



Success at Rio+20?

The case for regional conventions on environmental access rights

Good governance is necessary for sustainable environmental outcomes

Community meeting on diamond deposits in the Chiadzwa communal area Zimbabwe (Shamiso Mtisi)

The United Nations Earth Summit is returning to Rio de Janeiro in 2012, with *sustainable development governance* and *green economy* as the main themes. A report by the UN Secretary General¹ to the Preparatory Committee for the UN Conference on Sustainable Development in March 2011 raises key questions about the sustainable development agenda, progress to date and way forward to ensure outcomes at Rio 2012.

The report draws attention to the need for a continued emphasis “on transparency in information sharing and decision making... and providing better access to information for the poor —e.g. on the environment, on the use of revenues allocated for local economic development— as a valuable means of empowerment”. Submissions made by governments, major groups and intergovernmental organizations suggest that good governance, access to information and public participation are central to demonstrating political commitment for sustainable development.

Rio 2012 offers an exciting opportunity to achieve a significant, long lasting outcome by supporting the development of enforceable access rights for citizens throughout the world. This outcome could be achieved if parties are open to a process to support the development of regional conventions that establish and strengthen access rights.

Why Access Rights?

Principle 10 (P10) of the Rio Declaration, signed at the first Earth Summit in 1992, is an acknowledgement of the critical role citizens play in achieving sustainable development and “a key milestone on the journey to global recognition of citizens’ environmental rights”.² While the Rio

Declaration is considered a soft law agreement, P10 reflects the broad consensus of governments that access rights (the rights to access information, participate in decision making and access justice) are essential to addressing environmental issues fairly and effectively:

*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.***

What are Access Rights?

- **Access to Information:** the right to request and receive environmental information from government
- **Public Participation:** the right to be heard in policy making and planning
- **Access to Justice:** the right to seek judicial remedy and redress where there is environmental harm

Creating enforceable access rights is not unprecedented. Governments in Europe supported the development of the Aarhus Convention.³ This Convention, adopted in 1998 under the auspices of the United Nations Economic Commission for Europe (UNECE) entered into force in 2001 and has 44 European and Central Asian Parties.⁴

The UNECE Secretariat's submission to the Secretary General questionnaire states that:⁵

The Aarhus Convention has emerged as a foremost effective instrument linking good governance, environmental protection, and human rights and seeking to promote the key role of the public in sustainable development. Non-governmental organizations and the general public are aware of their rights under the Aarhus Convention and assert them to engage at the national level in addressing environmental and sustainable development issues and to advance both environmental protection and good governance, thus contributing to sustainable development.

No such legally binding convention exists for any other region. It is time to consider developing an equivalent framework for access rights around the world.

Why Regional Conventions on Access Rights?

Over twenty years after the pronouncement of P10, there are several remarkable developments in some regions in making access rights a reality but in others progress has been uneven and stifled. This is despite research demonstrating that access rights improve decisions and minimize poor environmental outcomes.⁶

The UN Environment Programme (UNEP) made some progress in 2010 with the adoption of voluntary P10 Guidelines at the UNEP Governing Council session in Bali.⁷ But this development does not go far enough by itself. Country by country implementation of voluntary guidelines coupled with resource and budgetary constraints of both governments and UNEP limit the potential impact of this option.

Another option to create enforceable access rights across the globe is accession to the Aarhus Convention by states outside the UNECE region. Article 19, paragraph 3, of the Convention provides that non-UNECE States may only accede 'upon approval by the Meeting of the Parties'. No State from outside the UNECE region has acceded to the Convention. While Aarhus is the gold standard for provision of access rights to citizens, there are political and practical obstacles to accession including the procedure for accession itself and the reticence many governments have expressed to a treaty viewed as "European centric".

Development of a global convention on access rights may encounter numerous difficulties in terms of what this would mean to Parties to the Aarhus Convention, and the likelihood of this approach leading to the adoption of minimal standards for access (as seen in the development of the voluntary guidelines on P10).

Experts outlined a number of arguments supporting a regional approach to the creation of access rights including:⁸

- Full involvement of all countries of the region, at governmental and non-governmental levels, in developing and shaping the text of the regional instrument from the start. This would provide the opportunity to take account of regional specificities and create a sense of regional ownership.
- Countries within a region often share common political, cultural and linguistic ties, which could simplify the negotiations and make it easier to reach consensus.
- The potential to accelerate progress in the establishment and creation of strong and effective access rights.
- Strengthening existing regional institutions and processes to reduce resource constraints.

The Way Forward?

In order to revive political commitment for sustainable development, the UN Secretary General's report recognizes the need for a transparent and accountable framework to decision making at all levels. Governments should support a formal declaration promising to set in motion regional convention negotiations. This would be time bound, overseen by appropriate regional bodies, and should aspire to or exceed the standards of the P10 Guidelines and the Aarhus Convention.

World Resources Institute is an environmental think tank that goes beyond research to find practical ways to protect the earth and improve people's lives (www.wri.org).

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



Pão de Açúcar / Sugarloaf Mountain in Rio de Janeiro, Brazil (Rodrigo Soldon).

Governments should enact regional conventions to extend access rights

Sources

1. UNGA Report: <http://www.unccd2012.org/files/OD/ACONF216PC2E.pdf>.
2. Options for strengthening the international legal framework protecting procedural environmental rights, including a global convention on access rights, Jeremy Wates (2010).
3. The 1998 Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters was adopted in Aarhus, Denmark, on 25 June 1998 within the framework of the Fourth Ministerial 'Environment for Europe' Conference.
4. Further information on the Aarhus Convention: <http://www.unece.org/env/pp/welcome.html>.
5. UNECE questionnaire response: <http://www.unccd2012.org/files/responses-un-system/Questionnaire-Email-submission-Organizations-UN-ECE-with-Attachment.pdf>
6. *Voice and Choice: Opening the Door to Environmental Democracy*, Foti, et al., (WRI 2008).
7. UNEP Governing Council decision GCSS.XI/11: Environmental law (part A), annexed to the proceedings of the special session: http://www.unep.org/gc/GCSS-XI/proceeding_docs.asp.
8. Options for strengthening the international legal framework protecting procedural environmental rights, including a global convention on access rights, Jeremy Wates (2010).