

ENVIRONMENT AND DEVELOPMENT

Access to information, participation and justice in environmental matters in Latin America and the Caribbean

Situation, outlook and examples
of good practice



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This document was prepared with financial support from the United Nations Development Account project “Improving management of resources for the environment in Latin America and the Caribbean” and the Federal Ministry for Economic Cooperation and Development (BMZ) of Germany through the German Agency for International Cooperation (GIZ).

The opinions expressed in this document, which has not undergone formal editorial review, are the sole responsibility of the author and may not reflect the opinions of the Organization.

United Nations publication

ISSN 1564-4189

LC/L.3549/REV.2

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Printed in United Nations, Santiago, Chile

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Summary

This document reviews laws and institutional frameworks that safeguard Principle 10 of the Rio Declaration on Environment and Development of 1992, which refers to access to information, participation and justice in environmental matters, in the 33 countries of Latin America and the Caribbean. In addition to the information that was collected, a questionnaire on implementation of Principle 10 at the national level was circulated in the first quarter of 2013, which was completed by 16 countries in the region and 10 civil society organizations.

As shown in this document, despite the significant progress made over the past 20 years, many countries of the region have yet to enact legislation to facilitate the implementation of Principle 10 of the Rio Declaration, while others are encountering implementation difficulties. Now, more than ever, the Latin American and Caribbean region must seek the full implementation of Principle 10, given that it provides a clear, pioneering vision of transparency, justice and access to information as a basis for deepening democracy and eliminating global asymmetries. It is widely recognized that deepening democracy as a collective order calls for progress towards providing equal opportunities and rights. This means enforcing the rights of those sectors of society that have historically been marginalized from decision-making to access to information, participation and justice on environmental matters.

To this end, steps must be taken to build the capacity of those groups that have traditionally been underrepresented in participatory processes; this includes women, as well as indigenous populations and communities, and involves recognizing the various languages and cultures that exist in the region.

In this context, legal requirements, however important, cannot by themselves ensure the full implementation of access rights. Efforts must be taken to broaden demand for access to information and participation in environmental matters and to inform citizens of their right of access to justice. Environmental education is one of the most widely used tools for strengthening citizen participation in environmental decision-making. It is gradually being incorporated into legislation in order to develop the population's environmental awareness.

I. Introduction

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

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

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

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

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

¹ See the submission of the organization Article 19 [online] www.unccd2012.org/content/documents/Article19%20Submission%20to%20UNCCD.pdf.

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

BOX 1 COSTS AND OPPORTUNITIES OF EARLY CITIZEN PARTICIPATION IN THE ENVIRONMENTAL DECISION-MAKING PROCESS

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

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

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

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

Conflict prevention. Early citizen engagement avoids the social conflict associated with perceived injustice that can drive costs up because of revoked permits, duplicate studies or the blocked or delayed execution of projects, plans, programmes and policies (CONAMA, 1999).

Flow of information. Participatory processes ensure that the flow of information on decisions made, as well as inputs from civil society for making those decisions, is official and clear. This reduces failures associated with imperfect information and information asymmetries in decision-making.

Given that the use of public goods is always a complex issue, citizen participation distributes accountabilities and builds a more just model for using those goods. Horizontal governance thus contributes to a greater overall benefit.

Decisions taken in participatory settings and with a free flow of information help to maintain more stable State policies that transcend political cycles.

These points converge to improve decisions and the services that they concern.

These factors suggest that the cost of failing to involve citizens in decision-making is higher than the transaction costs associated with their participation. Thus, the benefits of including citizens will extend beyond the moral reasons of deepening democracy, cohesion and social justice.

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

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

BOX 2 DEFINING ACCESS RIGHTS

The three pillars of Principle 10 —access to information, participation in decision-making and access to justice in environmental matters— are often referred to collectively as “access rights”:

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

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

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

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

BOX 3 THE BUILDING BLOCKS OF GOOD GOVERNANCE AND ENVIRONMENTAL DEMOCRACY

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

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

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

Box 3 (concluded)

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

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

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

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

The importance of access rights has also been recognized by the business sector. In this regard, it has been put forward that open disclosure of corporate information, far from putting businesses at greater risk of negative interactions with social actors, cuts the cost of and leads to more positive approaches to problem-solving. In the sphere of business-community relations, it has also been noted that involving social actors can actually improve, in terms of both cost and time, the information base of core social issues. For example, indigenous communities can bring to business studies useful knowledge on the way the community relates to the environment and the changes that have taken place over time (IIED/WBCSD, 2008). According to the final report of the Mining, Metals and Sustainable Development (MMSD) project supported by the World Business Council for Sustainable Development (WBCSD) and the International Institute for Environment and Development (IIED), "there is a strong business case to be made for free and open access to information. Once a company has established the fundamentals of improved sustainability performance, then increased trust, reduced transaction costs, better feedback, reduced risks, more effective resource use, and increased reputational value all arise through communicating this effectively to others" (IIED/WBCSD, 2008, page 402).

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

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

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

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

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

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

II. Access to information, participation and justice in environmental matters on a global scale

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

BOX 4

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

1992. **Rio Declaration on Environment and Development:** The Declaration is a non-binding commitment adopted by 178 governments at the United Nations Conference on Environment and Development (Earth Summit, Rio de Janeiro, Brazil, 1992). According to Principle 10 of the Declaration, environmental issues are best handled with the participation of informed citizens and effective access to judicial and administrative proceedings, including redress and remedy, should be provided.

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

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

1996. **Declaration of Santa Cruz de la Sierra:** In this declaration, the member States of the Organization of American States (OAS) pledged to support and encourage, as a basic requisite for sustainable development, broad participation by civil society in the decision-making process, including policies and programs and their design, implementation, and evaluation.

Box 4 (continued)

1998. Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters (Aarhus Convention): This is a binding regional instrument for which the United Nations Economic Commission for Europe (UNECE) acts as secretariat. The convention lays out minimum standards for countries to write into their national laws. Its three pillars are access to information,

participation and justice in environmental decision-making. The convention entered into force on 30 October 2001; to date, there are 45 signatory countries with widely different levels of economic development. Although it is a regional instrument, the Aarhus Convention is open to adoption by countries that are not members of ECE. Countries wishing to adhere to the Convention are required to amend their national laws to align them with its postulates.

2000. Inter-American Strategy for the Promotion of Public Participation in Decision Making for Sustainable Development: The strategy encourages but does not require adoption of a set of principles and a strategy for promoting transparent, effective and responsible public participation in decision-making and in designing, adopting and implementing sustainable development policies in Latin America and the Caribbean. The strategy was adopted by the member States of OAS.

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

2001. MERCOSUR Framework Agreement on the Environment: In article 1, the States parties reaffirm their commitment to the principles set forth in the Rio Declaration on Environment and Development of 1992. Article 6 establishes the obligation of States to carry out certain actions, including providing timely information on environmental disasters and emergencies that may affect the other States parties and, where possible, technical and operational support.

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

2002. Latin American and Caribbean Initiative for Sustainable Development: This initiative was adopted in 2002 by the governments of Latin America and the Caribbean in the context of the World Summit on Sustainable Development in Johannesburg. Its main objective is to assess progress and take effective actions towards sustainable development in the countries of the region. In 2003, the Forum of Ministers of the Environment of Latin America and the Caribbean decided to support a project to produce national environmental indicators and the economic, social and institutional indicators required to assess progress in the implementation of the initiative. The indicators used to evaluate the institutional aspects include the preparation of reports on the state of the environment and the creation of national councils for sustainable development.

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

2005. Mauritius Declaration and Mauritius Strategy for the Further Implementation of the Programme of Action for the Sustainable Development of Small Island Developing States: In the Declaration, the small island developing States reaffirm their commitment to the Principles of the Rio Declaration on Environment and Development. In the Strategy, they reaffirm the importance of gender equality and promoting the full and equal access of women and men to political participation at all levels and to decision-making systems for sustainable development. With the necessary support of the international

Box 4 (concluded)

community, small island developing States must continue trying to improve legislative, administrative and institutional structures in order to develop and implement sustainable development strategies, policies and plans, mainstream sustainable development concerns into overall policy development and implementation, and facilitate the participation of civil society in all sustainable development initiatives.

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

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

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

2010. **Declaration of Santo Domingo for the Sustainable Development of the Americas:** In the Declaration, the member States of OAS made a commitment to promote citizen and public participation as a key element in the sustainable development policy decision-making process.

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

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

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

2013. **First Summit of the Community of Latin American and Caribbean States (CELAC):** Article 60 of the Declaration of Santiago states that we (the Community) “Appreciate initiatives for regional implementation of the 10th Principle of the 1992 Rio Declaration, regarding the rights of access to information, participation and environmental justice, as a significant contribution to the participation of organized community committed to Sustainable Development”.

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

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

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

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

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

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

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

At an extraordinary meeting of the Parties to the Aarhus Convention in May 2003, the parties adopted the Kiev Protocol on Pollutant Release and Transfer Registers, which came into force in 2009. The Protocol is the first legally binding international instrument on pollutant release and transfer registers. It aims to enhance public access to information through the establishment of inventories of pollution from industrial sites and other sources. As of April 2013, the Protocol had been ratified by 31 countries and the European Union.⁸

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

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

⁸ See [online] www.unece.org/env/pp/prtr.html.

III. Tracking access rights in environmental matters in Latin America and the Caribbean⁹

A. Background

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

Thus, today, environmental rights and obligations have been included in most of the political constitutions of the countries of Latin America and the Caribbean. All countries in the region now have a ministry, secretariat or equivalent devoted to the environment (see table 1) and most have enacted general or framework legislation on the environment, many of which have been amended (see table 2) (United Nations, 2012). Many of these general laws were inspired by the guiding principles contained in the 1992 Rio Declaration and have been supplemented with a broad body of complementary legislation relating to access to information, participation and justice. The foregoing legislation is reinforced by a significant body of case law reaffirming access rights from national legal systems and the Inter-American Court of Human Rights.¹⁰

⁹ This section is based on a review of the laws and institutional frameworks that safeguard access to information, participation in decision-making and justice in environmental matters in the 33 countries of Latin America and the Caribbean. The information gathered was complemented with a questionnaire on the implementation at the national level of Principle 10 of the 1992 Rio Declaration, which was circulated in the first half of 2013 and filled in by 16 countries of the region and 10 civil society organizations.

¹⁰ In 2010, the Office of the Special Rapporteur for Freedom of Expression of the Inter-American Commission on Human Rights published a report entitled “The Inter-American Legal Framework regarding the Right to Access to Information”, which presents systematically the standards on access to information in the inter-American human rights system and the case law from various countries in this connection. See [online] <http://www.oas.org/en/iachr/expression/docs/publications/access%20to%20information%20final%20con%20portada.pdf>.

In Costa Rica, for example, the Constitutional Court established a precedent in 1989 to guarantee the right to information.

TABLE 1
LATIN AMERICA AND THE CARIBBEAN: HIGHEST ENVIRONMENTAL AUTHORITIES

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

Source: Economic Commission for Latin America and the Caribbean (ECLAC), on the basis of United Nations, Sustainable Development 20 Years on from the Earth Summit: progress, gaps and strategic guidelines for Latin America and the Caribbean (LC/L.3346/Rev.1), Santiago, Chile, 2012. Updated on 17 May 2013.

TABLE 2
LATIN AMERICA AND THE CARIBBEAN: ENVIRONMENTAL FRAMEWORK LAWS

Country	Environmental framework law	Year (amended)
Antigua and Barbuda	Environmental Protection and Management Bill ^a	2010 ^a
Argentina	General Environment Act, No. 25 675	2002
Bahamas	Conservation and Protection of the Physical Landscape of the Bahamas Act, No. 12	1997(2000)
Barbados	-	-
Belize	Environmental Protection Act, No. 22	1992 (2009)
Bolivia (Plurinational State of)	Environment Act, No. 1 333	1992
Brazil	Act on the National Environmental Policy, its purposes and mechanisms of formulation and implementation, and other measures, No. 6.938	1981
Chile	Basic Act on the Environment No. 19.300 (No. 20.417)	1994 (2010)
Colombia	General Environment Act creating the Ministry of Environment, rearranging the public sector responsible for the management and conservation of the environment and renewable natural resources, organizing the National Environmental System (SINA) and other provisions, No. 99	1993
Costa Rica	Environment Organization Act, No 7.554	1995
Cuba	Environment Act No. 81	1997
Dominica	Environmental and Natural Resource Management Bill ^a	2012 ^a
Dominican Republic	General Act on the Environment and Natural Resources, No. 64	2000
Ecuador	Environment Management Act, No. 37	1999
El Salvador	Environment Act , No. 233	1998
Grenada	-	-
Guatemala	Environmental Protection and Improvement Act, No. 68	1986
Guyana	Environmental Protection Act, No. 11	1996
Haiti	Decree on Environmental Management for Sustainable Development	2005
Honduras	General Environment Act, No. 104	1993
Jamaica	Natural Resources Conservation Authority Act, No. 9	1991
Mexico	Ecological Equilibrium and Environmental Protection Act	1988 (2013)
Nicaragua	General Act on the Environment and Natural Resources, No. 217	1996
Panama	General Environment Act of the Republic of Panama, No. 41	1998
Paraguay	-	-
Peru	General Environment Act, No. 28.611	2005
Saint Kitts and Nevis	National Conservation and Environmental Protection Act, No. 5	1987 (1996)
Saint Lucia	National Conservation Authority Act	1999
Saint Vincent and the Grenadines	-	-
Suriname	Nature Conservation Act, No. 26	1954 (1992)
Trinidad and Tobago	Environmental Management Act, No. 3	2000
Uruguay	Environmental Protection Act, No. 17.283	2000
Venezuela (Bolivarian Republic of)	Environment Organization Act, No. 5.833	2006

Source: Economic Commission for Latin America and the Caribbean (ECLAC), on the basis of United Nations, Sustainable Development 20 Years on from the Earth Summit: Progress, gaps and strategic guidelines for Latin America and the Caribbean (LC/L.3346/Rev.1), Santiago, Chile, 2012. Updated on 17 May 2013.

^a Draft legislation in italics.

Some free trade agreements signed by the countries of Latin America and the Caribbean have also promoted rights of access in the region. Box 5 presents some of these experiences. The evaluation of Chile's environmental performance conducted by the Economic Commission for Latin America and the Caribbean (ECLAC) and the Organisation for Economic Cooperation and Development (OECD), prior to the country's admission to the latter, implied an additional impetus in this sphere. The evaluation included a chapter on environmental democracy, which reviewed the advances and challenges relating to access to information, participation and environmental justice in the country. The report underscored the need to consolidate environmental information systems by improving, systematizing and expanding information on the environment. Authorities were urged to improve and systematize practices and to promote a more comprehensive use of environmental impact assessment systems (for projects) and strategic environmental assessments (policies and plans), with a view to ensuring truly effective participation. The recommendations set forth in the report were taken into account in the 2010 amendment of the Basic Act on the Environment, which incorporates strategic environmental assessment and provides for citizen participation forums. The treaty between the United States of America and the Eastern Republic of Uruguay concerning the encouragement and reciprocal protection of investment contains provisions on access rights.

BOX 5

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

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

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

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

United States-Colombia Trade Promotion Agreement (2006): Chapter 18 concerning the environment sets out similar provisions in its paragraphs 3 and 6 as the Dominican Republic-Central America-United States Free Trade Agreement (CAFTA-DR).

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

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

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

Cooperation agreements in North America (1992): International cooperation between Canada, the United States and Mexico is built around three axes: the North American Free Trade Agreement (NAFTA); the North American Agreement on Labor Cooperation (NAALC); and the North American Agreement on

Box 5 (concluded)

Environmental Cooperation (NAAEC). The three agreements were promoted jointly, but in order to mesh environmental regulations in the three countries, NAFTA was subject to signature of NAAEC, which provides for participation mechanisms such as the Joint Public Advisory Committee and the national advisory committees of the three countries, and mechanisms for access to environmental justice such as the submission of citizen petitions on failures to effectively enforce environmental law. It is on the basis of this agreement and the United States-Mexico Border XXI Program that Mexico implemented a pollutant release and transfer register and policies for participation in environmental impact assessment proceedings.

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

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

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

Access to information	Freedom of information mechanisms Environmental information systems State of the environment reports Toxic release inventories/pollutant release and transfer registers Emergency warning systems Air and water quality monitoring systems
Public participation	Environmental impact assessment Strategic environmental assessment Prevention and decontamination planning Emissions and environmental quality standards Environmentally friendly land-use planning Hearings on permits and planning Legislative hearings
Access to justice	Litigation Alternative dispute resolution Administrative justice mechanisms (planning councils, etc.) Specialized bodies with environmental jurisdiction Complaints procedures

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

As in other parts of the world, civil society has played a major role in disseminating the access rights stemming from Principle 10 of the Rio Declaration in Latin America and the Caribbean. The work done by The Access Initiative is particularly noteworthy.¹¹

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

The United Nations Environment Programme (UNEP) has used the Global Environmental Citizenship Project to promote access rights. As part of the same effort, it has examined regional

¹¹ The Access Initiative has assessed national public participation systems for guaranteeing access to information, participation and justice in decision-making processes that affect the environment in 15 countries of Latin America and the Caribbean. For more information, see [online] <http://www.accessinitiative.org/region/latin-america>.

instruments provided by the Latin American Parliament, and has promoted tools for access to environmental justice through training of judges and prosecutors.

Meanwhile, since 2008, the United Nations Institute for Training and Research (UNITAR) has been supporting various countries in the region (Costa Rica, Dominican Republic, El Salvador, Honduras, Nicaragua and Panama) in the development of national profiles that identify the divides and required actions for the fulfilment of Principle 10 of the Rio Declaration.¹² National workshops were organized for this purpose in all the countries and were attended by approximately 400 stakeholders in the region. The national profiles prepared for Costa Rica, the Dominican Republic, El Salvador and Honduras were converted into reference material for both public authorities and civil society in terms of access to information, participation in decision-making and justice in environmental matters. Moreover, the self-assessments of the existing national institutional frameworks were converted into reference material for supporting future capacity-building activities for strengthening environmental democracy.¹³

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

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

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

1. Progress made in the past 20 years

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

Currently, access to information is guaranteed under the constitution in 15 countries in Latin America, while 11 countries in the English-speaking Caribbean have a constitutional provision on freedom to receive information.¹⁴ For the region as a whole, specific legislation on access to public information exists in 18 countries and 7 others are engaged in adopting or creating such legislation (see table 4). In most countries the parameters determining access to environmental information are split between the framework environmental legislation and the legislation on access to public information. As shown in table 4, only Argentina and Brazil have promulgated specific laws establishing a system for accessing environmental information,

Latin America and the Caribbean has made great strides in access to public information since the early 2000s, reflecting the growing importance of transparency and accountability in governance worldwide and also in the region. The OAS provided additional impetus through the model law on access to public information prepared by the Secretariat for Legal Affairs to support the American States in the processes of formulating, reviewing and reforming legislation in this field and to further the implementation of the Inter-American Convention against Corruption.¹⁵

In addition to recognizing the right of individuals to access public information, most of the laws enacted in the region in the last decade include mechanisms to facilitate such access.

¹² See [online] www.unitar.org/egp/rio-principle-10-projects.

¹³ See [online] www.unitar.org/egp/publications.

¹⁴ Antigua and Barbuda, Bahamas, Barbados, Belize, Dominica, Grenada, Guyana, Jamaica, Saint Kitts and Nevis, Saint Lucia and Saint Vincent and the Grenadines.

¹⁵ See [online] www.oas.org/dil/access_to_information_model_law.htm.

In Antigua and Barbuda, for example, the Freedom of Information Act of 2004 (part II) establishes that every public authority shall designate an information officer to act as a central contact for the public. The Act also provides for the appointment of an Information Commissioner, whose functions include publishing a guide on minimum standards and compiling a set of best practices regarding the duty of public authorities to publish information. In Chile and Mexico, independent and autonomous transparency bodies have been set up pursuant to legislation on access to public information in order to monitor, promote and consolidate the capacities of society and the State with regard to institutional transparency. Table 5 compares the experiences of different countries in the region in relation to legislation on access to public information.

TABLE 4
LATIN AMERICA AND THE CARIBBEAN: LEGAL FRAMEWORKS PROTECTING ACCESS TO PUBLIC AND/OR ENVIRONMENTAL INFORMATION AND DEFINITION OF ENVIRONMENTAL INFORMATION IN THE LEGISLATION

Country	Provision for access to public information in the Constitution	Legislation on access to information (year)	Other legal provisions covering access to public or environmental information	Definition of environmental information in legislation on access to information or framework legislation on the environment
Antigua and Barbuda	-	Freedom of Information Act (N° 19 of 2004)	-	-
Argentina	-	-	Decree N° 1.172 (2003), General Environment Act (No. 25.675 of 2002) and the Act on System of Free Access to Public Information on the Environment (N° 25.831 of 2004)	Act N° 25.831, art 2
Bahamas	-	Freedom of Information Bill ^a	The Environmental Health Services Act (N° 4 of 1987) forbids the publication of certain environmental information without authorization by the source (art. 30)	-
Barbados	-	Freedom of Information Bill ^a		-
Belize	-	Freedom of Information Act (N° 9 of 1994, amended in 2008)	Environmental Protection Act (N° 22 of 1999, amended in 2009)	-
Bolivia (Plurinational State of)	Arts. 21(6), 24, 106 and 242(4)	Information Transparency and Access Bill ^a	Environment Act, (N° 1333 of 1992) and Supreme Decree N° 28168 of 2005	-
Brazil	Arts. 5(14) and 5(33)	Access to Information Act (N° 12527 of 2012)	Act providing for public access to data and information in the bodies and entities of SISNAMA (N° 10650 of 2003)	Act N°. 10650, art. 2
Chile	Art. 8	Access to Public Information Act (N° 20285 of 2008)	Basic Act on the Environment (N° 19.300, amended by Act N° 20.417 in 2010)	Act N° 19.300 art. 31 bis (amended in 2010)

Table 4 (continued)

Country	Provision for access to public information in the Constitution	Legislation on access to information (year)	Other legal provisions covering access to public or environmental information	Definition of environmental information in legislation on access to information or framework legislation on the environment
Colombia	Arts. 23 and 74	Transparency and the Right to Access National Public Information Bill ^a	Act governing the publicity of official documents and acts (N° 57 of 1985), Act creating the Ministry of the Environment and other provisions (N° 99 of 1993) and the Act issuing the administrative procedure code pertaining to administrative law (N° 1437 of 2011)	-
Costa Rica	Arts. 27 and 30	-	National Archive System Act (N° 7202 of 1990), Environment Organization Act (N° 7.554 of 1998), Biodiversity Act (N° 7788 of 1998) and Act regulating the right to petition (N° 9097 of 2012, published in 2013)	-
Cuba	-	-	-	-
Dominica	-	-	-	-
Dominican Republic	Art. 49	General Act on Free Access to Public Information (N° 200 of 2004)	General Act on the Environment and Natural Resources (N° 64 of 2000)	-
Ecuador	Art. 18	Transparency and Access to Public Information Act (N° 24 of 2004)	Environmental Management Act	Act N° 37 Glossary of Definitions
El Salvador	-	Access to Public Information Act (N° 534 of 2011)	Environment Act (N° 233 of 1998)	-
Grenada	-	Freedom of Information Bill ^a	-	-
Guatemala	Art. 30	Access to Public Information Act (N° 57 of 2008)	-	-
Guyana	-	Access to Information Act (2011) ^b	Environmental Protection Act (N° 11 of 1996)	-
Haiti	Art. 40	-	-	-
Honduras	-	Transparency and Access to Public Information Act (N° 170 of 2006)	Environment Act (N° 104 of 1993)	-
Jamaica	-	Access to Information Act (N° 21 of 2002)	Natural Resources Conservation Authority Act (N° 9 of 1991)	-

Table 4 (concluded)

Country	Provision for access to public information in the Constitution	Legislation on access to information (year)	Other legal provisions covering access to public or environmental information	Definition of environmental information in legislation on access to information or framework legislation on the environment
Mexico	Art. 6	Federal Act on Transparency and Access to Public Government Information (2002)	Ecological Equilibrium and Environmental Protection Act (1988, most recent amendment 2013)	LGEEPA art. 159 bis
Nicaragua	Art. 66	Access to Public Information Act (N° 621 of 2007)	General Act on the Environment and Natural Resources (N° 217 of 1996)	-
Panama	Arts. 41 and 43	Act defining standards for transparency in public administration, establishing Habeas Data and other provisions (N° 6 of 2006)	General Environment Act (N° 41 of 1998)	-
Paraguay	Art. 28	-	-	-
Peru	Art. 2(5)	Transparency and Access to Public Information Act (N° 27.806 of 2002)	General Environment Act (N° 28.611 of 2005), Framework Act on the National Environment Management System (N° 28245 of 2004), Regulations on Transparency, Access to Public Environmental Information and Citizen Participation and Consultation on Environmental Matters (Supreme Decree N° 002 of 2009)	Law N° 28.245 Art .31
Saint Kitts and Nevis	-	Freedom of Information Bill ^a	-	-
Saint Lucia	-	Freedom of Information Bill ^a	-	-
Saint Vincent and the Grenadines	-	Freedom of Information Act (N° 27 of 2003)	-	-
Suriname	-	-	-	-
Trinidad and Tobago	-	Freedom of Information Act (N° 26 of 1999, amended in 2003)	Environmental Management Act (N° 3 of 2000)	-
Uruguay	-	Right to Access Public Information Act (N° 18.381 of 2008)	Decree N° 484 on access to public information of 2009, Act on protection of the environment (N° 17283 of 2000)	-
Venezuela (Bolivarian Republic of)	Arts. 28 and 58	-	Environment Organization Act (N° 5.833 of 2006)	-

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

^a Bill pending approval by the legislature.

^b Law adopted but not yet implemented.

**TABLE 5
LATIN AMERICA AND THE CARIBBEAN (7 COUNTRIES): KEY ELEMENTS OF LEGISLATION ON TRANSPARENCY
AND ACCESS TO INFORMATION**

Country, Law (year)	To whom it applies	Scope of public information	Transparency	Time limits and cost	Exceptions and embargoes	Authority or institution responsible for access to information Appeals
Brazil, Act No. 12.527 (2011)	Public administration bodies, executive and legislative powers, courts, the attorney- general's office, public foundations, enterprises and other firms controlled partly or wholly by the central government, states, districts or municipalities. It also applies to non-profit NGOs that receive public funds.	Information held in records on activities, structure and operation of public bodies, whether produced or kept by them, or referring to the administration of public assets. Includes complete, primary and up-to-date information, as well as other types.	<p><u>Active:</u> Includes competencies; organizational structure; financial and expenditure records; hiring and tenders; activities, projects and works of the entity; frequently asked questions.</p> <p><u>Passive:</u> Anyone has the right to request information from any organ subject to the transparency legislation. That request should be considered without reference to the reasons behind the request</p>	<p><u>Time limit:</u> Response —provision or refusal of information— must be provided within 20 days. This may be extended by a further 10 days where justification is provided.</p> <p><u>Cost:</u> Free except for reproduction costs. Fully free of charge for those unable to pay the cost of reproduction.</p>	<p><u>Exceptions:</u> Information that would affect national defence, integrity, sovereignty or security; jeopardize international negotiations; threaten life or public health; destabilize the financial sector; concern strategic plans of the armed forces; or place scientific or technological research at risk.</p> <p><u>Embargo:</u> Depends on level of classification. Top secret: 25 years Secret: 15 years Reserved: 5 years</p>	<p><u>Institution:</u> None</p> <p><u>Appeal:</u> Before the next body up in the hierarchy, within 10 days of the refusal or failure to respond</p>

Table 5 (continued)

Country, Law (year)	To whom it applies	Scope of public information	Transparency	Time limits and cost	Exceptions and embargoes	Authority or institution responsible for access to information Appeals
Chile, Act No. 20.285 (2008)	Ministries; regional governors' offices; provincial governors' offices; regional governments; municipal offices; armed forces, forces of law and order; all bodies performing an administrative function; State enterprises.	Administrative documents and resolutions and the substantiating documentation. All information prepared with public funds and/or held by the State.	<p>Active: Organizational structure; faculties; normative framework; staff; hiring; transfers of public funds; directives and resolutions; procedures in respective areas of competence; mechanisms for participation, subsidies and budget; list of partner entities; auditing outcomes.</p> <p>Passive: Anyone has the right to request and receive public information. Requests shall be submitted in writing to any organ subject to the transparency legislation with no obligation to specify the reason behind the request.</p>	<p>Time limit: Response—provision or refusal of information— must be provided within 20 working days. This may be extended by a further 10 working days where justification is provided.</p> <p>Cost: Free except for costs of reproducing information.</p>	<p>Exceptions: Information that would jeopardize the proper functioning of the body, threaten national security, infringe third party rights, or run counter to the national interest, foreign relations or public health.</p> <p>Embargo: Five years, which may be extended by a further five years. Where the information could affect Chile's territorial integrity, international defence or foreign policy may be extended indefinitely.</p>	<p>Institution: Transparency Council</p> <p>Appeal: Before the Transparency Committee, within 15 working days from the refusal or failure to respond.</p> <p>The decision of the Transparency Committee can be appealed before the Court of Appeal.</p>

Table 5 (continued)

Country, Law (year)	To whom it applies	Scope of public information	Transparency	Time limits and cost	Exceptions and embargoes	Authority or institution responsible for access to information Appeals
Dominican Republic, Act No. 200 (2004)	Centralized, autonomous and decentralized agencies and entities of the public administration; autonomous and/or decentralized State bodies; State-owned enterprises and companies, corporations, private institutions that receive funds from the State and the legislative and judicial powers.	Information contained in written documents, photographs or magnetic recording media that has been created or received by a public authority and that is in its possession and under its control.	<p><u>Active:</u> Structure and membership; operational standards, projects; management reports; databases; point of receipt of complaints, queries and suggestions; and administrative formalities and bilateral transactions.</p> <p><u>Passive:</u> Everyone has the right to request and receive full, accurate and timely information from the bodies subject to the legislation.</p>	<p><u>Time limit:</u> 15 days to notify the approval, which can be extended for another 10 days in justified cases. If the request is rejected, the authority has five days to notify the interested party.</p> <p><u>Cost:</u> The authority may charge for the cost of searching for and reproducing information. Provision is also made for the authority to waive or reduce the cost when the information is to be used for certain purposes.</p>	<p><u>Exceptions:</u> Information that could threaten State defence or security; disrupt the banking or financial system; interfere with a court case; reveal trade, industrial or financial secrets; violate the privacy or endanger the life or safety of other people; or put at risk public health or security. Deliberative documents for government decision-making are also exempt.</p> <p><u>Embargo:</u> Five years.</p>	<p><u>Institution:</u> Bill proposing the creation of an institution (initiative No. 00970-2012-PLO-SE)</p> <p><u>Appeal:</u> An appeal may be submitted to the body that is hierarchically superior to the entity that denied access.</p> <p>If the applicant disagrees with the outcome of the appeal, he or she has 15 days to bring the case to an Administrative High Court.</p> <p>If the administration does not respond to the request or provide the requested information within the stipulated time frame, the applicant can submit a constitutional motion to the Administrative Dispute Tribunal.</p>

Table 5 (continued)

Country, Law (year)	To whom it applies	Scope of public information	Transparency	Time limits and cost	Exceptions and embargoes	Authority or institution responsible for access to information Appeals
Honduras, Act No. 170 (2006)	The legislative, executive and judicial branches, autonomous institutions, municipalities and other State bodies; NGOs, private development organizations and any entity that receives or manages public funds and unions that receive revenue from the issue of fiscal stamps, withholding of goods or that are exempt from tax.	Any file, record, data or communication contained in any medium, any document, or any printed, optical or electronic record, or other that has not been previously classified as reserved and that is in the possession of one of the institutions subject to the transparency legislation and can be reproduced.	<p><u>Active:</u> Organizational structure, roles and responsibilities; laws and regulations governing operation; policies, plans, programmes and projects, public records of any kind; staff remuneration; budgets; hiring and participation mechanisms, among others. In addition to the unofficial information pertaining to each individual State organ under the law.</p> <p><u>Passive:</u> Any natural or legal person is entitled to request and receive complete, accurate, adequate and timely information from institutions subject to the transparency legislation, without having to give a reason for their request.</p>	<p><u>Time limit:</u> 10 days, which may be extended by a further 10 days.</p> <p><u>Cost:</u> Institutions are authorized to charge and receive the amount equivalent to the reproduction costs, which must be made known in advance.</p>	<p><u>Exceptions:</u> Information that could jeopardize State security; endanger the life, health or safety of a person; hamper the administration of justice; harm international relations; undermine economic stability; or adversely affect the interests protected under the Constitution and the law.</p> <p><u>Embargo:</u> 10 years, unless there is a court order to the contrary.</p>	<p><u>Institution:</u> Institute for Access to Public Information.</p> <p><u>Appeal:</u> Before the Institute for Access to Public Information, which will have 10 days in which to pronounce its decision. The only remaining recourse against that decision is to present a constitutional motion.</p>

Table 5 (continued)

Country, Law (year)	To whom it applies	Scope of public information	Transparency	Time limits and cost	Exceptions and embargoes	Authority or institution responsible for access to information Appeals
Jamaica, Act No. 21 (2002)	<p>All public authorities, which includes ministries, departments, executive agencies or other agencies of Government; statutory bodies or authorities; companies in which the States owns more than a 51% share and bodies that provide public services, as well as any other companies specified by the Minister.</p> <p>The Act does not apply to the Governor-General, the judicial functions of the courts, the intelligence services and any other body that the Minister may specify.</p>	<p>The Act applies to all public documents, whose definition includes documents in writing, maps, plans, photographs or information in digital formats in the possession of the public authority, regardless whether it was created by that authority. The information must have been held for less than 30 years.</p>	<p><u>Active:</u> Public authorities shall publish a statement of their organization and functions, a list of departments with their addresses and opening hours, a list of manuals and documents that contain guidelines or practices of the institution, among other details.</p> <p><u>Passive:</u> Applicants for access to official documents shall not be required to give any reason for requesting that access.</p>	<p><u>Time limit:</u> Thirty days after the date of receipt of the application by the corresponding authority, which may be extended by a further thirty days.</p> <p><u>Cost:</u> The cost of reproducing any documents shall be borne by the applicant.</p>	<p><u>Exceptions:</u> Documents that prejudice security, defence or international relations; documents containing information communicated in confidence by other governments or international organizations; Cabinet documents; that could endanger a person's safety; interfere with the administration of justice; if it could affect economic stability; if it would reveal trade secrets or any other information of a commercial value, or information that could prejudice the interests of a third party; and information whose disclosure could put at risk the country's archaeological or natural heritage.</p> <p><u>Embargo:</u> Not specified.</p>	<p><u>Institution:</u> None.</p> <p><u>Appeal:</u> An applicant may apply for an internal review before the highest authority of the corresponding institution within 30 days of receiving notification of the refused access or if no such notification is given within that period. The applicant may appeal the decision taken on the internal review before the Appeal Tribunal described in the second schedule of the Act.</p>

Table 5 (continued)

Country, Law (year)	To whom it applies	Scope of public information	Transparency	Time limits and cost	Exceptions and embargoes	Authority or institution responsible for access to information Appeals
Mexico, Federal Act on Transparency and Access to Public Government Information (2002)	The federal executive branch, the federal civil service and the Office of the Attorney-General, the federal legislative branch, the Standing Committee and any of its bodies; autonomous constitutional bodies, the federal administrative courts and other federal bodies.	The Act is in line with the article of the Constitution establishing that "All information held by any authority [...] is public and can only be reserved temporarily for reasons of public interest as determined by the law".	<p><u>Active:</u> Organizational structure, faculties of each administrative unit; directory and remuneration of civil servants; services, processes and forms; data on the unit charged with liaising with the public; information on the budget and audits; concessions and contracts, specifying the holders thereof; the applicable normative framework and participation mechanisms.</p> <p><u>Passive:</u> Any person or his or her representative may submit a request in writing, or in another format accepted by the institution, for access to information from the liaison unit of the institution subject to the Act. Delivery of information is not subject to justification of the reasons for the request.</p>	<p><u>Time limit:</u> 20 working days to notify the decision (which can be extended by a further 20 days) and 10 days from the notification to provide the documents.</p> <p><u>Cost:</u> The cost of the information shall not be greater than the sum of the reproduction costs and the delivery cost.</p>	<p><u>Exceptions:</u> Documents whose disclosure could compromise the country's security, defence or any international negotiations; disrupt financial or monetary stability; endanger the life of a person; or interfere with the conduct of a legal investigation. Also exempt is information defined as confidential under other legislation, including: industrial, tax, bank, fiduciary or other forms of secrecy, and legal records.</p> <p>Documents cannot be exempted in cases of violations of fundamental rights or crimes against humanity.</p> <p><u>Embargo:</u> 12 years, which may be extended if the reasons for the exemption persist.</p>	<p><u>Institution:</u> Federal Institute for Access to Information and Data Protection (IFAI).</p> <p><u>Appeal:</u> Within 15 days of the denial of access an appeal may be submitted to the Institute or to the liaison unit, which shall forward it to the Institute. The decision of the Institute may be challenged before the federal judiciary.</p>

Table 5 (concluded)

Country, Law (year)	To whom it applies	Scope of public information	Transparency	Time limits and cost	Exceptions and embargoes	Authority or institution responsible for access to information Appeals
Peru, Act No. 27.806 (2002)	The executive, legislative and judicial powers; regional and local governments; the agencies of the Political Constitution of Peru; agencies with administrative powers and private legal persons who exercise administrative functions and provide public services, among others.	All information held by the State is presumed public, apart from the exceptions defined in the Act. Also considered public are any documents financed from the public budget that inform an administrative decision and official records.	<p><u>Active:</u> General information such as organizational structure, regulatory framework and communiqués; budget information, procurement of goods, suppliers, contracts and committed amounts; official activities and other information as appropriate. In addition, private companies subject to this Act must report the nature of their services, their fees and their administrative functions.</p> <p><u>Passive:</u> Everyone has the right to request and receive information from any public body through the official designated by each entity subject to the legislation. The applicant shall not be asked for justification for exercising the right.</p>	<p><u>Time limit:</u> Seven working days, which can be extended for a further five days.</p> <p><u>Cost:</u> The cost of the information shall not be greater than cost of reproducing the information.</p>	<p><u>Exceptions:</u> Information is classified as secret where it relates to conflict, the military and internal or external national defence. Information is classified as reserved where it could endanger the life of a person, police operations interfere with investigations or damage international relations.</p> <p>No exemption applies for information relating to the violation of human rights or the rights under the 1949 Geneva Convention.</p> <p><u>Embargo:</u> Five years, which can be extended (the length of the extension is not specified) for secret information.</p>	<p><u>Institution:</u> None, but discussions on setting one up are under way pursuant to a proposal put forward by the Office of the Ombudsman in bulletin No. 1359-2012-DP.</p> <p><u>Appeal:</u> If access is denied or no answer is given and there is no higher authority in the institution to whom to appeal, the administrative remedies are deemed to be exhausted and the applicant can initiate administrative legal proceedings.</p>

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

The case of Costa Rica is interesting to note. Act No. 9097 which regulates the right of petition, published in the Official Journal in March 2013, includes penalties for public officials who fail to provide a timely response to requests.¹⁶

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

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

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

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

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

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

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

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

	Period (days)	Extension (days)	Source
Antigua and Barbuda	20 days	20 days	Freedom of Information Act No 19 (2004)
Argentina	30 days ^a	-	Act on the System for Free Access to Environmental Information, No. 25.831 (2004)
Bahamas	Bill	Bill	-
Barbados	Bill	Bill	-
Belize	14 days	-	Freedom of Information Act, No. 9 (1994)
Bolivia (Plurinational State of)	15 days	-	Supreme Decree on Transparency in Public Administration by the Executive Branch, No. 28.168 (2005)
Brazil	20 days	10 days	Law No. 12.527 (2011)

¹⁶ Article 13 of Act No. 9097 provides for penalties for public officials who fail to provide a timely response to requests for information. Any public official who fails to respond within the established time limit to a straightforward request by a citizen shall pay a penalty equivalent to 5% of his or her monthly base salary.

Table 6 (continued)

	Period (days)	Extension (days)	Source
Chile	20 days	10 days	Transparency Act, No. 20.285 (2008)
Colombia	10 days	3 days	Publication of Acts and Official Documents Act, No. 57 of 1985
Costa Rica	10 days	-	Constitutional Jurisdiction Act, No 7.135 (1989)
Cuba	-	-	-
Dominica	-	-	-
Dominican Republic	15 days	10 days	General Act on Free Access to Public Information, No. 200 (2004)
Ecuador	10 days	5 days	Framework Act on Transparency and Access to Public Information, No. 24 (2004)
El Salvador	10 days	5 days	Access to Public Information Act (2011)
Grenada	Bill	Bill	-
Guatemala	10 days	10 days	Access to Public Information Act (2008)
Guyana	60 days	-	Access to Information Act, No 10 (2011)
Haiti	-	-	-
Honduras	10 days	10 days	Transparency and Access to Public Information Act(2006)
Jamaica	30 days	-	Freedom of Information Act, No. 21 (2002)
Mexico	20 days	20 days	Federal Act on Transparency and Access to Public Government Information (2002)
Nicaragua	15 days	10 days	Access to Public Information Act, No. 621 (2007)
Panama	30 days	30 days	Standards for Transparency in Public Administration, Habeas Data and Other Provisions Act, No. 6 (2002)
Paraguay	-	-	-
Peru	7 days	5 days	Transparency and Access to Public Information Act, No. 27.806 (2002)
Saint Kitts and Nevis	Bill	Bill	-
Saint Lucia	Bill	Bill	-

Table 6 (concluded)

	Period (days)	Extension (days)	Source
Saint Vincent and the Grenadines	30 days	-	Freedom of Information Act , No. 27 (2003)
Suriname	-	-	-
Trinidad and Tobago	30 days	-	Freedom of Information Act , No. 26 (1999)
Uruguay	20 days	20 days	Access to Public Information Act , No. 18.381 (2008)
Venezuela (Bolivarian Republic of)	-	-	-

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

^a In Argentina, Government Executive Decree 1172/2003 sets the maximum period at 10 days with an extension of 10 days.

^b In Brazil, the Public Access to SISNAMA (National Environmental Information System) Data and Information Act, No. 10,650 (2003) sets the maximum period for the submission of environmental information at 30 days.

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

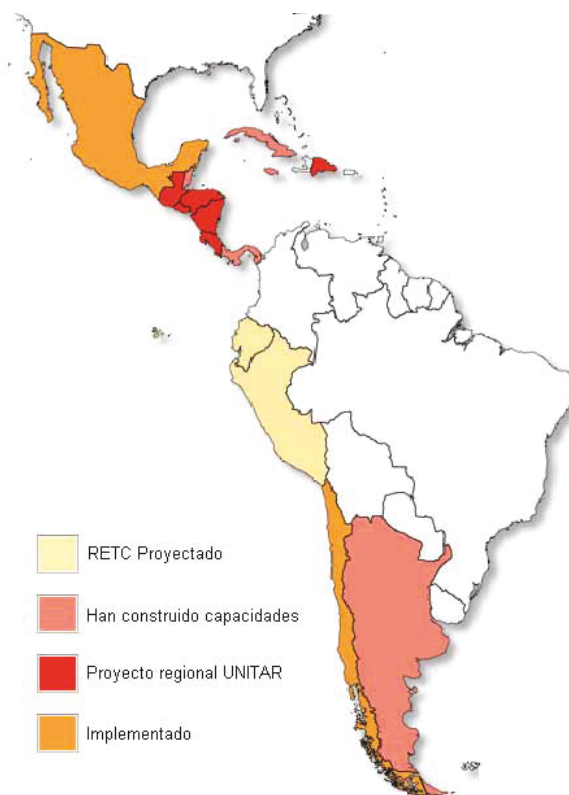
A PRTR is a database containing information on emissions and transfers to the environment of potentially harmful chemical substances. This type of database is a digital tool that is open to the public and reveals disaggregated and standardized data on the nature and quantity of the emissions. At present, Chile and Mexico are the only countries in the region that have a functioning PRTR, but Ecuador and Peru are in the final stages of bringing theirs on stream.

UNITAR has carried out a number of programmes to facilitate the development of PRTRs in countries of the region, including Argentina, Belize, Chile, Costa Rica, Cuba, Dominican Republic, Ecuador, Guatemala, Honduras and Mexico. In addition, it is designing a regional PRTR in Central America. PRTRs are important for ensuring the implementation of Principle 10 of the Rio Declaration, because they systematize the data from both public and private entities.¹⁷ UNITAR projects have been crucial in developing such registers in Latin America and the Caribbean. Map 1 shows the status of PRTRs in Latin America and the Caribbean.

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

¹⁷ See [online] <http://unitar.org/cwm/prtr>.

MAP 1
LATIN AMERICA AND THE CARIBBEAN: STATUS OF CREATION OF POLLUTANT RELEASE
AND TRANSFER REGISTERS, JUNE 2013



Source: Economic Commission for Latin America and the Caribbean (ECLAC), as at 21 June 2013.

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

Countries have also made strides in generating electronic databases containing environmental information, referred to in some countries as environmental information systems. Twenty of the 33 countries in the region are committed to some degree to the development of registers of this kind, although, in some cases, they are in the preliminary stages. Environmental information systems are being developed in Chile, Ecuador, Mexico and Peru, which have several indicators and cartographic and numeric registers. MERCOSUR is working on the generation of a regional environmental information system for its member countries.¹⁸

The National Environmental Authority of Panama has also striven to maintain up-to-date electronic databases in a user-friendly format. Its website (www.anam.gob.pa) contains an “Environmental information” section that includes interactive maps, environmental legal texts, environmental indicators, environmental management tools, statistics, information on progress in the REDD programme and a list of sanctions for administrative offenses committed in protected areas with details of paid and unpaid fines.

¹⁸ This task has been entrusted to Subworking Group No. 6 (thirty-first ordinary meeting of MERCOSUR Subworking Group No. 6, 2004).

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

BOX 7

THE SUPPLY OF ENVIRONMENTAL INFORMATION IN THE REGION

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

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

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

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

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

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

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

The increased access and use of information and communication technologies (ICTs) has become key in the dissemination of the available environmental information. For example, as a result of the advances in satellite technology, vulnerable areas such as the Amazon can now be monitored over shorter time lapses, thereby enabling government agencies to provide a timely response to crises and chart the course of long-term policies more effectively (United Nations, 2012).

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

The Declaration is a recognition of the impact that the Internet has had on communications and a comment on the role played by States, users and servers in its expansion. Section 6 of the Declaration indicates that States have the obligation to provide Internet access and that only in very rare cases can it be considered justifiable to cut off, restrict or refuse access to the Internet as a political or judicial mechanism. The Declaration also points out that States are under a positive obligation to facilitate universal access to Internet. In this regard, they should (i) put in place regulatory mechanisms that foster greater access to the Internet, including for the poor and in remote rural areas; (ii) provide direct support to facilitate access, including by establishing community-based ICT centres and other public access points; (iii) promote adequate awareness both about how to use the Internet and about the benefits it can bring, especially for the poor, children and the elderly and isolated rural populations; and (iv) put in place special measures to ensure equitable access to the Internet for the disabled and disadvantaged persons.¹⁹

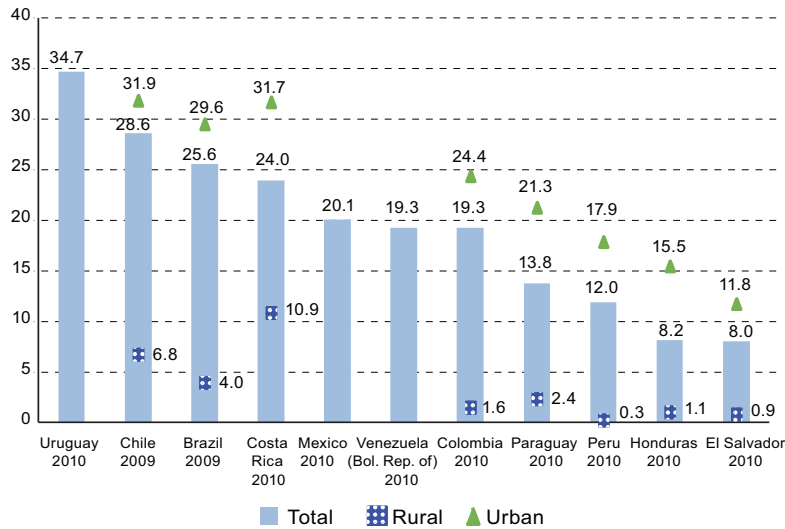
Access to the Internet is now considered by some as a human right and even the most conservative elements agree that if it is not a right per se, it is, nevertheless, a platform that acts as a catalyst for the exercise of human rights that are already recognized (information, education, participation).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

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

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

¹⁹ Joint Declaration on Freedom of Expression and the Internet, article 6 [online] [<http://www.oas.org/en/iachr/expression/showarticle.asp?artID=849&IID=1>].

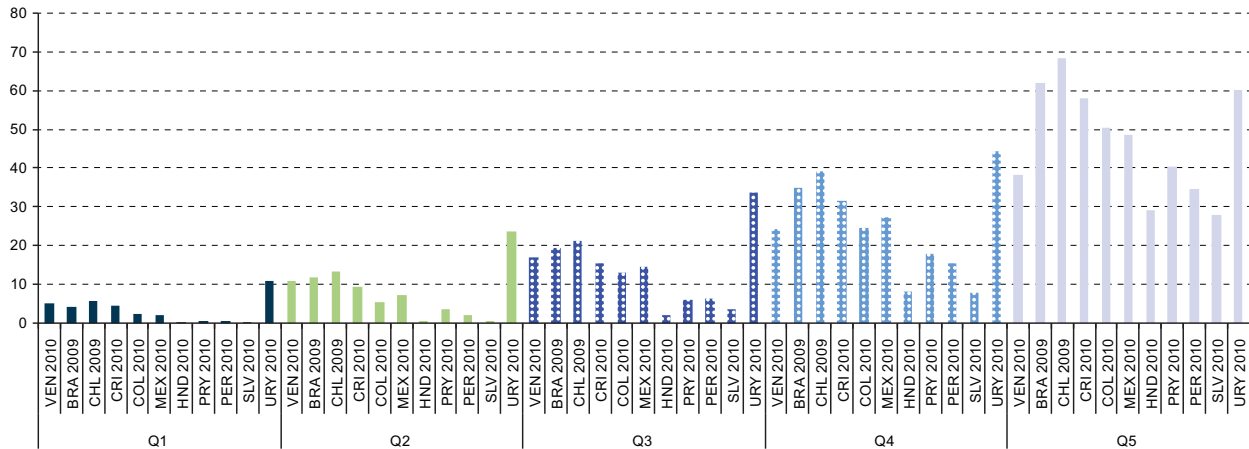
FIGURE 1
LATIN AMERICA AND THE CARIBBEAN: HOUSEHOLDS WITH ACCESS TO THE INTERNET
IN URBAN AND RURAL AREAS AND AT THE NATIONAL LEVEL
(Percentages)



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

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

FIGURE 2
LATIN AMERICA AND THE CARIBBEAN: HOUSEHOLDS WITH ACCESS TO THE INTERNET
BY INCOME QUINTILE
(Percentages)



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

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

2. Challenges

Despite the clear progress made in legislation to safeguard the right of citizens to access public information, full implementation of these laws remains an ongoing challenge in the region.

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

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

Costa Rican Law No 9097 of 2013 regulating the right of petition also lays down special provisions for native or indigenous communities, stating in Article 5 that members of such communities are entitled both to assistance from the Ombudsman or the National Commission of Indigenous Affairs in making applications in Spanish and to a prompt response.

A further challenge relates to the expansion of access by governments and civil society to existing technological and environmental information tools. Initiatives such as the Open Government Partnership²⁰ and the Open Data for Development in Latin America and the Caribbean (OD4D),²¹ which is headed by ECLAC and the World Wide Web Consortium (W3C) of Brazil, seek to make government information available to the public on the assumption that this practice will contribute to transparency, accountability and greater participation by civil society.

The region should advance towards expanding access by governments and civil society to key information for decision-making on environmental issues held by private stakeholders. A number of voluntary initiatives have been taken in these areas, such as Eye on Earth²² and the Carbon Disclosure Project.²³ Eye on Earth is a global public information network spearheaded by public and private agencies, including the European Environment Agency, Esri and Microsoft Corp. It was developed as a platform for creating and sharing environmentally relevant data and hailed in paragraph 274 of the outcome of the United Nations Conference on Sustainable Development "The future we want".²⁴ The Carbon Disclosure Project gathers standardized information on the environmental performance of cities and large companies, and enables civil society actors to compare company pollution levels and natural-resource intensity and track this performance over time (United Nations, 2012).

Along these same lines, it has also been proposed that standards should be established for the adoption of eco-labelling and other information mechanisms that convey commitment by corporations to the principles of sustainability and which inform and educate consumers (United Nations, 2012). A 2012

²⁰ See [online] <http://aga.org.mx/SitePages/Principal.aspx>.

²¹ See [online] <http://www.od4d.org>.

²² See [online] www.eyeonearth.org.

²³ See [online] <https://www.cdproject.net/en-US/Pages/HomePage.aspx>.

²⁴ "We recognize the importance of space-technology-based data, in situ monitoring and reliable geospatial information for sustainable development policymaking, programming and project operations. In this context, we note the relevance of global mapping and recognize the efforts in developing global environmental observing systems, including by the Eye on Earth Network and through the Global Earth Observation System of Systems. We recognize the need to support developing countries in their efforts to collect environmental data."

study on eco-labelling in the Southern Cone countries found that although Brazil was the only country that had legislation on this issue, all the countries in the subregion provided sufficient incentives to start to regulate the use of certification mechanisms (Fundación Chile/UNDP, 2012). The same study points to the existence of 49 certifications of this type in the Southern Cone. Of these, 37 are used in Brazil, 21 in Chile and Argentina, 11 in Paraguay and 8 in Uruguay. The most common eco-labels are used to identify the energy efficiency of electrical appliances, forest management and office supplies (for example, ink cartridges).

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

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

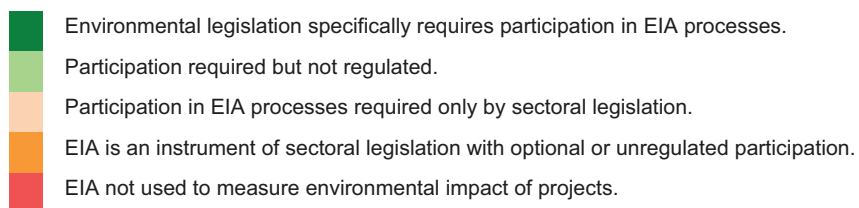
1. Progress made in the past 20 years

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

Citizen participation is most limited at the level of policies, plans and strategies, and it is generally at the discretion of the government (EIA) (see map 3). A notable experience in this regard is the inclusion of environmental impact assessments in Chile's recently reformed General Environmental Law (2010).²⁵ The law now stipulates that EIA must provide means for interested public parties to participate and must include making the policy or plan, and of any subsequent reform thereof public (article 7 of the reformed Law 19.300). Table 7 presents the instruments for participation and dissemination contemplated in the laws relating to the assessment of environmental projects and policies in the 33 countries of the region.

²⁵ Law 19.300 updated in 2010 in Law 20.417, which made substantial changes to Chile's environment-related legislation.

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





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

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

MAP 3
LATIN AMERICA AND THE CARIBBEAN: CITIZEN PARTICIPATION
IN STRATEGIC ENVIRONMENTAL ASSESSMENT PROCESSES



-  SEA is an instrument of environmental legislation.
-  SEA is an instrument of sectoral or regional legislation.
-  No legal requirement for an SEA.

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

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

TABLE 7
LATIN AMERICA AND THE CARIBBEAN: INSTRUMENTS FOR PARTICIPATION
AND DISSEMINATION IN ENVIRONMENTAL ASSESSMENTS

	Legal instruments (EIS, EAS, social impact assessment and others)	Provisions for citizen participation	Dissemination of information on assessment and participation processes	Obligations of the authority in respect of views expressed by citizens
Antigua and Barbuda	Environmental impact assessment governed by sectoral, rather than environmental, legislation.			
Argentina Law No. 25.675 (2002)	EIS mandatory under federal law, but is regulated at state level. SEA exists as an instrument in certain sectoral laws, such as Law No. 26.639 of 2010 and in some state legislation.	Mechanisms for citizen participation in environmental impact assessments (including EIS) and in the evaluation plans and programmes are mandatory under federal law, but the specific provisions governing this are to be found in state law.	Regulated at state level.	Under federal law, views expressed are not binding, but if they are contrary to the decision of the authority, it must publicly justify the decision.
Bahamas Law No. 12 (1997, last amended in 2000)	The Law states that the authority may order a report on the potential impact of certain projects, but does not provide for legal instruments. A draft regulation on environmental impact assessments has been published but is yet to be adopted.	The Law provides that the authority may accept objections to the award of a permit.	The authority may, if it deems necessary, order a notice to be published on the issue of the permit in at least two publications not more than three days apart.	Any objections raised with the authority must be considered before permits may be granted.
Barbados	Environmental impact assessment governed by sectoral, rather than environmental, legislation.			
Belize Law No. 22 (1992, last amended in 2009) Regulation No. 107 (1995, last amended in 2007)	The Law calls for an environmental impact assessment to be made for projects, activities and programmes. The Regulation provides for similar instruments to EIS with different categories according to magnitude.	Participation and consultation with affected parties is mandatory under the law. It provides for public meetings or hearings and enables the authority to set a period of time for the receipt of written submissions from the public at any time during the process.	The Law obliges the promoter of the project to publish a notice in the press on the project. The notice must give details of where and how project documentation can be viewed and of arrangements for citizen participation.	The Law obliges the promoter to respond to questions asked and observations made. Views expressed are not binding and the promoter is not obliged to provide reasons for disregarding them.

Table 7 (continued)

	Legal instruments (EIS, EAS, social impact assessment and others)	Provisions for citizen participation	Dissemination of information on assessment and participation processes	Obligations of the authority in respect of views expressed by citizens
Bolivia (Plurinational State of) Law No. 1.333 (1992) General Environmental Management Regulation (1995) Prevention and Environmental Control Regulation (1995)	The Law calls for an environmental impact study to be conducted for projects, works and activities. The Regulation also provides for various categories of EIS that must be conducted as part of the process, and sets out the process of strategic environmental impact assessment (analogous to an SEA) as an instrument for plans and programmes which is governed under the same rules as other such instruments.	The Law enshrines the right of individuals to participate in environmental management. The regulations govern participation in all stages of the process. General participation: participation following a request made to the authority or by forming specific consultative and advisory groups. Participation in individual processes: participation upon request or via public consultations. A public hearing must be held if the authority deems it necessary or the people call for it.	The Regulation calls for a summary of the EIS in easily understandable language to be made available to the public. Process documents should also be available for consultation. If a public hearing is to be held, a convening notice must be published at least 10 days in advance.	Views expressed at public hearings are deemed to be advisory in nature and the authority is free to take note of or ignore them.
Brazil Law No. 6.938 (1981) Resolution No. 001 (1986, CONAMA) Resolution No. 237 (1997, CONAMA)	This Federal Law enshrines the environmental impact assessment as an instrument of national policy. The regulation enshrines the EIS as a legal instrument at the federal level. Both regulations are supplemented by state law. Legislation in certain states also provides for an SEA.	The Regulation provides for a period for the receipt of comments from parties interested in the EIS. It further states that a public hearing must be held if necessary.	Regulated at state level.	Regulated at state level.

Table 7 (continued)

	Legal instruments (EIS, EAS, social impact assessment and others)	Provisions for citizen participation	Dissemination of information on assessment and participation processes	Obligations of the authority in respect of views expressed by citizens
Chile Law No. 19.300 (1994, last amended in 2010) Supreme Decree No. 30 (1997, last amended in 2002)	The Law provides for EIS instruments for projects and activities and an Environmental Impact Statement for projects and activities of lesser impact. It also provides for an SEA for plans and programmes. There is also a regulation covering SEAs pending approval.	The Law obliges the State to facilitate public participation, and to provide evidence of this in its evaluation reports. For SEAs: public consultations must be held. For EIS: period of 60 days must be set for comments (unless there have been modifications). For Environmental Impact Statements: 20-day period set for comments if a request is received from two citizen organizations or 10 individuals.	EIS and Environmental Impact Statements for projects and activities are published in the Official Journal (Diario Oficial) and in local or national newspapers if appropriate. Further documentation may be reviewed at the offices of the authority.	The environmental authority is obliged to take account of and provide a reasoned opinion on views expressed in the process of issuing permits. Procedures for EIS and Environmental Impact Statements provide for appeals in the event that comments are overlooked.
Colombia Law No. 99 (1993) Decree No. 2.820 (2010) Decree No. 330 (2007)	This Law (the Environmental Act) provides for a licensing system that includes the EIS as one of its legal instruments. The SEA was introduced by Law No. 812 of 2003 establishing the National Development Plan, but remains unregulated and is implemented at sectoral level.	The Act enshrines the right of any person to participate in the process of issuing, amending or cancelling licenses and permits. A public hearing must be held if a request is made by the relevant authorities, three non-profit organizations or 100 individuals. Public hearings are governed by a special regulation (Decree No. 330 of 2007).	All bodies which form part of the National Environmental System must keep an official journal to provide notifications of decisions pending. Information on past decisions must also be provided upon written request. The right to request environmental information is enshrined. If a public hearing is to be held, a convening notice must be published 30 days in advance.	The Act states that administrative decisions must be reasoned and take account of views expressed and evidence collected during the hearing.

Table 7 (continued)

	Legal instruments (EIS, EAS, social impact assessment and others)	Provisions for citizen participation	Dissemination of information on assessment and participation processes	Obligations of the authority in respect of views expressed by citizens
Costa Rica Law No. 7.554 (1995) Executive Decree No. 31.849 (2004)	The Law provides for an environmental impact assessment process for works, activities and projects. The Regulation sets out various categories of EIS as instruments tool in this process and outlines the SEA to be conducted for policy plans and programmes.	The Law requires the authorities to encourage active participation in decision-making. Any citizen may submit comments to the authority at any time during the environmental impact assessment. Public hearings are also held whenever the authority deems fit. For SEAs, the regulation lays down criteria similar to those for the environmental impact assessment in respect of participation, transparency and broad information management.	Details of the activities covered by ongoing environmental impact assessments must be actively disclosed. EIS case files and the criteria and weighting percentages used must be available for consultation.	Views expressed must be included and assessed in the final report.
Cuba Law No. 81 (1997) Resolution No. 77 (1999)	The Law provides for an environmental impact assessment process which includes the EIS as a legal instrument for assessing works and projects. It adds that certain plans and policies may be also be assessed using these processes.	The principle of participation in environmental management is enshrined in the law, but is not mentioned in the chapter on the EIA. The regulation states that the interests of the public must be taken into account, but does not provide for any participation mechanism.	The Regulation establishes a register of environmental impact assessment processes; information falling under the provisions of Chapter V of the law must be made available to the public.	Not specified.
Dominica		Environmental impact assessment governed by sectoral, rather than environmental, legislation.		
Dominican Republic Law No. 64 (2000) Resolution No. 02-2011	The Law establishes several categories of EIS as legal instruments, and provides for an SEA in the environmental assessment process. It stipulates that each institution must conduct SEAs under the guidelines set by the environmental authority.	With regard to project assessment, the regulation provides for at least four possible instances for participation: information, public visits, comments to the EIS and public hearings.	For assessments with greater implications, the promoter shall publish information by all means that are adequate for their reception by the possible interested public. The documents of the process, such as the EIS shall be available for inspection for at least 15 days.	The observations will be part of the information to be considered by the different committees when adopting a decision on granting or not the requested environmental authorization.

Table 7 (continued)

	Legal instruments (EIS, EAS, social impact assessment and others)	Provisions for citizen participation	Dissemination of information on assessment and participation processes	Obligations of the authority in respect of views expressed by citizens
Ecuador Law No. 37 (1999) Executive Decree No. 1.040 (2008)	The Law provides for an environmental impact assessment process for works, projects or activities. The EIS is included as a legal instrument within this process.	The right to participate in environmental management is enshrined in the law and governed by a specially created regulation, which states that citizens may participate in projects or activities at all stages prior to the approval of the EIS, and provides for mechanisms for holding hearings and workshops and for public notification.	The regulation states that the notifications inviting citizens to make use of social participation mechanisms will be made by one or more means of wide dissemination. These mechanisms may not begin unless the relevant information for each event is available to the public.	The results of the participation mechanisms should be systematized and submitted, together with the EIS, for review by the authority.
El Salvador Law No. 233 (1998)	The Law provides for several categories of EIS in the process of assessing the environmental impact of activities, works and projects. It also states that each authority must conduct an SEA of policies, plans and programmes, under the guidelines set by the environmental authority.	The Law states that the authority must consult with public participation organizations at regional, departmental and local levels. It also provides for an instrument for public consultation for SEAs and EIS for when the authority deems it necessary.	The Law enshrines the right to be informed truthfully and in a timely manner, particularly with a view to facilitate participation in decision-making processes. EIS will be available for consultation by interested parties.	The Law states that the Ministry must take note of views expressed in public consultations.
Granada		Environmental impact assessment governed by sectoral, rather than environmental, legislation.		

Table 7 (continued)

	Legal instruments (EIS, EAS, social impact assessment and others)	Provisions for citizen participation	Dissemination of information on assessment and participation processes	Obligations of the authority in respect of views expressed by citizens
Guatemala Law No. 68 (1986) Government Decision No. 431 (2007)	The Law provides for SEAs for plans and programmes, various categories of EIS, an environmental risk assessment and social impact assessment as environmental management instruments for projects, industrial construction works and activities.	The decision makes public participation, at the earliest possible stage, mandatory for all environmental management instruments. The instruments must include a plan for public participation with incentives, and arrangements for participation and forms of resolution for such mechanisms. In addition to face-to-face events with promoters (workshops, meetings etc.), interested parties may also submit comments to the authority within 20 days from publication of the notice convening the process.	The regulation states that the authority and promoters must ensure disclosure and dissemination of information on assessment instruments. Furthermore, when the works covered by the instruments are in areas populated by speakers of indigenous languages, due account must be taken of this fact when providing information.	Views received by the authority must be taken into account of they are backed up by a relevant technical, scientific or legal basis.
Guyana Law No. 11 (1996)	The Law provides for an environmental impact process with instruments similar to the EIS for assessing projects and activities. It also states that plans, policies or programmes liable to affect the environment must be assessed by a process similar to that for projects and activities, and thus establishes an instrument similar to the SEA.	Citizens have 28 days from the publication of the notice convening the process to submit queries and comments, which should be incorporated into the environmental assessment.	Notices convening the process of environmental impact assessment must be published in daily newspapers before it may begin so as to allow citizens to express their views. Promoters should also make assessment documents to the public on demand.	Views and comments should be responded to and taken into consideration in the environmental impact assessment process documents.

Table 7 (continued)

	Legal instruments (EIS, EAS, social impact assessment and others)	Provisions for citizen participation	Dissemination of information on assessment and participation processes	Obligations of the authority in respect of views expressed by citizens
Haiti Environmental Decree (2005)	Introduces EIS and SEA instruments, which remain, however unregulated.	Provides for public hearings as a way of involving the public in environmental assessments, a process that will be governed by the decree.	Not specified.	Not specified.
Honduras Law No. 104 (1993) Decision No. 189 (2009)	The Law introduces environmental impact assessments, and thereby provides for several categories of EIS and SEA as legal instruments .	The decision provides for participation at all stages of assessments of activities, works and projects. Promoters must include the public at the earliest possible stage. In cases where an EIS is required, queries and comments may be submitted for inclusion by the authority in the terms of reference of the EIS that the promoter must conduct. Once the EIS is completed, it will be available for 30 days for public consultation and comments. It also provides that the authority may call a hearing or public forum. For SEAs, participation is defined as a key element, but no specific mechanisms are provided for.	The decision states that disclosure mechanisms must be established for each project. It also obliges the authorities to make information on processes available to the public by electronic means.	The decision states that all views must be recorded and taken into account in the final decision, but may be ignored without a need to provide the reasons for this.
Jamaica Law No. 9 (1991)	The Law establishes a licensing system in which the authority may call for an environmental impact assessment, including an EIS if it deems necessary. This process is not regulated, but the authority produces guides to help with their implementation.	Not specified.	Not specified.	Not specified.

Table 7 (continued)

	Legal instruments (EIS, EAS, social impact assessment and others)	Provisions for citizen participation	Dissemination of information on assessment and participation processes	Obligations of the authority in respect of views expressed by citizens
Mexico Ecological Balance and Environmental Protection Act (1988, last amended in 2012) Environmental Impact Assessment Regulation (2000)	The Act establishes an environmental impact assessment process for projects, activities and certain plans and programmes. It includes the submission of an environmental impact statement and, for larger projects, an EIS. Environmental legislation contains no provisions for an SEA at federal level, although the authority has recognizes it and its utility in certain sectors (such as the SEA for the tourism sector dating from 2005 or the Pilot Project for an SEA of the electricity works in the north-eastern region with a view to choose a sites and a route for lines). Further legislation has been enacted at federal state level.	The Act provides for participation in the management of resources. The Regulation states that interested parties may request a public consultation. It also sets aside a period of time following the announcement of a project to take account of the views of interested parties.	Environmental impact manifests must be published in the official journal of the authority and be available in electronic format. Case files for assessments of each permit granted must also be available for consultation.	Views expressed by participants in participation processes must be addressed and summarized in a report.
Nicaragua Law No. 217 (1996, recast in 2008) Decree No. 76 (2006).	The Law introduces an environmental impact assessment process for works, projects and activities that includes several categories of EIS. It also provides for an SEA as a mandatory instrument for the assessment of plans and programmes for each institution under the conditions set by the environmental authority.	Participation is one of the guiding principles of the system of assessment, and mechanisms for participation are in place at all levels. The Decree also states that public consultations should form part of the process for all environmental assessments.	Process documents must be made available by means of established procedures and arrangements for access to information.	Not specified.

Table 7 (continued)

	Legal instruments (EIS, EAS, social impact assessment and others)	Provisions for citizen participation	Dissemination of information on assessment and participation processes	Obligations of the authority in respect of views expressed by citizens
Panama Law No. 41 (1998) Executive Decree No.123 (2009) Executive Decree 155 (2011)	The Law provides for an environmental impact assessment process for activities, works and projects. The Regulation outlines various categories of EIS for projects, works and activities and SEA for policies, strategies, plans and programmes.	For EIS, promoters must ensure participation in the works or projects at the earliest possible stage. Depending on the category of EIS, developers must carry out one or more of the following: briefings, surveys, interviews, formal consultations, plans for citizen participation or public forums. Besides the right to comment on the EIS and warn the authority considered effects on the environment, this will have 8 to 10 business days depending on the project category is recognized. The Regulation states that the SEA will be carried out along similar lines to the project assessments.	The right to information on the content of EIS and documents submitted for the environmental assessment of projects is enshrined in the Regulation. Promoters must also publish a summary of the EIS in at least two of the media outlets outlined in the Regulation.	The authority is required to consider reasoned objections and forward them to the project sponsor who shall assess and respond to them.
Paraguay Law No. 294 (1993) Decree No. 14.281 (1996) Resolution No. 1.777 (2005)	Paraguay has a specific Environmental Assessment Act, distinct from the Environment Act, which stipulates that the works and projects which must be assessed. The process comprises the EIS as a legal instrument.	The regulations state that, following an application for a permit, the authority, may contact the relevant sectors for consultation. They add that the authority shall lay down rules for the participation of the groups affected, does not specify what they shall be. A set period for receipt of comments is also opened following publication of reports. A meeting or public hearing may also be convened.	The Act states that the authority shall make environmental impact assessment documents available to the public. The regulations states that the list of documents available for consultation must be published in the press.	Before granting the permit, the authority shall notify the project sponsor of changes to be made in light of the views expressed. The findings of the public hearings are not binding but should be taken into account in the EIS.

Table 7 (continued)

	Legal instruments (EIS, EAS, social impact assessment and others)	Provisions for citizen participation	Dissemination of information on assessment and participation processes	Obligations of the authority in respect of views expressed by citizens
Peru Law No. 28.611 (2005) Law No. 27.446 (2001, last amended in 2008) Supreme Decree No. 019-2009- MINAM Supreme Decree No. 002 2009-MINAM	The process of environmental impact assessment is outlined in the General Environmental Act and governed by a specific act and the regulation covering it. The process includes an EIS and an environmental impact statement. The Act was amended in 2008 to provide for the evaluation of plans, policies and programmes, thus making the SEA a legal instrument.	The Act enshrines the environmental impact assessment as a participatory process and ensures formal and informal spaces for citizen participation at all stages of the procedures it mentions. Arrangements for informal participation forums must be included in the citizen participation plan submitted by project promoters. The authority may also convene a public consultation or open period for receipt of comments from the public. Notwithstanding other participatory mechanisms, the regulations refer to mailboxes for comments, offices for information and citizen participation, guided tours, consultations with promoters; mechanisms for submitting comments to the authority, information workshops and, public hearings.	Common practice for administrative records for all procedures to be published. The authority may also require executive summaries to be made in indigenous languages if it sees fit. The regulation provides that the authority must announce the start of evaluation processes with sufficient notice periods to take account of comments from the parties affected.	Views expressed by the public must be taken into account on the citizen participation plan drafted for the assessment and suggested changes with a valid technical basis must be incorporated.
Saint Kitts and Nevis Law No. 5 (1987)	The Law only requires environmental impact assessments for projects in coastal areas, sectoral legislation is also applicable.	Not specified.	Not specified.	Not specified.
Saint Vincent and the Grenadines	Environmental impact assessment governed by sectoral, rather than environmental, legislation.			
Surinam	-			
Saint Lucia Law No. 16 (1999)	The Environment Act sets out a licensing system but fails to provide for environmental impact assessments, sectoral legislation is also applicable.	Not specified.	Not specified.	Not specified.

Table 7 (concluded)

	Legal instruments (EIS, EAS, social impact assessment and others)	Provisions for citizen participation	Dissemination of information on assessment and participation processes	Obligations of the authority in respect of views expressed by citizens
Trinidad and Tobago Law No. 3 (2000) Legal Notice No. 104 (2001)	The Law states that certain specified activities require "environmental accreditation", which may entail an environmental impact assessment process. Under the relevant regulation, this must include an EIS.	The Law states the authority must open a public comment period of at least 30 days for the process. It also specifies that the promoter must open a comment period as per the terms of reference that the authority sets for the EIS.	The authority must publish essential information on the relevant activity in the official journal, and give details of how and where citizens may take part in the process. The relevant documents must also be available for consultation by the public.	Not specified, but the Law provides for an appeals process for people whose views are not taken into account.
Uruguay Law No. 17.283 (2000) Decree No. 349 (2005)	The Law provides for a process of prior environmental authorization that includes several categories of EIS for certain cases. The SEA is enshrined as a legal instrument in sectoral laws such as Law No. 18.308 (2008) and Regulatory Decree No 221/009 which governs it.	The Law provides for public hearings as a part of the prior environmental authorization process. The Decree requires hearings to be held for the most complex projects and empowers the authority to convene hearings on other projects if it sees fit. It must also open a period for the submission of comments on the process documents.	Applicants must publish essential information on the process in the official journal and in national newspapers and local newspapers in the area where the project is to take place. Process documents may be consulted by the public.	Not specified.
Venezuela (Bolivarian Republic of) Environmental Framework Act Decree No. 1.257 (1996)	The Act provides for a process of environmental impact assessment, which includes an environmental and socio-cultural impact study (EIS) for programmes and projects.	The authority may order a process of review of, and public consultation on, the EIS.	Promoters must publish the date of the commencement of the EIS in a local newspaper. Approved EIS remain available for public consultation in the authority's documentation centre.	Views can be wholly or partly included, but can also be ignored without need for justification.

Source: ECLAC on the basis of Gomez G.A., E. Sanchez-Triana, and S. Enriquez (2006). "Legal Framework of Environmental Impact Assessment in Latin America" Available at: http://www1.ifc.org/wps/wcm/connect/1069ce004c08ad23ae9cbe79803d5464/3_EIA+in+LAC+poster.pdf?MOD=AJPERES.

Note: EIA: environmental impact assessment. SEA: strategic environmental assessment. DIA: environmental impact statement. EIS: environmental impact study.

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

Costa Rica has also sought to foster citizen participation in various ways, particularly by means of the Biodiversity Act of 1988, which provides various opportunities for participation in decision-making processes both through the National System of Conservation Areas, and the National Commission for Biodiversity Management (CONAGEBIO).

In terms of direct participation, countries such as Chile, Colombia, Ecuador, Honduras, Nicaragua, Peru, the Plurinational State of Bolivia and Uruguay have enacted laws on citizen participation and established formal mechanisms for promoting it.

A number of countries in the region also have a people's legislative initiative, through which proposals for legislation supported by a given number of citizens can be admitted for processing through the proper legal channels.²⁶

Advances have also been made in the region in terms of integrating indigenous peoples and communities more fully into political life. Several countries have incorporated the issue explicitly in their constitutions and 15 countries²⁷ have ratified Convention 169 of the International Labour Organization (ILO) concerning Indigenous and Tribal Peoples in Independent Countries, the first comprehensive international treaty to specify the rights of these peoples. This Convention, together with the United Nations Declaration on the Rights of Indigenous Peoples, which was adopted by the General Assembly in 2007, recognizes the importance of working for greater participation by indigenous peoples in the political life of States and the value of their decisions in the management of their traditional territories.

More specifically, the United Nations Declaration on the Rights of Indigenous Peoples indicates that "States shall consult and cooperate in good faith with the indigenous peoples concerned through their own representative institutions in order to obtain their free, prior and informed consent before adopting and implementing legislative or administrative measures that may affect them." Free, prior and informed consent (FPIC), as referred to in the Declaration, means that measures or projects that affect indigenous peoples and their communities must be subjected to a joint study, of which these communities must have prior knowledge, and the final ruling concerning implementation of those measures or projects must be submitted for the latter's approval, bearing in mind the extent to which their culture and lives will be affected (Aranibar, Chaparro and Salgado, 2011).

Development banks, notably the Inter-American Development Bank, have incorporated the PFIC principle into their actions, predicating the financing of projects on a successful process in this regard. The World Bank, in its safeguard policy also makes its financing conditional on a process of free, prior and

²⁶ The countries that have a people's legislative initiative for which a certain percentage of signatures are required are as follows: Argentina (3%), Bolivarian Republic of Venezuela (10%), Brazil (1%), Colombia (5%), Costa Rica, Ecuador, Guatemala (5,000 signatures), Nicaragua (50,000 signatures), Paraguay (2%), Peru (0.3%) and Uruguay (10%) (Hevia de la Jara, 2010).

²⁷ Argentina, Bolivarian Republic of Venezuela, Brazil, Chile, Colombia, Costa Rica, Dominica, Ecuador, Guatemala, Honduras, Mexico, Nicaragua, Paraguay, Peru and Plurinational State of Bolivia.

informed consultation in relation to those projects that are likely to affect the lives and the environment of local communities, in particular in the case of mining and infrastructure projects (Doyle, 2008).

Moreover, the commitment of private financial entities to the FPIC principle was reflected in the Equator Principles, principle 5 of which relates to consultation and disclosure of projects. Seventy-nine private financial groups, including most European banking groups and ten Latin American groups, adhere to these principles.²⁸

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

2. Challenges

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

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

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

²⁸ The Ecuador Principles [online] <http://www.equator-principles.com/index.php/about-ep/the-eps>.

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

Obstacle	Measures for overcoming it
Legislation Lack of legal frameworks for inclusion	Identify affected groups and find opportunities for improving access: Identify vulnerable groups whose interests are at stake Earmark resources for raising such groups to the same level as the rest of the population Set clear guidelines for officials on the specific legal frameworks that apply to these groups
Literacy Basic reading skills Ability to understand technical subject matter Language	Use appropriate forms: Ensure that the information relating to the decisions and the opportunities for influencing them is consistent with the ability to grasp the technical concepts and the literacy level and is provided in the native language of the vulnerable communities Ascertain that the available environmental information is useful and effectively helps to inform the decision-making
Access to communication channels Unreliable physical access to information technologies such as the Internet, documents, television, radio and other media	Use appropriate channels: Ensure that the information relating to the decisions and opportunities for influencing them is communicated through channels which the vulnerable communities have used and with which they are familiar In cases where ICTs are scarce or inaccessible, choose non-technological solutions such as signs along the public highway or communication through local governments
Costs Rates Transport and time limits In ability to report for paid work and care of the family (opportunity cost over time)	Reduce costs: Eliminate obstacles, reduce public rates, subsidize participation Offer vulnerable persons access, free of charge or based on a sliding scale, to information, procedures and courts Bring public processes as close as possible to the communities that would stand to be affected
Exposure to the risk associated with participation Personal risks (physical or psychological intimidation) Risks to property (threat of expropriation, robbery etc.)	Defend the persons and organizations that promote access by providing training and building awareness on the issue. This can be done through non-governmental organizations, local governments and the communication media
Official documentation Lack of identity documents Proof of charges	Eliminate legal barriers: Ensure that all persons have efficient and inexpensive ways of obtaining identity documents Establish clear legal rights with respect to the use of resources through instruments such as title deeds Adopt more flexible practices for proof of charges in judicial processes for vulnerable groups
Cultural context Expectations of those who have a "voice" Meaning or impact of participation	Build capacities and enhance awareness: Improving their capacity to understand technical aspects of the decision-making process Ensure that the voice of vulnerable groups is influential Instruct public officials on the importance of taking into account the views of vulnerable groups

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

Ecuador's legislation reflects the effort to build its people's decision-making capacity. The Framework Act on Citizen Participation of 2010 states in Article 43 that "The State shall encourage citizen participation through its institutions, at all levels of government, by granting competitive funding, scholarships, loans and other incentives with a view to enabling social organizations to undertake projects and processes to educate citizens on issues pertaining to their rights and duties, in accordance with the Constitution and the law". The stated aim of the Act is to encourage, promote and safeguard the

right of citizens, municipalities, communities, indigenous peoples and nations, and Afro-Ecuadorian and Montubio peoples to take part in decision-making.

A further challenge is to set forth the way in which received views will be considered, make this transparent and create mechanisms for the purpose. This lends more credibility to processes and helps prevent potential conflict (see section on access rights and conflict prevention). The difference between the public's perception of what participation means and what is laid down in legislation and regulatory frameworks is sometimes a source of frustration and mistrust when it comes to real opportunities to influence environmental decision-making (United Nations, 2012). In 18 countries of the region, the environmental authority is bound by law to incorporate the public's observations in environmental impact assessments relating to projects or to justify their decision to disregard such observations. Meanwhile, only in seven countries of the region are the authorities required by law to inform the public promptly of a decision relating to an environmental impact assessment.

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

1. Progress made in the past 20 years

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

As indicated in table 9, several countries in the region such as Costa Rica and Chile have opted to set up specialized courts with jurisdiction over environmental matters. Trinidad and Tobago, for example, has established a specialized court on environmental matters—the Environmental Commission of Trinidad and Tobago—with competence to adjudicate complaints of violations of the Environmental Management Act. The advantage of a specialized court is that (unlike a judicial review), it is competent to assess the merits of the case as well as any procedural irregularities. Moreover, this specialized court has at least three technically trained judges with experience in environmental matters, engineering, and natural and social science issues.²⁹ The jurisdiction of the Environmental Commission of Trinidad and Tobago does have some limitations, however. For example, it cannot hear complaints relating to appeals by applicants for a Certificate of Environmental Clearance (CEC), cases relating to the application of the environmental standards set forth in the Environmental Management Act or appeals relating to the designation of an environmentally sensitive area.

In 2011 Mexico approved a raft of amendments to various legal texts such as the Federal Code of Civil Procedure and the General Ecological Balance and Environmental Protection Act (LGEEPA) with a view to legislating for citizen participation and access to environmental justice by collective actions that were introduced in 2010 in Article 17 of the Constitution. With these collective actions the Mexican State has enshrined the legitimate right of certain social groups, when they consider themselves affected by decisions taken by environmental bodies, to petition the judicial authorities to resolve a dispute affecting their rights and order compensation for them for environmental damage caused and the restoration of sites affected by deliberate man-made actions. Another significant legislative reform directly affecting the right to information, participation and access to justice in Mexico is the amendment to the Protection Act (*Ley de Amparo*) to enable any person or group to bring an action before the courts if the Mexican State violates a fundamental right recognized by an international treaty, or fails to take concrete action to safeguard a fundamental right, including in cases pertaining to access to citizen participation, information and/or access to justice in environmental matters.

²⁹ Section 82 of the Environmental Management Act.

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

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

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

^a These agencies are not yet fully operational.

^b Costa Rica's Public Prosecutors' Office also has a prosecutor in charge of maritime and environmental affairs. Agrarian Courts also have environmental responsibilities.

Paraguay has had a Directorate for the Investigation of Environmental Crimes since 1996 and a law (Law No. 716/916) which punishes crimes against the environment. This law identifies actions that are deemed to be environmental crimes and aggravating circumstances. In 1998, the Attorney General's Office created an investigating unit specialized in punishable acts against the environment, which currently has nine prosecuting magistrates specialized in this area.³⁰ These environmental prosecutors' offices report directly to the Attorney General's Office.

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

³⁰ Merlo, R., 2008. The Public Prosecutor's Office in Paraguay. Workshop document from the United Nations Environment Programme (UNEP) [online]: <http://www.pnuma.org/deramb/documentos/VIProgramaRegional/5%20MINISTERIO%20PUBLICO%20FISCAL%20Y%20PROTECCION%20AMB/16%20Merlo%20Ministerio%20fiscal%20en%20Paraguay.pdf>.

Countries in the region have also started to set up mechanisms to ensure that citizens have recourse to justice or some independent body if they feel that their right to a clean environment has been infringed. In at least one third of the countries in the region, there is provision under the law for any person to bring legal action in defence of diffuse interests or the environment. For example, under the Environmental Management Act of Trinidad and Tobago, any individual or group of individuals can bring a direct civil action before the Environmental Commission in connection with a violation of the Act.³¹ The action cannot be brought until 60 days after notification of the violation of the Environmental Management Act and is admissible only if no legal action has been taken by the Commission itself.

Effective access to environmental justice is said to require independent and expeditious judicial processes which contemplate the remediation of environmental damage. Table 10 presents the requirements for compensation and remediation of environmental damage set forth in the environmental framework laws in the countries of the region and lists the provisions of such laws that refer to civil responsibility with respect to acts or omissions that lead to degradation of the environment. In addition, several countries of the region treat the requirement to restore the environment separately and apart from any other type of sanction. In Paraguay, although it has no framework law on the environment, the Constitution states that “any damage caused to the environment will give rise to the overriding obligation to remedy it or pay compensation” (Art. 8).

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

Argentina	Law No. 25.675 of 2002	Article 31: If two or more persons have contributed to the perpetration of collective environmental damage or if it is not possible to determine precisely the measure of damage caused by each person, both or all will be held jointly responsible for the repairs vis-à-vis the society [...]
Bolivia (Plurinational State of)	Regulation covering Law No. 1333 of 1992	Article 108 Those responsible for economic activities that cause environmental damage shall be responsible for the repair and compensation of said damage. This responsibility will persist even after the activity that resulted in the damage has ceased.
Brazil	Decree No. 6514 of 1998	Article 21: IV. The punitive measures prescribed by the Administration do not obviate the obligation to repair the damage to the environment.
Chile	Law No. 19.300 of 1994 (2010)	Article 3: Without prejudice to the sanctions laid down by law, anyone who willfully or destructively causes damage to the environment shall be bound to repair it materially at his or her own expense, if possible, and to pay compensation in accordance with the law.
Costa Rica	Law No. 7554 of 1995	Article 99: In the face of infringement of environmental protection regulations or behaviour that is harmful to the environment as clearly specified in this law, the public authority shall apply the following protective measures and sanctions: g) The imposition of obligations that are compensatory or that stabilize the environment or biological diversity.
Cuba	Law No. 81 of 1997	Article 70: Any natural or legal person who, by action or omission, harms the environment must cease the conduct in question and repair the damage and harm caused.

³¹ Section 69 of the Environmental Management Act.

Table 10 (continued)

Dominican Republic	Law No. 64 of 2000	Article 169: Without prejudice to the sanctions prescribed by law, any person who causes damage to the environment or natural resources shall bear objective responsibility for the damage that he/she may cause in accordance with the present law and supplementary legal provisions. He/she shall also be obliged to repair it materially at his/her own expense, if such repairs are possible, and to provide compensation in conformity with the law. Repair of the damage consists in restoring the area to its state prior to the facts, if this is possible, and in paying economic compensation for the damage and harm caused to the environment or the natural resources, to the communities or to individuals.
Ecuador	Law No. 37 of 1999	Article 43: Without prejudice to any other legal actions that may be appropriate, the judge shall sentence the party responsible for the damage to pay compensation to the group directly affected and to repair the damage and harm caused. He or she shall also sentence the responsible party to pay to the plaintiff ten per cent (10%) of the value of the compensation.
El Salvador	Law No. 233 of 1998	Article 96: Whenever an administrative sanction is applied, the violator will be ordered to restore or rehabilitate the environment or repair the damage caused to it, and shall be granted a reasonable period within which to do so. If he/she fails to comply, the Ministry shall appoint experts to determine the value of the investment that should be set aside for the purpose. The certificate indicating the value and the decision ordering the restoration or rehabilitation of the environment or the repair of the damage will have executive force against the violator.
Guatemala	Law No. 68 of 1986	Article 31: g) Any other measures for correcting and repairing the damage caused and avoiding pollution through acts prejudicial to the environment and natural resources.
Honduras	Law No. 104 of 1993	Article 87: g) Restoration or rehabilitation of the things and objects affected to their natural being or state, if possible.
Jamaica	Law No.9 of 1991	Article 18: Subject to the provisions of this section, where it appears to the Authority that the activities of an undertaking in any area are such as to pose a serious threat to the natural resources or to public health, the Authority may serve on the person who appears to have carried out or to be carrying out the activity, a notice (hereinafter referred to as an "enforcement notice") specifying the offending activity and requiring [...] to restore the natural resources to their condition before the activity took place.
Mexico	General Ecological Balance and Environmental Protection Act (1988)	Article 203: Without prejudice to the appropriate penal or administrative sanctions, any person who pollutes or degrades the environment or damages natural resources or biodiversity shall be responsible for and bound to repair the damage caused, in accordance with the relevant civil legislation.
Nicaragua	Law No. 217 of 1996	Article 141: Any person who, by action or omission, degrades the environment is obliged to repair the damage and harm caused to environmental resources, to the equilibrium of the ecosystem and to the health and quality of life of the population.

Table10 (concluded)

Panama	Law No. 41 of 1998	Article 108 Any person who, by using or exploiting a resource or by exercising an activity, causes damage to the environment or human health shall be bound to repair the damage caused, apply preventive and mitigating measures and assume the corresponding costs.
Peru	Law No. 28.6111 of 2005	Article 142: Anyone who, by using or exploiting a good or by exercising an activity causes damage to the environment, the quality of life of individuals, human health or heritage, is bound to assume the costs deriving from the measures of prevention or mitigation of the damage as well as the cost of supervising and monitoring the activity and the preventive and mitigating measures adopted.
Uruguay	Law No 16466 of 1994, Law No 17283 of 2000	Article 4 of Law No 16466 on Environmental Impact Assessment: Without prejudice to the administrative and criminal penalties provided by law, anyone damaging or polluting the environment in violation of the provisions of the articles of this law shall be held civilly liable for all damages caused and must take action to remedy them, if physically possible. In the event that such a contravention causes irreversible damage, the person responsible must take action to remedy or mitigate them inasmuch as is possible, without prejudice to the administrative, civil or criminal liability that such damage may incur. Article 16 of Law No 17283 on General Environment Protection: Provides for remedial action when the responsible party is late in carrying out, or refuses to carry out the measures to remedy or mitigate damage provided for in Article 4 of Law No 16466. Legal action may be taken to enforce payment of penalties or they may be charged automatically to the perpetrator, who shall be liable for any costs incurred in so doing.

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

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

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

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

2. Challenges

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

Access to justice in environmental matters and other issues of public interest is heavily dependent on the existence of support structures for public interest litigation on environmental matters. Various studies in the literature, on legal mobilization, access to justice and social change, have highlighted the link between the ability of citizens to bring actions before the courts on issues of public interest and the development of support structures for this type of litigation. The existence of public or private organizations to use legal action in a strategic manner to influence public policy, the availability of lawyers willing to take on cases in the public interest and the availability of the requisite funding to cover the minimum costs of litigation are just some of the components of the support structures identified in the specialized literature.³²

The active role played by the Brazil's Public Prosecutor's Office and Argentina's Ombudsman's Office in environmental matters is a good example of how organizations —public bodies in this case— can provide access to justice for social groups who otherwise would have found it difficult to bring their environmental claims before the courts.

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

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

Countries must also move forward with the establishment of alternative mechanisms for environmental conflict resolution. Where such mechanisms are lacking, the tendency is to judicialize environmental conflicts, which produces heavy costs and delays and does not always provide acceptable or sustainable solutions for the various stakeholders. This issue is discussed in section D below. The need to strengthen mechanisms for disseminating information on the substance of, and access to, environmental justice is a further challenge (United Nations, 2012).

Reforms that have been proposed to improve access to environmental justice in the region include: elimination of barriers to the prosecution of environmental crimes; recognition of general and collective environmental interests in legal and administrative proceedings; ensuring legal enforceability of consultation mechanisms and citizen participation procedures; the establishment of environmental courts and prosecutors' offices with appropriate geographical distribution; powers to halt activities that are harmful to the environment or to health; provision of more guarantees for indigenous people, and recognition of their linguistic and cultural diversity.³³

³² See, for example Epp, Charles (1998), *The rights revolution. Lawyers, activists and supreme courts in comparative perspective*. Chicago: University of Chicago Press.

³³ See information concerning access to justice and reforms in geonational reports [online] www.pnuma.org/deat1/nacionales.html.

In addition, in the Declaration on Justice, Governance and Law for Environmental Sustainability, the chief justices, heads of jurisdiction, attorneys general, auditors general, chief prosecutors, and other high-ranking representatives of the judicial, legal and auditing professions gathered at the World Congress held in the framework of Rio+20 declared that States should cooperate to build and support the capacity of courts and tribunals as well as prosecutors, auditors and other related stakeholders at national, subregional and regional levels to implement environmental law, and to facilitate exchanges of best practices in order to achieve environmental sustainability by encouraging relevant institutions, such as judicial institutes, to provide continued education.³⁴

³⁴ See [online] http://www.unep.org/rio20/Portals/24180/Rio20_Declaration_on_Justice_Gov_n_Law_4_Env_Sustainability.pdf.

IV. Rights of access and prevention of environmental conflicts in Latin America and the Caribbean

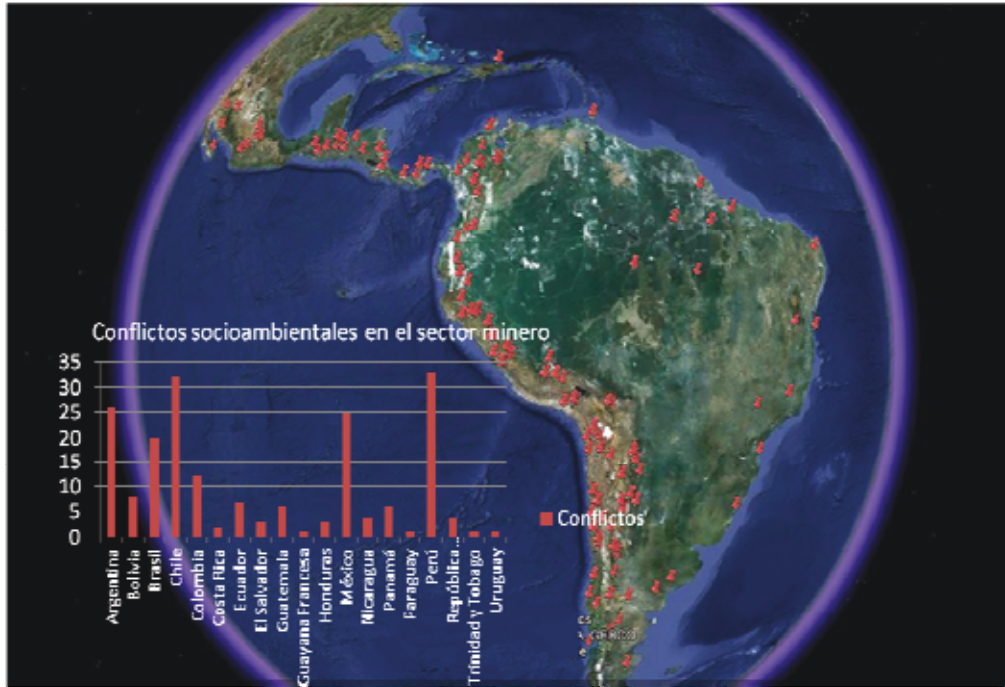
A further concern in the region is the growing number of socioenvironmental conflicts relating to the management and exploitation of natural resources (see figures 3 and 4). A 2011 report produced by the Office of the Ombudsman of Peru states that 55% of the 214 social conflicts identified concerned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

The backdrop to the socioenvironmental conflicts in the region is the poverty and extreme poverty that persists, especially in rural areas, despite the burgeoning economy and the rapid expansion of extractive activities, including mining, oil and gas exploitation, as well as fisheries, forestry and hydroelectricity.

In many cases, there is also a persistent crisis of political representation and social fragmentation, coupled with the State's difficulties in reaching out to the entire national territory. This is compounded by the limited capabilities of subnational local authorities and civil society leaders, as well as of public and private agents, to create spaces for discussion, dialogue and constructive participation in preference to confrontation or violence. The region still faces the challenge of building and strengthening democracy and the surest way of achieving this is to narrow social gaps, ensuring that growth is inclusive, that natural resources are exploited in an environmentally and socially responsible manner and that the authorities and citizens adopt dialogue as both a means and an end. (United Nations, 2012).

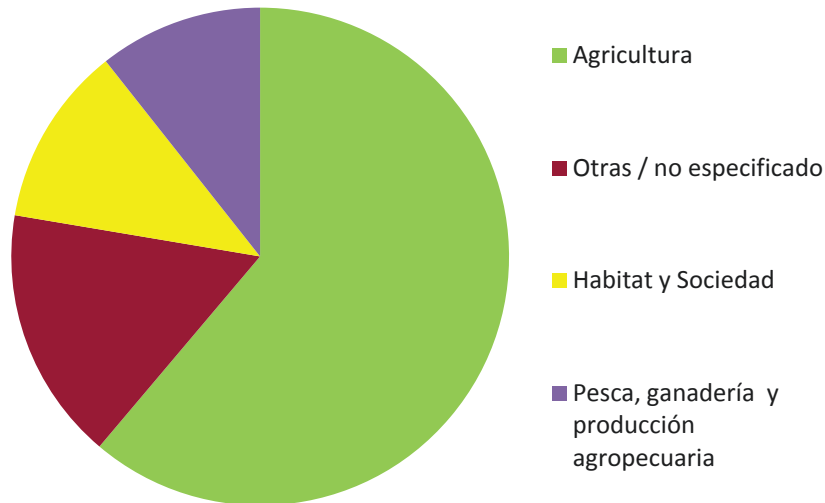
In this context, rights of access are considered indispensable for good governance of the region's natural resources and can help to prevent and avoid conflict. For example, access to information and citizen participation in decision-making on issues relating to natural resources can reveal in a transparent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

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



Source: Prepared on the basis of information from the Latin American Observatory of Environmental Conflicts (OLCA) [online] www.olca.cl (revised in June 2013).

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



Source: Prepared on the basis of data provided by the Latin American Observatory on Environmental Conflicts [online] www.olca.cl (revised in June 2013).

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

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

V. Concluding remarks

As discussed in this document, notwithstanding the significant progress made in the past 20 years, many countries have yet to develop the legislation needed to facilitate the implementation of Principle 10 of the Rio Declaration, or are finding it difficult to apply in practice. In many cases, judicial decisions have paved the way for a stronger framework for the safeguarding of access rights.

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

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

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

To this end, steps must be taken to build the capacity of groups of persons that have traditionally been underrepresented in participatory processes; this includes women as well as indigenous populations and communities and involves recognizing the various languages and cultures that exist in the region. Information must become a tool for levelling the playing field so that all stakeholders have

the required knowledge and are able to participate in decision-making on equal terms and from a well-informed position.

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

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

Costa Rica’s Organization of the Environment Act (Law N° 7554) also includes a chapter on environmental education and research. It stipulates that the State, the municipalities and other public and private institutions should ensure that due attention is paid to environmental concerns at all times in formal and non-formal education and curriculums at all levels with a view to adopting a culture of respect for the environment so as to achieve sustainable development (article 12).

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

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

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

In this connection, the Declaration on the application of Principle 10 of the Rio Declaration on Environment and Development was signed in the framework of the United Nations Conference on Sustainable Development (Rio+20).³⁵ Annex 1 shows the countries which had signed the Declaration in October 2013.

³⁵ See [online] <http://www.eclac.cl/rio20/noticias/paginas/8/48588/Declaracion-eng-N1244043.pdf>.

In the Declaration on the application of Principle 10, the signatory countries recognize and affirm that the rights of access to information, participation and justice regarding environmental issues are essential for promoting sustainable development, democracy and a healthy environment; and that these rights provide many benefits, such as helping to make better decisions and implement them more effectively; involving the public in environmental issues; furthering accountability and transparency in governance; and helping to change production and consumption patterns.

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

Although the signatory countries have yet to define the nature and content of the regional instrument, the importance has been stressed of continued adherence to the standards already in place in terms of access rights to information, participation and justice in environmental matters at both regional and global level.

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

It has also been suggested that this process would be more rapid than a global discussion and that a convention of this sort could strengthen existing regional institutions and generate synergies with processes under way to reduce resource constraints.³⁶ Other arguments for moving towards a regional instrument include sending a strong signal to other countries (including trade partners and countries supplying aid) and foreign investors of the commitment of the signatory countries to good governance, and of the belief that genuine public participation leads to better-quality decision-making in environmental matters and greater confidence in decisions made by governments.

The adoption and implementation of a strategy for sustainable development is a task of global magnitude which can only be successfully completed in a new international context built on shared principles. Adopting a rights-based perspective means calling for public policies actively aimed at reducing inequality in all its forms. The lack of access rights is not only incompatible with the deepening of democracy but also but also makes it impossible to take proper account of the diversity of cultural processes and the concerns and needs of people suffering exclusion or marginalization. Any agenda for development must therefore stress the central role of the State as guarantor of these rights.

³⁶ See [article19.org](http://www.article19.org) [online] <http://www.article19.org/>.

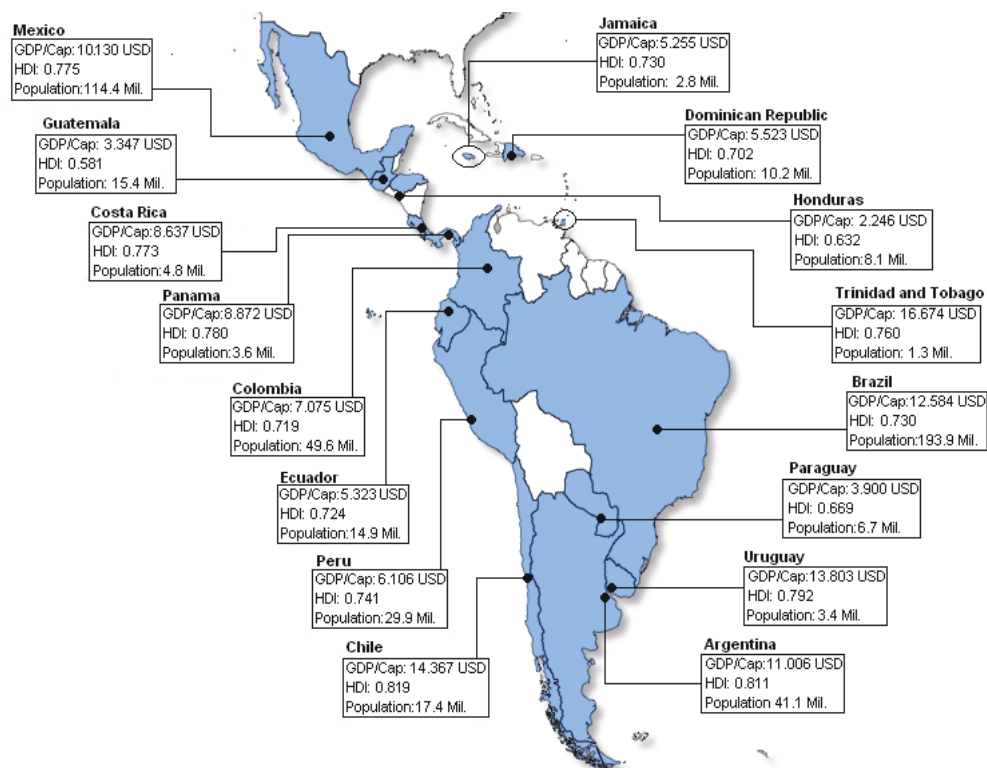
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Annex

MAP A.1
LATIN AMERICA AND THE CARIBBEAN: SIGNATORY COUNTRIES OF THE DECLARATION
ON THE APPLICATION OF PRINCIPLE 10 OF THE RIO DECLARATION
ON ENVIRONMENT AND DEVELOPMENT, OCTOBER 2013



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

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



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