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**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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## CONTENTS

	<i>Page</i>
A. INTRODUCTION .....	3
B. ACCESS TO INFORMATION, PARTICIPATION AND JUSTICE IN ENVIRONMENTAL ISSUES ON A GLOBAL SCALE.....	7
C. TRACKING ACCESS RIGHTS IN LATIN AMERICA AND THE CARIBBEAN .....	10
1. Background .....	10
2. Situation and outlook .....	14
3. Access to information in Latin America and the Caribbean .....	16
4. Citizen participation in environmental decision-making in Latin America and the Caribbean .....	22
5. Access to environmental justice in Latin America and the Caribbean .....	24
D. RIGHTS OF ACCESS AND PREVENTION OF ENVIRONMENTAL CONFLICTS IN LATIN AMERICA AND THE CARIBBEAN .....	26
E. CHALLENGES: BUILDING DEMAND FOR ACCESS TO INFORMATION, PARTICIPATION AND JUSTICE IN RELATION TO THE ENVIRONMENT.....	28
Bibliography .....	30

## A. INTRODUCTION<sup>1</sup>

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

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

Informed citizen participation is, in turn, a mechanism for integrating citizen concerns and knowledge into public policy decisions on the environment. Participatory decision-making enhances the ability of governments to respond to public concerns and demands, to build consensus, and to improve acceptance of and compliance with environmental decisions because citizens feel ownership over these decisions.<sup>2</sup> Evidence suggests that informed citizen participation early in the environmental decision-making process helps prevent future conflicts on environmental issues and brings down the economic cost of putting decisions into practice (see box 1).

Access to justice gives individuals and 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. Access to justice is especially important for ensuring that participation and access to information are also within the reach of those who historically have been excluded from the decision-making process.

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

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

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<sup>1</sup> In this draft, the analysis focuses on the Signatory Parties of the Rio+20 Declaration. In the final version, the analysis will cover all of the countries of Latin America and the Caribbean.

<sup>2</sup> See [article19.org](http://article19.org) [online] [www.uncsd2012.org/content/documents/Article19%20Submission%20to%20UNCSD.pdf](http://www.uncsd2012.org/content/documents/Article19%20Submission%20to%20UNCSD.pdf).

## Box 1

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

Citizen engagement in decision-making in general and on environmental issues in particular is too recent to allow for determining the exact cost-benefit ratio (Involve, 2005a). What is clear is that an array of factors are coming together in a virtually unanimous movement on the part of States to enhance these procedures and promote good environmental governance.

Development achievements in recent years, plus the information revolution made possible by new technologies, have yielded a better-educated population that is more aware of its natural and political environment. In this new scenario, information flows very quickly from a wide variety of sources.

For States, governance is becoming less vertical and national policies are increasingly subject to different levels of domestic government as well as outside forces, such as international treaties and organizations and market pressure.

The push for public engagement on environmental issues is also being driven by increasing awareness and knowledge of the processes of environmental degradation. This exposes the direct and indirect consequences that decisions will have on the environment and its inhabitants and sparks discussion on the suitability of the decision and the chosen location.

Despite this theoretical explanation and the moral rationale for building democracies that has buttressed this movement towards greater participation, it is hard to say whether there is an opportunity cost in not including participatory processes.

Neoclassical economic theory suggests that there is. Leaving the public out of rational decision-making that seeks the best possible outcome leads to market failures related to imperfect information (information asymmetry), misjudgement of externalities and poor management of public goods (Involve, 2005b).

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

Regardless of what side of the discussion is being put forward, there are clear benefits to public participation in decision-making:

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

These tangible factors give rise to an opportunity cost where they do not take account of participatory processes. As a result, the benefits of proposing mechanisms for participation go beyond the moral reasons of democratic identity, cohesion and social justice.

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

Twenty years on from the adoption of Principle 10 of the Rio Declaration on Environment and Development, there is consensus that the three access rights (see box 2) embody the core standards of transparency, equity and accountability in decision-making and are the foundation of environmental democracy and good governance (see box 3). Accumulated evidence suggests that citizen participation in

decision-making can improve the quality and acceptance of the decisions that result and is a tool for poverty reduction. This was recognized in the outcome document of the United Nations Conference on Sustainable Development (Rio+20), which states that broad public participation and access to information and judicial and administrative proceedings are essential to the promotion of sustainable development. In that document, the Heads of State also acknowledged that democracy, good governance and the rule of law at the national and international levels, as well as a favourable context, are essential for sustainable development, including sustained, inclusive economic growth, social development, environmental protection and the eradication of poverty and hunger.<sup>3</sup>

#### Box 2

#### DEFINING ACCESS RIGHTS

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

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

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

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

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

#### Box 3

#### THE BUILDING BLOCKS OF GOOD GOVERNANCE AND ENVIRONMENTAL DEMOCRACY

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

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

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

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

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

<sup>3</sup> General Assembly Resolution 66/288 [online] [www.un.org/en/ga/66/resolutions.shtml](http://www.un.org/en/ga/66/resolutions.shtml).

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

The importance of 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).

Two noteworthy voluntary initiatives for private enterprise information transparency are the Global Reporting Initiative and the Extractive Industries Transparency Initiative.

The Global Reporting Initiative (GRI)<sup>4</sup> 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)<sup>5</sup> aims to strengthen governance by improving transparency and accountability in disclosure of extractive industry payments to governments. It is a coalition of governments, companies, civil society groups, investors and international organizations that was first announced at the 2002 World Summit on Sustainable Development in Johannesburg. This voluntary initiative is followed by countries whose governments have signed up. In Latin America and the Caribbean, Peru is the only EITI compliant country. Guatemala and Trinidad and Tobago are EITI candidate countries. In April 2012, during the Open Government Partnership Meeting, the Government of Colombia announced its interest in participating. Compliance with this global transparency standard provides citizens of participating countries with an independent review of how much their governments receive in oil, gas and mining revenues.

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<sup>4</sup> For further information, see [online] <https://www.globalreporting.org>.

<sup>5</sup> For further information, see [online] <http://eiti.org/eiti/history>.

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

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

### Box 4

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

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

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

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

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

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

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

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

Box 4 (concluded)

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

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

2010. **UNEP Guidelines for the Development of National Legislation on Access to Information, Public Participation and Access to Justice in Environmental Matters**: The purpose of these voluntary guidelines, adopted at the Thirteenth Conference of the Parties to the United Nations Framework Convention on Climate Change (COP 13), held in Bali in 2010, is to provide general guidance to States so requesting, primarily developing countries, in promoting the effective implementation of their commitments to Principle 10 of the 1992 Rio Declaration on Environment and Development within the framework of their national legislation and processes.

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

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

2012. **Declaration on the Application of Principle 10 of the Rio Declaration on Environment and Development**: Put forward by the Governments of Chile, Costa Rica, Dominican Republic, Ecuador, Jamaica, Mexico, Panama, Paraguay, Peru and Uruguay during the Rio+20 Conference. The signatory countries 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.

**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).

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.<sup>6</sup> To date, no other region has made progress towards developing a binding legal instrument similar to the Aarhus Convention.

The Aarhus Convention grants the public rights and imposes on governments and public authorities obligations regarding access to information, public participation in decision-making and access to justice in environmental matters. It thus links environmental protection to government accountability and establishes that sustainable development can be achieved only through the involvement of all

<sup>6</sup> “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/>.



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.<sup>7</sup> They are:

- **Access to environmental information:** All individuals have the right to timely access to information held by public authorities, on request. The authorities are required to collect and actively and publicly disseminate certain types of environmental information.
- **Public participation in environmental decision-making:** Parties shall strive to promote effective public participation, at an appropriate stage, and while options are still open, in decisions for authorizing certain activities or in preparing environmental plans, programmes and policies. The Parties shall also promote effective public participation during the preparation of executive regulations and other generally applicable legally binding rules.
- **Access to justice in environmental matters:** All persons are entitled to access to legal or administrative procedures for appealing refusal or inadequate fulfilment of a request for environmental information, the legality of any decision to authorize an activity, or any act or omission of private persons or public authorities in violation of national environmental law. Appeal procedures must provide adequate and effective remedies and be fair, equitable, timely and not prohibitively expensive.

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.

Another major international step in promoting access rights was taken by the Inter-American Court of Human Rights in 2006, when it recognized the right of access to information held by public bodies as a core human right protected by human rights treaties that States are obliged to respect.<sup>8</sup>

More recently, at the United Nations Conference on Sustainable Development (Rio+20), the countries underscored that broad public participation and access to judicial and administrative proceedings are essential to the promotion of sustainable development. They encouraged action at the regional, national, subnational and local levels to promote access to information, public participation in decision-making and access to justice in environmental matters, as appropriate.

Along these lines and also within the framework of Rio+20, representatives of the Governments of Chile, Costa Rica, the Dominican Republic, Ecuador, Jamaica, Mexico, Panama, Paraguay, Peru and Uruguay signed the Declaration on the Application of Principle 10 of the Rio Declaration on Environment and Development in Latin America and the Caribbean (see the following section).

<sup>7</sup> See [online] [www.unece.org/env/pp/welcome.html](http://www.unece.org/env/pp/welcome.html).

<sup>8</sup> See Inter-American Court of Human Rights, “Claude Reyes and Others v. Chile”, 19 September 2006, Series C No. 151, para. 77 [online] [www.corteidh.or.cr/docs/casos/articulos/seriec\\_151\\_ing.doc](http://www.corteidh.or.cr/docs/casos/articulos/seriec_151_ing.doc).

## C. TRACKING ACCESS RIGHTS IN LATIN AMERICA AND THE CARIBBEAN<sup>9</sup>

### 1. Background

Until the late 1980s, the environment and its relationship to economic growth and social justice were not high on the agenda for the countries of the region. This began to change when economic opening brought new demands from external markets on top of incipient domestic demand for environmental protection and expanded citizen participation. It was against this backdrop that the United Nations Conference on Environment and Development, also known as the Earth Summit, was held in Rio de Janeiro, Brazil, in 1992. Worldwide, the conference was a turning point in environmental awareness and in formal recognition by the international community of the link between environment and development, through the concept of sustainable development (United Nations, 2012).

As noted earlier, an innovative and visionary principle included in the Rio Declaration on Environment and Development —Principle 10— is that broad public participation and access to information and judicial and administrative proceedings are essential to the promotion of sustainable development.

For Latin America and the Caribbean, the Earth Summit provided a major boost for 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 the region during the 1990s, some of these reforms provided for public participation (through environmental authority consultative committees or through formal mechanisms for drafting plans and regulations and for evaluating projects).

Access rights in Latin America and the Caribbean have also received a boost from free trade agreements signed by some of the countries. Box 5 summarizes some of these. In Chile, fresh impetus was given by the 2005 review of the country's environmental performance conducted by the Economic Commission for Latin America and the Caribbean (ECLAC) and the Organisation for Economic Cooperation and Development (OECD) before Chile became an OECD member. The 2005 review of Chile's environmental performance includes a section on environmental democracy that examines the progress made and the challenges facing Chile in terms of access to information, participation and environmental justice. The report highlighted the need to consolidate environmental information systems and improve the quality of environmental information reporting and make it more effective and systematic. It called for improving and expanding the use of environmental impact assessments (project-based) and strategic environmental assessments (at the policy and programme level) and for making them more systematic in order to ensure truly effective participation. The recommendations set out in the review were built into the General Environmental Framework Law of 2010, whose provisions include strategic environmental assessments and public participation in the process.

Twenty years on from the Earth Summit, environmental rights and obligations have been written into most of the political constitutions of the countries of Latin America and the Caribbean. Since 1992 there has also been a steep increase in the number of national institutions devoted to the environment. All countries in the region now have a ministry, secretariat or equivalent devoted to the environment and, in

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<sup>9</sup> This section is based on United Nations (2012) and a revision conducted from June to October 2012 of the state of the art of access to information, participation and justice in environmental matters in 14 countries of the region: Antigua and Barbuda, Belize, Chile, Costa Rica, Dominican Republic, Ecuador, Jamaica, Mexico, Panama, Paraguay, Peru, Saint Vincent and the Grenadines, Trinidad and Tobago, and Uruguay.

some cases, they are linked to related issues, such as agriculture, housing, energy or natural resources (see table 1) (United Nations, 2012).

All countries in the region have enacted general or framework laws on the environment, some of which have already been reformed (United Nations, 2012). In addition to these general laws there is a broad body of complementary legislation incorporating elements of Principle 10 of the Rio Declaration of 1992 (see table 2).

#### Box 5

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

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

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

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

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

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

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

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

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

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

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, Energy and Telecommunications
Cuba	Ministry of Science, Technology and the Environment
Dominica	Ministry of Environment, Natural Resources, Physical Planning and Fisheries
Dominican Republic	Ministry of the Environment and Natural Resources
Ecuador	Ministry of the Environment
El Salvador	Ministry of the Environment and Natural Resources
Grenada	Ministry of the Environment, Foreign Trade and Export Development
Guatemala	Ministry of the Environment and Natural Resources
Guyana	Environmental Protection Agency
Haiti	Ministry of the Environment
Honduras	Secretariat of Natural Resources and the Environment
Jamaica	Ministry of Water, Land, Environment and Climate Change
Mexico	Secretariat of the Environment and Natural Resources
Nicaragua	Ministry of the Environment and Natural Resources
Panama	National Authority for the Environment
Paraguay	Secretariat of the Environment
Peru	Ministry of the Environment
Saint Kitts and Nevis	Ministry of Sustainable Development
Saint Vincent and the Grenadines	Ministry of Health, Wellness and the Environment
Saint Lucia	Ministry of Planning, Development, Environment and Housing
Suriname	National Institute for Environment and Development
Trinidad and Tobago	Ministry of the Environment and Water Resources
Uruguay	Ministry of Housing, Land-Use Planning and Environment (National Environment Directorate)
Venezuela (Bolivarian Republic of)	Ministry of People's Power for the Environment

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

Table 2  
**LATIN AMERICA AND THE CARIBBEAN (21 COUNTRIES): ENVIRONMENTAL FRAMEWORK  
 LAWS AND REFERENCE TO ENVIRONMENTAL IMPACT ASSESSMENT (EIA),  
 LEGAL DEFINITION OF DAMAGE AND PRINCIPLE OF PARTICIPATION  
 IN ENVIRONMENTAL LAW-MAKING**

Country	Environmental framework laws	Year (amendments)	Legislation on EIA	Definition of environmental damage	Includes the principle of participation in law-making
Antigua and Barbuda	Environmental Protection and Management Bill	(Not yet approved)	X	...	X
Argentina	Law 25675	2002	X	X	X
Belize	Environmental Protection Act	2000	X	...	...
Brazil	Law 6938	1981	X	X	X
Chile	Law 19300 (20417)	1994 (2010)	X	X	X
Colombia	Law 99	1993	X	X	X
Costa Rica	Framework law on the environment	1995	X	X	X
Cuba	Law 81	1997	X	X	X
Dominican Republic	64-00	2000	X	X	X
Ecuador	Law on environmental management	1998	X	X	X
El Salvador	Law on the environment and related regulations	1988	X	X	X
Guatemala	Law 68-86	1986	X	...	X
Haiti	Decree on environmental management for sustainable development	2011	X	...	...
Jamaica	...	...	...	...	...
Mexico	General law on ecological balance and environmental protection	1988 (2012)	X		
Nicaragua	Law 217	1996	X	X	X
Panama	Law 41	1998	X	...	X
Paraguay	...	...	X	X	...
Peru	Law 28611	2005	X	X	X
Saint Vincent and the Grenadines	...	...	<sup>a</sup>	...	<sup>a</sup>
Trinidad and Tobago	Environmental Management Act	2001	X	X	X
Uruguay	Law 17283	17.283	X	...	X

**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.

<sup>a</sup> Principles included in draft environmental impact assessment regulations, although the regulations have not yet come into force.

## 2. Situation and outlook

Over the past few decades, the countries of the region have made great strides in access to information, participation and access to justice on environmental matters. In addition, the vast majority of the environment-related framework laws passed since the 1980s incorporate access to information and citizen participation, either through consultation or by convening organized civil society or integrating it directly into some form of management body (United Nations, 2012). Table 3 lists some common environmental management tools for integrating access that have been applied in the region.

Table 3  
**ENVIRONMENTAL MANAGEMENT TOOLS INTEGRATING ACCESS RIGHTS**

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

**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.<sup>10</sup>

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) and the United Nations Institute for Training and Research (UNITAR) have, since 2008, assisted a number of countries of the region (Costa Rica, Dominican Republic, El Salvador, Honduras, Nicaragua and Panama) in drawing up national profiles and identifying gaps and needs for implementing Principle 10 of the Rio Declaration through multisectoral, multi-stakeholder processes in keeping with the Bali guiding principles.<sup>11</sup>

Despite the progress made over the past 20 years, many countries have yet to enact legislation to facilitate implementation of Principle 10 of the Rio Declaration, while others are encountering

<sup>10</sup> For additional information, see [online] <http://accessinitiative.org/>.

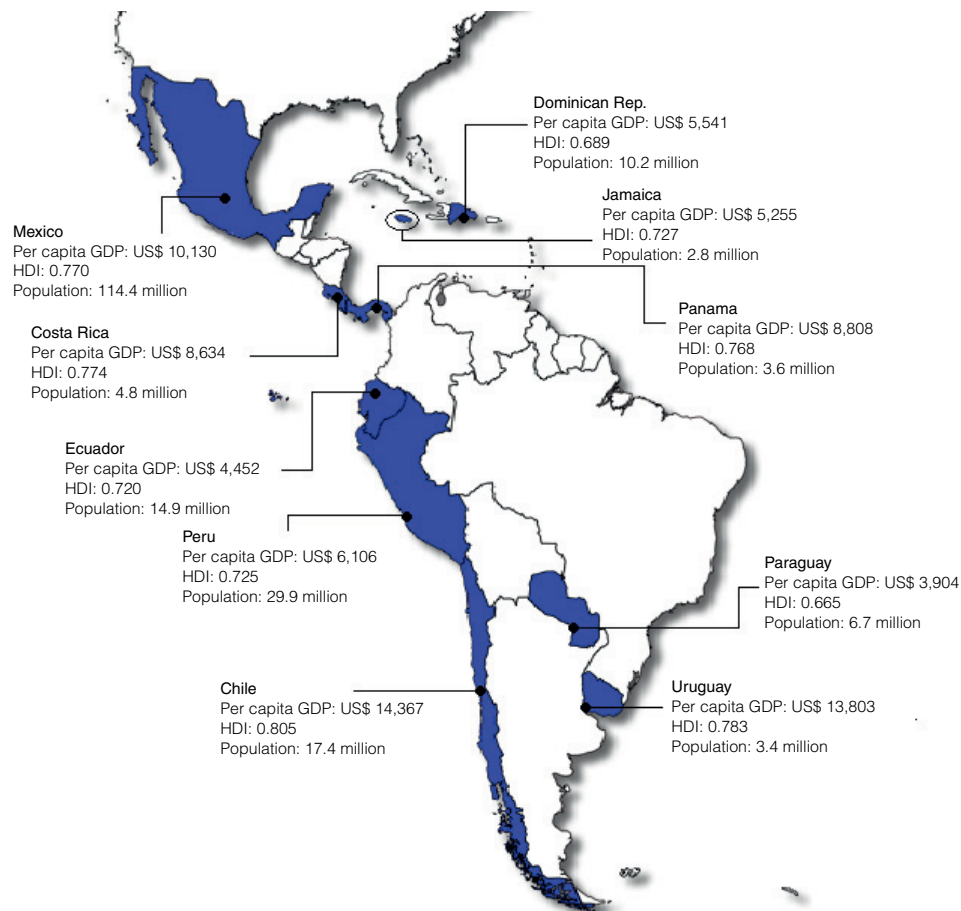
<sup>11</sup> See [online] [www.unitar.org/egp](http://www.unitar.org/egp).

implementation difficulties. A lack of available information, including environmental statistics, impedes effective public action and the full participation of civil society in decisions (United Nations, 2012).

It has been suggested that an international or regional agreement would make it possible to work towards effective implementation of Principle 10 of the Rio Declaration, strengthening the public's rights of access to information, participation and justice in environmental decision-making, especially the most disadvantaged segments of society that have, historically, been left out of the decision-making process (United Nations, 2012).

In the framework of the United Nations Conference on Sustainable Development (Rio+20), the Governments of Chile, Costa Rica, Dominican Republic, Ecuador, Jamaica, Mexico, Panama, Paraguay, Peru, and Uruguay adopted the Declaration on the Application of Principle 10 of the Rio Declaration on Environment and Development<sup>12</sup> (see map 1).

Map 1  
SIGNATORY COUNTRIES OF THE DECLARATION ON THE APPLICATION OF PRINCIPLE 10  
OF THE RIO DECLARATION ON ENVIRONMENT AND DEVELOPMENT



**Source:** Economic Commission for Latin America and the Caribbean (ECLAC), as at 18 October 2012.

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

<sup>12</sup> The Declaration is available [online] at: [www.un.org/ga/search/view\\_doc.asp?symbol=A/CONF.216/13](http://www.un.org/ga/search/view_doc.asp?symbol=A/CONF.216/13).

In the Declaration, 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. 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 signatory countries, with the support of ECLAC as technical secretariat, are also committed to working towards a regional convention or other instrument for full implementation of the rights of access to information, participation and justice regarding environmental issues in Latin America and the Caribbean with the active involvement of society as a whole and its principal groups.

Among the arguments in favour of moving towards a regional convention is the potential for the countries to be actively involved from the outset in drafting and tailoring the text of the instrument to the specificities of the region, creating a sense of regional ownership. Moreover, the cultural ties that the countries of the region share could simplify the negotiations and make it easier to reach a consensus. It has also been suggested that the process would probably be more expeditious than a global debate and that a regional convention could strengthen existing institutions in the region and generate synergies with processes already under way in order to ease constraints on resources.<sup>13</sup>

The signatory countries have still not defined the nature of the proposed regional instrument, but there is no question that the Aarhus Convention is a model for discussing a regional instrument for full application of Principle 10. It is useful to recall the reasons given by the Governments of Europe for participating in the Convention, including (a) being a Party to the convention sends a powerful signal to other States (including trading and aid partners) as well as to foreign investors that the Government is committed to good governance; (b) the Aarhus Convention principles —transparency, access to information, citizen participation, non-discrimination, non-persecution and access to justice— are at the core of a stable, secure society, and a stable, secure society is more likely to be economically prosperous and environmentally sustainable; and (c) active, real public participation improves environmental decision-making and builds trust in government decisions.

The following sections examine the state of the art in access to information, participation and justice in Latin America and the Caribbean, based on a review of 14 countries of the region: Antigua and Barbuda, Belize, Chile, Costa Rica, Dominican Republic, Ecuador, Jamaica, Mexico, Panama, Paraguay, Peru, Saint Vincent and the Grenadines, Trinidad and Tobago and Uruguay. Also included are experiences from other countries of the region recorded in the recent literature.

### **3. Access to information in Latin America and the Caribbean**

#### **(a) Progress made in the past 20 years**

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

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<sup>13</sup> See article 19.org [online] [www.article19.org/](http://www.article19.org/).



Currently, most of the region's countries guarantee access to information under the Constitution (for example, Costa Rica, Ecuador, Mexico and Peru) or through specific legislation. A review of 14 countries in the region shows that 11 have legislation on access to public information and 3 have a legal definition of environmental information (see table 4). In most of the countries, the parameters defining freedom of environmental information are split between environment-related framework laws and transparency legislation. Some countries, such as Argentina, however, have enacted specific legislation on access to environmental information (Law 25.831 of 2004). Table 5 compares the situation in Chile and Brazil in terms of freedom of information legislation.

Table 4  
**LATIN AMERICA AND THE CARIBBEAN (14 COUNTRIES): LEGISLATION ON ACCESS TO INFORMATION AND LEGAL DEFINITION OF ENVIRONMENTAL INFORMATION**

Country	Legislation on access to information	Year	Definition of environmental information in legislation on access to information or framework environmental legislation
Ecuador	Law on transparency and access to public and government information	2004	...
Panama	Law 6/2006	2006	...
Chile	Law 20.285	2009	Law 19.300 art 31 bis (reformed by Law 20.417 in 2010)
Peru	Law 27.806	2002	Law 28.245 art 31
Mexico	Federal law on transparency and access to public and government information	2002	General law on ecological balance and protection of the environment art 159 bis
Jamaica	Access to Information Act	2002	...
Uruguay	18.381	2008	...
Paraguay	...	...	...
Costa Rica	...	...	...
Dominican Republic	Law 200-04	2004	...
Antigua and Barbuda	Freedom of Information Act	2004	...
Belize	Freedom of Information Act	2000	...
Trinidad and Tobago	Freedom of Information Act	1999	...
Saint Vincent and the Grenadines	Freedom of Information Act	2003	...
		(not yet in force)	

**Source:** Economic Commission for Latin America and the Caribbean (ECLAC), on the basis of United Nations Environment Programme (UNEP), "Derecho y políticas ambientales. Legislación por países", 2009.

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

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

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

Another positive trend with respect to freedom of information in the region is the creation of pollutant release and transfer registers (PRTRs), in some cases (e.g. Chile and Mexico) as a result of commitments assumed under free trade agreements (see box 5). Map 2 shows the status of PRTRs in Latin America and the Caribbean.

The United Nations Institute for Training and Research (UNITAR) has carried out a number of programmes to facilitate the development of PRTRs in the region. PRTRs are important in ensuring the implementation of Principle 10 of the Rio Declaration, because they systematize the data from both public and private entities. UNITAR projects have been crucial in developing such registers in Latin America and the Caribbean.

Map 2  
**LATIN AMERICA AND THE CARIBBEAN: STATUS OF CREATION OF POLLUTANT RELEASE AND TRANSFER REGISTERS, OCTOBER 2012**



**Source:** Economic Commission for Latin America and the Caribbean (ECLAC), as at 18 October 2012.

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

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

Box 6 gives an overview of progress and challenges in the availability of environment-related information in the region.

#### Box 6

#### THE SUPPLY OF ENVIRONMENTAL INFORMATION IN THE REGION

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

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

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

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

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

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

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

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

## **(b) Challenges**

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

Governments and civil society in the region need greater access to existing tools for environmental information and technology. The amount of data for environmental decision-making in the hands of private agents represents another challenge. A number of voluntary initiatives have been taken in these areas, such as Eye on Earth<sup>14</sup> and the Carbon Disclosure Project.<sup>15</sup> 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".<sup>16</sup> 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).

In this connection, 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).

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<sup>14</sup> See [online] [www.eyearth.org](http://www.eyearth.org)

<sup>15</sup> See [online] <https://www.cdproject.net/en-US/Pages/HomePage.aspx>.

<sup>16</sup> "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".

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

##### (a) Progress made in the past 20 years

Twenty years on from the Earth Summit, most countries in the region have incorporated provisions on citizen participation into environmental legislation or into thematic or sectoral laws and have created a variety of citizen participation councils (United Nations, 2012). Most also have some degree of citizen participation in environmental impact assessments (see map 3).

Map 3  
LATIN AMERICA AND THE CARIBBEAN: CITIZEN PARTICIPATION  
IN ENVIRONMENTAL IMPACT ASSESSMENTS



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

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

Citizen participation is most limited at the level of policies, plans and strategies, where it is generally at the discretion of the government. A notable experience in this regard is the inclusion of environmental impact assessments in Chile's recently reformed General Environmental Law (2010).<sup>17</sup> The law now stipulates that environmental impact assessments must provide means for interested public parties to participate and must include advertising of the policy or plan, and of any subsequent reform thereof (article 7 of the reformed Law 19.300).

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

## **(b) Challenges**

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

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

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).

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<sup>17</sup> Law 19.300 updated in 2010 in Law 20.417, which made substantial changes to Chile's environment-related legislation.

## 5. Access to environmental justice in Latin America and the Caribbean

### (a) Progress made in the past 20 years

Countries in the region have made strides in creating and setting up specialized bodies with jurisdiction over environmental matters both within the framework of the justice system and as entities falling under ministerial or statutory bodies (see table 6). 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).

Table 6

#### LATIN AMERICA AND THE CARIBBEAN (16 COUNTRIES): SPECIFIC LAWS ON ENVIRONMENTAL CRIME AND SPECIALIZED BODIES WITH JURISDICTION OVER ENVIRONMENTAL MATTERS

Country	Specific law on environmental crimes	Specialized body with jurisdiction over environmental matters
Argentina	None	Federal Prosecution Unit for the Investigation of Crimes against the Environment
Brazil	10.605 Crimes against the Environment Act	Prosecutors or promoters of environmental justice
Chile	None	Environmental prosecutors' offices <sup>a</sup>
Costa Rica	None	Environmental prosecutors' offices
Dominican Republic	None	Office of the Procurator for Protection of the Environment
Ecuador	None	None
El Salvador	None	Environmental prosecutors' offices
Honduras	None	Environmental prosecutors' offices
Jamaica	None	None
Mexico	None	Office of the Federal Prosecutor for Protection of the Environment in Mexico – Some states also have an environmental prosecutor's office
Nicaragua	559/05 Crimes against the Environment and Natural Resources Act	Office of the Environmental Prosecutor
Panama	5/05 Punishable Acts against the Environment Act	Environmental prosecutors' offices
Paraguay	716/96 Punishment for Crimes against the Environment Act	Environmental prosecutors' offices
Peru	None	Environmental prosecutors' offices
Trinidad and Tobago	Environmental Management Act, 2000	Environmental Commission of Trinidad and Tobago
Uruguay	None	None
Venezuela (Bolivarian Republic of)	Penal Environmental Act	Environmental prosecutors' offices

**Source:** Economic Commission for Latin America and the Caribbean (ECLAC) on the basis of Merlo "El Ministerio Fiscal en Paraguay", document prepared for workshops of the United Nations Environment Programme (UNEP) 2008 [online] [www.pnuma.org/deramb/documentos/VIProgramaRegional/5%20MINISTERIO%20PUBLICO%20FISCAL%20Y%20PROTECCION%20AMB/16%20Merlo%20Ministerio%20fiscal%20en%20Paraguay.pdf](http://www.pnuma.org/deramb/documentos/VIProgramaRegional/5%20MINISTERIO%20PUBLICO%20FISCAL%20Y%20PROTECCION%20AMB/16%20Merlo%20Ministerio%20fiscal%20en%20Paraguay.pdf).

<sup>a</sup> Not yet fully functional.



As indicated in the table, several countries in the region have opted to set up specialized courts with jurisdiction over environmental matters. Trinidad and Tobago, for example, has established a specialized court on environmental matters—the Environmental Commission of Trinidad and Tobago—with competence to adjudicate complaints of violations of the Environmental Management Act. The advantage of a specialized court is that (unlike a judicial review), it is competent to assess the merits of the case as well as any procedural irregularities. Moreover, this specialized court has at least three technically trained judges with experience in environmental matters, engineering, and natural and social science issues<sup>18</sup>. 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.

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

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

Countries in the region have also started to set up mechanisms to ensure that citizens have recourse to justice or some independent body if they feel that their right to a clean environment has been infringed. 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.<sup>19</sup> 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.

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.

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<sup>18</sup> Section 82 of the Environmental Management Act.

<sup>19</sup> Section 69 Environmental Management Act.

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

## **(b) Challenges**

Whether creating bodies with specialized jurisdiction is the best way to proceed at this point is a matter of open debate in the region. One argument is that environmental courts may prove to be a cheaper 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.<sup>20</sup>

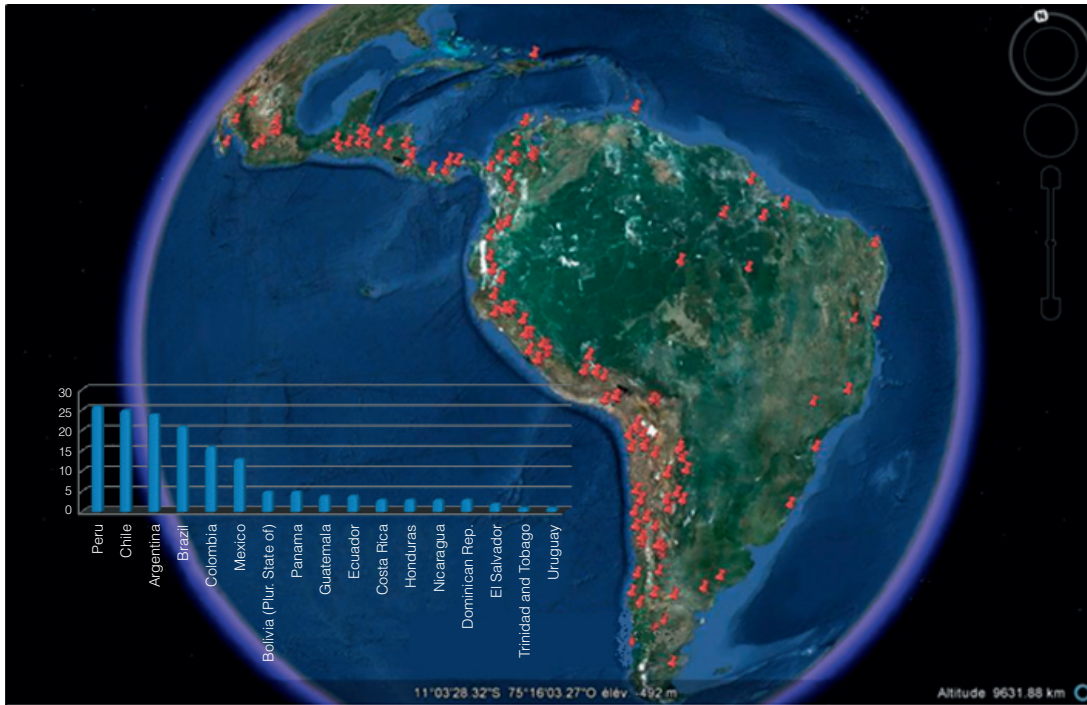
## **D. RIGHTS OF ACCESS AND PREVENTION OF ENVIRONMENTAL CONFLICTS IN LATIN AMERICA AND THE CARIBBEAN**

A further concern in the region is the growing number of socio-environmental conflicts relating to the management and exploitation of natural resources (see figures 1 and 2). 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.

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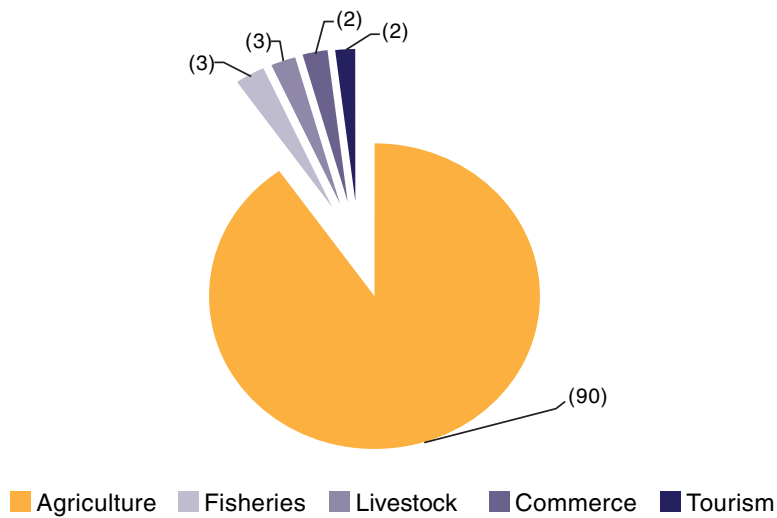
<sup>20</sup> See information concerning access to justice and reforms in geonational reports [online] [www.pnuma.org/deat1/nacionales.html](http://www.pnuma.org/deat1/nacionales.html).

Figure 1  
**LATIN AMERICA AND THE CARIBBEAN: SOCIO-ENVIRONMENTAL CONFLICTS LINKED TO MINING ACTIVITIES, 2004-2012**



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

Figure 2  
**LATIN AMERICA AND THE CARIBBEAN: SECTORS AFFECTED BY SOCIO-ENVIRONMENTAL CONFLICTS LINKED TO MINING ACTIVITIES, 2004-2012**  
*(Percentages)*



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

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

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.

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

#### **E. CHALLENGES: BUILDING DEMAND FOR ACCESS TO INFORMATION, PARTICIPATION AND JUSTICE IN RELATION TO THE ENVIRONMENT**

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.

Legal requirements, however important, cannot by themselves enforce proper fulfillment of rights of access. Governments must also make efforts to broaden demand for access to information and participation in environmental matters and to inform citizens of their right of access to justice.

Environmental education is one of the most widely used tools for building citizen participation in environmental decision-making. It is gradually being incorporated into legislation in order to develop environmental awareness within the population.

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

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

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

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

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