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THE EXISTENCE OF INSTITUTIONALIZED REMEDIES FOR ENVIRONMENTAL CLAIMS: A COMPARATIVE ANALYSIS BETWEEN EU AND CARICOM

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ABSTRACT

The importance of public participation in environmental policy-making and the benefits of allowing citizens and organisations access to the courts ensure their human and environmental rights are widely acknowledged. Domestic courts all over the world share the common knowledge of developing procedures and institutional mechanisms with the aim of maximizing access to justice. Some Caribbean Community (CARICOM) countries have developed resolution systems; however, they do not have the institutional capacity or commitment to provide enforcement mechanisms. If acts or omissions by public authorities in environmental matters cannot be challenged, this leads to the trivialization of rule of law.

This thesis examines CARICOM in comparison to European Union (EU) legal framework, focusing on whether the regions have implemented functional dispute resolution systems which provides equal accessibility and effectivity with regard to environmental claims. Procedural justice as one of the essential components of the rule of law, plays a fundamental role in the proper functioning of environmental dispute resolution system (DRSs) and should provide objective guarantees of operation. Citizens' expectations for residing in a healthy environment should be met, and this requires renewed focus on implementation as a foundation of environmental policies. Using this comparative analysis, it will depict issues regarding the current DRSs in CARICOM and EU. Resultantly, policy recommendations will be made for the unproductive areas in the system in relation to access to justice in environmental matters.

Keywords: rule of law, environmental law claims, environmental law remedies, access to justice, functional dispute resolution systems

INTRODUCTION

Small island developing states, including those in the Caribbean, are regarded as some of the most vulnerable to climate change [1], it is important to implement functional and appropriate legal and policy strategies to protect the environment. Presently, increasingly severe consequences of climate change and global trends are intensifying many challenges worldwide. Therefore, considerable attention has been given to defining which interests need to be protected, duties to be imposed on polluters and other mechanisms needed to be applied. Human rights and the environment are closely connected; human rights cannot be respected without a healthy environment and sustainable environmental governance is trivial without respect for human rights. The impact environmental factors have on our ability to enjoy fundamental human rights are well recognised. In accordance with international human rights law, many rights guaranteed include an environmental aspect.

Public participation is a critical element which promotes democratically legitimate environmental decision-making. As the protection of the environment is a public concern, public participation is an important theme of contemporary environmental policy and law at all levels. [2] The participation of individuals and groups contribute to the improvement of the level of environmental protection as all individuals are able to work together to find effective and meaningful solutions. Moreover, participatory democracy is a pre-requisite of sustainable development [3] and participatory mechanisms create a more reliable basis for better decisions which benefit all individuals.[4] Public participation methods improve the legitimacy of decision-making as the participation of all individuals can lead to more democratic decisions. [5]

This works speaks about access to justice and claims that is central to sustainable development; it is not just a right in itself, but it is also the right that helps restore other rights which have been violated by advancing the rule of law. The right to an effective remedy is a generally accepted

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[1] Field, C. B., & Barros, V. R. (Eds.). (2014). *Climate change 2014–Impacts, adaptation and vulnerability: Regional aspects*. Cambridge: Cambridge University Press, 3.
[2] Neil A.F. Popovic, (1993) *The Right to Participate in Decisions That Affect the Environment,* 10 Pace Environmental Law Review. 683, 4.
[3] Voss, H. (2014). Environmental Public Participation in the UK. *The International Journal of Social Quality, 4*(1), 26.
[4] *Ibid.,26.*
[5] Holder, J., & Lee, M. (2007). *Environmental protection, law and policy: Text and materials*. Cambridge: Cambridge University Press, 85.

principle of modern legal system which has also been enshrined in international treaties and national constitutions. However, rights are only implementable if there are adequate and sufficient redress mechanisms to uphold them if they are violated or omitted.[6] Access to justice is a polyvalent concept which has both substantive and procedural dimensions. In accordance with Lind and Tyler (1988),[7] procedural justice focuses on the fairness of the decision-making process and the quality of interpersonal treatment. The procedural aspect of access to justice concerns the involvement of various actors in the judicial process. Therefore, the parties must be active participants, where they have a voice in the matter which actually grants the participant the proper 'access' and represents a crucial element of the procedural justice paradigm. Although it isn't a substantive right to a healthy environment, the procedural dimensions assert the right to live in an adequate environment conducive to their health and well-being.

This thesis studies whether CARICOM has implemented functional dispute resolution systems for challenging environmental matters in comparison to the EU. In this thesis, functional dispute resolution systems may be defined as a resolution system which can prevent or address disputes effectively. As the procedures for environmental decision-making may include transparency, these procedural systems may fail to cope with complexities and unexpected changes. Further, as ADR was regarded as a supplement to adjudication, therefore, it is rooted in social structures and customary law.[8] However, it provides an alternative to traditional justice, therefore, this thesis will examine whether it guarantees equal access and timely and sufficient justice which satisfies accessibility and functionality with regard to environmental protection. Therefore, the primary goal of this thesis is to explore and identify potential shortcomings of CARICOM's and EU's current dispute systems with regard to environmental claims and develop recommendations to improve those systems. As the 'environment has no voice of its own'[9], it is critical that the methods aimed at its protection are susceptible to effective judicial enforcement.

Moreover, the comparison will be conducted between environmental law systems of CARICOM and the EU, because it is regarded as an exemplary political and environmental union, which is

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[6] CEPAL, N. (2018). *Ensuring environmental access rights in the Caribbean: Analysis of selected case law,*5 Retrieved from: https://www.cepal.org/en/publications/43549-ensuring-environmental-access-rights-caribbean-analysis-selected-case-law , date used: February 19th, 2021.

[7] Lind, E. A., & Tyler, T. R. (1988). *The social psychology of procedural justice*. Berlin: Springer Science & Business Media, 2-3.

[8] Francioni, F. (Ed.). (2007). *Access to justice as a human right*. Oxford: University Press, 11.

[9] Poncelet, C. (2012). Access to Justice in Environmental Matters—Does the European Union Comply with its Obligations? *Journal of environmental law*, *24*(2), 28.

known for its extensive environmental laws [10] and participatory rights in environmental matters.[11] On the other hand, CARICOM, although founded in 1973, is relatively sectoral with limited environmental laws and access to justice mechanisms.[12] There are remarkable differences between both of the unions' establishment as well as their contribution to public participation in environmental matters. Therefore, it is important to evaluate why one's dispute resolution system is more functional than the other. Based on case laws and legislation, there are some inconsistencies regarding environmental claims against public authorities in the Caribbean. Although CARICOM's establishment should be quite developed, precedents are not normally applied throughout the region, hence, the inconsistencies with environmental cases. [13] However, the EU member states fully implement CJEU case law on access to justice in environmental matters. So, there is unification amongst the states.[14]

The methodology of this thesis is theoretical and empirical research. This type of research is used because it is regarded as one of the most useful methods of systematic investigation.[15] Therefore, it provides valid conclusions as it is regarded as a direct method, rather than a secondary source. As it enables one to evaluate rules and procedures of the law, with a view to how such laws may operate and effects that they have, it is relevant to solving the research problem. The method is the comparative qualitative approach to analyze legislations and implementation between these two regions.

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[10] Selin, H., & VanDeveer, S. D. (2015). *European Union and environmental governance*. London: Routledge, 17.
[11] Jozwiak, J. (2019). Building environmental rights in the european union. *Gonzaga Journal of International Law, 22(2),* 72.
[12] CEPAL, N. (2018). Ensuring environmental access rights in the Caribbean: Analysis of selected case law, 32-33.
[13] Andrade-Goff, D. & Crooks Charles, K. Developing a Regional Instrument on Access Rights for Latin America and the Caribbean. Retrieved from: https://www.cepal.org/sites/default/files/publication/files/37196/S1420692_en.pdf, date used: February 22nd, 2021.
[14] Rozmus, M., Topa, I., & Walczak, M. (2010). Harmonisation of Criminal Law in the EU legislation–The current status and the impact of the Treaty of Lisbon. Retrieved from: https://www.ejtn.eu/Documents/Themis/THEMIS%20written%20paper%20-%20Poland%201.pdf , date used: February 22nd, 2021.
[15] Klein, J. D. (2002). Empirical research on performance improvement. *Performance Improvement Quarterly*, 97.

1. CONDITIONS FOR ENVIRONMENTAL JUSTICE

1.1. Rule of Law

In accordance with Pincione (2019)[16], in this thesis, the rule of law concept in which all citizens, including public authorities, are equally subjected to the law and entitled to its protection. Further, the concept influences the legal system to comply with standards of certainty, equality and generality. [17] Therefore, it is regarded as an ideal concept in which the majority aims to strive for in the interest of good governance and peace; it creates a clear system of laws and requirements which are widely accepted and demonstrated by the individuals of society.[18] As stated by Tyler (2003),[19] the legal authority has a standard goal to enforce the law, so there is immediate compliance with their decisions. As law is dependent on the compliance of the public's conduct and its efficiency is due to the abilities of the legal authority to shape their behaviour by enforcing the law; to be effective, these laws should be obeyed by the citizens in their daily lives. [20] Without its use, arbitrary governance reigns, [21] therefore, the rule of law is regarded as a primary social value.[22]

The concept also comprises of procedural and substantive justice aspects. In the procedural aspect, it ensures that laws are established using an open and democratic process, publicized, and equally and objectively enforced. [23] A procedurally just system therefore comprises of rules to ensure fair application and consistency of due process. Due process refers to the fairness of a legal proceeding, where the rights that are owed to a person are respected and acknowledged. [24] In a substantive aspect, the rule of law complies and influences the human rights norms and standards with regard

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[16] Pincione G. (2019) Rule of Law: Theoretical Perspectives. In: Sellers M., Kirste S. (eds) Encyclopedia of the Philosophy of Law and Social Philosophy. *Springer, Dordrecht*, 1.
[17] *Ibid., 135.*
[18] Dunn, A. D., & Stillman, S. (2014). Advancing the Environmental Rule of Law: A Call for Measurement. *Southwestern Journal of International Law.*, *21*, 284.
[19] Hollander-Blumoff, R., & Tyler, T. R. (2011). Procedural justice and the rule of law: Fostering legitimacy in alternative dispute resolution. *Journal of Dispute Resolution,* 2.
[20] *Ibid.,* 284.
[21] Pardy, B. (2014). Towards an Environmental Rule of Law. *Asia Pacific Journal of Environmental Law, 17,* 164.
[22] Voigt, C. (Ed.). (2013). *Rule of law for nature: new dimensions and ideas in environmental law*, Cambridge: Cambridge University Press, 7.
[23] *Ibid., 7.*
[24] Stancil, P. (2017). Substantive Equality and Procedural Justice. *Iowa Law Review, 102(4),*

to fundamental rights, personal security and integrity, and due process before the judicial bodies. Substantive justice is centralized on the legal system's ability to limit and direct human behavior, by specifically focusing on the function and the structure of a law.[25] Therefore, the concept also comprises of fairness and justice. [26] Provisions of justice through a functioning, adequately resourced legal system is an obligation of the government.[27] This definition of the rule of law aids well with procedural justice with regard to neutrality, as it requires decisions to be made impartially and through consistent application of legal rules and consideration of facts.[28] Therefore, if individuals cannot receive adequate justice and access courts, then the rule of law principle becomes trivial.

Moreover, due to its importance, the rule of law has advanced to a concept beyond its traditional focus of the role of law and legal systems; it has evolved to a tool used to promote and attain goals such as sustainable development. [29] With regard to environmental rule of law, the general concept of rule of law is necessary for the proper management and allocation of natural resources. [30] Due to weak social groups, the environment suffers from lack of law and a poorly developed legal system.[31] Further, as natural resources are scarce, the environment needs sufficient and effective, unbiased implementation of the enforcement of laws. The importance of the environmental rule of law is that it concerns environmental sustainability as it connects it with fundamental rights and obligations. Therefore, it promotes the enforcement of legal rights and obligations, and without it, environmental governance may be arbitrary. [32]

Furthermore, in accordance with author Weingast (2008),[33] open access order and the rule of law hold a society together. In this thesis, open access order is seen as a concept dependent on competition. It is defined as a state where access to economic, political, and social organizations, including the freedom to form them, is open to all citizens in the society and where citizens

[25] Chen-Wishart, M. (2012). *Contract law*. Oxford: Oxford University Press.313.
[26] Stewart, C. (2004), *supra nota 17,* 135.
[27] Holder, J., & Lee, M. (2007), *supra nota 5,* 90.
[28] Papayannis, D. M. (2016). Independence, impartiality and neutrality in legal adjudication. *Revus. Journal for Constitutional Theory and Philosophy of Law,* (28), 36.
[29] Dunn, A. D., & Stillman, S. (2014), *supra nota 19,* 284.
[30] *Ibid., 285.*
[31] Voigt, C. (Ed.). (2013), *supra nota 23*, 7.
[32] Lewis, B. (2012). Environmental rights or a right to the environment: Exploring the nexus between human rights and environmental protection. *Macquarie J. International and Comparative Law Quarterly.*, *8*, 36.
[33] Weingast, B. R. (2008). *Why developing countries prove so resistant to the rule of law. Global perspectives on the rule of law*, London: Cavendish Square Publishing, 44.

comprise most of the population. [34] As a result, some developing countries do not adhere to the rule of law fully, due to the institutional technologies required to attain the rule of law.[35] Therefore, some countries only subscribe to it in name and those who do subscribe to it find it difficult to apply all of its precepts all the time.[36] This can be seen in The Worldwide Governance Indicators (WGI) project report[37] on aggregate and individual indicators for 200 countries, assessing three six dimensions of governance, including the rule of law. The report shows data over the period 1996–2019 which analyzes the extent of the application and enforcement of the rule of law in 200 countries.

1.2. Dispute Resolution Systems

Alternative Dispute Resolution (ADR) was originally used as an experiment to resolve family disputes,[38] however, now it has evolved into a notable mechanism in civil practice.[39] Moreover, litigants now seek ADR mechanisms on their own initiative and courts have also implemented ADR processes. [40]As litigation is based on competition, by using a win-lose approach, in addition to monetary issues and legal analyses of cases, the process accelerates negative conflict between disputing parties by disempowering and alienating them. [41]

Subsequently, ADR is regarded as a better way of solving disputes, as it is time-conservative and affordable and environmental litigation can be expensive, not accessible to all interests, complex and lengthy.[42] Although ADR has many advantages, ADR efforts have failed in three aspects: adequate representation of the public, education of the wider public and implementation.[43]

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[34] North, D. C. (2007). *Limited access orders in the developing world: A new approach to the problems of development* (4359 Ed.). Washington D.C: World Bank Publications, 6.
[35] Weingast, B. R. (2008). *supra nota 32,* 45.
[36] Kamenecka-Usova, M. (2016). Mediation for resolving family disputes. In *SHS Web of Conferences* (Vol. 30). EDP Sciences, 2. Retrieved from: https://www.researchgate.net/publication/308134271_Mediation_for_resolving_family_disputes , date used: 5th May 2021.
[37] The Worldwide Governance Indicators (WGI) Report. Retrieved from: http://info.worldbank.org/governance/wgi/ ,date used: 13th May 2021.
[38] Plapinger, E & Shaw, M. (1992). Court ADR: Elements Of Program Design iX-X, 343.
[39] Waldman, E. (1997) Identifying the Role of Social Norms in Mediation: A Multiple Model Approach, *Law Journal*. 703, 6.
[40] Plapinger, E & Shaw, M. (1992). *supra nota 19*, 343.
[41] Nylund, A. (2014). Access to justice: Is ADR a help or hindrance?. In *The Future of Civil Litigation* (325). Springer, Cham.
[42] Ansari, A., Ahmad, M., & Omoola, S. (2017). Alternative Dispute Resolution in Environmental and Natural Resource Disputes: National and International Perspectives. *Journal of the Indian Law Institute, 59*(1), 26.
[43] Davies, J. (2000). Environmental adr and public participation. *Valparaiso University Law Review, 34(2),* 396.

Bingham found that when an agreement was reached for site-specific issues in environmental ADR, it was only implemented 80% of the time. [44] Therefore, in this thesis, the focus will be on the implementation aspect.

Moreover, as environmental disputes are concerned with the quality of life, the way in which these disputes are solved influence the future of the planet. As the environment largely depends on time, a method which is less time-consuming and provides adequate and swift remedies is quite favourable.

In this thesis, a distinction is made between traditional and less traditional alternative dispute resolution processes. Traditional dispute resolution processes are negotiation, litigation, arbitration, law and policymaking, and consultation as they are established by law, policy and legal theory. On the other hand, alternative dispute processes which promotes conflict resolution and negotiation merely with or without the use of assistance of a neutral or third-party. [45] For instance, arbitration is regarded as a traditional dispute resolution process as it has been a traditionally favoured mechanism and its legislative basis. [46]

Although there are different methods of ADR, this thesis will concentrate on the following methods: mediation, arbitration and consensus building. Mediation may be defined as a confidential dispute resolution method in which an independent third-party, the mediator, by resolving conflict in a voluntary approach.[47] Arbitration is a method in which the disputing parties submit their disputes to an impartial party for determination. The arbitrator has the power to make the decision of the dispute after hearing the disagreement between the parties and considering all relevant information. The decision made may also be legally binding and enforceable through the court. [48] Further, consensus building is regarded as a problem-solving approach due to its emphasis on the interest of participants in defining and resolving disputes. This dispute resolution process focuses on the improvement of communications between parties which are normally opposed to one another. Resultantly, this improves the quality and legitimacy of the decisions made by the

[44] *Ibid., 397.*
[45] Lavi, D. (2016). Three is not a Crowd: Online Mediation – Arbitration in business to Consumer Internet Disputes 37(3), *Penn Law: Legal Scholarship Repository,* 882.
[46] *Ibid., 269.*
[47] Wall Jr, J. A., Stark, J. B., & Standifer, R. L. (2001). Mediation: A current review and theory development. *Journal of conflict resolution,* 45(3), 371.
[48] *Ibid., 3.*

parties as it fosters understanding between them.[49] On the other hand, hybrid procedures have a goal to important goal of 'fitting the forum to the fuss'[50], where another ADR method is used if one of the methods are unsuccessful, such as Med/Arb. Using the ADR hybrid procedure, such as Med/Arb, the parties would use the mediation process first. However, if this ADR method fails, the procedure enables them to use another ADR method, such as arbitration.

Due to environmental concerns, attention and concerns have increased regarding resolving environmental disputes.[51] Environmental-related litigation has increased in frequency, scale and impact as explained by Miles and Swan (2017).[52] In this thesis, environmental disputes refer to disagreements between parties which are about or are directly relevant to the natural environment.[53]

The increased dissatisfactory of litigation processes have influenced an alternative mechanism which provides efficient ways of resolving environmental issues and alternatives to political actions.[54] Environmental disputes can be regarded as a manifestation of the system's dysfunction, where judicial reviews are regarded as a fail-safe mechanism to reduce negative outcomes in the event that the system fails.[55] In the event where courts have to apply the law, the real issue may arise when a new law is needed, or an old law altered; as environmental decision-making depend on judicial framework and administrative and policy-making decisions with the use of judicial reviews, such as an appeal process. [56] Accordingly, the matter will be resolved by political action or inaction, at the levels of legislative, executive, administrative or local government decision.[57] Therefore, the government is a party to these disputes, so they are unable to satisfactorily address them. [58] Consequently, the resulting paralysis of governments, has made settling environmental disputes through alternative dispute resolution techniques more favourable[59]. Moreover, there

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[49] Lavi, D. (2016). *supra nota 26,* 883.
[50] Sander, F. E., & Goldberg, S. B. (1994). Fitting The Forum to The Fuss: A User-Friendly Guide to Selecting An ADR Procedure. *Negotiation Journal*, *10*(1), 50.
[51] Wootten, H. (1993). Environmental dispute resolution. *Adelaide Law Review.*, 35.
[52] Miles, W. J., & Swan, N. K. (2017). Climate change and dispute resolution. *Dispute Resolution International, 11(2),* 117.
[53] *Ibid., 36.*
[54] *Ibid., 37.*
[55]Sandford, R. A. (1990). *Environmental dispute resolution: mediation, an effective alternative to litigation?* 19
[56] Wootten, H. (1993). *supra nota 48,* 36.
[57] Miles, W. J., & Swan, N. K. (2017). *supra nota 26,* 118.
[58] Susskind, L., & Weinstein, A. (1980). Towards theory of environmental dispute resolution. *Boston College Environmental Affairs Law Review, 9(2),*312.
[59] *Ibid., 312.*

seems to be no legal framework is capable of resolving all disputes.[60] However, 'fit the forum for the fuss' approach aids well as it designs an ADR procedure to resolve a particular dispute, such as an environmental dispute.

1.3. Access to Justice and Dispute Resolution Systems

There is no consensus on the importance of access to justice and how to attain it, nor on legal empowerment, nor on how to improve it.[61] However, as stated by Cappelletti, Garth and Trocker (1982), in this thesis, access to justice is regarded as the effective advocacy and representation of diffuse interests.[62] As the traditional civil procedure only concerned individual rights, this definition aims to provide access to justice of problems represented by groups and collective diffuse interests. Moreover, the authors also outlined other mechanisms to attain access to justice, such as dispute resolution systems to prevent and process disputes. As access to justice is a core principle of the rule of law that justice must be accessible to all. [63]

However, due to the lack of access to justice provisions in international environmental agreements, access to justice in environmental matters is likely to be achieved through provisions of human rights and through effective integration between human rights and environmental law.[64] In the Universal Declaration and the ECHR, access to justice is regarded as an 'effective remedy'. On the other hand, the Covenant on Civil and Political Rights define access to justice as: 'effective remedy'; 'the right to take proceedings before a court'; and 'to a fair and more public hearing'.[65] Evidently, access to justice has acquired many definitions, therefore, a unified definition is not in place. [66] Generally, access to justice is regarded as the possibility for an individual to bring a claim to the court and have the court adjudicate using procedural justice. [67] Additionally, access to justice may be regarded as a judicial review where there is an infringement of a right. [68] Furthermore,

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[60] Silecchia, L. A. (2017). Conflicts and laudato si: Ten principles for environmental dispute resolution. *Journal of Land Use & Environmental Law, 33(1),* 75.
[61] Solarte-Vasquez, M. C., & Hietanen-Kunwald, P. (2020). Transaction design standards for the operationalisation of fairness and empowerment in proactive contracting. *International and Comparative Law Review*, *20*(1), 191.
[62] Cappelletti, M., Garth, Bryant *et al*. Trocker, N. (1982) Access to Justice, Variations and Continuity of a World-Wide Movement. *The Rabel Journal of Comparative and International Private Law*, vol. 27, 665.
[63] Bottomley, S., & Bronitt, S. (2012). *Law in context*, 159.
[64] *Ibid., 160.*
[65] *Ibid., 160.*
[66] Francioni, F. (Ed.). (2007). *supra note 9,* 11.
[67] *Ibid, 11.*
[68] Miles, W. J., & Swan, N. K. (2017), *supra nota 26,* 118.

access to justice may also be used to describe legal aid in the absence of judicial remedies. [69] Such remedies may be offered by competent public authorities, which are not the court of law, but provide dispute settlement systems, such as alternative dispute resolution processes. [70] This thesis views access to justice from all three of these perspectives; the right to bring a claim before a competent court, and the right to effective remedy when the claimant has suffered, and it is a right within itself which is an instrumental guarantee when a substantive right has been omitted or violated.[71] As access to justice plays a critical role for the injured party, it provides protection and enforcement of human rights.[72] It is important to view access to justice in environmental matters using these three perspectives because it enables one to bring an environmental claim before a competent court, therefore, granting functional dispute resolutions regarding claims. Moreover, it also provides effective remedies for substantive rights, such as environmental rights, which have been suffered.

Access to justice and Alternative Dispute Resolution (ADR) have influenced the legal thinking of civil procedure and policymaking with regard to the function and role of the courts. [73] Both movements have scrutinized the traditional court system and civil procedure by discovering their fragilities and deficiencies.[74] Fortunately, both movements have offered solutions to improve and develop the justice system by developing out-of-court settlement procedures. However, as alternative dispute resolution was firstly used to supplement adjudication, it comprises of social structures and customary law, which may influence its functionality. [75] Therefore, in this thesis, a functional dispute resolution may be defined as system designed to provide equal accessibility and effectivity by producing high quality justice for disputes in a timely manner and at sustainable cost.[76]

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[69] Francioni, F. (Ed.). (2007), *supra nota 9,* 112.
[70]Llivina, C.. (2018). Small States and Regional Dispute Resolution Mechanisms: The Caribbean and Pacific Experiences. *Integration and International Dispute Resolution in Small States, 27.*
[71] CEPAL, N. (2018), *supra nota 11,* 49.
[72] Francioni, F. (Ed.), (2007), *supra nota 9,* 13.
[73] Nylund, A. (2014). *Access to justice: Is ADR a help or hindrance?. In The Future of Civil Litigation*, 325.
[74] *Ibid., 326.*
[75] Francioni, F. (Ed.) (2007), *supra nota 9,* 14.
[76] *Ibid., 14.*

The most important pillar in the modern public interest is access to justice.[77] Since the early 1970s[78], access to justice gained its momentum and has never lost its force.[79]As a result, it questions the crucial issue of the effectiveness and enforceability of law. The three elements of access to justice which enhance effectiveness are: locus standi which determines the formal rights to go to court; practical questions relating to the resources needed to bring an action; and the remedies provided.[80] The right of access to justice is the core of environmental access rights and environmental protection. As it relates to environmental claims, there should be access to judicial and administrative methods which can challenge and appeal any decision, action or omission related to access to environmental information and public participation in the decision-making process regarding environmental matters. [81] This also gives the right to challenge those decisions which affects or could affect the environment adversely or violate laws and regulations related to the environment. As rights can only be implementable and functional when there are adequate and sufficient redress mechanisms to uphold them in the event they are omitted or violated.[82]

Moreover, access to justice is critical for environmental protection, as environmental law tends to suffer from an enforcement deficit due to several varying reasons; from the inability to the unwillingness for national governments to implement the legislation in a sufficient manner, and the fact that the majority of environmental law does not confer rights on individuals that can be invoked in court. [83]

Further, public participation has become a conventional element of 'good governance' for the environment where three elements exist. In accordance with Principle 10 of the The Rio Declaration on Environment and Development, these three main elements are: access to environmental information, public participation in environmental decision-making and access to

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[77] Holder, J., & Lee, M. (2007), *supra nota 5,* 90.
[78] Ryan, M. (1997). Alternative Dispute Resolution in Environmental Cases: Friend Or Foe? *Tulane Environmental Law Journal, 10*(2), 398.
[79] Harlow, C. (2002). Public Law and Popular Justice. *The Modern Law Review, 65*(1), 4.
[80] Salman, R. K., & Ayankogbe, O. O. (2011). Denial of Access to Justice in public interest litigation in Nigeria: Need to learn from Indian judiciary. *Journal of the Indian Law Institute*, 67.
[81] Sambo, P. T. (2012). *A conceptual analysis of environmental justice approaches: procedural environmental justice in the EIA process in South Africa and Zambia*. Retrieved from: https://www.research.manchester.ac.uk/portal/files/54523801/FULL_TEXT.PDF, date used: March 1st, 2021.
[82] CEPAL, N. (2018), *supra nota 6,*5.
[83] Panovics, A. (2020). The Missing Link: Access to Justice in Environmental Matters. *EU and Comparative Law Issues and Challenges Series, 4,* 109.

justice; each with its own respective functions. [84]Additionally, access to information and access to justice are also instrumental for effective public participation more generally.

International human rights emphasize that public participation is an international or global issue, therefore, the participatory rights are enshrined in international human rights relating to environmental matters.[85] Although environmental protection and development have been inseparable, the connection between access to environmental justice and governance is a relatively new idea. [86]At the one end of the spectrum, public participation includes voicing concerns about specific activities or acts which may affect the environment, thus affecting their rights.[87] Resultantly, individuals have been granted the right to challenge acts, omissions and decisions by public authorities as well as private persons which violate their environmental rights.

[84] Barchiche, D., Hege, E., Napoli, A. (2019). *The Escazú Agreement: an ambitious example of a multilateral treaty in support of environmental law.* Retried from: https://www.iddri.org/sites/default/files/PDF/Publications/Catalogue%20Iddri/Décryptage/201903-IB0319EN_Escazu.pdf , date used: March 1st, 2021.
[85] Déjeant-Pons, M., Pallemaerts, M., & Fioravanti, S. (2002). *Human rights and the environment: compendium of instruments and other international texts on individual and collective rights relating to the environment in the international and European framework*, Strasbourg: Council of Europe, 14.
[86] Markowitz, K. J., & Gerardu, J. J. (2011). The importance of the judiciary in environmental compliance and enforcement. *Pace Environmental Law Review, 29*, 538, 23-25.
[87] Holder, J; Lee, M. (2007), *supra nota 5,* 90.

2. THE RIGHT OF ACCESS TO JUSTICE IN CARICOM ON ENVIRONMENTAL MATTERS

2.1. Regional and National Obligations of Environmental Access Rights

The application of the rule of law and the protection of human rights is enshrined by all Caribbean National Constitutions.[88] Additionally, the majority of the Caribbean countries are parties to international instruments which govern access to justice, such as the International Covenant on Civil and Political Rights (ICCPR).[89] Moreover, CARICOM countries have endorsed the Sustainable Development Goals (SDGs) which include Goal 16 on peaceful, just and inclusive societies. SDG 16 also provides the guidelines for 'promoting the rule of law at the national and international levels and ensuring access to justice for all.'[90]

Due to the influence of United Nations Conference on Sustainable Development in 2012, Latin American and the Caribbean region decided to adopt a regional agreement based on access to information, public participation and justice in environmental matters with the significant participation of the public and the support of Economic Commission for Latin America and the Caribbean (ECLAC) as technical secretariat.[91]

The Latin American and Caribbean countries agreed establish a negotiation process that would transpire the rights enshrined in Principle 10 of the Rio Declaration in the regions. Therefore, on March 4th, 2018, the Escazú agreement was adopted. [92] However, the agreement was entered into force on April 22nd, 2021.[93]

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[88] Anderson, J. (2021) The rule of law and the Caribbean Court of Justice: taking jus cogens for a spin, *Oxford University Commonwealth Law Journal,* 3.
[89] City, P. Press release Caribbean Human Development report 2012. Retrieved from: *https://www.undp.org/content/dam/undp/library/corporate/HDR/Latin%20America%20and%20Caribbean%20HDR/C_bean_HDR_Jan25_2012_3MB.pdf,* date used: April 11th, 2021.
[90] UN General Assembly, (2015).*Transforming our world :the 2030 Agenda for Sustainable Development*. Retrieved from: https://www.un.org/en/development/desa/population/migration/generalassembly/docs/globalcompact/A_RES_70_1_E.pdf , date accessed: May 13th 2021.
[91] Barchiche, D., Hege, E., Napoli, A. (2019), *supra nota 83,*6.
[92] *Ibid.,7.*
[93] Report of the First Meeting of the Countries Signatory to the Regional Agreement on Access to Information, Public Participation and Justice in Environmental Matters in Latin America and the Caribbean 2020.

This agreement is critical to the advancement of international environmental law in Latin America and the Caribbean as it emphasizes the importance of public participation regarding to environmental matters.[94] In accordance with ECLAC, the rights manifested in the Escazú Agreement, at the regional level, 23 countries have adopted access to information laws: 76% incorporate provisions to promote citizen participation and only 20 countries allow any person or group to bring actions in defense of the environment.[95] Therefore, it is concerning why only 20 out of 33 countries which are open to the agreement, allow any individual to bring actions in defense of their environmental rights.[96] As 24 countries have agreed to the Escazú agreement which aims emphasize the importance of public participation, it seems as though public participation negligible and inferior. As in written agreements, 76% of these countries include such provisions to promote public participation, yet this is restricted as they are unable to bring any action against a competent court. [97] Therefore, although officially these agreements are implemented, in reality they are not practiced nor are they effective.

As the constitutions of Caribbean countries are regarded as the primary source of national law, [98]it provides a fundamental legal basis at the national level for the protection of environmental access rights. The constitution is used to provide a guide for domestic legal frameworks. However, many Caribbean constitutions possess their own specific references to environmental rights, the rights which protect public participation in environmental matters are safeguarded within such references.[99]

On the other hand, in practice, Parliament's laws are considered the most important source of environmental law in the Caribbean because they relate specifically to access rights.[100] Although access rights in relation to environmental matters are enshrined in the constitution, Acts of Parliament are considered to play a critical role in the providing and establishing remedies.

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[94] CEPAL, N. (2018), *supra nota 6,*9.
[95] *Ibid.,8.*
[96] CEPAL, N. (2018). Regional Agreement on Access to Information, Participation and Justice in Environmental Matters in Latin America and the Caribbean. Escazú, Costa Rica. Retrieved from: https://www.google.com/url?sa=t&rct=j&q=&esrc=s&source=web&cd=&ved=2ahUKEwjSicWIvMbwAhURgv0HHREpCm4QFjABegQIBRAD&url=https%3A%2F%2Frepositorio.cepal.org%2Fbitstream%2Fhandle%2F11362%2F43583%2F1%2FS1800428_en.pdf&usg=AOvVaw3PU0BTkE4VAdI3S_j_yd8z , date accessed: 12th February, 2021.
[97]Jason Haynes (2015*)* Revisiting the locus standi of private applicants in judicial review proceedings under CARICOM and EU law: a comparative perspective*, Commonwealth Law Bulletin, 41:1, 59.*
[98] CEPAL, N. (2018), *supra nota 5,* 18.
[99] Nicole D. Foster (2017) CARICOM states and the WTO dispute settlement system: the case for greater engagement, *Commonwealth Law Bulletin,* 43:2, 153.
[100] *Ibid., 5.*

[101]However, as acts of parliament are regarded as public authorities, there are some concerns regarding the enforceability of such access rights. When individuals try to challenge legal acts against public authorities which may violate their environmental rights, it is arguable whether the rule of law conventionally applies. There is a known tension between judicial activism and the legitimate role of Legislature, as the role of judges is to interpret and apply the law, not to make them.[102] Subsequently, the fragility in this strategy is that judicial decision-making can become judicial dictatorship if it ignores the legislative imperatives of the democracy calibre of the public. [103] Therefore, the cooperation of the public is based on their perception on the fairness and implementation of the procedures by legal authorities. Accordingly, their willingness to accept the constraints on the law depend on their evaluation of the procedural justice of those authorities.[104]

In CARICOM, there are three main instruments which have provided a foundation for the rights to access environmental information and public participation in environmental matters. In addition to the Rio Declaration, these include the 1989 Port of Spain Accord on the Management and Conservation of the Caribbean Environment, the 1991 Port of Spain Consensus of the Caribbean Regional Economic Conference and the Revised Treaty of Chaguaramas. [105]

In the Port of Spain Accord, the environmental Ministers of CARICOM addressed issues in relation to environmental protection with regard to land use planning, degradation of coastal and marine environment, forest and watershed management and disaster preparedness.[106] Further, the Caribbean Regional Economic Conference, gathered the public in 1991 to reach the Port of Spain Consensus which influenced the importance of democratic, inclusive and participatory principles in environmental matters. [107] Lastly, Article 65 of The Revised Treaty of Chaguaramas addresses environmental protection by requiring CARICOM policies ensure the sufficient allocation and management of resources and takes into account available and accessible data and environmental justice principles. Moreover, in Article 226 of the treaty, further states that nothing interpreted as precluding the adoption or implementation by a Member State of measures relating to the

[101] *Ibid., 19.*
[102] Antoine, R. (2017) *The Rule of Law V Ruling by Laws: Promoting Development in Caribbean Societies*, 3.
[103] *Ibid., 4.*
[104] Tyler, T. (2003), *supra nota 20,* 284.
[105] Antoine, R. (2017), *supra nota 101,* 8.
[106] *Ibid., 24.*
[107] Elias-Roberts, A; Hanoman, R. (2018) CARICOM, the CSME, and Absolute Sovereignty: Lessons Learnt on the road Towards Regional Integration, *Commonwealth Law Bulletin,* 44:1, 66.

conservation of natural resources or the preservation of the environment. Furthermore, Article 222 enables the right to access to courts and their proceedings be heard before the Caribbean Court of Justice (CCJ).[108]

The draft Caribbean Community (CARICOM) Environmental and Natural Resources Policy Framework aims to address unsustainable use of resources to attain the 2030 SDGs in the CARICOM Single Market and Economy (CSME). Accordingly, it proposes a foundation and strategy for the effective allocation of environmental and natural resources in CARICOM, while maintaining the healthy environments within the Community. This Policy is the first towards making the Policy Framework actionable, by enabling a basis for collective regional responses and encouraging member states to take action to achieve environmental and sustainable development goals. [109]

Furthermore, Article 1 of the draft of Caribbean Community (CARICOM) Environmental and Natural Resources Policy Framework states 'every person has the right to live in an ecologically sound environment adequate for their health, well-being, dignity, culture and fulfilment. Moreover, Article 11 stipulates that all parties shall have the right of effective and affordable access to administrative and judicial procedures, including redress or remedies, to challenge legal acts or public authorities or private persons who contravene environmental law. [110] Moreover, in accordance with Article 7 of the policy, parties are able to receive adequate remedies for environmental damages.

However, this is the first policy and framework which has proposed environmental resources in CARICOM, yet it is still a draft.[111] As being some of the most vulnerable islands due to climate change, it is concerning why such policies haven't been in effect prior to. As previously stated, these countries' enforceability on environmental justice is greatly influenced by the constitution and statutory laws. Due to common law's influence, the procedure to make a decision is based on the procedural propriety, not the decision itself. However, as public authorities are the only source

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[108] Caribbean Community (CARICOM), Revised Treaty of Chaguaramas Establishing the Caribbean Community Including the CARICOM Single Market and Economy, 2001

[109] The (draft) Caribbean Community Environment and Natural Resources Policy ("Policy") Framework proposes a structure for environmental and natural resources management in CARICOM.6 The First Environmental and Natural Resources Action Plan ("Action Plan") of the Caribbean Community Environment and Natural Resources Policy Framework (July 2017-June 2022) is generally considered as the first step in making the Policy actionable. Retrieved from: https://www.iucn.org/sites/dev/files/global_pact_regional_review_-_caricom.pdf

[110] Holder, J. Lee, M. (2007), *supra nota 81,* 15.

[111] Anderson, W., & Anderson, W. (2012). *Principles of Caribbean environmental law*. Washington, D.C: Environmental Law Institute, 67.

which directly influences environmental rights, when individuals challenge legal acts against these same authorities, it is questionable whether they are granted fair administrative and judicial procedures to attain redress.[112]

2.2. Remedies for Environmental Claims in CARICOM

Practically, Acts of Parliament, courts and tribunals have been pivotal in ensuring the victim's right to seek redress and remedy in the event of environmental harm[113] In accordance with Article 25(1) of Universal Declaration of Human Rights, everyone has the right to a standard living for health. Although it isn't a substantive right to a healthy environment, the procedural dimensions assert the right to live in an adequate environment conducive to their health and well-being. In CARICOM, the Revised Treaty of Chaguaramas plays an important role in environmental matters. Article 65(2) states that in the event of environmental harm, the precautionary principle, the polluter pays principle and other principles which relate to preventative action shall apply. Article 65(2)(e) states that rectification should be provided through environmental damages. Therefore, these principles are deterrents for committing environmental rights breaches. [114]

However, the Treaty lacks information on how to redress through environmental damages. Instead, Acts of Parliament and Courts must implement these remedies deemed as fit in their perspective.[115] Accordingly, this contributes to disunity of precedents, and restriction of access to justice.[116] As judicial activism plays an integral role in the decisions in CARICOM states, this may cause disunity of precedents amongst states. Moreover, *locus standi* is the legal standing to challenge an infringement of a right.[117] It has been seen in CARICOM case law that the private interest model is usually applied, where only those who have sufficient and relevant interest in the matter could bring an action. [118] However, as environmental protection has been supplemented by legislation and legal rules, recent cases have shown a less restrictive approach.[119] Therefore, enabling

[112] Antoine, R. (2017), *supra nota 99*, 4.
[113] Anderson, W., & Anderson, W. (2012), *supra nota 109,* 79.
[114] The Revised Treaty of Chaguaramas.
[115] Anderson, W., & Anderson, W. (2012), *supra nota 109,* 118.
[116] *Ibid.,118.*
[117] Antoine, R. (2017), *supra nota 99*, 8.
[118] CEPAL, N. (2018), *supra nota 5,* 43.
[119] *Ibid., 43.*

applicants to initiate claims regarding environmental matters, once their interest is relevant and sufficient. Consequently, this hinders access to justice in environmental matters, as in some states an individual may have locus standi or may not. This can be seen in Ulric *'Buggy' Haynes Coaching School and ors v Minister of Planning and Sustainable Development*[120], which granted relief to a group of concerned citizens by denouncing the construction of a sports complex in the Orange Grove Savannah. On the other hand, in *Benjamin v Attorney General of Antigua and Barbuda*,[121] the Court decided that the applicant was unable to show locus standi, therefore, they had no rights in law relating to the construction of a multi-level car park in Antigua and Barbuda.

[120] High Court, TT 2015 HC 198, CV 2015-03563
[121] Eastern Caribbean Supreme Court of Justice, AG 2007 HC 54, ANUHCV 2008/0632

3. THE RIGHT OF ACCESS TO JUSTICE IN THE EU ON ENVIRONMENTAL MATTERS

3.1. International and Regional Obligations to Environmental Access Rights

In accordance with Article 191 to 193 of the Treaty on the Functioning of the European Union (TFEU), the EU is required to meet environmental objectives to combat environmental change.[122] The environmental policy of the EU is the outcome of a distinctive and evolving process which reflects tensions which arise during that process between the many interest of the member states, policy makers, scientific advisers and Sustainable Development Goals (SDGs).[123] The 10th principle of the Rio Declaration from 1992 established that access to information, public participation in decision-making and access to justice constitute core principles of environmental protection.[124] Therefore, access to justice has been a topic of interest before the 1998 Aarhus Convention.[125]

Customarily, individuals were only able to file a complaint against states reporting that international obligations have been violated. [126] The United Nation Economic Commission for Europe's Convention on access to information, public participation in decision-making, access to justice in environmental matters is considered to be the main legally binding instrument protecting the public's environmental rights. [127] It is the first international instrument which addresses procedural rights with regard to environmental matters and conceptualizes access to justice as access to environmental justice for non-state actors.[128]

In accordance with the EU Commission, "access to justice guarantees that individuals and environmental associations, under certain conditions, can have an independent national court examine whether a public authority acted lawfully in making a decision, act or omission affecting

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[122] Jozwiak, J. (2019). Building Environmental Rights in the European Union. *Gonzaga Journal of International Law*, 22(2), 71.
[123] Ibid.,7.
[124] 1992 Rio Declaration on Environment and Development
[125] Razzaque, J. (2004) Access to Justice in Environmental Matters at EU Member State Level: An Update on the UK. *Yearbook of European Environmental Law*, Vol. 5, 67.
[126] *Ibid.,* 69
[127] United Nation Economic Commission for Europe's Convention on Access to Information, Public Participation in Decision-making, Access to Justice In environmental matters 2161 UNTS 447
[128] Razzaque, J. (2004), *supra nota 122,* 69.

their rights. The principle guarantees consist of the fight to be heard, a sufficient scrutiny by the national judge, measures to put matters fight and measures to avoid prohibitive costs."[129]

Consequently, in the effort to raise awareness about the importance of sustainable development and healthy environments, the European Union developed a system of norms which seek to fulfill the gaps in individual legal systems. Moreover, the variation in national laws of the EU states can also lead to misinterpretation and conflict of laws. One of the issues with implementation was the conflicted treaty language as seen in cases using the *Plaumann* case which established the interpretation of "individual concern".[130] The *Plaumann* decision interpreted a phrase which limited the ability for individuals and Non-Government Organizations (NGOs) raise environmental claims, as the courts followed this interpretation. [131] This interpretation from the Plaumann case was used for many years until the Aarhus Convention establish an opportunity to reconsider the holding.[132]

However, although international treaties and directives in the EU regulate this aspect, the sections which are not covered, fall within the scope of national regulations. The Directive of the European Parliament and of the Council 2004/35/EC of 21 April 2004 [133], deals with the rights and duties of competent authorities of states to act towards prevention and elimination of damage. On the other hand, the Directive does not regulate damage that might occur as a result of environmental pollution, or which are detrimental to private law entities.[134] As a result, national law must fill in the gaps in these aspects and they play a vital role with regard to private law entities, natural and legal persons seeking judicial proceedings the compensation as a consequence of operators' activities.

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[129] European Commission, (2017). New Guidelines Help Citizens Gain Better and Fairer Access to their National Courts on Environmental Cases. Retrieved from: https://ec.europa.eu/commission/presscorner/detail/en/IP_17_1114, date used: 5th May 2021.
[130] Jozwiak, J. (2019), *supra nota 114*, 71.
[131] Razzaque, J. (2004), *supra nota 122,* 73.
[132] *Ibid., 72.*
[133] Directive 2004/35/EC of the European Parliament and of the Council of 21 April 2004
[134] Đajić, S., & Stanivuković, M. (2017). Domestic law in international investment arbitration: An overlooked source of law. Retrieved from: https://www.researchgate.net/publication/318429023_Domestic_law_in_international_investment_arbitration_An_overlooked_source_of_law , date used: 11th May, 2021.

3.2. Aarhus Convention and Access to Justice

Although regional in scope, the significance of the Aarhus Convention is global. It is the most impressive multilateral environmental agreement which emphasizes the need for citizens' participation and access to information with regard to the environment. It links human rights and environmental rights. [135] This Convention acknowledges that sustainable development may only be achieved once all individuals are involved. Therefore, the Aarhus Convention intertwines the government's accountability with environmental protection. It focuses on interaction between the public and public authorities in a democratic perspective while it forges a new process for public participation in the negotiation and implementation of international agreements.[136]

Although this Convention may have many motives, the strongest relates to improvement in environmental protection and sustainable development.[137] As part of the United Nations 2030 Agenda for Sustainable Development, the EU has implemented strategies and regulations which promote the goals outlined in the agenda.[138] Additionally, to promote the goals outlined by the UN, the EU has also issued their own agenda, EU's Strategic Agenda 2019-2024, where the integration of digital technologies and sustainability work hand in hand. One of the goals of the agenda is to promote sustainability using digital technologies, thus creating sustainable digitalization. [139]

The purpose of the Convention is to create a different approach with regard to environmental protection in the perspective of democracy by establishing three pillars. The first pillar aims to set out the rights of access to information; the second pillar involves public participation with regard to decision-making; and the third pillar relates to access to justice in environmental matters. [140]

The goals set out in the pillars also aim to improve the public's awareness on environmental matters as well as progress the transparency of national administrations and institutions. [141] It is believed that when effective judicial mechanisms are accessible to the public, it protects legitimate

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[135] Faure, M. G., & Philipsen, N. (2014), *supra nota 64,* 24.
[136] Ebbesson, J. (2002). *Access to Justice in Environmental Matters in the EU.* (3rd Ed.) South Holland: Kluwer Law International BV. 92.
[137] Dross, M. (2003). Access to justice in environmental matters. Tilburg Foreign Law Review, 11(4), 720.
[138] A Stronger Digital Europe – Our call to action towards 2025. Retrieved from: https://www.digitaleurope.org/policies/strongerdigitaleurope/ , date used: May 12th, 2021.
[139] *Ibid.*
[140] Jozwiak, J. (2019), *supra nota 114*, 72.
[141] Hartley, N., & Wood, C. (2005). Public participation in environmental impact assessment—implementing the Aarhus Convention. *Environmental impact assessment review*, *25*(4), 320.

interests and enforces environmental law. As breaches of environmental law have the propensity to affect all, it is difficult to enforce environmental law based on locus standi; as the provisions in the Aarhus Convention are based on the presumption that the natural environment belongs to all individuals, so is the responsibility to prevent environmental damage. [142]

The Aarhus Convention creates binds human rights and protection of the Environment; Article 1 of the Convention states that, "every person has the right to live in an environment adequate to his or her health and well-being, and the duty, both individually and in association with others, to protect and improve the environment for the benefit of present and future generations".[143] This guarantees the right to access information, public participation in decision-making and access to justice in environmental matters. The provisions on access to justice in environmental matters in the Aarhus Convention are based on the presumption that the natural environment belongs to all of us, as well as the responsibility to prevent environmental damage.[144] The preamble conceptualizes the need for adequate protection of the environment is essential for the enjoyment of basic human rights. Article 9(2) of the Aarhus Convention ensures that the public concerned has access to justice to challenge any decision, act or omission subject to the provisions in Article 6. [145]

The Convention is regarded as the most extensive and far-reaching international development in public participation to date, with many signatories including the EU and all its member states. [146] The influence is evident in the national compliance reports which have shown that several countries have changed their legislation in order to be compliant with the Aarhus Convention. However, although it is widely influenceable, it does not give standing rights.

There are five important issues that the Convention stipulates regarding access to court. First, in Article 4 of the Convention, it states that the review procedure shall enable any person to enforce their rights of access to information.[147] Secondly, Article 6 subjects the review of acts, decisions and omissions with regard to public participation. Thirdly, each party to the Convention must ensure that there are adequate resolution systems which enable the public to challenge such acts and omissions by private persons and public authorities who create provisions which contravene

[142] Jozwiak, J. (2019), *supra nota 114*, 74.
[143] Article 1 of the Aarhus Convention.
[144] Hartley, N., & Wood, C. (2005), *supra nota 131,* 322.
[145] Article 9(2) of the Aarhus Convention.
[146] Hartley, N., & Wood, C. (2005), *supra nota 131,* 322.
[147] Article 4 of the Aarhus Convention.

with the national law with regard to the environment. However, the Convention doesn't provide specific procedures or requirements with regard to the criterium the members of the public have to fulfill in order to receive such administrative or judicial procedures. This may be one of the reasons why the right to access to justice in environmental matters still tends to vary throughout the Union. Although the EU member states fully implement CJEU case law on access to justice in environmental matters, so that there is unification amongst the states, other factors such as the different legal cultures,[148]and the inaction from the EU legislator,[149] lead to the variation of the implementation of access to justice procedures. In accordance with Article 9 (3) of the Convention, there is a criterion in national law of the parties to the convention, where the members of the public shall enjoy such access rights. However, as the obligations set out in Article 9 (3) only outlines a general requirement, the parties to the convention must retain a broad discretion. [150]Therefore, the parties are free to define their own national laws and conditions for access to procedures, as long as this general provision set out in the Convention is met.

Additionally, the proceedings must also grant adequate and effective remedies, and be unbiased, equitable, timely and not prohibitively expensive.[151] Lastly, in order to strengthen the effectiveness of the preceding provisions, the fifth paragraph states that each party shall ensure information on access to administrative and judicial review procedures is provided to the public, and additionally, there must be adequate assistance strategies which aim to remove or reduce barriers to access to justice.[152]

3.3. Remedies for Environmental Claims in EU

EU has implemented directives and mechanisms to enforce environmental protection such as individuals' right to a healthy and balance environment in accordance with Article 6(1) of the European Convention on Human Rights (ECHR). However, to receive adequate redress for the rights which have been violated, Article 13 enable victims the right to an effective remedy. This article guarantees claimants whose rights and freedoms set forth in the Convention which have

[148] Article 6 of the Aarhus Convention.
[149] Ebbesson, J. (2002), *supra nota 130,* 100.
[150] Article 9 (3) of the Aarhus Convention.
[151] Stec, S. (Ed.). (2003). *Handbook on access to justice under the Aarhus Convention*. Szentendre: Regional Environmental Center for Central and Eastern Europe, 8.
[152] Robinson, N. A. (2011). Ensuring access to justice through environmental courts. *Pace Environmental Law Review.*, *29*, 363.

been violated, a right to obtain appropriate relief before a national authority.[153] In accordance with Article 9 (4) of the Aarhus Convention, it states that the remedies should be adequate, equitable and timely.

In accordance with Article 13, the national authority should be an impartial body capable to decide on the merits of the claim, and therefore, provide redress. [154] If environmental harm is done, the judicial authority is obligated to issue an injunction to stop the act or remedy it. However, dependent on the harm done, the order may differ. Due to legal traditions, states' approach toward remedies, may differ.[155] For instance, in Germany, remedies against environmental harm are regarded as administrative law rather than civil law.[156] However, this can reduce the uniformity of seeking redress between member states. This enables member states to apply appropriate remedies they deem fit. Moreover, what is regarded as an effective remedy may differ in different states due to legal culture.

Although it is not necessary for a right to be violated, the protection is afforded to those with an arguable claim[157] , therefore, claimants must prove an infringement of individual interest.[158] The member states have the privilege to implement rules on how they provide such remedies within their own legal system. However, the remedies chosen should be sufficient and effective. [159] As it's the member state's obligation to ensure that victims of an arguable claim, have a remedy before a national authority to have the claim addressed and to receive redress. This enables member states room for maneuver in apply access to justice and providing adequate remediation.

Moreover, Article 191 TFEU, established the principle of prevention, which states that EU should implement effective strategies to protect and prevent environmental harm. Moreover, the polluter-pays principle is also stipulated in Article 191 TFEU, which states that the costs of repairing environmental impairment is borne by the polluter. Furthermore, Article 11 TFEU states that environmental protection should be integrated into the definition and implementation of other EU policies. These principles are put in place to restore environmental impairment and redress those

[153] de l'Europe, C. (2012). Manual on Human Rights and the Environment. Strasbourg: Council of Europe., 24.
[154] European Convention on Human Rights
[155] de l'Europe, C. (2012), *supra nota 143*, 26.
[156] De Sadeleer, N., & Dross, M. (2003). *Access to Justice in environmental Matters*, 18.
[157] de l'Europe, C. (2012), *supra nota 143*, 26.
[158] Jadaan, J. B., & Hasan, Q. A. (2020). Environmental Law Within the Framework of European Courts and UN Charters. *Utopía y Praxis Latinoamericana*, 25(1), 345.
[159] *Ibid., 350.*

who have been affected in the event of environmental harm. The Aarhus Convention also plays a critical role in the remedial aspect of environmental protection, as it creates a liaison between environmental rights and human rights which link government accountability and environmental protection.[160]

[160] Robinson, N. A. (2011), *supra nota 142*, 365.

4. COMPETENT DISPUTE RESOLUTION SYSTEMS IN EU AND CARICOM

4.1. Functionality of Dispute Resolution Systems in the EU

In 2008, EU implemented the European Union Mediation Directive,[161] however, in accordance with De Palo and Canessa (2016), the use of ADR in Europe is still profoundly underutilized. [162] The focus of alternative dispute resolution is on consumer and civil disputes, as the EU has more economic polices over environmental policies. [163] This can be seen in the Directive on Consumer ADR[164] and Online Dispute Resolution (ODR) Regulation[165] adopted in April and May 2013, respectively. Both directives have proven to be a have had some on consumer dispute resolution, as they were designed to resolve disputes arisen from the contract of sales of goods and services. [166] ODR was originally designed to supplement ADR, therefore, it comprises of functions contained in traditional ADR processes. [167] The ODR Regulation 524/2013 complements the ADR Directive 2009/22/EC as it aims to resolve cross-border e-commerce disputes by providing an affordable, fast and informal process for online disputes. In 2010, it was estimated that the establishment of proper and transparent ADR could save approximately €22.5 billion a year, corresponding to 0.19% of EU GDP.[168] The first year that the ODR platform launched, 85% of

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[161] Directive 2008/52 of the European Parliament and the Council of 2001 May 2008 on Certain Aspects of Mediation in Civil and Commercial Matters

[162] De Palo, G., & Canessa, R. (2016). *New trends for ADR in the European Union. The new regulatory framework for consumer dispute resolution*. Oxford: Oxford University Press, 408.

[163] Jordan, A. (Ed.). (2012). *Environmental Policy in the EU: Actors, institutions and processes.* London: Routledge, 287.

[164] Directive of the European Parliament and of the Council of March 27, 2013 (discussing alternative dispute resolution for consumer disputes and amending Regulation (EC) No 2006/2004 and Directive 2009/22/EC (Directive on consumer ADR)); 63 O.J. L. 165 (June 18, 2013)

[165] Regulation of the European Parliament and of the Council on online dispute resolution for consumer disputes and amending Regulation (EC) No 2006/2004 and Directive 2009/22/EC (Regulation on consumer ODR); 1 0.J. L. 165 (June 18, 2013).

[166] de la Rosa, F. (2018). AdR-Rooted ODR Design in Europe: A Bet for the Future. *International Journal of Online Dispute Resolution, 5,* 154.

[167] *Ibid.,156.*

[168] Morek, R. (2013, April 9th). *New legislation on ADR and ODR for consumer disputes adopted in the European Parliament Kluwer Mediation Blog*. [Blog post] Retrieved from: http://mediationblog.kluwerarbitration.com/2013/04/09/new-legislation-on-adr-and-odr-for-consumer-disputes-adopted-in-the-european-parliament/ , 11th April 2021.

complaints were automatically closed before being solved by an ADR body. [169]It was shown that 40% of these cases were resolved directly with the traders and 1% used an ADR body.[170] Therefore, a dispute resolution process which may fail 60% of the time is worse than a communicative dispute resolution tool that may be beneficial to parties 40% of the time.[171]

However, although these directives mainly focus on business to consumer (B2C) disputes, on the contrary, one of the advantages of ADR is its flexibility, therefore, it is able to adapt to circumstances. [172] Unfortunately, some ADR methods are still not as established as the arbitration agreement, so there is no uniformity on the ADR rules among member states.[173] As such, this can create problems when settling disputes, as individual member states' private international law will need to be applied in these matters. Moreover, some countries classify and apply ADR in different ways; some states categorize ADR as contractual in nature, and other legal systems may enable procedural and substantive legal consequences. [174] This can cause different precedents on validity, sanctions, the duties of legal authorities and limitations of actions. This may be problematic as one of the EU's aims is to maintain unification amongst its states.

4.2. Functionality of Dispute Resolution Systems in Environmental Claims in the EU

Since the 1960s, environmental dispute resolution was regarded as an amicable resolution for environmental matters and litigation in the US and Canada. [175] Although Europe also adopted a directive for dispute resolutions in 2008,[176] this framework concentrated on disputes relating to

[169] Report from the Commission to the European Parliament and the Council on the functioning of the European Online Dispute Resolution platform established under Regulation (EU) No 524/2013 on online dispute resolution for consumer disputes 2017.
[170] Report from the Commission to the European Parliament and the Council on the functioning of the European Online Dispute Resolution platform established under Regulation (EU) No 524/2013 on online dispute resolution for consumer disputes 2019.
[171] Kaufmann-Kohler, G., Schultz, T. (2004). *Online Dispute Resolution: Challenges for Contemporary Justice.* (1st ed.) South Holland: Kluwer Law Intenational, 20.
[172] Piers, M. (2014). Europe's role in alternative dispute resolution: Off to good start. *Journal of Dispute Resolution, 2014(2),* 270.
[173] Goring, N. (2013). Rethinking the CARICOM Dispute Settlement Mechanism. *Global Journal of Comparative Law*, 2(1), 39.
[174] *Ibid., 278.*
[175] Ansari, A., Ahmad, M., & Omoola, S. (2017), *supra nota 42*, 30.
[176] Piers, M. (2014). Europe's Role in Alternative Dispute Resolution: Off to a Good Start. *Journal of Dispute Resolution.*, 269.

civil and commercial matters. Unfortunately, there still lacks a directive directly relating to environmental disputes with the application of ADR. Due to environmental degradation, environmental courts and environmental ADR are necessary in order to dispute complex environmental matters. As seen in Japan, environmental disputes are usually resolved using ADR methods, such as negotiation and arbitration, which has been successful in Japan thus far. [177]

In accordance with Article 2 (1) of the Directive 2013/11/EU, the directive is designed for out-of-court resolution of domestic and cross-border disputes concerning contractual obligations stemming from sales contracts or service contracts between a trader. [178] Although the directive wasn't designed for environmental disputes, in accordance with Article 2(2) of the Directive, environmental disputes aren't exempted from its scope. Due to the failure to implement ADR systems designed for environmental claims, it is evident that the EU favours economic interests over environment interests.

Although EU has yet to formulate a uniformed environmental dispute directive, environmental disputes can still be disputed through ADR methods using national regulation. However, EU states also only provide general ADR bodies for environmental claims, as environmental dispute resolution systems are yet to be formulated in any state yet. Therefore, if an individual or a collective group would like to dispute an environmental matter through the ADR method, this will need to be done using a general ADR body. Consequently, this may lead to room for errors, misinterpretation and sectoral precedents between each state. Resultantly, due to disunity of precedents, this may induce failure to provide sufficient remedies and substantive environmental regulations for environmental preservation.

4.3. Functionality of Dispute Resolution Systems in CARICOM

As an international organisation, CARICOM replaced its former regional trading agreement and renewed the 2001 Revised Treaty of Chaguaramas.[179] In addition to regional trading agreements, CARICOM also established the Caribbean Court of Justice (CCJ) in 2001, to ensure unification

[177] Ansari, A., Ahmad, M., & Omoola, S. (2017), *supra nota 66,* 31.
[178] Directive 2013/11/EU of the European Parliament and of the Council of 21 May 2013 on alternative dispute resolution for consumer disputes and amending Regulation (EC) No 2006/2004 and Directive 2009/22/EC (Directive on consumer ADR), art 2, p 1.
[179] The 2001 Revised Treaty of Chaguaramas.

of interpretation and application of the Revised Treaty to promote CARICOM Single Market and Economy.[180] Further, chapter 9 of the Revised Treaty[181], amends Article 19 of the Original Treaty devoted to dispute settlement by creating a CCJ. Therefore, to ease friction, alternative dispute resolution (ADR) methods were strategized and implemented within CARICOM. Accordingly, this created a rule of law approach under the Revised Treaty of Chaguaramas, rather than the original diplomatic method of ADR. [182]

By delegating the responsibility for final decisions to the CCJ, it is considered to be more efficient as decisions cannot be easily ignored[183] or modified if they are inconvenient to a member state. Further, characteristics of legalisation is seen in CARICOM dispute mechanisms, which promote its effectivity. Legalisation consists of three main features: delegation, obligation and precision.[184]Delegation grants authority the right to implement and apply the rules; obligation ensures that states or actors comply with the rules; and precision ensure that those 'rules unambiguously define the conduct they require, authorize or proscribe'.[185]

CARICOM's dispute resolution methods have characteristics which resemble the European Union as it has established a permanent court that is similar to the Court of Justice of the European Union (CJEU). [186] However, in comparison to the rulings of the CCJ, these dispute settlement methods lack enforcement and coercive sanctions.[187] On the other hand, this does not include arbitration, as this ADR method is used when a dispute arises about the Common Market created by the Original Treaty.[188] Moreover, arbitration is available to disputants and they are able to nominate they are who will sit on the panel and hear the matter.[189] On the contrary, the Revised Treaty provides more options of ADR methods, such as, mediation, conciliation, consultations and arbitration, however, these are not legalistic methods of settling disputes.[190]

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[180] Article 211 of the Revised Treaty of Chaguaramas.
[181] Goring, N. (2013), *supra nota 154,* 34.
[182] *Ibid., 39.*
[183] Trinidad Cement Company and The Caribbean Community [2009] CCJ 2 (OJ).
[184] Goring, N. (2013), *supra nota 156, 39.*
[185] Abbott, K, Robert, K, Moravcsik, A. et al., (2004*) The Concept of Legalization International Organization 54(3)* 401.
[186] Rawlins, H. (2000). *The Caribbean Court of Justice: The History and Analysis of the Debate*. Georgetown: Bank of Guyana Building, 7.
[187] Chayes, A., & Chayes, A. H. (1998). *The new sovereignty*. London: Harvard University Press, 7.
[188] Articles 11 and 12 of the Annex to the Original Treaty.
[189] Goring, N. (2013), *supra nota 156, 47.*
[190] *Ibid., 40.*

Moreover, CARICOM's ADR institutions raises many questions regarding the adequacy, rules and processes to effectively apply ADR methods in disputes. It is questionable whether the rules and processes are clearly defined in CARICOM law to efficiently settle disputes. [191] The duties outlined by the CCJ ensure that the decisions are legally binding, therefore, the disputes resolution systems are regarded as legalised. However, with regard to the ADR aspect of the dispute resolution regime, the diplomatic methods in the form of consultation, such as, mediation and conciliation are not legally binding.[192] Therefore, this changes the CARICOM's dispute resolution processes from highly legalised to only partially legalised, as the dispute resolution system consists of both diplomatic and legalistic features.[193] Consequently, this restricts the functionality of ADR mechanisms in CARICOM as only arbitration is regarded as the only legally binding ADR mechanism. Resultantly, it is foreseeable why CARICOM member states will not use their limited resources to pursue diplomatic methods such as conciliation, if the matter may eventually require the legally binding status of the CCJ.

4.4. Functionality of Dispute Resolution Systems in Environmental Claims in CARICOM

Principle 10 of the Rio Declaration states that access to justice also includes other non-judicial or administrative means and alternative dispute resolution mechanisms.[194] An affordable and time saving measure that can ease the administration of justice in environmental issues in CARICOM states, is the use of alternative dispute resolution mechanisms. This trend has led to the opening of arbitration and mediation centres in Jamaica, Dominica, Guyana, Trinidad and Tobago and Barbados.[195] This means that there are still 9 CARICOM states which have yet to implement alternative dispute resolution systems.

However, the Arbitration and Mediation Court of the Caribbean Inc (AMCC) provides dispute resolution services for domestic, regional and international clients for the CARICOM countries

[191] *Ibid., 35.*
[192] *Ibid., 40.*
[193] Smith, M. (2000). The politics of dispute settlement design: Explaining legalism in regional trade pacts. *International Organization,* 140.
[194] CEPAL, N. (2018), *supra nota 9*, 47.
[195] United Nations Development Programme for Latin America and the Caribbean. (2020) *Caribbean justice: a needs assessment of the judicial system in nine countries,* 18.

which use the CCJ as their final court of appeal. On the other hand, from November 2nd, 2020, The Eastern Caribbean Supreme Court (ECSC) issued Practice Direction (Re-Issue) No. 6 and 7 of 2020 on Court-Connected Mediation.[196] However, ECSC implemented strategies since 2002 relating to ADR systems to the 6 CARICOM states which use said court as their final court of appeal. In accordance with Part 2 Eastern Caribbean Supreme Court Civil Procedure Rules 2000, this only covers mediation and doesn't include settlement discussions.[197] Additionally, mediation must be court-connected, where it should be referred to by the court from a Master or Judge first. Moreover, the cases referred must be a civil action.[198] However, in accordance with Part 1.3, it may not apply to family proceedings, insolvency proceedings, non-contentious probate proceedings, proceedings when the High Court is acting as a prize court and any other proceedings in the Supreme Court instituted under any enactment. Subsequently, it is possible to dispute environmental matters using this mediation method, if the court approves. However, as Caribbean case law has traditionally interpreted the private interest model, depending on the jurisdiction, it may differ whether a claimant has legal standing to bring such matters to the court. This was evident in *Benjamin v Attorney General and the Development Control Authority*, where the court ruled that there was no locus standi as the claimant had no rights in law based on the proceedings in relation to the construction of a multi-level car park in Antigua and Barbuda.[199]

[196] Part 2 of Eastern Caribbean Supreme Court Civil Procedure Rules 2000 Practice Direction No. 6 of 2020 Court-Connected Mediation (Re-Issue)
[197] *Ibid.*
[198] United Nations Development Programme for Latin America and the Caribbean. (2020), *supra nota, 98.*19.
[199] Eastern Caribbean Supreme Court of Justice, AG 2007 HC 54, ANUHCV 2008/0632

5. COMPARISON OF ENVIRONMENTAL REMEDIES AND DSRSs BETWEEN CARICOM AND EU

5.1. Dispute Resolution Systems between EU and CARICOM

The EU has created a successful online platform concerning consumer contractual matters. In this respect, alternative dispute resolution systems concerning consumer disputes is functional. On the other hand, the ADR agreement is not as established as the arbitration agreement, which restricts the functionality of other methods, such as Conventional ADR and Hybrid procedures. As arbitration is a traditional form of ADR, as it was established by law, policy and legal theory, it is the favoured mechanism, due to its adjudication and familiarity.[200] This study shows that the EU has the potential and institutional capacity to implement functional environmental dispute resolution systems, however, there are more economic policies and remedies than those of environmental interests. This is evident as the ODR mechanisms are regarded as functional, on the other hand, the ADR agreement still lacks uniformity in European private law and in the laws of EU member states.[201] Consequently, due to the stagnation of the EU's ADR agreement, a uniformed environmental dispute resolution system has failed to emerge. 'Fitting the forum to the fuss' assisted the consumer disputes by implementing the ODR, however, environmental matters are still expected to use general ADR bodies, when there are limited central governing ADR rules. Accordingly, this increases the lack of uniformity of the application of precedents within the EU. Moreover, this system fails to provide effectivity if precedents applied in one state fails to apply in another, also resulting in the detriment of procedural standards.

With regard to CARICOM, in accordance with Part 2 Eastern Caribbean Supreme Court Civil Procedure Rules 2000, only mediation is encouraged in this directive, therefore, it doesn't include settlement discussions.[202] Furthermore, mediation must also be court-connected and referred to by a Master or Judge. Therefore, there is a restrictive approach on disputing using the Mediation method. Moreover, in the 2001 Revised Treaty of Chaguaramas, only arbitration is regarded as a legalised ADR method, as other conciliation methods aren't legally recognized. Arbitration is seen

[200] *Ibid., 269.*
[201] Goring, N. (2013), *supra nota 154,* 38.
[202] Part 2 of Eastern Caribbean Supreme Court Civil Procedure Rules 2000 Practice Direction No. 6 of 2020 Court-Connected Mediation (Re-Issue)

as a traditional ADR method due to its foundation, and it is the most favoured legalistic ADR mechanism in CARICOM. Additionally, CARICOM has yet to formulate a unified environmental dispute resolution system which follows the 'fit the forum to the fuss' approach. Although environmental disputes can be resolved using a general ADR body, due to legalisation and restrictions of ADR methods, receiving environmental justice through these bodies have a limited selection. Consequently, this also limits the functionality of alternative dispute mechanisms in environmental matters.

In both the EU and CARICOM, it is evident that both unions have weaknesses in the functionality of their dispute resolution systems for environmental claims. Although the EU has the potential to develop such mechanisms which are solely for the purpose of disputing environmental claims, it has yet to establish such an approach. Moreover, CARICOM also has the potential to formulate a functional dispute resolution system in environmental matters, however, it still struggles to provide alternative dispute mechanisms other than arbitration. In *Talisman Petroleum Ltd. vs. The Environmental Management Authority*[203], if another dispute resolution system was available, the case may have been successfully resolved using ADR. Furthermore, this union hasn't provided functional alternative dispute resolution systems for environmental dispute resolution due to its institutional capacity to enforce these mechanisms. Due to the limitations of mediation and the application of traditional arbitration, it restricts the functionality of alternative dispute resolution.

5.2. Comparison of Environmental Remedies between EU and CARICOM

In the EU, it is not necessary for a right to be violated, however, the applicant must prove an infringement of individual interest. Similarly, in CARICOM states the individual of the claim must also show legal standing and individual interest to challenge environmental matters. In both unions, it is determined by the state whether the individuals have sufficient interest in the matter. Therefore, if a substantive right is breached, the state determines whether the victim has sufficient individual interest to receive access to justice. Moreover, in both unions, the remedies are dependent on the states' discretion on the appropriate remedies for a right which has been violated.

[203] Environmental Commission, No. EA3 of 2002

Therefore, the member states have the privilege to implement rules on how they provide such remedies within their own legal system. As it's the states' obligation to define an infringement of a right, the right to access of justice is determined by the state. If the state believes a right has not been violated, it restricts the applicant from receiving remediation for the breach of their substantive right. Moreover, as access to justice has no unified definition, it may be regarded as provisional measures, legal aid or to limit the costs of legal procedures. As such member states enjoy their own interpretation of 'access to justice'. Therefore, if an applicant successfully files a claim for the breach of their substantive right, they may seek redress in the form of compensation or other reliefs that the state deems fit.

Accordingly, in CARICOM, judicial activism plays a role in many states. Therefore, this hinders procedural justice, as individuals may not receive an objective and fair process. Further, in the Revised Treaty of Chaguaramas, Article 65(2)(e) provides principles for environmental damages, however, it does not provide much information as to how the states should implement environmental damages. Therefore, it is also up to the state to interpret the appropriate relief for the substantive right which has been violated. Moreover, claimants may receive inadequate remedies for rights violated, as the Acts of Parliament determine the appropriate relief.

CONCLUSION

The primary goal of this thesis was to explore and identify potential shortcomings of CARICOM's and EU's current dispute systems with regard to environmental claims and develop recommendations to improve those systems. This plays a critical role in the access to justice concept, as it aims to provide legal aid in the absence of judicial remedies in the form of alternative dispute resolution systems. When a substantive right, such as the right to a healthy environment is violated, access to justice also plays a role in protecting and redressing that right. As procedural justice ensures the proper functioning of judicial proceedings, by guaranteeing fairness and objectiveness, it plays a critical role in access to justice.

The research shows that CARICOM and the EU do not have sufficient remediation for environmental claims. In both unions, remediation for environmental claims is dependent on the discretion of the state. As appropriate reliefs aren't enshrined in their policies, each state must apply the remedy deemed fit for the rights violated. Consequently, this may result in a disunity of precedents applied among the regions, as some claimants' rights may be disregarded due to locus standi. As it is up to the state to determine whether individuals have sufficient interest to receive environmental justice, due to legal cultures, this may vary. This hinders both substantive and procedural justice, as individuals' rights to obtain justice are applied differently in each state and their right to acquire remediation may differ, thus restricting due process. Moreover, as remedies are provided by the state, this does not guarantee that remedies will be applied uniformly amongst the states. Due to legal cultures in each state, this can reduce the uniformity of seeking redress between member states. Consequently, this hinders the functionality of obtaining equal accessibility and effectivity for environmental claims, therefore, remediation in both unions is regarded as insufficient. Moreover, although there have been sufficient regulations put in place for environmental protection, this does not guarantee the adequate implementation of the law. To receive adequate and equitable remedies for a breach of substantive rights, it is necessary to have appropriate mechanisms to seek justice.

Although EU has the most extensive environmental laws, it fails to provide mechanisms and processes with regard to environmental dispute resolution systems. EU has shown to have the institutional capacity to implement functional mechanisms by establishing the ODR method which follows the 'fit the forum to the fuss' concept. Moreover, ODR was built to provide adequate and

effective mechanisms for consumer disputes, which were a growing issue that was economically detrimental. On the other hand, although there are increased concerns about the environment, the 'fit the forum to the fuss' approach to develop environmental dispute resolution systems has yet to be established. Therefore, environmental matters can be resolved using a general ADR body which may result in producing low quality justice for disputes in an untimely manner as well. If the ADR body isn't equipped to handle environmental disputes, it may take longer to receive justice, therefore, resulting in the triviality of ADR.

With regard to other mechanisms of ADR, the EU's implementation is still rather insufficient. This can be seen in the ADR agreement that is still not as established as the arbitration agreement. Consequently, this hinders the progress of ADR in the union, as the uniformity of ADR rules are still underdeveloped, which causes disunity of precedents amongst states. Although arbitration is a functional ADR tool in EU, it is regarded as a traditional ADR concept which was built on legal theory, law and policy. Therefore, it consists of characteristics of litigation, such as social structures and customary law. Due to the dissatisfaction with the litigation approach for environmental matters, an alternative dispute resolution system, which is less traditional is favoured.

With regard to CARICOM, the institutional capacity to provide and produce alternative dispute resolutions is low. Although CARICOM was established before EU, due to limited resources and history, the region has failed to develop functional alternative dispute mechanisms. This is also evident where the CCJ was only established in 2001, unlike the CJEU which was established in 1952. Although the union has implemented agreements relating to access to justice, it fails to provide functional mechanisms to achieve this. This analysis has shown that alternative dispute resolution mechanisms functionality may differ in unions. Therefore, it is the union's role to implement mechanisms that efficiently enforce the legal rules they have put in place. Both unions have implemented sufficient environmental protection laws, however, they have failed to implement mechanisms which enforce such laws.

Following from this research, it is recommended to implement unified remedies in CARICOM and EU's policies to ensure sufficient and equal remediation is given for environmental claims. Moreover, it is also recommended to implement environmental dispute resolution systems which consists of consensus-building and hybrid approaches in the EU. As environmental issues are regarded as a public issue, consensus-building is a more communicative approach, rather than the

win-lose approach in litigation. Consensus building alleviates the negative conflict between disputing parties as it acts in the interest of the participants. It is a problem-solving approach which can improve the quality and legitimacy of decisions. As the environment has no voice on its own, it's important to have a win-win approach to ensure its protection. On the other hand, in CARICOM, it is recommended to implement hybrid approach of Conciliation/Mediation or Mediation/Facilitation in ADR. As CARICOM doesn't have the institutional capacity to properly implement ADR, a hybrid approach provides more options before going to court, where disputing parties can use different ADR processes which may fit the need of their claim. Using a hybrid procedure such as Facilitation/Mediation, enables the parties to work communicatively together to resolve a dispute using a neutral third-party in both an informal and formal setting.

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