The Rio Declaration on Environment and Development

A Commentary

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14. Principle 10

Public Participation

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Principle 10

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

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I) Origins and Rationale of the Principle

1. Origins

Despite the influence of Principle 10 of the Rio Declaration on the development of international and national laws on public participation, this development did not originate in one event or document. Public participation in environmental matters—usually understood as including access to information, participation in decision-making and access to justice—has been debated and legislated in various domestic contexts, in some parts of the world, at least since the early 1970s.\(^1\) To some extent, the international debate on participatory rights in environmental matters also stems from international human rights law, predating UNCED, in particular with respect to access to justice.

Public participation was not highlighted in the 1972 **Stockholm Declaration on the Human Environment**, but it was addressed by the **Stockholm Action Plan for the Human Environment**:

> It is recommended that Governments and the Secretary-General provide equal opportunities for everybody, both by training and by ensuring access to relevant means of information, to influence their own environment by themselves. (Recommendation 39(a))\(^2\)

The 1972 recommendation pertains to access to information and opportunities for everybody to influence their own environment; two of the elements in the international debate and legal development on public participation. Ten years later, through the 1982 **World Charter for Nature**, the UN General Assembly was more straightforward in prescribing opportunities for participation. It also highlighted the third element in the international debate and legal development on public participation in environmental matters, access to justice:

> All persons, in accordance with their national legislation, shall have the opportunity to participate, individually or with others, in the formulation of decisions of direct concern to their environment, and shall have access to means of redress when their environment has suffered damage or degradation. (Principle 23)\(^3\)

The 1972 and 1982 UN documents had limited, if any, immediate impact on international law and policy on public policy. Still, in parallel to developments in national laws and EU law, they were supportive to the increasing international debate on environmental

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and participatory rights, and thus helped paving the way for Principle 10 of the Rio Declaration. So did some regional conventions and OECD decisions on equal access and non-discrimination in transboundary environmental contexts, adopted in the 1970s and 1980s.4

So, the issues covered by Principle 10 were not entirely novel. Yet, it had a huge impact on international law and policy. A likely reason is the timing—this was 1992—combined with the major attention given to UNCED in general. UNCED took place and the Rio Declaration was adopted at a time of huge political changes in Europe and elsewhere, only shortly after the fall of the Berlin Wall and the Cold War. These changes influenced, if not transformed, the perception of what are international and national legal issues. Thus, a window was opened for new issues of civic society, such as democratization, environmental human rights and globalisation, to transcend state borders and expand into international discourse, law, and policy-making in a way that had previously not been possible.

Even though most environmental treaties adopted prior to UNCED contain provisions on information exchange, they essentially focus on inter-state communications. The lack of provisions on participation in decision-making, access to information held by public authorities, and access to review procedures reflects the then dominant perception that these issues were part of domestic law only.

2. Rationale

In most countries, laws and policies for ensuring the protection of human health and the environment rely heavily on governments and public administrations. Despite this expectation—indeed duty—for the state and public administration to ensure the protection of human health and the environment, such protection not only depends on the public administration; it is also shaped by the rights, responsibilities and powers of members of the public, as well as the corporate sector, in the performance, control and decision-making related to environmental activities.

The statement in Agenda 21, also adopted at UNCED, that ‘[o]ne of the fundamental prerequisites for the achievement of sustainable development is broad public participation in decision-making’, is too abstract to explain why public participation in environmental matters was—and should be—supported in international law and policy. In other writings,5 I have argued that the main rationales and justifications of law for public participation are found in ‘straightforward environmental arguments’, the adaptation and furtherance of human rights law, and the enhancement of the legitimacy of decision-making.

The protection of health and the environment may benefit from public participation through more effective enforcement and application of existing environmental laws. Thus, members of the public can challenge decision-making and also bring up environmental

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issues, interests or aspects that would otherwise risk being ignored. Moreover, public participation helps in shaping which issues are seen or identified as environmental or health issues in the first place, and it affects the perception of what is a problem.

As to human rights arguments, participatory rights in environmental matters adapt existing notions and norms to new circumstances and contexts. The right to participate in environmental decision-making furthers and specifies the already established human right to political participation. The right to judicial and administrative proceeding, including redress and remedy, in environmental matters draws on the right to a fair trial, and expands it, for example, by pertaining to non-governmental organizations.

Finally, public participation in decision-making serves to legitimize environmental decisions, which engage a mix of private and public interests. While the notion of public participation in environmental decision-making presupposes a responsibility on the government and the public administration to take an active role in protecting human health and the environment, it also reveals, if not an actual distrust in government, cognizance that the public administration cannot effectively or legitimately carry out these functions without due transparency and control, and the participation of members of the public in decision-making procedures.

Different reasons of trust in public authorities, legitimacy, justice, and effectiveness in environmental decision-making have motivated the promotion of public participation in environmental matters. The three main elements reflected in Principle 10 are also supportive for environmental democracy in general. Although public participation remains particularly relevant in domestic contexts, given the increased transboundary and international dimensions of environmental effects as well as of environmental discourse and decision-making, the same rationales and justifications explain the development of international law on access to information, public participation, and access to justice in environmental matters.

II) The Principle as Enshrined in the Rio Declaration

1. Preparatory work and context

Public participation was frequently addressed in the preparation of UNCED and the adoption of the Rio Declaration. According to the World Commission on Environment and Development (‘WCED’), which was influential for the conference, sustainable development requires ‘a political system that secures effective citizen participation in decision making’. Despite its emphasis on effective participation in relation to equity and common interests, public participation was still not a major theme in the WCED report. Nor was it much addressed by the international legal experts group of the WCED (‘WCED Legal Experts’), mandated to reinforce existing principles and to formulate new principles and rules of law which reflect and support the mainly anticipatory and preventive strategies which the Commission is committed to developing. The WCED Legal Experts

7 WCED, Our Common Future (Oxford University Press 1987), 65.
8 WCED, Our Common Future, 47.
9 Expert Group on Environmental law of the WCED, Environmental Protection and Sustainable Development: Legal Principles and Recommendations (Graham & Trotman 1987), 1.
emphasized equal access, equal treatment, and non-discrimination,\textsuperscript{10} but they were surprisingly modest in proposing anything close to international minimum standard for public participation, including access to information and access to justice.\textsuperscript{11}

More ambitious on public participation than the WCED and its Legal Experts were the regional ministerial declarations for, respectively, the UNECE region (including at the time Europe, with Soviet Union, USA, and Canada)\textsuperscript{12} and Asia and the Pacific,\textsuperscript{13} adopted in the run-up to the Rio Conference. While significantly different from each other, both declarations thus affirmed access to information and public participation as a right of individuals and NGOs.

In the run-up for UNCED, several proposals for a text on public participation, with different ambitions, were also put forth in Working Group III of the UNCED Preparatory Committee (eg by the G77 and China, USA, Japan, Australia, the EU, and the Nordic countries), not least during its fourth and final meeting in spring 1992.\textsuperscript{14} The final version was presented as part of the ‘Draft Proposal by the Chairman on Principles on General Rights and Obligations’, forwarded to the Rio Conference, and finally adopted as the Rio Declaration on Environment and Development.\textsuperscript{15}

2. Scope and dimensions

2.1. Legal issues

Principle 10 neatly comprises the three closely-related issues of access to information, public participation in decision-making processes, and access to justice, which are all crucial components for effective public participation in environmental contexts. While access to information is a prerequisite for meaningful participation, access to justice is a means to having decisions and decision-making processes reviewed. Although Principle 10 is carefully drafted so as not to include the term ‘right’, it is reasonably impossible for a state to properly comply with Principle 10 without granting, in some sense, rights to access to information, rights for citizens to participate in decision-making, and rights to access administrative and judicial proceedings, including redress and remedy. In leaving out any reference to civil society organizations, of course Principle 10 does not preclude states from

\textsuperscript{10} Expert Group on Environmental law of the WCED, \textit{Environmental Protection and Sustainable Development}, 119–26 (art 20).

\textsuperscript{11} Expert Group on Environmental law of the WCED, \textit{Environmental Protection and Sustainable Development}, 63–5 (art 6).

\textsuperscript{12} Bergen Ministerial Declaration on Sustainable Development in the ECE Region. Adopted in Bergen, Norway, 16 May 1990. UN Doc A/CONF.151/PC/10, Annex I, para 16.


also granting informational, participatory, and judicial rights and opportunities to such organizations or to other groups of people (cf Principle 22).

Being addressed to states, Principle 10 limits the duty of providing information to public authorities, without granting opportunities for individuals to make direct requests for information to the enterprises engaged in activities with an environmental impact. A crucial issue therefore is whether ‘public authorities’ include also private actors when performing public functions or operating under a public responsibility. If not, outsourcing of various services and functions may severely limit the scope and usage of access to environmental information and participation in decision-making.\(^{16}\) Moreover, in fulfilling the obligation of actively facilitating and encouraging public awareness, states will have to continuously request and gather relevant information, through their public authorities, for example from enterprises engaged with hazardous chemicals and other activities with an impact on human health or the environment. This information should then be made available for appropriate access.

Principle 10 is not limited to certain decision-making relating to the environment. Rather, it pertains to all forms of decision-making with a bearing on the environment, for instance decisions on specific activities, projects, spatial planning, nature conservation and biodiversity, marketing of chemicals and genetically modified products, waste treatment, fishery, emissions trading and infrastructure.

Despite the new thinking in Principle 10, the reference to ‘all concerned citizens’ instead of all concerned persons appears as narrow and outdated by suggesting that environmental contexts remain domestic and only citizens within a given country may be considered concerned. Given the attention to non-discrimination in various legal documents as well as the increasing awareness of the transboundary dimension of environmental contexts prior to UNCED,\(^{17}\) it is surprising that neither Principle 10 nor Principle 17 (on Environmental Impact Assessment) or any other principle of the Rio Declaration include any express reference to non-discrimination or transboundary public participation. Indeed, for some environmental issues ‘appropriate’ public participation would require international, supranational, or transnational procedures for multilevel governance rather than or in addition to national procedures. Despite this shortcoming, Principle 10 does not preclude the promotion of Principle 10 in international fora or a more expansive, transboundary and adequate approach to defining the scope of persons with opportunities to participate in decision-making.\(^{18}\)

### 2.2. Legal nature

The impact of Principle 10 on international environmental treaties and the increasing attention given to public participation at the time of UNCED is apparent when comparing treaties adopted prior to and after UNCED. On the one hand, essentially none of the environmental treaties of global reach adopted in the 1970s and 1980s, on matters such


\(^{17}\) See eg OECD Recommendation on the Implementation of a Regime of Equal Right of Access and Non-discrimination in Relation to Transfrontier Pollution, C(77) 28(Final), 16 ILM (1977) 977. On non-discrimination in international environmental law, see Ebbesson, ‘The Notion of Public Participation in International Environmental Law’.

as marine pollution, trade in endangered species, trade in wastes, and ozone layer depletion, obliged the parties to promote, let alone ensure, public access to information or participation in decision-making. On the other hand, most global environmental agreements adopted since UNCED endorse public access to information and public participation by some means.

While there is thus significant support for the Principle 10 issues in international law today, to a considerable degree the legal developments have taken place regionally, and these developments are geographically remarkably asymmetric. Strongest support for Principle 10 in international law is found in Europe and in the Caucasus and Central Asian regions (which were previously parts of the Soviet Union). There is also support for Principle 10 in regional international law of the Americas and Africa. In these regions, provisions on access to information, public participation and access to justice are set out in environmental agreements, and, more importantly, the regional human rights regimes have given significant inputs for the development of participatory and procedural rights in environmental matters. International law on Principle 10 issues is weakest in Asia and the Pacific, where there has hardly been any development in international law at all beyond the global regimes.

The support for Principle 10 in environmental treaties differs also in the degree of details and ambitions, and in the scope of procedural issues. Some agreements essentially aim at improving public awareness about environmental problems and public engagement and participation in these fields, whereas others go further and actually oblige the parties to ensure public access to information and public participation in matters covered by the agreements. Several agreements refer both to access to information and public participation, thus confirming the close link between these aspects. Other agreements refer only to public access to information, and yet others to all three elements, thus including access to justice.

As explained below, some environmental and human rights regimes provide rights for members of the public to access to information, participation in decision-making and access to review procedures. Other international regimes, while referring to access to information and public participation, give a greater leeway for the parties in deciding not only how, but also when or even if public access to information or public participation should actually be granted to members of the public. Yet other treaties merely require the promotion or facilitation of public awareness and participation in general terms. However, even treaties which do not provide for a right to access or participation are nevertheless supportive rather than neutral to the notions of Principle 10.

Among the elements of Principle 10, public access to information is most widely provided for in environmental agreements. The information to be made publicly available and the opportunities for public participation to be provided depend on the scope and purpose of the agreement itself. In some contexts, the information and scope for participation concern a particular procedure or installation, as in the case of environmental impact assessment procedures, and prevention and emergency planning for hazardous activities, including nuclear activities. In other cases, the information and participatory opportunities refer to particular substances, for instance hazardous chemicals, radioactive wastes, or genetically modified organisms. In some treaty regimes, finally, information on environmental matters to be publically available concern legislation, decisions by administrative authorities, or judgments by courts.

The parallel enhancement of Principle 10 in international human rights law after UNCED does not arise from new treaties. Indeed, few, if any, human rights treaties have
been adopted or changed as a result of Principle 10 or the increasing recognition of participatory rights in environmental matters. Instead, Principle 10 issues have been significantly promoted by some international courts and committees in the field of human rights when construing—‘greening’—the applicable treaties in light of the new notions of access to information, public participation, and access to justice in environmental contexts. In addition, some treaty bodies mandated to examine compliance and implementation by treaty parties on Principle 10 issues have developed useful jurisprudence in this area.

While this chapter focuses on international law and policy, Principle 10 and the related debate have also influenced national laws and debates, and not only in countries and regions where international law so requires.

3. Normative impact

3.1. Instruments and regimes of global scope

3.1.1. Sustainable development policy instruments

The message of Principle 10 was confirmed by the First Global Ministerial Environment Forum, in Malmö 2000, and by the 2002 Johannesburg Plan of Implementation, adopted at the 2002 Johannesburg World Summit on Sustainable Development. The latter is peppered with references to participation, such as the participation of women, youth, different communities, local enterprises, all stakeholders, and civil society in general, but instead of developing Principle 10 further, it was merely agreed to:

- ensure access, at the national level, to environmental information and judicial and administrative proceedings in environmental matters, as well as public participation in decision-making, so as to further principle 10 of the Rio Declaration on Environment and Development, taking into full account principles 5, 7 and 11 of the Declaration.

Contrary to the 2002 World Summit, which did not really further Principle 10, the outcome of the 2012 Rio Conference on Sustainable Development (‘Rio+20’), The Future We Want, expanded the application of Principle 10 beyond national contexts. The plan does not call for global action on Principle 10, but it encourages ‘action at the regional, national, subnational and local levels to promote access to information, public participation and access to justice in environmental matters, as appropriate’. This stretch of the scope for action beyond state borders and national contexts reflects the increasing focus on multilevel governance and the need for actions and norms for public participation of different scales, scope and levels.

3.1.2. Treaties adopted at UNCED and its aftermath

Some influence of Principle 10 is discerned in the two conventions adopted next to the Rio Declaration at UNCED.

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The Principle as Enshrined in the Rio Declaration

The 1992 UN Framework Convention on Climate Change ('UNFCCC') promotes access to information and public participation, although only in a general manner.\(^\text{24}\) The convention parties are essentially obliged to ‘promote and facilitate’ public access to information on climate change and its effects, and public participation in addressing climate change and its effects, but without further specification or qualification.\(^\text{25}\) The 1997 Kyoto Protocol to the UNFCCC effectively only repeats what is already required by the UNFCCC.\(^\text{26}\) These provisions could be used as a platform for further development of criteria for access to information and public participation, but little has been done so far to that effect.\(^\text{27}\)

The 1992 Convention on Biological Diversity ('CBD') is also rather modest in pushing for Principle 10. Whereas the obligations concerning information are essentially limited to inter-state exchanges,\(^\text{28}\) in introducing environmental impact assessment ('EIA') procedures for projects likely to have significant adverse effects on biodiversity, the convention parties shall allow for public participation in such procedures ‘where appropriate’.\(^\text{29}\) The weak provisions of the CBD are supplemented by several decisions by the CBD conference of the parties, which promote public participation.\(^\text{30}\) Moreover, contrary to the UNFCCC, access to information and public participation have been more adequately addressed in the context of the CBD through subsequent protocols (see later in this chapter).

Also established in connection to (although not at) UNCED, the 1994 Convention to Combat Desertification (UNCCD) is more supportive to Principle 10 than the UNFCCC and CBD. Drawing on several principles of the Rio Declaration, public participation and access to information are important element in the UNCCD. Accordingly, the parties shall promote and facilitate ‘the participation of local populations, particularly women and youth, with the support of non-governmental organizations, in efforts to combat desertification and mitigate the effects of drought’\(^\text{31}\) and make information on desertification ‘fully, openly and promptly available’.\(^\text{32}\) Moreover, the UNCCD is more specific than the UNFCCC and CBD by requiring the parties to provide for effective participation at the local, national, and regional levels of non-governmental organizations and local populations in policy planning, decision-making, and implementation and review of national action programmes.\(^\text{33}\)

3.1.3. Treaties on trade and use of harmful matters

The difference between treaties adopted prior to and after UNCED in addressing Principle 10 issues is most apparent when comparing five treaties of global scope on trade in and the use of different harmful matters. Whereas the 1989 Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and their Disposal makes no reference at all to public access to information or public participation in decision-making, the


\(^{25}\) UNFCCC, art 6.

\(^{26}\) 1997 Kyoto Protocol, art 10(e).

\(^{27}\) See, however, the Doha work programme on art 6 of the Convention, Decision 15/CP.18, Report of the Conference of the Parties on its Eighteenth Session, held in Doha from 26 November to 8 December 2012, UN Doc FCCC/CP/2012/8/Add.2 (2013).

\(^{28}\) CBD, arts 14(c) and 17.

\(^{29}\) CBD, art 14(a).


\(^{31}\) UNCCD, art 5(d).

\(^{32}\) UNCCD, arts 16 and 19.

\(^{33}\) UNCCD, art 10.
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Concerned with international trade in chemicals, the Rotterdam Convention parties must ensure that the public has appropriate access to information on chemical handling and accident management, and also to information on safer alternatives than the chemicals subject to prescribed prior informed consent procedures. While setting minimum standards for such access to information, however, the Rotterdam Convention does not provide for public participation in any decision-making procedure.

The Stockholm Convention takes Principle 10 further by specifying the requirements on access to information and public participation. Applicable to the control of persistent organic pollutants, the parties shall ensure that the public has access to up-to-date information concerning such pollutants and their effects, and consider the establishment of mechanisms, such as pollutants release and transfer register. In ensuring public participation, opportunities must be given to address responses concerning persistent organic compounds as well as the implementation of the Convention as such.

The Cartagena Protocol to the CBD obliges the parties to promote and facilitate public participation and access to information concerning living modified organisms in general. The parties must indeed grant opportunities for public participation and consultation, and provide information when consulting with the public in decision-making. The result of such decisions shall be made available to the public, while respecting confidential information in accordance with the Protocol.

The Minamata Convention (not yet in force), intended to ‘protect human health and the environment from anthropogenic emissions and releases of mercury and mercury compounds’, is significantly weaker than the previous three treaties in advancing Principle 10. Rather than setting out clear-cut obligations for public participation or public access to information, it merely obliges the parties to promote and facilitate within their capabilities ‘provision to the public of available information’ relating to, for example, effects, uses, and emissions of mercury as well as on measures to fulfil the convention requirements. The parties shall also promote and facilitate education, training and public awareness with respect to mercury.

3.1.4. Treaties on benefit-sharing and resources

While focusing on indigenous and local communities rather than individuals or members of the public in general, the 2010 Nagoya Protocol on Access to Genetic Resources and the Fair and Equitable Sharing of Benefits Arising from their Utilization to the Convention on Biological Diversity (‘Nagoya Protocol’) still promotes the notion of Principle 10 by providing for participation and involvement of indigenous and local communities in procedures of prior informed consent or approval concerning access to genetic resources.

The measures taken in order to raise awareness of the importance of genetic resources and traditional knowledge associated with genetic resources may include the organization of meetings of indigenous and local communities and relevant stakeholders, and information

34 Rotterdam Convention, art 15.  
35 Stockholm Convention, art 10.  
36 Cartagena Protocol, art 23.  
37 Minamata Convention, art 18.  
38 Nagoya Protocol, art 6.
dissemination. Contrary to the previous treaties, the Nagoya Protocol also addresses participatory processes across state borders: the parties must cooperate in transboundary contexts with the involvement of indigenous and local communities concerned.

3.1.5. Treaties on nuclear energy

International law on nuclear activities has never been at the forefront in promoting Principle 10 issues. Yet, it also provides some such support, in particular for public access to information.

The 1994 Nuclear Safety Convention requires access to appropriate information for emergency planning and response in case of radiological emergency for the affected population, and the 1997 Convention on the Safety of Spent Fuel Management and on the Safety of Radioactive Waste Management requires procedures to make information on facilities intended for spent fuel or radioactive waste management available to members of the public, for example, through environmental impact assessment procedures. While the push for public access to information and public participation in these conventions is rather modest, they still reflect a move in accordance with Principle 10 compared to conventions and international policies on nuclear policies predating UNCED.

3.1.6. The UNEP Bali Guidelines

Although (or because) they are not legally binding, the 2010 UNEP Guidelines for the Development of National Legislation on Access to Information, Public Participation and Access to Justice in Environmental Matters (‘Bali Guidelines’) are far more elaborate than any of the mentioned global environmental treaties.

Intended to provide guidance for states on how to promote effective implementation of Principle 10 in their national laws, the Bali Guidelines are also relevant for any new treaty negotiation on Principle 10 issues and, possibly, when construing the provisions for access to information, public participation, or access to justice in existing environmental treaties.

3.1.7. Human rights instruments

In addition to the mentioned environmental treaties and policy documents, support for Principle 10 is found in international human rights instruments of global reach, even though they all predate UNCED.

Thus, the 1948 UN Declaration of Human Rights (‘UDHR’) as well as the 1966 International Covenant on Civil and Political Rights (‘ICCPR’) provide for a right to freedom of opinion and the right to seek, receive, and impart information. As to public participation in decision-making, the UDHR stipulates the right to be part of government, directly or through voting, and the ICCPR a right to take part in the conduct of public affairs. In principle, both versions of the right to political participation can be said to pertain to environmental matters.

41 Nuclear Safety Convention, art 16.
44 UDHR, art 19; ICCPR, art 19.
45 UDHR, art 21.  46 ICCPR, art 25.
Participatory rights have also been acknowledged as part of the right to health and the right to water (with explicit reference to Principle 10) under the 1966 International Covenant on Economic, Social and Cultural Rights. Focusing on tribal and indigenous peoples, the 1989 ILO Convention Concerning Indigenous and Tribal Peoples in Independent Countries slightly resembles the Nagoya Protocol to the CBD by providing for public participation through consultations and other means by which these peoples may freely participate at all levels of decision-making as well as in the use, management, and conservation of natural resources.

Access to justice, finally, is supported by the recognized human right to a fair trial, set out, for example, in the UDHR and the ICCPR. Although international human rights jurisprudence has mainly developed through regional human rights bodies (see later in this chapter), Principle 10 has also been promoted and confirmed through resolutions of the UN Commission on Human Rights and the work of the UN Human Rights Council.

3.1.8. The ILC Prevention Articles

In addition to the foregoing survey of global environmental and human rights treaties and instruments, some indication that public participation may become part of general international law is given by the UN International Law Commission’s 2001 Articles on Prevention of Transboundary Harm from Hazardous Activities (ILC Articles).

Partly inspired by the Rio Declaration, the ILC sets out in these Articles that states shall provide the public likely to be affected by a hazardous activity with relevant information relating to the activity, the risks involved, and the harm which might result, and also ‘ascertain their views’. While ambiguous and limited to certain categories of activities, this would imply some form of public participation in support of Principle 10.

3.2. Instruments and regimes of regional scope

3.2.1. Europe and Central Asia

No other international treaty—global or regional—furthers Principle 10 as comprehensively as the 1998 Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters (Aarhus Convention), by transforming and developing it into international law. The Aarhus Convention developed within the

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49 ILO Convention, arts 6 and 15.

50 UDHR, art 10; ICCPR, art 14.


54 ILC Articles, art 13.
United Nations Economic Commission for Europe (‘UNECE’), which actively pushed for Principle 10 soon after UNCED. In explicitly referring to Principle 10, the Aarhus Convention stipulates minimum standards on access to information, public participation, and access to justice, to be complied with and implemented by the parties. It also sets general principles with respect to participatory rights for non-governmental organizations, non-discrimination (eg in transboundary contexts), and non-harassment, and it obliges the parties to promote the application of the convention principles in international fora.

The convention parties must ensure that public authorities make information available upon request within a given time frame. While access may be refused upon certain listed grounds, these grounds shall be interpreted in a restrictive way, taking into account the public interest served by the disclosure. The convention parties are also requested to gather, update, and disseminate certain environmental information.

In setting minimum standards for public participation, the Aarhus Convention distinguishes between three different categories of decisions and procedures: decisions concerning permits for specific activities; decisions on plans, programmes, and policies relating to the environment; and the preparation of regulations and other normative instruments. The most detailed provisions on public participation apply to permit procedures. The parties have to ensure that the public concerned is adequately, timely, and effectively informed at an early stage, and allowed to participate ‘when all options are open and effective participation can take place.’ The procedures for public participation must allow the public to submit comments and views that it considers relevant, and in the decision, due account must be taken to the outcome of the participation. Rather similar standards apply to decision-making concerning plans, programmes, and policies, while the requirements for public participation are less strict for the preparation of regulations and generally applicable normative instruments.

In effect, the access to justice requirements pertain to all kinds of decisions, acts, and omissions relating to environmental laws. Specific standards apply for access to judicial procedures concerning requests for environmental information, and decisions, acts, and omissions relating to permits and permit procedures for specific activities. In addition, members of the public shall have access to administrative or judicial procedures to challenge any other act or omission, by private persons and public authorities, which contravene provisions of national law relating to the environment (eg acts and omissions related to, say, city planning, nature conservation, fishing quotas, and the control of chemicals and wastes). In different ways, the convention limits the discretion for the parties in defining the scope of persons with access to review procedures. Moreover, for all these situations, the parties shall ensure that the procedures provide ‘adequate and effective remedies, including injunctive relief as appropriate, and be fair, equitable, timely and not prohibitively expensive.’

In addition to setting minimum standards on Principle 10 issues, the Aarhus Convention provides a unique compliance mechanism, through which members of

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55 eg arts 2(5) and 3(4). 56 Art 3(9). 57 Art 3(8). 58 Art 3(7).
60 Art 4.
61 Art 5. Within the framework of the Aarhus Convention, the right to access to information is even further developed by the adoption of the 2003 Protocol on Pollutant Release and Transfer Registers (‘PRTR Protocol’).
62 Art 6. 63 Art 7. 64 Art 8. 65 Art 9.
the public may trigger compliance reviews by the independent Aarhus Convention Compliance Committee (‘ACCC’). In examining compliance by the parties, the ACCC jurisprudence is instrumental also for the implementation of Principle 10 (see later in this chapter).

Principle 10 is confirmed and promoted by some other UNECE environmental treaties as well, adopted during the run up for or after UNCED. While less detailed on public participation than the Aarhus Convention, the 1991 Convention on Environmental Impact Assessment in a Transboundary Context (‘Espoo Convention’) obliges the parties to provide access to certain information and to ensure that the public likely to be affected be informed and provided with a possibility to make comments and objections concerning the proposed activity. The EIA documentation must be distributed to the public for comments, and the comments shall be taken into account in the final decision for the proposed activity. Similar provisions in support of Principle 10 are found in the 2003 Protocol on Strategic Impact Assessment to the Espoo Convention. The 1991 Convention on Transboundary Effects of Industrial Activities (‘Industrial Accident Convention’) obliges the parties not only to provide and disseminate adequate information on prevention and emergency preparedness with respect to industrial accidents arising out of hazardous activities. The public capable of being affected by such accidents shall also be given an opportunity to participate in relevant procedures concerning prevention and preparedness measures. Both these conventions also provide for access to information and public participation in transboundary contexts through non-discrimination. Finally, as far as the UNECE is concerned, general support for access to information is found in the 1992 Convention on the Protection and Use of Transboundary Watercourses and International Lakes (‘Helsinki Convention’), and even more advanced and precise provisions on access to information and public participation are set out in the 1999 Protocol on Water and Health related to the Helsinki Convention. As this survey of treaties reveals, the UNECE maintains an outstanding position in the UN organization in promoting Principle 10.

Besides these UNECE treaties, the most robust support for Principle 10 in international law in the region is provided by the European Convention on Human Rights (‘ECHR’), which predates UNCED. Although the ECHR does not explicitly address environmental matters, the European Court of Human Rights has construed the provisions of the ECHR, in particular the right to private and family life, and the right to a fair trial, in light of new notions, including Principle 10. Indeed, the European Court of Human Rights has developed the ECHR into an important driver for participatory rights in environmental contexts (see later in this chapter).

The European Union, finally, in adopting legislation and developing jurisprudence intended to meet the Aarhus Convention requirements, also significantly promotes the implementation of Principle 10 in EU member States.


67 Helsinki Convention, art 16.

68 Water and Health Protocol, art 5.

69 ECHR, art 8.

70 ECHR, art 6.

3.2.2. Americas

The 1993 North American Agreement on Environmental Cooperation (‘NAAEC’), the side agreement to the North American Free Trade Agreement between Canada, USA and Mexico, reaffirms the Rio Declaration and addresses all three aspects of Principle 10. Without going as far as the Aarhus Convention, the NAAEC obliges the parties to ensure public access to certain information relating to environmental matters, held by public authorities.72 The parties must also ensure procedural rights and procedural guarantees that are open to the public,73 but the agreement does not formulate minimum requirements for public participation in environmental decision-making.74

The NAAEC is particularly supportive of access to justice. The NAAEC parties shall not only ensure access to remedies and certain procedural guarantees for private actors.75 Persons with a legally recognized interest shall have access to judicial and quasi-judicial or administrative procedures for the enforcement of environmental laws. This includes access to remedies, including the right to sue for damages, and seek sanctions and injunctions.76 The parties shall also ensure fair open and equitable administrative, quasi-judicial or judicial proceedings, and ‘comply with due process of law’. These proceedings must not be ‘unnecessarily complicated’ or ‘entail unreasonable charges or time limits or unwarranted delays’.77 Whereas the parts on access to information and public participation do not meet the Aarhus Convention standards, the NAAEC requirements for domestic remedies are no less advanced than those of the Aarhus Convention.

Apart from the NAAEC and some bilateral agreements,78 Principle 10 has not yielded much effect in environmental treaties of the Americas. However, at the time of Rio+20 initiatives were taken for some form of regional instruments on Principle 10 issues for Latin America and the Caribbean.79

Despite these efforts, thus far the most profound support for Principle 10 in international law of the Americas is found in human rights instruments. Neither the 1948 American Declaration of the Rights and Duties of Man (‘AmDRDM’) nor the 1969 American Convention on Human Rights (‘AmCHR’) contains any explicit reference to environmental matters. Still, they have become important drivers for Principle 10 through the jurisprudence of the Inter-American Commission on Human Rights and the Inter-American Court of Human Rights when applying established human rights concepts, such as the right to freedom of thought and expression,80 the right to take part in the conduct of public affairs,81 the right to property,82 and right to judicial protection83 to environmental matters (see later in this chapter). Moreover, the 1988 Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social and Cultural Rights,

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72 NAAEC, art 4. 73 NAAEC, arts 6 and 7. 74 NAAEC, arts 4 and 7.
75 NAAEC, arts 6 and 7. 76 NAAEC, art 6.
80 AmCHR, art 13. 81 AmCHR, art 23. 82 AmCHR, art 21. 83 AmCHR, art 25.
which predates UNCED, is exceptional in addressing environmental matters explicitly: ‘Everyone shall have the right to live in a healthy environment and to have access to basic public services.’ In light of the interpretation of other human rights treaties, this would also appear to promote participatory rights in environmental matters.

3.2.3. Africa

Influenced by Principle 10, and possibly by the Aarhus Convention, the 2003 African Convention on the Conservation of Nature and Natural Resources (2003 African Nature Conservation Convention) contains a provision on participatory and procedural elements in environmental matters, but it is not yet in force. Once (if) in force, the parties will have to ensure ‘timely and appropriate’ dissemination of and access to environmental information, ‘timely and appropriate’ participation of the public in decision-making with a potentially significant impact, and ‘access to justice in matters related to the protection of environment and natural resources.’ Yet, in addition to the slow process of ratification, the convention does not give any detail on how it is to be made available or on how the other procedural arrangements should be established.

So far, the 1981 African Charter on Human and Peoples’ Rights (African Charter) has been far more important for the promotion of Principle 10 in international law in Africa. While the prescribed right of all peoples to a ‘general satisfactory environment favourable to their development’ is relevant for access to information and public participation in decision-making, also other provisions of the Charter have been interpreted as supporting Principle 10 elements (see later in this chapter). Instead of requiring access to a court, or court-like, independent, and impartial body of law, the African Charter provides for a person’s right to be heard and to ‘appeal to competent national organs against acts violating his fundamental rights’. The limited case law of the African Commission on Human and Peoples’ Rights has been shown to be highly important in promoting Principle 10 for Africa (see later in this chapter).

3.2.4. Asia and the Pacific

Despite the affirmation in the 1990 Bangkok Declaration for Asia and the Pacific of the right of individuals and non-governmental organizations to be informed, have access to information, and to participate in environmental decision-making, there has been little development of international law and policy on Principle 10 in the Asian and Pacific region (except for Central Asia through the Aarhus Convention).

Interestingly, the 1985 ASEAN Agreement on the Conservation of Nature and Natural Resources (ASEAN Agreement), adopted before UNCED, contains provisions for public participation and access to information, but not access to justice, concerning the

84 Art 11(1).
85 The 1968 version of the African Convention on the Conservation of Nature and Natural Resources, which is in force, does not contain any provision of this sort.
91 The 2004 Arab Charter on Human Rights (art 38) as well as the 2012 Human Rights Declaration of the Association of Southeast Asian Nations (art 28(3)) contain provisions on the right to a safe environment as an element of the right to an adequate standard of living. While neither document explicitly links this right to Principle 10 issues, they could be construed similarly to the 1981 African Charter, art 24, as including some form of participatory right.
environment. The parties are requested to circulate information on conservation measures and ‘as far as possible’ to organize participation of the public in the planning and implementation of such measures. As with the African Nature Conservation Convention, the ASEAN Agreement provides no details on how information is to be circulated to the public. Even more problematic, still after about 30 years, the ASEAN Agreement has not entered into force.

Lacking any regional human rights treaty and any effective regional environmental treaty promoting participatory rights in environmental matters, the support in international law for Principle 10 in Asia and the Pacific derives from the mentioned environmental and human rights treaties of global scope and, possibly, from general international law.

4. Jurisprudential relevance

4.1. Jurisprudence of global scope

Despite some support for Principle 10 in environmental treaties of global scope, the jurisprudence in support of public participation has developed regionally and, except for the Aarhus Convention, through human rights regimes. The International Court of Justice has not yet addressed public participation in environmental matters in its jurisprudence. While concluding in the Pulp Mills case that the obligation to carry out environmental impact assessments in transboundary contexts is today part of general international law, the court did not assert that under general international law public participation should be a necessary element in the EIA process. Nor has any jurisprudence on participatory rights in environmental matters, comparable to that of the regional human right bodies, developed through the UN Human Rights Committee, when acting under the Optional Protocol to the ICCPR.

4.2. Europe and Central Asia

The European Court of Human Rights has developed important jurisprudence on all aspects of Principle 10, in particular by construing the right to respect for private and family life as creating a right to access to information and to participate in decision-making. In several cases, the court has referred to Principle 10 of the Rio Declaration.

In a landmark case on access to information decided in 1998, the Court concluded that a state violates the right to respect for private and family life if it fails to provide essential information about hazardous activities that enables members of the public to assess the risks they and their families might run. This implies a positive duty of the state to ensure that relevant information is made available, and a corresponding right of members of the...
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public concerned to access such information. The Court has also held that the right to respect for private and family life requires that, where a state determines complex issues of environmental and economic policy, the decision-making process must involve appropriate investigations and studies in order to be able to predict and evaluate the effects. The Court stressed, the ‘[t]he importance of public access to the conclusions of such studies and to information, which would enable members of the public to assess the danger to which they are exposed is beyond question’. In such contexts, the decision-making processes leading to measures of interference must be fair and such as to afford due respect to the interests of the individual safeguarded by the right to respect for private and family life.\(^{98}\) In addition, in cases of dangerous activities, the public’s right to information may be based on the protection of the right to life.\(^{99}\) Although access to justice in environmental matters has mainly been considered in relation to the right to a fair trial,\(^{100}\) the right to respect for private and family life has also been interpreted as including a right for the individuals concerned to appeal to the courts environmental decisions, act or omission where they consider that their interests or comments have not been given sufficient weight in the decision-making process.\(^{101}\) The parallels to the Aarhus Convention are obvious.

While not a judicial body, but an independent compliance review body, the *Aarhus Convention Compliance Committee* (ACCC) has received more than 100 communications from members of the public alleging non-compliance by the parties.\(^{102}\) The ACCC jurisprudence concerning the interpretation of the Aarhus Convention also pertains to all aspects of Principle 10. The endorsement of the ACCC findings of non-compliance by the Meeting of the Parties increases the normative status and impact of its jurisprudence.\(^{103}\)

Among the issues considered, the ACCC has examined whether parties meet the rather detailed requirements on providing environmental information upon request and making information adequately available.\(^{104}\) Thus the ACCC has concluded that ignoring requests for environmental information for three months, failing to give reasons for the denial of access to information, and imposing unreasonable fees for copying documents amount to non-compliance with the Convention.\(^{105}\) The ACCC has also examined whether members of the public, including national and foreign NGOs,\(^{106}\) have effective opportunities for participation in different forms of decision-making.\(^{107}\) For example,


\(^{102}\) Information on all communications, with full documentation, and ACCC findings with recommendations in admissible cases are found at the Aarhus Convention website, at <http://www.unece.org> (accessed 1 February 2014).

\(^{103}\) As argued by Tanzi, A. and Pitea, C., ‘The Interplay between EU Law and International Law Procedures in Controlling Compliance with the Aarhus Convention by the EU Member States’, in Palmaeerts, M. (ed), *The Aarhus Convention at Ten*, 367, 380, when interpreting the Aarhus Convention ‘any decision by the [ACCC], when it is backed by the MOP through adoption by consensus, may be considered as falling within the concept of “subsequent practice”’ under art 31 of the 1969 Vienna Convention on the Law of Treaties.

\(^{104}\) See eg ACCC/C/2008/30 (Moldova), 8 February 2011.

\(^{105}\) See eg ACCC/C/2008/24 (Spain), 15–18 December 2009; and ACCC/C/2009/36 (Spain), 18 June 2010. In ACCC/C/2009/57 (Belarus), 24 September 2010, Belarus was held in non-compliance with the Aarhus Convention for having failed to provide requested information.

\(^{106}\) See ACCC/C/2004/5 (Turkmenistan), 14 March 2005.

it held that a party failed to comply with the convention because it did not inform the public in an adequate, timely, and effective manner about the possibility to participate in the decision-making, because it provided too little time for participation, and because it made the developer rather than public authorities responsible for organizing public participation.\(^{108}\)

As for access to justice, convention parties have been found non-compliant, for instance, because the costs for judicial appeals were ‘prohibitively expensive’\(^{109}\) and because the national criteria for standing were too strict with respect to individuals and/or non-governmental environmental organizations.\(^{110}\)

The ACCC also examines the performance of the EU, including whether it provides for access to information, public participation, and access to justice in its legislation addressed to the EU member States. The ACCC thus concluded that the EU had failed to comply with the Convention because it did not have in place a proper regulatory framework and/or other instructions to ensure implementation of the convention requirements on public participation by its member States with respect to the adoption of so called National Renewable Energy Action Plans. The Committee also found that the EU, in practice, by way of its monitoring responsibility, failed to ensure proper implementation of the relevant provision of the Convention.\(^{111}\)

Being a party to the Aarhus Convention, the European Union (‘EU’) has adopted a large set of legislation intended to meet the convention requirements. Based on this legislation and the Aarhus Convention itself the Court of Justice of the European Union (‘CJEU’) has for instance ruled out, as far too strict, certain national minimum requirements for allowing environmental associations to appeal permit decisions,\(^{112}\) and on acceptable criteria so as not to make judicial proceedings in environmental matters prohibitively expensive.\(^{113}\)

In addition, the CJEU has considered to what extent the Aarhus Convention shall be directly considered by the national courts of the EU member States.\(^{114}\) In general, by enforcing the Aarhus Convention, the CJEU has also helped implementing Principle 10 among the EU member States.\(^{115}\)

In Europe the dynamic interplay and between these three legal regimes (Aarhus Convention, ECHR, and EU) and the respective body mandated to examine compliance (ACCC, ECtHR and CJEU) has had a positive effect not only for implementing Principle 10 elements, but also for keeping the Principle 10 discourse alive.

\(^{108}\) ACCC/C/2006/16 (Lithuania), 7 March 2008. Public participation issues have also been raised in the mentioned cases ACCC/C/2008/24 (Spain), 15–18 December 2009; and ACCC/C/2009/37 (Belarus), 24 September 2010.

\(^{109}\) See ACCC/C/2008/23 (UK), 24 September 2010; ACCC/C/2008/27 (UK), 24 September 2010; ACCC/C/2008/33 (UK), 3 December 2010; and ACCC/C/2011/57 (Denmark), 30 March 2012.

\(^{110}\) See, ACCC/C/2010/48 (Austria), 16 December 2011; and ACCC/C/2011/63 (Austria), 27 September 2013; ACCC/C/2008/31 (Germany), 17–20 December 2013; ACCC/C/2010/50 (Czech Republic), 29 June 2012; and ACCC/C/2011/58 (Bulgaria), 28 September 2012.

\(^{111}\) ACCC/C/2010/54 (European Union), 29 June 2012.

\(^{112}\) C-263/08, Djurgården Lilla Värtan Miljöskyddsförening v. Stockholms kommun [2009] European Court Reports, 15 October 2009. The judgment resulted in a swift change in the national laws in question (in Sweden), much more in line with the Aarhus Convention.

\(^{113}\) C-240/09, Lesoobranjas zoskupenie VLK v. Ministerstvo životného prostredia Slovenskej republiky, 8 March 2011.

\(^{114}\) On the relation between the Aarhus Convention, ACCC and jurisprudence of the CJEU, see generally, Pallemaraets (ed), The Aarhus Convention at Ten.
4.3. Americas

Although the NAAEC provides a review mechanism that is also available for the public, it is primarily intended to ensure enforcement of national environmental protection standards rather than examining compliance with the NAAEC provisions on Principle 10 issues. Instead, robust international jurisprudence in support of Principle 10 is provided by the Inter-American human rights regime, despite the lack of provisions addressing environmental matters in the AmDHR and the AmCHR. Thus, like in the European human rights system, the relevant case law builds on the interpretation of established human rights. Whereas in the European human rights system this largely builds on the right to respect for private and family life, the key for Principle 10 jurisprudence for the Americas is the right to property, in connection to, for instance, the right to judicial protection.

According to the Inter-American Court of Human Rights (‘IACtHR’) the right to property requires, that in cases when concessions are granted for the exploitation and extraction of natural resources within territories of tribal communities, the state ensures effective participation of the members of the community concerned; that is, the state has to actively consult with the community, including by accepting and disseminating information. The Inter-American Commission on Human Rights makes a similar interpretation: that failing to provide for effective consultation with indigenous communities, including ‘information that must be shared with the communities concerned’, amounts to a violation of the right to property. As for access to justice in environmental matters, the Commission’s conclusion, that states are not only obliged to provide courts or formal procedures, but also to take affirmative steps to ensure that the remedies are ‘truly effective’ in establishing possible violations and in providing redress, resembles the notion of access to justice under the Aarhus Convention.

Lacking more precise international standards for transparency in environmental matters, these findings by the Inter-American Court and Commission on Human Rights give profound support for the development of international law in support of Principle 10 in the region.

4.4. Africa

In Africa too, international jurisprudence for the implementation of Principle 10 has developed in the context of human rights rather than in relation to any environmental treaty. In particular, the African Commission on Human & Peoples’ Rights, operating

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117 AmDRDM, art 23; AmCHR, art 21.
118 AmCHR, art 25.
119 IACtHR, Case of the Saramaka People v. Suriname, Judgment of 28 November 2007 (Merits, Reparations and Costs), Series C No 172, para 133.
120 Inter-American Commission on Human Rights, Maya Indigenous Communities of the Toledo District, Belize, Report No 40/04, Case 12.053, 12 October 2004.
121 Inter-American Commission on Human Rights, Maya Indigenous Communities of the Toledo District, Belize, Case 12.053, Report No 40/04 of 12 October 2004.
122 See also IACtHR, Claude-Reyes and Others v. Chile, Judgment of 19 September 2006 (Merits, Reparations and Costs), Series C No 151, where the Court, in para 81, refers to Principle 10 as well as to the Aarhus Convention.
under the African Charter on Human and Peoples’ Rights, has construed the provisions on the right to best attainable state of health and on the right to a satisfactory environment to this end.\textsuperscript{123}

According to the Commission, these rights imply a duty on the state to monitor threatened environments, undertake environmental and social impact studies, and provide information to the communities exposed to hazardous materials and activities.\textsuperscript{124} This includes a duty on the state to provide relevant information as well as meaningful opportunities for individuals to be heard and to participate in the development decisions that affect their communities.\textsuperscript{125} Lacking any specific international regime on Principle 10 issues, this jurisprudence provides important support for the development of regional international law on participatory rights in environmental matters.

4.5. Asia and the Pacific

Lacking any international environmental treaty on participatory rights as well as any international human rights regime for Asia and the Pacific, there is also no regional international jurisprudence relating to Principle 10 for this region. Therefore, in addition to the global environmental treaties, the main support for Principle 10 in Asia and the Pacific has developed in some national laws, not further analysed here.\textsuperscript{126}

III) Connections with Other Principles

Principle 10 connects with several other Principles of the Rio Declaration. The entitlement of a healthy and productive life in harmony with nature, set out in Principle 1, depends on the opportunities and rights for members of the public to access information, participate in decision-making, and to access judicial and administrative procedures with effective redress and remedy.\textsuperscript{127}

As mentioned, members of the public may enhance the control of the public administration through access to information, participation in decision-making and access to justice. Such activities are also instrumental for effective environmental legislation, as required by Principle 11, and for effective application of the precautionary approach of Principle 15 in various decision-making procedures.

\textsuperscript{123} Art 16 on best attainable status of health, and art 24 on satisfactory environment. In addition, both the right to property, in art 14, and the right to freely dispose of wealth and natural resources, in art 21, include elements of a duty for governments to consult with affected groups; see African Commission on Human & Peoples’ Rights, Centre for Minority Rights Development (Kenya) and Minority Rights Group (on behalf of Endorois Welfare Council) v. Kenya, Communication 276/03, 25 November 2009.


\textsuperscript{127} See Aarhus Convention, art 1.
The development of national and international laws on liability and compensation, as set out in Principle 13, is an important element of the implementation of Principle 10, since laws on liability and compensation may ensure effective redress and remedy.

Conceptually, environmental impact assessments, in Principle 17, should include adequate procedures for public participation; indeed, in many countries the opportunities for public participation are provided as part of the environmental impact assessments. Thus, such assessments are crucial means for effective implementation of Principle 10.

Finally, Principle 10 links with Principles 20, 21, and 22, which all emphasize the participation of different segments of the public, that is, women, youth, and indigenous people and their communities.128

IV) Assessment

Principle 10 has influenced international law in two distinct and remarkable ways.

First, Principle 10 was instrumental for changing the substance of global environmental treaties in support of participatory opportunities for members of the public. Whereas essentially no global environmental agreement predating UNCED included any provision on Principle 10 issues, just about all such treaties adopted at or after UNCED provide for public access to information and/or public participation, albeit with different degrees of ambition. Many of these treaties have more than 150 parties, thus revealing broad global support to the notions of public awareness, public access to documents, and public participation in environmental matters at a rather abstract level. Lacking effective mechanisms for compliance control, further developments of participatory rights within these global regimes will depend on actions and decisions, for example, action programmes, resolutions and guidelines, by the respective conference of the parties. While not (yet) confirmed by the International Court of Justice, these global treaties and some other indications (eg the ILC Articles) are supportive of the development of a duty under general international law to provide for some form of public consultation, at least in cases where harmful activities entail risks of significant transboundary harm.

Second, Principle 10 has inspired international human rights tribunals to construe existing human rights (eg right to respect for private and family life, right to property, and right to a fair trial) in a new light, thus acknowledging that established human rights provide for access to information, public participation, and access to justice in environmental matters. This development not only confirms these rights as part of international law, but also reveals the fundamental status of participatory rights as part of the human rights legal framework. Yet, this second development is geographically asymmetric. While Principle 10 issues have been embodied in human rights jurisprudence in Europe, the Americas, and Africa, there is not yet any corresponding development in international law for Asia and the Pacific.

No other treaty implements Principle 10 to the same extent as the Aarhus Convention, which merges environmental law and human rights law, and thus reflects the integration of these two dimensions. Possibly, the call at Rio+20 (2012) for action beyond state borders to promote access to information, public participation, and access to justice in environmental

128 See eg the CBD and the Nagoya Protocol as well as the human rights jurisprudence described in this chapter.
matters will stimulate similar legal developments for other parts of the world, and thus help correcting the described geographic asymmetry in support of Principle 10.

V) Select Bibliography


