



UNITED NATIONS

ECLAC

Distr.
LIMITED

LC/CNP10.7/4
18 October 2017

ENGLISH
ORIGINAL: SPANISH

**REPORT OF THE SEVENTH 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**

Buenos Aires, 31 July-4 August 2017

CONTENTS

		<i>Paragraph</i>	<i>Page</i>
A.	ATTENDANCE AND ORGANIZATION OF WORK	1-8	3
	Place and date of the meeting	1-2	3
	Attendance.....	3	3
	Chair	8	4
B.	ADOPTION OF THE AGENDA	9	4
C.	SUMMARY OF PROCEEDINGS.....	10-84	4
Annex 1	Agreements	-	19
Annex 2	List of participants	-	20

A. ATTENDANCE AND ORGANIZATION OF WORK

Place and date of the meeting

1. The seventh 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 was held in Buenos Aires, from 31 July to 4 August 2017.
2. The meeting was organized jointly by the Government of Argentina and the Economic Commission for Latin America and the Caribbean (ECLAC), in its capacity as technical secretariat of the regional process relating to the Declaration on the application of Principle 10 of the Rio Declaration on Environment and Development.¹

Attendance²

3. The meeting was attended by representatives of the 24 signatory countries of the Declaration: Antigua and Barbuda, Argentina, Brazil, Chile, Colombia, Costa Rica, Dominica, Dominican Republic, Ecuador, El Salvador, Grenada, Guatemala, Honduras, Jamaica, Mexico, Panama, Paraguay, Peru, Plurinational State of Bolivia, Saint Kitts and Nevis, Saint Lucia, Saint Vincent and the Grenadines, Trinidad and Tobago and Uruguay.
4. Nicaragua attended as an observer.
5. Representatives of the Compliance Committee of the Aarhus Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters of the Economic Commission for Europe (ECE), the Office of Legal Affairs of the United Nations Secretariat, the United Nations Environment Programme (UNEP) and the United Nations Development Programme (UNDP) were also in attendance.
6. Also attending were international experts in access to information, participation and justice in environmental matters, elected representatives of the public and members of the public, in accordance with the Santiago Decision, the *Organization and work plan for the negotiating committee of the regional agreement on access to information, participation and justice in environmental matters in Latin America and the Caribbean*³ and the *Modalities for participation of the public in the negotiating committee of the regional agreement on access to information, participation and justice in environmental matters in Latin America and the Caribbean*.⁴
7. The meeting was open-ended and webcast live.

¹ See A/CONF.216.13.

² See the list of participants in annex 2.

³ See LC/L.4011/Rev.1.

⁴ See LC/L.4163.

Chair

8. Argentina chaired the meeting in its capacity as host country.

B. ADOPTION OF THE AGENDA

9. The following agenda was adopted:
 1. Adoption of the agenda.
 2. Special session on capacity-building for the implementation of the future agreement.
 3. Actions taken at the national level by the signatory countries of the Declaration on the application of Principle 10 of the Rio Declaration on Environment and Development and activities carried out by the secretariat.
 4. Discussion of the administrative, financial and budgetary implications in the framework of articles 11 to 25 of the regional agreement.
 5. Negotiation of the regional agreement on access to information, public participation and justice in environmental matters in Latin America and the Caribbean.
 6. Consideration and adoption of agreements.

C. SUMMARY OF PROCEEDINGS

10. At the opening session statements were made by Sergio Bergman, Minister of the Environment and Sustainable Development of Argentina; Patricia Madrigal, Vice-Minister of the Environment of Costa Rica, on behalf of the Presiding Officers of the negotiating committee; Germán Garavano, Minister of Justice and Human Rights of Argentina; Danielle Andrade and Andrés Nápoli, elected representatives of the public; Joseluis Samaniego, Chief of the Sustainable Development and Human Settlements Division of the Economic Commission for Latin America and the Caribbean (ECLAC); and Jorge Faurie, Minister for Foreign Affairs and Worship of Argentina.

11. After welcoming the participants, the Minister of the Environment and Sustainable Development of Argentina noted that environmental global commitments were needed at the local level. He said that environmental degradation had an impact on individuals and their human rights and highlighted the strong commitment of the Government of Argentina to protecting the rights of access to information, public participation and justice in environmental matters, which was affirmed in the Access to Public Information Act, the open data policy and the pursuit of binding frameworks that went beyond aspirational declarations and protocols. Consequently, Argentina hoped that the agreement on access to information, public participation and access to justice, currently being negotiated, would become binding. He also drew attention to the Justice 2020 programme—which provided for the establishment of environmental courts—and the process for his country to become a full member of the Organization for

Economic Cooperation and Development (OECD). He reiterated that development should not be at the expense of the dignity and well-being of people, as nothing could be profitable if it was not sustainable.

12. The Vice-Minister of the Environment of Costa Rica thanked the hosts and ECLAC for organizing the meeting. She said that the expectations for the process were high, given the importance that the region's countries and societies attached to it. She noted countries' strong commitment to Principle 10 and recalled the values of the Lima Vision. She called on governments and the public to realize their full potential, developing opportunities for dialogue and avoiding setbacks, bearing in mind that the regional agreement would be a floor, not a ceiling. Countries should not be complacent and should reach an agreement in line with the aspirations of the region and international human rights standards. The negotiations must remain proactive, build trust and legitimacy, and seek to respond to the expectations of present and future generations.

13. The Minister of Justice and Human Rights of Argentina said that a solid foundation must be built for addressing environmental issues with a cross-cutting approach and ensuring the effective protection of the environment. A transparent and participatory approach to environmental issues was a priority for the Government of Argentina. Access rights, specifically, the right of access to environmental justice, must therefore be ensured. In that connection, the Criminal Code was being reformed and specialized prosecutor's offices established, which would help to attach importance to environmental issues. He hoped that regional efforts would allow future generations to inherit a better environment.

14. The elected representatives of the public welcomed the opportunity to participate in a new round of negotiations, which to date had enabled public concerns to be heard and addressed. As the negotiations entered the final stages, they urged participants not to limit their ambitions and remain steadfast in the vision for a better future, particularly in the light of escalating conflicts connected with environmental rights and attacks on environmental defenders in the region. They called for an agreement that would provide effective responses to real barriers to the exercise of rights and bridge gaps in the implementation of access rights by building capacities and strengthening cooperation. They recalled that information, participation and justice were highly relevant to the implementation of the 2030 Agenda and that building bridges of understanding and trust between civil society and governments would be critical to achieving its Goals.

15. The Director of the Sustainable Development and Human Settlements Division of ECLAC said that the development model was not sustainable and that new policies were needed to ensure equality and invigorate performance. Transparent, participatory, coordinated and concerted actions were crucial to achieving a balance between economic growth, social development and environmental sustainability. In that context, the regional agreement was even more relevant and there should be a move from principles to obligations. The future agreement went beyond environmental matters and was essential to human rights and equality, reflecting a region-wide commitment, with societies demanding greater transparency and accountability. In addition, it was a clear example of how, with the participation and commitment of all relevant stakeholders, a different future could be built. He encouraged participants to maintain the enthusiasm and ambition needed to achieve a robust legal agreement and said that ECLAC stood ready to support the process.

16. The Minister for Foreign Affairs and Worship of Argentina highlighted his country's strong support for the agreement being negotiated. He said that the participation of all stakeholders in environmental matters and transparency in the exercise of public power were inherent to the stated objectives. The region was starting from a solid foundation, as most countries recognized the right to a healthy environment in their constitutions and had enacted legislation on access to information. The

process would not only strengthen South-South and triangular cooperation, but would also raise public participation and governance standards. The future regional agreement would benefit the region and its inhabitants, he was therefore very pleased that his country was hosting the current round of negotiations. He congratulated Saint Lucia on its inclusion in the process and invited other Latin American and Caribbean countries that were not yet part of that important initiative to join it.

Special session on capacity-building for the implementation of the future agreement (agenda item 2)

17. The session was moderated by María Eugenia Di Paola, Coordinator of the Environment and Sustainable Development Programme of the United Nations Development Programme (UNDP) in Argentina. John H. Knox, United Nations Special Rapporteur on human rights and the environment; Michelle Fife, Legal Adviser on International Law Issues of the Ministry of Legal Affairs of Saint Vincent and the Grenadines; Joaquín González Casanova, Director General of International Affairs of the National Institute for Transparency, Access to Information and Personal Data Protection (INAI) of Mexico; Daniel Sabsay, Director of the Dr. Germán J. Bidart Campos Centre for Constitutional and Political Studies, Ministry of Justice and Human Rights of Argentina; Alieto Guadagni, member of the Argentine Academy of Environmental Sciences; Leila Devia, Director of the Basel Convention Regional Centre for South America; and Néstor Cafferatta, expert in environmental law of Argentina, participated in the session.

18. The United Nations Special Rapporteur on human rights and the environment said that the agreement being negotiated was one of the most important at the global level, not just on environmental matters, but also in the field of human rights. He referred to States' human rights obligations and their connections with the environment, stressing that the rights of access to information, participation and justice must be strengthened in order to achieve sustainable development. The agreement was being built on countries' experiences and reflected the lessons learned, but it must go further to adopt a real rights-based approach and to provide the tools needed to address the environmental challenges faced by the region. The text of the agreement should set out clear and precise obligations for the protection of environmental defenders and make provision for a robust and effective follow-up and compliance mechanism that the public could access easily and freely. He reiterated that the agreement must be binding and that any other outcome would be a setback for the region.

19. The Legal Adviser on International Law Issues of the Ministry of Legal Affairs of Saint Vincent and the Grenadines referred to the high environmental and climate vulnerability of the Caribbean, which made it more prone to natural disasters. Deepening environmental democracy was therefore key, given the existence of vulnerable groups and inequities. She said that it was essential to have a binding agreement and that, in its current format, the text adequately reflected all the elements, including access to justice, capacity-building and cooperation. She noted the Caribbean's firm commitment to access rights and the negotiations. The growing participation of Caribbean countries reflected the political will to move towards sustainable development with greater equality and rights.

20. The Director General of International Affairs of INAI of Mexico said that sustainable development and environmental protection required greater regional and international cooperation. Dialogue with specialized regional networks on access rights, such as the Ibero-American Network of Judges, was crucial. The aim was to adopt cross-cutting approaches and work collaboratively to enhance the rights of access to information, participation and justice. Specifically on the right to information, he said that there should be no restrictions on access to environmental information and that the State should adopt a proactive attitude to the dissemination of information. In his experience, specialized bodies and effective follow-up mechanisms

had been of paramount importance to making progress in the implementation of those rights. He called for reflection on the agreement's objectives and for participants to go beyond declarations of principle by laying the legal basis for its effective implementation in each country.

21. The Director of the Dr. Germán J. Bidart Campos Centre for Constitutional and Political Studies said that cooperation and capacity-building should be considered together. The acceptance of a democratic system, recognition of the right to a healthy environment and protection of access rights were major regional achievements. However, he noted that greater efforts should be made to ensure that everyone was able to fully and effectively exercise those rights. Among the challenges arising from the negotiations of the future agreement, he said that it was important to limit restrictions on access to information as much as possible, to develop the idea of establishing public information institutes to ensure the enjoyment of rights, and to establish parameters for meaningful, rather than simply token, public participation.

22. The member of the Argentine Academy of Environmental Sciences noted the links between the regional agreement and socially sustainable economic development. Significant increases in emissions, economies' dependence on fossil fuels and deforestation were real challenges that called for a review of existing public policies. He mentioned environmental education, innovation and efficiency as useful tools for bringing about changes in production and consumption patterns, and called for global responses to global problems.

23. The Director of the Basel Convention Regional Centre for South America drew attention to the importance of national training and cooperation networks when implementing environmental agreements, as under the Minamata Convention on Mercury, for example, which created monitoring and cooperation networks, and noted that the future regional agreement must be linked to other existing environmental conventions. There were considerable opportunities for obtaining the resources offered by environmental agreements to fulfil national obligations. She cited various challenges, most notably improving accessibility to information and participation, especially of those most affected. In turn, she called for clear and effective compliance mechanisms, which should be aligned with technical assistance, financing and capacity-building.

24. The expert in environmental law spoke about access to environmental justice and creating an environmental rule of law. It was not enough to guarantee that right through legislation; rather, classic instruments of procedural law —designed to meet individual needs and interests— must be redrafted to ensure effective environmental stewardship. In that regard, he said that the future agreement should include some basic provisions, specifically it should establish broad and general legal standing in defence of the environment; ensure an active role for judges and create specialized bodies; ensure that all parties in environmental cases were placed on an equal footing, for example by creating a dynamic burden of proof; and address the issue using a rights-based approach that sought to overcome barriers and inequality. In addition, precautionary measures should be anticipatory and there should be mechanisms to guarantee the execution of judgments. He urged the countries to negotiate those matters seriously and with a forward-looking attitude, not settling for the lowest common denominator.

New signatory to the Declaration on the application of Principle 10 of the Rio Declaration on Environment and Development

25. The representative of Saint Lucia announced her country's adhesion to the Declaration on the application of Principle 10 of the Rio Declaration on Environment and Development, which was welcomed by those present. She said that Saint Lucia, a small island developing State exposed to great

social, economic and environmental vulnerability, recognized the importance of access to information, participation and justice in environmental issues. In that regard, she reaffirmed its commitment to building the capacities of its national institutions and strengthening its legislative frameworks for implementing access rights and the 2030 Agenda for Sustainable Development.

Actions taken at the national level by the signatory countries of the Declaration on the application of Principle 10 of the Rio Declaration on Environment and Development and activities carried out by the secretariat (agenda item 3)

26. The signatory countries of the Declaration on the application of Principle 10 of the Rio Declaration spoke on the actions taken at the national level in the framework of the regional process, consisting of consultations, meetings and workshops with various governmental and non-governmental stakeholders, as well as dissemination and awareness-raising activities. Statements were made by the following delegations:⁵ Costa Rica, Paraguay, Chile, Colombia, Argentina, Peru, Mexico, Grenada, Brazil, El Salvador, Antigua and Barbuda, the Dominican Republic, Ecuador, Guatemala, Dominica and Honduras. Statements were also made by the representative of Nicaragua, as an observer, the elected representatives of the public and ECLAC in its capacity as technical secretariat of the process.

27. The representative of Costa Rica said that progress had been made in implementing the second open government action plan in recent months. One of the results had been the creation of the public sector transparency index, designed to evaluate four aspects of information available on public administration websites, namely access to information, accountability, citizen participation and open data. A decree on transparency and a national open data policy were in the pipeline. There was also a mechanism for citizen participation in energy projects, in the framework of which a multisectoral dialogue process had been launched, leading to the development of a public participation guide and a manual of best practices for the participation of communities. Meanwhile, a map of socioenvironmental conflicts had been drawn up and a round table on building cooperation capacities held, at which representatives from different ministries had addressed environmental matters.

28. The representative of Paraguay said that his country was part of the Open Government Partnership and had enacted the Public Information Access Act. His country had received support to rate the response of public institutions to requests for public information by assessing applicants' level of satisfaction. Another remarkable achievement had been the creation of an open data portal, which to date had 135 sets of data provided by public and private bodies.

29. The delegate of Chile reiterated her country's commitment to public participation and said that it had continued to hold meetings to follow up the negotiation process with various social partners and ministerial representatives. Information on the process had also been disseminated among the environmental courts. The country was implementing the third national action plan under the Open Government Partnership and had participated in the United Nations Global Compact local network of experts, which promoted corporate environmental responsibility. Memorandums of understanding had been signed with several countries on environmental issues and the process of recategorizing national assets was underway, in consultation with indigenous peoples. In addition, workshops on environmental issues had been held in different regions and comments by citizens and civil society organizations had been collected.

⁵ Listed in speaking order.

30. The representative of Colombia said that, with regard to access to information, a post-conflict integrated information system had been designed, which would address environmental matters, among other topics. Guidelines on access to information were also being developed, with a view to advancing the implementation of international standards on access to information, and a study had been conducted on access to public information. With regard to participation, the process to standardize responses to verbal requests in native languages was in the initial stages. The National Council for Citizen Participation, composed of public oversight committees, ethnic groups, women's organizations, youth and other groups, had already held several meetings. In addition, the Ministry of the Environment and Sustainable Development had published several administrative bills in order to receive comments from the public and 10 forestry round tables had been held in different regions of the country. Moreover, the 10-year justice plan for the period 2017-2027, had been adopted, which covered environmental justice.

31. The representative of Argentina said that in accordance with the General Environment Act, the authorities reported on the country's environmental situation every year. Reports consisted of an environmental analysis and assessment of the territory from a social, economic, cultural and ecological point of view. Work was under way to establish an environmental information platform to give the public access to information on projects undertaken by the Ministry of the Environment and Sustainable Development, and an open data platform. With regard to participation, she said that the Act guaranteed the right of everyone to participate in administrative procedures related to the preservation and protection of the environment. A directory of non-governmental organizations had been drawn up and working, advisory and training meetings had been held with some of them. Her Ministry and the Ministry of Foreign Affairs and Worship had held meetings with civil society to report on the negotiation process. Work was also under way with the Ministry of Justice and Human Rights to draft a policy on environmental justice.

32. The representative of Peru reported that a seminar-workshop on access to environmental justice had been held, attended by international experts, which had enabled the executive branch to coordinate efforts with administrative and judicial authorities, particularly with the judiciary and prosecutors' offices specializing in environmental matters. Lastly, he said that the action plan for implementing the recommendations of the Environmental Performance Review carried out by OECD-ECLAC included the implementation of Principle 10.

33. The representative of Mexico said that, in accordance with the Transparency and Access to Public Information Act, all branches of government had replaced "liaison units" with "transparency units", which were responsible for processing requests for access to information; notifying applicants; providing guidance on relevant subjects; informing the competent authority in the event of possible contraventions of the Act; and promoting agreements with specialized public institutions that could respond to requests for information in indigenous languages. An Open Government Guide 2017 was being implemented as part of the Close and Modern Government Programme, which covered issues of access to information and transparency. State agencies must comply with the transparency component, which would improve the process for dealing with requests, and establish mechanisms for citizens to participate either in person or virtually.

34. The representative of Grenada said that two workshops on the implementation of Principle 10 had been held in June for government and public representatives, with the support of ECLAC and the Regional Environmental Centre for Central and Eastern Europe. Following the workshops, a national action plan to raise awareness of access rights had been developed and disseminated by the National Coordination Committee on Human Rights, the Sustainable Development Council and youth organizations. Grenada would also use its position as chair of the Caribbean Community (CARICOM) to encourage other countries to adhere to the Declaration on the application of Principle 10.

35. The representative of Brazil noted the developments resulting from the Access to Information Act, which in 2017 had resulted in 1,418 third instance judgments. Progress had also been made in terms of social participation, particularly following the establishment of a National Commission for the Sustainable Development Goals, tasked with disseminating and implementing the 2030 Agenda in Brazil. One innovative aspect was its membership which was evenly divided, with eight government representatives and eight civil society representatives. The Commission contributed to the implementation of Principle 10 by providing a space for the public to participate in equal numbers. Representatives of the public were also involved in devising its internal rules and work plan. That federal government example was being replicated at other levels of government.

36. The representative of El Salvador reported that the results of the negotiation process continued to be disseminated to relevant government institutions and non-governmental organizations. There was consensus among government institutions that the agreement should be binding and a high-level meeting would be held in support of that position. With regard to access to information, the Institute for Access to Public Information had trained public officials and students on that matter. The first municipal transparency report had also been submitted. In addition, audits of 97 public entities from the three branches of government were being carried out. The Citizen Participation, Transparency and Anti-Corruption Secretariat had trained officials on issues of transparency and access to information, as well as in the use of the new open government portal. With regard to access to justice, environmental courts and an environmental chamber had been set up.

37. The representative of Antigua and Barbuda said that her government was taking proactive measures to implement access rights and disseminate information about the process to relevant stakeholders, including civil society organizations. The legislation in force required public consultations be held with local communities prior to approving any project and meetings had been held with the public, including vulnerable groups, in connection with various projects. Meanwhile, work had begun on the application for accreditation with the Green Climate Fund and there were plans to establish a committee of experts to improve access to justice.

38. The representative of the Dominican Republic said that the website of the Ministry of Environment and Natural Resources had been modified and that all instruments adopted by the Ministry were being published. The interaction between different areas of the Ministry had been strengthened in order to respond better to requests. Strategic planning efforts were also under way. A classified and restricted information matrix was being developed and the Access to Information Office had been provided with new equipment to ensure better service. A public consultation procedure had also been developed as part of the environmental review process. There were four bills before Congress relating to water and marine resources, drinking water and payment for environmental services, with the principle of public participation applied to all the processes.

39. The representative of Ecuador said that his country considered nature as a subject of law and was firmly committed to environmental access rights. Ecuador had undertaken initiatives such as an accountability process, led by the Council for Citizen Participation and Social Oversight, and created a national information system, a tool for storing and accessing public data. With regard to environmental law and management, the government had drafted the Environmental Code to expand the rights of nature, the National Biodiversity Strategy 2015-2030, the National Climate Change Strategy 2012-2025 and the National Air Quality Plan, among other instruments. He also drew attention to the Unified Environmental Information System (SUIA), which provided access to a variety of environmental data.

40. The representative of Guatemala reported that her country was a member of the Open Government Partnership and had developed its third national action plan for the period 2016-2018, complying with all standards for the first time. The plan contained 22 commitments covering the following work areas: access to public information and institutional archives; accountability; citizen participation; fiscal transparency; and technological innovation. Lastly, she said that a draft water bill was being debated by congress.

41. The representative of Dominica said that a training workshop on Principle 10 had been held on 23 June, which had been supported by ECLAC and the Regional Environmental Centre for Central and Eastern Europe. The meeting had focused on the climate change, environment and natural resource management bill, drawn up before Dominica adhered to the Declaration on the application of Principle 10. The bill covered almost all the aspects of Principle 10. In order to disseminate the bill and Principle 10, ECLAC and UNEP had been asked to make a presentation to Cabinet and decision-makers at the national level.

42. The representative of Honduras said that her country had a law on access to public information and that the Institute of Access to Public Information, established under that law, was responsible for ensuring access to information and fighting corruption. The law applied to the entire public sector, non-governmental organizations and political parties. Guidelines and standards had been drawn up so that all institutions could publish information on the transparency portals. In addition, guides had been produced for journalists, local governments and political parties, and a mobile phone application (Honduras Transparente) had been created which provided access to all the information on the portals. The third national open government action plan was being implemented, the pillars of which were the right to information and environmental rights.

43. The representative of Nicaragua said that his country had comprehensive environmental legislation that included the Food Sovereignty and Security Act and the Biological Diversity Act related to the conservation and sustainable use of biodiversity. In that connection, studies had been carried out in universities, with the participation of youth. He also spoke about the National Committee for Disaster Prevention, Mitigation and Response, which dealt with issues related to climate change.

44. The elected representative of the public summarized the activities carried out by civil society at the national level in Mexico, Chile, Argentina, Grenada and Dominica. These activities had included awareness-raising campaigns, workshops to prepare proposals to be considered by the negotiating committee and a project to promote the access rights of indigenous peoples.

45. Among the activities undertaken by the secretariat, the representative of ECLAC noted the support provided to the contact groups and the organization of virtual, intersessional meetings and meetings of the Presiding Officers, as well as capacity-building activities. The process had continued to be disseminated through the website and the regional public mechanism. Lastly, he reported that work was continuing on the Observatory on Principle 10 in Latin America and the Caribbean, specifically incorporating regulations on public participation, environmental impact assessments and the rights of indigenous peoples.

46. The representative of UNEP commended the countries and the representatives of the public on the progress made to date and recalled that the third session of the United Nations Environment Assembly would be held in December 2017, providing a further opportunity to highlight the regional process at the global level, as it had been at the two previous sessions. She also noted that a meeting would be held in

October 2017 between sessions of the Forum of Ministers of the Environment of Latin America and the Caribbean, at which priority themes for the region, including Principle 10, would be defined.

Discussion of the administrative, financial and budgetary implications in the framework of articles 11 to 25 of the regional agreement (agenda item 4)

47. Under this agenda item, the secretariat presented the document *Future regional agreement on access to information, participation and access to justice in environmental matters in Latin America and the Caribbean and the procedure for establishing its technical secretariat. Note by the secretariat*,⁶ prepared at the request of the countries. The document reflected upon the discussions that took place at the sixth meeting of the negotiating committee, held in Brasilia in March 2017. Two virtual, intersessional meetings had also been held at which articles 11 to 25 had been widely discussed, with the participation of Santiago Villalpando, Chief of the Treaty Section of the United Nations Office of Legal Affairs, Concepción Escobar, Full Professor of International Law at the National University of Distance Education (UNED) of Spain and member of the United Nations International Law Commission, and Ella Behlyarova, Secretary of the Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters (Aarhus Convention).

48. The representative of Colombia thanked the secretariat for the presentation of the report and the additional information provided. In that connection, he requested further details on how the implementation fund would be run, specifically which countries would be most in need of financing and how that would be decided.⁷ He also noted that the regular budget allocation to cover the needs of the regional agreement would be decided by the Fifth Committee of the General Assembly of the United Nations, which included third countries.

49. The representative of Mexico stressed the need to clarify which institution would be performing the functions of the secretariat and what the implications would be, with ECLAC being the most viable option. In reference to the Fifth Committee, he said that he shared the concerns expressed by the representative of Colombia relating to the fact that a group of countries would adopt decisions on another group of countries. He also reiterated that consideration should be given to opening the future agreement to countries outside of Latin America and the Caribbean, and recalled that the membership of ECLAC was diverse and included countries from the region and from outside the region.

50. The Officer-in-Charge of the Office of the Secretary of the Commission thanked the delegates for their questions and said that a distinction should be made between the implementation fund and the procedures and costs for hosting the secretariat of the regional agreement. With regard to the latter, he said that ECLAC had been using its own resources and extrabudgetary funds to support the process and had duly kept the governing bodies of ECLAC informed of the progress made in the negotiations. Once the text of the agreement had been adopted, a request would have to be submitted at the session of the Commission or the Committee of the Whole so that the new responsibilities arising from the agreement would be included in the biennial programme of work of ECLAC. Turning to the concerns about decisions taken by the Fifth Committee or other body with a wider membership on issues that only affected the region, he said that it was standard procedure in the United Nations, citing the recent decision by the Security Council to establish the United Nations Verification Mission in Colombia. What was

⁶ LC/CNP10.7/3.

⁷ Paragraph 2 of article 11 of the sixth version of the compiled text provides for the establishment of a fund, to be managed by the secretariat, to finance implementation of the agreement, which will be defined at the Conference of the Parties in accordance with article 12.

important, he said, was that the countries of the region that were members of those bodies should strive to mobilize the necessary support and demonstrate the importance of the agreement at the regional and global levels. He reiterated that there was a glaring disparity between the agreement's means and ends, since investment was disproportionately low compared to the future agreement's benefits and outcomes.

51. In response to the questions concerning the implementation fund, the representative of the secretariat said that the fund would primarily be used to obtain additional resources for training activities and that, according to the current version of the text, it was up to the Conference of the Parties to determine how resources were to be allocated, as the body that would decide which countries would be recipients and which activities financed. In order to take advantage of economies of scale and avoid excessive transaction costs, it was suggested that it should be used a single, multi-purpose, unearmarked fund, financed using extrabudgetary resources. The preliminary estimates of requirements were based on the bodies envisaged in the current version of the agreement, exploiting synergies and economies of scale, building on the experience gained in the negotiation process and training activities carried out regularly by ECLAC.

52. The elected representative of the public commended the work of ECLAC, which had proved to have sufficient technical expertise and commitment to continue supporting the process and capacity-building efforts.

53. The representative of Chile stressed the importance of not losing sight of the ultimate goal: to produce an ambitious and effective agreement that would be relevant and useful to the region. He said that if all countries were fully satisfied with the expected results, the discussion of procedures and mandates would be eased. At the current stage of the negotiations, he was of the opinion that it was not necessary to go into too much detail or reiterate estimates, as the countries already had a general idea and all other details could be provided once the institutional matters had been agreed.

54. The representative of Costa Rica welcomed the opportunity to discuss those articles. She said that access rights were human rights and that a lack of economic resources did not exempt States from respecting them. She urged representatives to be optimistic and to take into account the opportunities offered by the agreement and the capacities within the secretariat and countries, which had made a very positive impact on the process and the region. One example was the Observatory on Principle 10, which was a first step towards complying with the provision for a clearing house.

55. The representative of Brazil agreed that more information was needed in order to make better decisions. If a relevant and effective mechanism was to be created, the financial estimates must include the support that would be given to the public.

56. Delegations considered the dialogue to have been very useful and asked the secretariat to provide official information on the future administrative and financial costs of the agreement.

Negotiation of the regional agreement on access to information, public participation and justice in environmental matters in Latin America and the Caribbean (agenda item 5)

57. Under this agenda item, the delegations considered the document *Text compiled by the Presiding Officers incorporating the language proposals received from the countries on the preamble and articles 1 to 10 of the preliminary document on the regional agreement on access to information, participation and*

*justice in environmental matters in Latin America and the Caribbean. Sixth version*⁸ and reference documents on articles 5 (prepared by Argentina, Chile and Costa Rica), 6 and 7 (prepared by Mexico and Trinidad and Tobago), 8 (prepared by Argentina and Peru) and 10 (prepared by Costa Rica and Saint Vincent and the Grenadines).

58. The negotiations centred on articles 6 to 8 and 10 of the sixth version of the text compiled by the Presiding Officers, with the aforementioned language proposals prepared by the coordinators of the contact groups established by the Presiding Officers forming the basis for the discussions.

59. The delegations agreed articles 6, 7 and 8, in their entirety, which was reflected in the text. At the suggestion of Chile, countries asked the secretariat to harmonize the use of the terms "each Party" or "the Parties", where appropriate, in the seventh version of the compiled text.

60. During the discussions on article 7, the representative of Dominica stressed that the particular vulnerability of Caribbean countries to climate change and the challenges that they faced when implementing adaptation measures must be taken into account.

61. The countries also began consideration of article 10 on the basis of the proposal made by the coordinators of the contact group. As they did not conclude their review of that article, they agreed to continue their negotiations at the next meeting using a new version of the proposed text.

62. Taking up a suggestion from the public, the representative of Costa Rica, supported by Chile, Paraguay, Panama and Peru, proposed alternative wording for article 9 bis on environmental defenders.⁹ While that proposal would be negotiated at the committee's next meeting, some countries said that some elements needed to be clarified and asked that a concept note be prepared, detailing the origin and sources of the language used, in order to facilitate its review at the next meeting.

63. The delegations devoted a session to a general exchange of views on articles 11 to 25 and the legal nature of the agreement.

64. The representative of Chile reiterated that his country was in favour of a legally binding treaty, since non-binding statements and instruments would not be adequate to achieve the desired results. He said that the real question was not whether the instrument should be binding, but rather what countries' obligations would be. The future agreement should have a clear mandate and advance the desired objectives, building on national progress and based on cooperation, training and capacity-building efforts.

65. The representative of Costa Rica joined Chile in calling for a binding instrument. She said that it was important to have effective implementation and monitoring mechanisms. The aim of the agreement was not to have a repressive instrument, but rather one designed to share lessons learned and experiences, build capacities and open up spaces for addressing challenges and setting priorities. The countries should, therefore, uphold the core priority issues in order to guarantee access rights with clear obligations, supported by the secretariat and other countries.

⁸ LC/L.4059/Rev.5.

⁹ Following the proposal by Mexico, the negotiating committee agreed at its sixth meeting to include a specific article on environmental defenders that would cover elements that originally appeared under article 9 on access to justice. At its eighth meeting, the negotiating committee would review the alternative drafting proposals contained in the seventh version of the compiled text.

66. The representative of Peru said that the future agreement should be a binding instrument in order to be a powerful regional tool that would allow rights to be implemented more effectively. He drew attention to the expected commitments and the fact that the agreement recognized the specificities and multicultural nature of the region. The ultimate aim should be to eliminate any barriers to the effective exercise of rights.

67. The representative of Mexico said that the process had helped to raise countries' awareness of the importance of having workable systems that could adapt to national realities, capacities and characteristics. He called for clarity on the process' aims and for the most suitable tools and mechanisms to be identified. His country had a well-developed national access rights system, so it did not need a regional commitment to create what it had already established. In that regard, a legally binding instrument might not be the most appropriate tool. Nevertheless, his country stood ready to make available to other countries its extensive knowledge, skills and experience. He expressed support for an action plan for regional cooperation on that matter.

68. The representative of Paraguay said that his country was seeking a binding agreement, as it better reflected the energy, effort and ambition invested in it. He echoed the call of the representative of Costa Rica for the core elements of environmental democracy to be upheld. A binding agreement would mean that everyone was working towards the same goal, founded on collaboration and cooperation.

69. The representative of Panama also expressed his country's preference for a binding agreement. He said that the countries had been working on that understanding and that it could not really be otherwise, given that the rights that were being implemented were human rights, which crystallized general principles and key elements of environmental law. He reiterated his call for the high level of ambition to be maintained and for the text to set new standards in the protection of those rights that went beyond the lowest common denominator. Representatives should conduct the negotiations with the gravity and historic responsibility that those rights deserved.

70. The representative of Colombia said that there were still outstanding issues to be defined and that representatives must assess whether the text properly reflected the stated aims and objectives. He said that some aspects required further discussion and definition, bearing in mind countries' particularities and differences in their capacities and development. For his country, striking the right balance between the substantive and operative parts of the agreement was more important than the question of whether the instrument was binding or not. That would not preclude consideration of articles 11 to 25, on the understanding that the nature of the instrument would be defined during the negotiations. However, Colombia would not hinder those countries that wished to negotiate a binding instrument.

71. The representative of Argentina said that the discussions during the negotiations had been enriching and that the rights were crucial to the region's democracies and societies. Her country was already implementing Principle 10 and would welcome the agreement being accorded a higher level in the legal hierarchy, which would give it greater legal force. It therefore supported a binding regional agreement.

72. The representative of the Dominican Republic agreed that it was preferable to have a binding instrument, even if there were still outstanding issues, such as financial and budgetary aspects.

73. The representative of Brazil said that she was not prepared to offer an opinion on the nature of the instrument, on the understanding that the decision would be taken at a later date. She reaffirmed her country's commitment to the process and said that new opportunities and mechanisms for participation should be considered during the examination of articles 12 to 25. She reiterated that a cooperation-based approach should be adopted with regard to monitoring the agreement, and that the aim was to ensure greater and more effective access to the three rights and to work collaboratively with civil society.

74. The representative of Trinidad and Tobago reiterated that his country favoured a legally binding agreement.

75. The elected representative of the public thanked all those countries that had spoken in favour of a binding instrument and urged those that had not yet done so to support a binding agreement. She stressed that the public was of the opinion that the agreement must be binding and comply with the highest standards in order to bring about real change in the region.

76. Representatives were then given the opportunity to address questions on articles 19 to 25 of the agreement to the Chief of the Treaty Section of the Office of Legal Affairs of the United Nations. The Chief of the Treaty Section welcomed the opportunity to provide the negotiating committee with legal support and referred to the presentation he had given at the intersessional virtual meeting on 23 May 2017.

77. The representatives thanked the Chief of the Treaty Section for attending the meeting and for the alacrity with which he had provided support, particularly during the intersessional period. The representative of Colombia asked whether the Secretary-General was also the depositary of treaties concluded in the framework of other regional commissions and whether it was necessary to include additional provisions in the agreement to better reflect the modalities of cooperation between the secretariat of the treaty and the depositary. He also requested clarification on the distribution of responsibilities between the secretariat and the depositary and asked whether the Treaty Section would undertake a review of the legal coherence and consistency of the text. The representative of Brazil said that it was essential to have the text in Portuguese, and asked for clarification in that regard, given that it would be agreement negotiated within the framework of ECLAC. Lastly, the representative of Chile asked about the stages prior to the entry into force.

78. The Chief of the Treaty Section said that the Secretary-General of the United Nations was the depositary of all agreements concluded within the framework of the United Nations and its regional commissions, including ECLAC. He was therefore the depositary of multilateral environmental agreements with universal scope and treaties of other regional commissions such as the Aarhus Convention. The Treaty Section discharged all the Secretary-General's depositary functions under those treaties. With regard to the division of responsibilities between the depositary and the secretariat of the treaty, he said that the depositary was responsible for matters related to participation in the treaty (such as receiving instruments of ratification and accession, determining the entry into force, among other things), and for other aspects relating to the text of the treaty (such as custody of the original document or circulating adopted amendments). Meanwhile, issues relating to the implementation of the treaty and to its bodies were the responsibility of the secretariat. He was of the opinion that the text of the draft agreement, which had already been reviewed by the Treaty Section, did not require any modification and adequately reflected the relationship between the depositary and the secretariat of the agreement. In response to the query about the Portuguese text, he recalled that the Secretary-General was the depositary of treaties concluded only in the six official languages of the United Nations, as the Organization could not ensure the effective performance of the core depositary functions for treaties in other languages. However, that was only the case for the authentic texts and did not preclude the existence of non-authentic official versions in other languages. For example, the Aarhus Convention had an official Spanish version, but that was not an authentic text. With regard to the period prior to the entry into force, he said that once the text had been adopted, the regional commission would request the Secretary-General to accept the depositary functions and send the text of the agreement as adopted to the Treaty Section. The original treaty would then be prepared on the basis of that text, certified true copies would be distributed and the date on which the agreement would be open for signature would be announced. He pointed out that simply signing the agreement would not suffice for a State to express its consent to be bound by it; the agreement would only enter into force once the established number of ratifications had been reached. He said that the Treaty Section would not review the legal coherence and consistency of the text, as it was normally done during

the course of the negotiations. If errors came to light after the adoption of the agreement, a very specific and formal correction procedure would have to be followed. The final text should therefore be reviewed very carefully before adoption to ensure that the two authentic texts coincided and that the terms used were correct. Lastly, he said that the Treaty Section would continue to provide the countries and the secretariat with legal support in the future stages of the process.

Consideration and adoption of agreements (agenda item 6)

- 79. The delegations then considered the agreements of the seventh meeting of the negotiating committee.
- 80. The delegations adopted the agreements set out in annex 1 by consensus.

Closing session

81. During the closing session, statements were made by Marcia Levaggi, Director-General of Environmental Affairs of the Ministry of Foreign Affairs and Worship of Argentina, Tomás Severino, elected representative of the public, and Carlos de Miguel, Head of the Policies for Sustainable Development Unit of the Sustainable Development and Human Settlements Division of ECLAC.

82. The Director-General of Environmental Affairs of the Ministry of Foreign Affairs and Worship of Argentina highlighted the progress made in the negotiations, as well as the challenges among the outstanding issues that must be addressed before they could be concluded successfully. She thanked all parties and the secretariat for their collaboration and noted that they were in the final stages of negotiating an agreement of great significance for the region. She reiterated that her country was seeking a legally binding treaty.

83. The representative of the public thanked Argentina and the secretariat for organizing the meeting. While he recognized that progress had been made in the negotiations, he said that the public was disappointed with the text in its current form. He said that it was regrettable that the leadership and ambitious vision that had characterized the process to date had been lost. The public hoped that the process would produce forward-looking regional standards that would change the reality of the region and offer an appropriate response to the millions of people suffering as a result of environmental degradation. A decision must be taken on the way forward. He criticized the regime of exceptions for refusing access to information that had been agreed, saying it simply referred to domestic legislation and did not provide for the mandatory disclosure of some information, such as emissions of pollutants. With regard to public participation, he reiterated that the text must call for the early involvement of the public when all options were still open. On the matter of access to justice, he said that the agreement must recognize the broad active legal standing, ensure full guarantees for environmental defenders and establish measures to prevent harm and facilitate the production of evidence. There was a need to reflect on the direction the negotiations were taking and the level of ambition shown. He urged delegates to reverse that trend when negotiating the pending articles and reflect the spirit and aims of Principle 10.

84. The Head of the Head of the Policies for Sustainable Development Unit of ECLAC thanked Argentina for taking the Chair and hosting the seventh meeting, and the public for their valuable inputs. He urged delegations to maintain the level of ambition and dialogue in order to conclude the regional agreement, which was so important for the countries and their societies. He reiterated the commitment of ECLAC to the process and the next stages, as the conclusion of the negotiations would not mean that the work of implementing access rights was complete; instead countries would have to start to give effect to those rights accordingly.

Annex 1

AGREEMENTS

The representatives of the countries participating in the seventh 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, held in Buenos Aires from 31 July to 4 August 2017,

1. *Acknowledge* the significant progress made in the negotiations on the basis of the text compiled by the Presiding Officers, which will be presented in a seventh version of that document;

2. *Reiterate*, with a view to concluding the negotiations at the eighth meeting of the negotiating committee based on the seventh version of the text compiled by the Presiding Officers, the request made to the Presiding Officers to steer the negotiation process, with the support of the Economic Commission for Latin America and the Caribbean as technical secretariat, by continuing to use the flexible working modalities for the review of outstanding issues already considered by the plenary, including establishing new contact groups and/or maintaining the existing ones, open to the participation of the public;

3. *Decide* to hold the eighth 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 in a place to be determined in November 2017;

4. *Welcome* Saint Lucia as a signatory country of the Declaration on the application of Principle 10 of the Rio Declaration on Environment and Development¹ and recall that the invitation to join this regional process is open to all the countries of Latin America and the Caribbean that have not yet done so;

5. *Thank* the Economic Commission for Latin America and the Caribbean for its support as technical secretariat and, in particular, for the presentation of the document *Future regional agreement on access to information, participation and access to justice in environmental matters in Latin America and the Caribbean and the procedure for establishing its technical secretariat*² and the progress made in the development of the Observatory on Principle 10 in Latin America and the Caribbean;

6. *Also thank* the public and its representatives for their meaningful participation in the seventh meeting of the negotiating committee and for its contributions;

7. *Thank* the people and the Government of Argentina for their hospitality and the effort devoted to the organization of the seventh 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.

¹ A/CONF.216/13.

² LC/CNP10.7/3.

Annex 2

LIST OF PARTICIPANTS

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