



ECLAC

Distr.
LIMITED
LC/L.3549/Rev.1
12 April 2013
ENGLISH
ORIGINAL: SPANISH

Second meeting of the focal points appointed by the Governments of the signatory countries of the Declaration on the application of Principle 10 of the Rio Declaration on Environment and Development in Latin America and the Caribbean

Guadalajara, Mexico, 16 and 17 April 2013

ACCESS TO INFORMATION, PARTICIPATION AND JUSTICE IN ENVIRONMENTAL MATTERS IN LATIN AMERICA AND THE CARIBBEAN: SITUATION, OUTLOOK AND EXAMPLES OF GOOD PRACTICE*

* This working document was prepared with financial support from the United Nations Development Account and the Federal Ministry for Economic Cooperation and Development (BMZ) of Germany, through the German Agency for International Cooperation (GIZ). Any comments, corrections or contributions should be sent in by 17 May 2013 to the Sustainable Development and Human Settlements Division of ECLAC (principio10.lac@cepal.org).

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A. INTRODUCTION

There is growing recognition by civil society and governments that access to information, participation and justice in environmental issues are essential for advancing towards environmental protection and sustainable development. In order to progress towards sustainable development, the countries of Latin America and the Caribbean need to work on developing policies based on a more informed, participatory process (United Nations, 2012).

Access to information fosters openness and transparency in decision-making and thus contributes to more efficient and effective environmental regulations. It also sows confidence in the decisions made by authorities, casts light on previously unseen problems and identifies alternative solutions.

Informed citizen participation is, in turn, a mechanism for integrating citizen concerns and knowledge into public policy decisions on the environment. Participatory decision-making enhances the ability of governments to respond to public concerns and demands, to build consensus, and to improve acceptance of and compliance with environmental decisions because citizens feel ownership over these decisions.¹ Evidence suggests also that informed citizen participation early in the environmental decision-making process helps prevent future conflicts on environmental issues (see box 1).

Access to justice gives individuals and civil society organizations a tool for protecting their rights to access to information and participation, enabling them to question decisions that they feel have not taken their interests into consideration. It also ensures that legal bodies exist that are competent to protect environmental rights through independent and expeditious judicial process that contemplates repairing environmental damage. Access to justice is especially important for upholding the environmental rights of those who historically have been excluded from the decision-making process.

The importance of access to information, participation and justice in environmental issues was highlighted 20 years ago at the United Nations Conference on Environment and Development (Rio de Janeiro, Brazil, 1992). On that occasion, 178 governments agreed that:

“Environmental issues are best handled with the participation of all concerned citizens, at the relevant level. At the national level, each individual shall have appropriate access to information concerning the environment that is held by public authorities, including information on hazardous materials and activities in their communities, and the opportunity to participate in decision-making processes. States shall facilitate and encourage public awareness and participation by making information widely available. Effective access to judicial and administrative proceedings, including redress and remedy, shall be provided” (Principle 10 of the Rio Declaration on Environment and Development, 1992).

¹ See article19.org [online] www.uncsd2012.org/content/documents/Article19%20Submission%20to%20UNCSD.pdf.

Box 1

**COSTS AND OPPORTUNITIES OF CITIZEN PARTICIPATION EARLY
IN THE ENVIRONMENTAL DECISION-MAKING PROCESS**

Citizen engagement in decision-making in general and on environmental issues in particular is too recent to allow for determining the exact cost-benefit ratio (Involve, 2005a). What is clear is that an array of factors are coming together in a virtually unanimous movement on the part of States to enhance these procedures and promote good environmental governance. Factors such as the growing demand by citizens for the opportunity to participate in the adoption of decisions that affect their surroundings as well as international agreements that support it have prompted the adoption of national legislation in most of the countries recognizing the right to citizen participation.

Notwithstanding the consensus that the deepening of democracy calls for greater citizen participation in decision-making, it is difficult to say whether not including participatory processes implies an opportunity cost. Neoclassical economic theory suggests that there is. Leaving the public out of rational decision-making that seeks the best possible outcome leads to market failures related to imperfect information (information asymmetry), misjudgement of externalities and poor management of public goods (Involve, 2005b).

Environmental economic theory recognizes how hard it is to standardize the value of environmental impacts, because not all of the factors can be converted to a monetary unit. Citizen engagement is, therefore, a source of plural values that cannot be standardized. That is why decisions on the dimension and scope of public participation must be grounded in a qualitative rationale.

In this regard, public participation in decision-making is believed to yield the following benefits:

- Conflict prevention. Early citizen engagement avoids the social conflict associated with perceived injustice that can drive costs up because of revoked permits, duplicate studies or blocked projects (CONAMA, 1999).
- Flow of information. Participatory processes ensure that the flow of information on decisions made, as well as inputs from civil society for making those decisions, is official and clear. This prevents failures associated with imperfect information in decision-making.
- The use of public goods is always a complex issue. Citizen participation distributes accountabilities and builds a more just model for using those goods. Horizontal governance thus contributes to a greater overall benefit.
- These points converge to improve decisions and the services that they concern.

These factors suggest that failure to involve citizen participation in decision-making does have an opportunity cost. Thus, the benefits of including citizen participation will extend beyond the moral reasons of deepening democracy, cohesion and social justice.

Source: Economic Commission for Latin America and the Caribbean (ECLAC), on the basis of Involve, *People and Participation. How to put citizens at the heart of decision-making*, Richard Wilson, Diane Warburton and Edward Andersson, London, 2005; Involve, *The True Costs of Participation: Full report*, London, 2005; National Environment Commission (CONAMA), “Participación ciudadana temprana en el marco del sistema de Evaluación de Impacto Ambiental. Guía para titulares de proyectos de inversión”, Santiago, Chile, 1999.

Twenty years on from the adoption of Principle 10 of the Rio Declaration on Environment and Development, there is consensus that the three access rights (see box 2) embody the core standards of transparency, equity and accountability in decision-making and are the foundation of environmental democracy and good governance (see box 3). Accumulated evidence suggests that citizen participation in decision-making can improve the quality and acceptance of the decisions that result and is a tool for poverty reduction. This was recognized in the outcome document of the United Nations Conference on Sustainable Development (Rio+20), which states that broad public participation and access to information and judicial and administrative proceedings are essential to the promotion of sustainable development. In that document, the Heads of State also acknowledged that democracy, good governance and the rule of law at the national and international levels, as well as a favourable context, are essential for sustainable development, including sustained, inclusive economic growth, social development, environmental protection and the eradication of poverty and hunger.²

² General Assembly Resolution 66/288 [online] www.un.org/en/ga/66/resolutions.shtml.

Box 2
DEFINING ACCESS RIGHTS

Citizen rights to information, participation and justice in environmental decision-making, also referred to as “access rights”, have to do with:

Access to information, defined as the ability of citizens to obtain environmental information held by government authorities. “Environmental information” can be defined in different ways, but the consensus is that it includes, for example, information on air and water quality and whether hazardous chemicals are being stored at a nearby plant.

Access to public participation, defined as the opportunity for citizens to provide meaningful, timely and informed input and to help shape policy decisions, strategies and plans at various levels and on individual projects that have environmental impacts. Examples of this are formal mechanisms for citizen engagement provided for in environmental impact assessments, and public consultation by governments for implementing national policies.

Access to justice, defined as the public’s ability to turn to impartial, independent arbitrators to protect environmental rights or repair environmental damage or to resolve expeditiously disputes over access to information, participation in environmental decision-making and redress of environmental damage. Impartial arbitrators can be, for example, mediators, administrative tribunals or courts of justice.

Source: J. Foti and others, *Voice and Choice: Opening the door to environmental democracy*, Washington, D.C., World Resources Institute, 2008; D.L. Dresang and J.J. Gosling, *Politics and Policy in American States and Communities*, Boston, Allyn and Bacon Publishers, 1999.

Box 3
THE BUILDING BLOCKS OF GOOD GOVERNANCE AND ENVIRONMENTAL DEMOCRACY

Although good governance is defined in a number of ways, all definitions agree that it requires decisions to be made and implemented using clear processes that yield clear, consistent policies. In this context, good governance lies in putting forward an integrated political and social model and ensuring that all factors adhere to the established standards.

The standards should therefore be governed by a set of principles that align with the rights of access to information, participation and justice in environmental issues: *consistency*, ensuring reasonable standards and sanctions in line with specific objectives; *openness*, turning decision-making and governance in general into a transparent, understandable process; *effectiveness*, always bearing in mind that good governance is a means to an end and that, for it to be effective, there must be *participation* so that all possible factors are weighed during the decision-making process, and *clear accountability* (Harman, 2005).

Given a just political structure, good governance does not lie only in the government but also in the role taken on by the public, private enterprise, the media, civil organizations, investors, researchers and all those who help shape the political, economic and social life of a country (Harman, 2005).

On the environmental level, such decisions must, in addition to meeting the requirements set out above, promote sustainable development, including environmental conservation.

Source: J. Harman, “The relationship between good governance and environmental compliance and enforcement”, seventh International Conference on Environmental Compliance and Enforcement, International Network for Environmental Compliance and Enforcement, 2005; J. Foti and others, *Voice and Choice: Opening the door to environmental democracy*, Washington, D.C., World Resources Institute, 2008.

The link between good governance, environmental sustainability and the eradication of poverty and hunger has been extensively examined in the literature. The core argument is that reducing poverty and empowering the poor requires a receptive government (one that is open to access to information, participation and justice) and a healthy environment (Foti and others, 2008; Narayan, 2004).

The importance of principles of access has also been recognized by the business sector. In this regard, it has been put forward that open disclosure of corporate information, far from putting businesses

at greater risk of negative interactions with social actors, cuts the cost of and leads to more positive approaches to problem-solving. In the sphere of business-community relations, it has also been noted that involving social actors can actually improve, in terms of both cost and time, the information base of core social issues. For example, indigenous communities can bring to business studies useful knowledge on the way the community relates to the environment and the changes that have taken place over time (IIED/WBCSD), (2008). According to the final report of the Mining, Metals and Sustainable Development (MMSD) project supported by the World Business Council for Sustainable Development (WBCSD and the International Institute for Environment and Development (IIED), “There is a strong business case to be made for free and open access to information. Once a company has established the fundamentals of improved sustainability performance, then increased trust, reduced transaction costs, better feedback, reduced risks, more effective resource use, and increased reputational value all arise through communicating this effectively to others” (IIED/WBCSD, 2008).

Two noteworthy voluntary initiatives for private enterprise information transparency are the Global Reporting Initiative and the Extractive Industries Transparency Initiative. The Global Reporting Initiative (GRI)³ is a programme supported by Ceres and the United Nations Environment Programme (UNEP) to encourage voluntary sustainability reporting by all types of organizations. To this end, it provides a framework for sustainability reporting, including guidelines for preparing reports, and it lays out principles and indicators that organizations can use to measure and report their economic, environmental and social performance. The guidelines are available to the public free of charge. Adopting them is free, voluntary and flexible.

The Extractive Industries Transparency Initiative (EITI)⁴ aims to strengthen governance by improving transparency and accountability in disclosure of extractive industry payments to governments. It is a coalition of governments, companies, civil society groups, investors and international organizations that was first announced at the 2002 World Summit on Sustainable Development in Johannesburg. This voluntary initiative is followed by countries whose governments have signed up. In Latin America and the Caribbean, Peru is the only EITI compliant country. Guatemala and Trinidad and Tobago are EITI candidate countries. In April 2012, during the Open Government Partnership Meeting, the Government of Colombia announced its interest in participating. Compliance with this global transparency standard provides citizens of participating countries with an independent review of how much their governments receive in oil, gas and mining revenues.

The importance of publishing and disseminating reports on corporate sustainability was also highlighted in the outcome document of the United Nations Conference on Sustainable Development (Rio+20).⁵ At the Conference, the Governments of Brazil, Denmark, France and South Africa announced their decision to form the group “Friends of Paragraph 47” in order to promote corporate sustainability reports.

³ For further information, see [online] <https://www.globalreporting.org>.

⁴ For further information, see [online] <http://eiti.org/eiti/history>.

⁵ “We acknowledge the importance of corporate sustainability reporting and encourage companies, where appropriate, especially publicly listed and large companies, to consider integrating sustainability information into their reporting cycle. We encourage industry, interested governments and relevant stakeholders with the support of the United Nations system, as appropriate, to develop models for best practice and facilitate action for the integration of sustainability reporting, taking into account experiences from already existing frameworks and paying particular attention to the needs of developing countries, including for capacitybuilding” (Paragraph 47, The future we want. (A/CONF.216/L.1), June 2012).

B. ACCESS TO INFORMATION, PARTICIPATION AND JUSTICE IN ENVIRONMENTAL ISSUES ON A GLOBAL SCALE

Twenty years on from adoption of Principle 10 of the Rio Declaration, a number of international and regional initiatives have reaffirmed and broadened access rights. Box 4 provides a summary of these initiatives.

Box 4

REGIONAL AND INTERNATIONAL COMMITMENTS REGARDING ACCESS TO INFORMATION, PARTICIPATION AND JUSTICE IN ENVIRONMENTAL ISSUES

1992. **Rio Declaration on Environment and Development:** The Declaration is a non-binding commitment adopted by 178 governments at the United Nations Conference on Environment and Development (Earth Summit, Rio de Janeiro, Brazil, 1992). According to Principle 10 of the Declaration, the challenge of environmentally sustainable development can be met only with the participation of informed, empowered citizens.

1992. **Agenda 21:** This is a non-binding action plan for sustainable development adopted by the countries at the United Nations Conference on Environment and Development (Earth Summit, Rio de Janeiro, Brazil, 1992). Chapters 23 through 40 address issues related to access to information and civil society involvement in decision-making.

1994. **Global Conference on the Sustainable Development of Small Island Developing States (Bridgetown, 1994):** Several points of the Programme of Action approved at this conference recognize the importance of public participation in decision-making (chapter 10) and urge participating States to implement measures to foster participation.

1998. **Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters (Aarhus Convention):** This is a binding regional instrument for which the United Nations Economic Commission for Europe (ECE) acts as secretariat. The convention lays out minimum standards for countries to write into their national laws. Its three pillars are access to information, participation and justice in environmental decision-making. The convention entered into force on 30 October 2001; to date, there are 45 signatory countries with widely different levels of economic development. Although it is a regional instrument, the Aarhus Convention is open to adoption by countries that are not members of ECE. Countries wishing to adhere to the Convention are required to amend their national laws to align them with its postulates.

1999. **Inter-American Strategy for the Promotion of Public Participation in Decision Making for Sustainable Development:** The strategy encourages but does not require adoption of a set of principles and a strategy for promoting transparent, effective and responsible public participation in decision-making and in designing, adopting and implementing sustainable development policies in Latin America and the Caribbean. The strategy was approved by the member States of the Organization of American States (OAS).

2000. **Malmö Ministerial Declaration:** On the occasion of the Global Ministerial Environment Forum in Malmö, Sweden, under the auspices of the United Nations Environment Programme (UNEP), the environment ministers adopted a declaration recognizing the need to strengthen the role of civil society through free access to environmental information to all, broad participation in environmental decision-making and access to justice on environmental issues.

2002. **Plan of Implementation of the World Summit on Sustainable Development (Johannesburg):** Paragraph 164 of the Plan of Implementation provides that all countries should promote public participation, including through measures that provide access to information regarding legislation, regulations, activities, policies and programmes. They should also foster full public participation in sustainable development policy formulation and implementation. Women should be able to participate fully and equally in policy formulation and decision-making.

Box 4 (concluded)

2003. **Protocol on Pollutant Release and Transfer Registers (Kiev Protocol)**: This is a legally binding instrument to track compliance with the Aarhus Convention concerning pollutant release and transfer registers. It was adopted by the member countries of ECE in 2003. To date, it has been signed by the European Union and by 39 States (and ratified by 22).

2006. **The Inter-American Court of Human Rights**: In 2006, the Inter-American Court of Human Rights took another major step at the international level for promoting rights of access, in recognizing the right of access to public information as a fundamental human right protected by human rights treaties and one that should be upheld by States.^a

2006. **Declaration of Santa Cruz+10**: In this declaration, the member States of the Organization of American States (OAS) reaffirmed their commitment to Principle 10 of the Rio Declaration on Environment and Development.

2010. **UNEP Guidelines for the Development of National Legislation on Access to Information, Public Participation and Access to Justice in Environmental Matters (Bali Guidelines)**: The purpose of these voluntary guidelines, adopted at the twenty-fifth session of the UNEP Governing Council is to provide general guidance to States so requesting, primarily developing countries, in promoting the effective implementation of their commitments to Principle 10 of the 1992 Rio Declaration on Environment and Development within the framework of their national legislation and processes.

2011. **Conclusions of the Latin American and Caribbean Regional Meeting Preparatory to the United Nations Conference on Sustainable Development**: The countries of the region affirmed the need for commitments to achieve, inter alia, full implementation of the rights of access to environmental information, participation and justice enshrined in Principle 10 of the Rio Declaration.

2012. **United Nations Conference on Sustainable Development (Rio+20)**: In the outcome document of the conference, entitled *The Future We Want*, the countries underscored that broad public participation and access to information and judicial and administrative proceedings are essential to the promotion of sustainable development (paragraph 43). They also encouraged action at the regional, national, subnational and local levels to promote access to information, public participation and access to justice in environmental matters, as appropriate.

2012. **Declaration on the Application of Principle 10 of the Rio Declaration on Environment and Development**, which was promoted during the Rio+20 Conference, The signatories of this Declaration noted the need for commitments to achieve full exercise of the rights of access to information, participation and environmental justice as enshrined in Principle 10 of the Rio Declaration of 1992. They therefore indicated their willingness to launch a process for exploring the viability of developing a regional instrument open to all countries of the region with meaningful participation by all concerned citizens and support from the Economic Commission for Latin America and the Caribbean (ECLAC) as technical secretariat.

2013. **First Summit of the Community of Latin American and Caribbean States (CELAC)**: Article 10 of the Declaration of Santiago states that we (the Community) “Appreciate initiatives for regional implementation of the 10th Principle of the 1992 Rio Declaration, regarding the rights of access to information, participation and environmental justice, as a significant contribution to the participation of organized community committed to Sustainable Development.”

2013. **Summit of the Community of Latin American and Caribbean States (CELAC) and the European Union**: The Santiago Declaration states that “We acknowledge the importance of implementing Principle 10 of the 1992 Rio Declaration at the Earth Summit, and reiterate the importance of advancing initiatives in this matter.” The Declaration also reiterated the right of citizens to participate in the formulation, implementation and monitoring of public policies.

Source: Economic Commission for Latin America and the Caribbean (ECLAC) on the basis of official United Nations documents and information from the World Resources Institute (WRI).

^a See Inter-American Court of Human Rights. “Claude Reyes and Others v. Chile, 19 September 2006, series C No. 151, paragraph 77 [online] http://www.corteidh.or.cr/docs/casos/articulos/seriec_151_ing.doc.

There is international consensus that the Aarhus Convention is the instrument that has gone the farthest to promote access rights, owing to its binding nature. It has been described as the most ambitious venture in environmental democracy ever undertaken under the auspices of the United Nations.⁶ To date, no other region has made progress towards developing a binding legal instrument similar to the Aarhus Convention.

The Aarhus Convention grants the public rights and imposes on governments and public authorities obligations regarding access to information, public participation in decision-making and access to justice in environmental matters. It thus links environmental protection to government accountability and establishes that sustainable development can be achieved only through the involvement of all stakeholders. The Convention was adopted in 1998 in Aarhus, Denmark and came into force on 30 October 2001. The structure of the convention is based on three fundamental pillars: access to information, access to participation and access to justice in environmental matters.⁷

The Parties to the Convention meet once every two years to review progress and approve the work programme for the following period, including a set of training activities to help the Parties comply with the Convention. The Convention also provides for three working groups mandated to improve implementation of the three fundamental pillars.

The Aarhus Convention also includes an innovative mechanism for reviewing compliance with agreements, working with the Parties and enabling individuals and States to submit matters related to compliance with the convention. The Compliance Committee includes nine independent experts who serve in an individual capacity. It can be set in motion by public request and has proven to be a powerful tool for promoting compliance with the convention. To date, all Compliance Committee findings have been endorsed by the Meeting of the Parties.

C. TRACKING ACCESS RIGHTS IN ENVIRONMENTAL MATTERS IN LATIN AMERICA AND THE CARIBBEAN⁸

1. Background

The Earth Summit provided a major boost in Latin America and the Caribbean to environmental protection, the creation of environmental legislation and institutions and the establishment of the first instruments for sustainable management of the environment (United Nations, 2010). Echoing the postulates of Principle 10 and the wave of democratization that swept through the region during the 1990s, some of these reforms provided for public participation through environmental authority consultative committees as well as through formal mechanisms for project evaluation and for drafting regulations.

⁶ “It is by far the most impressive elaboration of Principle 10 of the Rio Declaration, which stresses the need for citizens’ participation in environmental issues and for access to information on the environment held by public authorities. As such it is the most ambitious venture in the area of environmental democracy so far undertaken under the auspices of the United Nations”. Kofi A. Annan, former Secretary-General of the United Nations (1997-2006) [online] <http://aarhusclearinghouse.unece.org/about/>.

⁷ See [online] www.unece.org/env/pp/welcome.html.

⁸ This section is based on a review of the laws and institutional frameworks that safeguard access to information, participation in decision-making and justice in environmental matters in the 33 countries of Latin America and the Caribbean. The information gathered was complemented with a questionnaire on the implementation at the national level of Principle 10 of the 1992 Rio Declaration, which was filled in by 16 countries of the region and 10 civil society organizations.

Thus, twenty years on from the Earth Summit, environmental rights and obligations have been written into most of the political constitutions of the countries of Latin America and the Caribbean. All countries in the region now have a ministry, secretariat or equivalent devoted to the environment (see table 1) and most have enacted general or framework legislation on the environment, many of which have been amended (see table 2) (United Nations, 2012). Many of these general laws were inspired by the guiding principles contained in the 1992 Rio Declaration and have been supplemented with a broad body of complementary legislation relating to access to information, participation and justice. The foregoing legislation is reinforced by various reaffirmations by case law of the country in question or of the Inter-American Court of Human Rights.

Table 1
LATIN AMERICA AND THE CARIBBEAN: HIGHEST ENVIRONMENTAL AUTHORITIES

Antigua and Barbuda	Ministry of Agriculture, Lands, Housing and the Environment
Argentina	Secretariat of Environment and Sustainable Development
Bahamas	Ministry of Environment and Housing
Barbados	Ministry of the Environment, Water Resources and Drainage
Belize	Ministry of Forestry, Fisheries and Sustainable Development – Department of the Environment
Bolivia (Plurinational State of)	Ministry of Environment and Water
Brazil	Ministry of the Environment
Chile	Ministry of the Environment
Colombia	Ministry of the Environment and Sustainable Development
Costa Rica	Ministry of the Environment and Energy
Cuba	Ministry of Science, Technology and the Environment
Dominica	Ministry of Environment, Natural Resources, Physical Planning and Fisheries
Dominican Republic	Ministry of the Environment and Natural Resources
Ecuador	Ministry of the Environment
El Salvador	Ministry of the Environment and Natural Resources
Grenada	Ministry of the Environment, Foreign Trade and Export Development
Guatemala	Ministry of the Environment and Natural Resources
Guyana	Environmental Protection Agency
Haiti	Ministry of the Environment
Honduras	Secretariat of Natural Resources and the Environment
Jamaica	Ministry of Water, Land, Environment and Climate Change
Mexico	Secretariat of the Environment and Natural Resources
Nicaragua	Ministry of the Environment and Natural Resources
Panama	National Authority for the Environment
Paraguay	Secretariat of the Environment
Peru	Ministry of the Environment
Saint Kitts and Nevis	Ministry of Sustainable Development
Saint Vincent and the Grenadines	Ministry of Health, Wellness and the Environment
Saint Lucia	Ministry of Planning, Development, Environment and Housing
Suriname	National Institute for Environment and Development
Trinidad and Tobago	Ministry of the Environment and Water Resources
Uruguay	Ministry of Housing, Land-Use Planning and Environment (National Environment Directorate)
Venezuela (Bolivarian Republic of)	Ministry of People’s Power for the Environment

Source: Economic Commission for Latin America and the Caribbean (ECLAC), on the basis of United Nations, *Sustainable Development 20 Years on from the Earth Summit: progress, gaps and strategic guidelines for Latin America and the Caribbean* (LC/L.3346/Rev.1), Santiago, Chile, 2012.

Table 2
LATIN AMERICA AND THE CARIBBEAN: ENVIRONMENTAL FRAMEWORK LAWS

Country	Environmental framework law	Year (reform)
Antigua and Barbuda	Environment Protection and Management Act	2010
Argentina	Law No. 25.675	2002
Bahamas	Conservation and Protection of the Physical Landscape of the Bahamas Act	(2005)
Barbados	-	-
Belize	Environmental Protection Act	2000
Bolivia (Plurinational State of)	Law No. 1333	1992
Brazil	Law No. 6.938	1981
Chile	Law No. 19.300 (20.417)	1994 (2010)
Colombia	Law No. 99	1993
Costa Rica	Organization of the Environment Act	1995
Cuba	Law No. 81	1997
Dominica	Environmental and Natural Resource Management Bill	(2012)
Dominican Republic	Law No. 64-00	2000
Ecuador	Environment Management Act	1998
El Salvador	Environment Act and General Implementing Regulations	1988
Grenada	-	-
Guatemala	Law No. 68-86	1986
Guyana	Environmental Protection Act	1998
Haiti	Decree on Environmental Management for Sustainable Development	2011
Honduras	Law No. 27.083	1993
Jamaica	Natural Resources Conservation Authority Act	1996
Mexico	Ecological Equilibrium and Environmental Protection Act	1988 (2012)
Nicaragua	Law No. 217	1996
Panama	Law No. 41	1998
Paraguay	Law No. 816	1996
Peru	Law No. 28.611	2005
Saint Kitts and Nevis	National Conservation and Environmental Protection Act	1987
Saint Lucia	National Conservation Authority Act	1999
Saint Vincent and the Grenadines	-	-
Suriname	Nature Conservation Act	1954
Trinidad and Tobago	Environmental Management Act	2001
Uruguay	Law No. 17.283	2000
Venezuela (Bolivarian Republic of)	Organization of the Environment Act	2007

Source: Economic Commission for Latin America and the Caribbean (ECLAC), on the basis of United Nations, *Sustainable Development 20 Years on from the Earth Summit: Progress, gaps and strategic guidelines for Latin America and the Caribbean* (LC/L.3346/Rev.1), Santiago, Chile, 2012.

Some free trade agreements signed by the countries of Latin America and the Caribbean have also promoted rights of access in the region. Box 5 presents some of these experiences. The evaluation of Chile's environmental performance conducted by the Economic Commission for Latin America and the Caribbean (ECLAC) and the Organisation for Economic Co-operation and Development, prior to the

country's admission to the latter, implied an additional impetus in this sphere. The evaluation included a chapter on environmental democracy, which reviewed the advances and challenges relating to access to information, participation and environmental justice in the country. The report underscored the need to consolidate environmental information systems by improving, systematizing and expanding information on the environment. Authorities were urged to improve and systematize practices and to promote a more comprehensive use of environmental impact assessment systems (for projects) and strategic environmental assessments (policies and plans), with a view to ensuring a really effective participation. The recommendations set forth in the report were taken into account in the reform of the 2010 Framework Law on the Environment, which incorporates strategic environmental assessment and contemplates citizen participation forums.

Box 5

ACCESS RIGHTS IN FREE TRADE AGREEMENTS IN LATIN AMERICA AND THE CARIBBEAN

A number of free trade agreements signed by countries of Latin America and the Caribbean recognize and impose obligations on States concerning access rights to information, participation and justice in environmental matters. Some of these are listed below.

CARIFORUM-European Community Economic Partnership Agreement (2008): Article 3 of this partnership agreement sets out the basis for respecting and promoting sustainable development. Chapter 4 lays the groundwork for fostering environmental protection and sustainable use of resources. Article 232 establishes a Consultative Committee to promote dialogue with civil society on economic, social and environmental issues that might be impacted by the agreement.

United States-Peru Trade Promotion Agreement (2006): Chapter 18 sets standards for promoting environmental justice (remedies for environmental damage, legal institutions, and other provisions). Article 18.7 requires that the parties set up processes for public participation in decision-making and promote public awareness of environmental issues.

United States-Colombia Trade Promotion Agreement (2006): The chapter concerning the environment (chapter 18) parallels CAFTA-DR and sets out the same measures in paragraphs 3 and 6.

Dominican Republic-Central America-United States Free Trade Agreement (CAFTA-DR) (2004): This agreement promotes environmental justice under Article 17.3, which, inter alia, provides for sanctions for environmental damage and legal protections for society in the event of damage to the environment and establishes remedies and the right of individuals to bring environmental damage cases before a legal body. Article 17.6 focuses on providing opportunities for civil society to participate in the management of the environment.

United States-Chile Free Trade Agreement (2003): Chapter 19 deals with environmental issues and requires, among other measures, establishment of processes for public participation in decision-making (19.4). Article 19.8 establishes threshold legal processes for environmental justice. The agreement also provides for pursuing eight projects in a variety of areas, including development of a pollutant release and transfer register.

Chile-European Community Association Agreement (2002): Articles 11 and 48 of this agreement require the participation of civil society, not only on environmental issues but also on matters concerning the agreement. It requires the disclosure of information and the promotion of participation. Article 28.2 (f) encourages environmental education as a way to involve citizens in environmental matters.

Cooperation agreements in North America (1992): International cooperation between Canada, the United States and Mexico is built around three axes: the North American Free Trade Agreement (NAFTA); the North American Agreement on Labor Cooperation (NAALC); and the North American Agreement on Environmental Cooperation (NAAEC). The three agreements were promoted jointly, but in order to mesh environmental regulations in the three countries, NAFTA was subject to signature of NAAEC. It is on the basis of this agreement and the United States-Mexico Border XXI Program that Mexico implemented a pollutant release and transfer register and policies for participation in environmental impact assessment proceedings.

Source: Economic Commission for Latin America and the Caribbean (ECLAC).

Over the past few decades, the countries of the region have made great strides in access to information, participation in decision-making and access to justice on environmental matters. Table 3 lists some common environmental management tools used in the region for incorporating access rights.

Table 3
**LATIN AMERICA AND THE CARIBBEAN: ENVIRONMENTAL MANAGEMENT TOOLS
THAT INCORPORATE ACCESS RIGHTS**

Access to information	<ul style="list-style-type: none"> • Freedom of information mechanisms • State of the environment reports • Toxic release inventories/pollutant release and transfer registers • Emergency warning systems • Air and water quality monitoring systems
Public participation	<ul style="list-style-type: none"> • Environmental impact assessment • Strategic environmental assessment • Sustainable development multi-stakeholder councils • Planning and permitting hearings • Legislative hearings
Access to justice	<ul style="list-style-type: none"> • Litigation • Alternative dispute resolution • Administrative justice mechanisms (planning councils, etc.) • Specialized bodies with environmental jurisdiction

Source: Economic Commission for Latin America and the Caribbean (ECLAC), on the basis of J. Foti and others, *Voice and Choice: Opening the Door to Environmental Democracy*, World Resources Institute (WRI), 2008.

As in other parts of the world, civil society has played a major role in disseminating the access rights stemming from Principle 10 of the Rio Declaration in Latin America and the Caribbean. The work done by The Access Initiative is particularly noteworthy.⁹

The work of a number of United Nations agencies and programmes should also be highlighted. Since early 2000, ECLAC has been shepherding processes for reforming access to information, participation and justice in the region and has provided training for countries and civil society actors.

The United Nations Environment Programme (UNEP) has used the Global Environmental Citizenship (GEC) Project to promote access rights. As part of the same effort, it has examined regional instruments provided by the Latin American Parliament, and has promoted tools for access to environmental justice through training of judges and prosecutors.

Meanwhile, since 2008, the United Nations Institute for Training and Research (UNITAR) has been supporting various countries in the region (Costa Rica, Dominican Republic, El Salvador, Honduras, Nicaragua and Panama) in the development of national profiles that identify the divides and required actions for the fulfilment of Principle 10 of the Rio Declaration.¹⁰ National workshops were organized for this purpose in all the countries and were attended by approximately 400 stakeholders of the region. The national profiles prepared for Costa Rica, Dominican Republic, El Salvador and Honduras were converted into reference material for both public authorities and civil society in terms of access to information,

⁹ For additional information, see [online] <http://accessinitiative.org/>.

¹⁰ See [online] www.unitar.org/egp/rio-principle-10-projects.

participation in decision-making and justice in environmental matters. Moreover, the self-assessments of the existing national institutional frameworks were converted into reference material for supporting future capacity-building activities for strengthening environmental democracy.¹¹

In early 2012, UNEP and UNITAR launched a joint initiative to build the capacity of Governments and key stakeholders to implement Principle 10 of the Rio Declaration through multisectoral, multi-stakeholder processes in keeping with the Bali guiding principles.

The following sections examine the state of the art in access to information, participation and justice in environmental matters in Latin America and the Caribbean, based on a review of 14 countries of the legal and institutional frameworks of the 33 countries of the region. Best practices and pending challenges for the region are also reviewed.

2. Access to information on the environment in Latin America and the Caribbean

(a) Progress made in the past 20 years

Access to environmental information includes two key elements: first, the production of information on the environment, and second, the right of citizens to gain access to information held by public authorities and consequently the obligation of governments to make information easily accessible and available to all.

Currently access to information is guaranteed under the Constitution in 17 countries. Meanwhile, 14 countries have specific legislation on access to public information and 8 others are engaged in adopting or creating such legislation (see table 4). Other countries, such as Colombia or Costa Rica, do not have specific laws on this issue but do have administrative processes that regulate requests for information from public authorities.¹² Table 5 compares the situation in Chile and Brazil in terms of freedom of information legislation.

The need for transparency and access to public information is now recognized throughout the region and, indeed, the world. Thus, in the past decade approximately a dozen laws on freedom of information have been enacted and programmes on capacity-building have been launched for public officials as well as civil society.

In Antigua and Barbuda, for example, the Freedom of Information Act of 2004 (section 9) created the position of Information Commissioner, whose functions include setting up and publishing minimum standards and compiling a set of best practices relating to the obligation by the authorities to provide information. This manual will be used to train public officials as well as citizens. Also worthy of note are the independent and autonomous transparency bodies created in Chile and Mexico to monitor, promote and consolidate the capacities of the society and the State with regard to institutional transparency.

¹¹ See [online] www.unitar.org/egp/publications.

¹² In the case of Costa Rica, by means of the National Archive System Act (law No. 7202 of 1990) and in the case of Colombia by means of Law No. 57 of 1985, which governs the release of official records and documents.

Table 4
**LATIN AMERICA AND THE CARIBBEAN: LEGISLATION ON ACCESS TO PUBLIC
AND OR ENVIRONMENTAL INFORMATION AND DEFINITION OF
ENVIRONMENTAL INFORMATION IN THE LEGISLATION**

Country	Provision for access to public information in the Constitution	Legislation on access to information (year)	Other channels of access to public or environmental information	Definition of environmental information in legislation on access to information or framework legislation on the environment
Antigua and Barbuda	-	Freedom of Information Act (2004)	-	-
Argentina	Art 41	-	Decree 1.172/03 (2003) and Law No. 25.831 Regime of Free Access to Public Information on the Environment	Law No. 25831, Art 2
Bahamas	Art. 20.1	Freedom of Information Bill ^a	The Environmental Health Services Act of 1987 forbids the publication of certain environmental information without authorization by the source	-
Barbados	-	Freedom of Information Act ^a		-
Belize	-	Freedom of Information Act (1998)	Environmental Protection Act (1999, amended en 2009)	-
Bolivia (Plurinational State of)	-	<i>Being drafted</i> ^b	Law No. 1333 on the environment	-
Brazil	Art 5.14 y 5.31	Law 12.527 (2012)	(Law No. 10.650)	Law 10.650 Art 2
Chile	Art 8	Law No. 20.285 (2009)	Law No. 19300 (Framework law on the environment) amended in 2010	Law No. 19.300 art. 31 bis (amended by Law No. 20.417 in 2010)
Colombia	Art 23	-	Law 57 of 1985	-
Costa Rica	Art 30	-	Law 7202 of 1990	-
Cuba	-	-	-	-
Dominica	Section 10	<i>Being drafted</i> ^b	-	-
Dominican Republic	-	Law No. 200-04 (2004)	Law No. 64-00	-
Ecuador	Art. 18	Transparency and Access to Public Information Act (2004)	Environmental Management Act	Law No. 37 (1999) Glossary of Definitions
El Salvador	-	Access to Public Information Act (2011)	Environment Act	-
Grenada	Art. 10	Freedom of Information Bill ^a	-	-
Guatemala	Art. 30	Law No. 57-2008 (2008)	-	-
Guyana	Art. 146	Access to Information Bill (2011) ^c	-	-
Haiti	Art. 40	-	-	-
Honduras	-	Law No. 170-2006 (2006)	Environment Act	-
Jamaica	-	Access to Information Act (2002)	<i>Natural Resources Conservation Authority Act (1991)</i>	-

Table 4 (concluded)

Country	Provision for access to public information in the Constitution	Legislation on access to information (year)	Other channels of access to public or environmental information	Definition of environmental information in legislation on access to information or framework legislation on the environment
Mexico	Art. 6	Transparency and Access to Public and Government Information Federal Act (2002)	Ecological Equilibrium and Environmental Protection Act (1988, most recent amendment 2012)	LGEEPA Art. 159 bis
Nicaragua	-	Law No. 621 (2007)	-	-
Panama	Art. 44	Law No. 6/2006 (2006)	Environment Act (Law No. 41 of 1998)	-
Paraguay	Art. 28	-	-	-
Peru	Art. 5.5	Law No. 27.806 (2002)	Environment Act (Law No. 28.611 of 2005)	Law No. 28.245 Art. 31
Saint Kitts and Nevis	-	The Freedom of Information Bill (2006) ^a	-	-
Saint Lucia	Art. 10	Freedom of Information Act ^a	-	-
Saint Vincent and the Grenadines	-	Freedom of Information Act (2003)	-	-
Suriname	-	-	-	-
Trinidad and Tobago	-	Freedom of Information Act (1999, amended 2003)	-	-
Uruguay	-	18.381 (2008)	Decree 484/2009 on access to public information	-
Venezuela (Bolivarian Republic of)	-	Bill ^b	-	-

Source: Economic Commission for Latin America and the Caribbean (ECLAC).

^a Bill pending approval by the legislature.

^b Bill being drafted.

^c Law adopted but not yet implemented.

Table 5
**CHILE AND BRAZIL: KEY ELEMENTS OF LEGISLATION ON TRANSPARENCY
 AND ACCESS TO INFORMATION**

	Chile (Law 20.285) 2009	Brazil (Law 12.527) 2012
To whom it applies	Ministries; regional governors' offices; provincial governors' offices; regional governments; municipal offices; armed forces, forces of law and order; anybody performing an administrative function; State enterprises.	Public administration bodies, executive and legislative powers, courts, the attorney-general's office, foundations, public enterprises and other firms controlled partly or wholly by the central government or by a state, district or municipality.
Scope of public information	Administrative documents and resolutions and the substantiating documentation. All information prepared with public funds and/or held by the State.	Information held in records on activities, structure and operation of public bodies, whether produced or kept by them, referring to the administration of public assets.
Active transparency	Organic structure; faculties; normative framework; staff; hiring; transfers of public funds; directives and resolutions; procedures in respective areas of competence; mechanisms for participation, subsidies and budget; list of partner entities; auditing outcomes.	Competencies; organic structure; financial and expenditure records; hiring and tenders; projects, works and proceedings of the entity; frequently asked questions.
Passive transparency	Anyone has the right to request and receive public information from any organ subject to the transparency legislation.	Anyone has the right to request and receive public information from any organ subject to the transparency legislation.
Transparency committee	Anyone whose rights are infringed may bring a complaint before the Transparency Committee.	None.
Deadlines	Response —provision or refusal of information— must be provided within 20 working days. This may be extended by a further 10 working days where justification is provided.	Response —provision or refusal of information— must be provided within 20 days. This may be extended by a further 10 days where justification is provided.
Costs	Free except for costs of reproducing information.	Free except for reproduction costs. Fully free of charge for those unable to pay the cost of reproduction.
Exceptions	Information that would jeopardize the proper functioning of the body, threaten national security, infringe third party rights, or run counter to the national interest, foreign relations or public health.	Information that would affect national defence, integrity, sovereignty or security; jeopardize international business; threaten life or public health; destabilize the financial sector; concern strategic plans of the armed forces; or place scientific or technological research at risk.
Embargo	Five years, which may be extended by a further five years. Where the information could affect Chile's territorial integrity, international defence or foreign policy may be extended indefinitely.	Top secret: 25 years Secret: 15 years Reserved: 5 years
Appeal	Before the Transparency Committee, within 14 working days from the refusal or failure to respond.	Before the next body up in the hierarchy, within 10 days of the refusal or failure to respond.

Source: Economic Commission for Latin America and the Caribbean (ECLAC).

In most countries, the parameters that determine access to information on the environment are distributed between the framework law on the environment and the law on transparency. However, in some countries—such as Argentina and Brazil— specific laws have been enacted for the regime relating to access to environmental information.

While most environmental laws in Latin America and the Caribbean make reference to information on the environment, only six countries in the region—Argentina, Brazil, Chile, Ecuador, Mexico and Peru— contemplate in their laws an explicit definition of what is understood by information on the environment. Box 6 presents the common elements of those definitions. Table 6 includes deadlines for the provision of the information contemplated in national legislations.

Box 6
**COMMON ELEMENTS OF DEFINITIONS OF ENVIRONMENTAL INFORMATION CONTAINED
IN LEGISLATION ON THE ENVIRONMENT IN LATIN AMERICA AND THE CARIBBEAN**

The legal definitions of information on the environment in the region vary from one country to the next. However, there are certain basic elements common to the countries that have this type of legal provision.

On the whole, information on the environment is defined as encompassing all information relating to the environment irrespective of the format or medium in which it is produced or found.

Furthermore, in most legislative systems, information on the environment is recognized as such particularly if it deals with:

- The state of the environment and/or one or other of its physical, cultural or social elements.
- The interaction of the society with the environment, including activities, projects and circumstances that can have an impact on the society or the environment.
- Plans, policies, programmes or actions relating to management of the environment.

Source: Economic Commission for Latin America and the Caribbean (ECLAC), on the basis of the environmental legislation existing in Argentina, Brazil, Chile, Mexico, Ecuador and Peru.

Table 6
**LATIN AMERICA AND THE CARIBBEAN: MAXIMUM PERIODS FOR THE PROVISION OF
INFORMATION UNDER LEGISLATION RELATING TO ACCESS TO PUBLIC AND/OR
ENVIRONMENTAL INFORMATION AND OTHER REGULATIONS**

	Period (days)	Extension (days)	Source
Antigua and Barbuda	20 working days	20 working days	Freedom of Information Act 2004
Argentina	10 days ^a	10 days	Decree 1172/2003
Bahamas	Bill	Bill	-
Barbados	Bill	Bill	-
Belize	2 weeks	-	Freedom of Information Act 1998
Brazil	15 days ^b		Access to Environmental Information Act (law No. 10.650) (2004)
Bolivia (Plurinational State of)	Bill	Bill	
Chile	20 days	10 days	Transparency Act (law No. 20.285) (2010)
Colombia	10 days	3 days	Law No. 57 de 1985
Costa Rica	10 days	-	Constitutional Jurisdiction Act (1989)

Table 6 (concluded)

	Period (days)	Extension (days)	Source
Cuba	-	-	-
Dominica	-	-	-
Dominican Republic	15 days	10 days	Law No. 200-04
Ecuador	10 days	5 days	Transparency and Access to Public Information Act (2004)
El Salvador	10 days	5 days	Access to Public Information Act (2011)
Grenada	Bill	Bill	-
Guatemala	10 days	10 days	Law No. 57-2008
Guyana	60 days	-	Access to Information Act (2011)
Haiti	-	-	-
Honduras	10 days	10 days	Law No. 170-2006
Jamaica	30 days	-	Access to Information Act (2002)
Mexico	20 days	20 days	Transparency and Access to Public and Government Information Federal Act (2002)
Nicaragua	15 days	10 days	Law No. 621
Panama	30 days	-	Law No. 6/2002
Paraguay	-	-	-
Peru	7 days	5 days	Law No. 27.806
Saint Kitts and Nevis	Bill	Bill	-
Saint Lucia	Bill	Bill	-
Saint Vincent and the Grenadines	30 days	-	Freedom of Information Act (2004)
Suriname	-	-	-
Trinidad and Tobago	30 days	-	Freedom of Information Act (1999)
Uruguay	20 days	20 days	Access to Public Information Act (2008)
Venezuela (Bolivarian Republic of)	-	-	-

Source: Economic Commission for Latin America and the Caribbean, on the basis of a review of national legislation.

^a In Argentina, the Access to Environmental Information Act (law No. 25.831) sets the maximum period at 30 days.

^b In Brazil, the Transparency Act (law No. 12.572) sets a period of 20 days with an extension of 10 days.

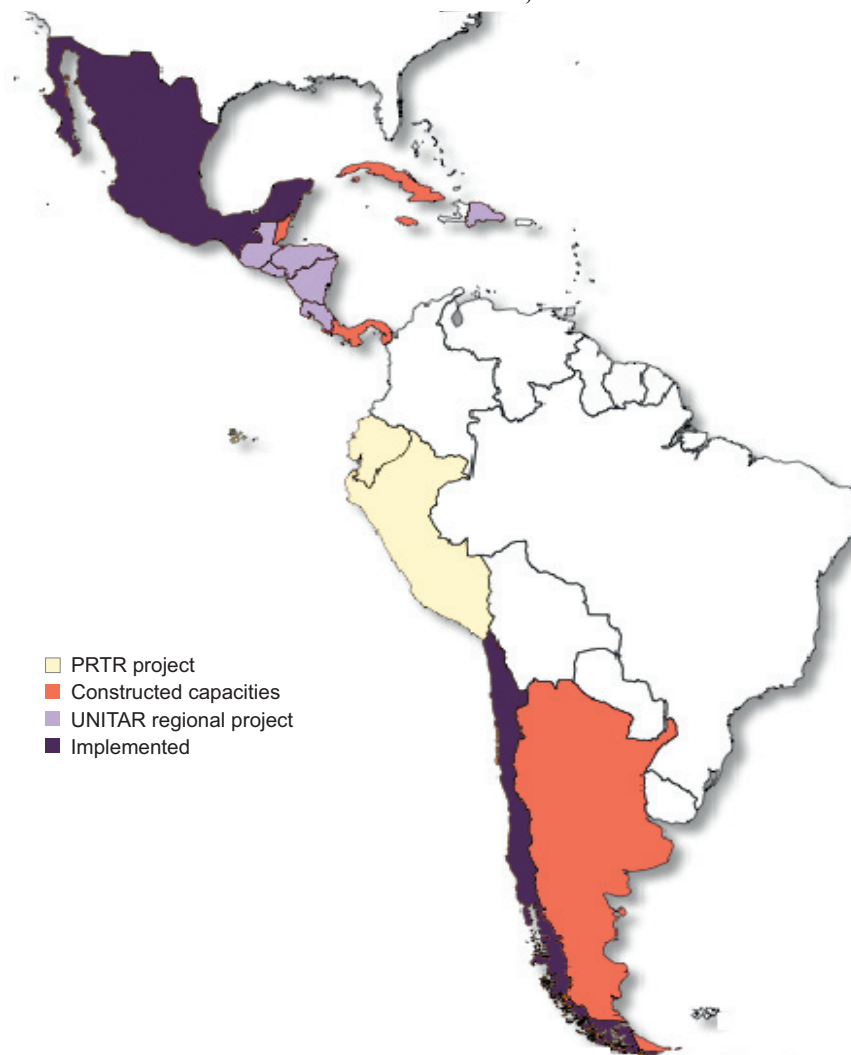
Another positive trend with respect to freedom of information in the region is the creation of pollutant release and transfer registers (PRTRs), in some cases (e.g. Chile and Mexico) as a result of commitments assumed under free trade agreements (see box 5).

A PRTR is a database containing information on emissions and transfers to the environment of potentially harmful chemical substances. This type of database is a digital tool that is open to the public and reveals disaggregated and standardized data on the nature and quantity of the emissions. At present,

Chile and Mexico are the only countries in the region that have a functioning PRTR, but Ecuador and Peru are in the final stages of bringing theirs on stream.

UNITAR has carried out a number of programmes to facilitate the development of PRTRs in countries of the region, including Argentina, Belize, Chile, Costa Rica, Cuba, Dominican Republic, Ecuador, Guatemala, Honduras and Mexico. In addition, it is designing a regional PRTR in Central America. PRTRs are important for ensuring the implementation of Principle 10 of the Rio Declaration, because they systematize the data from both public and private entities.¹³ UNITAR projects have been crucial in developing such registers in Latin America and the Caribbean. Map 1 shows the status of PRTRs in Latin America and the Caribbean.

Map 1
**LATIN AMERICA AND THE CARIBBEAN: STATUS OF CREATION OF POLLUTANT RELEASE
 AND TRANSFER REGISTERS, FEBRUARY 2013**



Source: Economic Commission for Latin America and the Caribbean (ECLAC), as at 7 February 2013.

Note: The boundaries and names shown on this map do not imply official endorsement or acceptance by the United Nations.

¹³ See [online] <http://unitar.org/cwm/prtr>.

With regard to the production of environmental information, many countries have introduced into domestic law the obligation for a designated authority to submit information on the state of the environment at specified intervals. These include Belize, Bolivarian Republic of Venezuela, Chile, Guyana, Haiti, Mexico, Panama and Uruguay. In some cases, free trade agreements include the obligation to produce and disseminate information on the environment on a regular basis (see box 5). In Colombia, this obligation is enshrined in the Constitution (United Nations, 2012).

Countries have also made strides in generating electronic databases containing environmental information, referred to in some countries as environmental information systems. Twenty of the 33 countries in the region are committed to some degree to the development of registers of this kind, although, in some cases, they are in the preliminary stages. Environmental information systems are being developed in Chile, Costa Rica, Ecuador, Mexico and Peru, which have several indicators and cartographic and numeric registers. MERCOSUR is working on the generation of a regional environmental information system for its member countries.¹⁴

Box 7 gives an overview of progress and challenges in the availability of environment-related information in the region.

Information and communication technologies (ICTs) have become key tools not only for providing access to existing information but also for generating and analysing data. For example, thanks to advances in satellite technology, vulnerable areas such as the Amazon can now be monitored over shorter time lapses, thereby enabling government agencies to provide a timely response to crises and chart the course of long-term policies more effectively (United Nations, 2012).

One manifestation of the sweeping changes that information and communications technologies (ICTs) have had is the Joint Declaration on Freedom of Expression and the Internet, signed in 2011 by the United Nations, the Organization for Security and Co-operation in Europe (OSCE), the Organization of American States (OAS) and the African Commission on Human and Peoples' Rights (ACHPR).

The Declaration is recognition of the impact that the Internet has had on communications and a comment on the role played by States, users and servers in its expansion. Section 6 of the Declaration indicates that States have the obligation to provide Internet access and that only in very rare cases can it be considered justifiable to cut off, restrict or refuse access to the Internet as a political or judicial mechanism. The Declaration also points out that States are under a positive obligation to facilitate universal access to Internet. In this regard, they should (i) Put in place regulatory mechanisms that foster greater access to the Internet, including for the poor and in "last mile" rural areas; (ii) provide direct support to facilitate access, including by establishing community-based ICT centres and other public access points; (iii) promote adequate awareness both about how to use the Internet and about the benefits it can bring, especially for the poor, children and the elderly and isolated rural populations; and (iv) put in place special measures to ensure equitable access to the Internet for the disabled and for disadvantaged persons.¹⁵

¹⁴ This task has been entrusted to Subworking Group No. 6 (thirty-first ordinary meeting of MERCOSUR Subworking Group No. 6, 2004).

¹⁵ Joint Declaration on Freedom of Expression and the Internet, article 6 [online] [<http://www.oas.org/en/iachr/expression/showarticle.asp?artID=849&IID=1>].

Box 7

THE SUPPLY OF ENVIRONMENTAL INFORMATION IN THE REGION

Since 1992, the countries of the region have invested heavily in producing environmental statistics. Whereas in the 1990s only a few countries published official environmental statistics and sustainable development indicators, most now publish systematic statistical compendia and reports on environmental (or sustainable development) indicators. According to a study conducted by the Economic Commission for Latin America and the Caribbean (ECLAC), in 2010 a total of 25 countries had staff assigned specifically to environmental statistics, while 29 national institutes (of the 36 surveyed) stated that they had a unit devoted solely to producing environmental statistics. However, most of the institutes participating in the study (75%) stated that they had three or even fewer staff dedicated to working on environmental statistics. Altogether, 26 countries (15 in Latin America and 11 in the Caribbean) had at least one publication on environmental statistics up to 2008.

Countries have also invested in formulating sustainable development indicators, based on different approaches. The experiences in Argentina, Barbados, Brazil, Chile, Colombia and Mexico, for example, have been interesting. In the context of the Latin American and Caribbean Initiative for Sustainable Development (ILAC), in 2003 the Forum of Ministers of the Environment of Latin America and the Caribbean adopted a set of environmental indicators, grouped into six thematic areas: biological diversity; water resource management; vulnerability, human settlements and sustainable cities; social issues, including health, inequity, and poverty; economic aspects, including trade and production and consumption patterns; and institutional aspects. A group of 45 indicators was agreed upon in 2009 and presented to the Forum of Ministers in 2010.

At the regional level, the Working Group on Environmental Statistics of the Statistical Conference of the Americas of ECLAC was established in 2009.

Despite recent progress, greater attention, investment and training is required in the area of environmental statistics. One obstacle is the shortage of human and financial resources. A number of international organizations have supported the preparation and dissemination of environmental statistics in the region. ECLAC has helped the countries of the region to build statistical capacity and implement international recommendations on environmental statistics, and it acts as technical secretariat of the Working Group on Environmental Statistics. Since 1999, the United Nations Environment Programme (UNEP) has been working with governments and specialized centres in the region to perform integrated environmental assessments covering varying subjects and geographical areas. To date, UNEP has supported the drafting and publication of national environment outlook reports (national GEO reports) in 19 countries, and of GEO reports on cities or subregions in 14 countries. In addition, thematic and youth-oriented subregional GEO reports have been prepared. The *Latin America and the Caribbean: Environment Outlook* reports for 2000, 2003 and 2010 provide an overview of the region. The United Nations Population Fund (UNFPA) has supported the countries of the region in carrying out the 2010 round of population censuses. Although censuses have been little used for environmental studies so far, they are an invaluable source of information for sustainable development planning.

Records are also kept in Latin America and the Caribbean of disaster-related loss and damage. These have become more robust and help provide an overview of the consequences of inappropriate land use and occupation, lack of governance, and environmental degradation, as the main causes of this loss and damage. This information is still not treated as forming part of environmental information systems and, in general, it does not yet constitute a mainstay of decision-making processes aimed at reducing the region's exposure and vulnerability to various threats.

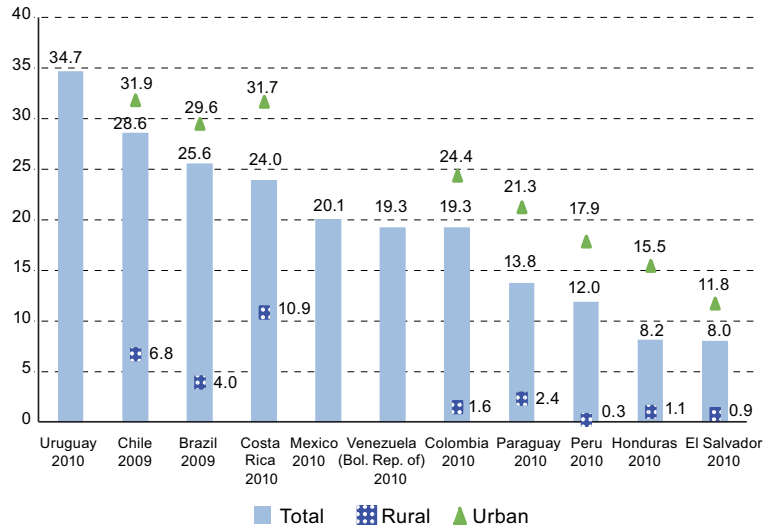
In terms of the future development of environmental statistics, one challenge is to produce data disaggregated by sex, age and other factors such as race and ethnicity for variables relating to people (such as access to services and exposure to pollutants). This disaggregation will highlight any inequalities regarding these factors, in order to orient policies and measures.

Source: Economic Commission for Latin America and the Caribbean (ECLAC), on the basis of United Nations, *Sustainable Development 20 Years on from the Earth Summit: progress, gaps and strategic guidelines for Latin America and the Caribbean* (LC/L.3346/Rev.1), Santiago, Chile, 2012.

Access to the Internet is now considered by some as a human right and even the most conservative elements agree that if it is not a right per se, it is, nevertheless, a platform that acts as a catalyst for the exercise of human rights that are already recognized (information, education, participation). In July 2010 a ruling of the Constitutional Court of Costa Rica stated that “access to these technologies have become a basic instrument for facilitating the exercise of fundamental rights”. Meanwhile, legislation governing access to information in countries such as Ecuador, Mexico, Panama and Uruguay, among others, identifies it as a possible platform for exercising the right of access to information.

In terms of access to the Internet, the most advanced countries in the region are Argentina, Brazil, Chile, Panama and Uruguay. These data are, however, subject to change; indeed they may vary significantly from one year to the next because the region is experiencing a veritable boom in the ICT sector. Nevertheless, recent studies place the region’s Internet coverage at between 30% and 40% on average, close to half of the rate in the OECD countries; moreover, the findings are mixed, ranging from 50% in Chile to 10% in Nicaragua (ECLAC, 2010). Inequality in the region shows up not only between countries, but also between urban and rural areas and between income quintiles (see figures 1 and 2). As indicated in figure 2, the connectivity ratio of the highest to the lowest income quintile varies from one country to the next, but, generally speaking, connectivity is between 5 to 10 times higher in the first quintile than in the lowest.

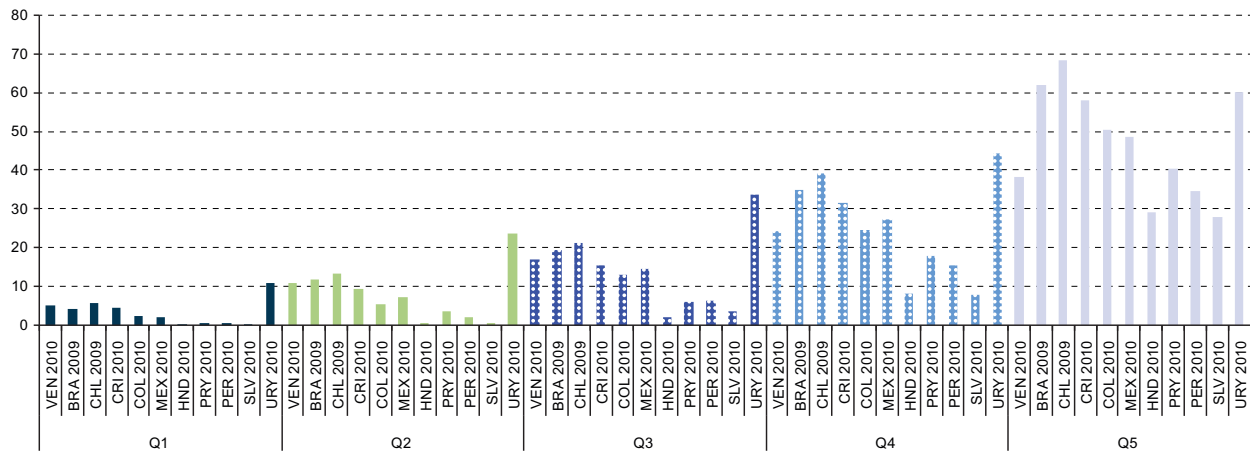
Figure 1
**LATIN AMERICA AND THE CARIBBEAN: HOUSEHOLDS WITH ACCESS TO THE INTERNET
IN URBAN AND RURAL AREAS AND AT THE NATIONAL LEVEL**



Source: Economic Commission for Latin America and the Caribbean (ECLAC), *Broadband in Latin America: beyond connectivity* (LC/L.3588), Santiago, Chile, 2013, forthcoming.

Note: Relates to the percentage of households with access to Internet over total households in each area.

Figure 2
**LATIN AMERICA AND THE CARIBBEAN: HOUSEHOLDS WITH ACCESS TO THE INTERNET
 BY INCOME QUINTILE**



Source: Economic Commission for Latin America and the Caribbean (ECLAC), *Broadband in Latin America: beyond connectivity* (LC/L.3588), Santiago, Chile, 2013, forthcoming.

Note: Relates to the percentage of households with access to Internet over total households in each area.

Several initiatives now underway are expected to result in a dramatic rise in these numbers. Costa Rica, for example, has set the year 2020 as a target for total connectivity and Panama and some states in Mexico have created public centres (plazas) with free access to Internet.

(b) Challenges

For citizens to participate in an informed manner in such decision-making on environmental matters, countries must strengthen their capacity to produce, process and disseminate environmental and sustainable development statistics and indicators at the national level. However, it is not enough to expand the supply of strategic environmental information; demand also has to be built up at a strategic level in each strata of society in order to guarantee the use of the environmental information outputs. Education and capacity-building therefore play a key role in developing citizen demand for more and better information and participation (see section 4), and in safeguarding citizens' legal right to access information. In this connection, it is necessary to establish (or improve, where they already exist) clear national-level legal frameworks and procedures regarding access to environmental information, with oversight mechanisms and procedures for ensuring that disadvantaged groups and those traditionally underrepresented in politics, such as women, the young, indigenous peoples and Afro-descendants, have proper access (United Nations, 2012).

In this context, the experience of Mexico is noteworthy: the Federal Institute for Access to Information and Data Protection (IFAI) and the National Institute of Indigenous Languages (INALI) signed a cooperation agreement in 2011 to guarantee right of access to information for the 7 million persons who speak indigenous languages in the country, many of them as their sole language.

A further challenge relates to the expansion of access by governments and civil society to existing technological and environmental information tools. Initiatives such as the Open Government Partnership¹⁶ and the Open Data for Development in Latin America and the Caribbean (OD4D),¹⁷ which is headed by ECLAC and the World Wide Web Consortium (W3C) of Brazil, seek to make government information available to the public on the assumption that this practice will contribute to transparency, accountability and greater participation by civil society.

The region should advance towards expanding access by governments and civil society to key information for decision-making on environmental issues held by private stakeholders. In this context.

A number of voluntary initiatives have been taken in these areas, such as Eye on Earth¹⁸ and the Carbon Disclosure Project.¹⁹ Eye on Earth is a global public information network spearheaded by public and private agencies, including the European Environment Agency, Esri and Microsoft Corp. It was developed as a platform for creating and sharing environmentally relevant data and hailed in paragraph 274 of the outcome of the United Nations Conference on Sustainable Development “The future we want”.²⁰ The Carbon Disclosure Project gathers standardized information on the environmental performance of cities and large companies, and enables civil society actors to compare company pollution levels and natural-resource intensity and track this performance over time (United Nations, 2012).

Along these same lines, it has also been proposed that standards should be established for the adoption of eco-labelling and other information mechanisms that convey commitment by corporations to the principles of sustainability and which inform and educate consumers (United Nations, 2012). A 2012 study on eco-labelling in the Southern Cone countries found that although Brazil was the only country that had legislation on this issue, all the countries in the subregion provided sufficient incentives to start to regulate the use of certification mechanisms (Fundación Chile/UNDP, 2012). The same study points to the existence of 49 certifications of this type in the Southern Cone. Of these, 37 are used in Brazil, 21 in Chile and Argentina, 11 in Paraguay and 8 in Uruguay. The most common eco-labels are used to identify the energy efficiency of electrical appliances, forest management and office supplies (for example, ink cartridges).

In Peru, meanwhile, the Consumer Defence Code (articles 36 and 37) states that foods containing transgenic fats or some genetically modified component must state so explicitly on the label. Colombia, in addition to having labelling on genetically modified organisms, has developed an eco-labelling system that complies with ISO 14024. The Colombian Environmental Seal, instituted by virtue of resolution 1555 of 2005, seeks to guide consumer preference towards more environmentally friendly products.

¹⁶ See [online] <http://aga.org.mx/SitePages/Principal.aspx>.

¹⁷ See [online] <http://www.od4d.org>.

¹⁸ See [online] www.eyearth.org.

¹⁹ See [online] <https://www.cdproject.net/en-US/Pages/HomePage.aspx>.

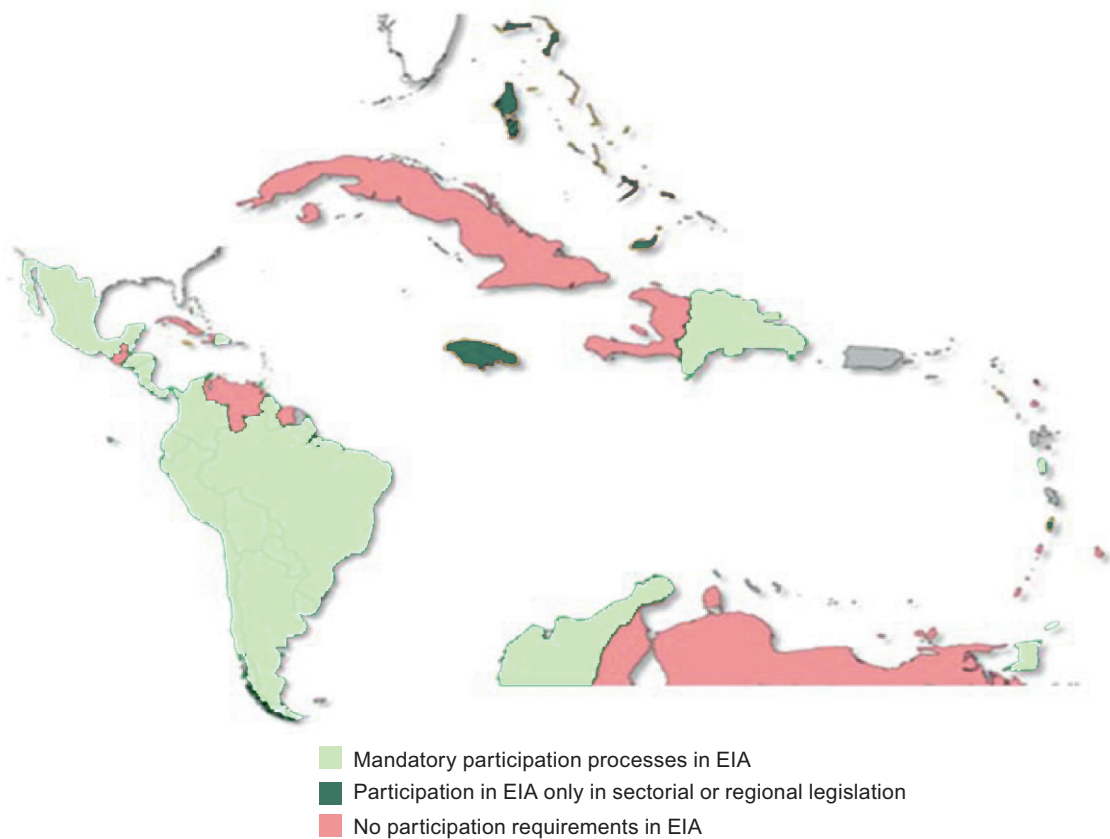
²⁰ “We recognize the importance of space-technology-based data, in situ monitoring and reliable geospatial information for sustainable development policymaking, programming and project operations. In this context, we note the relevance of global mapping and recognize the efforts in developing global environmental observing systems, including by the Eye on Earth Network and through the Global Earth Observation System of Systems. We recognize the need to support developing countries in their efforts to collect environmental data”.

3. Citizen participation in environmental decision-making in Latin America and the Caribbean

(a) Progress made in the past 20 years

Twenty years on from the Earth Summit, most countries in the region have incorporated provisions on citizen participation into environmental legislation or into thematic or sectoral laws and have created a variety of citizen participation councils (United Nations, 2012). Most also have some degree of citizen participation in environmental impact assessments (see map 2).

Map 2
LATIN AMERICA AND THE CARIBBEAN: CITIZEN PARTICIPATION
IN PROJECT ENVIRONMENTAL IMPACT ASSESSMENTS



Source: Economic Commission for Latin America and the Caribbean (ECLAC).

Note: The boundaries and names shown on this map do not imply official endorsement or acceptance by the United Nations.

Citizen participation is most limited at the level of policies, plans and strategies, where it is generally at the discretion of the government (see map 3). A notable experience in this regard is the inclusion of environmental impact assessments in Chile's recently reformed General Environmental Law

(2010).²¹ The law now stipulates that environmental impact assessments must provide means for interested public parties to participate and must include advertising of the policy or plan, and of any subsequent reform thereof (article 7 of the reformed Law 19.300). Table 7 presents the instruments for participation and dissemination contemplated in the laws relating to the assessment of environmental projects and policies in the 33 countries of the region.

Map 3
**LATIN AMERICA AND THE CARIBBEAN: CITIZEN PARTICIPATION
 IN ENVIRONMENTAL IMPACT ASSESSMENT PROCESSES**



Source: Economic Commission for Latin America and the Caribbean (ECLAC).

Note: The boundaries and names shown on this map do not imply official endorsement or acceptance by the United Nations.

²¹ Law 19.300 updated in 2010 in Law 20.417, which made substantial changes to Chile's environment-related legislation.

Table 7
**LATIN AMERICA AND THE CARIBBEAN: INSTRUMENTS FOR PARTICIPATION
 AND DISSEMINATION IN PROJECT AND POLICY**

	Legal character of environmental impact assessment (EIA)	Goal <i>Activities subject to EIA; a distinction is made between countries in which EIA refers only to projects and those that also include policies, plans, and programmes (strategic environmental assessment (SEA))</i>	Citizen participation <i>Provisions for the involvement of the general community or specific parts of the community as well as those directly interested in the EIA process</i>	Dissemination <i>Public notification and dissemination of information generated in the EIA process</i>
Antigua and Barbuda	Instrument for the management of some projects	Only EIA: works and activities are evaluated	Prior consultations are limited to National Parks. There is no other provision for participation in the EIA	There are no provisions in the current legislation about the dissemination of information
Argentina	Instrument of environmental policy and management	Only EIA: works and activities are evaluated	Law mandates citizen participation in EIA process; procedures for authorizing activities that can generate significant negative environmental impacts must include public hearings	Authorities must allow public access to any non-classified environmental information that they manage
Bahamas	Instrument for the management of some projects	Only EIA: no regulations on its content. Only guidelines	Participation (or lack thereof) in the EIA process depends on the authority that requests it	EIAs should be available in the Bahamas Environment, Science and Technology Commission
Barbados	Instrument for the management of some projects	Only EIA: no regulations on its content. There is also evaluation of some plans	No compulsory participation. The Voluntary Guidelines however require a public hearing to present the project and the EIA results	No dissemination requirements for EIA
Belize	Instrument for analysing impacts and risks and for recommending mitigation measures	Only EIA: projects, programmes, and activities are evaluated	Public must be consulted during preparation of the environmental impact study (EIS); EA sets procedures for public consultation and submission of comments; a public hearing can be held by recommendation of the EA	After EIS has been presented it must be announced through the media and made available to the public. Proponent must present an EIS summary
Bolivia (Plurinational State of)	Instrument for environmental planning; technical procedures, studies, and systems to determine the environmental impact of works, activities, or projects; environmental licensing (Environmental Impact Declaration (DIA))	EIA: works, activities, and projects are evaluated SEA: plans and programmes are evaluated	Any individual can present observations, criticisms, and proposals during the stages of EA review, classification, EIS review, and authorization of the DIA	Summary of EIS required; synthesis of DIA published in the Bulletin of the Ministry of the Environment and Water. The public can access information on classification and execution of EIS, except when it is legally protected. EIA and EIS forms available to the public

Table 7 (continued)

	Legal character of environmental impact assessment (EIA)	Goal	Citizen participation	Dissemination
Brazil	Requirement for a permit prior to construction, installation, expansion, or operation of facilities and activities covered by the regulations	Only EIA: facilities and activities are evaluated	Interested parties can present observations on the report within a specified period. The responsible authority can hold a public hearing if deemed necessary	The information in the environmental impact report (RIMA) must be comprehensible. The public must have access to the RIMA in locations determined by regulation. The licence request must be published
Chile	Procedure to determine if the environmental impact of an activity or project complies with prevailing regulations	EIA: activities, projects, SEA: plans and programmes	There are legal requirements for participation. Community organizations and directly affected individuals can submit comments on EIS within a specified period. In SEA, the specific regulations will include the time frames for participation. These are currently in discussion	A summary of the EIS must be submitted. An abstract must be published. The EIS file is open to the public, except for legally protected information
Colombia	Authorization to carry out works or activities, subject to meeting conditions for prevention, mitigation, remediation, compensation, and management of environmental impacts	EIA for works and activities are evaluated. SEA for plans, policies and programmes	Any individual may intervene in an administrative procedure for environmental permits and licences. Certain authorities and members of the public may request a public hearing under certain conditions	The responsible authority must publish the decision to initiate the EIA procedure, and the findings in the Official Gazette. Anyone can request to be notified of decision; information is public throughout process
Costa Rica	Required prior to beginning specific activities, works, or projects	Only EIA: activities, works, projects, and regulatory plans are evaluated	Any individual has the right to be heard by EA and to present comments at any stage of EIA process or operational phase	EIA file is public and must be made available to any individual or organization. EA must disseminate list of studies it has received and send EIS abstracts to municipalities
Dominica	Requirement for the authorization of some projects.	Only EIA	The authority must take into account observations but no participation procedures are specified. Public consultation must be held when the project is inconsistent with a plan	There exist provisions for the publication of the project

Table 7 (continued)

	Legal character of environmental impact assessment (EIA)	Goal	Citizen participation	Dissemination
		<i>Activities subject to EIA; a distinction is made between countries in which EIA refers only to projects and those that also include policies, plans, and programmes (strategic environmental assessment (SEA))</i>	<i>Provisions for the involvement of the general community or specific parts of the community as well as those directly interested in the EIA process</i>	<i>Public notification and dissemination of information generated in the EIA process</i>
Dominican Republic	Instrument for environmental policy and management	EIA: projects, civil works, industry, and activities evaluated SEA: public administration policies, plans, and programmes evaluated	Stakeholders consulted through a hearing during preparation of EIS. EA conducts consultations and requests comments during EIS review. EA holds hearings when required	Proponent must inform public, through media, of intention to carry out project and provide relevant information on it. The EIS must be available to the public once it has been submitted
Ecuador	Instrument for applying environmental regulations; guarantees that officials and public have access to environmental information on activity or project prior to implementation decision; sustainable development	Only EIA: activities, works, and projects are evaluated. SEA for policies, plans and programmes	Public consultation required (meetings, workshops, hearings, information centres, and Internet) for setting priorities for studies, criteria for terms of reference (TORs), and prior to presentation of EIS	Executive summary of the EIS must be presented. The national environmental authority maintains a national public registry of environmental files and licences
El Salvador	SEA: Environmental impacts of policies, plans, and programmes EIA: Ensures that activities, works, and projects follow procedures to identify and quantify impacts and mitigation measure	EIA: activities, works, and projects evaluated SEA: policies, plans, and public administration programmes evaluated	The legal framework allows anyone who feels affected to express an opinion or submit comments; in special cases there must be a public hearing in the municipalities where the activity will take place	EIS is publicly disclosed through publication in the print media with national circulation in a format designated by the Ministry
Grenada	Optional requirements for some projects	Only EIA and only for some projects.	No legal requirements for participation	No regulations on the disclosure
Guatemala	Instruments to systemically identify and evaluate the environmental impacts of a project, work, industry, or other activity during its planning, implementation, operation, and closure	EIA: projects, works, industries, and activities evaluated SEA: national and governmental policies and plans, projects of transnational significance evaluated	Proponent must consult population during preparation of the social impact assessment; (SIA); the public can present comments and opinions during valuation of SIA	EA orders publication of announcement or decree, with basic information about project, industry, works, or activity, in a daily newspaper with nationwide circulation

Table 7 (continued)

	Legal character of environmental impact assessment (EIA)	Goal	Citizen participation	Dissemination
Guyana	Instrument to provide information for identification and planning to help avoid or minimize environmental impacts and strengthen sustainable development	EIA: execution of projects is evaluated SEA: policies, plans, and programmes are evaluated if they significantly affect the environment	Public can participate in scoping process, preparation and evaluation of EIS, and commentary to the environmental protection agency (EPA). The Environmental Assessment Board (EAB) can determine if a public hearing is required before issuing a recommendation	The existence of the project is announced in a daily newspaper; the EIS is available to the public
Haiti	Optional requirements for some projects	Only EIA for some projects and the evaluation of some environmental plans and policies	Not specified in EIA requirements, only for some plans and policies	No requirements
Honduras	Process aims to identify, predict, and describe possible positive and negative impacts of project and propose measures to mitigate negative impacts and a plan for oversight and monitoring	Only EIA: projects, industrial facilities, and any other public and private activity are evaluated	EIS is made available to the public so that comments can be submitted	Once project has been registered, the public must be notified; all information from the EIA process is public
Jamaica	A requirement for the permit of some projects	EIA for projects and some plans and programmes	Not regulated	No requirements
Mexico	Procedures protect environment and avoid or reduce negative impacts by setting conditions for construction or activities that could disrupt ecological balance or violate established limits and condition	EIA: works and activities are evaluated In SEA, plans and partial programmes for urban development and/or ecological planning are evaluated	File available to the public; EA can conduct public consultations if requested by member of affected community; in special cases public meetings are held for information and feedback	EA publishes a weekly list of preventive reports and MIAs; files of MIA assessments available to the public; any citizen can request a public hearing
Nicaragua	Instrument for environmental policy and management, consisting of procedures, studies, and technical systems for predicting the impacts of a specific work, activity, or project	Only EIA: activities, works, and projects are evaluated. SEA for plans, policies and programmes	Any party can present opinions or suggestions on the environmental impact document, through procedures established by EA	EA publishes notices in national periodical of public availability of DIA, including hours and locations where it may be consulted

Table 7 (continued)

	Legal character of environmental impact assessment (EIA)	Goal	Citizen participation	Dissemination
		<i>Activities subject to EIA; a distinction is made between countries in which EIA refers only to projects and those that also include policies, plans, and programmes (strategic environmental assessment (SEA))</i>	<i>Provisions for the involvement of the general community or specific parts of the community as well as those directly interested in the EIA process</i>	<i>Public notification and dissemination of information generated in the EIA process</i>
Panama	Instrument for environmental management; early warning system based on continuous analysis that enables preventive decision-making to protect environment	Only EIA: activities, works, and projects are evaluated, as well as some sectoral development plans	Proponent must involve public during preparation of EIS; EA consults the community and gathers comments during evaluation of EIS. In some cases, a public hearing is required	EA discloses and makes EIS presentation available to the public. Proponent publishes abstract and facilitates public access to EIS and other documents
Paraguay	Environmental policy instrument to ensure systematic examination of environmental impacts of an action and its alternatives	Only EIA: works and activities are evaluated; but in the regulations a proposed action is defined as a project, programme, plan, or policy	EA sets rules for community participation and consultation in project area; can hold hearings to get community feedback	EIA must be available to the public in parts of the country
Peru	Instrument for environmental management, policy implementation, and enforcement; ensures public right to information and participation; instrument for decision-making on environmental viability	EIA: works and activities are evaluated SEA: public policies, plans, and programmes are evaluated	Proponent must consult population during preparation of EIS. Responsible authority conducts formal consultation for EIA. Public hearings mandatory for some EIA, and optional for others; public can comment	EIS available to public and must include brief summary of the Impact study. Documents available in regional office of the sectoral agency
Saint Kitts and Nevis	Process that Environmental authority may request in order to give permission for an activity	EIA for projects and some plans	No regulations	No regulations
Saint Lucia	Process that EA may request in order to give permission for an activity	EIA for projects	No regulations	No regulations
Saint Vincent and the Grenadines	Management document required under certain circumstances	EIA for projects	No regulations	No regulations
Suriname	Not included in the environmental legislation	No regulations	No regulations	No regulations

Table 7 (concluded)

	Legal character of environmental impact assessment (EIA)	Goal	Citizen participation	Dissemination
Trinidad and Tobago	Instrument for environmental management, policy implementation, and enforcement; ensures public right to information and participation; instrument for decision-making on environmental viability	Activities subject to EIA; a distinction is made between countries in which EIA refers only to projects and those that also include policies, plans, and programmes (strategic environmental assessment (SEA)) EIA for projects	Provisions for the involvement of the general community or specific parts of the community as well as those directly interested in the EIA process	Public notification and dissemination of information generated in the EIA process
Uruguay	Instrument for environmental management	Only EIA: activities, construction projects, and works are evaluated	The authority and the proponent must involve the public before, during and after the permission is given Interested parties can express opinions during evaluation; public hearings held in special cases	Files available at the environmental management authority Project summary available to public for set period; advance project information published in the official gazette and other newspapers
Venezuela (Bolivarian Republic of)	Part of process for incorporating environmental concerns in policies, plans, programs, and projects; predict and assess impacts; verify compliance with decrees	EIA and SEA: policies, plans, programmes and projects are evaluated	The Ministry of People's Power for the Environment can order a review process and public hearing for EIS	Approved EIS will remain available at the office of the competent authority

Source: Adaptation of information taken from Gomez G.A., E. Sanchez-Triana, and S. Enriquez (2006). "LEGAL Framework Of Environmental Impact Assessment In Latin America" Available at: http://www1.ifc.org/wps/wcm/connect/1069ce004c08ad23ac9cbe79803d5464/3_EIA+in+LAC+poster.pdf?MOD=AJPERES.

Note: EA: environmental authority; EIA: environmental impact assessment; SEA: strategic environmental assessment; DIA: environmental impact statement; MIA: environmental impact manifest; EIS: environmental impact study; EIS.

Advances in terms of participation in the assessment of plans, policies and programmes can be divided into two types: participation through coordinated civil society action and direct participation. In the first instance, various countries of Central America and South America have adopted initiatives with a view to creating specialized consultative councils in which representatives of various sectors of society can express their views and/or make observations on the proposed plans, policies or programmes. Brazil, Colombia, Ecuador and Panama are some of the countries that have adopted this type of instrument for participation. Countries are also being innovative in this respect. In Ecuador, for example, the 2008 Constitution introduces the legal definition of the Empty Seat in decentralized autonomous governments. This definition is subject to article 77 of the Citizens' Participation Act, which states that: "the sessions of autonomous decentralized governments are public and an empty seat shall be reserved for a representative (male or female) or several citizen representatives, depending on the issues that are to be addressed, in order to enable them to participate in the discussion and in the decision-making. [...] The person thus entitled to participate in the debates and in the decision-making shall do so with a voice and a vote."

In terms of direct participation, countries such as Chile and Colombia have enacted laws on citizen participation and established formal mechanisms for promoting it. Costa Rica has been a pioneer in this area, with several ground-breaking initiatives, including the creation of the Citizen Participation Department of San José. This office plays a key role in disseminating information and in participation processes at the level of individual projects. Its staff visit local inhabitants to explain the nature of a proposed business or industry in the neighbourhood and to determine the community's majority stance in relation to acceptance of the particular project and its possible impacts. The outcome of this process is crucial to the granting or refusal of a licence to set up the proposed business or industry.

A number of countries in the region also have a people's legislative initiative, through which proposals for legislation supported by a given number of citizens can be admitted for processing through the proper legal channels.²²

Advances have also been made in the region in terms of integrating indigenous peoples and communities more fully into political life. Several countries have incorporated the issue explicitly in their constitutions and 15 countries²³ have ratified Convention 169 of the International Labour Organization (ILO) concerning Indigenous and Tribal Peoples in Independent Countries, the first comprehensive international treaty to specify the rights of these peoples. This Convention, together with the United Nations Declaration on the Rights of Indigenous Peoples, which was adopted by the General Assembly in 2007, recognizes the importance of working for greater participation by indigenous peoples in the political life of States and the value of their decisions in the management of their traditional territories.

More specifically, the United Nations Declaration on the Rights of Indigenous Peoples indicates that "States shall consult and cooperate in good faith with the indigenous peoples concerned through their own representative institutions in order to obtain their free, prior and informed consent before adopting and implementing legislative or administrative measures that may affect them." Free, prior and informed consent (FPIC), as referred to in the Declaration, means that measures or projects that affect indigenous peoples and their communities must be subjected to a joint study, of which these communities must have

²² The countries that have a people's legislative initiative for which a certain percentage of signatures are required are as follows: Argentina (3%), Bolivarian Republic of Venezuela (10%), Brazil (1%), Colombia (5%), Costa Rica, Ecuador, Guatemala (5,000 signatures), Nicaragua (50,000 signatures), Paraguay (2%), Peru (0.3%) and Uruguay (10%) (Hevia de la Jara, 2010).

²³ Argentina, Bolivarian Republic of Venezuela, Brazil, Chile, Colombia, Costa Rica, Dominica, Ecuador, Guatemala, Honduras, Mexico, Nicaragua, Paraguay, Peru and Plurinational State of Bolivia).

prior knowledge, and the final ruling concerning implementation of those measures or projects must be submitted for the latter's approval, bearing in mind the extent to which their culture and lives will be affected (Aranibar, Chaparro and Salgado, 2011).

Development banks, notably the Inter-American Development Bank, have incorporated the PFIC principle into their actions, predicating the financing of projects on a successful process in this regard. The World Bank, in its safeguard policy also makes its financing conditional on a process of free, prior and informed consultation in relation to those projects that are likely to affect the lives and the environment of local communities, in particular in the case of mining and infrastructure projects (Doyle, 2008).

Moreover, the commitment of private financial entities to the FPIC principle was reflected in the Equator Principles, principle 5 of which relates to consultation and disclosure of projects. Seventy-nine private financial groups, including most European banking groups and ten Latin American groups, adhere to these principles.²⁴

In short, since the entry into force of ILO Convention 169 and the United Nations Declaration on the Rights of Indigenous Peoples, a different vision of relations between corporations and local, including indigenous, communities has been taking shape. These two instruments have fostered a more open attitude to citizens' participation in the adoption of decisions that can affect local communities (Aranibar, Chaparro and Salgado, 2011).

(b) Challenges

Even though there has been progress in incorporating into national legislation the recognition of the right to participation and in the creation of bodies for that purpose, the proper implementation of such mechanisms (especially at the level of plans, programmes, strategies and policies) continues to be a challenge. Participation is often limited to formal forums such as public consultation and does not ensure a follow-up mechanism for society's contributions (United Nations, 2012). In addition, in many cases, social participation is still dependent on stakeholders proving a pre-existing legal interest to the relevant authorities (The Access Initiative, 2005).

Other challenges relate to the need to build up the capacities of those who are historically underrepresented in participatory processes, including women and indigenous and Afro-descendent populations and communities, thus ensuring that the region's diverse languages and cultures are recognized. Citizen participation cannot be restricted to one language in multicultural countries or to one medium, such as the Internet, which has serious coverage shortfalls. The State must guarantee citizen participation in decision-making, paying special attention to underrepresented groups (United Nations, 2012).

The World Resources Institute (WRI) carried out an investigation into the barriers that vulnerable groups face in seeking access to information, participation in decision-making and justice on environmental matters. The study concluded that even in those countries that are advanced in the exercise of these rights, measures are still applied without taking into consideration the different capacities of the population, especially those that have traditionally been marginalized and a gap has been developing in access to participation in decision-making. The study identifies six obstacles faced by vulnerable groups and proposes a series of solutions, as set out in table 8. According to the investigations, these solutions must be carried out in a context in which there is a legal framework that safeguards rights of access,

²⁴ The Ecuador Principles [online] <http://www.equator-principles.com/index.php/about-ep/the-eps>.

guarantees respect for equality before the law, without legal or cultural discrimination towards vulnerable groups, and guarantees for all persons the ability to exercise rights on the same basis.

Table 8
**PENDING CHALLENGES FOR THE EFFECTIVE PARTICIPATION OF VULNERABLE GROUPS
AND THOSE TRADITIONALLY EXCLUDED FROM DECISION-MAKING PROCESSES**

Obstacle	Measures for overcoming it
Legislation	Identify affected groups and find opportunities for improving access:
Lack of legal frameworks for inclusion	<ul style="list-style-type: none"> • Identify vulnerable groups whose interests are at stake • Earmark resources for raising such groups to the same level as the rest of the population • Set clear guidelines for officials on the specific legal frameworks that apply to these groups
Literacy	Use appropriate forms:
Basic reading skills	<ul style="list-style-type: none"> • Ensure that the information relating to the decisions and the opportunities for influencing them is consistent with the ability to grasp the technical concepts and the literacy level and is provided in the native language of the vulnerable communities
Ability to understand technical subject matter	<ul style="list-style-type: none"> • Ascertain that the available environmental information is useful and effectively helps to inform the decision-making
Language	
Access to communication channels	Use appropriate channels:
Unreliable physical access to information technologies such as the Internet, documents, television, radio and other media	<ul style="list-style-type: none"> • Ensure that the information relating to the decisions and opportunities for influencing them is communicated through channels which the vulnerable communities have used and with which they are familiar • In cases where ICTs are scarce or inaccessible, choose non-technological solutions such as signs along the public highway or communication through local governments
Costs	Reduce costs:
Rates	<ul style="list-style-type: none"> • Eliminate obstacles, reduce public rates, subsidize participation
Transport and time limits	<ul style="list-style-type: none"> • Offer vulnerable persons access, free of charge or based on a sliding scale, to information, procedures and courts
In ability to report for paid work and care of the family (opportunity cost over time)	<ul style="list-style-type: none"> • Bring public processes as close as possible to the communities that would stand to be affected
Exposure to the risk associated with participating	Defend the persons and organizations that promote access by providing training and building awareness on the issue. This can be done through non-governmental organizations, local governments and the communication media
Personal risks (physical or psychological intimidation)	
Risks to property (threat of expropriation, robbery etc.)	
Official documentation	Eliminate legal barriers:
Lack of identity documents	<ul style="list-style-type: none"> • Ensure that all persons have efficient and inexpensive ways of obtaining identity documents
Proof of occupational position	<ul style="list-style-type: none"> • Establish clear legal rights with respect to the use of resources through instruments such as title deeds • Adopt more flexible practices for proof of occupational position in judicial processes for vulnerable groups
Cultural context	Build capacities and enhance awareness:
Expectations of those who have a “voice”	<ul style="list-style-type: none"> • Improving their capacity to understand technical aspects of the decision-making process
Meaning or impact of participation	<ul style="list-style-type: none"> • Ensure that the voice of vulnerable groups is influential • Instruct public officials on the importance of taking into account the views of vulnerable groups

Source: J. Foti and L. da Silva, *Voice and Choice: Opening the Door to Environmental Democracy*, Washington, D.C., World Resources Institute (WRI), 2010.

Ecuador’s legislation reflects the effort to build the capacities of groups that have traditionally been underrepresented in decision-making. Specific legislation exists that provides for the establishment of bodies for the participation of indigenous and Afro-Ecuadorian communities; the country’s environmental legislation contains provisions that operate in the same vein. Article 37 of the regulations issued under the Framework Law on the Environment states that “areas of productive forests of the State that are to be found on community lands of indigenous peoples or black people or Afro-Ecuadorians [...] shall, subject to authorization by the Ministry of the Environment and the provisions of this law, be exploited exclusively by these communities.”

A further challenge is to set forth the way in which received views will be considered, make this transparent and create mechanisms for the purpose. This lends more credibility to processes and helps prevent potential conflict (see section on access rights and conflict prevention). The difference between the public’s perception of what participation means and what is laid down in legislation and regulatory frameworks is sometimes a source of frustration and mistrust when it comes to real opportunities to influence environmental decision-making (United Nations, 2012). In eighteen countries of the region, the environmental authority is bound by law to incorporate the public’s observations in environmental impact assessments relating to projects or to justify their decision to disregard such observations. Meanwhile, only in seven countries of the region are the authorities required by law to inform the public promptly of a decision relating to an environmental impact assessment. In the case of strategic environmental assessments, this requirement appears in the legislation of only six countries.

4. Access to environmental justice in Latin America and the Caribbean

(a) Progress made in the past 20 years

Countries in the region have made strides in creating and setting up specialized bodies with jurisdiction over environmental matters both within the framework of the justice system and as entities falling under ministerial or statutory bodies (see table 9). Over the last few years, however, legislation enacted in several of the region’s countries has offered a broader range of procedural remedies, and burgeoning jurisprudence is paving the way towards a more functional form of environmental law (United Nations, 2012).

As indicated in table 9, several countries in the region have opted to set up specialized courts with jurisdiction over environmental matters. Trinidad and Tobago, for example, has established a specialized court on environmental matters —the Environmental Commission of Trinidad and Tobago— with competence to adjudicate complaints of violations of the Environmental Management Act. The advantage of a specialized court is that (unlike a judicial review), it is competent to assess the merits of the case as well as any procedural irregularities. Moreover, this specialized court has at least three technically trained judges with experience in environmental matters, engineering, and natural and social science issues²⁵. The jurisdiction of the Environmental Commission of Trinidad and Tobago does have some limitations, however. For example, it cannot hear complaints relating to appeals by applicants for a Certificate of Environmental Clearance (CEC), cases relating to the application of the environmental standards set forth in the Environmental Management Act or appeals relating to the designation of an environmentally sensitive area.

²⁵ Section 82 of the Environmental Management Act.

Table 9
**LATIN AMERICA AND THE CARIBBEAN (19 COUNTRIES): SPECIALIZED BODIES
 WITH JURISDICTION OVER ENVIRONMENTAL MATTERS**

Country	Specialized authority with jurisdiction over environmental matters
Argentina	Federal Unit for Investigation of Crimes against the Environment
Bolivia (Plurinational State of)	Environmental agencies and agro-environmental courts ^a
Brazil	Public prosecutors for environmental justice
Chile	Environmental prosecutors and environmental courts ^a
Colombia	Prosecutor on environmental and agrarian issues
Costa Rica	Environmental prosecutors and Administrative Environmental Court
Ecuador	Environmental regulatory authorities
El Salvador	Environmental regulatory authorities
Guatemala	Environmental regulatory authorities
Honduras	Environmental regulatory authorities
Jamaica	Office of the Director of Public Prosecutions
Mexico	Office of the Federal Public Prosecutor for Environmental Protection and some regulatory authorities at the subnational (state) level
Nicaragua	Office of the Public Prosecutor on Environmental Matters
Panama	Environmental regulatory authorities
Paraguay	Environmental regulatory authorities
Peru	Environmental regulatory authorities
Dominican Republic	Office for the Protection of the Environment and Natural Resources
Trinidad and Tobago	Environmental Commission of Trinidad and Tobago
Venezuela (Bolivarian Republic of)	Environmental regulatory authorities

Source: Economic Commission for Latin America and the Caribbean (ECLAC), on the basis of R. Merlo, Office of the Attorney-General of Paraguay, 2008 [online] <http://www.pnuma.org/deramb/documentos/VIProgramaRegional/5%20MINISTERIO%20PUBLICO%20FISCAL%20Y%20PROTECCION%20AMB/16%20Merlo%20Ministerio%20fiscal%20en%20Paraguay.pdf>.

^a These agencies are not yet fully operational.

Paraguay has had a Directorate for the Investigation of Environmental Crimes since 1996 and a law (Law No. 716/916) which punishes crimes against the environment. This law identifies actions that are deemed to be environmental crimes and aggravating circumstances. In 1998, the Attorney General's Office created an investigating unit specialized in punishable acts against the environment, which currently has nine prosecuting magistrates specialized in this area (Merlo, 2008). These environmental prosecutors' offices report directly to the Attorney General's Office.

In Panama, the environmental prosecuting body consists of the Office of the Environmental Prosecutor and five district prosecutor's offices in different provinces. These offices work in close collaboration with the National Environmental Authority of Panama to resolve environment-related crime. Law 5/05 defines offences against the environment and so that they can be included in the Penal Code.

Countries in the region have also started to set up mechanisms to ensure that citizens have recourse to justice or some independent body if they feel that their right to a clean environment has been infringed. In at least one third of the countries in the region, there is provision under the law for any person to bring legal action in defence of diffuse interests or the environment. For example, under the Environmental Management Act of Trinidad and Tobago, any individual or group of individuals can bring a direct civil action before the Environmental Commission in connection with a violation of the Act.²⁶ The action cannot be brought until 60 days after notification of the violation of the Environmental Management Act and is admissible only if no legal action has been taken by the Commission itself.

Effective access to environmental justice is said to require independent and expeditious judicial processes which contemplate the remediation of environmental damage. Table 10 presents the requirements for compensation and remediation of environmental damage set forth in the environmental framework laws in the countries of the region and lists the provisions of such laws that refer to civil responsibility with respect to acts or omissions that lead to degradation of the environment. In addition, several countries of the region treat the requirement to restore the environment separately and apart from any other type of sanction.

Table 10
**OBLIGATION TO COMPENSATE FOR AND REPAIR ENVIRONMENTAL DAMAGE
UNDER ENVIRONMENT FRAMEWORK LAWS**

Argentina	Law No. 25.675	Article 31: If two or more persons have contributed to the perpetration of collective environmental damage or if it is not possible to determine precisely the measure of damage caused by each person, both or all will be held jointly responsible for the repairs vis-à-vis the society [...]
Bolivia (Plurinational State of)	Regulation of Law No. 1333 Environment Act(1992)	Article 108: Those responsible for economic activities that cause environmental damage shall be responsible for the repair and compensation of said damage. This responsibility will persist even after the activity that resulted in the damage has ceased.
Brazil	Decree No. 6514 (2008)	Article 21: The punitive measures prescribed by the administration do not obviate the obligation to repair the damage to the environment.
Chile	Law No. 19.300 (1994, 2010)	Article 3: Without prejudice to the sanctions laid down by law, anyone who wilfully or destructively causes damage to the environment shall be bound to repair it materially at his or her own expense, if possible, and to pay compensation in accordance with the law.
Costa Rica	Environment Act (Law No. 7554, of 1995)	Article 99: In the face of infringement of environmental protection regulations or behaviour that is harmful to the environment as clearly specified in this law, the public authority shall apply the following protective measures and sanctions: The imposition of obligations that are compensatory or that stabilize the environment or biological diversity.
Cuba	Law No. 81 (1997)	Article 70: Any natural or legal person who, by action or omission, harms the environment must cease the conduct in question and repair the damage and harm caused.

²⁶ Section 69 Environmental Management Act.

Table 10 (concluded)

Ecuador	Environmental Management Act (1998)	Article 43: Without prejudice to any other legal actions that may be appropriate, the judge shall sentence the party responsible for the damage to pay compensation to the collectivity directly affected and to repair the damage and harm caused. He or she shall also sentence the responsible party to pay to the plaintiff ten per cent (10%) of the value of the compensation.
El Salvador	Environment Act (1998)	Article 96: Whenever an administrative sanction is applied, the violator will be ordered to restore or rehabilitate the environment or repair the damage caused to it, and shall be granted a reasonable period within which to do so. If he/she fails to comply, the Ministry shall appoint experts to determine the value of the investment that should be set aside for the purpose. The certificate indicating the value and the decision ordering the restoration or rehabilitation of the environment or the repair of the damage will have executive force against the violator.
Guatemala	Protecting and Improving the Environment Act	Article 31: Any other measures for correcting and repairing the damage caused and avoiding pollution through acts prejudicial to the environment and natural resources.
Honduras	Environment Act (Law 27.083)	Article 87: Restoration or rehabilitation of the things and objects affected to their natural being or state, if possible.
Mexico	Ecological Balance and Environmental Protection Act (1988)	Article 203: Without prejudice to the appropriate penal or administrative sanctions, any person who pollutes or degrades the environment or damages natural resources or biodiversity shall be responsible for and bound to repair the damage caused, in accordance with the relevant civil legislation.
Nicaragua	Law No. 217 (1996)	Article 141: Any person who, by action or omission, degrades the environment is obliged to repair the damage and harm caused to environmental resources, to the equilibrium of the ecosystem and to the health and quality of life of the population.
Panama	Law No. 41 (1998)	Article 108: Any person who, by using or exploiting a resource or by exercising an activity, causes damage to the environment or human health shall be bound to repair the damage caused, apply preventive and mitigating measures and assume the corresponding costs.
Peru	Law No. 28.611 (2005)	Article 142: Anyone who, by using or exploiting a good or by exercising an activity causes damage to the environment, the quality of life of individuals, human health or heritage, is bound to assume the costs deriving from the measures of prevention or mitigation of the damage as well as the cost of supervising and monitoring the activity and the preventive and mitigating measures adopted.
Dominican Republic	Law No. 64-00 (2000)	Article 169: Without prejudice to the sanctions prescribed by law, any person who causes damage to the environment or natural resources shall bear objective responsibility for the damage that he/she may cause in accordance with the present law and supplementary legal provisions. He/she shall also be obliged to repair it materially at his/her own expense, if such repairs are possible, and to provide compensation in conformity with the law. Repair of the damage consists in restoring the area to its state prior to the facts, if this is possible, and in paying economic compensation for the damage and harm caused to the environment or the natural resources, to the communities or to individuals.

Source: Economic Commission for Latin America and the Caribbean (ECLAC).

Another positive development is the gradual introduction of steps prior to the judicial process. In Argentina, for example, Law 26.589 on compulsory mediation and reconciliation is geared towards establishing and regulating a process of dialogue between the parties before matters get as far as the courts. This legislation applies to conflicts in general, but also to environmental processes.

The appointment of an Ombudsman, as in Ecuador, Peru and Uruguay, is another noteworthy initiative observed in the region. In Peru, the Ombudsman operates independently of the executive, legislative and judicial authorities, and does not act as a judge or public prosecutor; as such he or she does not hand down sentences or have any type of legal power. The Office of the Ombudsman is the focal point for receipt of complaints and enquiries from the public and provides citizens with legal advice when their rights have been infringed. The Ombudsman is also authorized to write reports and make recommendations to the authorities with a view to improving their performance in enforcing citizens' rights. Thus, the Office of the Ombudsman acts in conjunction with the authorities and liaises between citizens and the Government and can be instrumental in providing access to environmental justice.

Countries have also made progress in establishing authorities to whom citizens can appeal if denied access to information. In Chile, the Transparency Committee was set up not just to promote the principle of transparency and public participation, but also to serve as an independent body to which appeals can be brought against an institutional decision to withhold information. In Mexico, the recent reform of the Federal Act on Transparency, Access to Public and Governmental Information and Protection of Personal Data affords the Federal Institute for Access to Information (IFAI) greater autonomy and powers similar to those of the Transparency Committee in Chile. In Uruguay, the Unit for Access to Public Information, while it does not have the authority to deal with complaints of refusal of information, advises citizens on their rights and the next steps to take in their defence.

(b) Challenges

The main barriers to access to justice in the region include limitations on categories of persons (natural or legal, those directly affected or the public in general, or others) who have the right to initiate legal claims in courts and the prohibitively high costs associated with legal action. For example, in most Commonwealth Caribbean countries there is a requirement to provide an undertaking for damages as a condition for obtaining an injunction to prevent harm and the court can award costs against a losing party.

Some countries, such as Saint Lucia in the Caribbean and the Ecuador, Peru and the Plurinational State of Bolivia in Latin America, have put measures in place to help the poor to gain access to justice free of the cost constraint. Another pending challenge is full integration of indigenous communities into the social model, such that belonging to such a community does not impose limitations on access to justice. Mexico, Guyana and Peru, among others, are working actively towards this objective.

Whether creating bodies with specialized jurisdiction is the best way to proceed at this point is another matter of open debate in the region. One argument is that environmental courts may prove to be a more efficient and expedite alternative for dispute settlement than traditional courts. By providing specialized service and thorough knowledge of environmental laws, as well as greater scientific knowledge, they can more readily devise lower-cost solutions to the population's environmental demands (The Access Initiative, 2011). Such bodies must be geographically distributed in such a way that people living in isolated areas have access to their service.

Countries must also move forward with the establishment of alternative mechanisms for environmental conflict resolution. Where such mechanisms are lacking, the tendency is to judicialize

environmental conflicts, which produces heavy costs and delays and does not always provide acceptable or sustainable solutions for the various stakeholders. This issue is discussed in section D below. The need to strengthen mechanisms for disseminating information on the substance of, and access to, environmental justice is a further challenge (United Nations, 2012).

Reforms that have been proposed to improve access to environmental justice in the region include: elimination of barriers to the prosecution of environmental crimes; recognition of general and collective environmental interests in legal and administrative proceedings; ensuring legal enforceability of consultation mechanisms and citizen participation procedures; the establishment of environmental courts and prosecutors' offices with appropriate geographical distribution; powers to halt activities that are harmful to the environment or to health; provision of more guarantees for indigenous people, and recognition of their linguistic and cultural diversity.²⁷

In addition, in the Declaration on Justice, Governance and Law for Environmental Sustainability, the chief justices, heads of jurisdiction, attorneys general, auditors general, chief prosecutors, and other high-ranking representatives of the judicial, legal and auditing professions gathered at the World Congress held in the framework of Rio+20 declared that States should cooperate to build and support the capacity of courts and tribunals as well as prosecutors, auditors and other related stakeholders at national, subregional and regional levels to implement environmental law, and to facilitate exchanges of best practices in order to achieve environmental sustainability by encouraging relevant institutions, such as judicial institutes, to provide continued education.²⁸

D. RIGHTS OF ACCESS AND PREVENTION OF ENVIRONMENTAL CONFLICTS IN LATIN AMERICA AND THE CARIBBEAN

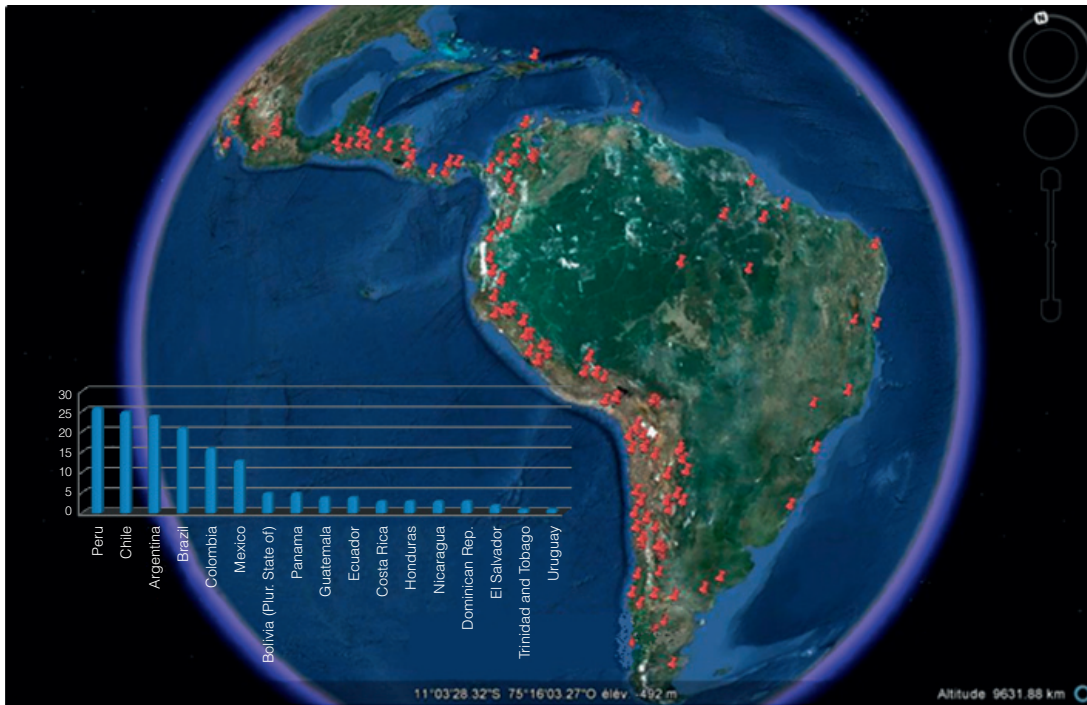
A further concern in the region is the growing number of socioenvironmental conflicts relating to the management and exploitation of natural resources (see figures 3 and 4). A 2011 report produced by the Office of the Ombudsman of Peru states that 55% of the 214 social conflicts identified concerned socioenvironmental issues (Ombudsman of Peru, 2011). In fact, most of them were between mining companies and the local communities that fell within their sphere of influence.

The backdrop to the socioenvironmental conflicts in the region is the poverty and extreme poverty that persists, especially in rural areas, despite the burgeoning economy and the rapid expansion of extractive activities, including mining, oil and gas exploitation, as well as fisheries, forestry and hydroelectricity. In many cases, political representation and social fragmentation crises are coupled with a weak State apparatus that is unable to provide nationwide coverage; furthermore, subnational local authorities, leaders of civil society, and public and private stakeholders have little scope for generating forums where deliberation, dialogue and constructive participation can prevail over confrontational or violent options. The region still faces the challenge of building and strengthening democracy and the surest way of achieving this is to narrow social gaps and to ensure that growth is inclusive, that natural resources are exploited in an environmentally and socially responsible manner and that the authorities and citizens adopt dialogue as both a means and an end (United Nations, 2012).

²⁷ See information concerning access to justice and reforms in geonational reports [online] www.pnuma.org/deat1/nacionales.html.

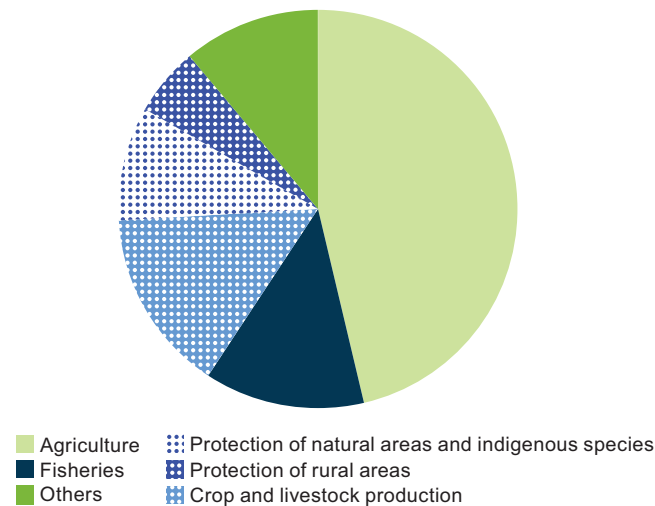
²⁸ See [online] http://www.unep.org/rio20/Portals/24180/Rio20_Declaration_on_Justice_Gov_n_Law_4_Env_Sustainability.pdf.

Figure 3
LATIN AMERICA AND THE CARIBBEAN: SOCIOENVIRONMENTAL CONFLICTS LINKED TO MINING ACTIVITIES, 2004-2012



Source: Economic Commission for Latin America and the Caribbean (ECLAC) on the basis of information provided by the Latin American Observatory of Environmental Conflicts (OLCA) [online] www.olca.cl.

Figure 4
LATIN AMERICA AND THE CARIBBEAN: SECTORS AFFECTED BY SOCIOENVIRONMENTAL CONFLICTS LINKED TO MINING ACTIVITIES, 2004-2012



Source: Prepared on the basis of data provided by the Latin American Observatory on Environmental Conflicts [online] www.olca.cl.

In this context, rights of access are considered indispensable for good governance of the region's natural resources and can help to prevent and avoid conflict. For example, access to information and citizen participation in decision-making on issues relating to natural resources can reveal in a transparent manner how the costs and benefits of the decisions will be distributed between investors, the government and local communities, thus generating trust and avoiding conflicts.

One of the main complaints made by the population in areas where natural resources are extracted has to do with limited access to full, adequate and quality information. The State sometimes leaves the responsibility of keeping the population informed about projects and their possible impacts to the companies concerned, which tends to create mistrust in the respective communities (Aranibar, Chaparro and Salgado, 2011).

The first step in resolving conflicts should be to create and disseminate information and to build the capacity of local authorities and leaders, leaders of grass-roots organizations and the general public to assert their rights as citizens and explore avenues for reaching satisfactory agreements for all the parties involved in such conflicts. Indications are that environmental conflicts, especially those where there has been very active public participation in terms of providing ideas, information and possible solutions, tend to create opportunities for positive change by raising issues and options that have never been considered before (United Nations, 2012).

E. CONCLUDING REMARKS

As discussed in this document, notwithstanding the significant progress made in the past 20 years, many countries have yet to develop the legislation needed to facilitate the implementation of Principle 10 of the Rio Declaration, or are finding it difficult to apply in practice.

On the basis of a questionnaire which was answered by the governments of 16 countries in Latin America and the Caribbean and 10 civil society organizations from several countries, a number of limitations on rights of access to information, participation and justice in environmental matters were identified. Ten of the 16 governments cited the shortage of financial resources as a limitation, while seven also cited lack of training opportunities on the issue. The third most commonly identified constraint was weak institutional frameworks. From the point of view of the civil society organizations the main limitation was the limited importance afforded to the issues, followed by lack of training opportunities and the lack of financial resources.

With regard to the challenges identified in the questionnaire, governments and civil society alike agreed on the importance of generating and circulating information in a systematic manner, education and capacity-building among citizens and officials as the main priorities in their respective countries. The government responses also identified the construction of legal frameworks for access rights as a main challenge.

Now, more than ever, the Latin American and Caribbean region must seek full compliance with Principle 10, which provides a clear, pioneering vision of transparency, justice and access to information as a basis for deepening democracy and eliminating global asymmetries. It is widely recognized that deepening democracy as a collective order calls for progress towards providing equal opportunities and rights (ECLAC, 2010). This means enforcing the rights of those sectors of society that have historically

been marginalized from decision-making to access to information, participation and justice on issues relating to the environment.

To this end, steps must be taken to build the capacity of groups of persons that have traditionally been underrepresented in participatory processes; this includes women as well as indigenous populations and communities and involves recognizing the various languages and cultures that exist in the region. Information must become a tool for levelling the playing field so that all stakeholders have the required knowledge and are able to participate in decision-making on equal terms and from a well-informed position.

As noted earlier, legal requirements, however important, cannot by themselves enforce proper fulfillment of rights of access. Governments must also make efforts to broaden demand for access to information and participation in environmental matters and to inform citizens of their right of access to justice. Environmental education is one of the most widely used tools for building citizen participation in environmental decision-making. It is gradually being incorporated into legislation in order to develop environmental awareness within the population.

In Peru, an entire chapter of the Environmental Act is devoted to environmental education (section III, chapter 4). Environmental education is defined here as a comprehensive process that imparts knowledge, attitudes, values and practices for developing activities in an environmentally sound manner (article 127). Moreover, the environmental authority and the Ministry of the Environment are called upon to coordinate educational programmes to ensure that they include environmental matters. Apart from covering natural processes and the way living beings function and interact with nature, this education also seeks to encourage citizen participation in environmental issues and to impart knowledge of the legal framework of rights and duties in relation to environmental protection. In relation to this last point, public and private media outlets are expected to participate in dissemination (articles 289-130).

Other countries have included environmental education in their legislations, albeit less explicitly, either as a mechanism for management or as a protection policy objective. The Environmental Management Act in Ecuador, for example, states that the Ministry of Education shall review education programmes with a view to incorporating environmental education and sets a deadline for fulfilment of this provision.

It has been proposed that a regional instrument be established to pursue better implementation of Principle 10 in the region, and to build up—from both the supply and demand sides—policies based on more participatory processes and better information. The idea is to link environmental rights to human rights, with recognition of obligations towards present and future generations, and, at the same time, to set the stage for democracy-building through citizen participation (Balmaceda, 2012).

A regional instrument would also map out ways to channel interests, concerns and petitions and to exchange experiences and good practices in order to improve the environmental performance of the region's governments, and it would strengthen the probity and transparency of the public service and boost the capacity and involvement of civil society (Balmaceda, 2012). It would also enable those countries where Principle 10 is underimplemented to benefit from experiences gained and lessons learned in the countries which are further ahead. Countries with more experience in Principle 10 implementation would, in turn, benefit from more level rules of play.

In this connection, the Declaration on the application of Principle 10 of the Rio Declaration on Environment and Development was signed in the framework of the United Nations Conference on Sustainable Development (Rio+20). Map 4 shows the countries which have signed the Declaration.²⁹

Map 4
**LATIN AMERICA AND THE CARIBBEAN: SIGNATORY COUNTRIES OF THE DECLARATION
 ON THE APPLICATION OF PRINCIPLE 10 OF THE RIO DECLARATION
 ON ENVIRONMENT AND DEVELOPMENT**



Source: Economic Commission for Latin America and the Caribbean (ECLAC).

Note: The boundaries and names shown on this map do not imply official endorsement or acceptance by the United Nations.

In the Declaration on the application of Principle 10, the signatory countries recognize and affirm that the rights of access to information, participation and justice regarding environmental issues are essential for promoting sustainable development, democracy and a healthy environment; and that these rights provide many benefits, such as helping to make better decisions and implement them more

²⁹ See [online] <http://www.eclac.cl/rio20/noticias/paginas/8/48588/Declaracion-eng-N1244043.pdf>.

effectively; involving the public in environmental issues; furthering accountability and transparency in governance; and helping to change production and consumption patterns.

The signatories to the Declaration also commit, with the support of ECLAC as technical secretariat, to work towards a regional convention or other instrument to ensure the full exercise of rights of access to information, participation and justice regarding environmental issues in Latin America and the Caribbean, with the active participation of society and the major groups.

One of the arguments for advancing towards a regional convention is that it would enable the countries to participate actively, from the outset, in developing and shaping the text of the instrument, taking into account specific national characteristics and creating a regional sense of belonging. Moreover, the Latin American and Caribbean countries share cultural bonds which could simplify the negotiations and facilitate consensus-building.

It has also been suggested that this process would be more rapid than a global discussion and that a convention of this sort could strengthen existing regional institutions and generate synergies with processes under way to reduce resource constraints.³⁰

Although the signatory countries have yet to define the nature of the regional instrument, the Aarhus Convention is undoubtedly a benchmark as regards an instrument for the full implementation of Principle 10 in Latin America and the Caribbean. In this context, the reasons which European governments have given for signing up to the Aarhus Convention include the following: (a) being a signatory to the Convention sends a strong signal to other countries (including trade and cooperation partners) and to foreign investors that the government is committed to good governance; (b) the principles of the Aarhus Convention —transparency, access to information, citizen participation, non-discrimination, non-persecution and access to justice— are at the heart of a stable and safe society, and it is easier to achieve such a society when its economy is prosperous and environmentally sustainable; and (c) active and meaningful public participation improve the quality of decision-making on environmental issues and builds trust in the decisions governments make.

³⁰ See article19.org [online] <http://www.article19.org/>.

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