



PARTICIPANTS ONLY
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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

Santiago, 27 November-1 December 2017

ARTICLE 9 **ACCESS TO JUSTICE IN ENVIRONMENTAL MATTERS***

Proposal of Brazil and Chile

* This document has not undergone formal editing.

ARTICLE 9

Access to justice in environmental matters

1. Each Party shall guarantee the right of the public to access to justice in environmental matters through administrative and judicial means, in accordance with the guarantees of due process.
2. Each Party shall ensure, in the framework of its domestic legislation, the public's access to judicial and administrative entities to challenge, with respect to substance and procedure, the legality of:
 - (a) any decision, action or omission related to the access to environmental information;
 - (b) any decision, action or omission related to public participation in the decision-making process regarding environmental matters; and
 - (c) any administrative and judicial decision, action or omission that affects or could affect the environment adversely or violate laws and regulations related to the environment.
3. Each Party shall ensure the right of appeal to a higher body.
4. Each Party shall provide:
 - (a) judicial or non-judicial competent entities with expertise in environmental matters;
 - (b) procedures subject to the principles of effectiveness, publicity, transparency and impartiality, among others;
 - (c) broad active legal standing in defence of the environment that may include, inter alia, class actions;
 - (d) the possibility of ordering precautionary, interim and oversight measures to safeguard, prevent, halt and rehabilitate or mitigate damage to the environment;
 - (e) measures to facilitate the production of evidence of environmental damage, including strict liability, the reversal of the burden of proof and the dynamic burden of proof as applicable. Mechanisms should be promoted to ensure the production of evidence, even when the Parties do not have the necessary funds to do so;
 - (f) mechanisms to timely execute and enforce judicial and administrative rulings and decisions; and
 - (g) mechanisms for redress, where applicable, including restitution, restoration, compensation, satisfaction, guarantees of non-repetition, assistance for affected persons and the establishment of financial mechanisms, such as funds to assist in redress.
5. To facilitate access to justice in environmental matters, each Party shall establish:
 - (a) mechanisms to minimize or eliminate barriers to the exercise of the aforementioned right, including those linked to financial costs;
 - (b) mechanisms to publicize the right of access to justice and procedures to ensure its effectiveness;

- (c) mechanisms to communicate and disseminate judicial and/or administrative criteria and decisions; and
 - (d) the use of interpreters or translators when the petitioners or defendants speak indigenous languages.
6. In order to give effect to the right of access to justice, each Party shall give consideration to persons and groups in vulnerable situations by establishing, inter alia:
- (a) support mechanisms, including free technical and legal assistance;
 - (b) assistance for persons with disabilities; and,
 - (c) assistance for persons having difficulties with reading and/or writing.
7. Each Party shall ensure that the judicial and administrative decisions adopted in environmental matters and their legal reasonings are set out in writing, and made available to the public.
8. Each Party shall encourage the generation of public registers of judicial and administrative decisions in environmental matters.
9. Each Party shall encourage the development and use of alternative dispute resolution mechanisms, where appropriate.
10. When implementing the right of access to justice in environmental matters, each Party may, where appropriate, encourage the establishment of uniform judicial and/or administrative standards of review in their jurisdictions in cases pertaining to environmental damage.