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**REPORT OF THE FOURTH MEETING OF THE FOCAL POINTS APPOINTED BY THE
GOVERNMENTS OF THE SIGNATORY COUNTRIES OF THE DECLARATION
ON THE APPLICATION OF PRINCIPLE 10 OF THE RIO DECLARATION
ON ENVIRONMENT AND DEVELOPMENT IN LATIN AMERICA
AND THE CARIBBEAN**

Santiago, 4-6 november 2014

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A. ATTENDANCE AND ORGANIZATION OF WORK

Place and date of the meeting

1. The fourth meeting of the focal points appointed by the governments of the signatory countries of the Declaration on the Application of Principle 10 of the Rio Declaration on Environment and Development in Latin America and the Caribbean was held in Santiago from 4 to 6 November 2014.
2. The meeting was organized jointly by the Economic Commission for Latin America and the Caribbean (ECLAC) in its capacity as technical secretariat for the Declaration on the application of Principle 10 of the Rio Declaration on Environment and Development,¹ and the Government of Chile.

Attendance²

3. The meeting was attended by representatives of the following 19 signatory countries of the Declaration: Argentina, Brazil, Chile, Colombia, Costa Rica, Dominican Republic, Ecuador, El Salvador, Guatemala, Honduras, Jamaica, Mexico, Panama, Paraguay, Peru, Plurinational State of Bolivia, Saint Vincent and the Grenadines, Trinidad and Tobago and Uruguay.
4. The following countries of Latin America and the Caribbean attended as observers: Antigua and Barbuda, Nicaragua and Saint Lucia. France also attended.
5. Also attending were international experts in access to information, participation and justice in environmental matters, and members of the public, as established in the Plan of Action to 2014.
6. The meeting was open-ended and webcasted.

Chair

7. Chile chaired the meeting in its capacity as host country and Chair of the Presiding Officers.

¹ See A/CONF.216.13.

² See the list of participants in annex C.

Adoption of the agenda

8. The following agenda was adopted:
 1. Adoption of the agenda and organization of work.
 2. Welcome extended to the new signatories of the Declaration.
 3. Adoption of the San José Content.
 4. Report on the activities carried out by the working groups established under the Plan of Action to 2014 for the implementation of the Declaration on the application of Principle 10 of the Rio Declaration on Environment and Development in Latin America and the Caribbean.
 5. Action taken at the national level by the signatory countries of the Declaration.
 6. Current status of the international debate.
 7. Adoption of agreements and election of the presiding officers.

B. SUMMARY OF PROCEEDINGS

Opening session

9. At the opening session, statements were made by Antonio Prado, Deputy Executive Secretary of the Economic Commission for Latin America and the Caribbean (ECLAC); Andrea Sanhueza, representative of the public; Fernando Rojas, Ambassador of Peru in Chile; Waldemar Coutts, Director for the Environment and Maritime Affairs at the Ministry of Foreign Affairs of Chile, and Marcelo Mena, Undersecretary of the Environment of Chile.

10. The Deputy Executive Secretary of ECLAC welcomed the participants and recalled that the adoption of Principle 10 of the Rio Declaration on Environment and Development in 1992 had been the starting point for a new journey, whose basic premise was that achieving sustainable development and eradicating poverty required good governance and the participation of all. He asserted that Principle 10 was more important than ever, since the right of citizens to know the state of the environment, to express their opinions and to demand accountability would allow society at large to prevent significant environmental damage. He also underscored the relevance of the regional dimension in the application of Principle 10, and restated the commitment of ECLAC to the process of securing a regional agreement in that regard, with a view to greater integration and sustainable development.

11. The representative of the public stated that civil society had always advocated the need for a legally binding regional instrument that would ensure the full exercise of rights of access to information, participation and justice in environmental matters. She highlighted the progress achieved in a short space of time, as well as the participation in the process by governments, organizations and the public, and noted that 2015 was an opportune moment to commence the negotiation of a regional instrument that would reflect the Lima Vision, take the San José Content as a foundation rather than a ceiling, and include significant public involvement. Civil society considered that it was important for the instrument to be

binding, since it would thus constitute a real rather than a merely symbolic commitment to sustainable development, and enable the integration of a rights-based approach into environmental governance, the creation and strengthening of specific cooperation and capacity-building mechanisms, and the reduction of social and environmental conflicts. Lastly, she congratulated the States for their receptiveness to a binding convention, and encouraged all the countries support this position.

12. The Ambassador of Peru in Chile recalled the commitment by signatory countries of the Declaration on the application of Principle 10 of the Rio Declaration on Environment and Development to prepare a plan of action to develop a regional instrument for the full exercise of the rights of access to information, participation and justice regarding environmental matters. He called attention to past achievements, such as the promotion of the Declaration, the incorporation of new signatories, regional-level participation, the active collaboration of the public, and the creation of working groups. The Ambassador also reaffirmed the full commitment of the Government of Peru to the process and its steadfast support for multilateralism. He concluded by stating that the regional instrument would not only strengthen access rights, but also deepen regional cooperation and support the implementation of the post-2015 development agenda and the sustainable development goals.

13. The Director for the Environment and Maritime Affairs of the Ministry of Foreign Affairs, on behalf of the Minister for Foreign Affairs of Chile, stated that citizen participation was one of the most effective mechanisms for addressing environmental challenges and achieving lasting solutions, within a framework of sound policies that ensure sustainability. He expressed his appreciation for the lengthy process of learning and reflection that had been undertaken, including the shoring-up of important consensuses. The meeting represented the beginning of a new phase, and an opportunity to find a common path. Chile favoured the negotiation of an instrument able to channel the application of Principle 10, considering that poverty eradication was linked to environmental equity and should be achieved in a manner harmonious with the environment.

14. The Undersecretary of the Environment of Chile thanked ECLAC for its support in the process of developing a regional instrument on access to information, participation and justice in environmental matters. He pointed to the collective efforts that had already been invested, and the growth of the process to include 19 signatory countries. The participation of civil society and the public was a hallmark of the process which, despite scepticism in some quarters, had yielded important results. Chile favoured a binding instrument that would facilitate coordinated strategies, dialogue and capacity-building, environmental governance and the creation of a regional agenda on access rights. In this regard, it was necessary to build on existing agreements in the region, avoiding setbacks in the construction of environmental democracy.

Welcome extended to the new signatories to the Declaration (agenda item 2)

15. The representative of Chile, in that country's capacity as Chair of the Presiding Officers of the fourth Meeting, welcomed El Salvador and the Plurinational State of Bolivia.

16. The representative of the Plurinational State of Bolivia expressed her country's satisfaction at becoming an active participant in the process for the implementation of the Declaration on the application of Principle 10, and her hope that it would be a fruitful one. She also explained that, with its participation, the Plurinational State of Bolivia wished to step up the initiatives already under way in the country and study the experiences of other countries in environmental governance and access rights.

17. The representative of El Salvador stated that it was an honour to participate in the meeting of the focal points as a signatory country, having previously held observer status. She affirmed that the principles contained in the Declaration on the application of Principle 10 were essential instruments for environmental management, and recalled that El Salvador had demonstrated political resolve in putting them into practice. She also expressed the belief that cooperation and the exchange of experiences were key elements for implementing the objectives of the Declaration. Lastly, the representative stated that El Salvador was committed to promoting the inclusion of new signatory countries in the region.

Adoption of the San José Content (agenda item 3)

18. The Chair of the Presiding Officers recalled that at the second meeting of the focal points, held in Guadalajara (Mexico), an agreement had been reached to create a working group designed to gain a deeper knowledge of access rights with a view to making a proposal on the nature and content of the regional instrument. He noted that at the previous meeting of this working group, held in San José, progress had been made on the design and wording of the *Proposal on the nature and content of the regional instrument for consideration at the fourth meeting of the focal points appointed by the Governments of the signatory countries of the Declaration on the application of Principle 10 of the Rio Declaration on Environment and Development in Latin America and the Caribbean: the San José Content on the Regional Instrument*,³ which the country representatives had at their disposal. He highlighted that the countries and the public had participated extensively in preparing this work, which had resulted in a document supported by the broadest possible consensus.

19. Several signatory countries underscored the importance of the document and its value for the subsequent stage of negotiating the regional instrument, as well as the fact that it had been prepared in an inclusive and participatory manner. The countries emphasized that the document should be used as a guide for the discussion that would take place in the negotiation phase, so that it does not close doors to new issues that might arise during negotiation, or prejudice any aspects of the process.

20. The representative of Uruguay also acknowledged the work carried out and highlighted the need to ensure that processes were as operational and productive as possible. He called for decisions to be taken, responsibilities to be accepted and work to be carried out on the document, in order for the regional instrument to be ready ideally before 2016.

21. Regarding the San José Content, the representative of Trinidad and Tobago stated that compliance should be approached with an emphasis on facilitation, and called for consideration of the challenges facing some of the region's countries in terms of generating environmental data.

22. In view of the comments expressed by the country representatives, the Chair of the Presiding Officers took the San José Content for the Regional Instrument, as set forth in annex B, as adopted.

Report on the activities carried out by the working groups established under the Plan of Action to 2014 for the implementation of the Declaration on the application of Principle 10 of the Rio Declaration on Environment and Development in Latin America and the Caribbean (agenda item 4)

23. The representative of Colombia, as joint coordinator (with Jamaica) of the working group on capacity-building and cooperation, described the main advances and progress achieved by the working group in the fulfilment of its mandate. She referred to the in-person and virtual meetings that had been

³ LC/L.3898.

held, training workshops, priority lines of action and the proposal on capacity-building and cooperation to be included in the regional instrument, based on inputs received from governments and the public.

24. The representative of Costa Rica, as joint coordinator (with Brazil) of the working group on access rights and the regional instrument, referred to the meetings of the group and the two main proposals that had been developed: the common vision and the content of the instrument. She also recalled the discussions on the nature of the regional instrument, in which it was held that a binding instrument would be more conducive to achieving the ultimate goal of the Declaration, given the need for internal protection in States, for effectiveness in national public policies, and the need to establish a solid institutional base and to reduce the number of legal disputes and social conflicts.

25. The Chief of the Policies for Sustainable Development Unit of the Sustainable Development and Human Settlements Division of ECLAC, as technical secretariat, referred to the work carried out in support of the Presiding Officers, the working groups, the countries and the public. He noted that the priority areas of the secretariat had been the organization of meetings (between governments, working groups and the Presiding Officers) and training workshops, the provision of technical assistance, and dissemination activities. He highlighted the joint activities carried out with other organizations and United Nations bodies such as the United Nations Environment Programme (UNEP), the United Nations Institute for Training and Research (UNITAR) and the Economic Commission for Europe (ECE). He also mentioned the Commission's links with other regional and global processes and its participation in other activities. Lastly, he referred to publications, the expenditure incurred by the technical secretariat, and the regional public mechanism.

26. In the comments following the presentations, the representative of Paraguay suggested the need to establish a committee of technicians and experts. A representative of the public welcomed the broad degree of participation and congratulated ECLAC for its work and the governments of new signatory countries for joining the process. Another representative of the public noted that civil society had prepared a position document containing the arguments in favour of a binding instrument, which would be circulated among participants. The representative of Chile pointed out that the value added by the process would come from the confluence of different governmental and non-governmental actors and thanked all the participants for their commitment to building a regional agreement.

Action taken at the national level by the signatory countries of the Declaration (agenda item 5)

27. The representative of Argentina stated that the regional process was part of a positive environmental agenda, underpinned by a rights-based approach, and with a view to strengthening democratic processes. She highlighted the recent creation of the Environmental Justice Office of the Supreme Court of Justice of Argentina, as well as the work carried out by various sectors of government, the provinces, and civil society. She also mentioned the meeting convened with the Secretariat for the Environment and Sustainable Development for the purposes of disseminating the Principle 10 process, and which had been attended by more than 30 civil society organizations.

28. The representative of Brazil reiterated his country's commitment to the process and its full support for the post-2015 agenda and the sustainable development goals. He called attention to the meeting that had been held with civil society organizations and expressed his conviction that the Principle 10 process would ultimately strengthen democracy in the region and offer greater opportunities for dialogue and cooperation between countries and societies.

29. The representative of Chile asserted that environmental governance was a priority for her government. She highlighted the cooperation activities carried out with other ministries and with the intergovernmental commission on the application of free trade agreements, so that these would include environment-related provisions for cooperation on Principle 10, as in the agreement under negotiation with Colombia. She also mentioned the talks and activities carried out with the Chilean Council for Transparency (with which a cooperation agreement had been signed), environmental courts and municipalities. Two workshops had also been held on support for users of environmental public services, and collaboration activities undertaken with various Chilean universities. The representative also underscored the government's support for civil society initiatives and its participation in gatherings such as the Meeting of the Parties to the Aarhus Convention, as well as the joint organization, with ECLAC, of an environmental information meeting in December 2013 and the Regional Workshop on Pollutant Release and Transfer Registers in October 2014. She further stated that the process had been included in Chile's first Open Government Action Plan for 2014-2016, and concluded by referring to seven "expanded meetings" with the public and private sectors, which had proven a useful forum for national-level collaboration.

30. The representative of Colombia indicated that great strides had been made in promoting and disseminating the Declaration among civil servants, civil society, academic institutions and the private sector, with activities including an information workshop held jointly with ECLAC. The representative also reaffirmed the importance of capacity-building and cooperation for her country.

31. The representative of Costa Rica recalled that her country had been resolutely committed to the process since its inception. She mentioned the institutional dialogue and coordination with the Ministry of Foreign Affairs, which had arranged information days for its civil servants, and the preparation and regional dissemination of a position document which expressed the country's preference for a legally binding instrument and called for the inclusion of more countries in the process. She also reported on a recent meeting of the Organization of American States (OAS) and highlighted the efforts that were being made by her country to include the regional process in the Declaration of the third Summit of Heads of State and Government of the Community of Latin American and Caribbean States (CELAC) to be held on 28 and 29 January 2015, for which she requested the support of all the countries present. The representative also underlined the synergies created with the Open Government Partnership and the promotion of public participation at national level, including the creation of a support group in order to establish working relations with the interested public.

32. The representative of El Salvador noted that substantial progress had been made in information, participation and justice regarding environmental matters, and highlighted the implementation of the Access to Information Act, which allows citizens to access all information generated, provided that the respective proceedings have been concluded. She also drew attention to the proposed Citizen Participation Act, which was under discussion, and which had been formulated by consensus and with the participation of civil society. Lastly, she mentioned the establishment of three environmental courts and the creation of the Environmental Sustainability Office.

33. The representative of Guatemala mentioned the joint work carried out with the Ministry of Environment and Natural Resources to disseminate and implement Principle 10, and the steps that were being taken in respect of the Access to Public Information Act.

34. The representative of Honduras described the progress achieved in the form of the Citizen Participation Act and the Transparency and Access to Information Act. She also pointed out that her country was the current Chair of the Inter-American Committee on Sustainable Development, and would

host the third Meeting of Ministers and High-level Authorities on Sustainable Development, at which the Inter-American Programme for Sustainable Development would be agreed, and in which it was expected that the regional process would be included. She also referred to talks held between government, civil society, enterprises and volunteers, in order to discuss the proposed nature and content.

35. The Executive Secretary of ECLAC then addressed the participants by videoconference. She reiterated the Commission's firm commitment to Principle 10 and the priority attention that it had accorded to the process. In its role as technical secretariat, ECLAC had been working closely with the countries and the public, supporting capacity-building and the exchange of experiences, and fostering regional cooperation. Robust progress had been made and would provide the foundations for the future regional agreement. The Executive Secretary congratulated the participants on the expansion of the Declaration to include 19 signatory countries, and thanked Antigua and Barbuda, Nicaragua and Saint Lucia for their attendance as observers and invited them to join the process. She acknowledged the important role played by civil society and noted that governments' commitment to open and active participation would be expressed in the adoption of a regional instrument that would be open to the entire region, with significant citizen participation. Close links between governments and the public were essential for moving forward together in building a regional agreement that strengthened cooperation and fully implemented access rights. The future instrument had to go beyond mere declarations of intent, and should be ambitious and should establish clear and specific legal obligations that genuinely ensure access rights in environmental matters. The Executive Secretary urged the participants to agree long-term covenants and commitments that respond to public demands for greater equality and inclusion. The new agreement was fundamental for the region to achieve a shift in the development paradigm and to ensure environmental equality and sustainability associated with the full ownership of rights. It would also help alleviate social conflict, improve natural resource governance and reduce the uneven distribution of profits and environmental impacts. She called on the countries to sustain the political momentum and to take advantage of the historic opportunity presented by the convergence of processes (the post-2015 development agenda, Rio+20, the Open Government Partnership and the data revolution, among others). Lastly, the Executive Secretary reaffirmed the importance of the negotiation process, which the countries and the public should approach conscientiously and responsibly, and concluded by stating that that the time had come for governments and society to unite towards a common objective: better democracies, better societies and greater justice for all.

36. In the subsequent comments, several representatives of the countries and the public expressed their appreciation for the efforts of governments in adopting the San José Content in a straightforward and expeditious manner, and called for the preparation of a clear roadmap for the negotiation stage. A member of the public of Mexico also urged that progress be made towards an agreement with legal force. The representative of Costa Rica pointed out that the process helped strengthen the human rights system and requested that results be obtained as quickly as possible. The representative of Peru concurred as to the historic nature of the process, and noted that the instrument would not only strengthen access rights, but would also lead to deeper regional cooperation, support the implementation of the post-2015 development agenda, and contribute to economic, social and environmental equality.

37. Continuing the reports of the signatory countries on action taken at national level, the representative of Jamaica stated that the Lima Vision fully coincided with his country's position and affirmed that Principle 10 had been integrated into government plans and policies, for example, through outreach activities on the occasion of International Right to Know Day. Information on the process had also been added to the website of the Ministry of Water, Land, Environment and Climate Change and an online portal had been created on pollutant release and transfer registers.

38. The representative of Mexico underscored the policy and legislative measures adopted, such as the programme for an open and modern government, which attached importance to transparency and civil society participation. She also mentioned the inclusion of the Declaration in the Declaration of the Nineteenth Meeting of the Forum of Ministers of the Environment of Latin America and the Caribbean, held in Los Cabos, Mexico in March 2014, and the holding of various seminars on access to justice, organized in conjunction with the Office of the Federal Attorney for Environmental Protection and the National Autonomous University of Mexico (UNAM). The representative also drew attention to the rights-based awareness-raising initiatives carried out in the environmental sector and federal government and State departments, as well as the preparation of a citizen participation index and the updating of the national strategy for citizen participation, focused on Principle 10. She also pointed to the efforts undertaken with civil society organizations and in seeking their deeper involvement. Lastly, she indicated that Principle 10 would occupy a prominent role in the events in 2015 to mark the twentieth anniversary of the founding of the advisory councils on sustainable development.

39. The representative of Panama confirmed her government's steadfast adherence to the tenets of Principle 10, and expressed her hope that a binding regional instrument would be adopted. She reported that the National Environment Authority had held an event on the process with the participation of civil society and other government agencies. Panama had important rules to protect access rights, but implementation remained the greatest obstacle. Other advances included setting up district commissions, posting environmental impact studies online, creating a national environmental information system, developing the 3-1-1 platform for reporting environmental offences to the authorities, and greater cooperation with the National Authority for Transparency and Access to Information. She also reported that Panama expected to create a new Ministry of the Environment soon.

40. The representative of Paraguay reiterated the need to set up a scientific committee or commission so that the countries could receive accurate information, and which would reduce the politicization of environmental conflicts. He also called on participants to reflect seriously on the future steps in the process and to intensify regional cooperation in order to respond to the requirements of the population. He requested the support of ECLAC to ensure technical, scientific and political quality in the region.

41. The representative of Peru pointed out that the Council of Ministers of Peru had adopted core environmental management strategies in 2012, which included a number of measures designed to guarantee access rights. The Government of Peru was in the process of updating the report on the state of the environment in order to comply with the standards of the Organization for Economic Co-operation and Development (OECD) by developing a country programme and preparing an environmental performance report. The representative also mentioned the progress made in creating a pollutant release and transfer register, a tool which he considered to be of great use for the public. He also highlighted participatory monitoring, the adoption of participation rules by the environmental evaluation and oversight agency, and the prioritization of thematic areas with civil society participation to mark the twentieth session of the Conference of the Parties of the United Nations Framework Convention on Climate Change (UNFCCC). Lastly, he reported on the updating of the Environmental Citizenship Strategy, the strengthening of the judiciary and the creation of two supraprovincial courts in Piura and Cusco to combat illegal mining.

42. The representative of the Dominican Republic described several laws, institutions and programmes that guaranteed access rights, including the General Act on the Environment and Natural Resources, the Access to Public Information Act, the Public Procurement Act, the Ombudsman's Office, e-government, the national development strategy, the Act for the Regulation and Promotion of Non-profit Organizations, and the Sectoral Act on Protected Areas. She also referred to the public consultation on

environmental assessment processes and public participation mechanisms for sustainable development. Lastly, she called attention to the meetings held with the access to information office of the Ministry of the Environment and Natural Resources, the Ministry of Foreign Affairs, non-governmental organizations, universities, the business sector and community organizations, among others.

43. The representative of Saint Vincent and the Grenadines stated that her government was seeking to improve dialogue with the public, increase information and participation, and raise awareness of Principle 10, especially from a human rights perspective. She highlighted the cooperation between ministries and mentioned the progress that the country had made on access rights. The representative also reiterated her country's support for a binding regional agreement, with sufficient flexibility, and which would promote the democratic and human-rights standards applicable to environmental governance. Lastly, she called for more Caribbean countries to be included in the process.

44. The representative of Trinidad and Tobago thanked ECLAC for ensuring that the country was able to participate in the meeting by videoconference, and welcomed the progress that had been made in the discussions. She also reaffirmed her country's commitment to the process and indicated that national consultations were under way to determine the best way of implementing Principle 10. She highlighted a joint initiative that was being carried out with other United Nations Member States to include education, training and awareness-raising on the system to combat climate change that would result from negotiations at the twenty-first session of the Conference of the Parties of the United Nations Framework Convention on Climate Change in 2015.

45. The representative of Uruguay mentioned his country's legislative framework, including the Access to Public Information Act and the Ministry of Foreign Affairs' mechanism for dialogue and consultation with civil society, and highlighted the deep imprint that civil society participation had left on the government's initiatives and policies. He stressed that it was essential to guarantee access to information and to strengthen civil society at national and international level. Including civil society representatives in official international delegations was one way of doing this.

46. A representative of the public of Colombia highlighted the intense efforts undertaken to disseminate the Declaration, and the activities carried out under the banner of Principle 10 by several civil society organizations in different countries, notably Brazil, Chile, Ecuador, Mexico, Panama and Peru. Such activities included arranging information and training workshops —sometimes in partnership with universities and governments— the drawing-up of newsletters and other outreach material, and assessments of the status of the national implementation of Principle 10, among others.

47. A representative of the public of Saint Lucia stressed that Caribbean organizations have been working to promote greater Caribbean participation in the regional process, by arranging meetings and workshops with civil society, governments and universities, preparing outreach material and setting up working groups. Among the planned initiatives was a regional meeting, due to be held in late November in Jamaica, and a conference to promote Principle 10, in Suriname.

48. A representative of the secretariat of the Access Initiative referred to the global gathering of this network in Colombia in late October, at which the status of access rights had been addressed in discussions on the use of information, data and technology. She highlighted the network's commitment and support for the process, especially with a view to more Caribbean countries signing the Declaration.

49. A representative of the public of Paraguay pointed to his country's progress on public information, especially the Access to Public Information Act, which set forth active transparency obligations, and the Supreme Court decisions that recognized access to information as a human right.

50. A representative of the public of Chile called for links to be established with the inter-American human rights system, for consideration to be given to the Model Inter-American Law on Access to Public Information and for the inclusion of representatives of the Organization of American States (OAS).

51. The Chair of the Aarhus Convention Compliance Committee expressed his support for, and recognition of, the efforts invested and the progress achieved to date. He also stated that the bodies of the Aarhus Convention were closely following the process and could be of great assistance in negotiating the regional instrument.

52. A public representative from Europe congratulated the countries and the public and expressed her continued willingness to actively support the process in Latin America and the Caribbean, by increasing cooperation and the exchange of experiences, especially with civil society organizations.

Current status of the international debate (agenda item 6)

53. Under this agenda item, three high-level international panels were held on the following subjects: (i) international law and the environment; (ii) environmental justice, equity and the environment and (iii) human rights, the environment and intergenerational justice.

54. The first panel, on international law and the environment, was moderated by Marcos Orellana of the Center for International Environmental Law (CIEL), with the participation of Santiago Villalpando, Chief of the Treaty Section of the United Nations Office of Legal Affairs (by videoconference); Concepción Escobar, Full Professor of International Law at the National University of Distance Education (UNED) and member of the United Nations International Law Commission and Silvia Cappelli, State Prosecutor in the South of Brazil and coordinator of the Latin American Network of Public Prosecutors for the Environment.

55. The official of the United Nations Office of Legal Affairs explained the functions of the Treaty Section, which was characterized by its impartiality. His presentation focused on the basic principles of treaty law and on the final clauses of multilateral treaties, which he thought would be crucial if it were decided to negotiate a treaty as part of the regional process. In this regard, treaties afforded considerable contractual freedom and flexibility. The official then explored the justifications for negotiating a treaty, such as the need to adopt standard rules, to encourage international cooperation, to ensure that rules and institutions were consolidated at national level, and to establish international cooperation and monitoring mechanisms. One advantage was that of flexibility in formal and substantive aspects. He also spoke about final clauses of treaties, including amendments, reservations, mechanisms for the settlement of disputes, denunciation of a treaty and the depositary. He concluded the presentation by inviting the countries to reflect on these elements so that the wording of a potential treaty would be technically adequate and conducive to correct implementation and operation.

56. The Full Professor of International Law and member of the United Nations International Law Commission underlined the importance of deciding how to proceed in choosing the type of instrument. Although this decision was a sovereign competence of the State, this did not mean that technical criteria should not be applied. Consideration should thus be given to the objectives pursued and their nature as well as the levels of efficiency and effectiveness that the instrument hoped to achieve. Since access rights

were at the core of Principle 10 and required effective national implementation measures, and given that the States had already accepted a number of commitments during the course of the process, she considered that a binding instrument would be more appropriate and a more effective channel for securing funding, as well as giving the region greater influence and visibility on the international stage. She then explained that there were two models of binding instrument. The closed model would contain a comprehensive legal regime, in which obligations and rights would be established from the beginning and in which changes would require the adoption of a new treaty. By contrast, the open model would contain a basic legal regime, with obligations and rights that would be gradually developed, and the potential to make informal changes (amendments, with no requirement to adopt a new treaty). She identified three types of open instrument: a basic framework agreement, a developed framework agreement and a general open agreement.

57. The State Prosecutor in the South of Brazil and coordinator of the Latin American Network of Public Prosecutors for the Environment focused on access to justice in environmental matters, which in her opinion went beyond access to justice, since it also entailed the exercise of citizenship and democracy, as well as the guarantee and the effective enjoyment of basic human rights. She also noted that access to justice in environmental matters involved both judicial and extrajudicial means, and faced challenges including structural issues, access to the population with special needs, a lack of rights awareness, the costs incurred and the priority given to group litigation. However, she also pointed to the progress made, such as the growing use of extra-jurisdictional instruments, the creation of specialized public bodies, the organization of networks and a wealth of environmental case law. Lastly, she cited some examples of how access rights in environmental matters were being applied in the Brazilian justice system.

58. Following the presentations, government and public representatives raised questions on a number of subjects, such as the importance of the process in the event that a binding instrument was not adopted, non-compliance and the consequences of non-compliance with a future treaty, the opportunity to decide the nature of the instrument at that moment, the preparation of a draft text for negotiation, the risk of only reaching a minimal agreement, the possibility that access rights amounted to an international obligation in light of developments and practice in the region, and prevention in the area of justice.

59. The panellists commented that in adopting a treaty, it was important to carry out the drafting process in good time, since it entailed a degree of complexity and was not merely a technical step. They indicated that there would be liability in the event of non-compliance, but that this did not necessarily equate to sanctions. In this regard, they referred to the non-confrontational, non-judicial and consultative nature of the compliance mechanism of the Aarhus Convention. The representative of Chile pointed out that while not lacking in a technical component, the meeting was essentially political, and that there was a consensus between the countries that the nature of process was cooperative rather than punitive, although this did not release the countries from their responsibility to fulfil their obligations.

60. With regard to prevention, the State Prosecutor in the South of Brazil and coordinator of the Latin American Network of Public Prosecutors for the Environment stated that it would become a reality through changes in the law and in mentality, and that the region would be able to find consensus on common issues. In response to the question on risk and the usefulness of reaching a minimal agreement, the Full Professor of International Law and member of the United Nations International Law Commission mentioned that closed treaties were more prone to such risk and therefore recommended the open model, which had the required flexibility and technical elements that could ensure the best possible balance of interests. She also insisted that, in the name of efficiency and effectiveness, the instrument should not adopt an existing soft law form, but that a legal commitment should be built on the basis of political commitment. As to the question of whether there was a general international law obligation relative to

access rights, the panellists concurred that this would require an examination of the *opinio iuris* and the practice of States, but that technically no such obligation appeared to exist. However, the Full Professor of International Law and member of the United Nations International Law Commission stated that there was regional political will behind access rights that reflected the interests and needs of society, hence the need for a binding instrument. Access rights were already enshrined in international law, especially in human rights treaties, whereas this process sought to create the link between access rights and the environment, something that could only be achieved through a binding instrument. The official of the United Nations Office of Legal Affairs added that treaties afforded legal certainty by clearly establishing rights and obligations, and emphasized that rather than being set in stone, treaties were highly versatile instruments that States could deploy in different ways in pursuit of their objectives.

61. The second panel, on environmental justice, equity and the environment, was moderated by Guillermo Acuña, Legal Adviser and Chief of Protocol of the Office of the Executive Secretary of ECLAC, with the participation of Jonas Ebbesson, Dean of the Faculty of Law of Stockholm University and Chair of the Aarhus Convention Compliance Committee, and Winston Anderson, Judge of the Caribbean Court of Justice.

62. The Dean of the Faculty of Law set out the reasons justifying public participation in environmental matters, and summarized the current status of access rights in the international and regional spheres. He noted that participation improved the effectiveness of environmental legislation and the quality of decision-making, established and guaranteed human rights, and conferred legitimacy, justice, equity and trust in governments. He then discussed follow-up and facilitation mechanisms such as the submission of reports, peer reviews or specific committees such as the Aarhus Convention Compliance Committee, and distinguished between the settlement and prevention of disputes. In the case of Aarhus, it had been essential that individual parties had access to the Committee, since this improved the development and the implementation of the treaty. While initially some countries had been reluctant to set up this body, they were subsequently, without exception, appreciative of its existence and its work. Not only did the recommendations of the Committee identify breaches of compliance, but they also facilitated the delivery of specialized technical assistance to promote compliance, ensured that there was a procedure for dialogue between governments and the public, enabled a greater mobilization of international funds for capacity-building, and were considered in the design of activities and projects. With regard to the nature of the instrument, he underscored that treaties had significant advantages, such as establishing equal conditions for the observance of rules and obligations, the promotion of long-term regional cooperation and the creation of trust between parties and with citizens. In respect of content, he indicated that it was sometimes better to plan for greater flexibility in the text, which could then be developed more extensively in practice. He concluded by highlighting the need for a facilitation body to help build capacity, and encouraged the region to go even further than the Aarhus Convention.

63. The Judge of the Caribbean Court of Justice called for the creation of synergies with existing processes, such as the International Advisory Council for Environmental Justice of the United Nations Environment Programme (UNEP). He emphasized the links between Principle 10 and the countries of the Caribbean subregion, which needed to become more actively involved and to take ownership of the process, since they were not disconnected from it and had made great progress in the legislative and judicial spheres. In this regard, he mentioned some of the provisions on access rights in environmental matters contained in national constitutions and regional and international legal instruments, such as the Treaty of Basseterre, which included the St. George's Declaration of Principles for Environmental Sustainability. The Judge also cited some advances in case law in the Caribbean which, for example, had led to the widespread recognition of the active legal standing of environmental groups. He also stressed that the regional agreement on Principle 10 could contribute to the fulfilment of other international

obligations, such as those established under the Treaty of Basseterre. Lastly, he advocated greater civil society participation and the deepening of links with judiciaries and other regional and international processes and initiatives, which could be particularly useful in relation to reporting obligations, and as such civil society could make a significant contribution.

64. In the subsequent exchange of views, the participants asked about the procedure for determining lack of compliance under the Aarhus Convention and the technical and scientific advice available to the Compliance Committee, issues that one of the panellists explained. The representative of the Center for International Environmental Law (CIEL) mentioned that most multilateral agreements on environmental matters contained provisions on access rights, but few authorized the public to file communications with a compliance body. He called on the participants to consider this fact and the tension that existed between flexibility and procedural safeguard mechanisms.

65. In response to the question of how to ensure greater Caribbean participation in the process, the Judge of the Caribbean Court of Justice mentioned two main problems: the perception by some that the process was external to the subregion and a feeling of “treaty fatigue”. He therefore proposed emphasizing the sense of taking ownership of it and continuing the dissemination process. He also suggested making clear to the countries the obligations they would assume by signing up to a future agreement, and finding creative ways to avoid the duplication of work. He concluded by offering the support of the International Advisory Council for Environmental Justice of UNEP and the Caribbean Court of Justice.

66. The third panel, on human rights, the environment and intergenerational justice, featured the participation of John Knox, United Nations Independent Expert on Human Rights and the Environment, Amerigo Incalcaterra, Regional Representative for South America of the Office of the High Commissioner for Human Rights (OHCHR), and Danielle Andrade, Attorney-at-Law of the non-governmental organization the Jamaica Environment Trust. The panel was moderated by Marcos Orellana, representative of CIEL.

67. The presentation by the Independent Expert on Human Rights and the Environment focused on the application of human rights obligations to environmental policymaking. He indicated that a regional agreement in this sphere would make an outstanding contribution to the advancement of human rights and the environment, and maintained that the Lima Vision and the San José Content provided a sound basis for continued progress. Environmental protection and human rights were interdependent and formed a virtuous circle, a concept adequately reflected by the Lima Vision. In analysing this interplay he referred to procedural rights, substantive rights and obligations in relation to specific vulnerable groups, and recommended that States incorporate these obligations in the formulation and implementation of environmental policies. As for the content of the future regional agreement, it would be advisable to include provisions to protect people in the exercise of access rights, since it had been shown that environmental advocates were the second largest group at risk and it was they who made it possible for all citizens to exercise their rights. The Independent Expert recommended that the right to a healthy environment should be afforded legal recognition and given due importance, in keeping with the existing provisions of constitutions, legal frameworks and regional treaties. In laying down clear rules on access rights, the regional process would strengthen democracy and sustainable development. He stated that the process of adopting a regional agreement on access rights in environmental matters was the largest step being taken in this sphere worldwide, and he called on the countries to maintain their leadership of the process and serve as an inspiration and a model for other regions. Lastly, he urged the countries to take into account human rights obligations and the extensive experience of civil society.

68. The Regional Representative for South America of OHCHR presented an analysis of the relationship between environmental access rights and human rights, with a particular focus on the international legal framework and interpretations of it in international human rights mechanisms. He also referred to the regional protection framework, guiding principles on business and human rights and international instruments to safeguard the rights of indigenous peoples, such as Convention 169 of the International Labour Organization and the United Nations Declaration on the Rights of Indigenous Peoples. The environment could have a major effect on human rights such as the right to life, health, food, water and sanitation or adequate housing, and many of these were directly or indirectly at risk from climate change. In respect of Principle 10 specifically, rights such as those to freedom of expression and information, free association, participation and effective redress were essential for the formulation, implementation and monitoring of environmental policies. These rights were enshrined in international treaties ratified by countries, thus creating legally binding rules. OHCHR had developed a list of structural, process and outcome indicators to assess the implementation of these international obligations. The representative concluded by stressing the need to incorporate a human rights-based approach so as to improve accountability systems and ensure participation without discrimination and access to information on environmental issues, and confirmed that OHCHR was willing to provide support in the regional process.

69. The Attorney-at-Law of the Jamaica Environment Trust began her presentation by showing a short video summing up what Principle 10 meant for the average citizen, the effects of breaching these rights and the benefits of respecting them. She stressed the great strides the region had made, although serious challenges remained, such as inequality, poverty, unemployment, social fragmentation and the situations of indigenous peoples and women. Public participation was essential in promoting democracy and public dialogue, as it brought legitimacy to government action and eased conflicts while facilitating peace and sustainable development. The Caribbean countries, as small island developing States, faced additional challenges given their limited resources and legal and practical deficits and the fact that less than half of them had passed a national law on access to information. In respect of the regional agreement, it was important to ensure public participation in all stages, given its status as an international benchmark. The adoption of such an instrument would also have significant benefits in view of the similarity of the political and legal systems of the countries of the region. This could help these smaller countries to strengthen their institutions and overcome the limitations of their reduced resources, notably by means of capacity-building and cooperation. She concluded by stating that procedural rights would improve democracy, foster informed debate and reduce conflicts.

70. In the ensuing comments, the participants asked what the reaction of States had been to the report submitted by the Human Rights Council; the independent expert replied that it had been very well received. Concern was raised about the rights of future generations and their possible inclusion in the regional agreement. The panellists explained that these generations were at the heart of sustainable development and that the well-being of people was paramount. There was also a legal basis with which to address this issue in the regional process laid out in the preamble of the San José Content, which established that the right to a healthy environment was essential for present and future generations. The Judge of the Caribbean Court of Justice pointed out that the active standing granted to the courts meant that they were able to consider all viewpoints in any given case, and added that spiritual rights needed to be safeguarded. The panellists stated that these rights were recognized in the relevant case law and, in particular, enshrined in the United Nations Declaration on the Rights of Indigenous Peoples. The representative of OHCHR recalled that it was crucial to develop binding legal instruments on access rights and, above all, to apply them. He urged the participants not to forget that human beings were at the heart of human rights, and that the well-being of people, including future generations, was fundamental. It was important to guarantee human rights on an equal footing and without discrimination. The representative noted that human rights mechanisms of the United Nations had been designed by the

countries and merely facilitated the common agreement to protect humanity. In that sense, the region had a responsibility to move forward and to show the world its progress.

Adoption of agreements and election of the presiding officers (agenda item 7)

71. The representative of Chile, in her capacity as Chair, gave a short presentation on the draft decision regarding the process of implementing the Declaration, as proposed by the Presiding Officers and made available to the countries and the public. She stressed that the draft decision was fundamentally political, since it initiated the negotiation of the instrument and set out the distinguishing features of the process: openness to all countries of the region, public participation, capacity-building and the pursuit of effectiveness. She emphasized that the purpose of the meeting was to agree to a short text and to exchange ideas on how to tackle the next stage of negotiation.

72. Regarding the nature of the instrument, the Dominican Republic, Guatemala, Panama, Paraguay and Uruguay stated their wish to adopt a binding agreement, joining Chile, Costa Rica, Peru and Saint Vincent and the Grenadines, which had already expressed such a position. Several countries indicated that the nature of the instrument could not be decided at that time, and that it would be determined during the negotiating process. However, they maintained that negotiations would be approached with the seriousness and responsibility that the process merited and as if the regional agreement were indeed to be binding, a position that was also supported by several members of the public. Trinidad and Tobago also indicated that although they had not taken a decision, they were open to considering a binding instrument in accordance with the negotiations. The representative of Brazil proposed that the nature of the instrument be dealt with comprehensively in the discussion and analysis of the content, and maintained that in any case the instrument should be flexible, progressive and effective, although at that time it was not appropriate to predetermine time frames or prejudice the design of the negotiating process.

73. To forge ahead with the incorporation of the comments, as had been done at the second meeting of the focal points appointed by the Governments of the signatory countries, at the suggestion of the Chair, the representatives agreed to set up an open contact group and invited two representatives of the public to participate. It was agreed that the new version of the draft decision to emerge from this group would be sent to all representatives of signatory countries for adoption at the meeting.

74. The observer countries (Antigua and Barbuda, Nicaragua and Saint Lucia) emphasized their interest in the regional process, and some of their representatives requested that specific provisions be included in the text of the decision in order to promote relations between the observers and the process. The representative of Saint Lucia stressed that her government was extremely interested in the regional process and was taking the necessary steps for the cabinet to consider signing the Declaration. Nicaragua also urged the participants to support the inclusion of a paragraph on the regional process in the CELAC declaration that would emerge from the Costa Rica summit. The representative of Nicaragua reiterated the increasing importance of access rights and the regional process, since it was an ethical issue with future significance, and expressed her wish that Nicaragua would participate as a signatory country at the earliest opportunity.

75. The signatory countries of the Declaration adopted by consensus the Santiago Decision, as set out in annex A.

76. It was agreed that Chile and Costa Rica would be the Presiding Officers as co-chairs, together with Argentina, Mexico, Peru, Saint Vincent and the Grenadines and Trinidad and Tobago. The decision was also taken to invite the observer countries to maintain open channels of communication with the

Presiding Officers with a view to becoming part of the process, and to invite the public to appoint two representatives within two months of the adoption of the decision, so as to maintain a continuous dialogue with the Presiding Officers.

Closing session

77. At the closing session, statements were made by Marcelo Mena, Undersecretary of the Environment of Chile, and Joseluis Samaniego, Chief of the Sustainable Development and Human Settlements Division of ECLAC.

78. The Undersecretary of the Environment of Chile congratulated the participants on the adoption of the Santiago Decision and urged them to continue with a rigorous and ambitious process as the region moved into a phase of negotiating the regional agreement. Governments would work with citizens to address outstanding issues of environmental sustainability, governance and equity and strengthen capacities with a view to building a fairer and more modern and democratic continent.

79. The Chief of the Sustainable Development and Human Settlements Division said it was gratifying to see how far the concept of development had evolved, since it no longer entailed growth at the expense of nature but rather managing the assets of the nation, a process in which the population played a leading role. The aim was not only to protect physical resources but also for States to act as guardians of the public good. The adoption of the Decision was an important step in this regard, but there was still a long way to go before the best possible result could be achieved.

Annex A

SANTIAGO DECISION

The countries signatory to the Declaration on the application of Principle 10 of the Rio Declaration on Environment and Development in Latin America and the Caribbean, gathered at the fourth meeting of the focal points appointed by the Governments of the signatory countries of the Declaration on the application of Principle 10 of the Rio Declaration on Environment and Development in Latin America and the Caribbean, held in Santiago from 4 to 6 November 2014,

Recalling the Declaration on the application of Principle 10 of the Rio Declaration on Environment and Development,¹ endorsed by 10 Governments from Latin America and the Caribbean at the United Nations Conference on Sustainable Development, held in Rio de Janeiro, Brazil, from 20 to 22 June 2012, in which they reaffirmed their commitment to the rights of access to information, participation and justice regarding environmental matters, declared their willingness to work towards a regional instrument promoting the full application of those rights and requested the support of the Economic Commission for Latin America and the Caribbean as technical secretariat,

Considering that 19 countries² have signed the Declaration to date and that it remains open for signature by all countries in Latin America and the Caribbean,

Recalling paragraph 60 of the Declaration of Santiago, adopted by the Heads of State and Government at the first Summit of the Community of Latin American and Caribbean States, held in Santiago on 27 and 28 January 2013,

Recalling also resolution 686(XXXV) on the application of Principle 10 of the Rio Declaration on Environment and Development in Latin America and the Caribbean, adopted by the Economic Commission for Latin America and the Caribbean at its thirty-fifth session, held in Lima in 2014,

Noting that since the adoption of the Declaration on the application of Principle 10 in Rio de Janeiro, Brazil, three meetings of the focal points appointed by the Governments of the signatory countries of the Declaration on the application of Principle 10 of the Rio Declaration on Environment and Development in Latin America and the Caribbean have taken place: the first in Santiago on 6 and 7 November 2012; the second in Guadalajara, Mexico, on 16 and 17 April 2013; and the third in Lima on 30 and 31 October 2013,

¹ A/CONF.216.13.

² Argentina, Brazil, Chile, Colombia, Costa Rica, Dominican Republic, Ecuador, El Salvador, Guatemala, Honduras, Jamaica, Mexico, Panama, Paraguay, Peru, Plurinational State of Bolivia, Saint Vincent and the Grenadines, Trinidad and Tobago and Uruguay.

Reaffirming the pertinent agreements adopted at the meetings of the focal points, which are reflected in the respective reports:³ the road map for the creation of an instrument on Principle 10 in Latin America and the Caribbean, the Plan of Action to 2014 for the implementation of the Declaration on the application of Principle 10 of the Rio Declaration on Environment and Development in Latin America and the Caribbean and its road map, the Lima Vision for a regional instrument on access rights relating to the environment and the priority lines of action for 2014 for capacity-building and cooperation,

Bearing in mind that the Plan of Action to 2014 created two working groups for advancing towards the formulation of a regional instrument, with the aim of intensifying regional cooperation and proposing the nature and content of the regional instrument,

Decide to

1. *Endorse* the San José Content, consisting of an annotated index of topics, which, together with other inputs indicated in operative paragraphs 7 and 8, will be considered in the negotiation of the regional instrument on access rights in environmental matters, without prejudice to the negotiations that will take place;

2. *Commence negotiations on the regional instrument on rights of access to information, participation and justice regarding environmental matters;*

3. *Establish a negotiating committee of the countries signatory to the Declaration on the application of Principle 10 in Latin America and the Caribbean, with significant participation by the public in accordance with the provisions and modalities set forth in the Plan of Action adopted in Guadalajara, Mexico, and in which non-signatory countries may take part as observers;*⁴

4. *Appoint Presiding Officers, comprising Chile and Costa Rica as co-chairs and Argentina, Mexico, Peru, Saint Vincent and the Grenadines and Trinidad and Tobago, who will coordinate the negotiations carried forward by the committee;*

5. *Invite the observer countries to maintain an open channel of communication with the Presiding Officers with a view to becoming part of the process;*

6. *Also invite the public to designate, within two months of the adoption of this decision, two representatives to maintain a continuous dialogue with the Presiding Officers and whose appointment, and any future changes thereto, shall be notified formally to the Presiding Officers;*

³ See *Report of the first meeting of the focal points appointed by the Governments of the signatory countries of the Declaration on the application of Principle 10 of the Rio Declaration on Environment and Development in Latin America and the Caribbean* (LC/L.3565); *Report of the second meeting of the focal points appointed by the Governments of the signatory countries of the Declaration on the application of Principle 10 of the Rio Declaration on Environment and Development in Latin America and the Caribbean* (LC/L.3677); and *Report of the third meeting of the focal points appointed by the Governments of the signatory countries of the Declaration on the application of Principle 10 of the Rio Declaration on Environment and Development in Latin America and the Caribbean* (LC/L.3780).

⁴ “Non-signatory countries” refers to those countries of Latin America and the Caribbean that have not acceded to the Declaration.

7. *Request the Presiding Officers to prepare, in consultation with the signatory countries, by 31 March 2015, a draft work plan, addressing such aspects as negotiating procedures, organization of work and a calendar of meetings, on which the committee will adopt a decision at its opening meeting, to be held in the first four months of 2015;*

8. *Request also that the Economic Commission for Latin America and the Caribbean prepare a preliminary document on the regional instrument that brings together elements including the outcomes of the process to date, the San José Content, the report on the current situation in the region drafted by the Commission,⁵ and national legislation, practices and institutions, and that takes into account also the challenges and needs of the region;*

9. *Invite the signatory countries, non-signatory countries and the public to submit input for the preliminary document by 31 December 2014;*

10. *Request that the Commission distribute the preliminary document on the regional instrument to the signatory countries, non-signatory countries and the public by 31 March 2015;*

11. *Define the nature of the regional instrument during the negotiation process;*

12. *Invite the signatory countries, non-signatory countries and interested public to continue to carry out activities and consultations at the national level with a view to contributing substantively to the process of negotiating the regional instrument;*

13. *Request the Presiding Officers to steer the process, with the support of the Economic Commission for Latin America and the Caribbean as technical secretariat, with a view to concluding negotiations on the regional instrument by December 2016;*

14. *Also request the Commission to continue and intensify the efforts under way to build capacities and cooperation regarding the effective application of Principle 10 of the Rio Declaration on Environment and Development in Latin America and the Caribbean, in coordination with the Presiding Officers, the signatory countries and the interested public, and subject to the availability of resources and in parallel with the work of the committee;*

15. *Urge international organizations and cooperation agencies to support these efforts and continue working with the Commission to promote regional and national capacity-building, taking account of the needs of the region overall and of each signatory country;*

16. *Request the Presiding Officers to identify and put forward, with the support of the technical secretariat, means of financing for the negotiation process and for the implementation of the regional instrument;*

17. *Continue efforts to bring more countries into the process, strengthen synergies with other international processes and evaluate, in a timely fashion, modalities for institutionalizing the process, including integration into existing regional mechanisms.*

⁵ *Access to information, participation and justice in environmental matters in Latin America and the Caribbean: situation, outlook and examples of good practice, Medio Ambiente y Desarrollo series, No. 151 (LC/L.3549/Rev.2), 2014, forthcoming.*

Annex B

SAN JOSÉ CONTENT FOR THE REGIONAL INSTRUMENT**FIRST PART****Preamble**

1. The region and its countries have made progress in this area, as shown in the ECLAC document *Access to information, participation and justice in environmental matters in Latin America and the Caribbean: Situation, outlook and examples of good practice* (LC/L.3549/Rev.1). This has left the region in a good position to make further headway in the full implementation of access rights.
2. Reference is made to international documents on access rights, including the following: the Declaration of the United Nations Conference on the Human Environment, the Rio Declaration on Environment and Development, Agenda 21, the Programme for the Further Implementation of Agenda 21, the Johannesburg Declaration on Sustainable Development, the Plan of Implementation of the World Summit on Sustainable Development, the outcome document of the United Nations Conference on Sustainable Development, held in Rio de Janeiro in June 2012, entitled “The future we want”, the Inter-American Strategy for the Promotion of Public Participation in Sustainable Development Decision-Making, the Model Inter-American Law on Access to Public Information, the Open Government Partnership, the Guidelines for the Development of National Legislation on Access to Information, Public Participation and Access to Justice in Environmental Matters (Bali Guidelines), the Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters (Aarhus Convention, 1998), and the Protocol on Pollutant Release and Transfer Registers (2002).
3. Reference is also made to the documents adopted as part of the regional process: Declaration on the application of Principle 10 of the Rio Declaration on Environment and Development (Rio de Janeiro, 2012), Road Map (Santiago, 2012), Plan of Action to 2014 (Guadalajara, April 2013), Lima Vision for a Regional Instrument on Access Rights Relating to the Environment (October 2013), and the priority lines of action for capacity-building and cooperation (October 2013).
4. The process will be open to the countries of the region; it aims to be relevant to all of them and will benefit from the widest possible regional participation.
5. Capacity-building and cooperation is an essential element of this instrument.
6. The instrument shall allow for the creation of synergies at all levels and shall support implementation of the post-2015 development agenda.
7. Rights-based approach: the instrument shall be based on recognition of the rights of access to information, participation and justice in environmental matters.
8. Right to a healthy environment: everyone has the right to a healthy environment, which is essential for the full development of human beings and for the achievement of sustainable development,

poverty eradication, equality, and the preservation and stewardship of the environment for the benefit of present and future generations (Lima Vision).

9. Acknowledgement of the participation and the fundamental role of the public in environmental protection and the effective implementation of access rights.

10. Recognition of the region's diversity and multiculturalism.

11. Interrelation and interdependence of access rights: access rights are interrelated and interdependent, and so each should be promoted and implemented in an integrated and balanced manner (Lima Vision).

12. Link between human rights and the environment: exercising rights of access to information, participation and justice in environmental matters deepens and strengthens democracy and contributes to better protection of the environment and thus of human rights (Lima Vision).

13. Importance and benefits of access rights:

- (i) Rights of access to information, participation and justice in environmental matters are essential to the promotion of sustainable development, democracy and a healthy environment (Lima Vision).
- (ii) They represent an important contribution to the formulation and implementation of informed, transparent and appropriate measures for furthering the well-being of the population and contributing to accountability and the effective rule of law (Lima Vision).
- (iii) They contribute to greater public awareness and allow the public to express its concerns regarding environmental problems and challenges and this, duly acknowledged by the authorities, leads to greater public involvement and support for the decisions taken (Lima Vision).
- (iv) Adequate access to these rights is essential for the governance of natural resources in the region and contributes to the promotion of dialogue between authorities and citizens in natural resource management (Lima Vision).
- (v) They contribute to inclusiveness, social cohesion and environmental equity.

Use of terms or definitions

These include terms and expressions such as party, competent national authority, environmental information, public participation, access to environmental information, access to participation in environmental matters, access to environmental justice, public, and capacity-building and cooperation.

Objective

The full implementation of access rights in environmental matters, under a capacity-building and cooperation approach (that is, the contributions of a regional instrument as outlined in the Lima Vision).

Principles

The principles of the Lima Vision shall be taken into consideration: equality, inclusion, transparency, proactivity, collaboration, progressive realization and non-regression.

OPERATIVE PART

General provisions

(For examples corresponding to each matter, see annex 1)

- Right to live in a healthy environment and link to human rights
- Open nature of the instrument
- Awareness-raising and environmental education
- Basic instrument that does not preclude further development
- Collaboration between the countries in the region
- Protection, recognition and support of organizations, groups and/or individuals that aim to protect the environment and that exercise the rights recognized in the instrument
- Maximum dissemination of access rights and the duty incumbent upon authorities and public officials to facilitate the exercise of these rights
- Promotion of the instrument's objective in regional and international forums
- Scope of application
- National measures and institutions for implementation of the instrument, including public participation
- Non-discrimination

Access to environmental information

(For examples corresponding to each matter, see annex 2)

Guidelines

Countries may consider the following with regard to access to environmental information:

- Relevance
- Freedom of information
- Openness and transparency
- Maximum dissemination/publicity
- Non-discrimination
- Opportunity to obtain information
- Control/oversight bodies
- No-cost
- Accessibility
- Severability

Passive transparency

- Accessibility of information
 - Presumption of public access
 - Extent
 - Refusal/exceptions
- Mechanisms to facilitate access to information and appeal mechanisms in the event of refusal
 - Format
 - Deadline
 - Language
 - Guarantee of reply
 - Costs
 - Systems
 - Independent national body / institution to ensure compliance

Active transparency

- Generation and dissemination of environmental information
- Periodic reports on the state of the environment and environmental performance reviews
- Consideration of specific issues, encompassing matters such as:
 - Environmental emergencies
 - Public pollutant release and transfer registers
 - Information on dangerous materials, substances and activities
 - Information on permits relating to projects and activities that could have a significant environmental impact
 - Information on environmental enforcement and compliance
- Use of new information and communication technologies
- Special consideration of specific or vulnerable groups
- Information relating to the private sector, encompassing matters such as:
 - Information for consumers
 - Promotion of the production of sustainability reports and environmental compliance by private parties
 - Minimum standards for information quality and participatory environmental monitoring
- Document management and archiving, encompassing matters such as:
 - Management and archiving of administrative documents

Public access to participation in environmental decision-making

(For examples corresponding to each matter, see annex 3)

Guidelines

Countries may consider the following with regard to public access to participation in environmental decision-making:

- Openness and inclusion
- Autonomy

- Respect for cultural diversity
- Co-responsibility
- Institutions
- Modes of and mechanisms for participation
- Types of activities, encompassing matters such as:
 - Applicability to the formulation, execution and evaluation of projects, policies, plans, standards, regulations, programmes and strategies in environmental decisions
 - Applicability to activities that may have a significant environmental impact
 - Applicability also to processes linked to the conservation and management of natural resources
 - Applicability to international forums and negotiations
- Mechanisms and instruments for public participation, encompassing matters such as:
 - Institutions and policy frameworks
 - Forms of participation
- Facilitation of public participation, encompassing matters such as:
 - Notification
 - Identification
 - Information and logistics channels
 - Technical support
 - Possibility of early public participation, to enable the public to provide background information in the early stages of a project's development
 - Public participation in oversight and complaint processes
 - Promotion of guides / frameworks to implement public participation and support for public participation
- Access to information, encompassing matters such as:
 - Relevant and timely information
 - Summary
- Consideration of observations made by the public and grounds for the decision taken
- Decision taken, encompassing matters such as:
 - Communication of the decision
 - Means of appeal and follow-up
- Special consideration of specific or vulnerable groups

Access to justice

(For examples corresponding to each matter, see annex 4)

Guidelines

Countries may consider the following with regard to access to justice in environmental matters:

- Justice and equity
- Publicizing and ensuring transparency
- Prompt response

- Prevention
- Independence and impartiality
- Effective remedy
- Appeal mechanisms when access to information has been denied
- Appeal mechanisms when access to participation has been denied
- Appeal mechanisms to deal with infringement of the rules and claims relating to environmental damage and compensation
- Facilitating access to justice, encompassing matters such as:
 - Opportunity
 - Communication channels
 - Costs
 - Official mechanisms for complaints and for cases where access has been denied, including use of new technologies
 - Broad legal standing
- Special consideration of specific or vulnerable groups
- Decisions adopted
- Mechanisms for implementing decisions
- Training of judicial and administrative officers, public prosecutors, ombudsmen and cooperation
- Public awareness-raising and training
- Alternative dispute resolution

CAPACITY-BUILDING AND COOPERATION

Capacity-building and cooperation shall provide tools to help States and the general public strengthen their capacities and foster cooperation to achieve the full exercise of rights of access to information, participation and justice in environmental matters.

Guidelines

Countries may consider the following with regard to capacity-building and cooperation:

- Demand-driven principle, based on national needs
- Flexibility and effectiveness
- Results-based management
- Reflection of regional specificities
- Mainstreaming of capacity-building
- Transparency and accountability
- Promotion of South-South cooperation
- Consideration of the specificities of cooperation for each access right

- Recognition of the importance and need for capacity-building of both the public and governments.
- Consideration of specific needs, circumstances, capacities and priorities of countries and Governments.
- The instrument shall constitute the framework for capacity-building activities.
- Consideration of the participation of the private sector, civil society organizations and other regional and international organizations, taking into account their role as multiplier agents and existing synergies within public-private initiatives.
- Capacity-building and cooperation shall take account of the target audiences, particularly where groups may have specific needs or require special attention.
- Synergies with other environmental instruments and provisions.
- Self-assessment of national needs and capacities.

Forms of capacity-building and cooperation

- Between States (bilateral, triangular and/or multilateral)
- Between bodies of the instrument and States
- Of the public, public officials and national authorities
- Regional and international cooperation

Modalities

- Discussions, workshops, exchanges of experts, technical assistance, education and awareness-raising, observatories and clearinghouses, among others.
- Development, exchange and implementation of educational, training and awareness-raising materials and programmes at the national and international level.
- Voluntary codes of conduct, guidelines, best practices and/or standards.
- Sharing of experiences at all levels.
- Use of committees, councils and public-private platforms to address cooperation priorities and activities.

Implementation, follow-up and evaluation

- Periodic reports
- The follow-up mechanism can establish or suggest capacity-building measures to support implementation by both the public and Governments

Resources

- Mobilization of various types of resources from different sources

RULES OF PROCEDURE

- Rules for public participation, taking into consideration the experience gained during the regional Principle 10 process, and based on the Plan of Action
- Publicizing and ensuring transparency
- Resource efficiency and use of information and communication technologies

INSTITUTIONAL FRAMEWORK

- Meeting/conference of the signatory countries with participation from the public
- Presiding Officers
- Secretariat
- Advisory group or subsidiary bodies
- Facilitation and/or follow-up mechanism
- Final provisions
- Financial resources and mechanisms

ANNEXES (FOR REFERENCE PURPOSES)

Annex 1

**POSSIBLE APPROACHES TO THE MATTERS LISTED IN THE SECTION
“GENERAL PROVISIONS”**

Examples are presented below of possible approaches to certain issues concerning the general provisions to illustrate how they may be further developed.

- Open nature of the instrument: recognizing the need for and the importance of strengthening access rights in a broad manner, the instrument will be open to all the countries of Latin America and the Caribbean (Plan of Action)
- Awareness-raising and environmental education: as set out in the Lima Vision.
- Basic instrument that does not preclude further development: regardless of the measures that we, the signatory countries, agree upon in order to strengthen the full implementation of access rights, nothing shall preclude our ability to take additional measures to ensure even broader access to information, participation and justice in environmental matters (Lima Vision).
- Protection, recognition and support of organizations, groups and/or individuals: countries can explore modalities for supporting associations, organizations or groups that aim to protect the environment and that exercise the rights recognized in this instrument.
- Maximum dissemination of access rights and the duty incumbent upon authorities and public officials to facilitate the exercise of these rights: mechanisms and procedures for accessing information, participation and justice shall facilitate the exercise of these rights, and shall exclude requirements that may obstruct or impede it.
- Promotion of the instrument's principles in regional and international forums.
- Scope of application and national measures for the implementation of the instrument.

Annex 2

**POSSIBLE APPROACHES TO THE MATTERS LISTED IN THE SECTION
“ACCESS TO ENVIRONMENTAL INFORMATION”**

Examples are presented below of possible approaches to certain issues concerning access to environmental information to illustrate how they may be further developed.

Guidelines

- **Relevance:** any information held by the bodies under obligation is assumed to be relevant, regardless of its format, medium, date of creation, origin, classification or processing, with due regard for the exceptions provided for in law.
- **Freedom of information:** everyone has the right to access the information held by the bodies under obligation, without prejudice to the exceptions and limitations established by law.
- **Openness and transparency:** any information held by the bodies under obligation is presumed public, unless it is subject to regulated exceptions.
- **Maximum dissemination:** information should be provided in the broadest possible terms, excluding only that which is subject to constitutional or legal exceptions.
- **Non-discrimination:** the bodies under obligation shall provide information to anyone that requests it, under equal conditions, without making arbitrary distinctions and without requiring any justification for the request, always in accordance with national law.
- **Opportunity to obtain information:** the bodies under obligation shall reply to information requests within the legal deadlines, as quickly as possible and without introducing any kind of procedural delay; extensions must be clearly stated and justified.
- **Control:** compliance with the rules governing the right of access to information will be constantly monitored and decisions taken regarding information requests can be appealed.
- **No-cost:** access to information held by the bodies under obligation is free, without prejudice to justified exceptions.
- **Accessibility of information systems.**
- **Severability:** if an administrative act contains both information that can be known and information that must be withheld on legal grounds, access will be granted to the former but not to the latter.

Passive transparency

- **Accessibility of information**
 - **Presumption of public access:** this applies to any environmental information held by the public authorities, with clear, limited and regulated exceptions.
 - **Extent:** it is not necessary to demonstrate (or mention) a special interest or provide any reason.

- Refusal: public bodies must justify their refusal to answer an information request and, if access to information is denied, there must be independent mechanisms to review the decision.
- Mechanisms to facilitate access to information
 - Format: obligation to provide information in the required format if available.
 - Deadline: timeframe for providing information.
 - Language: language shall not constitute a barrier, and special consideration must be accorded to the languages of indigenous peoples.
 - Guarantee of reply: assistance and/or redirection if a request falls outside the sphere of competence.
 - Costs: if there are costs, these must not exceed what is reasonable for the request.
 - Systems: establishment and/or development of information systems with a view to promoting greater user access.

Active transparency

- Generation and dissemination of environmental information

Examples:

- Parties shall seek to generate environmental information and make it publicly available in a proactive, timely, regular, accessible and comprehensible manner.
- All information of public interest that is produced, managed and disseminated should be timely, objective, reliable, complete, up-to-date, reusable, processable and available in formats that are accessible to petitioners and other interested parties with no restrictions on its reproduction or use, in accordance with legal provisions and exceptions.

- Consideration of specific issues

Examples:

- Environmental emergencies: information shall be effectively and immediately disseminated to communities affected by environmental emergencies.
- Public pollutant release and transfer registers
- Information on dangerous materials and activities
- Information on permits relating to large projects or activities that could have a significant environmental impact

- Use of new communication technologies

Examples:

- Development of mechanisms aimed at encouraging the implementation of open-data policies at the various government levels so as to improve information systems, increase transparency, generate data interoperability and promote innovation.
- Owing to the possible limitations, alternative mechanisms for dissemination and access should also be considered.

- Special consideration of specific or vulnerable groups

Examples:

- Consider channels that are culturally, economically, spatially and temporally appropriate and used by vulnerable groups.

- Information held by private parties

Examples:

- Information for consumers: Product information to ensure consumers make informed choices in environmental matters.
 - Promotion of the production of sustainability reports and environmental compliance by private parties: Compliance with principles, guidelines, human rights and socio-environmental responsibility.
 - Minimum standards for information quality and participatory environmental monitoring.
- Document management and archiving

Examples:

- Management and archiving of administrative documents so that they can be retrieved and made available if required, in accordance with legal provisions and exceptions.

Annex 3

**POSSIBLE APPROACHES TO THE MATTERS LISTED IN THE SECTION
“PUBLIC ACCESS TO PARTICIPATION IN ENVIRONMENTAL
DECISION-MAKING”**

Examples are presented below of possible approaches to certain issues concerning public access to participation in environmental decision-making to illustrate how they may be further developed.

Guidelines

- Openness and inclusion: public participation must be open and inclusive.
- Autonomy: the public must have complete autonomy to participate and organize.
- Respect for cultural diversity: respect for the particular conditions and plurality of all, especially vulnerable groups and indigenous peoples, and promotion of the value of local knowledge.
- Co-responsibility: participation must be exercised on the basis of the co-responsibility of Governments and the public; both parties must take an active role and act in good faith in the process of constructing public policies as a society.
- Institutions: institutions and mechanisms should enable the effective and transparent exercise of the public’s right to participate in public management.
- Opportunity to have an impact: participation should be significant and should take place at a time when options are still open.

Examples for each matter

- Types of activities
 - Applicability to the formulation, execution and evaluation of environmental decisions (cases in which this would be compulsory and discretionary to be determined)
 - Applicability to activities that may have significant environmental impacts
 - Applicability also to processes linked to the conservation and management of natural resources
- Mechanisms and instruments for public participation
 - Institutions and policy frameworks: These will be based on regulatory frameworks, legal and institutional traditions, and international instruments.
 - Forms of participation: Consider comments made in writing or at public hearings and differentiated and gradual mechanisms that are consistent with the potential degree of impact of the project.
 - Impact forums: Establishment of permanent forums with representatives of different sectors (representatives of civil society and public authorities).
- Facilitation of public participation
 - Timely notification, appropriate deadlines and prior information
 - Identification of those are directly affected
 - Appropriate information and logistics channels
 - Technical support for participants and resources for participation

- Possibility of early public participation, to enable the public to provide background information in the early stages of a project's development
- Public participation in oversight and complaint processes
- Promotion of guides/frameworks to implement public participation and support for public participation
- Access to information
 - Relevant information: The public must have access to relevant information for their participation to be active and effective
 - Summary: A summary of the issue must be disseminated
- Consideration of observations received from the public and decision taken
 - Extent of public participation and justification of the consideration given to the comments from the public
- Decision taken
 - Communication of the decision: the public must be promptly informed of the decision taken and the reasons for it must be made public and be accessible
 - Means of appeal and follow-up
- Special consideration of specific or vulnerable groups:
 - Identify communities in a situation of vulnerability.
 - Consider the best means and formats for providing information to vulnerable communities, including language when appropriate.
 - Seek to support participation at the lowest cost possible.
 - Raise awareness and build capacities to ensure informed participation.
 - Ensure that the characteristics of vulnerable communities are taken into account.
 - Encourage active and timely participation.

Annex 4

**POSSIBLE APPROACHES TO THE MATTERS LISTED IN THE SECTION
“ACCESS TO JUSTICE”**

Examples are presented below of possible approaches to certain issues concerning access to justice to illustrate how they may be further developed.

Guidelines

- Justice and equity: Right to be heard, within a reasonable time, through legal and/or administrative means, in a process that grants guarantees of due process; right to be judged on the basis of the principle of legality; clear, fair, appropriate and independent procedures; right of appeal in respect of superior court rulings; and, where these exist, specialized courts.
- Publicizing and ensuring transparency of judicial proceedings and of rights in environmental matters, in accordance with legal provisions and exceptions.
- Appeal mechanisms in cases where access to information and/or participation has been denied or environmental regulations have been violated.
 - Active legal standing
 - Victim support
 - Environmental and access rights defenders (such as the right to promote and defend, individually or in association with others, environmental protection and access rights; the need for States to take the necessary measures to ensure that this right is properly guaranteed).
 - Precautionary, interim and oversight measures to safeguard the environment
 - Specialized courts/chambers to deal with environmental matters
 - Liability of public officials in cases where access to information and/or participation has been denied
 - Execution and remedy mechanisms (for example, funds to repair damage)
- Facilitating access to justice (such as cost and opportunity)
 - Broad dissemination of mechanisms to facilitate access
 - Effective communication channels between authorities
 - Reducing the cost of litigation and the duration of court cases, supporting and building the capacities of affected communities and the public
 - New mechanisms, including virtual, electronic and telephone mechanisms
- Special consideration of specific or vulnerable groups, including indigenous and Afro-descendent peoples
 - Free legal assistance
 - Consideration of channels that are culturally, economically, spatially and temporally appropriate and used by vulnerable groups
- Decisions adopted
 - Notification and justification
 - Judicial decisions shall be made available to the public

- Training of judicial and administrative officers and cooperation
 - Promotion of capacity-building programmes on environmental law for judicial officials and law enforcement officers, other jurists and other stakeholders
 - Regional cooperation for the investigation and prosecution of environmental crimes
- Alternative dispute resolution
 - Promote the development and use of alternative dispute resolution mechanisms, in appropriate cases, for example hearings, mediation and arbitration
 - Alternative and inexpensive methods such as commissions and ombudsmen

Annex 5

**POSSIBLE APPROACHES TO MATTERS CONCERNING FINANCING
AND THE INSTITUTIONAL FRAMEWORK**

Examples are presented below of possible approaches to certain issues concerning financing and the institutional framework to illustrate how they may be further developed.

- Financing:
 - Possibility of a specific fund to finance the capacity-building and cooperation component.
 - Provisions regarding financial cooperation from the States Parties and relevant international organizations or bodies, cooperation between the States Parties and financial resources managed by the body responsible for the instrument.

INSTITUTIONAL FRAMEWORK

- Meeting/conference of the signatory countries (with significant participation from the public)
- Presiding Officers
- Secretariat
 - As set out in the Plan of Action
 - Training and relations with other multilateral bodies
- Advisory group or subsidiary bodies
 - Specialized technical groups or panels to provide advice to States
- Compliance and/or follow-up mechanism
 - Voluntary non-adversarial and non-judicial mechanisms of a consultative nature to review compliance with the instrument's provisions
 - Appropriate participation by the public and review of communications from members of the public on matters related to the instrument
 - Consideration of capacities and national legislation
 - Compliance and follow-up methods (such as periodic reports, monitoring, communications from members and peer review)
- Final provisions dealing with aspects such as adoption, amendments, right to vote, signature, ratification, entry into force, reservations, withdrawal, depositary and authentic texts.

Annex C

LIST OF PARTICIPANTS**A. Países signatarios de la Declaración
Signatory countries of the Declaration****ARGENTINA**Representante/Representative:

- María Fabiana Loguzzo, Directora General de Asuntos Ambientales, Ministerio de Relaciones Exteriores, Comercio Internacional y Culto, email: laf@mrecic.gov.ar

Miembros de la delegación/Delegation members:

- Romina Iglesia, Secretaria, Embajada de la Argentina en Chile, email: iir@mrecic.gov.ar

BOLIVIA (ESTADO PLURINACIONAL DE)/BOLIVIA (PLURINATIONAL STATE OF)Representantes/Representatives:

- Justina Robles, Ministerio de Ambiente y Agua, email: justinarobles@gmail.com

BRASIL/BRAZILRepresentante/Representative:

- Bernardo Macke, Secretario, Coordinación General de Desarrollo Sostenible, Ministerio de Relaciones Exteriores, email: bernardo.macke@itamaraty.gov.br

Miembros de la delegación/Delegation members:

- Cristiano Rabelo, Primer Secretario y enlace CEPAL, Embajada del Brasil en Chile, email: cristiano.rabelo@itamaraty.gov.br

CHILERepresentantes/Representatives:

- Marcelo Mena, Subsecretario de Medio Ambiente, Ministerio de Medio Ambiente, email: mmena@mma.gob.cl

Miembros de la delegación/Delegation members:

- Waldemar Coutts, Ministro Consejero, Director de la Dirección de Medio Ambiente y Asuntos Marítimos, Ministerio de Relaciones Exteriores, email: wcoutts@minrel.gov.cl
- Julio Cordano, Jefe, Departamento de Cambio Climático y Desarrollo Sostenible, Dirección de Medio Ambiente, Ministerio de Relaciones Exteriores, email: jcordano@minrel.gov.cl
- Constance Nalegach, Punto Focal Democracia Ambiental Latinoamérica y Caribe, Oficina OCDE y Foros Internacionales, Ministerio de Medio Ambiente, email: CNalegach@mma.gob.cl
- Miguel Figueroa, Asesor, Comisión Defensor Ciudadano y Transparencia, Ministerio Secretaría General de la Presidencia, email: mfigueroa@minsepres.cl

- Marcela Ponce, Ministerio del Medio Ambiente, email: mponce@mma.gob.cl
- Daniel Garcés, Abogado, Consejo para la Transparencia, email: danielgarces@gmail.com
- Deyse Sandoval, Encargada Transparencia, Servicio de Evaluación Ambiental (SEA), email: dsandoval@sea.gob.cl

COLOMBIA

Representante/Representative:

- Andrea Marcela Alarcón, Coordinadora de Asuntos Sociales, Dirección de Asuntos Económicos, Sociales y Ambientales, Ministerio de Relaciones Exteriores, email: andrea.alarcon@cancilleria.gov.co

Miembros de la delegación/Delegation members:

- Marta Galindo, Ministra Consejera, Embajada de Colombia en Chile, email: marta.galindo@cancilleria.gov.co

COSTA RICA

Representante/Representative:

- Patricia Madrigal, Viceministra del Ambiente, Ministerio de Ambiente y Energía, email: vicemi@minae.go.cr

Miembros de la delegación/Delegation members:

- Ana Elena Pinto, Ministro Consejero y Encargado de Negocios a.i., Embajada de Costa Rica en Chile, email: apinto@rree.go.cr

ECUADOR

Representante/Representative:

- María Natalia Yépez Martínez, Dirección de Asuntos Culturales, Desarrollo Social y Derechos Humanos, Ministerio de Relaciones Exteriores y Movilidad Humana, Ecuador, email: nataliaym@gmail.com

EL SALVADOR

Representante/Representative:

- Marina Sandoval, Coordinación Técnica, Ministerio de Medio Ambiente y Recursos Naturales, email: msandoval@marn.gob.sv

Miembros de la delegación/Delegation members:

- Carla Arias, Ministra Consejera, Embajada de El Salvador en Chile, email: embasalva@adsl.tie.cl, ctarias@rree.gob.sv

GUATEMALA

Representante/Representative:

- Rosmery Juárez, Primera Secretaria, Ministerio de Relaciones Exteriores, email: rjuarez@minex.gob.gt

Miembros de la delegación / Delegation members:

- Rudy Gómez del Cid, Embajada de Guatemala en Chile, email: embajada@guatemala.cl

HONDURAS

Representante/Representative:

- Xiomara Cubas, Coordinadora Técnica y Administrativa, Consejo Nacional de Desarrollo Sostenible (CONADES), email: xcubas@yahoo.com

Miembros de la delegación/Delegation members:

- Mauro Salgado, Consejo Nacional de Desarrollo Sostenible (CONADES), email: maurosalgadoluna@yahoo.com

JAMAICA

Representante/Representative:

- Dorlan Burrell, Director in the Environment and Risk Management Division, Ministry of Water, Land, Environment and Climate Change, email: Dorlan.Burrell@mwlecc.gov.jm

MÉXICO/MEXICO

Representantes/Representatives:

- Berta Helena de Buen, Directora General Adjunta de Participación y Atención Ciudadana, Secretaría de Medio Ambiente y Recursos Naturales, email: helenadebuen@semarnat.gob.mx

Miembros de la delegación/Delegation members:

- Caritina Saénz Vargas, Primera Secretaria, Embajada de México en Chile, email: csaenz@emexico.cl

PANAMÁ/PANAMA

Representante/Representative:

- Joana Abrego, Jefa de Asesoría Legal, Autoridad Nacional del Ambiente, email: jabregog@anam.gob.pa

PARAGUAY

Representante/Representative:

- Ricardo Caballero Aquino, Director , Unidad de Asuntos Ambientales del Ministerio de Relaciones Exteriores, email: rcaballeroa@mre.gov.py

PERÚ/PERU

Representantes/Representatives:

- Fernando Rojas Samanez, Embajador del Perú en Chile, email: miturrino@embajadadelperu.cl

Miembros de la delegación / Delegation members:

- Jimpson Dávila, Asesor Legal, Ministerio del Ambiente, email: jdavila@minam.gob.pe
- Carlos Rossi Covarrubias, Subdirector de Asuntos Ambientales Globales, Ministerio de Relaciones Exteriores, email: crossi@rree.gob.pe

REPÚBLICA DOMINICANA/DOMINICAN REPUBLIC

Representante/Representative:

- Marisol Castillo, Directora Legal, Ministerio de Medio Ambiente y Recursos Naturales, email: Marisol.Castillo@ambiente.gob.do

SAN VICENTE Y LAS GRANADINAS/SAINT VINCENT AND THE GRENADINES

Representante/Representative:

- Michelle Fife, Legal Advisor, International Law Issues, Ministry of Legal Affairs, email: majestysultry777@yahoo.com, michellefife777@gmail.com

TRINIDAD Y TABAGO/TRINIDAD AND TOBAGO

Representante/Representative:

- Rueanne Haynes, Segunda Secretaria, Misión Permanente de Trinidad y Tabago ante las Naciones Unidas (por videoconferencia), email: rueanna.haynes@gmail.com

URUGUAY

Representante/Representative:

- Carlos Rodríguez, Subdirector de Medio Ambiente, Dirección de Medio Ambiente, Ministerio de Relaciones Exteriores, email: medio.ambiente@mrree.gub.uy

B. Países miembros de la Comisión que participan en calidad de observadores States members of the Commission participating as observers

ANTIGUA Y BARBUDA/ANTIGUA AND BARBUDA

Representante/Representative:

- Ruleta Camacho, Senior Environment Officer, Ministry of Health and the Environment, email: rcamacho@environmentdivision.info

FRANCIA/FRANCE

Representante/Representative:

- Pascal Delisle, Consejero Regional de Cooperación, Ministerio de Asuntos Exteriores, email: pascal.delisle@diplomatie.goug.fr

Miembros de la delegación / Delegation members:

- Michel Schlaifer, Asesor en Clima y Desarrollo Sostenible, Embajada de Francia en Chile y CEPAL, email: Michel.schlaifer@cepal.org

NICARAGUA

Representante/Representative:

- María Luisa Robleto, Embajadora de Nicaragua en Chile, email: embajadoranic@vtr.net

SANTA LUCÍA/SAINT LUCIARepresentante/Representative:

- Sallyane Cotter, Legal Officer, Ministry of Sustainable Development, Energy, Science and Technology, email: sallyane.cotter@govt.lc

**C. Secretaría de las Naciones Unidas
United Nations Secretariat**

Oficina de Asuntos Jurídicos de las Naciones Unidas/United Nations Office of Legal Affairs

- Santiago Villalpando, Chief, Treaty Section (por videoconferencia), email: villalpando@un.org

**D. Organismos de las Naciones Unidas
United Nations bodies**

Oficina del Alto Comisionado para los Derechos Humanos (ACNUDH)/Office of the High Commissioner for Human Rights (OHCHR)

- Amerigo Incalcaterra, Representante Regional para América del Sur, email: aincalcaterra@ohchr.org
- Humberto Henderson, Representante Regional Adjunto para América del Sur, email: hhenderson@ohchr.org

**E. Organismos especializados
Specialized agencies**

Organización de las Naciones Unidas para la Educación, la Ciencia y la Cultura (UNESCO)/United Nations Educational, Scientific and Cultural Organization (UNESCO)

- Astrid Hollander, Especialista de Programa en Educación para el Desarrollo Sostenible, email: a.hollander@unesco.org

**D. Panelistas
Panellists**

- Winston Anderson, Judge of the Caribbean Court of Justice, email: wanderson@caribbeancourtsofjustice.org
- Danielle Andrade, Attorney-at-Law, Jamaica Environment Trust, Jamaica, email: dandrade.jet@gmail.com
- Silvia Capelli, Coordinadora de la Red Latinoamericana del Ministerio Público del Medio Ambiente, Brasil, email: silvia.cappelli@gmail.com
- Jonas Ebbesson, Dean, Faculty of Law, University of Stockholm and Chair of the Aarhus Convention Compliance Committee, email: Jonas.Ebbesson@juridicum.su.se
- Concepción Escobar, Catedrática de Derecho Internacional Público, UNED, España, y miembro de la Comisión de Derecho Internacional de las Naciones Unidas, email: cescobar@der.uned.es

- John Knox, Experto Independiente de las Naciones Unidas para los Derechos Humanos y el Medio Ambiente (por videoconferencia), email: ieenvironment@ohchr.org
- Marcos Orellana, Director of Human Rights and Environment Program, Center for International Environmental Law (CIEL), email: orellana@american.edu

E. Otros participantes **Other participants**

- Mara Angelini, abogada asociada, Chile, email: mara.angelini@gmail.com
- Luisa Pilar Araúz, Centro de Incidencia Ambiental (CIAM), Panamá, email: larauz@ciampanama.org
- David Banisar, Senior Legal Counsel, Article 19, United Kingdom, email: banisar@article19.org
- Daniel Barragán, Director Ejecutivo, Centro Ecuatoriano de Derecho Ambiental (CEDA), Ecuador, email: dbarragan@ceda.org.ec
- Bertrand Bhikarry, Council of Presidents of the Environment (COPE), Trinidad and Tobago, email: bertrand@bhikarry.net
- Gabriela Burdiles, Corporación Fiscalía del Medio Ambiente (FIMA), Chile, email: burdiles@fima.cl
- Isabel Calle, Directora Programa de Política y Gestión Ambiental, Sociedad Peruana de Derecho Ambiental (SPDA), Perú, email: icalle@spda.org.pe
- Juan Carlos Castro Rivadeneira, Academia de Derecho Ambiental, Universidad Andrés Bello, Chile, email: jccrivadeneira@gmail.com
- Rolando Castro, Director Ejecutivo, Centro de Derecho Ambiental y de los Recursos Naturales (CEDARENA), Costa Rica, email: rcastro@cedarena.org
- Karetta Crooks Charles, Saint Lucia National Trust, Saint Lucia, email: advocacy@slunatrust.org
- Ezio Costa Cordella, Director Ejecutivo, Fiscalía del Medio Ambiente (FIMA), Chile, email: costa@fima.cl
- Euren Cueva Medina, Instituto de Abogados para la Protección del Medio Ambiente, República Dominicana, email: insaproma2000@yahoo.es
- Noriko Date, Osaka University Graduate School of Law and Politics, Japan, email: okku@db3.so-net.ne.jp
- Michael Díaz Rodríguez, Consejo de Desarrollo Local del Maule, Chile, email: midiaz@alumnos.utralca.cl
- María Constanza Dougnac, Fiscalía del Medio Ambiente (FIMA), Chile, email: cdougnac@fima.cl
- Carole Excell, World Resources Institute, United States, email: cexcell@wri.org
- Tsvetelina Filipova, Senior Expert, Leader Participatory Governance, Regional Environmental Center, Hungary, email: filipova@rec.org
- Natalia Gómez Peña, Ambiente y Sociedad, Colombia, email: nataliagomez@ambienteysociedad.org.co
- Daryll Griffith, Caribbean Youth Environment Network, Trinidad and Tobago, email: daryllgriffith@gmail.com
- Nicole Kirsten, Chile, email: nicokirsten@gmail.com
- Alessandro Lodi, Fundación Casa de la Paz, Chile, email: alodi@casadelapaz.cl
- Alex Patricio Martínez González, Academia de Derecho Ambiental, Universidad Andrés Bello, Chile, email: alex.martinez.gonzalez@gmail.com
- Carol Mora Paniagua, Sociedad Peruana de Derecho Ambiental, Perú, email: cmora@spda.org.pe
- Renato Morgado, Institute of Agricultural and Forest Management and Certification (IMAFLOA), Brazil, email: renato@imaflora.org
- Guisella Muñoz, Centro de Desarrollo y Pesca Sustentable (CEDEPESCA), Chile, email: guisella.munoz@cedepesca.net
- Marcela Müller, Corporación de Asistencia, Chile, email: mmuller@cajmetro.cl

- Andrés Napoli, Director Ejecutivo, Fundación Ambiente y Recursos Naturales, Argentina, email: anapoli@farn.org.ar
- Amira Oden, Caribbean Youth Environment Network, Puerto Rico, email: amira.oq@gmail.com
- Ana Cecilia Olivares, Unidad Ecológica Salvadoreña, El Salvador, email: aceciliaolivares@gmail.com
- Felipe Pizarro Venegas, Universidad Andrés Bello, Chile, email: pizarrovenegasfelipe@gmail.com
- Moises Sánchez, Secretario Ejecutivo, Alianza Regional por la Libre Expresión e Información, Uruguay, email: msanchez@alianzaregional.net
- Andrea Sanhueza, Coordinadora Iniciativa de Acceso América Latina, email: andreasanhuezae@gmail.com
- Ezequiel Francisco Santagada, Director Ejecutivo, Instituto de Derecho y Economía Ambiental (IDEA), Paraguay, email: Ezequiel.santagada@idea.org.py
- Tomás Severino, Director, Cultura Ecológica A.C., México, email: tseverino@culturaecologica.org.mx
- Pía Macarena Slanzi Rodríguez, abogada, Chile, email: piaslanzi@gmail.com
- Mariana Tamari, Project Manager, Article 19, Brazil, email: mariana@article9.org
- Magdolna Tothne, Senior Expert, Regional Environmental Center, Hungary, email: tmagdi@rec.org
- Pablo Valenzuela, Director Ejecutivo de Fundación Casa de la Paz, email: pvalenzuela@casadelapaz.cl

G. Secretaría/Secretariat

Comisión Económica para América Latina y el Caribe (CEPAL)/Economic Commission for Latin America and the Caribbean (ECLAC)

- Joseluis Samaniego, Director, División de Desarrollo Sostenible y Asentamientos Humanos/Chief, Sustainable Development and Human Settlements Division, email: joseluis.samaniego@cepal.org
- Luis F. Yáñez, Oficial a cargo, Secretaría de la Comisión/Officer in charge, Secretary of the Commission, email: luis.yanez@cepal.org
- Carlos de Miguel, Jefe de la Unidad de Políticas para el Desarrollo Sostenible, División de Desarrollo Sostenible y Asentamientos Humanos/Head of the Policies for Sustainable, Development Unit, Sustainable Development and Human Settlements Division, email: carlos.demiguel@cepal.org
- Guillermo Acuña, Asesor Legal y Jefe de Protocolo, Oficina de la Secretaria Ejecutiva/Legal Adviser and Chief of Protocol, Office of the Executive Secretary, email: guillermo.acuna@cepal.org
- Valeria Torres, Oficial de Asuntos Económicos, División de Desarrollo Sostenible y Asentamientos Humanos/Economic Affairs Officer, Sustainable Development and Human Settlements Division, email: valeria.torres@cepal.org
- David Barrio, Oficial de Asuntos Políticos, División de Desarrollo Sostenible y Asentamientos Humanos/Political Affairs Officer, Sustainable Development and Human Settlements Division, email: david.barrio@cepal.org

Sede subregional de la CEPAL para el Caribe/ECLAC subregional headquarters for the Caribbean

- Leda Peralta, Oficial de Asuntos Ambientales, Unidad de Desarrollo Sostenible/Environmental Affairs Officer, Sustainable Development Unit, email: leda.peralta@cepal.org