discussions to review documents, prepare arguments and devise strategies.

Regarding funding, it is also a central component of the negotiation process. Funding is needed to attend the meetings but also to prepare for them. It is desirable to secure funding for the three phases of the negotiation process (before, during and after). In the Aarhus experience, the UNECE Secretariat provided support for some CSOs. In addition, some governments and the European Commission, also supported public involvement and provided opportunities for project funding ensuring funding not only for the participation in the negotiating meetings but also for covering at least part-time during the years of negotiations, the time of the coordinator of the CSO negotiating team and the expert and networking meetings. In the Principle 10 process in Latin America and the Caribbean, fortunately there has been some funding from ECLAC to support the participation of civil society and the elected representatives. But it is necessary to find governments and other donors that are willing to dedicate resources in favour of public participation and provide funds also to enable the preparation for the negotiating meetings and for networking as well as actions at the national and local levels.

6. How are stakeholders mobilized, relationships built and communication to influence exercised?

Answer by Nicole Leotaud, Executive Director, Caribbean Natural Resources Institute (CANARI), Trinidad and Tobago

CANARI, a Caribbean non-governmental organization, has been involved in the Small Island Developing States process (SIDS) and the Sustainable Development Goals (SDGs), both of which are major global discussions very distant from civil society and communities on the ground. CANARI facilitated a national consultation of NGOs in Trinidad and Tobago and used other processes to try to understand and gather the opinions of civil society across the region on these processes.

In the SDGs example, information and communication technologies were used by CANARI to engage civil society. There are more than twenty Caribbean mailing lists focused on the different dimensions of environmental issues, each having a significant number of members. CANARI used the listservs to send out notices about the webinars that CANARI was planning to hold on different topics (proposed goals). There were five topics: climate change, energy, economic development, forests, oceans and seas. Experts from academia, civil society, government, international organizations and the private sector were invited to speak on each topic. People from all over the region signed on to the webinars, and one had more than forty participants. These were inclusive and open. The results of the discussions were used to prepare short policy briefs on the key recommendations, which were then shared online and submitted to negotiators from the Caribbean Community (CARICOM) to inform them of the recommendations from Caribbean experts, including civil society.

Another critical strategy for a Caribbean NGO like CANARI that works in a specific geographical context to get involved in an international policy process was to become a member of an international network. CANARI joined a global network of research institutes called The Independent Research Forum (IRF). This network is composed of ten institutes across the globe and gave CANARI direct access to a wealth of information, ideas and methodologies. It also allowed CANARI to exchange good practices and interact with UN negotiations in New York during informal retreats for the Open Working Group which IRF facilitated. CANARI facilitated sessions and provided a Caribbean civil society perspective on specific technical issues. This allowed CANARI to establish direct contact with the negotiators and experts and so exercise greater influence on the negotiations.

Indirectly, the contacts with the Caribbean negotiators in New York also facilitated CANARI's work and relationship with the governments in the Caribbean countries. The inputs provided focused on technical advice, but the contacts made also permitted informal, direct contacts and the sharing of ideas and perspectives behind the scenes. Trust, respect and credibility were built in this way, thus providing greater visibility and legitimacy to the organization in the negotiating process and among other civil society stakeholders.

7. Questions and comments from participants

Summary of main points raised by the panellists

For successful advocacy with the government, establishing the relationship is key. Achieving mutual respect can be facilitated by, first, ensuring the government knows the track record of the organization as well as its representatives' expertise and interest in the matter. In setting up negotiating teams, having experts on each pillar helped civil society organizations prepare the Aarhus Convention negotiations and could be valuable in the Principle 10 regional process. Additionally, having networks to sensitize the public, linking what is happening in the negotiations with the documented texts and commitments to what is happening on the ground is a way to ensure greater public involvement. Finally, new technologies (webinars) and international networks are excellent ways of connecting with people who are instrumental in the negotiating process.

Question: In social sciences and particularly in economics, when thinking about the future, the analysis can be made based on forecast scenarios or projections. If a structural change is sought, one has to work with scenarios because projections replicate in the future what happened in the past. This is what is being done in climate change, for example. In terms of public participation,

the Principle 10 LAC process is working with scenarios whereas in UNEA the approach is closer to projections. What role did the UNEP/UNECE secretariat have to make those structural changes? Since the major groups system leaves out a significant number of actors, has the UNEP/UNECE secretariat tried to amend the traditional procedures used?

Ms. Bankobeza: For UNEA, UNEP provides secretariat services servicing inter-governmental meetings that take place under the framework of UNEA. UNEP is an organization that is run by governments, member states of the United Nations. It deliberates on emerging issues on the field of the environment and provides direction through adopting resolutions and decisions of UNEA. In addition governments review and approve the programme of work and budget of UNEA. UNEA can also make declarations. In Nairobi, there is a Committee of Permanent Representatives to provide inputs intersessionally.

Accreditation for all delegates in UNEA meetings is through credentials. Normally there is an opening for civil society through the rules of procedures that are being reviewed. These rules are more development than in other areas of international affairs such as peace and security. Credentials are fundamental as they give persons the power and authority to negotiate, as governed by international treaties. Credentials are important even for governments especially in cases of conflict or insurgencies, particularly in unstable countries.

The secretariat does not make decisions. It facilitates the international decision-making process and is at the service of the member states. It can provide technical expert advice and support if so required. At the end of the day, it is the governments that adopt decisions and resolutions and decide on the rules of procedures which relate to observers and their role. But the secretariat does not have any leeway to promote changes. It does not have the power to change. It is the governments that have to take the lead. An example is the very creation of UNEA and the strengthening of UNEP, which was adopted by the Governing Council and then adopted by the United Nations General Assembly. With regard to the rules of procedure of this body, although there are different models such as that of the Economic and Social Council or the different conventions, again it is the governments that decide. Currently, regional groups have increasing power in negotiations (for example, in GRULAC), so even the individual power of governments is changing. It is therefore important for civil society to influence these regional groups.

Mr. Jendroška: The general rules in the UN are flexible enough to allow for specificity in different negotiations as in the Principle 10 regional process, which is a very specific type of negotiation. It is true that the secretariat's role is not that of a decision-maker, but it is supposed to facilitate and help the governments and that could be done in different ways. UN officials can perform their facilitative role differently: more actively or more passively. But there is always room for activity. Now, the major point here is that governments may decide or not and this decision can be well informed or less informed. This is why governments normally favour the participation of the public, because it enriches the discussions and includes key stakeholders who are also important for implementation. Nonetheless, this participation has to be organized to be effective. In the Aarhus example, the negotiation rules included the request to NGOs and civil society to organize their interventions, to consult other civil society groups and put forward concrete proposals. This is much different than the major groups system as in Aarhus civil society had the same rights as any government to make proposals. It is possible to channel public participation in the negotiations successfully. When the agreement deals with public participation this is almost a requirement for success. Perhaps the secretariat can play a key role in assisting the public to organize itself and promoting public participation.

Mr. Bispham: In terms of the rules of procedure, there is greater flexibility although in essence, it is the governments who make decisions and, normally, the chair of the meeting can regulate this, set limitations on the duration of interventions and so on. There are demonstrations of increased flexibility which are to be applauded. As for UNEP, it aims to articulate environment and sustainable development, which has given leeway to include multistakeholders in the process. The idea, however, is to increase the platforms for government-civil society dialogue. Civil society needs to be more organized and focused.

Mrs. Toth: It is also important to be aware of the role played by the chair of the meeting. In the case of Aarhus, the chair was able to manage discussions efficiently with a certain level of ambition of

aiming to achieve the goals of the negotiations, not only from the point of view of civil society representatives but also of governments. The Chair also reminded some government delegations of their former commitments, for example under the international, European Union or national legislation, when they took a position which was not in line with these standards. Sometimes, the chair can make proposals to move the negotiations forward also taking on board the CSO proposals and motivate some government to take more progressive positions. Having a good chair is, thus, crucial.

Question: In the Principle 10 regional process, the floor is given in the order it is requested regardless of whether it is a government representative or a member of the public. In this case, in order to be more effective, how should the public organize itself? What main roles and tasks should be assigned?

Mr. Jendroška: The key point for civil society negotiators is to be able to negotiate professionally, without being excessively emotional. In the negotiation of the PRTR protocol, there were strong divergences between the United States and European states, and the then head of the negotiators acted as a facilitator and a person that could favour the reaching of consensus. This required a strong and professional approach. Negotiators should be able to react quickly, wording a proposal, coming up with middle-point alternatives, and be able to listen. Furthermore, making the case for each argument is fundamental. General arguments do not suffice. Well-supported arguments are needed, referring to guidelines, to internationally approved practices or concrete examples. This can convince governments to follow NGO statements, even if originally these were not accepted. The key is being able to negotiate the legal text. A legal background is of great use in this sense but not absolutely necessary. In Aarhus, the lead negotiator did not have a legal background but was a very skillful negotiator and had a deep knowledge of the substantive matters.

Mr. Bispham: One critical issue to be kept in mind is that all negotiators have instructions and therefore, constraints. It is important to understand this and once the constraints are identified, possible courses of action can be charted. As a result, sometimes even good arguments do not manage to change positions. At times, decisions are taken at the political level, others are based on more technical issues. Finding language of compromise is, as Mr. Jendroška said, key so that these constraints can be worked around and progress can be made.

Mr. Jendroška: First, we should all be aware of the specificity of the Principle 10 regional process. This negotiation is different from others not only because of the matters being negotiated, but also because the diversity of views is much more restricted given its regional nature and involving countries with similar cultures and mindsets. The number of actors involved is also smaller than in global conventions, making it easier to handle. Therefore, not all the rules that are applicable and well developed for the global conventions should apply *mutatis mutandis* to regional processes. It is good to develop specific rules and agree in advance to these rules, in order to prevent situations where countries may make procedural objections. These barriers are then avoided.

The second issue is about the chair. It is fundamental that, whenever there is any procedural stall in the process, the chair invite a small group to discuss the matter always with the presence of the civil society representatives. It was never a good practice that the governments decided themselves and then, invited the NGOs to talk with them. Inviting the NGO representative to participate in such small groups has proven to be much more useful.

Question: Many of the environmental organizations are based and act locally. How can platforms where other matters are being discussed be used to further the actions these local organizations defend?

Mr. Napoli: Local organizations have a prominent role to play in the Principle 10 regional process. There are advantages and disadvantages to this process. First, the disadvantages are that this process is in the making, it is continuously being created. Therefore, inviting an organization that has not been involved to take part in this process without knowing what the end result will be is challenging. But this is an open process and nothing prevents more organizations from participating. As for the advantages, the process is by nature wide in scope. Access rights touch upon almost every aspect of

economic, social and environmental issues. In environmental terms, it is the first process that is negotiating human rights. Normally, the environment is about economic issues. And for this it is to be commended. This process can also help open broader spaces in other fields through governance, it can set standards and demonstrate successful methodologies and strategies. It is fundamental that local organizations strengthen the national agenda on rights. Civil society has to promote access to information, monitor participation processes, foster access to justice, and when we cannot find national or local answers, look for the regional level and this process. Pushing an individual agenda is not sufficient to guarantee rights.

B. During the negotiations

1. How should civil society organize itself during the negotiations?

Answer by Jerzy Jendrośka, Member of the Compliance Committee and former Chair of the Bureau of the Meeting of the Parties of the Aarhus Convention, United Nations Economic Commission for Europe

Standard practice can be used. For example, in the European Union, since all the countries have to provide a collective view, every time there is a negotiation a coordination meeting is convened one hour in advance. In the breaks (for example lunch break), coordination meetings would continue as well as when the negotiation meeting adjourned. This also applies to NGOs. In Aarhus, there were four civil society negotiators but they met with other NGOs to discuss the situation. Interventions would be coordinated and ideas prioritized. Normally the messages they gave were either political or more technical (specific legal language). Each civil society member had his or her role, according to their skills and experience.

Negotiators have to be prepared. For example, there was a difficult point being negotiated in Aarhus on the active dissemination of information in cases of accidents. Some governments did not favour these provisions and the NGOs, with the permission of the chair, invited some witnesses of specific cases and experts to be present and give a short statement about their experience. This had a drastic effect on those governments. It was well prepared, concise and yielded the expected results. The way the meetings were organized allowed for this good preparation and planning. It is important for all negotiators—government and civil society alike—to know exactly what would be discussed in each session. Normally, the chair would meet with the officers and announce what would be discussed at the next meeting. This allowed all parties to come prepared. In Aarhus, access to information and participation were discussed first and then access to justice. It is a good idea not to try to discuss everything at each session, but rather focus on certain issues.

2. What are some ways civil society organizations can make successful interventions during the negotiations?

Answer by Rubens Born, Fundação Grupo Esquel, Brazil

There are different ways to act and intervene effectively and efficiently and this, in turn, depends on the different capacities of each stakeholder. The preparation for a negotiation meeting is almost like the preparation of a trip. One wishes to travel, knows where he or she is heading to, and expects good weather (which can happen or not). The road is not perfect, there could be a storm and to enjoy the trip, the first thing which is needed is the ability to adapt. In the event the expectations are not met by reality, quick responses and flexibility are needed as well as making the most out of each opportunity.

It is worth noting that success at a negotiating meeting depends mostly on the preparatory work done prior to the meeting. As mentioned in the first phase, one has to identify partners and allies, matters, issues, priorities, etc. Successful interventions are contingent upon seven capacities:

- ability to adapt;
- ability for dialectics and for providing reasoned arguments: influencing the items of the agenda and providing evidence and testimonies;
- ability to communicate effectively with the external public: create legitimacy among other stakeholders from the public and reflect their points of view and concerns;
- ability to reach agreements: build partnerships and reach out to experts;
- ability to be ambitious: not to stay at the minimum common denominator, and be perseverant;
- ability to analyze interests, needs and values of the different stakeholders, at times, separate such interests and to not confuse interests with values; and,
- ability to draft texts: having the skill to present a clear text.

3. How should civil society maintain a continuous dialogue with the Presiding Officers and with the countries during the negotiations?

Answer by Andrés Napoli, Executive Director, *Fundación Ambiente y Recursos Naturales*, Argentina

This question is complex to answer, but perhaps one of the abilities mentioned by Mr. Born should be reaffirmed: perseverance. In a process like the Principle 10 one, the public is a marathon runner and not a 100 meter one. We are marathon runners of the environment and attaining results can take time, efforts and dedication. To build a good relation with the chair or with government representatives, first and foremost, there must be a formal space for dialogue. In the Principle 10 process, this already exists. Representatives of the public were elected to hold this dialogue with the Presiding Officers, pursuant to the decisions reached in the Santiago Decision.

There are many other ways to create this link. For example, through the interventions in the plenary sessions. Civil society organizations must remain focused and privilege some issues over others to be effective. It has to be dynamic and creative to attract attention to the matters being negotiated. In climate change negotiations, for instance, a prize is given to the person that made more outrageous comments on climate change. Having a daily news bulletin on the negotiations and a more regular one or using social media are other examples. The relation with the countries is built over time and here trust on both sides is essential.

4. What are some ways civil society organizations can use to successfully respond or counter positions from governments?

Answer by Magdolna Toth Nagy, Senior Adviser, Regional Environmental Center, Hungary

It is extremely important to be prepared for the negotiations, not only in terms of knowing the text, but also to prepare with arguments for the most important points that the civil society delegation would like to keep on the agenda. For this, collective action (through meetings and joint initiatives) is key as it allows to gather more arguments and references to national legislation or international legislation, policy, documents or good practices. As seen earlier, having resource people was also of great use.

This coordinated approach can be complemented by individual actions from participating civil society organizations or other organizations. The Regional Environmental Center was not a member of the NGO Coalition (later called ECOForum), but supported the work of civil society from the outside. The REC obtained funds and led a project in 21 countries of the region by which roundtables were held as well as dialogues between the governments and civil society. It also prepared assessments of the legislation and institutional background and practices of countries. At these country meetings, government representatives shared their country's view and flagged issues of concern. NGOs could maintain a dialogue with the representatives of the country and also argue or advocate for a certain

position. These positions and assessments were used in the negotiations and whenever the country took another position that was below the standards already available in that country, the NGOs would raise this to the representative privately or in the main discussions.

Another strategic issue was determining which organization should raise these issues in the negotiations because sometimes it would be more effective for an NGO coming from another country to do so. Therefore, NGOs should organize themselves and assume different roles.

Yet another issue was when the NGOs managed to have a country take up a certain viewpoint and present it to the inter-governmental negotiating group, either supporting the idea from civil society or putting it as their own. This was instrumental because in the final phase of the negotiations, only NGO positions which were supported by at least one government would be taken into account.

5. How can the public effectively participate in the negotiations taking place outside the primary negotiation meeting (i.e. working groups, contact groups, etc.)?

Answer by Gordon Bispham, Caribbean Policy Development Centre, Barbados

NGOs and CSOs have to see themselves as experts. Even if unfamiliar with the process, one can be an expert because he or she is knowledgeable on the technical issues and implications, on the science-policy interface or on similar processes.

The working groups outside the primary negotiation meeting are normally of two types: either a long-term group or a contact group, which is formed for a specific time, a couple of hours, maybe one day and may have representatives by region or by interests. Civil society representatives have to be experts in these types of negotiations, understanding the institutional structure and being aware of past decisions. In addition, civil society could be called on by governments to serve as advisors in these meetings. So there are several ways in which the public can participate in these groups outside the primary negotiation.

In these meetings, it is also important to bring a human face to the negotiations, and bring delegates back to reality when matters get abstract. This can be very powerful.

Furthermore, having a firm understanding of the spirit and intent of the negotiation allows to put matters into context. Sometimes, negotiations get stalled on a verb or a word, and what is important in these cases is to grasp the intent, the principles behind it and try to reflect that in the language. If there is a clear understanding in all parties about the intent, it makes it much easier to find the most suitable language. UN language is also quite legal in general and therefore it is important to reduce ambiguity in the phrases, sentences or statements made. Language crafting skills are in this sense a must, especially in the working groups or contact groups which are generally created to solve these types of issues.

Negotiations are a very complex game and understanding the stage of the game one is involved in can solve many problems. Generally speaking, nobody puts forward their best scenario or bet right away and this has to be kept in mind at all times. Very often negotiators spend hours and hours negotiating on a particular matter and, at the end, resolve to use language that was agreed five or ten years ago and this allows to move forward. Another option in this case is to leave the word or phrase pending, and come back to it at a later stage.

6. How can the public succeed in having the governments support their positions? How can civil society identify the more favourable governments and what strategy should they use to approach them?

Answer by Félix Wing, Secretary General, Ministry of the Environment of Panama

In order to participate effectively in the negotiations, there must be a balance between idealism and realism, since in this process much time, effort and resources are being dedicated to the cause. Traditionally, people ask for the results of a given meeting or process. The result depends on all of us.

A certain degree of trust has to be built at first with government representatives and this cannot be done through confrontation and protests, although at times these are useful. Civil society has to reach out to government officials, identify who is key in defining the country's policy and adopt a collaborative approach. Previous panelists have given useful tools and techniques to achieve this. In the particular case of the Principle 10 process, it is fundamental that all parties involved are acquainted with the substantive issues, that they study the preliminary document and the compilation text as these are basis for the negotiations.

As for the modalities of public participation, which are one of the most open and transparent in international negotiations, civil society should make the best of them. These modalities should be maintained, promoted and strengthened. The reality is that the main actors in the international stage are the states, which implies that NGOs necessarily have to work with the governments in order to influence the negotiations.

Another important aspect is knowing the background of the negotiations. Each meeting is different and is based on what happened previously. One must know these precedents. Civil society also has to understand the positions of the countries, which can be legitimate even if they are not shared. And by knowing these positions, the public can try to work around them. In this regard, diplomatic skills as well as common sense, empathy and emotional intelligence are needed.

There may more and less accessible stakeholders in the process. The public should try to find out why this is so, if this is due to instructions from the delegate's capital or if it is a personal position. Knowing the national and international agenda of the country can also shed some light. Once this is understood, agreements are possible.

7. Questions and comments from participants

Question: As outlined before, aligning the Principle 10 regional process with the agendas of other local actors has been challenging up to now. Even if other organizations are interested in environmental matters, it is hard for us to convince them of the benefits of access rights for their work. How did civil society in Europe manage to create this broad support and momentum among other organizations?

Mr. Jendroška: Linking international processes and domestic procedures is of great relevance. In Aarhus, more or less half-way of the negotiations, many countries and civil society organizations held public hearings and meetings to discuss the negotiating position of a given country and explain to the domestic NGOs why such positions were being taken. This was a good idea because it helped NGOs in the country to get to know about the process and hold the government accountable. Another idea is to look for media coverage. This could be, for example, have the representatives of the country issue a short press release in the media summarizing the meeting, what went well and wrong, what are the positions of the governments, etc.

Mrs. Toth: It is very important to have more activities at the national level and interact not only with the NGOs or CSOs, but also with the other counterparts in the Ministries of Environment and, in your case also, Ministries of Foreign Affairs. In the Aarhus process, the Ministers of the Environment were those involved in the negotiations, but in Latin America and the Caribbean this is different for some countries. Also, in the case of the NGO Coalition (later ECO Forum), there was an e-mail network of NGOs that followed the negotiations. Reports of each negotiating session were prepared and disseminated, providing brief descriptions of the negotiations including the different governments' positions, what the NGOs proposed or replied, what the arguments were, etc. These were publicly made available so there was some sort of accountability. Short news or articles were published at the national level disclosing what position the country's government representative took in the negotiations, pointing out the different approaches or standpoints. Again, the media is a fundamental partner for this purpose. In addition, letters were sent to certain governments asking them to support certain positions and CSO representatives met with some government delegations for private discussions. These can be all part of the advocacy efforts by the public.

Mr. Bispham: Going back to what Mr. Napoli said, it is important to continue building critical mass.

Mr. Born: Increasing the critical mass is fundamental. In response to the question, more than waiting for the involvement of others, it is the activists of this process who have to reach out to the others, to vulnerable groups, and link their causes with the process. This would allow for them to know that an international instrument on the environment can safeguard their rights. It would demonstrate that access to information and access to justice can solve many conflicts.

Comment: From the conversation with the panelists, it is clear that coordination among civil society organizations is fundamental. To ensure effectiveness, members of the public should not intervene without coordinating their interventions with the other organizations. In the Principle 10 process, there are six elected representatives who should assume a leading role in this coordination.

Comment: The CSO representatives should be aware, before coming to the meeting, of the individual positions of countries.

Question: CSO representatives do their best to know the position of the countries before the meeting, but government representatives do not always have time to meet with civil society, or do meet but are not transparent regarding their position and then use new arguments or bring up new points of view at the meeting. What can civil society representatives do to overcome this? What suggestions can you provide to increase financing?

Mr. Jendroška: On this first issue, it is possible to avoid this. The negotiation process could have a session where the governments provide their formal positions and exchange views on a given topic. Then for the next session, countries are asked to come back to the issue, which means that their views would have been collected already and the governments would be requested to come back with the firm position prior to the meeting on a specific item on the agenda. The time between the first exchange of views and the second review allows for advocacy and further discussions with the governments. If negotiations start right after the positions are known, the possibility of changing their stance is lost. For the governments, the mere fact that their position would be at odds with all the other governments would be enough to change this. At home, NGOs can also put a bit of pressure with the help of the press. Governments are very sensitive and responsive to this.

Mr. Wing: There may be some governments that do not have a clear stance on an issue or that do not want to have a clear position to prevent commitments. This becomes evident with the interventions and statements. Some delegates speak vaguely and look to avoid commitments while others are willing to move the process forward seriously. And, it is true that some governments may occasionally have positions in the Principle 10 process that are not fully coherent with their national actions and legal framework. Here, the important point is to determine whether these positions are legitimate or not. If they are, one should try to understand the reasoning behind them. It is worth noting that most of the provisions included in the preliminary document enjoy broad consensus among the negotiating parties. Civil society has more leeway to hold the governments accountable. This is one of the major contributions they can make to the process: identify those actors who want to move forward and those who adopt more reactive positions.

Mr. Born: It is important to know the positions of the countries beforehand. But more important than knowing the positions of the governments is perhaps having clarity on what civil society wants. The reference for civil society are not the governments but the standards that civil society expect from them.

Mr. Bispham: In order to get a genuine understanding on the government's position, one can go through public statements and reports, which can give some clarity on the basis that past action determines future action. Of course, they are not the only source, but can help.

C. After the negotiations and follow-up

1. How do you effectively communicate the decisions and progress made in negotiations and engage stakeholders in implementation?

Answer by Nicole Leotaud, Executive Director, Caribbean Natural Resources Institute (CANARI), Trinidad and Tobago

Now that the negotiation of the global sustainable development agenda and the Sustainable Development Goals has been completed, there are three courses of action that CANARI has undertaken. First, changing how CANARI works as an organization. For example, CANARI is analyzing how its work helps to deliver on specific goals and targets and how it can report on progress on what the organization is doing to implement that agenda.

Second, we are influencing others and building awareness about the Sustainable Development Goals because that negotiation process was very far away from the people in the Caribbean; it was not covered in the media very well, people were not aware of it and sometimes not even the governments were interested. Social media was extremely useful. CANARI created Facebook posts about specific goals and targets and a Caribbean example from CANARI's work was given to illustrate how this is relevant to the Caribbean. For example, for the goal and target on food security, the work done by CANARI to support small farmers and fishermen was explained, making it very concrete and simple.

Third, CANARI is offering support to Caribbean governments on the implementation of the new agenda. What is going to be challenging for governments is using participatory and inclusive approaches to development, which is what Principle 10 is about. They will need help in engaging civil society, in doing public education and awareness, in building the capacity of civil society to partner with governments, and in designing what are the mechanisms for the participatory inclusive development approaches to take place. Principle 10 can support this. Once the Sustainable Development Goals are officially adopted by the United Nations, civil society can offer to help governments with implementation.

2. What additional follow-up activities should be carried out after an agreement is adopted?

Answer by Magdolna Toth Nagy, Senior Adviser, Regional Environmental Center, Hungary

After agreement is adopted, there would be a time for signature—which in the Aarhus Convention was six months—and then came ratification. In the case of the Aarhus Convention the agreement entered into force only in 3 years, which was a great achievement and a show of political will and commitment by the Parties.

In this phase, on one hand the task is to promote the signature and then, the ratification of the agreement, in the countries, through different actions. On the other hand, civil society needs to start organizing itself for its participation in the regular work of the agreement. After the signature, there are normally meetings and some follow-up issues were discussed such as the rules of procedure or the modalities for the compliance committee.

In order to prepare government officials and civil society for implementation, the Regional Environmental Center carried out projects to build their capacities and provided assistance. A review of the legislative framework was updated and an analysis on any legislative amendments or institutional capacities was done in project countries. The projects involved not only the Ministries of Environment but also other ministries and authorities that may have responsibilities in providing access to environmental information, for example.

An implementation strategy was also devised and action plans developed in several countries. Some of these were adopted at the governmental level or even by parliaments. They were reviewed on a regular basis and in partnership with civil society representatives. As part of the training provided to

government officials, CSOs and members of the judiciary were offered first general training on the convention, then later, more specific training on the different pillars, depending on their responsibilities. REC also cooperated with the Judicial Training Centers and the ministries of justice when offering interactive training programmes for the judiciary.

The Regional Environmental Center also offered grants to civil society to implement smaller projects at the local level carrying out different actions regarding the three pillars. Guides and other guidance documents on practical implementation were prepared in local languages.

3. How can the public be engaged in following-up interim decisions adopted after a meeting?

Answer by Rubens Born, Fundação Grupo Esquel, Brazil

Articles 8.2 and 8.3 of the preliminary document prepared by ECLAC at the request of the countries offer some guidelines to answer this question. Article 8.2 states that public participation must take place when all options and solutions are still possible and when the public is able to exercise real influence. Therefore, in order to understand and be engaged in the decisions, the public has to be involved during the whole process.

Article 8.3 establishes that the information has to be provided in a simple and clear format, through suitable means. Understanding decisions implies not only accepting them but also assessing their impact and implications.

Implementation manuals and training programmes are of great use for civil society, governments, parliaments and the judiciary. If the agreement will finally be legally binding, the effectiveness will depend to a great extent on these actions. National assessments should also be made to identify elements in national legislation that would be affected.

Linking the process to the local reality would be of utmost importance. Access rights need to be linked to the reality of indigenous peoples or other vulnerable communities. Public involvement should take place as early as possible.

4. How can the implementation of an agreement be ensured?

Answer by Sylvia Bankobeza, Lawyer, Division of Environmental Law and Conventions, United Nations Environment Programme

Environmental conventions, especially at the global level, normally include mechanisms for monitoring and ensuring implementation of the agreement. One of them is the secretariat, which can take different forms. It could be a newly established institution, or it can be assumed by an existing institution. Other mechanisms to ensure implementation are the reporting procedures and the Conference of the Parties through regular meetings as well as compliance mechanisms. Additionally, capacity-building measures can assist in implementation. Some Multilateral Environmental Agreements can have financial mechanisms to assist countries in implementation. There are many examples that can provide guidance in this regard.

5. What is the role of the civil society negotiating team after the meeting and the negotiation?

Answer by Félix Wing, Secretary General, Ministry of the Environment of Panama

They have to assess their specific performance and the results of the meeting, provide follow-up and start planning on the future actions that should be taken. The results should be shared widely.

Civil society representatives have to work closely with the co-chairs, the Presiding Officers and the secretariat. Efforts should be made to include more stakeholders to the process. The Principle 10 process is still not that well known and what is taking place in the meetings should be reported.

From a government perspective, it is important that civil society accompany the governments all along the process. Principle 10 enshrines the basic principles of democracy and participation, and for it

to be successful it needs the participation and active engagement of the public. Partnerships and alliances are key in this regard. It is also important to think what each person can do for the process.

6. Questions and comments from participants

Question: In the Aarhus and UNEP experience, the interventions made by NGOs are quite managed and structured. The Principle 10 process is intentionally supposed to be very open and inclusive, so in theory any member of the public attending any of these meetings—who has registered to attend—can make an intervention. How can a balance be struck between this openness and the need to have organized interventions from civil society?

Ms. Leotaud: CANARI's mission is to facilitate and promote participation in natural resource management in the Caribbean islands. It has been doing so for the last 30 years and this has not been obviously fully achieved. In order to increase civil society engagement in the Principle 10 process, people need to ask themselves the following question: what difference do people think having a regional agreement is going to make? In response to the original question, participation is not equal to coming to a meeting. Designing a participatory process, identifying the different groups, looking at their capacities and building them, increasing their understanding and strengthening their skills to communicate all foster participation and does not necessarily mean coming to a meeting. You can have effective participation by using different types of mechanisms to engage different types of people. We should broaden our thinking in terms of how we engage civil society in a meaningful way.

Mr. Jendroška: The benefit of having a structured participation of the representatives of the public is that they would undertake to connect the process with the civil society of all the countries they are representing and they would ask the civil society to come up with ideas. They can serve as channels of public opinion by asking them what they would like to have regulated, what is currently not properly regulated and how that could be solved. Then, these representatives can come with concrete proposals to the negotiating table on behalf of civil society in the region. This is what happened in Europe. So it was not a country-specific process but open to all civil society from the entire region, centralized by this Ecoforum, which represented civil society organizations. In the end, there was the ownership of a large group of people involved in making proposals.

Mr. Bispham: The Principle 10 process should be applauded. It is its intention to capture and to reflect the voices of civil society. At the same time, however, civil society has to be organized, focused and well prepared.

Mrs. Toth: Structured participation has many advantages, therefore in each process civil society should decide how to organize themselves. In preparing for the meetings, the elected representatives can play a major role, making consultations, gathering and synthesizing opinions and making concrete proposals to be considered at the negotiation table on behalf of the CSOs. After the negotiation meetings, they can analyze the results and prepare for the next round. In the Aarhus case, some other organizations also spoke in their own capacity on the negotiations, which was also useful when they supported the arguments backed by the negotiating team of the civil society organizations. The important part is the coordination of the viewpoints or interventions of the CSOs presented in the negotiations—before and during the meetings—so the CSO contributions would go towards the same directions and strengthen the CSO positions.

Mr. Napoli: This process is an open process and even if we do not know what the end result will be, the methodology and the working methods are an asset. It has allowed to raise the standards in Latin America and the Caribbean, to level the playing field of countries and improve the implementation of access rights. For the meeting to be successful, preparation is key, as emphasized earlier. The organizations involved in the process up to now have been of environmental nature. But the process has to do with much more than the environment and so other actors can and should get involved from the human rights field and from the private sector. One has to look beyond the meetings and see the process as a learning and growth experience.

Comment: The Principle 10 process is, in fact, well advanced in the structuring and organization of the civil society. The regional public mechanism elected representatives of the public through an open, participatory and transparent process where more than 20 candidates ran for election.

D. Open dialogue with panellists

A space for open discussion was then provided for participants to make comments and/or ask general questions to the panelists on public participation in international negotiations. Participants were invited to think about their value to the process, their expectations and any other view that they wanted to share with the audience.

1. General comments

The value of the participation of civil society in the Principle 10 process should be underscored. Such participation has been significant up to now and should be maintained. Civil society has provided specific knowledge and capacities on the rights of access to information, participation and justice in environmental matters. It has managed to engage different voices (women, youth, and indigenous peoples) and has sent valuable inputs for the negotiations.

Civil society has been extremely supportive of the Government actions on Principle 10. They have been very creative and have achieved great accomplishments with little resources. NGOs can facilitate compliance, carry out consultations and put together documentation.

The challenge that small and local organizations face to get involved in international negotiations is the lack of experience and capacities. However, all efforts are to be made to link the local and the international agendas. Networking will be key.

Public participation provides legitimacy to the process. The process is about governance and needs to include civil society. In addition, to implement the future agreement, the public will be fundamental. Public participation also increases ownership among societies.

2. General questions

How can civil society promote the active participation of the 20 countries in the discussions?

Mr. Bispham: CSOs have to continue lobbying the governments in countries. All governments have already agreed to go along this line and sometimes they have to be reminded. They have committed to a process that they now have to formalize and they have to make all efforts required to reach a satisfactory result.

How can a balance be struck between idealism and realism without falling into the common minimum denominator?

Mr. Napoli: Neither the standards nor the ambition should be lowered in the process. The process shall make progress but not to the detriment of the substantive parts.

How can the Principle 10 process be promoted in other spheres of the Government?

Mr. Napoli: With regard to the lack of internal consultations within government offices, perhaps it has to do with the fact that some countries see this process as an environmental process, which is overridden by other priorities most of the time. The environment affects many other aspects of government and this adds complexity.

How can the involvement of non-signatory countries be enhanced?

Mrs. Toth: The Bali Guidelines could also be used for the promotion of the Principle 10 instrument, in case any meetings are planned on that, as well as increased awareness-raising and dialogue with key government officials of those countries. The benefits of transparent decision-making for the communities and the public should be pinpointed. Additionally, reporting on progress of the development of the instrument at different high level LAC regional inter-governmental instances or

organizing events such as Forum of Ministers or side events, could also be explored to show the benefits of the process.

Mr. Jendroška: Experience shows that countries that participated in the negotiations appreciated the fact of taking part in shaping the convention as they were able to include their views and address their concerns. Once the instrument is adopted, signed and open for ratification, all countries would be actively encouraged and expected to join.

Mr. Napoli: More than looking at the countries that are not part of the process, one should look at those that are part of the process, what their positions are and to what extent they are committed with the process. As Mr. Jendroška said, those that are not part of the process will eventually end up joining but the process has to move forward.

V. Environmental justice and access rights for sustainable development in Latin America and the Caribbean

In the session entitled “Environmental justice and access rights for sustainable development in Latin America and the Caribbean” renowned legal experts participated in a discussion on the linkages between environmental justice and access rights in the context of sustainable development. In addition, the experts reviewed the access to justice provisions of the preliminary document of the regional agreement prepared by ECLAC at the request of the countries and expressed their technical opinions. Participants had the opportunity to exchange views in an open dialogue after the presentations.

The panelists of this session were:

- Winston Anderson, Judge of the Caribbean Court of Justice;
- Silvia Cappelli, Senior Public Prosecutor, Court of Rio Grande do Sul, Brazil; and,
- Andrea Brusco, Environmental Governance Coordinator, United Nations Environment Programme.

The session was moderated by Guillermo Acuña, Legal Advisor, Office of the Executive Secretary of ECLAC.

A. Winston Anderson, Judge of the Caribbean Court of Justice

Environmental justice is obviously not to be equated with Principle 10 of the Rio Declaration on Environment and Development. Principle 10 is concerned with rights of access: to environmental information, to participate in environmental decisions, to the courts in environmental disputes. These are access rights which, by definition, are not an end to themselves, but rather be means to the end of achieving environmental justice. So the question remains: what is environmental justice?

I think that one perspective, though an old one, is that people have a right to certain environmental goods, environmental commodities and others, mainly the State, have the obligation to preserve and protect the environment so that this right can be enjoyed.

This goes back to the 1972 Stockholm Conference and its Declaration. Principle 1 of the Stockholm Declaration states that “Man has the fundamental right to freedom, equality and adequate conditions of life, in an environment of a quality that permits a life of dignity and well-being”. Such prescription has been repeated over and over again, for example, in Principle 1 of the Rio Declaration, and in a number of constitutions, legislation and regulations. A recent example of constitutional provisions is the British Virgin Islands Constitution that establishes that “Every person has a right to an environment that is generally not harmful to his or her health or well-being and to have the environment protected, for the benefit of present and future generations, through such laws as may be enacted by the Legislature.” The kinds of laws reflect this idea of environmental justice being the same as human utility of the environment.

Even the highest global court, the International Court of Justice, has said that the environment “represents a living space, the quality of life and the very health of human beings, including generations unborn”. This was first stated in the *Nuclear Weapons Advisory Opinion* (1996) and later in the *Gabcikovo-Nagymaros case* (1997). It has also been repeated in several domestic decisions. Perhaps one of the most famous cases is the *Oposa v Factoran case* of the Supreme Court of the Philippines. Based on Philippines’ Constitution, it was argued that people have the right to a balanced and healthful ecology in accordance with the rhythm and harmony of nature. And, therefore, applicants were allowed to maintain their action to halt deforestation of the country on behalf of generations not yet born.

This idea that environmental justice is to be equated with human satisfaction of environmental goods has a very strong and rich concept in western philosophical and religious traditions. Because in that tradition, *homo sapiens* are regarded as conquerors of the environment as seen in Genesis and with Aristotle and Thomas Aquinas, who also said that the environment existed to satisfy human desires, human needs and wants. But the Industrial Revolution and what followed thereafter showed the difficulties in associating and equating environmental justice with anthropocentric utilitarianism. Since the start of the Industrial Revolution, almost 200 years ago, thousands and thousands of species of fauna and flora have been exterminated, there has been a loss of biodiversity and the world has seen the emergence of global warming and climate change.

There is another way, a better way of defining environmental justice. The alternative is to see environment as one with us, as part of us. This perspective is consistent with modern science. It is now widely agreed that the atoms which make up the gold and lead and human bodies are not different on the material level, but different only in terms of arrangement and structure of the atoms. So what we see around us which seems to be the physical and natural environment is really the modulations of atoms and energy into forms cognizable by consciousness. There are signs in the Abrahamic tradition that which recognize this. For example, King David in the Psalms reflected that “The heavens declare the glory of God. The skies display his craftsmanship.” The Jewish philosopher Spinoza said more deeply that God is not a corporeal entity that is apart from his creation but is intimately reflected in it.

This line of thinking, that there is an indivisible continuity between the environment and human beings, was also very familiar to the Romantic poets of the 18th and 19th centuries. One of the greatest of the Romantic poets was William Blake. And in his early days, in celebration of the environment, and celebration of childhood, he wrote the Songs of Innocence. Later on, when he became so disenchanted with the Industrial Revolution, and the effects of this Revolution, he wrote the Songs of Experience. He saw that human life and human potential was being suffocated by the mechanized forms of labour implicit in the Industrial Revolution. Awareness of our oneness with nature can help us to appreciate the paradox that Blake presented, which is amongst the most sublime poetry available to us: “To see a World in a Grain of Sand and Heaven in a Wild Flower, Hold the Infinity in the palm of your hand and Eternity in an hour”. “We are led to believe a Lie, when we see not Thro the Eye, which was born in a Night to perish in a Night, when the soul slept in beams of light”. Eckhart Tolle, in turn, wrote that “We depend on nature not only for our physical survival. We also need nature to show us the way home, the way out of the prison of

our own minds. We got lost in doing, thinking, remembering, anticipating —lost in a maze of complexity and a world of problems”.

B. Silvia Cappelli, Senior Public Prosecutor, Court of Rio Grande do Sul, Brazil

Some observations can be made with regard to the preliminary document of the regional agreement on access to information, participation and justice prepared by ECLAC at the request of the countries.⁴

Starting with article 1, which deals with the objective, the proposal goes beyond the Aarhus Convention and is to be applauded for this. It is important not to limit the agreement only to access rights, because these are instrumental. They are the basis for ensuring the right to live in a healthy environment.

In relation to article 2 containing the definitions, a definition of access to justice is fundamental and should be as wide as possible. Although there was no definition in the original proposal, there were some language proposals in the compilation text which limit access to justice to the Judiciary. The definition should also include extra-judicial and administrative bodies and should correspond with article 9.2 of the preliminary document.

In all countries, extra-judicial conflict resolution is encouraged, through independent bodies such as the Public Prosecutor’s Office in Brazil and the “*Termo de Ajustamento de Conduta*” (extra-judicial arrangements). This matter has gained such importance that even in the reform of the Brazilian Civil Procedural Code, which will enter into force in January 2016, courts are obliged to create negotiation and mediation bodies. The Judiciary alone cannot solve all the contentious issues that emerge and there is an increasing need of alternative dispute resolution mechanisms. Even though the right to a healthy environment is a fundamental right where no negotiation on the substance is possible, it is possible to mediate in the conditions on compliance such as the timeframes, form and place of compliance. The National Council of Public Prosecutors of Brazil has also published a negotiation and mediation manual for public prosecutors⁵. In such manual, there are three levels of access to justice: (i) access to courts; (ii) consideration and encouragement of collective actions over individual ones; and, (iii) extra-judicial solutions, with controls, possibility of appeal and without relinquishing the right to access a court.

Antonio Herman Benjamin, Justice of the National High Court of Brazil, even talks about the “right to access a just equal order.” As a result, the definition of access to justice should not be limited to courts, but also include other legitimate mechanisms such as the Public Prosecutor, the Ombudsperson, lawyers or arbitration. The proposal I would suggest is as follows: “Access to justice shall be understood as the fundamental right and guarantee to access all legitimate means —judicial, extrajudicial, national or international— for the effective protection and compliance of individual and collective rights, widely considered”.

As for the principles, those applicable to environmental law should be kept, especially the prevention, precautionary and non-regression principles. There is an additional principle which derives from the precautionary one, which is the “*in dubio pro natura*” principle. In case of doubt, judges should interpret according to this principle and there is a broad jurisprudence on this principle in Brazil.

With regard to access to information, such access should be in the broadest terms possible. The preliminary document proposes a good starting point: “without demonstrating or even mentioning a special interest explaining why the information is being requested”. This should be so, as access to environmental information has to do with a diffuse interest, so persons should not be requested to have a

⁴ LC/L.3987. Available at: http://repositorio.cepal.org/bitstream/handle/11362/37953/S1500260_en.pdf?sequence=1

⁵ The negotiation and mediation manual for public prosecutors (“*Manual de negociação e mediação para membros do Ministério Público*”) is available [online]: http://www.cnmp.gov.br/portal/images/MANUAL_DE_NEGOCIACAO_E_MEDIACAO_PARA_MEMBROS_DO_MP_ISBN_2_1.pdf.

special interest or justification. The environmental information system provided for in article 6.3 should likewise be as wide as possible. That information is, per se, of public interest and relevant to all given the common nature of the environment. In federal states, it is important to apply these obligations to all levels of government. Environmental information systems should be compatible among sub-national and local governments. The information included shall be all that is in the possession of the State, without distinction. A country cannot choose which information to include or limit it according to the national priorities given the public interest underlying the access to information.

On the exemptions to provide information, the proposal included in the preliminary document adequately states that they shall be exceptional and that any refusal shall be duly justified. Justification is fundamental because it is the only way to ensure legal control of State actions. Judges and public prosecutors must also justify their acts.

Article 6.8 which considers information on human and environmental health and safety not confidential shall be maintained despite the fact that there is a proposal to eliminate it.

In terms of the deadlines to provide the information (article 6.12), these are essential. There is a proposal to eliminate these deadlines. Ensuring rights without deadlines or sanctions is not effective. Special care should be taken to maintain these deadlines. In Brazil, for example, the delay in providing the information when requested by the Public Prosecutor's Office is a crime when investigating environmental matters.

Under the generation and dissemination of environmental information, the preliminary document establishes nondiscretionary public access to contracts, authorizations, permits, which should be maintained. This is an obligation of the State, not an option. Accepting a discretionary act means countering the principles of the agreement and ignoring the right to information as a fundamental right.

In public participation, article 8 is key for the agreement. Numeral 2 of this article establishes that the participation of the public shall be ensured when all options and solutions are still possible and when the public is able to exercise a real influence. Many conflicts can be avoided if the public is included beforehand. Once a decision has been taken, the only solution is suing the government in court, which is costly and inefficient.

Article 8.7 provides that a justification in writing is needed in cases where authorities do not consider an observation or recommendation from the public. This should be applicable to all persons and not just to those that made the observation or recommendation. The public interest is diffuse in environmental matters.

With regards to access to justice, once again, it is important to adopt a wide concept of access to justice. However, accessing justice is not limited to accessing a court or initiating a process. It is also a reasonable duration of the process and the right to an adequate result that ensures the substantive right, among others. It is not only about bringing an action. To guarantee rights, effective, adequate and timely implementation and enforcement mechanisms are needed. Access to justice implies the right to an adequate result as well, to duly justified decisions, based on the legal framework, on the Constitutions, among others.

Judicial and extra-judicial means are fundamental as well. Article 9.2 c) is of special importance to safeguard the environment. A public or private action shall be ensured in case of any decision, action or omission that could affect the environment or violate environmental laws and regulations. Without this provision, the right to a healthy environment would be null.

In article 9.3 a), it is important to have specialized bodies not only of judicial and non-judicial entities but of all other legal bodies such as public prosecutors, Ombudspersons, etc. There should be specialization in all levels of access to justice, whether it be administrative or judicial.

Antigua and Barbuda made an extremely interesting proposal in article 9.3 e). By including the word "restoration", all aspects of the reparation of environmental damage are covered. Restoration is normally the first form of reparation. The order should be restoration, reparation with compensation and, lastly, compensation for damages.

The establishment of judicial and administrative standards of review in cases pertaining to environmental damage, such as the “*in dubio pro natura*” principle are important but should not be limited to damage but also include risk.

Article 9.5 establishes that access to justice will have no costs, something which is essential to guarantee this access.

The cooperation in environmental crime matters is also extremely useful and can encourage the establishment of networks of Public Prosecutors, judges and ministries.

As already stated, article 9.10 dealing with alternative dispute resolution mechanisms like mediation and arbitration is key.

To conclude, access to justice enables a population to be informed and conscientious about their rights and about the exercise thereof. Access to justice is much more than access to the Judiciary. The agreement shall not be limited to access rights but also encompass the right to a healthy environment. Collective approaches should be favoured and priority given to prevention rather than to compensation of damages. The independence of the Judiciary, of the Public Prosecutors, the Police and other administrative bodies is essential. The establishment of networks and specialization at all levels is also important. Finally, for this agreement to be effective, it shall have implementation, monitoring and compliance measures and, above all, be of a legally binding nature.

C. Andrea Brusco, Environmental Governance Coordinator, United Nations Environment Programme

The preliminary document of the regional agreement contains important concepts that are also included in our legal systems and are part of the commitments the region has assumed in these matters. Access to justice is complex but should not be controversial due to the fact that this instrument will favour regional cooperation and dialogue as well as capacity-building. It will try to establish a framework for concepts and elements that are in the spirit and text of the legal systems of this region, in their constitutions and in international declarations and commitments.

In the first place, it is important to refer to the enforceability of rights and this is what we are talking about in access to justice. As Ms. Cappelli said, it is not only about accessing a court but accessing a whole system and it is related to the end result. Enforceability of rights is a fundamental element of environmental governance and of Rule of Law. When dealing with the environment, the legally protected right is not individual but also collective and intrinsically linked to human rights. It is a common good: the environment belongs to all not only the present generations but also the ones to come. In addition, the damage that can be caused by human activity can even be irreparable. For this reason and due to its complex nature, specific procedural tools are needed to guarantee these rights and facilitate their enforceability.

The principles of environmental law are clearly established in the laws of the countries of the region and at times in their constitutions. Principle 10 of the Rio Declaration also clearly mandates decision-makers to facilitate information, participation and access to justice. In addition to the Aarhus Convention, other instruments provide significant guidance such as the outcome document of the Rio+20 conference (“The Future We Want”), the Declaration on Justice, Governance and Law for Environmental Sustainability adopted by judges, public prosecutors, auditors and other members of the legal community, and the first UNEA resolution.

At the national level, access rights are included in constitutions, environmental laws and a growing jurisprudence. The constitutions mention the obligation of the State and the public in general to protect the environment as well as the right to enjoy a healthy environment. These obligations bind the State as a whole, the executive, legislative and judicial powers. Two paragraphs of a ruling of the Argentinian Supreme Court are especially relevant. They refer to the pollution of a river that affects three million people (the Matanzas-Riachuelo basin) and show the need to adopt international and regional approaches to environmental protection. The paragraphs read as follows: “it is not a mere

expression of good or desirable objectives whose effectiveness is contingent upon a discretionary power of the public authorities,” “it is a good that belongs to the social and trans-individual sphere and from this emerges the particular efforts that judges shall make to render effective these constitutional rights”.

Moreover, resulting from a global intergovernmental process, the Bali Guidelines are also worth mentioning. They are not compulsory or legally binding in their content as they establish guides for States in the national implementation of Principle 10. However, they reflect a common understanding and logic of countries of how to implement access rights in practice.

Guidelines 15 to 29 deal with access to justice and include important concepts that have been, in turn, reflected in ECLAC’s preliminary document. These include: broad legal standing, effective, timely, fair, open, transparent and equitable procedures, reducing obstacles and other barriers to access justice (economic or otherwise), timely and effective execution mechanisms, the provision of adequate information to the public on the procedures and making decisions public, capacity-building programmes and alternative dispute mechanisms, among others.

In 2013, UNEP and ECLAC organized a workshop in Lima that also identified challenges in the implementation of access rights in the region. At that workshop, countries and the public present agreed that there was a need to protect the environment, to change growth paradigms and models and include environmental concerns in decision-making. It is in this context that the regional instrument on Principle 10 cannot be timelier as it offers an additional tool for countries to achieve this, is based on capacity-building and cooperation and fosters regional cooperation with the participation of the public. Some of the challenges identified are as follows:

- limited environmental specialization of judicial bodies;
- limited knowledge and awareness of access rights of the population;
- costs faced by individuals for legal defence;
- costs associated to bringing legal actions;
- limited dissemination of decisions;
- discrimination of traditionally excluded or less represented groups;
- lack of coordination between decision-makers;
- limited promotion of alternative dispute mechanisms;
- limitations for legal standing;
- difficulty in prosecuting environmental crimes;
- slow appeal processes; and,
- limited capacity of individuals to stop harmful activities.

Article 9 of the preliminary document contains all the aforementioned elements and strengthens the pillar on access to justice. There may be discussion on the emphasis given to some of these concepts but the region is mature enough not have any difficulties in adopting none of the concepts included.

Lastly, it is important to recall some paragraphs of the Declaration on Justice, Governance and Law for Environmental Sustainability adopted at Rio+20: “Environmental sustainability can only be achieved if there exist effective legal regimes, coupled with effective implementation and accessible legal procedures, including on locus standi and collective access to justice, and a supporting legal and institutional framework and applicable principles from all world legal traditions. Justice, including participatory decision-making and the protection of vulnerable groups from disproportionate negative environmental impacts must be seen as an intrinsic element of environmental sustainability.”

D. Questions and comments from participants

Question: In the framework of the Principle 10 negotiation, access to justice is complicated for some governments. Civil society has made its best efforts to explain that clear and effective procedures reinforce rule of law and, in the long-term, promote social peace and prevent conflict, which is in the interest of all stakeholders. Alternative dispute resolution methods are also important. In fact, if one looks at the documents of the process, the word “conflict” does not appear because it has been avoided up to now. How can governments become more aware of the importance of these topics?

Justice Anderson: I do not consider that there is a major problem with this in the Caribbean. There is a general recognition of the need to have access to justice in environmental cases and this recognition is often prescribed in Caribbean constitutions and legislation. Also, we've signed on to various international declarations and regional and international treaties, declarations and other instruments which require access to justice in environmental disputes.

Ms. Brusco: Many countries of the region have created environmental courts, environmental offices within their justice system, environmental public prosecutors, etc. which means that there is a recognition that environmental conflicts exist. If not, these institutions would not have been created. The problem is that in many cases, procedural laws are not designed to accommodate the characteristics and complexity of environmental conflicts. What is needed is to include these characteristics in the legal framework, so that judges can be better guided in solving these conflicts. Progressiveness is also interesting as it makes explicit the need of intra-regional cooperation and recognizes that even if all countries want to make progress, there may be different capacities, conditions and circumstances. But there will be the means to reach that common standard established in the instrument, mainly through capacity-building.

Ms. Cappelli: Perhaps other terms and expressions can be used. “Claim” between a person and an authority, for example. “Controversy” which refers to differences of opinion or two opposing stances. “Conflict” would be more for a legal proceeding. The word “dispute” could also be used.

Question for Justice Anderson: Article 17.2 talks about a special approach in implementation to the least developed countries or small Caribbean developing countries. Do you consider this a positive or a negative provision? I am asking because in the European Union, whenever a new country applies for accession, the rule is that it must conform with all standards in the European Union, including environmental standards. Some margin is given sometimes to adopt new standards, laws or others, but this never applies to procedural requirements, like access to justice, public participation or access to information, because this is considered as fundamental for the rule of law.

Justice Anderson: I do believe it is a positive provision in the draft and its consistent with the way that international law has evolved on this question of the disparity in economic development between developing countries and developed countries. There is, of course, the concept of common but differentiated responsibilities which is a well-known and accepted principle of environmental law. I do agree that the emphasis is on procedural rights and again, there are many legal provisions securing rights of access to the courts in environmental matters in the region. However, the fact is that this agreement does also require certain resource outlay and resource requirements, for example, if there is the need for drafting new legislation. And the truth is that in the Caribbean there are priorities which governments point to, and those do not necessarily immediately include access rights. The preliminary document also speaks about the creation of an environmental information system and collecting information which has resource requirements. This has to be considered as Caribbean countries may need the assistance from other countries of the region in terms of expertise, capacity-building and resources. Reporting obligations and attendance at meetings are also resource related.

Question: To Silvia Cappelli: In Article 8, there is the requirement of taking due account of the comments from the public, and then, when justifying their incorporation, this affects only those that are not included. Shouldn't this obligation to justify apply to all comments, regardless of whether they were included or not?

Ms. Cappelli: All administrative and judicial decisions have to be duly justified. This is a rule of administrative law to enable judicial control. Therefore, regardless of whether the comment was or not included, there should be justification.

Question: In terms of reparation of the damage, should the criteria established by the Inter-American Court of Human Rights apply, specifically regarding satisfactory measures and measures for non-repetition?

Ms. Cappelli: The forms of reparation should be the broadest possible. Although there are many references to the reparation of harm, emphasis should be placed on prevention of risk and harm. Brazilian law has made great progress in this regard. Whereas in the 80s the term used was precautionary measures and preliminary measures, now we are speaking of "anticipation of judicial protection" and of "mandate decisions" to prevent the continuation of damage. Judges in Brazil have all these options at their disposal.

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Annexes

Annex 1

Agenda of the capacity-building workshop

8-9 am Registration.

9-9.30 am **Opening remarks.**

- Carlos de Miguel, Chief, Policies for Sustainable Development Unit, United Nations Economic Commission for Latin America and the Caribbean (ECLAC);
- Felix Wing, Secretary General of the Ministry of Environment of Panama;
- Mara Murillo, Deputy Regional Director, Regional Office for Latin America and the Caribbean, United Nations Environment Programme;
- Brooke Alfaro, Chair of the Executive Board, CIAM, Panama.

9.30-10 am **Keynote speaker: Patricia Madrigal, Vice-minister of the Environment of Costa Rica.**

10-10.30 am **Session 1: Towards a regional agreement on access to information, participation and justice in environmental matters in Latin America and the Caribbean.**

- Brief outline of the Principle 10 regional process. Constance Nalegach, Head of International Affairs, Ministry of the Environment of Chile.
- Future outlooks in the process and how the public can participate. Joana Abrego, Head of Legal Affairs, Ministry of the Environment of Panama.

Questions and answers.

10.30-10.45 am Coffee break.

10.45 am-1 pm **Session 2: Successful public participation in environmental negotiations: Conversation with panelists.**

Interactive and focused discussion with panelists with significant experience in environmental negotiations based on key questions raised by the moderator.

Speakers:

- Sylvia Bankobeza, Lawyer, Division of Environmental Law & Conventions, UNEP;
- Gordon Bispham, Caribbean Policy Development Centre, Barbados;
- Rubens Born, *Fundação Grupo Esquel*, Brazil;
- Jerzy Jendroška, Member of the Compliance Committee of the Aarhus Convention;
- Nicole Leotaud, Executive Director, Caribbean Natural Resources Institute, Trinidad and Tobago;
- Andrés Napoli, Executive Director, *Fundación Ambiente y Recursos Naturales* (Farn), Argentina;
- Magdolna Toth Nagy, Senior Adviser, Regional Environmental Center;
- Felix Wing, Secretary General of the Ministry of Environment of Panama.

Facilitators: Danielle Andrade and Andrea Sanhueza.

Questions and answers.

1-2.30 pm Break for lunch.

2.30-4 pm **Session 2 (cont.): Question and answer session with the aim of sharing experiences and practices amongst participants.**

4-4.30 pm Coffee break.

4.30-6 pm **Session 3: Environmental justice and access rights for sustainable development in Latin America and the Caribbean.**

Speakers:

- Winston Anderson, Judge, Caribbean Court of Justice;
- Silvia Cappelli, Senior Public Prosecutor, Court of Rio Grande do Sul, Brazil;
- Andrea Brusco, Environmental Governance Coordinator, UNEP.

Moderator: Guillermo Acuña, Legal Advisor, Office of the Executive Secretary, ECLAC.

6 pm Closing remarks.

Annex 2

Biography of panellists that participated in Sessions 2 and 3

Winston Anderson, Judge, Caribbean Court of Justice

Member of UNEP International Advisory Council for the Advancement of Justice, Governance and Law for Enforcement Sustainability, the Honourable Winston Anderson is a judge of the Caribbean Court of Justice. He earned a Bachelor of Laws from the University of the West Indies in 1983 and has a Doctorate in Philosophy from Cambridge University in London, majoring in International and Environmental Law. In 1988, he completed a course of training at the Inns of Court School of Law in London and was called to the Bar of England and Wales, as a Barrister of the Honorable Society of Lincoln's Inn. Justice Anderson was appointed general counsel of the Caribbean Community (CARICOM) Secretariat on secondment from the University of West Indies for 2003-2006. In 2006 he was appointed professor in the Faculty of Law, University of West Indies and was called to the Bar of Jamaica in February 2007. Following his return to the Faculty of Law in 2006, he was appointed executive director of the Caribbean Law Institute Center (CLIC). Justice Anderson was elevated to the Bench of the Caribbean Court of Justice at King's House, Kingston, Jamaica, on June 15, 2010. He was sworn in by His Excellency the Governor General of Jamaica, Sir Patrick Allen.

Sylvia Bankobeza, Lawyer, Division of Environmental Law & Conventions, UNEP

A seasoned lawyer, Ms. Bankobeza has been working with UNEP from October 1999, developing and implementing both National Environmental Law and International Environmental Law Programmes including conducting and delivering training in international environmental diplomacy and negotiations. Other areas of work include providing technical assistance and advisory services to Governments to develop and strengthen environmental laws and institutions, to expand the knowledge base in the field of environmental law by developing environmental law guidance materials both in hard copy and online information. Before joining UNEP, Sylvia worked with the Ministry of Foreign Affairs of Tanzania and served as a UN consultant for 8 years.

Gordon Bispham, Caribbean Policy Development Centre, Barbados

Mr. Bispham is a sustainable development expert having worked on several issues of critical importance to regional sustainable development over the past 27 years. He has worked on issues of participation and environmental justice since 1994 largely within the context of the United Nations Commission for Sustainable Development, and the ACP-EU Development Cooperation Agreements. He worked with the Government of Barbados in the Ministry of Agriculture in the mid-80s. He also served as Chairman of the Urban Development Commission of Barbados from 2008 to 2011. He has worked in different capacities within the private sector with special focus in the areas of general, retail, and corporate management. Mr. Bispham was a national delegate and CSO participant at the recently concluded Third International meeting on SIDS in Samoa in 2014. Mr. Bispham is currently a Member of the Technical Advisory Committee of the Regional Coordinating Mechanism for Caribbean Member States. Mr. Bispham has chaired several bodies and processes at the national, regional and international levels with a mandate for environment and development, including the Barbados Association of NGOs, the Caribbean (NGO) Policy Development Centre, and the Inter-American Development Bank Civil Society Advisory Group. He is currently a member of the Caribbean Consultative Working Group of CSOs. Mr. Bispham was a national delegate and the Chairman for the Small Islands Developing States Global Conference NGO Forum in 1994 and Chairman of the NGO forum of the World Summit on Sustainable Development in Johannesburg, 2002. He was a Coordinating Committee Member for the Millennium Development Summit in 2000. He was the International Coordinator for the Mauritius SIDS International Meeting UN parallel event in 2005, and has coordinated many other national, regional and international meetings.

Rubens Born, *Fundação Grupo Esquel*, Brazil

Mr. Born has been involved with international negotiations for the past 25 years, always as representative of civil society organizations and alliances. He acted as coordinator of the Brazilian NGO delegations to UN Conferences and their preparatory processes, such as Rio-92, WSSD, Rio+20, UN CSD. He is also involved with the biodiversity and climate change conventions, participating in multilateral negotiations, their national implementation processes and related civil society networks. By training, he is a civil engineer, with graduate studies in environmental engineering, and he later took a Master of Science degree in Public and Environmental Health. His Ph.D. thesis (1998) is in the field of political/social science, focusing on civil society participation in the Rio 92 multilateral agreements (Agenda 21, UNFCCC, UN CBD). In 2013 he obtained a degree in law and he is currently finishing a graduate course on Constitutional Rights. In 1991 he attended a special course on “Negotiations on environment and development conflicts,” held in Salzburg, by the Salzburg Global Seminar and Harvard Law School.

Andrea Brusco, Environmental Governance Coordinator, United Nations Environment Programme

Ms. Brusco is Legal Officer for UNEP’s Regional Office for Latin America and the Caribbean, coordinating the Environmental Law Programme, under the Division of Environmental Law and Conventions-DELIC. She has been Legal Officer at UNEP since 2007 and Regional Environmental Governance Coordinator of UNEP’s Regional Office since 2007. She is a lawyer and international relations specialist. She was previously Director of Environmental Promotion of the Secretary of Environment and Sustainable Development of Argentina and professor of Private International Law.

Silvia Cappelli, Senior Public Prosecutor of the State Court of Rio Grande do Sul, Brazil

Ms. Cappelli is Senior Public Prosecutor of the Brazilian State of Rio Grande do Sul and Coordinator of the Latin American Network of Public Prosecutors for the Environment, Chair of the Brazilian Committee of the IUCN and professor of environmental law.

Jerzy Jendrośka, Member of the Aarhus Compliance Committee

Mr. Jerzy Jendrośka, PhD is Managing Partner at Jendrośka Jerzmański Bar & Partners Environmental Lawyers. He is also the President of the Environmental Law Center, independent environmental law and policy think tank in Wrocław, Poland, and Adjunct Professor and the Director of European Environmental Law Post-Graduate Studies at Opole University. He also teaches at Wrocław University and at the European Law Academy in Trier, Germany.

He has held a number of official positions in Poland, including as a member of the National EIA Commission (1994-2004), a permanent legal expert of the Parliamentary Environment Commission (since 1996), as a Vice-chair of the governmental GMO Commission (2002-2006) and as a Member of the Committee “Man and the Environment” of Polish Academy of Sciences (2003-2007). He has also served as the advisor to the Environment Minister on European Integration (2000-2001) and to the Polish Presidency in EU (2011). In July 2014 he was nominated to the State Environmental Protection Council and elected to the Presidium of the Council.

Since 1995 Mr. Jendrośka has represented the Government of Poland in various European Union and international processes, including serving as a Vice-chair of the UNECE Aarhus Convention negotiations (1996-1998) and of the UNECE SEA Protocol negotiations (2000-2002) as well as a member (2000-2006) and the Chair (2002-2003) of the Aarhus Convention Bureau. Currently he serves as an arbitrator at the Permanent Court of Arbitration in the Hague (since 2002), a member of the Compliance Committee of the Aarhus Convention (since 2006) and a member of the Implementation Committee of the UNECE Espoo Convention (since 2004). In 2014 he was nominated by the European Commission to the EU Expert Group on Access to Environmental Justice.

Mr. Jendrośka was the principal drafter of the EIA/SEA, GMO and Aarhus Convention related legislation in Poland, and has been involved in legislative reforms and drafting environmental legislation in a number of countries in South-Eastern and Eastern Europe, Caucasus and Central Asia. Since 2014

he advises the Secretariat of the United Nations Economic Commission for Latin America and the Caribbean on the regional instrument on access to information, participation and justice in environmental matters. He is the author/co-author of 30 books and about 200 articles (in Polish, English, Russian and German) dealing with environmental law in both domestic and comparative perspectives (in particular issues connected with harmonization with EU law).

Nicole Leotaud, Executive Director, Caribbean Natural Resources Institute, Trinidad and Tobago

Nicole Leotaud is Executive Director of the Caribbean Natural Resources Institute (CANARI), a regional technical non-profit institute working across the Caribbean islands to promote and facilitate stakeholder participation in natural resource management. CANARI advocates for effective engagement of all stakeholders in international, regional and national policy processes, with a particular emphasis on engagement of civil society and giving voice to rural communities and marginalized resource users. Ms. Leotaud has recently been leading CANARI's involvement in the development of the post-2015 sustainable development agenda and the global Sustainable Development Goals (SDGs) as well as the SAMOA Pathway for Small Island Developing States (SIDS). Ms. Leotaud represented CANARI at national, regional, inter-regional and international meetings for the development of the SAMOA Pathway. Ms. Leotaud facilitated civil society and multi-stakeholder meetings to develop recommendations and positions to feed into the post-2015 process and provided technical support to Caribbean Community (CARICOM) negotiators. CANARI is also a member of the Independent Research Forum (IRF), a collaboration of ten research institutes from across the world providing an independent source of critical thinking, integrated analysis and awareness-raising in this process. As part of IRF's work, Ms. Leotaud facilitated informal retreats with member states active in the Open Working Group tasked with drafting the SDGs and provided input to technical briefs prepared to support negotiations. Nicole has written and co-authored policy briefs, case studies, blogs and social media posts on these global policy processes. (October 2015)

Andrés Napoli, Executive Director, *Fundación Ambiente y Recursos Naturales* (FARN)

Mr. Napoli is an Argentinean lawyer with a degree from the Faculty of Law and Social Sciences of the University of Buenos Aires and a Master of Laws in Environmental Law, from the University of the Basque Country, Spain. He is Executive Director of *Fundación Ambiente y Recursos Naturales* (FARN). Mr. Napoli represents FARN in the negotiation process on the regional agreement on the implementation of Principle 10, having been elected as an alternate representative of the public in the Negotiating Committee. As part of FARN, he belongs to several CSO networks on climate change, among which the Latin American Climate Platform, which aims to generate responses to and for Latin America on the global challenge of climate change, and the Climate Action Network America Latina (CANLA). Mr. Napoli is a University professor and chair of environmental law in the Masters Degree programme on Energy of the *Centro Estudios de la Actividad Regulatoria Energética* (CEARE) of the Faculty of Law of the UBA.

Magdolna Tóthné Nagy, Senior Adviser for the Regional Environmental Center for Central and Eastern Europe (REC)

Magdolna Tóthné Nagy holds an M.Sc. and a doctoral degree from the Corvinus University of Economic Sciences, Budapest in international studies and international economic relations, and is an internationally recognized expert on public participation, stakeholder involvement, civil society and good governance with 25 years of professional experience. She worked for the REC between September 1990 and July 2012 as REC's key expert in the mentioned field, and was head of the Public Participation Programme and of the Participatory Governance Topic Area between 1999 and 2012. Since her retirement in July 2012, she continues her engagement as expert and adviser in different projects, mainly with the REC. As REC representative, she was personally involved in the negotiations of the Aarhus Convention (starting from putting together the so called zero draft), the Protocol on Pollutant Release and Transfer Registers (PRTRs), the Protocol on Strategic Environmental Assessment (SEA), and the Protocol on Water and Health in the UNECE region as well as in multi-country projects

supporting the negotiations, implementation and ratification of the Aarhus Convention, the mentioned instruments, since the mid-1990s, at regional and national levels in Europe, in EU Member States, South and Eastern Europe and the EECCA region. These projects have included the preparation of assessments, strategies and action plans for practical implementation of the international agreements and related EU legislation, design and implementation of capacity building programmes, and trainings for public administration, the judiciary, civil society organizations and businesses in the mentioned fields.

Felix Wing, Secretary-General, Ministry of the Environment, Panama

Mr. Wing has been Secretary-General of the Ministry of Environment of Panama since July 2014. He was previously Managing Partner of the law firm of public interest *Derechos Humanos, Ambiente y Comunidades* (DHAyC) and Executive Director of the *Centro de Incidencia Ambiental* (CIAM). He was also Assistant Magistrate of the Supreme Court of Justice and Vice Dean of the Faculty of Law and Political Science of the Universidad Latina de Panama, among others.



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