



United Nations Environment Programme

Experts Group on Access to Environmental Justice in the Caribbean SIDS Barbados, 10-11 December 2007

Conclusions

The rights of access to information, public participation and environmental justice are recognized by international law, primarily Principle 10 of Rio Declaration, as well as in national legislations. An assessment of the status of Environmental Justice in Caribbean SIDS indicate that a number of challenges exists, which limits the access to environmental justice. These challenges include, *inter alia* institutional weaknesses, the need to strengthen the rule of law, lack of public participation even when mechanism exist for facilitating access, lack of information on the scope and purpose of the rights contain of various legislations and economic interests as an overriding factor to environmental protection. It was also recognized that poverty in Caribbean SIDS is, in itself, a constraining factor to accessing environmental justice. Even where legislation exists, enforcement of and compliance with environmental law still remain a challenge to most Caribbean SIDS. In this regard, the strengthening of enforcement and compliance mechanisms in Caribbean SIDS is identified as a priority issue which requires immediate action in many areas.¹

Against this background a number of specific recommendations were made. These are summarized as follows:

1. Public information and participation is a fundamental plank for the dispensation of access to environmental justice. It therefore must be an integral part of any strategy for increasing access to environmental justice. In this context, there is need to sensitize the general public on their environmental rights, remedies, etc. as a means of facilitating access to justice in Caribbean SIDS. There is also the need to identify, develop, and make the necessary tools available to the general public to enable them to utilize their rights to access to environmental justice. A number of strategies may be adopted including the strengthening of existing environmental legislation, consideration of enacting Environmental Justice Act.

¹ Environmental Justice includes the effective judicial and administrative remedies and procedures available to a personal (natural or legal) that is aggrieved or likely to be aggrieved by environmental harm. The term includes not only the procedural right of appearing before and appropriate body but also the substantive right of redress for harm done.

2. There is a general lack of awareness of environmental issues among the members of the public which is a contributory factor to the lack of public participation in the decision-making processes. The existing legislation in many Caribbean SIDS fails to adequately provide for the dissemination of information to the public and also fails to adequately provide for public consultation in decision making. Where this is the situation, legislation needs to be amended to reflect a broader approach to public participation in decision making in environmental and development planning matters.
3. The poor become vulnerable to influential groups with special interests. These influential groups play a dominant role in non-compliance with environmental requirements.
4. Policies for poverty alleviation should be strengthened and environmental considerations should be fully integrated into them.
5. Matter of significant public interest should be the basis of establishing standing on environmental issues as a means of gaining access to Environmental justice. As long as standing remains restrictive, it will be a major obstacle to access to environmental justice in Caribbean SIDS. It is further recommended the future legislation specifically address the right of standing for members of civil society to intervene in any matter of public interest regarding the protection of the environment, Court awarded costs and the requirement for a personal applicant for injunctive relief to give an undertaking for damages, may be deterrents to instituting environmental actions. There should be a form of cost protection for members of civil society who institute environmental matters where the court is satisfied that the matter is of significant public interest.
6. Taking into consideration that Environmental Courts already exist in some Caribbean SIDS, notably Trinidad and Tobago and the Dominican Republic, consensus emerged on the need for the establishment of specialized and independent courts or specialized environmental divisions of the High Court judicial system. In the establishment of such mechanisms, emphasis should be placed on, *inter alia*, the training of judicial and legal personnel, the adoption of a broad approach to standing and effective compliance and enforcement mechanisms.
7. The Revised Treaty of Chaguaramas provides a platform for addressing environmental concerns and for the pursuit of a balance between development and environmental considerations. Therefore, there is a need to popularize the role of the Caribbean Court of Justice and its potential
8. The Jurisdiction of Environmental Courts in Caribbean SIDS, where they exist, should be extended to include, *inter alia*, the built environment, indigenous peoples rights, development planning issues and land tenure.
9. A Multi-pronged approach is needed to increase awareness and protection of the rights of indigenous peoples in Caribbean SIDS, including at the national, regional and international levels. There is also the need to strengthen the legislative framework for the protection of indigenous peoples rights as well as to empower them to exercise these rights. Access to genetic resources and fair and equitable benefit sharing, as well as protection of relevant traditional knowledge are critical issues in this context in particular taking into account ongoing regional and multilateral instruments and processes.

10. The environment has significant ecological and economic value and provides environmental goods and services which are not often recognized and quantified. It is important that this value be incorporated in any development activity or negotiation. Decision makers should ensure that the necessary measures are put in place to give effect to this value.
11. Regional dialogues, processes and regimes should be established for facilitating access to environmental justice. This may include the development of a regional instrument to promote access to information, public participation and access to justice in environmental matters in Caribbean SIDS. To facilitate this we call on UNEP to keep the Expert Working Group on Access to Environmental Justice as a core mechanism for pursuing this objective and to ensure synergies between other programmes and activities in Caribbean SIDS. Consultations among the group's members will be held to agree the agenda, venue and time of the next Group meeting during the first quarter of 2008.

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