



**PARTICIPANTS ONLY**  
REFERENCE DOCUMENT  
DDR/2  
22 March 2016  
ENGLISH  
ORIGINAL: SPANISH

---

Third meeting of the negotiating committee  
of the regional agreement on access to information,  
participation and justice in environmental matters  
in Latin America and the Caribbean

Montevideo, 5-8 April 2016

**INTERNATIONAL HUMAN RIGHTS STANDARDS APPLICABLE  
TO ACCESS TO INFORMATION, PUBLIC PARTICIPATION  
AND ACCESS TO JUSTICE**

**EXECUTIVE SUMMARY**

**(PRELIMINARY VERSION)**

This document is an unedited preliminary version of the executive summary of the publication “International human rights standards applicable to access to information, public participation and access to justice” (forthcoming).

Joseluis Samaniego, Director of the Sustainable Development and Human Settlements Division of the Economic Commission for Latin America and the Caribbean (ECLAC), and Amerigo Incalcaterra, Regional Representative for South America of the Office of the United Nations High Commissioner for Human Rights (OHCHR) supervised the preparation of this document.

David Barrio was responsible for the preparation of this document, in collaboration with Carlos de Miguel and Valeria Torres, of ECLAC, and Humberto Henderson, Krista María Orama and Alejandra Parra, of OHCHR.

This document is an input by ECLAC and OHCHR to the negotiations for the adoption of a regional agreement on access to information, participation and justice in environmental matters in Latin America and the Caribbean (“Principle 10 process” in reference to Principle 10 of the Rio Declaration on Environment and Development), of which ECLAC is Technical Secretariat. More information on the process is available at: <http://www.eclac.org/en/principle10>.

This publication was prepared with financial support from the United Nations Development Account and the project “Addressing critical socio-environmental challenges in Latin America and the Caribbean”.

This document has not undergone formal editorial review.

## Contents

---

<b>I.</b>	<b>General considerations .....</b>	<b>5</b>
	A. Overview of the United Nations human rights system.....	5
	B. The human rights-based approach (HRBA).....	7
	C. The Latin American and Caribbean region and the core United Nations human rights treaties .....	7
	D. The rights of access to information, public participation and access to justice as human rights .....	11
	E. Implementation of access rights.....	12
	F. Right of access to information .....	13
	G. Right to participate in decision-making .....	16
	H. Right of access to justice.....	18
	I. Cross-cutting issues on access rights .....	21
	1. Equality and non-discrimination.....	21
	2. References to specific groups.....	22
	3. Human rights defenders .....	24
<b>II.</b>	<b>List of and links to relevant documents .....</b>	<b>25</b>
	Universal system .....	25
	Inter-American system.....	28

**Tables**

Table 1	Core treaties of the United Nations human rights system .....	6
Table 2	Ratification of selected United Nations human rights treaties in Latin America and the Caribbean.....	9
Table 3	Ratification of selected Inter-American human rights treaties in Latin America and the Caribbean.....	10
Table 4	Terms used in reference to specific groups in selected documents .....	23

## **I. General considerations**

---

### **A. Overview of the United Nations human rights system**

With the adoption of the Charter of the United Nations in 1945, human rights gained center stage in Public International Law, being their protection one of the most basic requirements in contemporary international society. The Charter of the United Nations proclaimed that one of the purposes of the Organization is to develop and stimulate respect for everyone's human rights and fundamental freedoms and recognized their interdependence with peace, security and development. This ideal was later regulated by the 1948 Universal Declaration of Human Rights, the first international instrument to codify a complete catalogue of human rights. Even if it is not a legally binding treaty, the Declaration expresses a joint and generally accepted legal conviction, represents the first internationally agreed definition of human rights and lays the foundations for the construction of the current United Nations human rights treaty system.

Although the Universal Declaration gathered and defined a wide span of rights without distinction and highlighted their interrelation and interdependence, the two Covenants adopted in 1966 established two main categories of human rights: (i) the civil and political rights; and, (ii) the economic, social and cultural rights. Whereas the International Covenant on Civil and Political Rights (ICCPR) defined the contents of rights such as the right to life, the prohibition of torture, the right to personal freedom and security, the right of freedom of expression, access to information and the rights to participation, association and access to justice, the International Covenant on Economic, Social and Cultural Rights (ICESCR) focused on the human rights related to labour, social security, health and education, among others.

Notwithstanding the above, it is important to note that the two Covenants —like the other human rights treaties— must be analyzed jointly to fully understand the obligations assumed by a State Party. The 1993 Vienna Declaration and Programme of Action states that human rights are universal, indivisible and interdependent and interrelated.<sup>1</sup> Not surprisingly, no right can be enjoyed in isolation, and is dependent upon the realization of the other rights. Furthermore, the treaties share fundamental principles such as equality and non-discrimination, the special attention and protection of the most

---

<sup>1</sup> Vienna Declaration and Programme of Action, adopted by the World Conference on Human Rights on 25 June 1993, paragraph 5. See: [http://www.ohchr.org/Documents/Events/OHCHR20/VDPA\\_booklet\\_English.pdf](http://www.ohchr.org/Documents/Events/OHCHR20/VDPA_booklet_English.pdf).

vulnerable groups and the ultimate objective of placing human beings as an active and informed participant of public life and the decisions that affect them.

The two Covenants, together with the Universal Declaration, constitute the cornerstone of a series of core human rights treaties (see Table 1). Each treaty established its own Committee or Treaty Body. The Committees are the treaty oversight bodies, composed of independent experts with important functions such as the issuing of authorized interpretations of the treaties (“General comments”), the review of periodic reports sent by States and the examination of individual complaints.<sup>2</sup>

**Table 1**  
**Core treaties of the United Nations human rights system**

Treaty	Optional Protocol(s)	Treaty Body/Bodies
International Covenant on Civil and Political Rights (1966) – ICCPR	Optional Protocol to the ICCPR (1966) Second Optional Protocol to the ICCPR (1989)	Human Rights Committee
International Covenant on Economic, Social and Cultural Rights (1966) – ICESCR	Option Protocol to the ICESCR (2008)	Committee on Economic, Social and Cultural Rights
International Convention on the Elimination of All Forms of Racial Discrimination (1965) – CERD		Committee on the Elimination of Racial Discrimination
Convention on the Elimination of All Forms of Discrimination against Women (1979) – CEDAW	Optional Protocol to the CEDAW (1999)	Committee on the Elimination of Discrimination against Women
Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (1984) – CAT	Optional Protocol to the CAT (2002)	Committee against Torture Subcommittee on Prevention of Torture
Convention on the Rights of the Child (1989) – CRC	Optional protocol to the CRC on the sale of children, child prostitution and child pornography (2000) Optional protocol to the CRC on the involvement of children in armed conflict (2000) Optional Protocol to the CRC on a communications procedure (2011)	Committee on the Rights of the Child
International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (1990) – ICMW		Committee on Migrant Workers
Convention on the Rights of Persons with Disabilities (2006) – CRPD	Optional Protocol to the CRPD (2006)	Committee on the Rights of Persons with Disabilities
International Convention for the Protection of All Persons from Enforced Disappearance (2006) – CED		Committee on Enforced Disappearances

**Source:** Office the United Nations High Commissioner for Human Rights (OHCHR).

In addition to the United Nations treaty system (conventional mechanisms), there are other non-conventional mechanisms that have been created by the United Nations General Assembly or its dependent bodies. The Human Rights Council, main intergovernmental body of the United Nations responsible for human rights, and two mechanisms created under its umbrella are worth mentioning: the Universal Periodic Review (UPR) and the special procedures. The UPR is a periodic peer review which all United Nations Member States undergo and in which the human rights situation and the compliance of obligations

<sup>2</sup> See: <http://www.ohchr.org/EN/HRBodies/Pages/TreatyBodies.aspx> and <http://www.ohchr.org/Documents/Publications/FactSheet7Rev.2.pdf>

undertaken in this matter are analyzed. The review is based on an interactive dialogue and cooperation and concludes with the adoption of an outcome report with recommendations.<sup>3</sup> For their part, the special procedures are independent experts (generally Special Rapporteurs or Working Groups) appointed by the Human Rights Council to examine, advise and publicly inform on the human rights situations of a specific country or of a specific matter (independence of judges and lawyers, freedom of expression, human rights defenders, toxic wastes, extreme poverty, environment or disability, among others).<sup>4</sup>

## **B. The human rights-based approach (HRBA)**

The human rights-based approach is a conceptual framework based on international human rights standards and directed at their promotion and protection. Its goal is to analyze the obligations and inequalities that lie at the heart of development problems and redress discriminatory practices and unjust distributions of power that hinder development progress. As a result, the rights-based approach anchors consistently and systematically the main human rights principles and standards in plans, policies and programmes; focuses on rights, not on needs; favours processes and results; and is centered around the most vulnerable groups. Moreover, it strengthens the participation of all stakeholders, fosters local empowerment and reinforces accountability.<sup>5</sup>

The ultimate goal of public action must be the realization of rights, being the international human rights standards guides applicable to the themes and problems of development. The procedure for their development must, as a result, be guided by human rights and their results focused on the strengthening of capacities of all stakeholders.

Through the HRBA, the right-holders and that to which they have a right to, as well as the duty-bearers and their obligations are identified. It also aims to strengthen the capacity of the right-holders to claim their rights and of the duty-bearers to fulfill their obligations.

This conceptual framework has some central components. Firstly, a human rights-based approach implies the implementation of rights of excluded and marginalized people and of those whose rights are at greater risk of being infringed. Furthermore, a holistic approach should be considered. That is, the environment of those persons (family, community, civil society, authorities) and the social, political and legal framework have to be taken into account to determine the requirements and responsibilities and to provide a multidimensional response. The specific results of any plan, policy and programme shall stem from universal human rights instruments and other internationally agreed standards and be based on participatory processes. Transparency and accountability help determine the rights to address and the necessary capacities.

In addition, the HRBA is based on oversight, supporting compliance of the commitments made by the State. Finally, sustained results must be favoured by capacity-building, improving social cohesion and institutionalizing democratic processes.

## **C. The Latin American and Caribbean region and the core United Nations human rights treaties**

The Latin American and Caribbean region has been at the forefront in taking ownership of the concept of human rights. Not only was it the first region in the world to express multilaterally its concern for this matter (at the 1945 Chapultepec conference, it charged the Executive Council of the then Pan-American Union to draft a Declaration of International Rights and Duties of Man—which later became the American Declaration of Rights and Duties of Man—), but since then it has also prominently incorporated human rights in its legal framework, State policies and structures.

<sup>3</sup> See: <http://www.ohchr.org/EN/HRBodies/UPR/Pages/UPRMain.aspx>.

<sup>4</sup> See: <http://www.ohchr.org/EN/HRBodies/SP/Pages/Welcomepage.aspx>.

<sup>5</sup> Office of the United Nations High Commissioner for Human Rights, “Frequently Asked Questions on a Human Rights-based Approach to Development Cooperation”, 2006, New York and Geneva. Available at <http://www.ohchr.org/Documents/Publications/FAQen.pdf>.

Nowadays, the countries of the region stand out due their firm commitment with the international human rights system. As shown in Table 2, the States of the region have a high ratification index in terms of the core international human rights treaties at the universal level, having some countries such as Argentina, Bolivia, Chile, Colombia, Ecuador, Guatemala, Mexico, Nicaragua, Paraguay or Peru ratified all the United Nations treaties considered in this document. At the same time, the Inter-American system is relevant for the region, as can be seen in Table 3.

The ratification of an international human rights treaty implies a permanent commitment of the entire State structure with the rights enshrined in that instrument. This means that through such legal act, State Parties commit to adapt their domestic legal system to the international norm, and act coherently with such provisions. The fact that a significant number of countries grant constitutional hierarchy to human rights treaties, either expressly in their Constitutions or case law, is especially revealing. This is the case of Argentina<sup>6</sup>, Brazil<sup>7</sup>, Costa Rica<sup>8</sup>, the Dominican Republic<sup>9</sup>, Ecuador<sup>10</sup>, Mexico<sup>11</sup>, Paraguay<sup>12</sup> and Peru.<sup>13</sup> Other countries of the region go even further to recognize supraconstitutional hierarchy to human rights treaties, such as Bolivia<sup>14</sup>, Colombia<sup>15</sup>, Guatemala<sup>16</sup> and Honduras<sup>17</sup>.

---

<sup>6</sup> Article 75.22 of the Argentine National Constitution: "Treaties [...] have a higher hierarchy than laws."

<sup>7</sup> Article 5 § 3º of the Constitution of the Federative Republic of Brazil: "International human rights treaties and conventions approved by each chamber of National Congress, in two votes, by three fifths majority of their respective members, equate to constitutional amendments." See also: Supreme Federal Court (STF). *Julgamento do Recurso Extraordinário* - RE 466.343-15. Voto do Ministro Gilmar Mendes, Tribunal Pleno, julgamento em 3.12.2008 Dje de 5.6.2009. Available at <http://www.stf.jus.br/imprensa/pdf/re466343.pdf>.

<sup>8</sup> Article 7 of the Political Constitution of the Republic of Costa Rica: "Public treaties, international conventions and concordats, duly approved by the Legislative Assembly, will have higher authority than the laws from the moment of their enactment or the date indicated by them."

<sup>9</sup> Article 74 of the Constitution of the Dominican Republic: "[...] Treaties, covenants and conventions on human rights signed and ratified by the Dominican State have constitutional hierarchy and are directly and immediately applicable by the courts and other bodies of the State."

<sup>10</sup> Article 424 of the Constitution of Ecuador: "[...] The Constitution and international human rights treaties ratified by the State that recognize rights that are more favourable than those contained in the Constitution shall prevail over any other legal norm or act of a public authority." Article 425: "The legal hierarchy of norms will be as follows: the Constitution; international treaties and conventions [...]"

<sup>11</sup> Article 1 of the Political Constitution of the United Mexican States: "[...] The norms related to human rights will be interpreted in accordance with this Constitution and with the international treaties in this matter providing persons with the widest protection at all times." Article 133: "This Constitution, the laws of the Congress of the Union that emanate from the latter and all treaties that are in accordance with the same, concluded and that are concluded by the President of the Republic, with the approval of the Senate, will be Supreme Laws of the Union. Judges of each State will be bound by the said Constitution, laws and treaties, without prejudice to any contrary provision contained in the State Constitutions or laws."

<sup>12</sup> Article 137 of the Constitution of the Republic of Paraguay: "The Constitution is the supreme law of the Republic. The latter, the adopted and ratified international treaties, conventions and agreements, the laws enacted by Congress and other legal provisions of lower hierarchy, sanctioned accordingly, constitute national positive law in the aforementioned order of preference."

<sup>13</sup> Constitutional Court of Peru. EXP. N.º 03343-2007-PA/TC. LIMA. Jaime Hans Bustamante Johnson. Ruling of 19 February 2009, paragraph 31.

<sup>14</sup> Article 13.IV of the Political Constitution of the Plurinational State of Bolivia: "international treaties and conventions ratified by the Plurinational Legislative Assembly that recognize human rights and prohibit their limitation in states of emergency shall prevail under national law. The rights and duties enshrined in this Constitution shall be interpreted in accordance with the international human rights treaties ratified by Bolivia."

<sup>15</sup> Article 93 of the Political Constitution of Colombia: "international treaties ratified by Congress that recognize human rights and prohibit their limitation in states of emergency shall prevail under national law. The rights and duties enshrined in this Charter shall be interpreted in accordance with the international human rights treaties ratified by Colombia."

<sup>16</sup> Article 46 of the Political Constitution of Guatemala: "The general principle by which in human rights, treaties and conventions accepted and ratified by Guatemala prevail under national law is hereby established."

<sup>17</sup> Article 18 of the Political Constitution of the Republic of Honduras: "In case of conflict between a treaty or convention and the law, the former shall prevail."



**Table 2**  
**Ratification of selected United Nations human rights treaties in Latin America and the Caribbean <sup>a</sup>**

	Antigua and Barbuda	Argentina	Bahamas	Barbados	Belize	Bolivia (Plurinational State of)	Brazil	Chile	Colombia	Costa Rica	Cuba	Dominica	Ecuador	El Salvador	Grenada	Guatemala	Guyana	Haiti	Honduras	Jamaica	Mexico	Nicaragua	Panama	Paraguay	Peru	Dominican Republic	Saint Kitts and Nevis	Saint Lucia	Saint Vincent and the Grenadines	Suriname	Trinidad and Tobago	Uruguay	Venezuela (Bolivarian Republic of)
International Covenant on Civil and Political Rights, 1966		1986	2008	1973	1996	1982	1992	1972	1969	1968	2008	1993	1969	1979	1991	1992	1977	1991	1997	1975	1981	1980	1977	1992	1978	1978	2011	1981	1976	1978	1970	1978	
International Covenant on Economic, Social and Cultural Rights, 1966		1986	2008	1973	2015	1982	1992	1972	1969	1968	2008	1993	1969	1979	1991	1988	1977	2013	1981	1975	1981	1980	1977	1992	1978	1978		1981	1976	1978	1970	1978	
International Convention on the Elimination of All Forms of Racial Discrimination, 1965		1968	1975	1972	2001	1970	1968	1971	1981	1967	1972	1972	1966	1979	2013	1983	1977	1972	2002	1971	1975	1978	1967	2003	1971	1983	2006	1990	1981	1984	1973	1968	1967
Convention on the Elimination of All Forms of Discrimination against Women, 1979	1989	1985	1993	1980	1990	1990	1984	1989	1982	1986	1980	1980	1981	1981	1990	1982	1980	1981	1983	1984	1981	1981	1981	1987	1982	1982	1985	1982	1981	1993	1990	1981	1983
Convention on the Rights of the Child, 1989	1993	1990	1991	1991	1990	1990	1990	1990	1991	1990	1991	1991	1990	1990	1990	1990	1991	1995	1990	1991	1990	1990	1990	1990	1990	1991	1990	1993	1993	1993	1991	1990	1990
International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, 1990		2007			2001	2000		2005	1995				2002	2003		2003	2010	2013	2005	2008	1999	2005		2008	2005			2010			2001	2011	
Convention on the Rights of Persons with Disabilities, 2006	2016	2008	2015	2013	2011	2009	2008	2008	2011	2008	2007	2012	2008	2007	2014	2009	2014	2009	2008	2007	2007	2007	2007	2007	2008	2008	2009	2011	2010	2007	2015	2009	2013

**Source:** Economic Commission for Latin America and the Caribbean (ECLAC), on the basis of UN Treaties (<http://treaties.un.org>).

<sup>a</sup> Shaded cells indicate that agreement has only been signed. Updated on: 15 January 2016.

**Table 3**  
**Ratification of selected Inter-American human rights treaties in Latin America and the Caribbean <sup>a</sup>**

	Antigua and Barbuda	Argentina	Bahamas	Barbados	Belize	Bolivia (Plurinational State of)	Brazil	Chile	Colombia	Costa Rica	Cuba	Dominica	Ecuador	El Salvador	Grenada	Guatemala	Guyana	Haiti	Honduras	Jamaica	Mexico	Nicaragua	Panama	Paraguay	Peru	Dominican Republic	Saint Kitts and Nevis	Saint Lucia	Saint Vincent and the Grenadines	Suriname	Trinidad and Tobago	Uruguay	Venezuela (Bolivarian Republic of)	
American Convention on Human Rights, 1969		1984		1981		1979	1992	1990	1973	1970		1993	1977	1978	1978	1978		1977	1977	1978	1981	1979	1978	1989	1978	1978				1987	1991 (*)	1985	1977 (*)	
Additional Protocol to the American Convention on Human Rights in the area of economic, social and cultural rights "Protocol of San Salvador", 1988		2003				2006	1996	2001	1997	1999			1993	1995		2000		1988	2011		1996	2009	1992	1997	1995	1988				1990	1995	1989		
Inter-American Convention Against Racism, Racial Discrimination and Related Forms of Intolerance, 2013	2013	2013				2015	2013	2015	2014	2013			2013					2014														2013		
Inter-American Convention Against All Forms of Discrimination and Intolerance, 2013		2013				2015	2013	2015	2014				2013					2014					2014									2013		
Inter-American Convention on the Elimination of all Forms of Discrimination Against Persons with Disabilities, 1999		2000				2003	2001	2001	2003	1999		1999	2004	2002		2002		2009	2011	1999	2000	2002	2001	2002	2001	2006						2001	2006	
Inter-American Convention on the Granting of Civil Rights to Women, 1948		1957				2001	1950	1975	1959	1951	1949	1980	1948	1951		1970		1957	1955		1981	1956	1951	1963	1956	1949				1982	1968	1993		
Inter-American Convention on Protecting the Human Rights of Older Persons, 2015		2015					2015	2015		2015																						2015		

**Source:** Economic Commission for Latin America and the Caribbean (ECLAC), on the basis of [http://www.oas.org/en/sla/dil/inter\\_american\\_treaties.asp](http://www.oas.org/en/sla/dil/inter_american_treaties.asp).

<sup>a</sup> Shaded cells indicate that the agreement has only been signed. Updated as at: 15 January 2016. (\*) Indicated that agreement has been terminated.

## D. The rights of access to information, public participation and access to justice as human rights

The rights of access to information, participation and justice (“access rights”) are human rights framed within the category of civil and political rights. They are governed by the International Covenant on Civil and Political Rights (articles 19, 25 and 2.3 and 14, respectively), thereby meaning that States shall respect and guarantee them immediately on the basis of equality and non-discrimination (article 2 of the ICCPR). Such special protection granted by international human rights law derives from their essential nature for democratic life and their capacity as catalysts for the realization of other rights, as they are vital to achieve good governance, transparency, accountability and inclusive and participatory public management.

On the other hand, their inclusion in this category differentiates them from the so-called economic, social and cultural rights contained in the International Covenant on Economic, Social and Cultural Rights, whose effectiveness is dependent upon progressive realization and availability of resources (article 2 ICESCR). This notwithstanding, access rights—as civil and political rights—allow for the achievement of other rights framed within the realm of economic, social and cultural rights. This is the case of the right to health, to an adequate standard of living, to water or to enjoy a healthy environment.

With regard to the latter, the Special Rapporteur on human rights and the environment has indicated on numerous occasions that access rights are essential to guarantee the enjoyment of an environment without risks, clean, healthy and sustainable.<sup>18</sup> Access to information is not only fundamental to protect the right to life and security in cases of environmental degradation, but also to guarantee sustainable environmental policies through informed, inclusive and participatory decision-making. Moreover, without access to justice the right to information and participation in environmental matters can hardly be upheld. The three rights of access are, thus, necessary and inseparable to safeguard other human rights.

It is precisely in the environmental one where the virtuous circle between access rights, human rights and the environment has been enshrined with greater force.<sup>19</sup> Principle 10 of the Rio Declaration on Environment and Development (“Principle 10”), establishes 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.”<sup>20</sup>*

Elements of Principle 10 have also been included in various multilateral environmental agreements. For example, the United Nations Convention to Combat Desertification in Countries Experiencing Serious Drought and/or Desertification, Particularly in Africa (UNCCD), indicates that the Parties shall “promote, on a permanent basis, access by the public to relevant information, and wide public participation” (article 19 of the UNCCD), “should ensure that decisions on the design and implementation of programmes to combat desertification and/or mitigate the effects of drought are taken with the participation of populations and local communities” (article 3 of the UNCCD) and promote “more effective operation of existing national institutions and legal frameworks” (article 19 of the

<sup>18</sup> Report of the Independent Expert on the issue of human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment, John H. Knox, A/HRC/25/53, 30 December 2013, paragraph 29.

<sup>19</sup> “Making this connection can create a kind of virtuous circle: strong compliance with procedural duties produces a healthier environment, which in turn contributes to a higher degree of compliance with substantive rights such as rights to life, health, property and privacy. The converse is also true. Failure to meet procedural obligations can result in a degraded environment, which interferes with the full enjoyment of other human rights.” Report of the Independent Expert on the issue of human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment, John H. Knox, A/HRC/22/43, 24 December 2012, paragraph 42.

<sup>20</sup> Rio Declaration on Environment and Development (1992), Principle 10.

UNCCD). For their part, the United Nations Framework Convention on Climate Change (UNFCCC), the Convention on Biological Diversity (CBD), the Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and their Disposal (“Basel Convention”) and the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES) contain important references to the three access rights.<sup>21</sup>

On the other hand, resolution 70/1 “Transforming our world: the 2030 Agenda for Sustainable Development”, adopted by the United Nations General Assembly on 25 September 2015<sup>22</sup>, which establishes 17 Sustainable Development Goals (SDGs) and 169 targets, links access rights with human rights and sustainable development. Access rights are at the center of the agenda and are mainstreamed in all SDGs. However, SDG 16 stands out as it expressly refers to the three rights of access. This SDG makes explicit the commitment of States to ensure: (i) public access to information and protection of fundamental freedoms; (ii) inclusive, participatory and representative decision-making; and, (iii) equal access to justice. Furthermore, the agenda calls for the creation of effective, accountable and transparent institutions and the adoption of non-discriminatory laws and policies for sustainable development.

## E. Implementation of access rights

Access to information, public participation and access to justice are civil and political rights, thereby governed by the 1966 International Covenant on Civil and Political Rights. Under the same, the obligations assumed by States are legally binding and immediately applicable. Therefore, States shall respect and guarantee such rights under equal and non-discriminatory terms. In turn, States shall abstain from infringing recognized rights as well as adopt adequate measures to render them effective. In other words, while the obligation to respect implies the abstention by the State so that it does not contravene rights, the obligation to guarantee requires the proactive action of the State in the adoption of the necessary actions to ensure the free and full exercise of these rights. Pursuant to the Vienna Convention on the Law of Treaties, States Parties must perform the obligations imposed by the Covenant in good faith (article 26) and may not invoke the provisions of its internal law as justification for its failure to perform a treaty (article 27).

Furthermore, it is important to highlight that the Covenant establishes the obligation to respect and guarantee their rights to all individuals that are in the territory and subject to the jurisdiction of a State Party. As indicated by the Human Rights Committee, this implies that the rights apply to every person under the authority or effective control of the State even if the person is not in the territory of the State. Moreover, the enjoyment of the rights is not limited to the citizens of a State Party, but must be available to all individuals, regardless of their nationality.<sup>23</sup>

At the same time, the Covenant foresees that the restrictions must not impair the essence of the right and stipulates the most favourable interpretation rule. Article 5 of the Covenant states that no provision may be interpreted as implying any right to engage in any activity or perform any act aimed at the destruction of any of the rights and freedoms recognized in it or at their limitation to a greater extent than is provided for in the Covenant. It further reads that there shall be no restriction upon or derogation from any of the fundamental human rights recognized or existing in any State Party to the Covenant pursuant to law, conventions, regulations or custom on the pretext that the Covenant does not recognize such rights or that it recognizes them to a lesser extent. The latter refers to an hermeneutical criterion that inspires international human rights law: the “pro homine” or “pro persona” principle.<sup>24</sup> Given that a treaty shall be interpreted in light of its object and purpose (according to article 31 of the Vienna Convention on the Law of Treaties), and being the main object and purpose of human rights treaties to

<sup>21</sup> Article 6 of UNFCCC, articles 8, 10 and 17 of the CBD, articles 4, 9 and 10 of the Basel Convention and articles 8, 11 and 12 of the CITES, among others.

<sup>22</sup> A/RES/70/1.

<sup>23</sup> Human Rights Committee, General comment No. 31 on the nature of the General Legal Obligation on States Parties to the Covenant, 2004, CCPR/C/21/Rev.1/Add.13, paragraph 10.

<sup>24</sup> Also recognized in the Convention on the Elimination of All Forms of Discrimination against Women (article 23) and the Convention on the Rights of the Child (article 41), among others.

recognize the rights of persons, the widest norm or most favourable interpretation to guarantee these rights shall always be adopted.

For its part, the Inter-American system foresees in the American Convention on Human Rights the obligation of State Parties to respect the rights and freedoms recognized therein and ensure to all persons subject to their jurisdiction the free and full exercise of those rights and freedoms, without any discrimination for reasons of race, colour, sex, language, religion, political or other opinion, national or social origin, economic status, birth, or any other social condition (article 1). In addition, States undertake to adopt such legislative or other measures as may be necessary to give effect to those rights or freedoms (article 2).

## F. Right of access to information

Numerous international instruments recognize and develop access to information as a human right. Both the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights, in their article 19, set out the right of every individual to seek, receive and impart information. Other specific treaties such as the Convention on the Rights of the Child (article 13), the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (article 13) or the Convention on the Rights of Persons with Disabilities (article 21) provide greater details of this obligation with regard to the persons and groups to which they apply.

Paragraphs 18 and 19 of General Comment n. 34 of the Human Rights Committee are particularly important since they establish active and passive transparency in this matter:

- “Article 19, paragraph 2 embraces a right of access to information held by public bodies. Such information includes records held by a public body, regardless of the form in which the information is stored, its source and the date of production. Public bodies are as indicated in paragraph 7 of this general comment.<sup>25</sup> The designation of such bodies may also include other entities when such entities are carrying out public functions. [...]”<sup>26</sup>
- “To give effect to the right of access to information, States parties should proactively put in the public domain Government information of public interest. States parties should make every effort to ensure easy, prompt, effective and practical access to such information. States parties should also enact the necessary procedures, whereby one may gain access to information, such as by means of freedom of information legislation. The procedures should provide for the timely processing of requests for information according to clear rules that are compatible with the Covenant. Fees for requests for information should not be such as to constitute an unreasonable impediment to access to information. Authorities should provide reasons for any refusal to provide access to information. Arrangements should be put in place for appeals from refusals to provide access to information as well as in cases of failure to respond to requests”.<sup>27</sup>

In his 2013 report, the United Nations Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression stressed that access to information is a right in and of itself upon which free and democratic societies depend and that it comprises both the right of the general public to have access to information of public interest and the rights of every individual to seek and

<sup>25</sup> Paragraph 7 of General Comment No. 34 establishes: “The obligation to respect freedoms of opinion and expression is binding on every State party as a whole. All branches of the State (executive, legislative and judicial) and other public or governmental authorities, at whatever level – national, regional or local – are in a position to engage the responsibility of the State party. Such responsibility may also be incurred by a State party under some circumstances in respect of acts of semi-State entities. The obligation also requires States parties to ensure that persons are protected from any acts by private persons or entities that would impair the enjoyment of the freedoms of opinion and expression to the extent that these Covenant rights are amenable to application between private persons or entities.”

<sup>26</sup> Human Rights Committee, General Comment No. 34 on article 19 (freedoms of opinion and expression), 2011, CCPR/C/GC/34, paragraph 18.

<sup>27</sup> Ibid., paragraph 19.

receive information of public interest. He also added that obstacles to access to information can undermine the enjoyment of both civil and political rights and economic, social and cultural rights. Core requirements for democratic governance, such as transparency, the accountability of public authorities or the promotion of participatory decision-making processes, are practically unattainable without adequate access to information.<sup>28</sup>

According to the Special Rapporteur, the authorities represent their population, offer public goods and, as a result, must be transparent in their actions and decisions. In his view, a culture of secrecy is acceptable only in very exceptional cases, when confidentiality can be fundamental to perform its functions effectively. In addition, information can only be considered reserved under exceptional circumstances.

The basic principles that must guide the design and implementation of law and practice on access to information are as follows:<sup>29</sup>

- **Maximum disclosure:** All information held by public bodies (all powers of the State—legislative, executive and judicial— and other public authorities) should be subject to disclosure and this presumption may be overcome only in very limited circumstances.
- **Obligation to publish:** Freedom of information implies not only that public bodies accede to requests for information, but also that they widely publish and disseminate documents of significant public interest, subject only to reasonable limits based on resources and capacity.
- **Promotion of open government:** The full implementation of national laws on access to information requires that the public be informed about their rights and that government officials adhere to a culture of openness. Dedicated efforts are required to disseminate information to the general public on the right to access information and to raise the awareness of and train government staff to respond appropriately to public demands.
- **Limited scope of exceptions:** Reasons for the denial of access to information should be clearly and narrowly designed, bearing in mind the three-part test suggested in the interpretation of the right to freedom of opinion and expression.<sup>30</sup> Non-disclosure of information must be justified on a case-by-case basis. Exceptions should apply only where there is a risk of substantial harm to the protected interest and where that harm is greater than the overall public interest in having access to the information.
- **Processes to facilitate access:** Procedures to request information should allow for fair and rapid processing and include mechanisms for an independent review in cases of refusal. Public bodies should be required to establish open, accessible internal systems for ensuring the public's right to receive information. The law should provide for an individual right of appeal to an independent administrative body in respect of a refusal by a public body to disclose information.
- **Costs:** Individuals should not be deterred by excessive cost from making requests for information.
- **Open meetings:** In line with the notion of maximum disclosure, legislation should establish a presumption that meetings of governing bodies are open to the public.
- **Disclosure takes precedence:** To ensure maximum disclosure, laws which are inconsistent with this principle should be amended or repealed. The regime of exceptions provided for in the freedom of information law should be comprehensive and other laws should not be permitted to extend it.

<sup>28</sup> Report of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, Frank La Rue, A/68/362, 4 September 2013, paragraph 3.

<sup>29</sup> Report of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, Frank La Rue, A/68/362, 4 September 2013.

<sup>30</sup> Human Rights Committee, General Comment n. 34 on article 19 (freedom of opinion and expression), 2011, CCPR/C/GC/34, paragraph 22.

- **Protection for individuals who disclose relevant information:** National laws on the right to information should provide protection from liability for officials who, in good faith, disclose information pursuant to right to information legislation. Individuals should be protected from any legal, administrative or employment-related sanctions for releasing information on wrongdoing, including the commission of a criminal offence or the failure to comply with a legal obligation. Special protection should be provided for those who release information concerning human rights violations.

Additionally, the mandate-holders of the Human Rights Council have pointed to more specific obligations when access to information is related to certain matters. For example, the Special Rapporteur on human rights and the environment asserts that in order to protect human rights from violations caused by environmental damage, States should provide access to information on the environment and foresee the assessment of environmental impacts that can interfere with the enjoyment of human rights.

In turn, the Special Rapporteur on human rights and hazardous substances and wastes argues that relevant information on this matter must be available, accessible and functional, in a manner consistent with the principle of non-discrimination. Furthermore, it needs to be ensured that people who may be exposed to hazardous substances and wastes are aware that they have a right to information and understand its relevance. With regard to the limitations regime, the Special Rapporteur has highlighted that certain types of information about hazardous substances cannot be legitimately claimed as confidential. It is not legitimate to claim that public health and safety information on hazardous substances is confidential. There is widespread recognition that health and safety information should not be confidential, and States have legally binding obligations to this end.<sup>31</sup>

In the Inter-American system, the right of access to public information is not only contained in the American Convention on Human Rights (Article 13) and the Inter-American Democratic Charter (article 4), but has also been comprehensively developed through the Model Inter-American Law on Access to Information. Some of the main elements of this model law are indicated below:

- A broad right of access to information, in possession, custody or control of any public authority, based on the principle of maximum disclosure, is established;
- “Information” refers to any type of data in custody or control of a public authority and “public authority” refers to all public authorities, including the executive, legislative and judicial branches at all levels of government, among others;
- The right of every person, under equality and non-discrimination terms, and without providing justifications, to obtain information free of charge or at a cost limited to the cost of reproduction;
- A reasonable interpretation of the provision that best gives effect to the right to information must be adopted;
- The obligation of proactive dissemination of information by authorities is established;
- Exceptions must be clear and specific, defined by law and be legitimate and strictly necessary in a democratic society; and,
- The right of internal and external appeal, judicial review, the reversal of the onus of proof and the establishment of an Information Commission as an independent body are ensured.

---

<sup>31</sup> Report of the Special Rapporteur on the implications for human rights of the environmentally sound management and disposal of hazardous substances and wastes, Başkut Tuncak, on the right to information, A/HRC/30/40, 8 July 2015, paragraph 42.

## G. Right to participate in decision-making

Article 21 of the Universal Declaration of Human Rights establishes that everyone has the right to take part in the government of his/her country and article 25 of the International Covenant on Civil and Political Rights deals with the right to take part in the conduct of public affairs. As determined by the Human Rights Committee, the conduct of public affairs is a broad concept which relates to the exercise of political power (which includes the exercise of legislative, executive and judicial powers, covers all aspects of government and public administration, and the formulation and implementation of policy at international, national, regional and local levels). There are different ways in which participation in public affairs can take place: by assisting to popular assemblies, through citizen consultations, public debates and dialogues or through associations and organizations. In addition, any conditions which apply to their exercise should be based on objective and reasonable criteria.

Other core human rights treaties ensure this right for specific groups. This is the case of the International Convention on the Elimination of All Forms of Racial Discrimination, the Convention on the Elimination of All Forms of Discrimination against Women, the Convention on the Rights of the Child, the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families or the Convention on the Rights of Persons with Disabilities. Among the main obligations provided for in the said treaties are the following:

- **CERD**: Prohibit and eliminate racial discrimination in all its forms and to guarantee the right of everyone, without distinction as to race, colour, or national or ethnic origin, notably in the enjoyment of political rights (article 5). Afro-descendants have the right to be consulted prior to the adoption of decisions that may affect their rights, in accordance with international norms. With regard to indigenous peoples, the enjoyment of equal rights for their effective participation in public life shall be ensured and no decision directly related with their rights and interests shall be taken without their informed consent.
- **CEDAW**: Take all appropriate measures to eliminate discrimination against women in the political and public life of the country and, in particular, ensure to women, on equal terms with men, the right to participate in the formulation of government policy and the implementation thereof and to hold public office and perform all public functions at all levels of government and participate in non-governmental organizations and associations concerned with the public and political life of the country (article 7). In addition, their right to participate in the elaboration and implementation of development planning at all levels shall be ensured (article 14).
- **CRC**: Considering the best interests of the child, assuring to the child who is capable of forming his or her own views the right to express those views freely in all matters affecting the child, the views of the child being given due weight in accordance with the age and maturity of the child, and giving him the opportunity to be heard in all matters that affect him or her (article 12).
- **ICMW**: Facilitate the consultation or participation of migrant workers and members of their families in decisions concerning the life and administration of local communities (article 42).
- **CRPD**: Closely consult with and actively involve persons with disabilities in the development and implementation of legislation and policies to implement the Convention, and in other decision-making processes concerning issues relating to persons with disabilities (article 4). States shall ensure that persons with disabilities can effectively and fully participate in political and public life on an equal basis with others and promote actively a favourable environment for such participation (article 29). Accessibility (including to information and communication) is a pre-condition to enable persons with disabilities to participate on an equal basis.

The Declaration on the Right to Development is, likewise, pointed in recognizing the participation of persons in public management. In its article 2, the Declaration underscores that the human person is the central subject of development and should be the active participant and beneficiary of the right to



development. At the same time, States should encourage popular participation in all spheres as an important factor in development and in the full realization of all human rights (article 8).

A special reference should be made to the participation of indigenous and native peoples. The International Labour Organization Convention No. 169 provides that governments shall consult the peoples concerned, through appropriate procedures and in particular through their representative institutions, whenever consideration is being given to legislative or administrative measures which may affect them directly (free, prior and informed consultation). Furthermore, they shall establish means by which these peoples can freely participate, to at least the same extent as other sectors of the population, at all levels of decision-making in elective institutions and administrative and other bodies responsible for policies and programmes which concern them (article 6). For its part, the United Nations Declaration on the Rights of Indigenous Peoples requires that States 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 (article 19). Moreover, States shall consult and cooperate in good faith in order to obtain their free and informed consent prior to the approval of any project affecting their lands or territories and other resources, particularly in connection with the development, utilization or exploitation of mineral, water or other resources (article 32).

The right to participate in public affairs has also been recognized in specific matters such as extreme poverty, water and sanitation and the environment. The Special Rapporteur on human rights and extreme poverty underlined the need to include people living in poverty in decision-making, given the existing vicious circle between poverty and participation: the greater the inequality, the less the participation; the less the participation, the greater the inequality. Additionally, she compiled a group of human rights principles that must govern all participatory processes, including the design, formulation, implementation, follow-up and evaluation: (i) Respect for dignity; (ii) Non-discrimination and equality; (iii) Transparency and access to information; (iv) Accountability; and, (v) Empowerment. For each principle, she provided a set of recommendations for States, available in her report A/HRC/23/36, 11 March 2013.<sup>32</sup>

The Special Rapporteur on the human right to water and sanitation likewise identified the following essential components for an active, free and meaningful participation that are applicable to her mandate and human rights as a whole:<sup>33</sup>

- **Involving people in setting out the terms of engagement:** terms of participation, the scope of issues and the questions to be addressed, their framing and sequencing, and rules of procedure;
- **Creating space for participation:** States have an obligation to invite participation and to create opportunities from the beginning of deliberations on a particular measure and before any decisions, even de facto decisions, have been taken;
- **Enabling people to access participatory processes:** States must enable people to eliminate barriers to accessing deliberative processes. People must have information on how to access these spaces and the procedures for getting involved;
- **Guaranteeing free and safe participation:** Free participation rules out any form of coercion or inducement, direct or indirect. Participation must be free from manipulation or intimidation. There must be no conditions attached;

<sup>32</sup> Report of the Special Rapporteur on extreme poverty and human rights, Magdalena Sepúlveda, on the right to participation of people living in poverty, A/HRC/23/36, 11 March 2013.

<sup>33</sup> Report of the Special Rapporteur on the human right to safe drinking water and sanitation, Catarina de Albuquerque, on the right to participation, A/69/213, 31 July 2014.

- **Ensuring access to information:** Participation must be informed. People require accessible information on the issues at stake that enables them to form an opinion. To ensure equal access, information must be made available and be clear and consistent. It must be presented in different formats and in appropriate language. For people to be able to understand and verify the information presented, it must be provided well in advance of any opportunity to provide input. Cost must not be a barrier to accessing information; and,
- **Providing reasonable opportunity to influence decision-making:** Meaningful participation entails ensuring that people's views are considered and influence the decision.

Likewise, the American Declaration of the Rights and Duties of Man (article XX), the American Convention on Human Rights (article 23) and the Inter-American Democratic Charter (article 6) recognize the right to participate in public affairs. In addition, the 2001 the Inter-American Strategy for the Promotion of Public Participation in Decision Making for Sustainable Development contains important principles and recommendations for States in this matter. The following principles are worth highlighting: proactivity, inclusiveness, shared responsibility, openness, access, transparency and respect for public input. Recommendations are also made on information and communication, legal frameworks, institutional procedures and structures, education and training, funding for participation and opportunities and mechanisms for public participation.

## H. Right of access to justice

Access to justice is another basic pillar of international human rights law. On top of being a right in itself, it is also a means to re-establish the exercise of those rights that were ignored or violated. The International Covenant on Civil and Political Rights establishes that every person shall have the right to an effective remedy if his or her rights are violated (article 2.3). States shall provide adequate judicial and administrative mechanisms to address such infringement of rights. Precisely on the access to an effective remedy, international standards clearly indicate that the remedies have to be adaptable so as to consider the special vulnerability of certain groups of people.

In addition, the requirements of rule of law<sup>34</sup> and due process impose certain obligations on States in judicial matters. To right to equality before judicial courts and tribunals and to a fair trial are key elements for the protection of human rights and are procedural means to re-instate rule of law. Hence, States have to abide by certain standards in the administration of justice such as the principles of legality, effectiveness, publicity and transparency, the establishment of clear, fair, appropriate and independent procedures, the right of defense and the right of appeal to a superior body.

The right to appeal shall be aimed at providing relief to the persons whose rights have been violated. As the Human Rights Committee noted, reparation can involve restitution, rehabilitation and measures of satisfaction, such as public apologies, public memorials, guarantees of non-repetition and changes in relevant laws and practices, as well as bringing to justice the perpetrators of human rights violations. The Committee also observed that the right to an effective remedy may in certain circumstances require States to provide for and implement provisional or interim measures to avoid continuing violations and to endeavour to repair at the earliest possible opportunity any harm that may have been caused by such violations.

---

<sup>34</sup> "Rule of law" refers to "a principle of governance in which all persons, institutions and entities, public and private, including the State itself, are accountable to laws that are publicly promulgated, equally enforced and independently adjudicated, and which are consistent with international human rights norms and standards. It requires, as well, measures to ensure adherence to the principles of supremacy of law, equality before the law, accountability to the law, fairness in the application of the law, separation of powers, participation in decision-making, legal certainty, avoidance of arbitrariness and procedural and legal transparency." The rule of law and transitional justice in conflict and post-conflict societies (S/2004/616).

Equality before the courts of justice galvanizes the principles of equal access and equal procedural means. As established by the Human Rights Committee, the right of access to courts and tribunals and equality before them is not limited to citizens of States parties, but must also be available to all individuals, regardless of nationality or any other condition, who may find themselves in the territory or subject to the jurisdiction of the State. This guarantee also prohibits any distinctions regarding access to courts and tribunals that are not based on law and cannot be justified on objective and reasonable grounds. The guarantee is violated if certain persons are barred from bringing suit against any other persons such as by reason of their race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status. In this sense, all parties in a process shall have the same procedural rights.

The availability or absence of legal assistance often determines whether or not a person can access the relevant proceedings or participate in them in a meaningful way. While the Covenant on Civil and Political Rights explicitly addresses the guarantee of legal assistance in criminal proceedings (article 14.3 d), the Human Rights Committee encourages States to provide free legal aid in other cases, for individuals who do not have sufficient means to pay for it. The Special Rapporteur on the independence of judges and lawyers has also highlighted that the definition of legal aid should be as broad as possible. It should include not only the right to free legal assistance in criminal proceedings but also the provision of effective legal assistance in any judicial or extrajudicial procedure aimed at determining rights and obligations.<sup>35</sup> In addition, the apportionment of costs in a judicial proceeding that hinders access to justice *de facto* can pose challenges in terms of paragraph 1 of article 14. Specific obligations in this regard stem from other treaties such as CERD (articles 5 and 6), CEDAW (article 15), CRC (articles 12 and 40) and CRPD (articles 12 and 13).

The Committee on the Elimination of Discrimination against Women has identified six essential and related components to ensure access to justice:<sup>36</sup>

- **Justiciability:** unhindered access to justice and ability and empowerment to claim rights as legal entitlements;
- **Availability:** requires the establishment of courts, quasi-judicial bodies or other bodies throughout the State party in urban, rural and remote areas, as well as their maintenance and funding;
- **Accessibility:** requires that all justice systems, both formal and quasijudicial, be secure, affordable and physically accessible, and be adapted and appropriate to the different needs;
- **Good quality of justice systems:** requires that all components of the system adhere to international standards of competence, efficiency, independence and impartiality and provide, in a timely fashion, appropriate and effective remedies that are enforced and that lead to sustainable dispute resolution for all women;
- **Provision of remedies:** requires that justice systems provide viable protection and meaningful redress for any harm suffered; and,
- **Accountability of justice systems:** ensured through monitoring to guarantee that they function in accordance with the principles of justiciability, availability, accessibility, good quality and provision of remedies. The accountability of justice systems also refers to the monitoring of the actions of justice system professionals and of their legal responsibility when they violate the law.

<sup>35</sup> Report of the Special Rapporteur on the independence of judges and lawyers, Gabriela Knaul, on legal aid, A/HRC/23/43, 15 March 2013, paragraph 27.

<sup>36</sup> Committee on the Elimination of Discrimination against Women, General recommendation No. 33 on women's access to justice, 2015, CEDAW/C/GC/33.

Access to justice has also been recognized in specific domains. With regard to the right to water, the Committee on Economic, Social and Cultural Rights underscored that every person or group victim of a violation of this right shall have access to effective judicial or other types of recourse both at the national and international levels. Additionally, all victims of violations of the right to water should be entitled to adequate reparation, including restitution, compensation, satisfaction or guarantees of non-repetition.<sup>37</sup> Similar obligations exist for the right to health, food and adequate housing.

With regard to access to environmental justice, it should be highlighted that both Treaty Bodies and special procedures have pointed to the obligation of States to provide effective recourse in cases of environmental damage. The Committee on Economic, Social and Cultural Rights has urged States to ensure that “adequate compensation and/or alternative accommodation and land for cultivation are provided to the indigenous communities and local farmers affected by infrastructure projects, as well as just compensation to and resettlement of indigenous peoples displaced by forestation.”<sup>38</sup>

Furthermore, the Special Rapporteur on the independence of judges and lawyers identified the main barriers to access justice. These are:

- **Financial barriers:** Costs include initiating and pursuing the proceedings, and possible delays. In addition there are lawyers’ fees and other costs such as travel and loss of working time as a result of a court case;
- **Extreme poverty:** Financial factors take on even more importance when they compound other social, cultural or employment factors and lead to marginalization and social exclusion. The most serious obstacles barring access to justice for the very poor include: (a) their indigent condition; (b) illiteracy or lack of education and information; (c) the complexity of procedures; (d) mistrust, not to say fear, stemming from their experience of the justice system, either because they frequently find themselves in the position of accused, or because their own complaints are turned against them; (e) the slow pace of justice, despite the fact that their petitions often relate to very sensitive aspects of life (such as return of children) which need to be dealt with rapidly; and (f) in many countries, the fact that they are not allowed to be accompanied or represented by support organizations which could also bring criminal indemnification proceedings.
- **Barriers relating to information:** Clients’ ignorance of their rights and all matters relating to their case;
- **Cultural barriers:** Language difficulties and different cultural and economic backgrounds of those involved; and,
- **Physical barriers:** The physical distance between client and court or the architectural layout.

The Inter-American framework contains similar rights in relation to access to justice. The right of every person to recur to courts to exercise their rights, to simple and brief procedures and to due process guarantees are embedded in its main legal texts.

---

<sup>37</sup> Committee on Economic, Social and Cultural Rights, General Comment No. 15 on the right to water (arts. 11 and 12 of the International Covenant on Economic, Social and Cultural Rights), 2002, E/C.12/2002/11, paragraph 55.

<sup>38</sup> ICESCR Report, secc. III.A.3.

## I. Cross-cutting issues on access rights

### 1. Equality and non-discrimination

Equality and non-discrimination is a basic, immediate and cross-cutting principle in the protection of human rights and, as such, of access rights. Pursuant to article 1 of the Universal Declaration of Human Rights, all human beings are born free and equal in dignity and rights. The International Covenant on Civil and Political Rights establishes the obligation of each State to respect and to ensure to all individuals within its territory and subject to its jurisdiction the rights recognized in the Covenant, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status. Furthermore, all persons are equal before the law and are entitled without any discrimination to the equal protection of the law.

Although the International Covenant on Civil and Political Rights does not define the term “discrimination”, its content has been established by the International Convention on the Elimination of All Forms of Racial Discrimination, the Convention on the Elimination of All Forms of Discrimination against Women and the Convention on the Rights of Persons with Disabilities. Such treaties converge in defining discrimination as any distinction, exclusion or restriction made on the basis of certain aspects which has the effect or purpose of impairing or nullifying the recognition, enjoyment or exercise, on a basis of equality of men, of human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field. By way of example, the Human Rights Committee has indicated that for civil and political rights such aspects include race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status which have the purpose or effect of nullifying or impairing the recognition, enjoyment or exercise, on an equal footing, of human rights and fundamental freedoms. For its part, the Committee on Economic, Social and Cultural Rights has noted that direct<sup>39</sup> and indirect<sup>40</sup> discrimination as well as formal<sup>41</sup> and substantive<sup>42</sup> discrimination shall be eliminated in order to ensure non-discrimination. To eliminate such discrimination, States may be under an obligation to adopt special measures to attenuate or suppress conditions that perpetuate discrimination.<sup>43</sup>

Both the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights expressly state that all human beings shall enjoy entirely and on equal grounds all the rights. The States shall also ensure the equal right of men and women to the enjoyment of all rights (article 3, in common). In both cases, the obligation is immediate. As underscored by the Human Rights Committee, “State parties [are required to] take all necessary steps to enable every person to enjoy those rights. These steps include the removal of obstacles to the equal enjoyment each of such rights, the education of the population and of state officials in human rights and the adjustment of domestic legislation so as to give effect to the undertakings set forth in the Covenant.

---

<sup>39</sup> According to the Committee on Economic, Social and Cultural Rights, “direct discrimination occurs when an individual is treated less favourably than another person in a similar situation for a reason related to a prohibited ground; e.g. where employment in educational or cultural institutions or membership of a trade union is based on the political opinions of applicants or employees. Direct discrimination also includes detrimental acts or omissions on the basis of prohibited grounds where there is no comparable similar situation (e.g. the case of a woman who is pregnant).”

<sup>40</sup> According to the Committee on Economic, Social and Cultural Rights, “indirect discrimination refers to laws, policies or practices which appear neutral at face value, but have a disproportionate impact on the exercise of Covenant rights as distinguished by prohibited grounds of discrimination. For instance, requiring a birth registration certificate for school enrolment may discriminate against ethnic minorities or non-nationals who do not possess, or have been denied, such certificates.”

<sup>41</sup> Eliminating formal discrimination requires ensuring that a State’s constitution, laws and policy documents do not discriminate on prohibited grounds.

<sup>42</sup> Eliminating discrimination in practice requires paying sufficient attention to groups of individuals which suffer historical or persistent prejudice instead of merely comparing the formal treatment of individuals in similar situations. States parties must therefore immediately adopt the necessary measures to prevent, diminish and eliminate the conditions and attitudes which cause or perpetuate substantive or *de facto* discrimination.

<sup>43</sup> According to the Committee on Economic, Social and Cultural Rights, such measures are legitimate to the extent that they represent reasonable, objective and proportional means to redress *de facto* discrimination and are discontinued when substantive equality has been sustainably achieved. Such positive measures may exceptionally, however, need to be of a permanent nature, such as interpretation services for linguistic minorities and with sensory impairments.

The State party must not only adopt measures of protection but also positive measures in all areas so as to achieve the effective and equal empowerment of women.”<sup>44</sup> For its part, the Committee on Economic, Social and Cultural Rights has indicated that “non-discrimination is an immediate and cross-cutting obligation in the Covenant. Article 2, paragraph 2, requires States parties to guarantee non-discrimination in the exercise of each of the economic, social and cultural rights enshrined in the Covenant and can only be applied in conjunction with these rights.”<sup>45</sup>

In order to fulfill this obligation, States parties should take account of the factors which impede the equal enjoyment by women and men of each right specified in the Covenant. In relation to access rights, the Human Rights Committee argues that the Parties shall: (i) take into account the factors that impede women to exercise the rights enshrined in article 19 (access to information) on an equal basis; (ii) ensure that the law guarantees to women article 25 (right to participation) rights on equal terms with men and take effective and positive measures to promote and ensure women’s participation in the conduct of public affairs; and, (iii) ascertain whether access to justice and the right to a fair trial, provided for in article 14, are enjoyed by women on equal terms to men, particularly with respect to the existence of legal provisions preventing women from direct and autonomous access to the courts, whether women may give evidence as witnesses on the same terms as men and whether measures are taken to ensure women equal access to legal aid. In addition, State parties must ensure that everyone also has accessible and effective remedies to vindicate those rights. Such remedies should be appropriately adapted so as to take account of the special vulnerability of certain categories of persons.

Meanwhile, the Inter-American system also contains the obligation to promote equality and non-discrimination. The American Convention on Human Rights states that the rights and freedoms shall be respected and guaranteed to all persons subject to the jurisdiction of a State without any discrimination for reasons of race, color, sex, language, religion, political or other opinion, national or social origin, economic status, birth, or any other social condition (article 1). Similar provisions are found in the Protocol of San Salvador, the Inter-American Democratic Charter and the Inter-American Convention against all forms of discrimination and intolerance.

## **2. References to specific groups**

Human rights instruments seek to protect, in particular, those persons that are more prone to human rights violations. For this reason, human rights norms and provisions establish specific obligations and safeguards to protect those individuals and groups of greater vulnerability. In addition, some human rights treaties focus specifically on certain groups such as the CERD, CEDAW, ICMW, CRC and CRPD. Although all instruments give special attention to certain individuals and/or groups, in light of the standards analyzed, there is not a single term used to refer to these individuals and/or groups. Table 4 includes a list of terms used in selected documents of relevance to access to information, participation and justice.

---

<sup>44</sup> Human Rights Committee, General Comment No. 28 on equality of rights between men and women (article 3), 2000, HRI/GEN/1/Rev.9 (Vol. I), paragraph 3.

<sup>45</sup> Committee on Economic, Social and Cultural Rights, General Comment No. 20 on non-discrimination in economic, social and cultural rights (art. 2, para. 2, of the International Covenant on Economic, Social and Cultural Rights), 2009, E/C.12/GC/20, paragraph 7.

**Table 4**  
**Terms used in reference to specific groups in selected documents**

Term used	2011- 2016	2006- 2010	2001- 2005	1996- 2000	1991- 1995	Treaty/General Comment/Concluding Observation/Report
Most vulnerable groups in the population and groups at risk of social exclusion	X					CCPR/C/URY/CO/57
Disadvantaged or marginalized groups	X		X			E/C.12/2005/4 E/C.12/GUY/CO/2-4 E/C.12/PRY/CO/4 E/C.12/GTM/CO/3
Groups at risk	X					A/68/262 A/HRC/25/55 A/70/217 E/C.12/JAM/CO/3-4
Groups in vulnerable situations	X					A/HRC/25/53 A/HRC/28/61
Groups particularly at risk		X				A/HRC/7/21 A/HRC/30/40
Socially vulnerable groups		X		X		E/C.12/2002/11 E/C.12/1999/5
Socially disadvantaged groups			X			E/C.12/2002/11
Vulnerable/most vulnerable groups	X	X			X	A/HRC/25/53 A/68/262 E/C.12/2002/11 CCPR/C/79/Add.42 A/HRC/22/43 A/HRC/28/61
Vulnerable, disadvantaged or marginalized groups	X			X		A/HRC/14 E/C.12/2000/4
Individuals and groups who have traditionally faced difficulties in exercising their right			X			E/C.12/2002/11
Most vulnerable sections	X					A/HRC/14 E/C.12/2000/4

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

### 3. Human rights defenders

Although there is not a specific definition of who is or can be a defender of human rights, the Declaration on human rights defenders refers to those “individuals, groups and associations [that contribute] to the effective elimination of all violations of human rights and fundamental freedoms of peoples and individuals” (fourth paragraph of the preamble). In this sense, a human rights defender is considered to be any person who, individually or with others, acts in favour of one or more human rights of an individual or group.<sup>46</sup>

The defense of human rights can be undertaken through professional activities (paid or unpaid) and in a non-professional context. Most defenders act locally or nationally, defending the rights of their communities and countries. As has been recognized by the Special Rapporteur on human rights defenders, certain groups of defenders face a greater risk. Among them are women, defenders of rights relating to land, defence of the environment and corporate responsibility and lawyers working to promote and protect human rights.<sup>47</sup>

It is worth noting that, as pointed by the Special Rapporteur on the situation of human rights defenders, the defenders working on land rights, natural resources and environmental issues are the second most vulnerable group when it comes to the danger of being killed because of their activities.<sup>48</sup> Furthermore, in a recent report, the Special Rapporteur described the extraordinary risks faced by those defending the rights of local communities, such as threats, harassment and physical attacks, when they oppose the implementation of development projects that have a direct impact on natural resources, the land and the environment.<sup>49</sup>

In cases of violations, international standards outline specific duties for States and the responsibilities of everyone with regard to defending human rights. The Declaration establishes the need of supporting and protecting human rights defenders in their work. It does not create new rights but instead articulates existing rights in a way that makes it easier to apply them to the practical role and situation of human rights defenders. States shall, therefore, protect, promote and implement all human rights; ensure that all persons under their jurisdiction are able to enjoy all social, economic, political and other rights and freedoms in practice; adopt such legislative, administrative and other steps as may be necessary to ensure effective implementation of rights and freedoms; provide an effective remedy for persons who claim to have been victims of a human rights violation; conduct prompt and impartial investigations of alleged violations of human rights; and, take all necessary measures to ensure the protection of everyone against any violence, threats, retaliation, adverse discrimination, pressure or any other arbitrary action as a consequence of his or her legitimate exercise of the rights referred to in the Declaration, among others.

---

<sup>46</sup> Office of the United Nations High Commissioner for Human Rights, “Fact Sheet n. 29: Human Rights Defenders: Protecting the Right to Defend Human Rights”.

<sup>47</sup> Report of the Special Rapporteur on the situation of human rights defenders, Michel Forst, on global trends pointing to a threatening environment for defenders, A/70/217, 30 July 2015.

<sup>48</sup> Report submitted by the Special Representative of the Secretary-General on human rights defenders, Hina Jilani, A/HRC/4/37, 24 January 2007.

<sup>49</sup> Report of the Special Rapporteur on the situation of human rights defenders, Margaret Sekaggya, A/68/262, 5 August 2013.



## II. List of and links to relevant documents

---

Below is a list of documents of the human rights system at the universal and Inter-American levels which are relevant to access to information, public participation and access to justice. The electronic version of this publication contains the links to such documents.

### Universal system

#### [Universal Declaration of Human Rights](#)

#### [International Covenant on Civil and Political Rights](#)

- [General Comment No. 18 on non-discrimination](#)
- [General Comment No. 25 on the right to participate in public affairs, voting rights and the right of equal access to public service \(Art. 25\)](#)
- [General Comment No. 28 on the equality of rights between men and women\) \(Art. 3\)](#)
- [General Comment No. 31 on the nature of the general legal obligation imposed on States Parties to the Covenant](#)
- [General Comment No. 32 on the right to equality before courts and tribunals and to fair trial \(Art. 14\)](#)
- [General Comment No. 34 on freedoms of opinion and expression \(Art. 19\)](#)

#### [International Covenant on Economic, Social and Cultural Rights](#)

- [General Comment No. 4 on the right to adequate housing \(art. 11 \(1\)\)](#)
- [General Comment No. 10 on the role of national human rights institutions in the protection of economic, social and cultural rights](#)
- [General Comment No. 12 on the right to adequate food \(Art.11\)](#)
- [General Comment No. 14 on the right to the highest attainable standard of health \(Art. 12\)](#)
- [General Comment No. 15 on the right to water \(Art. 11 and 12\)](#)
- [General Comment No. 16 on the equal right of men and women to the enjoyment of all economic, social and cultural rights \(Art. 3\)](#)

- [General Comment No. 20 on non-discrimination in economic, social and cultural rights \(Art. 2, paragraph 2\)](#)

#### [International Convention on the Elimination of All Forms of Racial Discrimination](#)

- [General Comment No. 23 on the rights of indigenous peoples](#)
- [General Comment No. 31 on the prevention of racial discrimination in the administration and functioning of the criminal justice system](#)
- [General Comment No. 34 on racial discrimination against people of African descent](#)

#### [Convention on the Elimination of All Forms of Discrimination against Women](#)

- [General Comment No. 23 on political and public life](#)
- [General Comment No. 24 on women and health](#)
- [General Comment No. 27 on older women and protection of their human rights](#)
- [General Comment No. 33 on women's access to justice](#)

#### [Convention on the Rights of the Child](#)

- [General Comment No. 9 on the rights of children with disabilities](#)
- [General Comment No. 11 on indigenous children and their rights under the Convention](#)
- [General Comment No. 12 on the right of the child to be heard](#)
- [General Comment No. 14 on the right of the child to have his or her best interests taken as a primary consideration \(Art. 3, paragraph 1\)](#)
- [General Comment No. 15 on the right of the child to the enjoyment of the highest attainable standard of health \(Art. 24\)](#)
- [General Comment No. 16 on State obligations regarding the impact of the business sector on children's rights](#)

#### [International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families](#)

#### [Convention on the Rights of Persons with Disabilities](#)

- [General Comment No. 1 on Art. 12 \(equal recognition before the law\)](#)
- [General Comment No. 2 on Art. 9 \(accessibility\)](#)

#### [Convention No. 169 of the International Labour Organization on Indigenous and Tribal Peoples](#)

#### [Vienna Declaration and Programme of Action, adopted by the World Conference on Human Rights on 25 June 1993](#)

#### [Declaration on the Right to Development, adopted by General Assembly resolution 41/128 of 4 December 1986](#)

#### [United Nations Declaration on the Rights of Indigenous Peoples, adopted by the General Assembly resolution 61/295](#)

#### [Basic Principles on the Independence of the Judiciary](#)

#### [Guidelines on the Role of Prosecutors](#)

#### [Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law adopted and proclaimed by General Assembly resolution 60/147 of 16 December 2005](#)

[Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power adopted by General Assembly resolution 40/34 of 29 November 1985](#)

[Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms, adopted by General Assembly resolution 53/144](#)

[Guidelines against Intimidation or Reprisals \(“San José Guidelines”\), 2015, HRI/MC/2015/6](#)

[Report of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, Frank La Rue, A/68/362, 4 September 2013](#)

[Report of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, Frank La Rue, A/HRC/14/23, 20 April 2010](#)

[Report of the Independent Expert on the issue of human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment, John H. Knox, A/HRC/25/53, 30 December 2013](#)

[Report of the Independent Expert on the issue of human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment, John H. Knox, A/HRC/28/61, 3 February 2015](#)

[Report of the Special Rapporteur on the issue of human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment, John H. Knox, A/HRC/31/53, 28 December 2015](#)

[Report of the Special Rapporteur on the issue of human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment, John H. Knox, A/HRC/31/52, 1 February 2016](#)

[Report of the Special Rapporteur on the implications for human rights of the environmentally sound management and disposal of hazardous substances and wastes, Başkut Tuncak, on the right of access to information, A/HRC/30/40, 8 July 2015](#)

[Report of the Special Rapporteur on the adverse effects of the illicit movement and dumping of toxic and dangerous products and wastes on the enjoyment of human rights, Okechukwu Ibeanu, on the right to information and participation, A/HRC/7/21, 18 February 2008](#)

[Report of the Special Rapporteur on the human right to safe drinking water and sanitation, Catarina de Albuquerque, on the right to participation, A/69/213, 31 July 2014](#)

[Report of the Special Rapporteur on extreme poverty and human rights, Magdalena Sepúlveda, on the right to participation of people living in poverty, A/HRC/23/36, 11 March 2013](#)

[Report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association, Maina Kiai, on the rights to freedom of peaceful assembly and of association natural resource exploitation, A/HRC/29/25, 28 April 2015](#)

[Report of the Special Rapporteur on the rights of indigenous peoples, James Anaya, on extractive industries and indigenous peoples, A/HRC/24/41, 1 July 2013](#)

[Report of the Special Rapporteur on the independence of judges and lawyers, Leandro Despouy, on access to justice, A/HRC/8/4, 13 May 2008](#)

[Report of the Special Rapporteur on the independence of judges and lawyers, Gabriela Knaul, on free legal assistance, A/HRC/23/43, 15 March 2013](#)

[Report of the Special Rapporteur on the situation of human rights defender, Michel Forst, A/70/217, 30 June 2015](#)

[Report of the Special Rapporteur on the situation of human rights defenders, Margaret Sekaggya, on elements of a safe and enabling environment for human rights defenders, A/HRC/25/55, 23 December 2013](#)

[Report of the Special Rapporteur on the situation of human rights defenders, Margaret Sekaggya, on the relationship between large-scale development projects and the activities of human rights defenders, A/68/262, 5 August 2013](#)

[Report of the Special Rapporteur on the situation of human rights defenders, Margaret Sekaggya, on the specific risks and challenges faced by selected groups of defenders, including journalists and media workers, defenders working on land and environmental issues and youth and student defenders, A/HRC/19/55, 21 December 2011](#)

[Report of the Special Rapporteur on the rights of persons with disabilities, Catalina Devandas, on the right of persons with disabilities to participate in decision-making, A/HRC/31/62, 12 January 2016](#)

## **Inter-American system**

[American Declaration of the Rights and Duties of Man](#)

[American Convention on Human Rights](#)

[Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social and Cultural Rights, "Protocol of San Salvador"](#)

[Inter-American Convention Against All Forms of Discrimination and Intolerance](#)

[Inter-American Democratic Charter](#)

[Social Charter of the Americas](#)

[Declaration of Principles on Freedom of Expression](#)

[Model Inter-American Law on Access to Information](#)

[Inter-American Strategy for the Promotion of Public Participation in Decision Making for Sustainable Development](#)