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

Towards achievement of the 2030 Agenda for Sustainable Development

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FOR SUSTAINABLE DEVELOPMENT WITH EQUALITY

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Foreword

In a global context of economic instability, growing inequality, risks to peace and security and a serious environmental crisis, it has become clear that the prevailing development pattern in Latin America and the Caribbean is unsustainable. In addition to the degradation of the environment and ecosystems and the plundering of natural resources associated with today's production and consumption dynamics, compounded by urban concentration, there are global challenges such as climate change that greatly impact our region, particularly its vulnerable persons and groups.

These deep economic, social and environmental imbalances challenge us to change the current way of doing things and have prompted the regional and international community to seek answers through instruments such as the 2030 Agenda for Sustainable Development and the Paris Agreement and the negotiation of the regional agreement on access to information, participation and justice in environmental matters in Latin America and the Caribbean. These instruments all seek to promote peaceful, fairer and less unequal societies that are caring and inclusive, to protect human rights and to ensure the lasting protection of the planet and its natural resources.

The regional and international community's new road map will demand a new and more inclusive vision of development and, crucially, the full application of Principle 10 of the Rio Declaration on Environment and Development, adopted over twenty-five years ago at the 1992 United Nations Conference on Environment and Development (Earth Summit).

Principle 10 of the Rio Declaration is based on three interdependent rights: the right to have access to environmental information in a timely and effective manner; the right to participate in decision-making in environmental matters; and the right to have access to justice to ensure compliance with environmental laws and rights or to obtain redress for environmental damage. Guaranteeing these rights for all is fundamental for addressing inequality and advancing towards environmentally sustainable development. As discussed in this document, these rights ensure not only that environmental problems disproportionately affecting vulnerable persons and groups are addressed, but also that the needs of those groups are properly considered, in line with the commitment enshrined in the 2030 Agenda to leave no one behind. Access rights in environmental matters therefore constitute a keystone of the relationship between human rights and the environment.

This document, of which an earlier version was published in 2013,[1] reviews the laws and institutional frameworks that safeguard access to information, participation in decision-making and access to justice in environmental matters, as enshrined in Principle 10 of the Rio Declaration on Environment and Development, in the 33 countries of the region, on the basis of the material collected in the Observatory on Principle 10 in Latin America and the Caribbean. This updated version reflects recent developments in these matters and the traction they have gained in the region and includes new examples of good practices and emerging issues.

As discussed herein, notwithstanding the significant progress made in the last few decades, many countries have yet to develop fully the legislation needed to facilitate the implementation of Principle 10 of the Rio Declaration, or are finding it difficult to apply in practice. It is clear from the document that all countries in the region have experiences to share on the effective application of access rights in environmental matters. However, it is also apparent that even countries with solid regulatory frameworks face

[1] See *Access to information, participation and justice in environmental matters in Latin America and the Caribbean: situation, outlook and examples of good practice, Environment and Development series*, No. 151 (LC/L.3549/Rev.2), Santiago, 2013.

challenges when it comes to ensuring that all people are able to exercise their rights. As this work has found, people living in poverty and indigenous and Afrodescendent peoples, among others, face significant barriers to exercising their rights, sometimes in the form of unequal access to justice and lack of political power.

The Economic Commission for Latin America and the Caribbean (ECLAC) has prepared this publication as part of its commitment to the follow-up of the agreements adopted by the international community in Rio de Janeiro, Brazil, in 1992 and to the implementation and monitoring of the 2030 Agenda for Sustainable Development.

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Introduction

Both civil society and governments have increasingly recognized that access to information, participation and justice in environmental matters are not only rights in themselves but are vital if development is to become environmentally sustainable. Accordingly, it has been argued that policymaking in the countries of Latin America and the Caribbean needs to be more participatory and informed (United Nations, 2012a).

Access to information is conducive to open, transparent decision-making, which forges trust, allows previously unnoticed problems to be brought to light or alternative solutions proposed, and increases the efficiency and effectiveness of environmental policies and regulations.

Informed participation, meanwhile, is a mechanism for integrating public concerns and knowledge into public policy decisions affecting the environment. It has been argued that public participation in decision-making makes governments better able to respond promptly to public concerns and demands, build consensus and secure increased acceptance of and compliance with environmental decisions, as people are made to feel part of them.[1] There is also evidence that informed public participation at early stages of environmental decision-making helps to forestall future socioenvironmental conflicts.

Access to justice, for its part, provides individuals, groups and organizations with a tool to protect their rights in relation to the environment, information access and participation in decision-making, as it gives them recourse to clear, equitable, timely and independent legal and administrative procedures capable of providing redress and remedies for environmental damage in the event that these rights are infringed by the State itself or private persons.

The United Nations Conference on Environment and Development, held in Rio de Janeiro in 1992, was a turning point for recognition of the importance of access to information, participation and justice in dealing with environmental challenges. On that occasion, governments agreed that:

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

Twenty-five years on from the adoption of Principle 10 of the Rio Declaration on Environment and Development, it is generally agreed that the rights of access to information, public participation and justice in environmental matters (see box 1) are central to the relationship between the environment and human rights and form the basis of environmental democracy and good governance (see box 2). Similarly, the cumulative evidence is that citizen participation in decision-making can improve the quality and acceptability of the decisions that come out of environmental procedures and operates as a tool for reducing inequality and poverty. This was formally recognized in "The future we want", the outcome document of the United Nations Conference on Sustainable Development (Rio+20), which argued that broad public participation and access to information and to judicial and administrative proceedings were essential

[1] See Article 19, "Submission of Article 19, global campaign for free expression, on incorporating Principle 10 and the right to information in the Rio 2012 outcomes", London, 1 November 2011 [online] https://www.article19.org/data/files/medialibrary/2808/11-11-02-Rio.pdf.

to the pursuit of sustainable development.[2] In that document, heads of State also recognized that democracy, good governance and the rule of law at both the national and international levels, and likewise an enabling environment, were essential for sustainable development, including sustained and inclusive economic growth, social development, environmental protection and the eradication of poverty and hunger.[3]

Box 1
Rights of access to information, participation and justice in environmental matters

Principle 10 of the 1992 Rio Declaration on Environment and Development is grounded in the relationship between three interconnected and interdependent human rights:

The right for everyone to have access to environmental information held by the public authorities in a timely and effective manner. Although there is no single definition of "environmental information", this is generally agreed to include not just information on materials and activities posing a threat to communities but also information on environmental quality, environmental health impacts and the factors affecting these, information on legislation and policies for the provision of guidance on obtaining data. The term "public authorities" should also be interpreted broadly to include all branches of the State (the executive, legislature and judiciary) at all levels of the internal government structure (central or federal, regional, provincial or municipal) and any other physical or legal persons having public responsibilities or functions or providing public services (including private sector organizations performing public functions and supplying public services).

The right for everyone to participate individually or collectively in decision-making that affects the environment. This refers to the opportunity for citizens to provide inputs when all options and solutions are still possible and to have an influence on decision-making about standards, policies, strategies and plans at different levels, as well as projects, works and activities liable to have an environmental impact. Examples include formal citizen participation arrangements set up as part of environmental impact or licensing assessments, and public consultations carried out by governments to implement a national policy. To be able to exercise this right properly, the public needs to have prior access to the information needed for participation and be given a reasonable amount of time to prepare.

The right of access to justice so that anyone can enforce environmental laws and rights (including the rights to information and participation in decision-making) or obtain redress for environmental damage. Access to justice takes the form of clear, equitable, independent and expeditious judicial and administrative remedies when these rights are affected or a remedy is required for environmental harm. Broad active legal standing in defence of the environment, the creation of assistance mechanisms to eliminate or reduce financial and other obstacles to justice, the implementation of mechanisms to execute rulings in a timely and effective manner and the application of provisional or precautionary measures and remedial measures (such as restitution or restoration and compensation) are some of the conditions for this right to be fully exercised. Access to justice is also essential to safeguard the environmental rights of those traditionally excluded from decision-making.

Source: Economic Commission for Latin America and the Caribbean (ECLAC), on the basis of ECLAC, "Preliminary document of the regional instrument on access to information, participation and justice on environmental matters in Latin America and the Caribbean" (LC/L.3987), Santiago, 2015 [online] http://repositorio.cepal.org/bitstream/handle/11362/37953/1/S1500260_en.pdf; United Nations Environment Programme (UNEP), *Putting Rio Principle 10 into Action: An Implementation Guide for the UNEP Bali Guidelines for the Development of National Legislation on Access to Information, Public Participation and Access to Justice in Environmental Matters*, Nairobi, 2015.

2 See United Nations (2012b).
3 See [online] https://rio20.un.org/sites/rio20.un.org/files/a-conf.216l-1_english.pdf.

Box 2
Elements of good governance and environmental democracy

Although there is no one definition of what is meant by environmental democracy, it is generally agreed that the core of the concept is the idea that decision-making with environmental implications needs to be participatory, open and inclusive. Thus, the emphasis should be on the decision-making process rather than the actual results. Environmental democracy is underpinned by three interrelated and interdependent rights: the right to effective and timely access to environmental information, the right to participation in decision-making affecting the environment and the right to justice in order to enforce environmental laws and rights or obtain redress for environmental damage. These three rights were internationally recognized in Principle 10 of the 1992 Rio Declaration on Environment and Development and are the basis for environmental democracy.

Accordingly, while different definitions of good governance exist, they all start out from the premise that decision-making and implementation processes should be clear and governed by the following principles: openness, so that decision-making and government generally is transparent and understandable; effectiveness, always considering that good governance is a means to an end and that effective attainment of that end is what ultimately counts; participation, so that decision-making includes all possible actors; consistency, with reasonable incentives and sanctions in pursuit of specific goals; and clear accountability).

Good governance lies not only with government but also in the role played by the public, private enterprise, the media, civil society organizations, investors, researchers and all those with the power to affect a country's political, economic and social life.

Source: Economic Commission for Latin America and the Caribbean (ECLAC), on the basis of J. Harman, "The relationship between good governance and environmental compliance and enforcement", document presented at the Seventh International Conference on Environmental Compliance and Enforcement, International Network for Environmental Compliance and Enforcement (INECE), Washington, D.C., 9–15 April 2005 [online] https://www.peacepalacelibrary.nl/ebooks/files/C08-0084-Harman-Relationship.pdf; J. Foti and others, *Voice and Choice: Opening the Door to Environmental Democracy*, Washington, D.C., World Resources Institute (WRI), 2008.

A. Democracy, the environment and poverty: ensuring no-one is left behind

Latin America and the Caribbean faces great challenges in respect of social inclusion, equality, poverty eradication and environmental protection. It is increasingly clear that environmental degradation —at both the local and global levels— has a more severe impact on disadvantaged groups, who are more vulnerable to diseases associated with it (such as air and water pollution and changes in the patterns of vector-borne diseases), to disasters caused by extreme weather events and to loss of livelihoods due to the degradation of ecosystems and natural resources (United Nations, 2012a, p. 231).

Another challenge is to strengthen the ability of States and institutions to more effectively manage and resolve the growing number of socioenvironmental conflicts associated with projects in extractive sectors.

The wide array of challenges faced by the region in its pursuit of development with equality and peace and of genuine progress on poverty eradication calls for a greater public policy and budgetary effort and more concerted action by government, civil society and the private sector to establish enduring compacts for equality and a sustainable future. Such compacts will only be possible when democracies are more participatory and transparent and their citizens are deeply engaged in decisions about the type of society they want to build.[4]

[4] See Bárcena (2016).

Similarly, the United Nations *World Economic and Social Survey 2016*, which examines the challenges of creating climate change resilience and the disproportionate effects of climate disasters on vulnerable populations and communities, argues that rights of access to information, participation and justice are essential to combat inequality and build climate resilience strategies. These rights, which are enshrined in Principle 10 of the 1992 Rio Declaration on Environment and Development, not only ensure that environmental problems affecting disadvantaged groups and vulnerable communities are dealt with, but also ensure that these groups' needs are taken into account.

The link between good governance and democracy, environmental sustainability and the eradication of poverty and hunger has been thoroughly explored in the literature.[5] The starting point is the recognition that poverty is not just an economic issue but a multidimensional phenomenon encompassing the lack of both income and the basic capabilities needed to lead a decent life, including access to natural resources (OHCHR, 2012). The Committee on Economic, Social and Cultural Rights has defined poverty from a human rights perspective as "a human condition characterized by the sustained or chronic deprivation of the resources, capabilities, choices, security and power necessary for the enjoyment of an adequate standard of living and other civil, cultural, economic, political and social rights" (United Nations, 2001).

Persons living in poverty are confronted by enormous physical, economic, cultural and social obstacles to accessing their rights and entitlements. Consequently, they experience many interrelated and mutually reinforcing deprivations, including unequal access to justice and lack of political power. From a human rights perspective, ending poverty means recognizing people who live in it as rights holders and agents of change and empowering them to participate effectively in public life (including public policymaking) and hold to account those who have an obligation to act (OHCHR, 2012).

Effective and meaningful participation is an affirmation of the right of every individual and group to take part in the conduct of public affairs. It is also a means of promoting social inclusion and an essential component of efforts to combat poverty, not least by ensuring that public policies are sustainable and designed to meet the expressed needs of the poorest segments of society (OHCHR, 2012).

Thus, with a multidimensional approach, reducing poverty and empowering the neediest requires a receptive government (to guarantee access to information, participation and justice and establish institutional mechanisms and arrangements that clear away the obstacles to effective participation by the poor) and an environment that guarantees the health and well-being of current and future generations.

B. Principle 10 and the United Nations 2030 Agenda for Sustainable Development

In September 2015, coinciding with the seventieth anniversary of the United Nations, the General Assembly approved a transformational plan of action for people, the planet, peace and prosperity called "Transforming our world: the 2030 Agenda for Sustainable Development".[6]

This new universal agenda includes 17 Sustainable Development Goals and 169 targets, constituting the road map agreed by the countries for the next 15 years. The Sustainable Development Goals pick up where the Millennium Development Goals left off, with a view to achieving unfulfilled targets, but their focus is no longer primarily on developing

5 See, for example, UNDP/UNEP (2015), UNDP (2011), Foti and others (2008), Foti and Da Silva (2010) and Narayan (2002).
6 See United Nations (2015).

countries but on the whole world. These are universal goals and targets engaging developed and developing countries alike. They are integrated and indivisible and balance the economic, social and environmental dimensions of sustainable development.

In the Sustainable Development Goals and their targets, the countries set forth a supremely ambitious and transformational vision for the future. They aspire, among other things, to a world where consumption and production methods and use of all natural resources are sustainable; one in which democracy, good governance and the rule of law, as well as an enabling environment at the national and international levels, are essential for sustainable development, including sustained and inclusive economic growth, social development, environmental protection and the eradication of poverty and hunger; one in which humanity lives in harmony with nature and in which wildlife and other living species are protected.

The 2030 Agenda for Sustainable Development is a call to action for us to change our world, and in it the countries have made it clear that human well-being is inextricably linked to environmental quality and peace. Thus, five of the Goals deal explicitly with environmental topics, and well-being based on the environment is present in the targets of all the other Goals.[7] Furthermore, Goal 16, which promotes peaceful and inclusive societies for sustainable development, calls on countries to provide access to justice for all, build effective, accountable and inclusive institutions at all levels, ensure responsive, inclusive, participatory and representative decision-making at all levels, ensure public access to information, and promote and enforce non-discriminatory laws and policies for sustainable development.

Principle 10 of the Rio Declaration on Environment and Development is thus at the core of the 2030 Agenda, as it seeks to ensure that everyone has access to information, participates in decision-making and has recourse to justice in environmental matters, particularly individuals and groups in situations of vulnerability and poverty.[8]

Although Principle 10 of the Rio Declaration on Environment and Development refers explicitly to environmental issues, it is part of a set of guiding principles laid down by the countries for progress towards more sustainable development. Thus, Principle 10 should be read in conjunction with the others, particularly Principle 1, which asserts that human beings are at the centre of sustainable development concerns and are entitled to a healthy and productive life in harmony with nature; Principle 4, stating that, in order for sustainable development to be achieved, environmental protection shall constitute an integral part of the development process and cannot be considered in isolation from it; and Principle 25, establishing that peace, development and environmental protection are interdependent and indivisible.[9] Thus, ensuring that Principle 10 of the Rio Declaration on Environment and Development is fully applied will help clear the path to sustainable development on which the countries embarked when they adopted the 2030 Agenda, by creating the conditions for cooperation and the creation of robust partnerships between the different stakeholders in society.

7 See Bárcena (2016).
8 See Bárcena (2016).
9 See United Nations (1992).

CHAPTER I

Access to information, participation and justice in environmental matters at the international level

A. Background

In the 25 years since Principle 10 of the Rio Declaration on Environment and Development was adopted, access rights have been reaffirmed and extended by a number of international and regional initiatives, as summarized in box I.1.

Box I.1
Regional and international commitments regarding access to information, participation and justice in environmental matters

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

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

1994. **Programme of Action of the Global Conference on the Sustainable Development of Small Island Developing States** (Bridgetown, Barbados, 1994). The Barbados Programme of Action recognizes the importance of public participation in decision-making (chapter 10) and enjoin participating States to take measures to this end.

1996. **Declaration of Santa Cruz de la Sierra**. In the Declaration, the member States of the Organization of American States (OAS) undertook to support and encourage, as a basic prerequisite for sustainable development, wide-ranging participation by civil society in the decision-making process, including policies and programmes and their design, implementation and evaluation.

1997. **Charter of Civil Society**. Adopted by the heads of government of the Caribbean Community (CARICOM). Articles 23 (Environmental Rights) and 24 (Awareness and Responsibilities of the People) include provisions for public participation while reaffirming the right of all to an environment adequate for their health and well-being.

1998. **Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters (Aarhus Convention)**. This is a binding regional instrument serviced by the United Nations Economic Commission for Europe (UNECE), which sets minimum standards for the countries that are parties to it. The three pillars of the Convention, which came into force on 30 October 2001, are: access to information, participation in environmental decision-making and access to justice. There are currently 46 signatory countries with widely differing levels of economic development, plus the European Union. Although it is a regional instrument, the Aarhus Convention is open to adoption by countries that are not UNECE members, if the meeting of the parties agrees. Countries wishing to accede to the Convention are required to amend their national laws to align them with its provisions. The Convention gave rise to the first legal instrument on pollutant release and transfer registers, the Protocol on Pollutant Release and Transfer Registers, which was adopted in 2003 and came into force on 8 October 2009. It has so far been ratified by 35 parties, including the European Union.

2000. **Inter-American Strategy for the Promotion of Public Participation in Sustainable Development Decision-Making**. The Strategy encourages States to adopt —but does not bind them to— a set of principles, while encouraging transparent, effective and responsible public participation in decision-making and in the design, adoption and implementation of sustainable development policies in Latin America and the Caribbean. It was adopted by the OAS member States.

2000. **Malmö Ministerial Declaration**. At the Global Ministerial Environment Forum in Malmö, Sweden, the environment ministers meeting under the auspices of the United Nations Environment Programme (UNEP) adopted a declaration recognizing the need to strengthen the role of civil society through freedom of access to environmental information for all, wide-ranging participation in environmental decision-making and access to justice in environmental matters.

2001. **MERCOSUR Framework Agreement on Environment**. In article 1, the States parties reaffirm their commitment to the principles laid down in the 1992 Rio Declaration on Environment and Development. Article 6 establishes a duty for States parties to provide timely information on environmental disasters and emergencies that might affect the other States parties and to provide technical and operational support when possible.

Box I.1 (continued)

2001. **Revised Treaty of Chaguaramas**. Articles 65 and 226 of the Treaty establishing CARICOM includes provisions on environmental rights. The Treaty gives individuals the right to seek redress in the Caribbean Court of Justice when they consider their rights to have been infringed, providing the requirements of article 222 are met.

2001. **St. George's Declaration of Principles for Environmental Sustainability**. This statement of principles for environmental sustainability in the Organisation of Eastern Caribbean States (OECS), signed by its environment ministers, establishes the general framework for environmental management to be applied in the OECS region. Principles 4, 5 and 7 refer to the inclusion of all societal actors in environmental management.

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

2002. **Latin American and Caribbean Initiative for Sustainable Development**. The Initiative was adopted in 2002 by the governments of Latin America and the Caribbean within the framework of the Johannesburg World Summit on Sustainable Development. Its main objective is to assess progress and secure effective action towards sustainable development in the countries of the region. In 2003, the Forum of Ministers of the Environment of Latin America and the Caribbean decided to support a project for producing national environmental indicators, as well as any economic, social and institutional indicators required to assess progress in implementing the Initiative. The indicators for evaluating institutional aspects include the preparation of reports on the state of the environment and the existence of national sustainable development councils.

2005. **The Mauritius Declaration and the Mauritius Strategy for the Further Implementation of the Programme of Action for the Sustainable Development of Small Island Developing States**. In the Declaration, small island developing States reaffirm their commitment to the principles of the Rio Declaration on Environment and Development. In the Strategy, they reaffirm the importance of gender equality and the pursuit of full and equal access for women and men to political participation at all levels and to programmes and decision-making systems for sustainable development. They also add that, with the necessary support of the international community, small island developing States should continue seeking to improve legislative, administrative and institutional structures for developing and implementing sustainable development strategies, policies and plans, mainstreaming sustainable development concerns into overall policy development and implementation and facilitating the participation of civil society in all sustainable development initiatives.

2006. **Order of the Inter-American Court of Human Rights**. In 2006, the Inter-American Court of Human Rights took another major step at the international level in promoting access rights by ruling that the right of access to public information was a fundamental human right protected by human rights treaties and should be upheld by States.[a]

2006. **Declaration of Santa Cruz+10**. In the Declaration, the OAS countries reaffirmed their commitment to Principle 10 of the Rio Declaration on Environment and Development.

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

2010. **The Declaration of Santo Domingo for the Sustainable Development of the Americas**. In the Declaration, OAS member States undertook to promote citizen and public participation as a key element of sustainable development policymaking.

2011. **Conclusions of the Latin American and Caribbean Regional Meeting Preparatory to the United Nations Conference on Sustainable Development**. On this occasion, the countries of the region articulated the need to commit, among other things, to full implementation of the rights of access to information, participation and justice in environmental matters enshrined in Principle 10 of the Rio Declaration on Environment and Development.

2012. **Outcome of the United Nations Conference on Sustainable Development (Rio+20), "The future we want"**. In this document, the countries emphasized that broad public participation and access to information and judicial and administrative proceedings were essential to the promotion of sustainable development (paragraph 43). They also encouraged action at the regional, national, subnational and local levels to promote access to information, public participation in decision-making and access to justice in environmental matters, where appropriate.

2012. **Declaration on the Application of Principle 10 of the Rio Declaration on Environment and Development in Latin America and the Caribbean**. In the Declaration, which was made as part of the Rio+20 Conference under the leadership of Chile, the signatory countries indicated the need to commit to full implementation of the rights of access to information, participation and justice in environmental matters enshrined in Principle 10 of the 1992 Rio Declaration on Environment and Development. They therefore indicated their willingness to launch a process to explore the viability of developing a regional instrument open to all countries of the region with meaningful participation by all concerned citizens and with support from the Economic Commission for Latin America and the Caribbean (ECLAC) as technical secretariat. In November 2014, after a two-year exploratory stage, the 24 countries that had signed the Declaration at that time agreed to begin negotiations over a regional agreement on access to information, participation and justice in environmental matters, for which a negotiating committee with substantial public participation was established. The countries asked the Presiding Officers of the Committee —comprising Chile and Costa Rica as co-chairs and Argentina, Mexico, Peru, Saint Vincent and the Grenadines and Trinidad and Tobago as vice-chairs— to lead the negotiating process with the support of ECLAC as technical secretariat.

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

2013. **Declaration of the First CELAC-European Union Summit**. The Declaration of Santiago states: "We acknowledge the importance of implementing Principle 10 of the 1992 Rio Declaration at the Earth Summit, and reiterate the importance of advancing initiatives in this matter." The Declaration also reiterated the right of citizens to participate in the formulation, implementation and monitoring of public policies.

2014. **Declaration of the Nineteenth Meeting of the Forum of Ministers of the Environment of Latin America and the Caribbean**. In the declaration adopted in Los Cabos, Mexico, the participating ministers reaffirmed that it was indispensable to promote access to information, informed public participation and environmental justice for the exercise of citizenship rights. The meeting participants also adopted a Decision on Principle 10 reaffirming their commitment to working towards full implementation in Latin America and the Caribbean of Principle 10 of the Rio Declaration on Environment and Development, recognizing the progress made with the process of the Declaration on application of Principle 10 in the region and urging that it should be consolidated as an inclusive and participatory regional forum for constructing a shared vision and strengthening national capabilities.

2014. **Resolution 686 (XXXV) of the thirty-fifth session of ECLAC**. Resolution 686 (XXXV) on Application of Principle 10 of the Rio Declaration on Environment and Development in Latin America and the Caribbean reiterates the commitment of the countries of Latin America and the Caribbean to moving towards full implementation of the rights of access to information, participation and justice in environmental matters with a view to fomenting the involvement of society in the promotion of sustainable development. It underscores the importance of sustainable management of natural resources for the development of the region's countries, to which end mechanisms for informed, broad and inclusive participation are vital.

2014. **Resolution on the implementation of Principle 10 at the First United Nations Environment Assembly of the United Nations Environment Programme (UNEP)**. The Assembly passed resolution UNEP/EA.1/L.13 on Implementation of Principle 10 of the Rio Declaration on Environment and Development, which takes note of the Declaration on the Application of Principle 10 of the Rio Declaration on Environment and Development (2012) and encourages the countries to continue their efforts to strengthen international dialogue, cooperation, technical assistance and capacity-building in support of the implementation of Principle 10 of the Rio Declaration on Environment and Development at the international, regional and national levels.

2014. **Lima Ministerial Declaration on Education and Awareness-raising at the twentieth Conference of the Parties to the United Nations Framework Convention on Climate Change**. In the Lima Ministerial Declaration on Education and Awareness-raising, recalling the importance of articles 6 of the Convention and 10(e) of the Kyoto Protocol, the countries reaffirmed that public participation, access to information and knowledge were crucial for developing and implementing effective policies to combat climate change and adapt to its impacts.

Box I.1 (concluded)

2015. **Declaration of the Third Summit of Heads of State and Government of the Community of Latin American and Caribbean States (CELAC)**. The heads of State and government gathered in Belén, Costa Rica, emphasized the importance of access rights in the promotion of sustainable development and highlighted the advances made with the implementation process for Principle 10 of the 1992 Rio Declaration on Environment and Development.

2016. **Declaration of the twentieth meeting of the Forum of Ministers of the Environment of Latin America and the Caribbean**. In the declaration adopted in Cartagena de Indias, Colombia, the ministers and delegation heads reaffirmed that it was indispensable to work towards full implementation of Principle 10 of the Rio Declaration, consistently with national situations and legislation, to which end it was crucial to strengthen international cooperation and capacity-building in the region's countries. The meeting also adopted a Decision on Access to Information, Public Participation and Access to Justice in Environmental Matters (Decision 5: Principle 10 of the Rio Declaration).

2016. **Resolution 706 (XXXVI) of the thirty-sixth session of ECLAC**. Resolution 706 (XXXVI) on Application of Principle 10 of the Rio Declaration on Environment and Development in Latin America and the Caribbean notes the progress and convergence achieved in the regional process and reiterates the commitment of the countries of Latin America and the Caribbean to moving towards full implementation of the rights of access to information, participation and justice in environmental matters with a view to fostering the involvement of society in the promotion of sustainable development.

2016. **Resolution 2/25 of the Second United Nations Environment Assembly (UNEA) of the United Nations Environment Programme (UNEP)**. The Assembly passed resolution 2/25, presented by Chile and Costa Rica, on "Application of Principle 10 of the Rio Declaration on Environment and Development in the Latin America and Caribbean Region", enjoining the countries to continue their efforts towards greater international dialogue and cooperation, carry on with technical assistance and capacity-building in support of Principle 10 in a way that takes account of progress, instruments, experience and practices arising since its adoption, and work to strengthen the rule of law in environmental matters at the international, regional and national levels.

Source: Economic Commission for Latin America and the Caribbean (ECLAC), on the basis of official documents.

[a] See Inter-American Court of Human Rights, "Order of the Inter-American Court of Human Rights. Case of Claude-Reyes et al. v. Chile: judgment of September 19, 2006 (merits, reparations and costs)", 19 September 2006 [online] http://www.corteidh.or.cr/docs/casos/articulos/seriec_151_ing.doc.

There is international consensus that the Aarhus Convention, being binding, is the instrument that has done most to promote access rights. It has been described by former Secretaries-General of the United Nations Kofi Annan and Ban Ki-Moon as the most ambitious venture in environmental democracy ever undertaken under the auspices of the United Nations.[1] Box I.2 summarizes its main characteristics.

At the United Nations Conference on Sustainable Development, held in Rio de Janeiro, Brazil, from 20 to 22 June 2012, Chile assumed the leadership of a regional process under which 24 Latin American and Caribbean countries (as of August 2017) are negotiating a regional agreement on access to information, public participation and justice in environmental matters.

The process began with the signing of the Declaration on the Application of Principle 10 of the Rio Declaration on Environment and Development, in which the signatory countries reaffirmed their commitment to the rights of access to information, participation and justice in environmental matters, announced their intention of initiating a process to explore the viability of establishing a regional instrument to promote full enforcement of these, and asked ECLAC to act as technical secretariat.[2] The Declaration has so far been signed by 24 countries forming the membership of the negotiating committee: Antigua and Barbuda, Argentina, Brazil, Chile, Colombia, Costa Rica, Dominica, Dominican Republic, Ecuador, El Salvador, Grenada, Guatemala, Honduras, Jamaica, Mexico, Panama, Paraguay, Peru, the Plurinational State of Bolivia, Saint Kitts and Nevis, Saint Lucia, Saint Vincent and the Grenadines, Trinidad and Tobago and Uruguay.

1 See ECE (2000 and 2014).
2 See United Nations (2012b).

Box I.2
Environmental democracy at the Economic Commission for Europe: the Aarhus Convention

The Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters (Aarhus Convention) of the United Nations Economic Commission for Europe (UNECE) and its Protocol on Pollutant Release and Transfer Registers were the first legally binding instruments to stipulate obligations for States parties regarding effective implementation of Principle 10 of the Rio Declaration on Environment and Development. The Convention confers rights on the population and places obligations on governments and public authorities in respect of access to information, public participation in decision-making and access to justice in environmental matters, and has played a key role in the development of legislation on these issues in the countries of the UNECE region. It is a unique international environmental treaty that explicitly links environmental procedural rights with other human rights and provides a broad and solid framework for governments to involve the public effectively in actions to achieve sustainable development. The Convention was adopted in 1998 in Aarhus, Denmark, and came into force on 30 October 2001.

Every three years, a Meeting of the Parties to the Convention is held to review progress and adopt a programme of activities for the next period, including a number of capacity-building measures to help the parties comply with the provisions agreed on. The Convention also has three working groups whose mission is to improve implementation of each of the three pillars and share good practices.

The Convention additionally includes an innovative non-judicial and non-confrontational mechanism of a consultative character for reviewing fulfilment of its provisions. The Compliance Committee is made up of nine independent experts who serve in an individual capacity. It receives communications from members of the public as well as from the parties, and has proved a powerful instrument for encouraging compliance with the provisions of the Convention. To date, all Compliance Committee findings have been endorsed by the Meeting of the Parties.

By its Decision II/1, the second Meeting of the Parties passed an amendment on genetically modified organisms (GMOs) which will come into force once ratified by at least three quarters of the parties to the Convention at the time the amendment was adopted.

Source: Economic Commission for Latin America and the Caribbean (ECLAC), on the basis of Economic Commission for Europe (ECE), "Public participation", Geneva [online] http://www.unece.org/env/pp/welcome.html.

Four meetings of the focal points designated by the governments of the countries that had signed the Declaration on the Application of Principle 10 of the Rio Declaration on Environment and Development in Latin America and the Caribbean were held between 2012 and 2014. At their fourth meeting, the signatory countries adopted the Santiago Decision, initiating the negotiation of a regional instrument.[3] To that end they established a negotiating committee, with substantial public participation, and appointed presiding officers, comprising Chile and Costa Rica as co-chairs and Argentina, Mexico, Peru, Saint Vincent and the Grenadines and Trinidad and Tobago as vice-chairs. ECLAC was asked to draft a preliminary document for the regional instrument[4] based on the San José Content for the Regional Instrument, the outcome of two years' work by delegations and civil society representatives.[5]

3 See ECLAC (2015a).
4 See ECLAC (2015b).
5 See ECLAC (2015a).

The negotiating committee held its first session in May 2015, at which time the participating countries adopted the Organization and Work Plan of the Negotiating Committee of the Regional Agreement on Access to Information, Participation and Justice in Environmental Matters in Latin America and the Caribbean.[6] The committee met again in Panama City (October 2015), Montevideo (April 2016), Santo Domingo (August 2016), Santiago (November 2016), Brasilia (March 2017), Buenos Aires (August 2017), and Santiago (November 2017), carrying forward the negotiations on the regional agreement by working on successive versions of the text incorporating the countries' proposals. In the 2017 Santiago round, countries agreed to make every effort to conclude the negotiations in 2018.

Among the elements the countries have indicated that the future regional agreement should contain are: a rights-based approach, an emphasis on cooperation and capacity-building, non-regression and progressivity, the interdependence of access rights, the setting of minimum standards that are not an impediment to even greater progress, affirmative measures for vulnerable groups and intergenerational equity.[7]

Prior to the second round of discussions in the negotiating committee, a group of 15 United Nations human rights experts expressed their firm support for the effort by the governments of Latin America and the Caribbean to achieve a regional instrument guaranteeing the rights of access to information, participation and justice in environmental matters. They added that the negotiations were one of the most important steps being taken internationally to protect and promote environmental democracy and would provide a model for similar efforts in other regions and countries. The experts also urged the negotiators to adopt a treaty or other binding instrument,[8] as this would be the best way of pursuing effective implementation of access rights and sustainable development and of ensuring that this instrument would strengthen the capacities of public institutions and civil society.[9]

6 See ECLAC (2015c).

7 See the San José Content, agreed in November 2014, in ECLAC (2015a).

8 Although the countries agreed in the Santiago Decision that the nature of the instrument would be a matter for the negotiations, they also agreed at the meeting that these should be undertaken as seriously and responsibly as the process merited and as though the regional agreement were to be binding. See ECLAC (2015a). By September 2017, a majority of the countries on the negotiating committee had come out in favour of a legally binding agreement.

9 See OHCHR (2015).

B. The virtuous circle between human rights, the environment and access rights

Since the United Nations Conference on the Human Environment in 1972, the relationship between human rights and the environment has been a subject of great interest in the international community,[10] particularly as regards two key issues: the nature of the relationship between human rights and the environment, and whether the international community ought to recognize a new human right, namely the right to a healthy environment.[11]

With a view to extending the analysis and clarifying obligations relating to human rights and the environment, the Human Rights Council of the United Nations agreed under resolution 19/10 of 22 March 2012 to appoint an independent expert on the issue of human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment.[12]

In the performance of his functions, the Special Rapporteur has highlighted the virtuous circle between human rights, the environment and access rights, and has noted that the full exercise of procedural rights of access to information, participation in decision-making and effective redress produces more transparent and better-informed environmental policies, contributing to a healthier environment that in turn enables people to enjoy substantive human rights such as the right to life, food and health.[13]

States have often codified the relationship between human rights and the environment by giving legal recognition at the highest level to the right to a healthy environment (see table I.1).

10 See article 1 of the Declaration of the United Nations Conference on the Human Environment, held in Stockholm in 1972: "Man is both creature and moulder of his environment, which gives him physical sustenance and affords him the opportunity for intellectual, moral, social and spiritual growth. In the long and tortuous evolution of the human race on this planet a stage has been reached when, through the rapid acceleration of science and technology, man has acquired the power to transform his environment in countless ways and on an unprecedented scale. Both aspects of man's environment, the natural and the man-made, are essential to his well-being and to the enjoyment of basic human rights—even the right to life itself" (United Nations, 1973).

11 See United Nations (2011).

12 Professor John H. Knox of the School of Law of Wake Forest University was appointed to the position in July 2012 and entered upon his duties in August 2012 for a period of three years. In March 2015, the Human Rights Council established under resolution 28/11 that the independent expert would become a special rapporteur on the issue of human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment for a period of three years and encouraged the Rapporteur to continue to study obligations and identify and promote good practices in this area. See J. Knox, "UN Mandate", Geneva [online] http://srenvironment.org/un-mandate/.

13 See ECLAC (2013) and Office of the United Nations High Commissioner for Human Rights (OHCHR), "Special Rapporteur on human rights and the environment (former Independent Expert on human rights and the environment)", Geneva [online] http://www.ohchr.org/EN/Issues/Environment/SREnvironment/Pages/SRenvironmentIndex.aspx.

Table I.1
Latin America and the Caribbean (19 countries): constitutional treatment of the right to a healthy environment

Country	Constitutional provision
Argentina	Article 41. All inhabitants have the right to a healthy, balanced environment suitable for human development and for production activities to meet present needs without compromising those of future generations; and have a duty to preserve it.
Bolivia (Plurinational State of)	Article 33. People have the right to a healthy, protected and balanced environment. The exercise of this right should allow individuals and communities in current and future generations, and other living creatures, to develop normally and permanently.
Brazil	Article 225. Everyone is entitled to an ecologically balanced environment, which is a good for the common use of the peopleand is essential for a healthy quality of life, and which the public authorities and community have a duty to defend and preserve for current and future generations.
Chile	Article 19. The constitution guarantees everyone: [...] 8. the right to live in a pollution-free environment. The State has a duty to ensure that this right is not encroached upon and to provide for the preservation of nature.
Colombia	Article 79. Everyone has the right to a healthy environment. The law shall provide for community participation in decisions that may affect it. The State has a duty to safeguard the environment and protect its diversity, conserve areas of special ecological importance and provide for education to attain these ends.
Costa Rica	Article 50. [...] Everyone is entitled to a healthy and ecologically balanced environment.
Cuba	Article 27. The State protects the country's environment and natural resources. It recognizes how closely these are linked to sustainable economic and social development in order to make human life more rational and ensure the survival, well-being and security of current and future generations. The competent agencies are responsible for applying this policy [...].
Dominican Republic	Article 67.1. Everyone has the right, individually and collectively, to the sustainable use and enjoyment of natural resources; to live in a healthy, ecologically balanced environment that is suitable for the development and preservation of different life forms, landscapes and nature.
Ecuador	Article 14. The constitution recognizes the right of the population to live in a healthy and ecologically balanced environment that guarantees sustainability and *sumak kawsay*, good living [...]. Article 66. The following rights are recognized and guaranteed [...] 27. The right to live in a healthy, ecologically balanced and pollution-free environment in harmony with nature.
El Salvador	Article 34. All minors are entitled to live in family and environmental conditions conducive to their all-round development, for which they will have the protection of the State.
Guyana	Article 36.In the interests of the present and future generations, the State will protect and make rational use of its land, mineral and water resources, as well as its fauna and flora, and will take all appropriate measures to conserve and improve the environment.
Honduras	Article 145. The right to the protection of health is hereby recognized. It is everyone's duty to participate in the promotion and preservation of individual and community health. The State shall maintain a satisfactory environment for the protection of everyone's health.
Jamaica	Article 13 (3). The rights and freedoms referred to in subsection (2) are as follows: [...] (l) the right to enjoy a healthy and productive environment free from the threat of injury or damage from environmental abuse and degradation of the ecological heritage [...].
Mexico	Article 4. Everyone has the right to a healthy environment for their development and well-being. The State shall enforce this right. Environmental damage and deterioration will generate a liability for the perpetrator as provided by law [...].
Nicaragua	Article 60. Nicaraguans are entitled to live in a healthy environment. The State is required to preserve, conserve and restore the environment and natural resources.
Panama	Article 118. It is a fundamental duty of the State to ensure that the population lives in a healthy and unpolluted environment where the air, water and foods meet the requirements for the proper development of human life.
Paraguay	Article 7. Everyone is entitled to live in a healthy and ecologically balanced environment. The preservation, conservation, restoration and improvement of the environment are priority social goals, as is the reconciliation of these with all-round human development. These purposes will guide the relevant legislation and government policy.
Peru	Article 2. Everyone has a right: [...] 22. To peace, tranquillity, leisure and relaxation, and the enjoyment of a suitably balanced environment in which to lead their lives.
Venezuela (Bolivarian Republic of)	Article 127. Each generation has a right and duty to protect and maintain the environment for its own benefit and that of the world in future. Everyone is individually and collectively entitled to enjoy a safe, healthy and ecologically balanced life and environment. The State will protect the environment, biological diversity, genetic resources, ecological processes, national parks and natural monuments and other areas of special ecological importance [...].

Source: Economic Commission for Latin America and the Caribbean (ECLAC), Observatory on Principle 10 in Latin America and the Caribbean [online] http://observatoriop10.cepal.org.

The rights of access to information, public participation and justice, meanwhile, have been recognized in international human rights standards (see table I.2) and widely developed within the framework of the United Nations human rights system, mainly within the category of civil and political rights.[14] As indicated in the following chapters, rights of access have also been recognized in numerous regulatory and institutional frameworks at the national level.

[14] See ECLAC/OHCHR (2016) for further information on the international human rights standards applicable to the rights enshrined in Principle 10 of the Rio Declaration on Environment and Development and for reports prepared in the framework of the universal and inter-American humans rights systems that give an account of progress and challenges in this area.

Table I.2
Universal human rights standards related to Principle 10

The right to information	**Article 19 of the Universal Declaration of Human Rights**: "Everyone has the right to freedom of opinion and expression; this right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers." **Article 19 of the International Covenant on Civil and Political Rights**: "2. Everyone shall have the right to freedom of expression; this right includes freedom to seek, receive, and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing, in print, in the form of art, or through any other medium of one's choice."
The right to participation	**Article 21 of the Universal Declaration of Human Rights**: "1. Everyone has the right to take part in the government of his country, directly or through freely chosen representatives." **Article 25 of the International Covenant on Civil and Political Rights**: "Every citizen shall have the right and the opportunity, without any of the distinctions mentioned in article 2 and without unreasonable restrictions: (a) To take part in the conduct of public affairs, directly or through freely chosen representatives."
The right to justice	**Article 2 of the International Covenant on Civil and Political Rights**: "3. Each State Party to the present Covenant undertakes: (a) To ensure that any person whose rights or freedoms as herein recognized are violated shall have an effective remedy, notwithstanding that the violation has been committed by persons acting in an official capacity; (b) To ensure that any person claiming such a remedy shall have his right thereto determined by competent judicial, administrative or legislative authorities, or by any other competent authority provided for by the legal system of the State, and to develop the possibilities of judicial remedy; (c) To ensure that the competent authorities shall enforce such remedies when granted." **Article 14 of the International Covenant on Civil and Political Rights**: "1. All persons shall be equal before the courts and tribunals. In the determination of any criminal charge against him, or of his rights and obligations in a suit at law, everyone shall be entitled to a fair and public hearing by a competent, independent and impartial tribunal established by law. The press and the public may be excluded from all or part of a trial for reasons of morals, public order (ordre public) or national security in a democratic society, .or when the interest of the private lives of the parties so requires, or to the extent strictly necessary in the opinion of the court in special circumstances where publicity would prejudice the interests of justice; but any judgement rendered in a criminal case or in a suit at law shall be made public except where the interest of juvenile persons otherwise requires or the proceedings concern matrimonial disputes or the guardianship of children."

Source: Economic Commission for Latin America and the Caribbean/Office of the United Nations High Commissioner for Human Rights (ECLAC/OHCHR), *Society, rights and the environment: international human rights standards applicable to access to information, public participation and access to justice* (LC/W.712), Santiago, 2016.

The rights recognized in the International Covenant of Civil and Political Rights of 1966, such as those concerned with access to information, with participation and association and with justice, create the conditions for attaining the rights enshrined in the International Covenant on Economic, Social and Cultural Rights, also of 1966, such as the right to health, to an adequate standard of living, to water and to a healthy environment. The two covenants have been ratified by most of the countries of Latin America and the Caribbean and have constitutional and even supraconstitutional status in some countries (ECLAC/OHCHR, 2016).

CHAPTER II

The evolution and status of rights of access in environmental matters in Latin America and the Caribbean

A. Background

B. The role of the different actors

A. Background

In Latin America and the Caribbean, the 1992 Earth Summit gave a strong impetus to environmental protection, the creation of environmental legislation and institutions and the construction of the first environmental management for sustainability instruments (United Nations, 2010). Echoing the tenets of Principle 10, and in line with the democratization that characterized the decade in the region, some of these reforms included arrangements for citizen participation, whether through advisory councils set up by the environmental authority, formal project assessments and standard-setting institutions or other bodies.

Thus, environmental rights and responsibilities are now enshrined in the constitutions of most Latin American and Caribbean countries. Likewise, all countries in the region have a ministry, secretariat or equivalent authority devoted to environmental management (see table II.1), and most have passed general or framework environmental laws, some of which have already been amended (see table II.2) (United Nations, 2012a). Besides these general laws, many of whose guiding principles include those of the 1992 Rio Declaration on Environment and Development,[1] there is a wide array of supplementary legislation dealing with access to information, participation and justice. In addition, a significant corpus of case law developed both in the countries and at the Inter-American Court of Human Rights has reaffirmed and expanded the way access rights are understood.[2]

Table II.1
Latin America and the Caribbean: highest environmental authorities

Antigua and Barbuda	Ministry of Health and the Environment
Argentina	Ministry of the Environment and Sustainable Development
Bahamas	Ministry of the Environment and Housing
Barbados	Ministry of Environment and Drainage
Belize	Ministry of Agriculture, Fisheries, Forestry, the Environment, Sustainable Development and Immigration
Bolivia (Plurinational State of)	Ministry of the Environment and Water
Brazil	Ministry of the Environment
Chile	Ministry of the Environment
Colombia	Ministry of the Environment and Sustainable Development
Costa Rica	Ministry of the Environment and Energy
Cuba	Ministry of Science, Technology and Environment
Dominica	Ministry of Health and the Environment
Dominican Republic	Ministry of Environment and Natural Resources
Ecuador	Ministry of the Environment
El Salvador	Ministry of Environment and Natural Resources
Grenada	Ministry of Agriculture, Lands, Forestry, Fisheries and the Environment
Guatemala	Ministry of the Environment and Natural Resources
Guyana	Department of Environment, Ministry of the Presidency
Haiti	Ministry of the Environment
Honduras	Secretariat of Energy, Natural Resources, Environment and Mines
Jamaica	National Environment and Planning Agency, Ministry of Economic Growth and Job Creation
Mexico	Secretariat of the Environment and Natural Resources
Nicaragua	Ministry of the Environment and Natural Resources
Panama	Ministry of the Environment
Paraguay	Secretariat of the Environment

1 See, for example, article 1.1 of Law No. 99 of 1993 in Colombia (Congress of Colombia, 1993) and article 12.f of the General Environment Act (Law No. 28611) of 2005 in Peru (Ministry of the Environment, 2005).

2 In 2012, the Special Rapporteur for Freedom of Expression of the Inter-American Commission on Human Rights (IACHR) published the second edition of the report *The Right to Access to Information in the Americas: Inter-American Standards and Comparison of Legal Frameworks*, which provides a systematized presentation of information access standards in the Inter-American human rights system and case law on the subject in different countries (IACHR, 2012).

Table II.1 (concluded)

Peru	Ministry of the Environment
Saint Kitts and Nevis	Ministry of Agriculture, Marine Resources, Cooperatives, Environment and Human Settlement
Saint Lucia	Ministry of Education, Innovation, Gender Relations and Sustainable Development
Saint Vincent and the Grenadines	Ministry of Health, Wellness and Environment
Suriname	Ministry of Natural Resources
Trinidad and Tobago	Ministry of Planning and Development
Uruguay	National Environment Department, Ministry of Housing, Territorial Planning and Environment
Venezuela (Bolivarian Republic of)	Ministry of People's Power for Ecosocialism and Water

Source: Economic Commission for Latin America and the Caribbean (ECLAC) on the basis of official information from the countries.

Table II.2
Latin America and the Caribbean: framework environmental laws

Country	Framework environmental law	Year (reform)
Antigua and Barbuda	Environmental Protection and Management Act	2015
Argentina	General Environment Act, No. 25675	2002
Bahamas	Conservation and Protection of the Physical Landscape Act, No. 12	1997 (2000)
Barbados	-	-
Belize	Environmental Protection Act, No. 22	1992 (2009)
Bolivia (Plurinational State of)	Environment Act, No. 1333	1992
Brazil	National Environmental Policy Act, No. 6938	1981 (2013)
Chile	Environmental Framework Law, No. 19300	1994 (2016)
Colombia	Law creating the Ministry of the Environment, reorganizing public sector responsibilities for managing and conserving the environment and natural renewable sources, organizing the National Environmental System (SINA) and establishing other provisions, No. 99	1993 (1999, 2007, 2008, 2011 and others)
Costa Rica	Organic Environmental Law, No. 7554	1995 (2010)
Cuba	Environment Act, No. 81	1997
Dominica	*Climate change, environment and natural resource management bill*	
Dominican Republic	General Law on the Environment and Natural Resources, No. 64-00	2000 (2002)
Ecuador	Environmental Management Act, No. 37[a]	1999
El Salvador	Environment Act, Legislative Decree No. 233	1998 (2015)
Grenada	-	-
Guatemala	Environmental Protection and Improvement Act, Decree No. 68-1986	1986
Guyana	Environmental Protection Act, No. 11	1996 (2005)
Haiti	Decree on Environmental Management for Sustainable Development	2006
Honduras	General Environment Act, No. 104	1993 (2000)
Jamaica	Natural Resources Conservation Authority Act, No. 9	1991
Mexico	General Law on Ecological Balance and Environmental Protection	1988 (2017)
Nicaragua	General Law on the Environment and Natural Resources, No. 217	1996 (2008)
Panama	General Law on the Environment, No. 41	1998 (2015)
Paraguay[b]		-
Peru	General Environment Act, No. 28611	2005 (2008)
Saint Kitts and Nevis	National Conservation and Environment Protection Act, No. 5	1987 (1996)
Saint Lucia	National Conservation Authority Act, No. 16	1999 (2008)
Saint Vincent and the Grenadines	*Environmental management bill*	
Suriname	Nature Conservation Act, No. 26	1954 (1992)
Trinidad and Tobago	Environmental Management Act, No. 3	2000 (2014)
Uruguay	Environmental Protection Act, No. 17283	2000
Venezuela (Bolivarian Republic of)	Organic Environmental Law	2006

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

[a] The Environmental Management Act will be repealed when the Organic Environmental Code comes into force in April 2018 (12 months after publication in the Official Register).

[b] Although Paraguay does not have a framework environmental law, Law No. 1561/00 of 2000 (amended in 2014) creating the National Environmental System, the National Environmental Council and the Ministry of the Environment establishes and regulates the workings of the institutions responsible for developing, standardizing, coordinating, implementing and overseeing the country's national environmental policy and management.

Some free trade agreements signed by the countries of Latin America and the Caribbean have also promoted access rights in the region. Box II.1 presents some of these experiences. The environmental performance evaluations promoted by the Organization for Economic Cooperation and Development (OECD) have also included recommendations for environmental democracy that have driven advances in this area in the region (see box II.2).

Box II.1
Latin America and the Caribbean: access rights in free trade agreements

Different free trade agreements signed by countries in Latin America and the Caribbean recognize and impose State obligations in respect of access to information, participation and justice in environmental matters. Some of these are:

Economic Partnership Agreement between the Caribbean Forum of African, Caribbean and Pacific States (CARIFORUM) and the European Union (2008). Article 3 of this cooperation treaty establishes that it will respect and apply sustainable development concepts. Chapter 4 deals with the environmental basis for the protection and sustainable use of resources. Article 232 establishes a consultative committee involving civil society so that this can make observations on the economic, social and environmental aspects the treaty might affect.

Free Trade Agreement between Peru and the United States (2006). Chapter 18 of this treaty establishes environmental justice provisions (reparations for environmental damage and judicial institutions, among other things). Article 18.7 requires the parties to make arrangements for public participation in decision-making and build public awareness of environmental issues.

United States-Colombia Trade Promotion Agreement (2006). Chapter 18, which deals with the environment, parallels the Dominican Republic-Central America-United States Free Trade Agreement and prescribes the same measures in its sections 3 and 6.

Dominican Republic-Central America-United States Free Trade Agreement (2004). Article 17.3 promotes environmental justice, with its provisions including penalties for environmental damage and legal protections against environmental damage, compensation measures, and the ability of individuals to sue over environmental damage. Article 17.6 focuses on opportunities for civil society to participate in environmental management.

Free Trade Agreement between Chile and the United States (2003). Chapter 19 deals with environmental issues and requires the parties to create opportunities for public involvement in decision-making, among other things (19.4). Article 19.8 establishes the minimum judicial remedies for environmental justice. It was also agreed that eight projects would be undertaken in different areas, including the creation of a pollutant release and transfer register (PRTR).

Association Agreement between Chile and the European Union (2002). Articles 11 and 48 of the Agreement require civil society participation not only in environmental matters but also in matters relating to the agreement, requiring both information disclosure and efforts to promote participation. Article 28.f establishes promotion of environmental education as an instrument for citizen participation in environmental matters.

Cooperation treaties in North America (1992). International cooperation between Canada, the United States and Mexico was built around three pillars: the North American Free Trade Agreement (NAFTA), the North American Agreement on Labor Cooperation (NAALC) and the North American Agreement on Environmental Cooperation (NAAEC). These three agreements were negotiated jointly. In order for the three countries' environmental regulations to be comparable, however, NAFTA was made conditional on the signing of NAAEC, which provides for participation mechanisms such as the Joint Public Advisory Committee and the three countries' national advisory committees, plus mechanisms for access to environmental justice such as the presentation of citizen petitions on the effective implementation of environmental legislation. On the basis of this agreement and the Border XXI Program between the United States and Mexico, the latter implemented a pollutant release and transfer register system and policies for participation in environmental impact assessment processes.

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

Box II.2
Peer review and environmental democracy: the experience of environmental performance reviews

Environmental performance reviews by the Organization for Economic Cooperation and Development (OECD) and the Economic Commission for Latin America and the Caribbean (ECLAC) have translated into major advances in environmental democracy in the countries of the region that have undergone them. These reviews analyse a country's overall performance over a given period (not the policies of a particular government). Being peer reviews, they not only facilitate the sharing of experience but are an opportunity to identify problems, solutions and opportunities that countries are not always aware of as they pursue their own environmental goals and international commitments.

One of the great strengths of these reviews is the breadth of participation by different actors in society. Although their focus is on the environment, they recognize that this is one of the pillars of development and that performance in this area will depend on interactions with the country's economic and social policies. Thus, reviews have prompted significant changes in public policies aimed at integrating economic, social and environmental aspects in a balanced way and strengthening the sustainable development strategies of the countries and subnational bodies being reviewed.

The environmental performance review conducted in Mexico in 2003 examined the progress made since the OECD environmental performance analysis of 1998 and the OECD environmental information system analysis of 1996 and found that, while there had been progress with the quantity and variety of environmental information available from the country's authorities, the different agencies' statistics were not always consistent and there were still large gaps. As regards access to environmental information, the review showed how restrictive and difficult this was, since while a great deal of environmental information had been made available on the Internet, less than 5% of Mexicans had access to this technology. The report also revealed that although public participation and consultation mechanisms had been formally established, more needed to be done to implement them. Accordingly, it recommended that Mexico take steps to implement the right of access to environmental information in practice and strengthen structures to achieve effective public participation.

The 2013 environmental performance review found that Mexico still needed to do more to implement the right of access to information in practice and to improve public participation in decision-making. The report emphasized that the amount of environmental information available to the public and representatives of civil society had increased since the 2003 review and recommended further work to increase environmental awareness and strengthen the role of environmental information in policymaking. It also recommended enhancing public participation in environmental policymaking by extending the federal government public participation strategy to other levels of government, providing the public with environmental information in an easily understandable form, rationalizing the system of advisory councils, providing these with the resources they needed to do their work, and responding adequately to citizens' concerns.

In Chile, the environmental performance review conducted in 2005 by ECLAC and the OECD prior to the country's entry into the latter also gave a further impetus to environmental democracy. The review included a section on environmental democracy that dealt with progress and challenges in respect of access to information, participation and justice in environmental matters in the country. The report underlined the need to consolidate environmental information systems by improving, systematizing and expanding information on the environment. It also enjoined the country to improve, systematize and expand the use of systems of environmental impact assessment (projects) and strategic environmental assessment (policies and plans), with a view to securing effective participation. The report recommendations were taken into account in the reform of the Framework Law on the Environment (No. 19300) in 2010, so that it makes provision, among other things, for strategic environmental assessment with citizen participation arrangements.

The 2016 environmental performance review highlighted the efforts Chile had made to enhance citizen participation since 2005. However, it ascertained that the granting of permits for specific matters not forming part of the environmental impact assessment process was not open to such participation. The assessment also pointed out that although in 2009 Chile ratified the International Labour Organization (ILO) Indigenous and Tribal Peoples Convention, 1989 (No. 169), which establishes that indigenous communities are to be consulted before development processes affecting them are undertaken, there is no effective mechanism to safeguard the specific rights of such communities. As regards environmental information, the assessment acknowledged the systems Chile had set up to manage this, but found that they still had serious problems of scope and completeness. For example, there was little information on water extraction and use, and almost none on the protection of biological diversity and adverse effects on ecosystems. Stations monitoring air and water quality usually collected data on the basis of just a few parameters. Consequently, the report concluded that Chile was struggling to provide environmental statistics to the standards of international agreements or present them to international bodies such as OECD. As for environmental justice, the report highlighted the country's progress in this area but observed that the high cost of legal counsel continued to be an obstacle for citizens and non-governmental organizations (NGOs).

In Colombia, the 2014 environmental performance review recommended promoting public participation in the environmental impact assessment process and considering ways for citizens from neighbouring countries to participate in the impact assessments of Colombian projects affecting them. As regards environmental justice, it stressed the need to develop specific

national environmental responsibility strategies for each sector, draw up an inventory of polluted sites and identify those for which the government would remain responsible, and create a comprehensive plan of corrective measures that took in both the public and private sectors, setting priorities in accordance with the level of risk to human and environmental health. It also noted the need to enhance monitoring of compliance at national and subnational level, considering the risks to human health and the environment, and recommended issuing a consolidated national report each year setting out the actions taken, the results achieved and future priorities. The report also emphasized the need to intensify efforts to improve the quality and relevance of environmental data and information systems for policymaking, particularly by improving networks and records of environmental observations, drawing up technical standards for the regional autonomous corporations, improving the consistency of the environmental information system, connecting it to the health system and the national system of statistics, and disseminating the relevant information more frequently and effectively to decision-makers and the public.

In Brazil, meanwhile, the 2015 assessment highlighted public participation as a central element in environmental governance. Thus, the report emphasized national initiatives designed to strengthen environmental democracy, such as federal laws that have provided citizens with important guarantees of access to environmental information; the National Environmental Information System (SINIMA), which is responsible for developing a consistent policy on the production, collection, systematization and dissemination of environmental information; and the Brazilian Geographical and Statistical Institute (IBGE), which publishes reports on sustainable development indicators every two years. However, the report judged that these initiatives had not been sufficient and that environmental information remained fragmented, so that policy analysis and the ability of the public to influence the development and implementation of environmental policy were undermined. The report added that it was necessary to strengthen mechanisms so that the views of civil society could be taken into account in environmental decision-making. In consideration of all this, the report's recommendations turned on the development of a standardized environmental data collection and management system, including the implementation of environmental legislation (input, output and result indicators) and economic aspects of environmental policies (environment-related spending and income accounts, goods, services and jobs).

The earlier environmental and sustainability analysis carried out at the subnational level in 2007 for the state of Amazonas had a section on environmental democracy and another one on environmental awareness-raising that recognized the amplitude of participatory spaces and processes, including public hearings, the importance attached to indigenous and traditional populations and progress with public access to environmental justice. Nonetheless, it was recommended that efforts to generate and systematize environmental information should be intensified with a view to improving planning and decision-making, and that there should be the greatest access to this information as the basis for responsible participation. Mention was also made of the need to carry on enhancing citizen participation and access to justice through an increased role for the federal public prosecution service and other authorities specializing in the environment to meet needs within the State.

In the case of Peru, the 2016 assessment highlighted efforts to facilitate access to information held by the State and make it more transparent. However, the report argued that these efforts have been inadequate for a number of reasons and that the system thus needs to be strengthened in order to facilitate citizen participation while raising awareness of the need to prevent pollution, environmental degradation and natural disasters. The report also drew attention to the limited ability of citizens to influence environmental decision-making, despite the measures the country has taken to improve mechanisms for citizen participation in this process. Accordingly, it argued for the need to strengthen and extend existing mechanisms for participating in conventional instruments (such as environmental impact assessments) and in land-use planning processes, among others, to ensure that the opinions of the social groups potentially affected are ascertained before a project or activity is undertaken. Where the application of environmental justice in the country is concerned, the report stated that while the institutional and legal framework has changed, there werestill major shortcomings in the way the General Environment Act is implemented in practice.

Accordingly, the report advised Peru to undertake a more vigorous and thorough formal and informal education and awareness-raising effort in the business sector and among citizens where environmental issues are concerned, prioritizing the most polluting industries and the communities most exposed and vulnerable to risks posed by the climate and by externalities deriving from economic activity. The purpose of this is to improve knowledge and the exercise of rights and duties, contribute to changes in behaviour and the adoption of environmentally sound practices, and facilitate active and constructive engagement in the design and implementation of policies, programmes, strategies and projects affecting the environment. It also recommended improving the effectiveness of citizen participation mechanisms in the environmental impact assessment system, plans, standards and programmes and other areas of social interaction, and enhancing the conditions for implementing the prior consultation mechanism of ILO Convention No. 169, particularly for major investment projects in the mining and energy sectors. Lastly, it recommended improving the capabilities of the judiciary, the public prosecution service and all other agencies of the justice system with responsibility for applying the law to deal with environmental issues, while considering the creation of specialized environmental courts. It also suggested expanding the judiciary's environmental training mechanisms, improving the technical and scientific support capabilities available for the work of administering justice and applying the law, and strengthening police forces specializing in environmental crimes.

Source: Economic Commission for Latin America and the Caribbean (ECLAC) on the basis of environmental performance reviews for Mexico, Chile, Brazil, Colombia, Peru and the Brazilian state of Amazonas.

Thus, the region's countries have progressed substantially over the last two decades in making access to information, participation and justice in environmental matters a reality at the national level. Table II.3 presents some common environmental management instruments applied in the region that incorporate access rights.

Table II.3
Latin America and the Caribbean: environmental management instruments incorporating access rights

Access to information	Environmental information systems Periodic reporting on the state of the environment Inventories of toxic emissions, pollutant release and transfer registers Emergency and disaster risk information systems Systematized environmental quality monitoring systems (urban, national)
Access to public participation	Environmental impact assessment Strategic environmental assessment Public hearings on permits, authorizations and licences and for planning purposes Advisory councils involving multiple actors Legislative hearings Preparation of emissions and environmental quality standards Environmental land-use planning Public consultations on standards, strategic instruments, and prevention and decontamination plans
Access to justice	Administrative mechanisms and judicial actions Environmental courts Ordinary and administrative courts of justice specializing in the environment Complaints to sectoral agencies with environmental competencies Alternative conflict resolution

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

States have also made progress in expanding the demand for access to information and participation in environmental matters and in publicizing access rights among the population. One of the tools most widely used for enhancing citizens' ability to participate in decision-making on environmental matters is environmental education. This has been gradually incorporated into legislation to give the population adequate environmental awareness.

For example, Peru's General Environment Act devotes an entire chapter to environmental education (section III, chapter 4), defining this as a comprehensive process that provides people with "the knowledge, attitudes, values and practices they need to conduct their activities in an environmentally appropriate way" (Ministry of the Environment, 2005, art. 127). Furthermore, the Ministries of Education and the Environment have to coordinate syllabuses so as to include the environmental aspect. This education does not relate solely to natural processes and the workings and interaction of life with nature, but promotes citizen participation in environmental issues and knowledge of the legal basis of rights and duties for environmental protection. Public and private sector communications media are also called upon to help publicize the latter (articles 89-130).

Costa Rica's Organic Environmental Law (No. 7554) also includes a chapter on environmental education and research. This establishes that the State, municipalities and other institutions in the public and private sectors will strive to include the environmental variable permanently in the formal and informal education processes of syllabuses at all levels with a view to adopting an environmental culture conducive to sustainable development (article 12).

Other countries have included environmental education in their laws, either as a management mechanism or as a goal of protection policies. In Ecuador, the Organic Environment Code that will come into force in April 2018 incorporates environmental education among the instruments of the decentralized national system of environmental management, treating it as a vital cross-cutting element of strategies, programmes and plans within the different levels and types of formal and non-formal education. The 2015 Environmental Protection and Management Act of Antigua and Barbuda mandates the authority to design public information, education and training programmes to foster understanding and awareness of and compliance with the provisions of the Act.

B. The role of the different actors

As elsewhere in the world, civil society has played an important role in disseminating the access rights enshrined in Principle 10 of the Rio Declaration on Environment and Development in the region. Mention may be made here of the work of the Access Initiative.[3]

In 2015, the Access Initiative and the World Resources Institute (WRI), in collaboration with partners all over the world, launched the Environmental Democracy Index, an online platform intended to raise awareness of the issue and strengthen environmental legislation and public participation. The Index evaluates 70 countries by means of 75 legal indicators based on the internationally agreed standards in the Guidelines for the Development of National Legislation on Access to information, Public Participation and Access to Justice in Environmental Matters (Bali Guidelines), approved by the Governing Council of the United Nations Environment Programme (UNEP) in February 2010. The Index also includes a supplemental set of 24 limited practice indicators that provide insight into a country's implementation performance. National evaluations were carried out in 2014 and will be updated every two years.[4]

Also prominent here is the work of the different United Nations agencies and programmes. The Economic Commission for Latin America and the Caribbean (ECLAC) has has accompanied the reform processes on access to information, participation and justice in the region since the early 2000s and carried out training activities aimed at the countries and civil society actors. Since 2012 it has also acted as Technical Secretariat for the process of adopting the regional agreement on access to information, public participation and justice in environmental matters.[5]

Likewise, UNEP, through its Global Environmental Citizenship project, has contributed to the dissemination of rights of access in environmental matters, including the analysis of regional instruments in the Latin American and Caribbean Parliament and the promotion of tools for access to environmental justice through training for judges and prosecutors.

Since 2008, the United Nations Institute for Training and Research (UNITAR) has also been helping a number of countries in the region (Costa Rica, the Dominican Republic, El Salvador, Honduras, Nicaragua and Panama) to prepare national profiles identifying shortcomings and actions needed to fully implement Principle 10 of the Rio Declaration on Environment and Development. To this end, it has held national workshops in all the countries, with about 400 actors from the region participating. In Costa Rica, the Dominican Republic, El Salvador and Honduras, the national profiles became a source of reference for both the public authorities and civil society regarding access to information, participation and justice in environmental matters. Furthermore, the self-assessments of these countries' existing institutional frameworks became a source of reference for efforts to support future capacity-building activities aimed at enhancing environmental democracy.

In early 2012, UNEP and UNITAR agreed to implement a joint initiative to increase the ability of governments and key actors to implement Principle 10 of the Rio Declaration on Environment and Development via processes involving multiple sectors and actors in accordance with the Bali Guidelines. UNEP also published an implementation guide

[3] The Access Initiative has evaluated national public participation systems to ensure access to information, participation and justice in decision-making processes affecting the environment in different countries of Latin America and the Caribbean. See Access Initiative [online] http://www.accessinitiative.org.

[4] See World Resources Institute (WRI), Environmental Democracy Index [online] www.environmentaldemocracyindex.org.

[5] See Economic Commission for Latin America and the Caribbean (ECLAC), "Meeting of the Negotiating Committee-Principle 10 in Latin America and the Caribbean" [online] https://www.cepal.org/en/subsidiary-bodies/meeting-negotiating-committee-principle-10-latin-america-and-caribbean.

for the Bali Guidelines in 2015 with a view to supporting actions at the national level. This guide is based on a wealth of country-level experience and is a practical tool for helping countries to develop and improve the national legislation and institutions required to effectively apply Principle 10.[6]

The United Nations Educational, Scientific and Cultural Organization (UNESCO) has provided and continues to provide States in the region with technical assistance on public information access and has a wide array of publications on the subject which, while not dealing explicitly with environmental issues, reflect the way standards on the subject have developed in the region.

In the Organization of American States (OAS), meanwhile, the Department of Sustainable Development has a programme area dealing with environmental law, policies and governance that helps countries strengthen mechanisms of public participation for sustainable development as part of the activities to promote the Inter-American Strategy for the Promotion of Public Participation in Decision-Making for Sustainable Development in the Americas.

The importance of access rights has also been recognized by the business sector (see box II.3).

The chapters that follow present the latest developments in each of the three rights of access in environmental matters in Latin America and the Caribbean by reviewing the regulatory and institutional frameworks of the 33 countries in the region.[7] They also describe good practices that have been identified and challenges that remain for the region.

6 United Nations Environment Programme (UNEP), *Putting Rio Principle 10 into Action: An Implementation Guide*, Nairobi, 2015 [online] https://wedocs.unep.org/bitstream/handle/20.500.11822/11201/UNEP%20MGSB-SGBS%20BALI%20GUIDELINES-Interactive.pdf.

7 The review is based on the laws available at the ECLAC Observatory on Principle 10 in Latin America and the Caribbean. The Observatory on Principle 10 emerged as an ECLAC initiative to contribute to greater knowledge, dissemination and implementation of the rights of access to information, public participation and justice in environmental matters enshrined in Principle 10 of the Rio Declaration on Environment and Development. It provides highlights of access rights established in international treaties that the region's countries are party to, together with provisions and other information of interest on these rights contained in the national constitutions, laws, regulations, plans, strategies and policies of the 33 countries of Latin America and the Caribbean. It also includes jurisprudence relevant to access rights. See Economic Commission for Latin America and the Caribbean (ECLAC), Observatory on Principle 10 in Latin America and the Caribbean [online] http://observatoriop10.cepal.org.

Box II.3
Access rights in environmental matters in the business arena

It has been argued that full disclosure of corporate information, far from exposing firms to greater risk of negative interactions with social actors, reduces costs and translates into more positive forms of problem-solving. As regards relations between firms and the community, it has likewise been suggested that the participation of social actors can often be a time- and cost-effective way of expanding the information base for essential social issues. For example, indigenous peoples and communities can furnish companies' studies with important knowledge on the relationships between community and environment and the changes that have taken place over time (IIED/WBCSD, 2008). The final report of the Mining, Minerals and Sustainable Development project undertaken by the World Business Council for Sustainable Development (WBCSD) and the International Institute for Environment and Development (IIED) argues that there is a strong business case to be made for free and open access to information. Once a company has established the fundamentals of improved sustainability performance, then increased trust, reduced transaction costs, better feedback, reduced risks, more effective resource use, and increased reputational value all arise through communicating this effectively to others (IIED/WBCSD, 2008, p. 293).

In this context, two voluntary initiatives aimed at making information held by private firms more transparent stand out: the Global Reporting Initiative and the Extractive Industries Transparency Initiative (EITI). The Global Reporting Initiative is a programme being implemented by Ceres and the United Nations Environment Programme (UNEP) that encourages the preparation of sustainability reports in all types of organizations.[a] To this end, the initiative produces a framework for sustainability reporting, including a guide to preparation, and establishes principles and indicators that organizations can use to measure their economic, environmental and social performance. The guide is available to the public for free and its application is unrestricted, voluntary and flexible.

The Extractive Industries Transparency Initiative (EITI), meanwhile, aspires to enhance governance by improving transparency and responsibility in the extractive sector via effective accountability regarding payments to the State.[b] The EITI is a coalition of governments, firms, civil society groups, investors and international organizations, and was first announced at the World Summit on Sustainable Development held in Johannesburg in 2002. The initiative is voluntary and applies in countries whose governments have signed up to it. As of August 2017, the only country in Latin America and the Caribbean to have made satisfactory progress towards the 2016 standard was Peru. Colombia, the Dominican Republic, Guatemala, Honduras, Suriname and Trinidad and Tobago, although participating in the initiative, have not yet been assessed under the 2016 standard. Guyana has stated its intention to join the EITI. Compliance with this global transparency standard provides citizens of participating countries with an independent assessment of how much their governments receive from the exploitation of oil, gas and minerals.

The importance of publishing and disseminating corporate sustainability reports was also emphasized in the outcome document of the United Nations Conference on Sustainable Development (Rio+20).[c] Likewise, as part of the Conference, the Governments of Brazil, Denmark, France and South Africa announced the formation of the Group of Friends of Paragraph 47 for the purpose of promoting corporate sustainability reporting. This group was later joined by three other countries of the region: Argentina, Chile and Colombia.

The United Nations Global Compact, an international initiative promoting implementation of 10 corporate social responsibility principles in the areas of human rights and business, labour standards, the environment and anti-corruption efforts in firms' business activities and strategies, has also highlighted the issues of governance, transparency and community relations as key elements in the effort to align companies' policies and operations with its principles. The principles of the Global Compact include: Principle 1: Businesses should support and respect the protection of internationally proclaimed human rights within their sphere of influence; Principle 7: Businesses should support a precautionary approach to environmental challenges; Principle 8: Businesses should undertake initiatives to promote greater environmental responsibility.[d]

Source: Economic Commission for Latin America and the Caribbean (ECLAC), on the basis of International Institute for Environment and Development/World Business Council for Sustainable Development (IIED/WBCSD), "Access to information", *Breaking New Ground: Mining, Minerals and Sustainable Development*, London, 2008.

[a] For further information on the Global Reporting Initiative, see [online] https://www.globalreporting.org.

[b] For further information, see [online] http://eiti.org/eiti/history.

[c] "We acknowledge the importance of corporate sustainability reporting, and encourage companies, where appropriate, especially publicly listed and large companies, to consider integrating sustainability information into their reporting cycle. We encourage industry, interested governments and relevant stakeholders, with the support of the United Nations system, as appropriate, to develop models for best practice and facilitate action for the integration of sustainability reporting, taking into account experiences from already existing frameworks and paying particular attention to the needs of developing countries, including for capacity-building" (United Nations, 2012b).

[d] See United Nations Global Compact [online] https://www.unglobalcompact.org/.

CHAPTER III

Access to environmental information in Latin America and the Caribbean

A. Progress in recent years
B. Pollutant release and transfer registers
C. Challenges

A. Progress in recent years

Access to environmental information has two main components: the generation of information on the environment and the ability to access public information (entailing an obligation for States to make such information readily available to all).

The right of access to public information is enshrined in the constitutions of most of the region's countries, whether explicitly, or through recognition of freedom of expression (including the right to seek information), or through habeas data provisions. In addition, 22 countries now have specific freedom of information laws and others are currently passing or drafting laws of this type (see table III.1).

Furthermore, not only did a 2006 ruling by the Inter-American Court of Human Rights recognize the right of access to information as a fundamental human right that is protected by human rights treaties and must be respected by States, but numerous rulings by national courts in the region have recognized the right of access to information as a fundamental and universal right. Examples can be found in the national jurisprudence of Argentina, Colombia, El Salvador, Guatemala, Panama and Uruguay.[1]

In 2015, legislation in Mexico and Paraguay explicitly recognized the right of access to information held by the State as a human right.[2]

In most of the countries, the parameters determining access to environmental information are divided between the framework environmental act and the freedom of information act. As can be seen in table III.1, only Argentina and Brazil have enacted specific laws for systems of access to environmental information.

The substantial progress made on access to public information in Latin America and the Caribbean since the early 2000s is indicative of the importance now attached to transparency and accountability in public sector management worldwide, including the region. A further impetus has been provided by the Model Inter-American Law on Access to Public Information prepared by the Secretariat for Legal Affairs of the Organization of American States (OAS) to support the States of the Americas as they set about formulating, revising and reforming legislation in this area and to assist in the implementation of the Inter-American Convention against Corruption.[3]

1 See Inter-American Commission on Human Rights (IACHR), National jurisprudence on freedom of expression and access to information, Washington, D.C., 2013 [online] http://www.oas.org/en/iachr/expression/docs/publications/2013%2005%2020%20national%20jurisprudence%20on%20freedom%20of%20expression.pdf.

2 See Mexico, Office of the President of the Republic, "Ley General de Transparencia y Acceso a la Información Pública", *Diario Oficial de la Federación*, Mexico City, May 4, 2015; and Paraguay, Office of the President of the Republic, "Decreto núm. 4064 por el cual se reglamenta la Ley núm. 5282 de Libre Acceso Ciudadano a la Información Pública y Transparencia Gubernamental", Asuncion, September 17, 2015.

3 See Organization of American States (OAS), "Ley Modelo de Acceso a la Información Administrativa" [online] http://www.oas.org/juridico/english/ley_modelo_acceso.pdf.

Table III.1
Latin America and the Caribbean: legal frameworks for access to public or environmental information and definitions of environmental information in legislation

Country	Constitutional treatment of the right of access to information	Freedom of information act (year)	Other bodies of law confirming the right of access to public or environmental information	Definition of environmental information in legislation
Antigua and Barbuda	Art. 12[a]	Freedom of Information Act (No. 19 of 2004)	-	-
Argentina		Right of Access to Public Information Act (No. 27275 of 2016)	Decree No. 206 of 2017 approving the Regulations of Act No. 27275 Decree No. 1172 of 2003, General Environment Act (No. 25675 of 2002) and Freedom of Public Environmental Information Regime Act (No. 25831 of 2004)	Act No. 25831 (art. 2)
Bahamas	Art. 23.1[a]	Freedom of Information Act (No. 1 of 2017)	-	-
Barbados	Art. 20.1[a]	Freedom of Information Bill[b]	-	-
Belize	Art. 12.1[a]	Freedom of Information Act (No. 9 of 1994, reformed in 2008)	Environmental Protection Act (No. 22 of 1992, reformed in 2009)	-
Bolivia (Plurinational State of)	Arts. 21.6, 24, 106 and 242.4	Transparency and Access to Information Bill[b]	Environment Act (No. 1333 of 1992) and Supreme Decree No. 28168 of 2005	-
Brazil	Arts. 5.14 and 5.33	Access to Information Act (No. 12527 of 2011)	Freedom of Environmental Information Act (No. 10650 of 2003)	Act No. 10650, art. 2
Chile	Art. 8	Access to Information Act (No. 20285 of 2008)	Environmental Framework Law (No. 19300, reformed by Act No. 20417 in 2010)	Act No. 19300, art. 31 (bis) (reformed in 2010)
Colombia	Arts. 20, 23 and 74	National Transparency and Access to Information Act (No. 1712 of 2014)	Decree partially regulating Act No. 1712 of 2014 and establishing other provisions (Decree No. 103 of 2015), Law creating the Ministry of the Environment, reorganizing public sector responsibilities for managing and safeguarding the environment and renewable natural resources, organizing the National Environmental System (SINA) and establishing other provisions (No. 99 of 1993) Law regulating the Fundamental Right of Petition and replacing a section of the Code of Administrative Procedure and Administrative Disputes (No. 1755 of 2015) Decree issuing the Consolidated Decree regulating the Environment and Sustainable Development Sector (No. 1076 of 2015)	-
Costa Rica	Arts. 27 and 30	-	National Archive System Act (No. 7202 of 1990), Organic Law on the Environment (No. 7554 of 1995), Biodiversity Act (No. 7788 of 1998), Constitutional Jurisdiction Act (No. 7135 of 1989) and Law regulating the Right of Petition (No. 9097 of 2012, published in 2013)	-
Cuba	-	-	Environment Act (No. 81 of 1997)	-
Dominica	Art. 10.1[a]		-	-
Dominican Republic	Art. 49	Access to Information Act (No. 200 of 2004)	Environment and Natural Resources Act (No. 64 of 2000)	-
Ecuador	Art. 18	Organic Act on Transparency and Access to Information (No. 24 of 2004)	Environmental Management Act (No. 37 of 1999), General Regulations of the Organic Law on Transparency and Access to Information (Decree No. 2471 of 2005)	
El Salvador	Art. 6[a]	Access to Information Act (Decree No. 534 of 2011)	Environment Act (Decree No. 233 of 1998)	-
Grenada	Art. 10.1[a]	Freedom of Information Bill[b]	-	-
Guatemala	Art. 30	Access to Information Act (Decree No. 57 of 2008)	-	-
Guyana	Art. 146[a]	Access to Information Act (No. 21 of 2011)	Environmental Protection Act (No. 11 of 1996)	-

Country	Constitutional treatment of the right of access to information	Freedom of information act (year)	Other bodies of law confirming the right of access to public or environmental information	Definition of environmental information in legislation
Haiti	Art. 40	-	-	-
Honduras		Transparency and Access to Information Act (Decree No. 170 of 2006)	General Environment Act (Decree No. 104 of 1993)	-
Jamaica	Arts. 13.3.c and 13.3.d[a]	Access to Information Act (No. 21 of 2002)	Natural Resources Conservation Authority Act (No. 9 of 1991)	-
Mexico	Art. 6	Transparency and Access to Information Act (2015)	Ecological Balance and Environmental Protection Act (1988, last amended in 2015)	Ecological Balance and Environmental Protection Act, art. 159 (bis)
Nicaragua	Art. 66	Access to Information Act (No. 621 of 2007)	Environment and Natural Resources Act (No. 217 of 1996)	-
Panama	Arts. 41 and 43	Law establishing Standards for Transparency in Public Administration, the Habeas Data Proceeding and Other Provisions (No. 6 of 2002)	Environment Act (No. 41 of 1998)	-
Paraguay	Art. 28	Freedom of Citizen Access to Information and Government Transparency Act (No. 5282 of 2014)	Decree No. 4064 of 2015 regulating the Freedom of Citizen Access to Information and Government Transparency Act (No. 5258)	-
Peru	Art. 2.5	Supreme Decree No. 43 of 2003. Consolidated amended text of the Transparency and Access to Information Act (No. 27806)	General Environment Act (No. 28611 of 2005), Framework Law of the National Environmental Management System (No. 28245 of 2004), Regulations on Transparency, Access to Environmental Information and Citizen Participation and Consultation on Environmental Matters (Supreme Decree No. 2 of 2009), Regulations of the Transparency and Access to Information Act (Supreme Decree No. 72 of 2003), Legislative Decree No. 1353 of 2016	Act No. 28245, art. 31
Saint Kitts and Nevis	Art. 12.1[a]	Freedom of Information Bill[b]	-	-
Saint Vincent and the Grenadines	Art. 10.1[a]	Freedom of Information Act (No. 27 of 2003)	-	-
Saint Lucia	Art. 10.1[a]	Freedom of Information Bill[b]	-	-
Suriname	-	-	-	-
Trinidad and Tobago	Art. 4.i[a]	Freedom of Information Act (No. 26 of 1999, amended in 2003)	Environmental Management Act (No. 3 of 2000)	-
Uruguay	Art. 29[a]	Access to Information Act (No. 18381 of 2008)	Decree No. 484 of 2009, Access to Information Act (No. 17283 of 2000)	-
Venezuela (Bolivarian Republic of)	Arts. 28, 58 and 143		Organic Law on the Environment (2006) Organic Law of the Public Administration (No. 6217 of 2008, arts. 9 and 12)	-

Source: Economic Commission for Latin America and the Caribbean (ECLAC).
[a] Recognizes freedom of expression.
[b] Bill under discussion.

In addition to recognizing everyone's right of access to public information, most of the laws passed in the region over the last decade have provided for mechanisms to facilitate such access.

In Antigua and Barbuda, for instance, the 2004 Freedom of Information Act (part II) provides that the public authorities must appoint information officers to act as a central contact with the public. The Act also provides for the appointment of an Information Commissioner, whose duties include compiling a guide on minimum standards and best practices regarding the duty of public authorities to publish information. In countries such as Chile, El Salvador, Honduras, Mexico and Panama, meanwhile, freedom of information acts have given rise to the creation of independent or autonomous bodies charged with upholding access, whose main functions are: to guarantee the right of access to information, oversee compliance with the relevant provisions and promote transparency in the public administration. More recently, Peru created the National Authority for Transparency and Access to Public Information under Legislative Decree No. 1353 of December 2016. The Authority will form part of the Ministry of Justice and Human Rights, and its functions include proposing policies on transparency and access to public information, issuing directives and guidelines as necessary to enforce regulations in its field of competence, overseeing compliance with these regulations, dealing with questions that legal entities or natural persons may raise about implementation of the regulations and nurturing a culture of transparency and access to public information in the country.[4] Table III.2 compares public information access legislation in the region.

[4] See Peru, Office of the President of the Republic, "Decreto legislativo núm. 1353", *Diario Oficial El Peruano*, 2017 [online] http://busquedas.elperuano.com.pe/normaslegales/decreto-legislativo-que-crea-la-autoridad-nacional-de-transp-decreto-legislativo-n-1353-1471551-5/.

Table III.2
Latin America and the Caribbean (14 countries): core provisions of transparency and freedom of information acts

Country Law (Year)	Obligated entities	Concept of public information	Elements of active transparency (unrequested information) and passive transparency	Costs	Exemptions and time limits on these	Oversight body, nature and appeal procedures
Argentina Act No. 27275 (2016)	Legislative, executive and judicial, wholly or partially State-owned companies and private sector bodies in receipt of public funding, among others.	For the purposes of the Act, public information means: information of any kind contained in documents of any format that those entities with obligations under the Act may produce, obtain, convert, control or have in their safekeeping. By document is meant: any record produced or controlled by or in the keeping of these obligated entities, irrespective of its form, medium, origin, date of creation or official character.	Active: obligated entities shall publish certain information in full and update it as necessary using digital media and in open formats, such as their organizational structure and functions, services provided and any mechanism or procedure whereby the public can make requests, access information or in some way participate in or influence policymaking or the exercise of powers by those subject to the law. Passive: any natural or legal person, public or private, is entitled to request and receive public information without having to justify the request, demonstrate a subjective right or legitimate interest or employ legal counsel.	Access to public information shall be free of charge unless reproduction is required. Reproduction costs shall be borne by the applicant.	Exemptions: information considered classified or confidential or secret for defence or foreign policy reasons; information protected by a requirement of professional confidentiality; information that contains personal data and cannot be disclosed partially; information that may endanger life or safety; among others. These exemptions shall not apply in cases of serious violations of human rights, genocide, war crimes or crimes against humanity. Time limits: not specified.	Oversight body and nature: the Public Information Access Agency is created as an operationally independent autonomous body within the national executive branch. Appeal procedure: decisions on access to public information can be appealed directly to the courts of first instance responsible for federal administrative disputes, without prejudice to the option of initiating the relevant administrative complaint with the Public Information Access Agency or other responsible agency.
Brazil Act No. 12527 (2011)	Public agencies exercising the direct administrative powers of the executive and legislative (including courts of audit), the judiciary and the federal Public Prosecutor's office; entities, foundations, public businesses and other companies wholly or partially controlled by the central government, states, districts or municipalities; non-profit private sector bodies in receipt of public funds.	Information in records or documents produced or held by the obligated entities; genuine, authentic and up-to-date primary information; information on activities conducted, administration of public goods, use of public resources and tenders; information on the implementation, follow-up and results of agencies' programmes, projects and actions; the results of inspections, audits and other actions carried out by internal and external oversight bodies.	Active: powers; organizational structure; financing and spending records; contracts and tenders; actions, projects and works implemented by the agency; frequently asked questions; among others. Passive: any interested party may make a freedom of information request concerning information of public interest to those subject to the law without having to present any justification.	Free of charge, except for the cost of reproducing information (this will also be free for those unable to afford it).	Exemptions: information affecting the nation's defence, integrity, sovereignty or security; information that jeopardizes international negotiations or human life or public health; information destabilizing to the financial sector; information that concerns the strategic planning of the armed forces or imperils scientific or technological research; among others. Time limits: depending on the classification. Top secret: 25 years; secret: 15 years; classified: 5 years.	Oversight body and nature: Oversight Offices of the Comptroller General, reporting to the office of the President of Brazil. Appeal procedure: the service ranking next up in the hierarchy is to be approached in the first instance (within 10 days of rejection or failure to respond within the set time), the Comptroller General in the second instance and the Joint Information Re-evaluation Committee (CMRI) in the third instance.
Chile Act No. 20285 (2008)	Ministries; local, regional and municipal governments; the armed forces and law enforcement agencies, and anybody performing an administrative functions; public companies established by law and enterprises and companies in which the State has over 50% of the shares or a majority on the board.	Administrative acts and resolutions and the documents supporting them. Any information prepared using public funds or in the possession of the State.	Active: organizational structure; powers; legal framework; staff; recruitment; transfers of public funds; acts and resolutions; participation procedures and mechanisms, subsidies and budgetary funding received; list of related agencies and audit results; among others. Passive: anyone is entitled to request and receive public information. Application may be made in writing to any obligated entity without the need to state a cause or reason.	Free of charge, except for the cost of reproducing information.	Exemptions: information affecting national security or the proper functioning of the agency; information that impairs the rights of third parties; information affecting the national interest, international relations or public health; among others. Period: five years, renewable for a further five. In the case of information that may affect Chile's territorial integrity, international defence or foreign policy, the extension is indefinite.	Oversight body and nature: Transparency Council, an autonomous, independently resourced body under public law with a legal personality. Appeal procedure: appeals may be filed with the Transparency Council within 15 days of refusal of the original request or failure to respond within the set time. The Council ruling may be appealed before the Court of Appeals.

Table III.2 (continued)

Country Law (Year)	Obligated entities	Concept of public information	Elements of active transparency (unrequested information) and passive transparency	Costs	Exemptions and time limits on these	Oversight body, nature and appeal procedures
Colombia Act No. 1712 (2014) Decree No. 1494 (2015)	All public bodies in all branches of government at any level of the State (central or decentralized national, departmental, municipal and district authorities; oversight bodies; natural and legal persons, be they public or private, discharging a public function; public companies created by law; State companies and companies in which the State owns shares; political parties and significant citizen groups; bodies administering parafiscal institutions or public funds or resources.	Any information that obligated entities create, obtain, acquire or control in that capacity.	Active: organizational structure and services, procedures and operation of obligated entities, including public participation mechanisms and any decisions and policies adopted that affect the public together with the grounds for these; a publication plan setting out the classes of information that the subject will proactively publish. Passive: anyone is entitled to request and receive information from any of those obligated entities without having to state a cause or reason for the request.	The request must be answered free of charge, or the charge must not exceed the cost of reproducing the information and sending it to the applicant.	Exemptions: information that impairs the rights of natural or legal persons (right to privacy, to life, to health or safety, or to commercial, industrial and professional confidentiality); information harmful to public interests (national defence and security, public safety, international relations, the prevention, investigation and prosecution of crime, due process, children's and adolescents' rights, the country's macroeconomic and financial stability, public health). Time limit: the exemption for information harmful to public interests may not be protracted for a period exceeding 15 years.	Oversight body and nature: the Public Prosecutor's Office, which is independent of the other branches of the State. Appeal procedure: whenever an exemption for national security and defence or international relations is invoked, the applicant may lodge a review application within three days of being notified. If this is denied, the applicant may appeal to the administrative court or administrative judge.
Dominican Republic Act No. 200 (2004)	Agencies and entities of the public administration, whether centralized or autonomous and decentralized; autonomous or decentralized agencies of the State; commercial companies and enterprises belonging to the State; limited liability companies; private institutions receiving funds from the State; the legislature and judiciary.	Information in documents, writings, photographs; recordings on magnetic media created or obtained by a public authority and held and controlled by it.	Active: structure and composition; operating regulations; projects, management reports; databases; reception point for complaints, queries and suggestions; bilateral formalities and transactions. Passive: anyone is entitled to request and receive accurate, appropriate and timely information from those subject to the Act.	The authority may charge for the cost of searching for and reproducing information. The authority may furnish information free of charge or at a reduced cost for certain uses.	Exemptions: information connected to the defence or security of the State; information that may affect the banking or financial system; information that is sub judice; commercial, industrial or financial secrets; documents for government deliberations prior to a decision being taken; information that may hinder others' privacy, life or safety; information that may affect public health or safety; among others. Time limit: five years.	Oversight body and nature: none. Appeal procedure: recourse is to be had to the service ranking next above the one that refused access. Applicants who request a review and disagree with the ruling will have 15 days to take the case to a Higher Administrative Tribunal. When the administration does not issue a ruling or does not supply the information in the time stipulated, an appeal on the grounds of unconstitutionality *(amparo)* can be made to the Administrative Disputes Tribunal.
El Salvador Access to Information Act (Decree No. 534 of 2011)	State bodies, their agencies, autonomous institutions, municipalities or any other body administering public resources and State property or carrying out acts of the public administration; companies in mixed public-private ownership and natural or legal persons handling public information or resources or executing acts of the national or local State administration. Binding on all public servants within the country and abroad.	Information held by bodies subject to the law and contained in documents, archives, data, databases, communications and records of any kind that document the exercise of their powers or activities, on all types of media.	Active: regulatory framework, organizational structure, budget, staff selection and recruitment procedures, pay, annual operating plan and results obtained, memorandums, accounting reports, goods inventories, listings of works being implemented or already implemented using public funds, information on subsidy programmes, private recipients of public resources and reports, recruitment and procurement, and citizen participation and accountability mechanisms, among others. Passive: everyone is entitled to request and receive information created, administered or held by public institutions and other bodies subject to the law, without having to demonstrate an interest or motive of any kind.	There is no charge for obtaining or consulting public information. The cost of reproducing it will be borne by the applicant, but the charge may not exceed the costs of the materials used and delivery. No charge will be made to electronic delivery.	Exemptions: Classified information: secret military plans and political negotiations; information affecting national defence and public security; information detrimental to international relations or diplomatic negotiations; information that endangers anyone's life, safety or health; among others. Confidential information: that which constitutes an invasion of someone's privacy. Time limit: Classified information: seven years, with the option of a five-year extension and further extensions in specific cases. Confidential information: obligated entities shall not supply confidential information without the free and explicit consent of its owner.	Oversight body and nature: Institute for Access to Public Information, an independently resourced public institution with legal personality and administrative and financial autonomy. Appeal procedure: recourse is to the Institute for Access to Public Information within five working days of notification. Individuals may challenge rulings refusing their requests before the Administrative Disputes Chamber of the Supreme Court of Justice.

Country Law (Year)	Obligated entities	Concept of public information	Elements of active transparency (unrequested information) and passive transparency	Costs	Exemptions and time limits on these	Oversight body, nature and appeal procedures
Honduras Act No. 170 (2006)	The legislative, executive and judicial powers; autonomous institutions, municipalities and other organs of the State; non-governmental organizations (NGOs), private sector development organizations and anybody receiving or administering public funds; and trade associations that receive income from the issuance of stamps and retention of goods or are exempt from taxes.	Any unclassified archive, register, piece of data or communication on any medium or in any document or printed, optical, electronic or other record that is held by an institution subject to the law and can be reproduced.	Active: organizational structure, functions and powers; laws and regulations governing their operations; policies, plans, programmes and projects; public records of any kind; staff remuneration; budgets; recruitment and participation mechanisms; among others. Any information the Act may require each individual State agency to publish unsolicited. Passive: any natural or legal person is entitled to request and receive full, accurate, appropriate and timely information from the institutions covered by the Act in accordance with its terms, without having to justify the request.	Public access to information is free of charge. Public institutions are authorized to charge and collect only reproduction costs set in advance by the institution concerned.	Exemptions: information that jeopardizes State security, anyone's life, health or safety, the execution of justice, international relations, economic stability or interests protected by the constitution and law is classified. Time limit: 10 years unless there is a court order.	Oversight body and nature: Institute for Access to Public Information, a deconcentrated agency of the public administration with operational, decision-making and budgetary independence. Appeal procedure: recourse is to the Institute for Access to Public Information, which will have up to 10 days to issue a ruling. This ruling can only be challenged by an appeal on the grounds of unconstitutionality *(amparo)* as provided by the Constitutional Justice Act.
Jamaica Act No. 21 (2002)	All public authorities, including ministries, departments, the executive agency and other government agencies; any public body or authority; any company of which the State owns more than 50% or which provides public services; and other companies as decreed by the Prime Minister.	The Act applies to all public documents whose definition establishes that they are in writing or in the form of a map, plan or photographs, or information in digital formats held by the public authority, whether or not created by it. The information must be less than 30 years old.	Active: the public authorities must publish a statement of their organization and functions, a list of departments with their addresses and opening hours, and a list of manuals and documents containing the institution's guidelines and practices, among other matters. Passive: everyone shall be entitled to access official documents held by the public authorities, without having to state any reason.	The costs of copying and reproducing the information will be borne by the applicant.	Exemptions: documents affecting national security, defence or international relations; documents supplied in confidence by other governments or international organizations; cabinet documents; documents that may endanger anyone's safety; documents that interfere with the application of justice; documents likely to affect economic stability; secret commercial documents or information with commercial value; information that may prejudice a third party; information that jeopardizes the country's archaeological or natural heritage; among others. Time limit: 20 years or a shorter or longer period as specified by the minister responsible, subject to a favourable ruling.	Oversight body and nature: Access to Information Unit, under the authority of the Office of the Prime Minister. Appeal procedure: an internal review may be requested from the head of the institution concerned within 30 days of access being denied or the time limit for providing the information expiring. The applicant may appeal this decision before the Appeal Court established by the Act specifically for this purpose.

Table III.2 (continued)

Country Law (Year)	Obligated entities	Concept of public information	Elements of active transparency (unrequested information) and passive transparency	Costs	Exemptions and time limits on these	Oversight body, nature and appeal procedures
Mexico Transparency and Access to Public Information General Act (2015)	Any authority, body, organ or agency of the executive, legislative and judicial branches, autonomous agencies, political parties, public funds and trusts and any physical or moral person or consortium receiving and applying public resources or carrying out acts of authority at the federal, state and municipal levels.	Information of relevance or benefit to society, and not simply of individual interest, whose disclosure contributes to the public's understanding of the activities carried out by the obligated entities.	Active (common obligations): regulatory framework, organizational structure, powers, goals, indicators, remuneration, positions, recruitment, asset declarations, calls for applications, subsidy, incentive and support programmes, budgets, audit reports, contracts and tenders, oversight and supervision mechanisms and citizen participation arrangements, among others, and any other information deemed relevant. Supplementary obligations for each subject of the law and incentives for proactive transparency. Passive: everyone has the right of access to information, without discrimination on any grounds.	The cost of the information shall not exceed the sum of the costs of reproducing, sending and certifying the documents, where applicable.	Exemptions: information that compromises national security, public safety, national defence or international negotiations and relations; information supplied to the State with this character; information that may affect monetary, exchange-rate or financial policy; information that jeopardizes the stability of financial institutions; information that endangers a person's life; information that obstructs activities relating to law enforcement or the prevention or prosecution of crime; information forming part of the deliberations of public servants; information detrimental to the handling of court cases or administrative proceedings; information forming part of investigations being undertaken with the Public Prosecution Service that has this character by explicit provision of some law; among others. Information containing personal data is deemed confidential. Time limit: five years, with a possible extension of another five years. Exceptionally, the time limit may be further extended.	Oversight body and nature: National Institute for Transparency, Access to Information and Protection of Personal Data (INAI). Independently resourced autonomous, specialized, impartial and collegiate constitutional body with legal personality. Appeal procedure: within 15 days of the response being notified or the time limit expiring the applicant may initiate a review procedure with the appropriate overseeing agency or with the Transparency Unit that dealt with the application. Individuals may challenge the rulings of overseeing agencies before the federal courts.
Panama Act No. 6 (2002) Act No. 33 creating the National Authority for Transparency and Access to Information (2013)	Any State agency or department, including those belonging to the executive, legislative and judicial branches, the Public Prosecutor's Office, decentralized, autonomous and semi-autonomous bodies, the Panama Canal Authority, municipalities, local governments, local councils, enterprises in joint public-private ownership, cooperatives, foundations, trusts and non-governmental organizations that have been or are in receipt of State funding, capital or goods.	All types of content in any printed, optical, electronic, chemical, physical or biological medium, document or record.	Active: the institution's internal regulations, policies, manuals of procedures, organizational structure, document location. Additional obligations for the Comptroller General and the Ministry of Economy and Finances. Passive: everyone is entitled to request access to publicly available information held by or known to the institutions indicated in the Act, without having to state any justification or reason.	Public access to information will be free of charge unless reproduction is required. The costs of reproducing information will be borne by the applicant. The rates charged by the institution must suffice to cover reproduction costs only.	Exemptions. Confidential information: that relating to people's medical and psychological data and private life. Restricted information: that relating to national security, commercial secrets, matters relating to proceedings of the Public Prosecutor's Office and the judiciary and other investigative processes, the existence of mineral and oil-bearing deposits, and documents relating to diplomatic, trade or international negotiations, among others. Time limit. Confidential information: this may not be disclosed under any circumstances. Restricted information: 10 years, with the option of a further extension of up to 10 years.	Oversight body and nature: National Authority for Transparency and Access to Information, an independent decentralized State institution operating with full functional and administrative autonomy. Appeal procedure: anyone may refer a case to the Authority for non-compliance within 30 days of notification. Complainants to the Authority do not relinquish the legitimate right to initiate an action for habeas data. The rulings of the Authority may be submitted for reconsideration to the Director General within three working days of being issued.

Country Law (Year)	Obligated entities	Concept of public information	Elements of active transparency (unrequested information) and passive transparency	Costs	Exemptions and time limits on these	Oversight body, nature and appeal procedures
Paraguay Act No. 5282 (2014)	The legislative, executive and judicial branches, the armed forces, the Ombudsman's Office, the Comptroller General and the Central Bank of Paraguay, State financial entities, public enterprises, commercial companies that are majority State-owned, companies in joint public-private ownership, regulatory or supervisory agencies and all other decentralized entities with a legal personality under public law, Paraguayan universities, departmental and municipal governments, joint commissions and binational bodies in which Paraguay participates.	Information produced, obtained, controlled or held by public sources regardless of format, medium, creation date, provenance, classification or processing, unless it has been legally categorized as confidential or classified.	Active (minimum information): organizational structure, powers and attributes, legal framework, mode of functioning and decision-making process, staff and remuneration, institutional policy and action plans, current programmes and budgets, audit reports, travel reports, agreements and contracts, official letters, consultancy reports, tables of results, powers of attorney issued to lawyers, index of documents, description of procedures for accessing documents, citizen participation mechanisms. Additional obligations for the legislative, executive and judicial branches. Passive: everyone, without discrimination of any kind, may access public information free of charge and without having to justify the request, following the procedure laid down in the Act.	Access to information will be free of charge.	Exemptions: classified public information explicitly described or categorized as such by the Act. Time limit: not specified.	Oversight body and nature: none. Appeal procedure: if a request for access to public information is refused or left unanswered, the remedy of reconsideration can be exercised, so that the same authority reviews the matter and issues the appropriate ruling. In the event of refusal, and irrespective of whether this remedy has been pursued, applicants may bring a case before any judge of first instance within 60 days.
Peru Act No.27806 (2002)	According to the General Administrative Proceedings Act (No. 27444): the executive, legislative and judicial branches; regional and local governments; bodies upon which Peru's constitution and laws confer autonomy; all other entities and agencies, projects and programmes of the State whose activities are deemed to be subject to the common standards of public law; legal persons operating in the private sector but providing public services or carrying out administrative functions.	All information held by the State is assumed to be public except as described in the Act. Also deemed public is any type of publicly funded documentation used for administrative decision-making, as well as official records.	Active: general information such as the organization chart, legal framework and communiqués; budgetary information; goods procurement, suppliers, recruitment and amounts committed; official activities; and any other information deemed necessary. In addition, private individuals subject to this regime must report the nature of their services, their fees and the administrative functions they perform. Passive: everyone is entitled to request and receive information from any agency in the public administration. In no event may any justification be required for the exercise of this right.	The cost of information may not exceed its cost of reproduction.	Exemptions. Military, war-related and domestic or external national defence information is secret. Information that may endanger life, information on police operations, information whose publication would interfere with investigations and information that could harm international relations is classified. Confidentiality requirements shall not apply to information related to violations of human rights or of rights agreed in the first Geneva Convention of 1949. Time limit: five years for secret information, renewable (the renewal period is not specified).	Oversight body and nature: National Authority for Transparency and Access to Public Information, forming part of the Ministry of Justice and Human Rights through the National Office for Transparency and Access to Public Information (created by Legislative Decree No. 1353). Appeal procedure: if a request is refused or left unanswered, and the institution has no hierarchical superior, administrative remedies can be considered to have been exhausted. Once this happens, an administrative dispute proceeding can be initiated. Legislative Decree No. 1353 (which will come into force the day after publication of the supreme decree approving its regulations and amendment of the Regulations for the Organization and Functions of the Ministry of Justice and Human Rights) provides for the creation of a Transparency and Access to Public Information Tribunal as the ultimate administrative authority on matters of transparency and the right of access to public information at the national level.

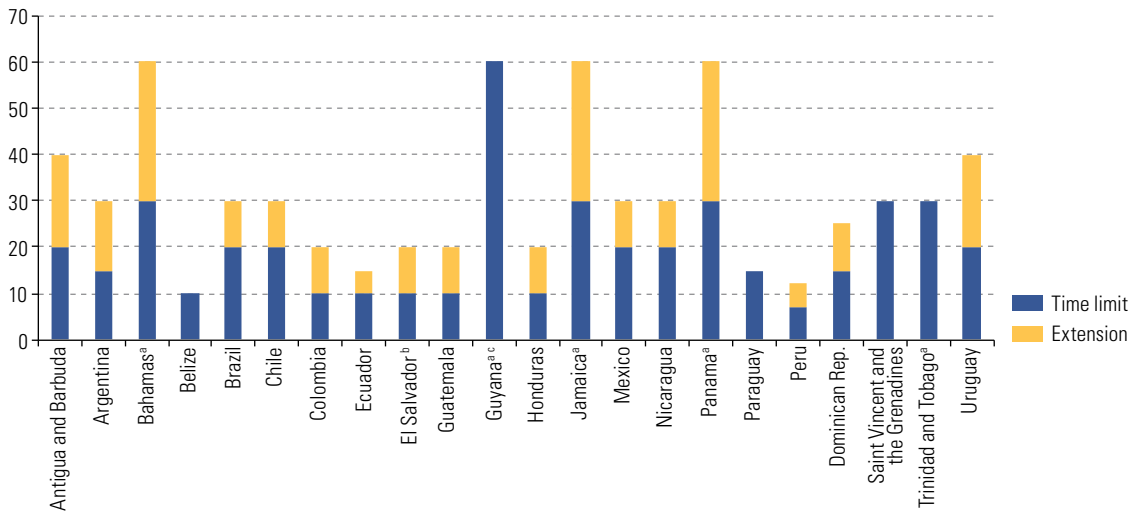
Table III.2 (concluded)

Country Law (Year)	Obligated entities	Concept of public information	Elements of active transparency (unrequested information) and passive transparency	Costs	Exemptions and time limits on these	Oversight body, nature and appeal procedures
Trinidad and Tobago Act No. 26 (1999)	Public authorities, including Parliament, the Court of Appeal, the High Court, the cabinet, a ministry, the Tobago House of Assembly, a municipal corporation, a company incorporated under the laws of the Republic of Trinidad and Tobago which is owned or controlled by the State, among others.		Active: a public authority shall cause to be published in the Gazette and in a daily newspaper a statement setting out the particulars of the organization and functions of the public authority, indicating the decision-making powers and other powers affecting members of the public; a statement of the categories of documents that are maintained in the possession of the public authority; and a statement of the procedure to be followed by a person when a request for access to a document is made to a public authority; among others. Passive: recognition that everyone is entitled to access information in the possession of the public authorities.	No fee shall be charged by a public authority for the making of a request for access to an official document. Where access to an official document is to be given in the form of printed copies, or copies in some other form, such as on tape, disc, film or other material, the applicant shall pay the prescribed fee. The fees payable by the applicant shall be commensurate with the cost incurred in making documents available.	Exemptions: certain documents of the executive branch; information compromising to the country's defence and security, international relations or the public interest; internal working documents; information that may prejudice law enforcement or due process; information affecting personal privacy; information relating to commercial secrets; documents containing material obtained confidentially or affecting economic or commercial matters; certain documents relating to the operations of the public authorities; among others. Time limit: 10 years for executive branch documents.	Oversight body and nature: Office of the Ombudsman of Trinidad and Tobago, an impartial, independent and non-political oversight body reporting to Parliament. Appeal procedure: a person aggrieved by the refusal of a public authority to grant access to an official document may, within 21 days of receiving notice of the refusal, complain in writing to the Ombudsman. Also, a person aggrieved by a decision of a public authority may apply to the High Court for judicial review of the decision.
Uruguay Act No. 18381 (2008)	Any State or non-State public body.	Any information issued by or in the possession of any State or non-State public body except for the exemptions or secrets established by law and any classified or confidential information.	Active: organizational structure, powers of each unit, remuneration structure, functions of the different positions and system of compensation, budgeting and execution, audit results, concessions, tenders, permits or authorizations granted, statistical information and citizen participation mechanisms. Passive: access to public information is a right for all, without discrimination by reason of the applicant's nationality or character, with no need to justify the reasons for requesting the information.	Access to information will always be free of charge, but the interested party will be charged for its reproduction on any medium.	Exemptions: information legally defined as secret and that of a classified and confidential character. Classified information: that which compromises public security or national defence, impairs the conduct of international relations or negotiations, harms the country's financial, economic or monetary stability, imperils anyone's life, human dignity, security or health, entails a loss of competitive advantages for the subject constrained by the Act, or leaves scientific, technological or cultural discoveries unprotected. Confidential information: any that is supplied on that basis to those subject to the Act and relates to people's property or personal data. Time limit: 15 years. Protection for certain documentation may be extended, but only when the causes giving rise to it subsist and are demonstrated.	Oversight body and nature: Access to Public Information Unit, a deconcentrated unit of the Agency for the Development of Electronic Government and the Information and Knowledge Society (AGESIC) that is endowed with the fullest technical autonomy. Appeal procedure: anyone is entitled to take effective legal action if information is refused. Only a final ruling and one rejecting the action on the grounds of manifest inadmissibility may be appealed. The appeal must be lodged within three days.

Source: Economic Commission for Latin America and the Caribbean (ECLAC), Observatory on Principle 10 in Latin America and the Caribbean [online] http://observatoriop10.cepal.org.

Figure III.1 shows the time limits for providing information as laid down in the countries' legislation.

Figure III.1
Latin America and the Caribbean (22 countries): time limits for providing information as prescribed in freedom of information acts[a]
(Days)



Source: Economic Commission for Latin America and the Caribbean (ECLAC) on the basis of the countries' legislation.
Note: Time limits are in working days unless otherwise stated.
[a] Calendar days.
[b] Extension of 10 days plus a further 5 in exceptional circumstances.
[c] May be extended.

Although most general environment laws in Latin America and the Caribbean make reference to environmental information, only five countries in the region (Argentina, Brazil, Chile, Mexico and Peru) have included an explicit definition of what is meant by environmental information. Box III.1 presents the common elements in these definitions.

Box III.1
Latin America and the Caribbean: elements common to different definitions of environmental information in environmental legislation

Legal definitions of environmental information differ from one country to another in the region. However, there is a common core in all the countries that have legal provisions of this type.

Generally speaking, environmental information is deemed to be any information relating to the environment, irrespective of the format or medium of production or storage.

In addition, all such laws introduce different nuances when defining environmental information, particularly as concerns:

- The state of the environment or any of its physical, cultural or social components.
- The interaction of society with the environment, including activities, works and circumstances that may affect them both.
- Plans, policies, programmes and actions relating to environmental management.

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

Nonetheless, most general environment laws contain provisions on active transparency, i.e., an obligation to make certain information on environmental matters available to the public, as well as provisions relating to the creation of environmental information systems. In practice, this obligation has translated into the implementation of online environmental information systems in a number of countries of Latin America and the Caribbean, such as the national systems of environmental information in Chile, Nicaragua, Panama, Peru and the Plurinational State of Bolivia, the Environmental Information System of Colombia (SIAC), Ecuador's Unified Environmental Information System (SUIA), the Dominican Republic's Environmental Information System (SIA) and Mexico's National System of Environmental Information and Natural Resources. A regional information system established within the framework of the Southern Common Market (MERCOSUR) integrates and systematizes information from member countries and includes regional and local thematic maps.[5]

Moreover, many of the region's countries have included in their domestic legislation an obligation for some authority to present information on the state of the environment at given intervals. This is the case, for example, with Antigua and Barbuda, Argentina, Belize, the Bolivarian Republic of Venezuela, Chile, Guyana, Haiti, Mexico, Panama, Peru and Uruguay. Some free trade agreements also provide for periodic publication and dissemination of information about the state of the environment in the region's countries (see box II.1). In Colombia, furthermore, the obligation to produce annual reports on the state of the environment is provided for in the constitution.[6] The challenge is to produce these reports at the intervals set so that comparisons can be made over time and to ensure that the different bodies which might have information of relevance to them collaborate successfully. Box III.2 details some progress and challenges in the provision of environmental information in the region.

Box III.2
The supply of environmental information in the region

The region's countries have invested heavily in the production of environmental statistics since 1992. Whereas just a few countries had official publications on environmental statistics and sustainable development indicators in the 1990s, most now systematically publish both statistical compendiums and reports on environmental indicators (or sustainable development). According to a study by the Economic Commission for Latin America and the Caribbean (ECLAC), a total of 23 countries had personnel assigned specifically to environmental statistics in 2015, while 9 national institutions (of 31 surveyed) had a unit dealing exclusively with the preparation of this type of statistics. Nonetheless, over half of all institutions with dedicated staff (>58%) have just three or even fewer people dedicated to working with environmental statistics. The region's countries have also invested in the formulation of sustainable development indicators based on different approaches. Interesting work has been done in Argentina, Barbados, Brazil, Chile, Colombia and Mexico, among others. In the context of the Latin American and Caribbean Initiative for Sustainable Development (ILAC), in 2003 the Forum of Ministers of the Environment of Latin America and the Caribbean adopted a set of environmental indicators, grouped into six thematic areas: biological diversity; water resource management; vulnerability; human settlements and sustainable cities; social issues, including health, inequity and poverty; economic aspects, including trade and patterns of production and consumption; and institutional aspects. A group of 45 indicators agreed on in 2009 was presented to the Forum of Ministers in 2010. Countries such as Argentina, Brazil, Colombia, Costa Rica, Cuba, Mexico, Nicaragua, Panama and Peru have produced publications in this area, and there are also regional publications.

[5] See Southern Common Market (MERCOSUR), "Sistema de Información Ambiental del MERCOSUR (SIAM)" [online] http://mercosurambiental.net/.

[6] See article 268.7 of the Colombian constitution of 1991.

At the regional level, a working group on environmental statistics was set up in 2009 as part of the Statistical Conference of the Americas of ECLAC (SCA-ECLAC). This group received funding from the Inter-American Development Bank (IDB) Regional Public Goods Initiative for a project called "Development and Strengthening of Official Environmental Statistics through the Creation of a Regional Framework in Latin America and the Caribbean". The project consists of four components: diagnosis and current situation, regional strategy and action plan, development of a toolkit, and capacity-building.

Despite the progress made in recent years, the environmental statistics area needs more attention, investment and training. The challenges include a dearth of human and financial resources and a lack of coordination between institutions. A number of international organizations have collaborated in the preparation and dissemination of environmental statistics in the region. ECLAC has also supported the region's countries in their efforts to build up statistical capabilities and implement the international recommendations for environmental statistics, as well as performing the role of Technical Secretariat for the SCA-ECLAC Working Group on Environmental Statistics. Since 1999, the United Nations Environment Programme (UNEP) has been working with governments and specialized centres in the region to carry out comprehensive environmental assessments with different thematic and geographical coverage. To date, UNEP has supported the preparation and publication of national environmental outlook reports (national GEO reports) in 21 countries, with GEO reports being prepared for cities or subregions in 18 countries, plus thematic, subregional and youth-centred GEO reports. A regional overview is provided in the *Latin America and the Caribbean: Environment Outlook* reports for 2000, 2003, 2010 and 2016.

Over recent years, more and more countries have begun to compile environmental accounts following the System of Environmental-Economic Accounting (SEEA) methodology. The SEEA is a statistical framework that is based on the same principles as the System of National Accounts and can be used to produce an exhaustive range of tables and accounts to guide the compilation of comparable and consistent statistics and indicators for policymaking, analysis and research. The earliest studies by pioneering countries such as Colombia and Mexico began in the 1990s. Currently, 12 countries in the region have an environmental accounts development programme. ECLAC is supporting these initiatives in the region by running regional training programmes, holding regional workshops and providing specific support to six pilot countries.

Following the initiatives and achievements associated with the Millennium Development Goals (MDGs) between 2000 and 2015, environmental statistics have come to greater prominence in the Sustainable Development Goals (SDGs). The different conferences and workshops held in relation to the SDGs have reaffirmed the need to develop strong statistical systems in order for environment-related SDGs (specifically numbers 2, 6, 7, 12, 13, 14 and 15) to be attained. Promoting the use of a common statistical standard and developing strong national statistical systems is currently a prime objective in the countries' efforts to achieve and properly measure sustainable development. A challenge for the future development of environmental statistics is to generate data disaggregated by sex, age and factors such as race and ethnicity for personal variables (e.g., access to services and exposure to pollutants). Disaggregation of this kind would highlight inequalities in these areas, providing guidance for actions and policies.

Source: Economic Commission for Latin America and the Caribbean (ECLAC), on the basis of ECLAC, "La situación de las estadísticas, indicadores y cuentas ambientales en América Latina y el Caribe", *Statistical Studies series*, No. 94 (LC/TS.2017/135), Santiago, 2017; and United Nations, *Sustainable Development 20 Years on from the Earth Summit: Progress, gaps and strategic guidelines for Latin America and the Caribbean* (LC/L.3346/Rev.1), Santiago, 2012.

The increasing availability and use of information and communication technologies (ICTs) has been an important factor in the dissemination of the environmental information available. Besides providing opportunities to reduce greenhouse gases, ICTs are contributing to environmental and climate monitoring and facilitating communications in the event of early warnings or disasters (ECLAC, 2013). Satellite technologies, for example, have been used to monitor sensitive areas like Amazonia with only a short time lag, allowing public agencies to react promptly at times of crisis and longer-term policies to be oriented more effectively (United Nations, 2012a). Pollutant release and transfer registers, described further on, are another example of the use of ICTs for environmental monitoring and the dissemination of information.

Evidence for the substantial change produced by ICTs includes the Joint Declaration on Freedom of Expression and the Internet signed in 2011 by the United Nations, the Organization for Security and Cooperation in Europe (OSCE), OAS and the African Commission on Human and Peoples' Rights (ACHPR).

The Declaration is a way of acknowledging the impact the Internet has had on communications and separating out the roles played by States, users and servers in its growth. Section 6 of the Declaration affirms that States have an obligation to provide an Internet service and that withdrawing, restricting or denying access to this service as a political or legal mechanism is justified only in very few cases. It also affirms that States are under a positive obligation to facilitate universal access to the Internet, indicating that they should: (i) put in place regulatory mechanisms that foster greater access to the Internet, including for the poor and in "last mile" rural areas; (ii) provide direct support to facilitate access, including by establishing community-based ICT centres and other public access points; (iii) promote adequate awareness about both how to use the Internet and the benefits it can bring, especially among the poor, children and the elderly, and isolated rural populations; and (iv) put in place special measures to ensure equitable access to the Internet for the disabled and for disadvantaged persons.[7]

Internet access is thus a platform that catalyses the exercise of recognized human rights such as the rights to information, education and participation. In July 2010, a judgement by the Constitutional Chamber of Costa Rica stated that "access to these technologies is becoming a basic tool for facilitating the exercise of fundamental rights".[8] Meanwhile, freedom of information laws in countries such as Brazil, Ecuador, Mexico and Panama mention it as a possible platform for exercising the right of access to information.

Internet access has advanced substantially in the region over recent years, albeit with differences between countries. The number of Internet-connected households in the region rose from 22.4% in 2010 to 43.4% in 2015 and the gap with the countries of the Organization for Economic Cooperation and Development (OECD) narrowed, with the difference in penetration between the two regions declining from 50.8 percentage points in 2010 to 41.7 percentage points in 2015. Despite this progress, there are still problems with quality and equity in Internet access. As can be seen in figures III.2 and III.3, Internet penetration differs between urban and rural areas and by income distribution (ECLAC, 2016).

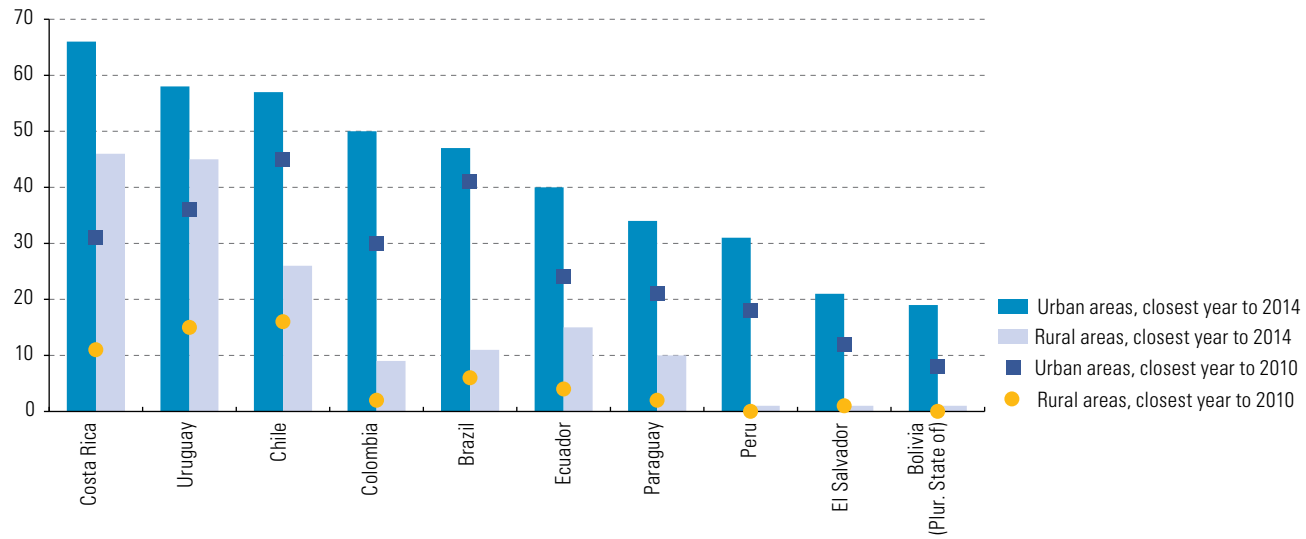
7 See Organization of American States (OAS), "Joint Declaration on Freedom of Expression and the Internet", Washington, D.C., 2011 [online] http://www.oas.org/en/iachr/expression/showarticle.asp?artID=849&lID=1.

8 See Constitutional Chamber of Costa Rica, "Sentencia núm. 10-012790: Retardo en la asignación de concesiones de banda de frecuencia de telefonía celular. Internet como derecho fundamental", San José, 2010 [online] https://www.poder-judicial.go.cr/salaconstitucional/index.php/servicios-publicos/759-10-012790.

There are a number of initiatives aimed at improving these figures, including Argentina's Federal Internet Plan, the Smart Brazil Programme 2015-2018, Costa Rica's National Telecommunications Development Plan 2015-2021, Mexico's National Digital Strategy (prepared as part of the National Development Plan 2013-2018) and Panama's Digital Agenda 2014-2019 (ECLAC, 2016).

Active participation by the region's countries in the Open Government Partnership is another reflection of the growing importance assigned by States to new technologies and Internet use as a tool for promoting transparency, empowering citizens and combating corruption.[9]

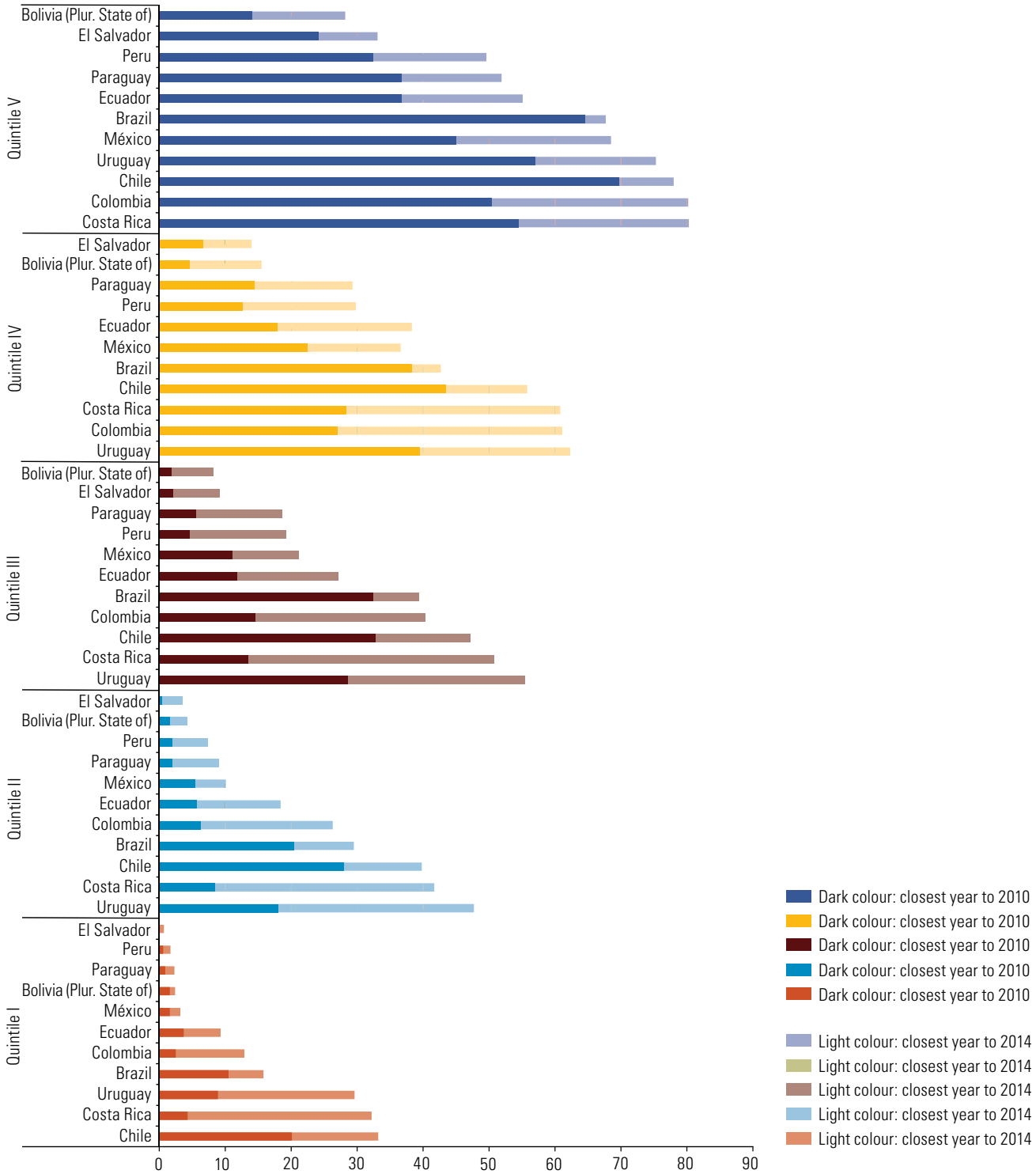
Figure III.2
Latin America and the Caribbean: households with Internet access, by geographical area, 2010 and 2014
(Percentages of all households in each area)



Source: Economic Commission for Latin America and the Caribbean (ECLAC), "Estado de la banda ancha en América Latina y el Caribe 2016", *Project Documents* (LC/W.710/Rev.1), Santiago, 2016.

[9] Launched in 2011, the Open Government Partnership is an initiative aimed at eliciting concrete commitments from governments to promote transparency, empower citizens, combat corruption and use new technologies to strengthen governance. In a spirit of collaboration between governments and civil society, the Partnership is supervised by a steering committee that includes representatives of both. To become members of the Partnership, countries have to endorse a declaration, develop an action plan with public involvement and prepare independent reports on the progress made with the commitments they have accepted. The following countries of Latin America and the Caribbean were members of the Partnership as of September 2017: Argentina, Brazil, Chile, Colombia, Costa Rica, the Dominican Republic, El Salvador, Guatemala, Honduras, Jamaica, Mexico, Panama, Paraguay, Peru, Trinidad and Tobago and Uruguay. See [online] https://www.opengovpartnership.org/.

Figure III.3
Latin America and the Caribbean: households with Internet access,by income quintile
(Percentages of all households in each quintile)



Source: Economic Commission for Latin America and the Caribbean (ECLAC), "Estado de la banda ancha en América Latina y el Caribe 2016", *Project Documents* (LC/W.710/Rev.1), Santiago, 2016.

B. Pollutant release and transfer registers

As can be seen in table III.3, a variety of international agreements have promoted the implementation of systems for gathering data on emissions and pollutants and making them available to the general public.

Table III.3
Promotion of emission and pollutant data collection systems in multilateral environmental agreements

Convention	Provisions
Stockholm Convention on Persistent Organic Pollutants (2001)	Article 10, paragraph 2: Each Party shall, within its capabilities, ensure that the public has access to the public information referred to in paragraph 1 and that the information is kept up-to-date. Article 10, paragraph 3: Each Party shall, within its capabilities, encourage industry and professional users to promote and facilitate the provision of the information referred to in paragraph 1 at the national level and, as appropriate, subregional, regional and global levels. Article 10, paragraph 4: In providing information on persistent organic pollutants and their alternatives, Parties may use safety data sheets, reports, mass media and other means of communication, and may establish information centres at national and regional levels. Article 10, paragraph 5: Each Party shall give sympathetic consideration to developing mechanisms, such as pollutant release and transfer registers, for the collection and dissemination of information on estimates of the annual quantities of the chemicals listed in Annex A, B or C that are released or disposed of.
Rotterdam Convention on the Prior Informed Consent Procedure for Certain Hazardous Chemicals and Pesticides in International Trade (1998)	Article 14, paragraph 1: Each Party shall, as appropriate and in accordance with the objective of this Convention, facilitate: (a) The exchange of scientific, technical, economic and legal information concerning the chemicals within the scope of this Convention, including toxicological, ecotoxicological and safety information. Article 15, paragraph 1: Each Party shall take such measures as may be necessary to establish and strengthen its national infrastructures and institutions for the effective implementation of this Convention. These measures may include, as required, the adoption or amendment of national legislative or administrative measures and may also include: (a) The establishment of national registers and databases including safety information for chemicals; (b) The encouragement of initiatives by industry to promote chemical safety. Article 15, paragraph 2: Each Party shall ensure, to the extent practicable, that the public has appropriate access to information on chemical handling and accident management and on alternatives that are safer for human health or the environment than the chemicals listed in Annex III.
Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and their Disposal (1989)	Article 4, paragraph 2: Each Party shall take the appropriate measures to: (f) Require that information about a proposed transboundary movement of hazardous wastes and other wastes be provided to the States concerned, according to Annex V A, to state clearly the effects of the proposed movement on human health and the environment. Article 10, paragraph 2: for this purpose, parties shall: (a) Upon request, make available information, whether on a bilateral or multilateral basis, with a view to promoting the environmentally sound management of hazardous wastes and other wastes, including harmonization of technical standards and practices for the adequate management of hazardous wastes and other wastes. Article 13, paragraph 3: The Parties, consistent with national laws and regulations, shall transmit, through the Secretariat, to the Conference of the Parties established under Article 15, before the end of each calendar year, a report on the previous calendar year, containing the following information: (b) Information regarding transboundary movements of hazardous wastes or other wastes in which they have been involved, including: (i) the amount of hazardous wastes and other wastes exported, their category, characteristics, destination, any transit country and disposal method as stated on the response to notification; (ii) the amount of hazardous wastes and other wastes imported, their category, characteristics, origin, and disposal methods; (iii) disposals which did not proceed as intended; (iv) efforts to achieve a reduction of the amount of hazardous wastes or other wastes subject to transboundary movement; (d) Information on available qualified statistics which have been compiled by them on the effects on human health and the environment of the generation, transportation and disposal of hazardous wastes or other wastes.
Vienna Convention for the Protection of the Ozone Layer (1985) and Montreal Protocol on Substances that Deplete the Ozone Layer (1987)	Article 3, paragraph 3: The Parties undertake to co-operate, directly or through competent international bodies, in ensuring the collection, validation and transmission of research and observational data through appropriate world data centres in a regular and timely fashion. Article 4, paragraph 1: The Parties shall facilitate and encourage the exchange of scientific, technical, socio-economic, commercial and legal information relevant to this Convention as further elaborated in annex II.

Table III.3 (concluded)

Convention	Provisions
United Nations Framework Convention on Climate Change (1992)	Article 4, paragraph 1: All Parties, taking into account their common but differentiated responsibilities and their specific national and regional development priorities, objectives and circumstances, shall: (a) Develop, periodically update, publish and make available to the Conference of the Parties, in accordance with Article 12, national inventories of anthropogenic emissions by sources and removals by sinks of all greenhouse gases not controlled by the Montreal Protocol, using comparable methodologies to be agreed upon by the Conference of the Parties; (g) Promote and cooperate in scientific, technological, technical, socio-economic and other research, systematic observation and development of data archives related to the climate system and intended to further the understanding and to reduce or eliminate the remaining uncertainties regarding the causes, effects, magnitude and timing of climate change and the economic and social consequences of various response strategies; (i) Promote and cooperate in education, training and public awareness related to climate change and encourage the widest participation in this process, including that of non governmental organizations. Article 6: In carrying out their commitments under Article 4, paragraph 1(i), the Parties shall: (a) Promote and facilitate at the national and, as appropriate, subregional and regional levels, and in accordance with national laws and regulations, and within their respective capacities: (i) The development and implementation of educational and public awareness programmes on climate change and its effects; (ii) Public access to information on climate change and its effects; (iii) Public participation in addressing climate change and its effects and developing adequate responses; and (iv) Training of scientific, technical and managerial personnel. (b) Cooperate in and promote, at the international level, and, where appropriate, using existing bodies: (i) The development and exchange of educational and public awareness material on climate change and its effects; and (ii) The development and implementation of education and training programmes, including the strengthening of national institutions and the exchange or secondment of personnel to train experts in this field, in particular for developing countries. Article 12, paragraph 1: In accordance with Article 4, paragraph 1, each Party shall communicate to the Conference of the Parties, through the secretariat, the following elements of information: (a) A national inventory of anthropogenic emissions by sources and removals by sinks of all greenhouse gases not controlled by the Montreal Protocol, to the extent its capacities permit, using comparable methodologies to be promoted and agreed upon by the Conference of the Parties; (b) A general description of steps taken or envisaged by the Party to implement the Convention; and (c) Any other information that the Party considers relevant to the achievement of the objective of the Convention and suitable for inclusion in its communication, including, if feasible, material relevant for calculations of global emission trends.
Paris Agreement within the United Nations Framework Convention on Climate Change (2015)	Article 13, paragraph 7: Each Party shall regularly provide the following information: (a) A national inventory report of anthropogenic emissions by sources and removals by sinks of greenhouse gases, prepared using good practice methodologies accepted by the Intergovernmental Panel on Climate Change and agreed upon by the Conference of the Parties serving as the meeting of the Parties to this Agreement.
Kyoto Protocol to the United Nations Framework Convention on Climate Change (1997)	Article 5, paragraph 1: Each Party included in Annex I shall have in place, no later than one year prior to the start of the first commitment period, a national system for the estimation of anthropogenic emissions by sources and removals by sinks of all greenhouse gases not controlled by the Montreal Protocol. Guidelines for such national systems, which shall incorporate the methodologies specified in paragraph 2 below, shall be decided upon by the Conference of the Parties serving as the meeting of the Parties to this Protocol at its first session. Article 7, paragraph 1: Each Party included in Annex I shall incorporate in its annual inventory of anthropogenic emissions by sources and removals by sinks of greenhouse gases not controlled by the Montreal Protocol, submitted in accordance with the relevant decisions of the Conference of the Parties, the necessary supplementary information for the purposes of ensuring compliance with Article 3, to be determined in accordance with paragraph 4 below. Article 10, letter d: Cooperate in scientific and technical research and promote the maintenance and the development of systematic observation systems and development of data archives to reduce uncertainties related to the climate system, the adverse impacts of climate change and the economic and social consequences of various response strategies, and promote the development and strengthening of endogenous capacities and capabilities to participate in international and intergovernmental efforts, programmes and networks on research and systematic observation, taking into account Article 5 of the Convention.
Minamata Convention on Mercury (2017)	Article 9, paragraph 6: Each Party shall establish, as soon as practicable and no later than five years after the date of entry into force of the Convention for it, and maintain thereafter, an inventory of releases from relevant sources. Article 18, paragraph 2: Each Party shall use existing mechanisms or give consideration to the development of mechanisms, such as pollutant release and transfer registers where applicable, for the collection and dissemination of information on estimates of its annual quantities of mercury and mercury compounds that are emitted, released or disposed of through human activities. Article 19, paragraph 1: Parties shall endeavour to cooperate to develop and improve, taking into account their respective circumstances and capabilities: (a) Inventories of use, consumption, and anthropogenic emissions to air and releases to water and land of mercury and mercury compounds; (b) Modelling and geographically representative monitoring of levels of mercury and mercury compounds in vulnerable populations and in environmental media, including biotic media such as fish, marine mammals, sea turtles and birds, as well as collaboration in the collection and exchange of relevant and appropriate samples; (c) Assessments of the impact of mercury and mercury compounds on human health and the environment, in addition to social, economic and cultural impacts, particularly in respect of vulnerable populations; (d) Harmonized methodologies for the activities undertaken under subparagraphs (a), (b) and (c); (e) Information on the environmental cycle, transport (including long-range transport and deposition), transformation and fate of mercury and mercury compounds in a range of ecosystems, taking appropriate account of the distinction between anthropogenic and natural emissions and releases of mercury and of remobilization of mercury from historic deposition; (f) Information on commerce and trade in mercury and mercury compounds and mercury-added products; and (g) Information and research on the technical and economic availability of mercury-free products and processes and on best available techniques and best environmental practices to reduce and monitor emissions and releases of mercury and mercury compounds.

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

These international commitments are connected to what has been called the "right to know", i.e., people's right to accurate information about the environmental risks they are exposed to in their work or where they live.

Among the most effective tools for guaranteeing everyone's right to information about hazardous materials and activities in their communities and to opportunities to participate in decision-making are inventories and registers of emissions, sources and transfer of contaminated substances, generally known as pollutant release and transfer registers (PRTRs).

A PRTR is a database containing information on releases of pollutants into the air, water and soil and data on the transfer of waste from major industries and other point and non-point sources. It is a digital tool, accessible to the public and using standardized data, in which information on the nature and quantity of pollutant releases can be consulted by waste type and geographical area, disaggregated to the industrial complex or economic sector level. These registers are important for effective application of Principle 10 of the 1992 Rio Declaration on Environment and Development because of their power to generate systematized information from both public and private sector bodies.

The creation and implementation of a public PRTR is also among the recommendations of OECD to its member countries and has been included in various free trade agreements (see box II.1) (OECD, 1996).

Cumulative experience since the 1986 creation of the world's first PRTR, the Toxics Release Inventory in the United States, shows that these systems have benefits for all sections of society.[10] For the public authorities, they are a way of more efficiently capturing the information needed to guide public policies and establish and update release rules and standards, while they also facilitate proper follow-up of compliance with current rules and identification of changes needed over time and contribute to fulfilment of the commitments adopted in international agreements. For the production sector, they allow environmental performance to be compared between similar industries, encouraging voluntary reduction of releases. For the general public, they are a source of information on possible health hazards and provide a basis for informed participation in decision-making.

An obligation to create pollutant release and transfer registers is laid down in the general environment laws of Chile[11] and Mexico.[12] Belize's Environmental Protection Act[13] provides for the creation of a Department of the Environment, one of whose functions is to maintain a register of all wastes, discharges, emissions, deposits or other sources of emission or substances which are of danger or potential danger to the environment. In Trinidad and Tobago, the Environmental Management Act authorizes the ministry to establish regulations on procedures for registering sources of pollution that may be released into the environment and on the characterization of such sources, as well as procedures and standards for periodic monitoring of pollutant releases.[14]

10 See Environmental Protection Agency (EPA), "Toxics Release Inventory (TRI) Program" [online] https://www.epa.gov/toxics-release-inventory-tri-program.

11 Environmental Framework Law No. 19300 of 1994 (reformed in 2010), article 70.P: "It will be especially the responsibility of the ministry to administer a pollutant release and transfer register that records and systematizes, by source or group of sources in the same establishment, the nature, rate and concentration of releases of pollutants covered by emissions rules and the nature, volume and destination of discharges of solid wastes as specified in the regulations".

12 Ecological Balance and Environmental Protection Act of 1998 (as reformed in 2001), article 109 bis: "The secretariat, states, Federal District and municipalities must introduce a pollutant release and transfer register covering air, water, soil and subsoil pollutants, materials and wastes falling within their purview, and such substances as may be determined by the relevant authority. Information in the register will be integrated with data and documents contained in authorizations, schedules, reports, licences, permits and concessions processed with the secretariat or competent authority of the government of the Federal District, States and, where applicable, municipalities".

13 See chapter 328, article 4.i.

14 See article 26.

Article 26 of Antigua and Barbuda's Environmental Protection and Management Act (No. 11 of 2015) states that the authority is to establish a register of sources of pollution containing data on quantities, conditions or concentrations as required to identify each pollutant, and that this is to be open to public inspection.

The United Nations Institute for Training and Research (UNITAR) has implemented a number of programmes to facilitate implementation of PRTRs in countries of the region such as Argentina, Belize, Chile, Costa Rica, Cuba, the Dominican Republic, Ecuador, Guatemala, Honduras, Jamaica, Mexico and Uruguay and the design of a regional PRTR for Central America. In Latin America and the Caribbean, UNITAR projects and the cooperation of various countries, including Spain, have been proving essential for the implementation of these registers.

As map III.1 shows, just two countries in the region, Chile and Mexico, have operational PRTRs issuing periodic reports. The two registers, whose first public reports date from 2007 and 2006, respectively, were prompted by commitments taken on under free trade agreements (see box II.1).

Map III.1
Latin America and the Caribbean: status of pollutant release and transfer registers (PRTRs), March 2017

Source: Economic Commission for Latin America and the Caribbean (ECLAC), Observatory on Principle 10 in Latin America and the Caribbean [online] http://observatoriop10.cepal.org.
Note: The boundaries and names shown on this map do not imply official endorsement or acceptance by the United Nations.

Peru's PRTR began to be implemented in 2015, when a number of training workshops were held with the industries prioritized for the initial phase, in which firms will report voluntarily. The ministerial resolution for the creation of the PRTR in Peru is still pending. Since 2015, a number of workshops and training sessions on implementation of this register in the country have also been held for civil servants and the general public. The PRTR is one of the commitments accepted by Peru as part of its OECD accession process.

The establishment of a PRTR in accordance with international good practice, with information available to the public, is also one of the recommendations of Colombia's environmental performance review, carried out in 2014 by OECD and ECLAC (ECLAC/OECD, 2014). This recommendation was incorporated into the country's National Development Plan 2014-2018.

As part of the commitments stemming from the Central America-Dominican Republic-United States Free Trade Agreement, Costa Rica, the Dominican Republic, El Salvador, Guatemala, Honduras and Nicaragua have initiated actions for the design of national registers and are working on the design and implementation of a regional PRTR. With technical support from the Central American Commission on Environment and Development (CACED) and UNITAR, these countries have already conducted assessments of existing infrastructure for implementing PRTRs and are at different stages of the initiation process.

Of the aforementioned countries, Honduras is furthest advanced with implementation of its PRTR. During the 2012-2013 biennium, the country implemented a project to design the core characteristics of the PRTR and conducted a pilot test, the 2011, 2012 and 2013 reports on which are available online.[15] Ministerial agreement No. 1070-2014, published in the official journal on 15 April 2015, approved the regulations for the PRTR, stipulating that establishments required to report must submit their first annual report in 2017. To prepare for the process, industries were invited to make a voluntary report to the PRTR in 2015. Guatemala has also made progress in designing the core characteristics of its PRTR and conducted a pilot study in 2012.

In parallel, albeit without yet being fully engaged in the Central American regional PRTR project, Belize and Panama also began to design national systems in 2010 with the support of CACED, the Quick Start Programme Trust Fund of the Strategic Approach to International Chemicals Management (SAICM) and UNITAR.

In Jamaica, work is under way to construct an online PRTR with support from the National Environment and Planning Agency. In Ecuador, a pilot study was carried out in 2011 and work has been under way since 2012 on the design, development and implementation of the PRTR using the Unified Environmental Information System (SUIA) platform of the Ministry of the Environment.

In Brazil, policy instruction No. 31 of December 2009 introduced the requirement for a PRTR in the annual report of the Brazilian Environment and Renewable Resources Institute (IBAMA), which is attached to the Ministry of the Environment. Since then, the country has begun to implement a number of measures for its gradual implementation.[16] Table III.4 summarizes the main characteristics of PRTRs in Brazil, Chile, Honduras, Mexico and Peru.

[15] See Secretariat of Energy, Natural Resources, Environment and Mines (MiAmbiente), "Información pública" [online] http://www.retchn.org/reportes.html.

[16] See Ministry of the Environment, "Registro de Emissões e Transferência de Poluente" [online] http://www.mma.gov.br/cidades-sustentaveis/residuos-perigosos/registro-de-emissoes-e-transferencia-de-poluente.

Table III.4
Latin America and the Caribbean (5 countries): situation and characteristics of pollutant release and transfer registers (PRTRs)

Country	Agency responsible	Year of implementation	Chemicals reported	Release types	Data presentation	Data verification	First report published	First compulsory report published	Date regulations or PRTR issued
Brazil	Brazilian Environment and Renewable Resources Institute (IBAMA), Ministry of the Environment	2011	194 air, water and soil pollutants, plus transfers	Point and non-point source emissions	Data presented by location of declarants, who can be searched for by: (i) river basin, (ii) region, (iii) state and (iv) city	Any declaration submitted to the Brazilian PRTR system must specify the names of legal representatives and information subjected to internal and external audit. There is provision for penalties for failure to update the Federal Technical Register of Potentially Polluting and Environmental Resource-Depleting Activities, which records pollutant-producing activities (policy instructions No. 6 of 2013, No. 18 of 2014 and No. 1 of 2015)	No information	No information	2009
Chile	Ministry of the Environment	2005	120 substances in water, air and soil, and transfers	Point source emissions (fixed sources) and non-point source emissions: domestic firewood, vehicular transport, forest fires and controlled agricultural burning	Data disaggregated by region and commune and georeferenced since 2014	The head of the establishment is responsible for the accuracy of the information and has an obligation not to falsify or deliberately omit data Infractions punished by the Superintendency for the Environment Act No. 20417 (art. 35.m) and Penal Code (art. 201)	2007	2014 (via the one-stop shop system as provided in the regulations)	2013
Honduras	Secretariat of Energy, Natural Resources, Environment and Mines (MiAmbiente)	2015	114 substances and air, water and soil pollutants and hazardous waste, plus persistent organic pollutants, greenhouse gases and substances that deplete the ozone layer	Point sources	Data disaggregated by department and municipality	Establishments are responsible for the quality of the information provided, using the best information available When the head of the establishment required to submit reports becomes aware that the format has not been properly entered, he or she must make the necessary corrections to the errors or supply the missing data within three working days of the information being entered (Regulations of the Pollutant Release and Transfer Register, chapter VI: Infractions and penalties)	2012	2017	2015
Mexico	Secretariat of the Environment and Natural Resources (SEMARNAT)	1994	104 water, air, soil and subsoil pollutants and transfers in water and wastes	On-site emissions into the air, water and soil; off-site transfers for disposal, recycling, re-use, energy recovery, processing, coprocessing (as input in another production process) and release into sewers	Federal, state, municipal	The initiator is responsible for the accuracy of the information The Secretariat carries out inspection and oversight (Regulations of the Ecological Balance and Environmental Protection Act in respect of the Pollutant Release and Transfer Register, article 30)	1997 (federal report on paper)	2006 (2004 report) – annual report	2004 (reformed in 2014)
Peru	Ministry of the Environment	2015	132 chemicals, 12 physical, chemical and biological parameters and 18 categories of dangerous waste	Point sources	No information	No information	2016	No information	Under development

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

C. Challenges

Despite the evident progress made on access to environmental information, legislation to guarantee full exercise of this right has yet to be fully developed or has come up against implementation difficulties in many countries of Latin America and the Caribbean. Besides the establishment of legal frameworks recognizing and guaranteeing the right of access to public information, it is necessary to create and bring into operation independent oversight bodies with their own budgets and inspection powers to enforce this right, as Chile and Mexico have done. Thus, these bodies do not confine themselves to recognizing rights but enforce a positive, direct obligation of compliance with the relevant transparency and freedom of information laws. The recommendations and rulings of these bodies in the region are not always binding.

Redoubled efforts are needed to ensure maximum disclosure of environmental information and avoid treating it as exempt wherever possible, given that freedom of information is both a human right and in the public interest. The regime for exemptions must ensure that these are exceptional, limited and clearly defined, and restrictive interpretation criteria must prevail in their application.

The ability to produce, process and disseminate information on the state of the environment at the national level also needs to be improved if people are to play an informed part in environmental decision-making. Although the countries are making progress in establishing environmental information systems, the challenge is to keep registers operative, accessible and up to date, and above all to define a standard for the minimum information these systems should contain in the interests of increased access to environmental information and greater active participation by society in environmental management.

In addition, and given that expanding the supply of strategic environmental information does not in itself ensure that it will be used, there is also a need to build up demand for this information in the different sections of society so that advantage is taken of it. Education and capacity-building thus have a vital role to play in developing citizen demand for more and better information and participation. In this context, particular attention needs to be paid in the region to the establishment of expeditious procedures for accessing environmental information and of affirmative measures to provide access to vulnerable people and groups and to those who have traditionally been underrepresented politically, such as women, young people, indigenous peoples and Afro-descendants.

Of particular relevance here is the experience of Mexico, whose National Institute for Transparency, Access to Information and Protection of Personal Data (INAI) and National Institute of Indigenous Languages (INALI) signed a collaboration agreement in 2011 to give effect to the information access rights of the 7 million people in the country who speak indigenous languages, often monolingually. Costa Rica's Law regulating the Right of Petition (No. 9097 of 2013) provides for special consideration to be given to aboriginal or indigenous communities, and article 5 establishes that members of aboriginal or indigenous communities will be entitled to assistance from the Ombudsman's Office or the National Commission on Indigenous Affairs so that they can formulate their petitions in Spanish and receive a prompt reply.

In the past decade, countries such as Colombia, Guatemala, Mexico and Peru have also passed laws on the recognition, promotion and protection of native languages that incorporate provisions relating to the dissemination of information in these languages.[17]

The region also needs to increase the access of governments and society to privately held information that is vital for environmental decision-making. In this context, as already mentioned, the establishment and development of public pollutant release and transfer registers has proven a powerful tool for making systematized information from both public and private agents available to the public, with clear benefits for environmental management.

The countries can also benefit from different voluntary initiatives that help bring to light information held by private agents, such as the Global Reporting Initiative and the Extractive Industries Transparency Initiative (EITI), both mentioned earlier, and others such as the CDP (formerly the Carbon Disclosure Project),[18] which encourages firms and cities to disclose information on their environmental effects, providing decision-makers with the data they need to change market behaviour.

In Peru, for example, the owners of mine operating, benefit, general labour, transport and storage projects have an annual obligation to submit an annual public report on environmental sustainability containing information on the social and environmental performance of their business along the lines laid down by the competent environmental authority.[19] To enable them to comply with this obligation pending publication of the reporting guidelines, the authority recommended that the parameters set by the Global Reporting Initiative be taken as the standard.[20]

The countries have also begun to legislate and create incentives for the adoption of ecolabelling and other information mechanisms to express firms' commitment to sustainability and inform and educate consumers. The general environment acts of Costa Rica, El Salvador, Mexico, Peru and Trinidad and Tobago contain provision for regulating the environmental certification of processes or products.[21]

Likewise in Peru, the Consumer Protection and Defence Code (arts. 36 and 37) provides that the presence of genetically modified fats or other components must be indicated explicitly on food labelling. Colombia not only requires labelling of genetically modified organisms but has developed a system of ecolabelling that meets the requirements of ISO standard 14024. The Colombian Environmental Seal of Approval, introduced under resolution No. 1555 of 2005, is meant to guide consumer preferences towards more environmentally friendly products.

In the Southern Cone, the most widely used ecolabels are those identifying the energy efficiency of electrical appliances, forest management and office items such as ink cartridges (Claro and others, 2012).

Governments and civil society need greater access to the technological and environmental information tools available, the benefits of which include the distribution of information without cost to users and greater transparency in public management.

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17 See Colombia's Act No. 1381 of 2010, Guatemala's Decree No. 19 of 2003, Mexico's Linguistic Rights of Indigenous Peoples Act of 2015 and Peru's Act No. 29735 of 2011.

18 See CDP [online] https://www.cdp.net.

19 Supreme Decree No. 040-2014, art. 148.

20 See Ministry of Energy and Mines [online] www.minem.gob.pe.

21 Costa Rica: Organic Law on the Environment (No. 7554 of 1995), article 74; El Salvador: Decree No. 233, Environment Act (1998), article 38 and General Regulations of the Environment Act (Decree No. 17 of 2000), articles 57-59; Mexico: Ecological Balance and Environmental Protection Act (1988), article 38.V; Peru: General Environment Act (No. 28611 of 2005), article 80; Trinidad and Tobago: Environmental Management Act (No. 3 of 2000), article 34.

An important initiative in this context is the Open Government Partnership, which aspires to make government information available to the public on the premise that this contributes to transparency, accountability and greater civil society participation.[22] Other initiatives, such as the Eye on Earth information network,[23] which was singled out in the final document of the United Nations Conference on Sustainable Development,[24] enable environment-related information and technological advances to be shared.

A further challenge is to convey timely, accurate information to the public in the event of an imminent threat to health or the environment, whether due to human activities or natural causes, so that people can take measures to prevent or limit any damage. Although States have accepted obligations in this area under international human rights standards[25] and some countries such as Antigua and Barbuda, Colombia, Ecuador, Haiti, Panama, Peru, the Plurinational State of Bolivia and Saint Vincent and the Grenadines[26] have regulations in place, challenges remain in the region.[27]

22 See Open Government Partnership [online] http://www.opengovpartnership.org.

23 See Eye on Earth [online] http://eye-on-earth.net/.

24 "We recognize the importance of space-technology-based data, in situ monitoring and reliable geospatial information for sustainable development policymaking, programming and project operations. In this context, we note the relevance of global mapping and recognize the efforts in developing global environmental observing systems, including by the Eye on Earth Network and through the Global Earth Observation System of Systems. We recognize the need to support developing countries in their efforts to collect environmental data" (United Nations, 2012b).

25 See United Nations, "Report of the Special Rapporteur on the implications for human rights of the environmentally sound management and disposal of hazardous substances and wastes, Başkut Tuncak" (A/HRC/30/40), New York, 2015 [online] http://undocs.org/en/A/HRC/30/40.

26 Antigua and Barbuda: Disaster Management Act (No. 13 of 2002), article 3; Colombia: Act No. 1523 adopting the national disaster risk management policy and establishing the National Disaster Risk Management System and establishing other provisions (2012), article 3.15 and chapter IV; Ecuador: Environmental Management Act (No. 37 of 1999), article 29; Haiti: Decree on environmental management and regulation of citizens' conduct for sustainable development (2006), article 149; Panama: General Environment Act (No. 41 of 1998), article 53; Peru: Supreme Decree No. 002-2009 approving the Regulations on Transparency, Access to Public Environmental Information and Citizen Participation and Consultation in Environmental Matters (2009), article 4; Plurinational State of Bolivia: General Environmental Management Regulations (1992), article 21; Saint Vincent and the Grenadines: National Emergency and Disaster Management Act (2006), article 17.2.c.

27 In November 2015, after the catastrophic collapse of a tailings dam in the state of Minas Gerais (Brazil), the Special Rapporteur on human rights and the environment and the Special Rapporteur on the implications for human rights of the environmentally sound management and disposal of hazardous substances and wastes stated that it was unacceptable for it to have taken three weeks to obtain information on the toxic risks of the mining disaster. See Office of the United Nations High Commissioner for Human Rights (OHCHR), "Brazilian mine disaster: 'This is not the time for defensive posturing', UN rights experts", Geneva, 25 November 2015 [online] http://www.ohchr.org/en/NewsEvents/Pages/DisplayNews.aspx?NewsID=16803&LangID=E.

CHAPTER

IV

Public participation in decision-making on environmental matters in Latin America and the Caribbean

A. Progress in recent years

B. Participation in decision-making about projects and activities that have or may have an impact on the environment

C. Participation in the development of environmental standards, plans, programmes and policies

D. Direct and semi-direct democracy mechanisms used in environmental matters

E. Participation by indigenous peoples and Afrodescendants

F. Challenges

A. Progress in recent years

Twenty-five years on from the Earth Summit, most of the region's countries have included public participation provisions in their environmental legislation and in related thematic or sectoral laws (see box IV.1).

Box IV.1
Latin America and the Caribbean: public participation provisions in sectoral sustainable development-related laws and policies

In recent years, public participation provisions have gradually permeated not only general environmental laws in the region, but also sectoral laws and policies relating to the environmental sustainability of development.

The climate change laws passed in Brazil, Guatemala, Honduras and Mexico over the last decade have made specific provision for public participation.

- The guiding principles of the Law establishing the National Policy on Climate Change in Brazil (Act No. 12187 of 2009) include encouragement and support for participation by organized civil society in the development and execution of policies, actions, plans and programmes related to climate change.
- Participation is one of the principles of Guatemala's Framework Law on Climate Change (Decree No. 7-2013), meaning that there should be the fullest participation by citizens and organizations, including those of the country's different peoples, in the design of climate change-related plans, programmes and actions. It mandates the creation of the National Council on Climate Change as a regulatory body with public and private participation, including representatives of indigenous organizations, and with functions that include preparing the National Plan of Action for Climate Change Adaptation and Mitigation jointly with the Secretariat for Planning and Programming of the Office of the President (SEGEPLAN).
- The Climate Change Act of Honduras, adopted by Decree No. 297 of 2013, states that the preparation, creation and establishment of climate change prevention, adaptation and mitigation measures must comply with the principle of citizen participation in environmental conservation, protection and restoration activities. It also provides for the creation of two inter-institutional climate change committees involving organized civil society.
- Mexico's Climate Change Act of 2012 (updated in 2016) enjoins the promotion of shared societal participation and responsibility in the areas provided for by the Act. It also provides for citizen participation in the formulation of the nation's climate change policy, the national climate change strategy and programme, and the climate programmes of the different states. It additionally mandates the creation of a climate change council comprising members from the social, private and academic sectors, with functions to include fostering informed and responsible social participation through public consultations.

The forestry laws of Honduras, Mexico and Peru also include explicit provisions on public participation in forest management.

- The Forestry, Protected Areas and Wildlife Act of Honduras mandates the creation of forestry advisory councils and enjoins the full participation and integration of local authorities and organized groups in each community, with articles 25 to 28 setting out the functions of these councils.
- Mexico's Sustainable Forest Development Act of 2003 (amended in January 2017) includes a chapter on the right to information, social participation and consultation in forestry matters, stating that the federal executive branch will promote the participation of society in the planning, design, application and evaluation of forestry policy programmes and instruments.

Box IV.1 (concluded)

- The principles of Peru's Forestry and Wildlife Act (No. 29763 of 2011) include that of participation in forest management. According to the Act, this principle endows everyone with the right and duty to participate responsibly in decision-making on the content, application and follow-up of policies, management methods and measures relating to forest ecosystems and other wild plant ecosystems and their components adopted at each level of government. It aims to ensure effective participation by all interested parties, including indigenous and campesino communities, both individually and collectively.

Public participation has also been incorporated into the provisions of sectoral policies adopted in the region over recent years, with examples including Chile's energy policy and Uruguay's water policy.

Chile's Energy 2050 policy, adopted by Decree No. 148 of 2015, addresses the need to ensure that there are formal processes for early stage citizen participation that is both informed and symmetrical and really impacts national, regional and local policies, plans and projects.

In Uruguay, Act No. 18610 of 2009, which established the National Water Policy, contains a specific chapter on participation defining this as the democratic process whereby users and civil society engage as key actors in the planning, management and control of water resources, the environment and territory (art. 18) and stating that users and civil society are entitled to effective and genuine participation in the formulation, implementation and evaluation of any plans and policies established (art. 19).

Source: Economic Commission for Latin America and the Caribbean (ECLAC), Observatory on Principle 10 in Latin America and the Caribbean [online] https://observatoriop10.cepal.org/en.

People's right to participate in the nation's public life has been given constitutional status in several of the region's countries, while in most of them environmental legislation recognizes or promotes public participation in environmental management (see table IV.1). A right of public participation in environmental affairs is recognized by the constitutions of the Bolivarian Republic of Venezuela, Colombia and Ecuador. Additionally, countries such as Brazil, Chile, Colombia, Ecuador, Honduras and the Plurinational State of Bolivia have passed laws on public participation which, while not explicitly environment-related, recognize and guarantee citizens' right to participate in public affairs, including environmental ones.

The countries have also made progress in setting up semi-direct or direct democracy mechanisms, such as popular legislative initiatives, which can serve for environmental matters. Most have created formal, permanent consultation arrangements for environmental affairs in which representatives of different sections of society can give their views or make observations on plans, policies, standards or programmes proposed by the authority. Table IV.2 presents some examples in the region.

Table IV.1
Latin America and the Caribbean: legal frameworks guaranteeing the right of participation in public or environmental management

Country	Section of the constitution dealing with the right to participate in the country's public life or in environmental matters	Public participation law (year)	Legal recognition of the right to participate in environmental management or provision promoting participation in environmental management
Antigua and Barbuda	--	--	Environmental Protection and Management Act, No. 11 (2015), arts. 5.f, 7.2.r, 7.2.s, 21, 30, 41, 46.4, 48, 55 and 108
Argentina	--	--	Environment Act, No. 25675 (2002), arts. 2, 19, 20 and 21 Decree No. 1172 (2003)
Bahamas	--	--	Conservation and Protection of the Physical Landscape Act, No. 12 (1997), arts. 8 and 18
Barbados	--	--	Town and Country Planning Act, No. 14 (1968), arts. 8, 9 and 27
Belize	--	--	Environmental Protection Act, No. 22 (1992), art. 20 Environmental Impact Assessment Regulations, No. 107 (1995), arts. 18 and 20
Bolivia (Plurinational State of)	Arts. 26, 241 and 242	Social Participation and Oversight Act, No. 341 (2013)	Environment Act, No. 1333 (1992), arts. 78 and 92 and heading X General Environmental Management Regulations, heading VII
Brazil	Art. 1 (sole paragraph)	Decree instituting the National Social Participation Policy (PNPS) and the National Social Participation System (SNPS) and other measures, No. 8243 (2014)	National Environmental Policy Act, No. 6938 (1981), art. 2.X Act No. 9795 for environmental education, the establishment of the National Environmental Education Policy and other measures (1999), art. 5.IV
Chile	Art. 1	Partnerships and Citizen Participation in Public Management Act, No. 20500 (2011)	Environmental Framework Law, No. 19300 (1994), art. 4 Partnerships and Citizen Participation in Public Management Act, No. 20500 (2011), art. 69
Colombia	Arts. 40 and 79	Citizen Participation Mechanisms Act, No. 134 (1994) Law establishing provisions for the promotion and protection of the right to democratic participation, No. 1757 (2015)	Decree issuing the Consolidated Decree regulating the Environment and Sustainable Development Sector, No. 1076 (2015) Law creating the Ministry of the Environment, reorganizing public sector responsibilities for managing and conserving the environment and renewable natural resources, organizing the National Environmental System (SINA) and establishing other provisions, No. 99 (1993), art. 69 National Renewable Natural Resources and Environmental Protection Code, Decree No. 2811 (1974)
Costa Rica	Art. 9	--	Organic Law on the Environment, No. 7554 (1995), arts. 2, 6, 8 and 22
Cuba	--	--	Environment Act, No. 81 (1997), art. 9.c
Dominica	--	--	Physical Planning Act, No. 5 (2002), art. 10
Ecuador	Arts. 61.2, 95 and 102	Organic Law on Citizen Participation, No. 13 (2010)	Environmental Management Act, No. 37 (1999), arts. 9.m and 28 Organic Code on the Environment (2018), arts. 5.10, 8.4, 9.6, 18, 48 and 184[a]
El Salvador	--	--	Environment Act, Legislative Decree No. 233 (1998), arts. 8, 9, 10 and 11.d
Grenada	--	--	Physical Planning and Development Control Act, No. 25 (2002), arts. 6, 15, 16, 17 and 25
Guatemala	Art. 136 (participation in political activities)	--	Regulations on Environmental Assessment, Oversight and Follow-up, Government Order No. 431-2007
Guyana	Arts. 13, 25, 38.a and 149.c	--	Environmental Protection Act, No. 11 (1996), art. 4.b
Haiti	--	--jm	Decree on Environmental Management for Sustainable Development (2005), arts. 12, 58 and 69

Table IV.1 (concluded)

Country	Section of the constitution dealing with the right to participate in the country's public life or in environmental matters	Public participation law (year)	Legal recognition of the right to participate in environmental management or provision promoting participation in environmental management
Honduras	Art. 5	Citizen Participation Act, Decree No. 3 of 2006 Citizen Participation Mechanisms Act, Decree No. 190-2012	General Environment Act, No. 104 (1993), arts. 9.d and 102 General Regulations of the Environment Act, agreement No. 109-93, art. 10
Jamaica	--	--	Town and Country Planning Act, No. 42 (1957), arts. 5, 6 and 11
Mexico	Art. 26		General Act on Ecological Balance and on Protection of the Environment (1988) heading V, chapter I (among others) Climate Change Act (2012)
Nicaragua	Art. 50	--	Environment and Natural Resources Act, No. 217 (1996), art. 12
Panama	Art. 80 (right to participate in culture) Arts. 108 and 124 (indigenous peoples and campesino communities)	--	Environment Act, No. 41 (1998), art. 97
Paraguay	Arts. 65 and 117 (indigenous peoples)	--	--
Peru	Arts. 2.17 and 31	Citizen Participation and Oversight Rights Act, No. 26300 (1994)	Environment Act, No. 28611 (2005), art. III and chapter 4
Dominican Republic	Arts. 2 and 22		Environment and Natural Resources Act, No. 64-00 (2000), art. 6
Saint Kitts and Nevis	--		National Conservation and Environment Protection Act, No. 5 (1987), art. 35 Development Control and Planning Act, No. 14 of 2000, art. 4.g
Saint Vincent and the Grenadines	--	--	Town and Country Planning Act, No. 45 (1992), arts. 13, 16 and 17
Saint Lucia	--	--	Physical Planning and Development Act, No. 29 (2001), arts. 7, 12, 22, 23 and 34
Suriname	Arts. 4, 6, 46 and 52	--	--
Trinidad and Tobago			Environmental Management Act, No. 3 (2000), arts. 16.2 and 27
Uruguay	--	Decentralization and Citizen Participation Act, No. 18567	Environmental Protection Act, No. 17283 (2000), art. 6.d
Venezuela (Bolivarian Republic of)	Art. 62	--	Organic Law on the Environment (2006), art. 39 and chapter II

Source: Economic Commission for Latin America and the Caribbean (ECLAC), on the basis of the Observatory on Principle 10 in Latin America and the Caribbean [online] https://observatoriop10.cepal.org/en.

[a] Ecuador's Organic Code on the Environment will come into force 12 months from 12 April 2017, the date it was published in the official registry. The Environmental Management Act, No. 37 (1999) thus remains applicable during this legal hiatus, after which it will be repealed.

Table IV.2
Latin America and the Caribbean (8 countries): formal, permanent arrangements for consultation on environmental matters

Country	Formal authority and legal framework establishing it	Mission and goals
Brazil	National Council for the Environment (CONAMA) Established by the National Environmental Policy Act, No. 6938 (1981), which is regulated by Decree No. 99274 (1990)	CONAMA is a consultative and deliberative body in the National Environment System (SISNAMA), and its mission, given its democratic and widely representative character, is to reconcile the different sections of society as required. Federal, state and municipal agencies participate in CONAMA alongside representatives of business and civil society.
Chile	Advisory Committee of the Ministry of the Environment Established by the Environmental Framework Law (Act No. 19300), arts. 76 and 77	The Advisory Committee of the Ministry of the Environment shall have the task of dealing with inquiries from the Minister of the Environment and the Council of Ministers for Sustainability and issuing opinions on draft bills and supreme decrees establishing environmental quality standards, prevention and decontamination plans, special emissions regulations and emissions standards when these are brought to its attention. It may also pronounce in its official capacity on environmental issues of general interest and exercise all other functions entrusted to it by the Ministry and the Act.
Colombia	National Environmental Council and Steering Committees of the Regional Autonomous Corporations Established by Act No. 99 (1993) creating the Ministry of the Environment, reorganizing public sector responsibilities for managing and conserving the environment and renewable natural resources, organizing the National Environmental System (SINA) and establishing other provisions (arts. 13 and 26)	The National Environmental Council is responsible for intersectoral coordination in the public sector of policies, plans and programmes relating to the environment and renewable natural resources. Council recommendations are not binding and do not constitute official pronouncements or administrative acts of its members. The latter include representatives of indigenous and Afrodescendent communities, different trade associations and environmental non-government organizations (NGOs). The Steering Committees of the Regional Autonomous Corporations are the administrative organ of the highest regional environmental authority and their membership includes, among others, representatives of the national government, local agencies, indigenous and Afrodescendent communities, different trade associations and environmental NGOs.
Costa Rica	Regional Environmental Councils established by the Organic Law on the Environment, No. 7554 (1995), arts. 7 and 8 National Commission for the Management of Biodiversity (CONAGEBIO), established by the Biodiversity Act, No. 7788 (1988), art. 14	The Regional Environmental Councils, attached to the Ministry of the Environment and Energy, are among the highest deconcentrated regional authorities. With civil society participation, they exist to analyse, discuss, report and oversee environmental activities, programmes and projects. The functions of the Regional Environmental Councils include: (i) undertaking activities, programmes and projects to promote greater citizen involvement in the analysis and discussion of environmental policies affecting the region, and (ii) proposing activities, programmes and projects to foment sustainable development and conservation of the environment in the region. CONAGEBIO gives advice on biodiversity to the executive branch and autonomous institutions. These may consult the Commission before authorizing national or international agreements or establishing or ratifying actions or policies that affect the conservation and use of biodiversity. Some members of the Committee of the Whole of CONAGEBIO are representatives of the National Council of Rectors, the National Campesino Committee, the National Indigenous Committee, the Costa Rican Federation for the Conservation of the Environment and the Costa Rican Union of Private Sector Business Chambers and Associations (UCCAEP).
Ecuador	Sectoral Citizen Council and Local Advisory Councils created under the Organic Code on the Environment (2017), art. 18	The Organic Code on the Environment, which was adopted in 2017 and will come into force in April 2018, establishes two types of bodies to channel citizen participation in environmental management: the Sectoral Citizen Council and Local Advisory Councils. The members of these councils shall be representatives of civil society, communes, communities, peoples, nationalities and groups from the local district affected, as provided by law.
Guatemala	National Council on Climate Change, created under Decree No. 7, Framework Law for regulating the Reduction of Vulnerability, Compulsory Adaptation to the Effects of Climate Change and Mitigation of Greenhouse Gases (2013), art. 8	The members of the National Council on Climate Change are the Ministry of Environment and Natural Resources, the Ministry of Agriculture, Cattle and Food, the Ministry of Energy and Mines, the Ministry of Communications, Infrastructure and Housing, the National Coordinating Committee for Disaster Reduction (CONRED), the Coordinating Committee for Agricultural, Commercial, Industrial and Financial Associations (CACIF), the National Association of Municipalities (ANAM) and environmental organizations. Council functions include regulation, supervision of the execution of actions and conflict resolution to follow up the implementation of actions deriving from this law, including national climate change policy, the climate change fund, mitigation (emissions reduction) strategies, plans and programmes and adaptation to the effects of climate change.
Jamaica	Local Forest Management Committees Created under the Forest Act (1996), art. 12	Committees must have at least two members with local knowledge, and their functions include: monitoring the condition of natural resources in the relevant forest reserve, holding discussions and public meetings and proposing incentives for conservation practices in the area in which the relevant forest reserve is located.
Mexico	National Advisory Council for Sustainable Development Created by virtue of the General Act on Ecological Balance and on Protection of the Environment (1988) Climate Change Council Created by virtue of the Climate Change Act (2012), chapter III, art. 51 (Climate Change Council)	The National Advisory Council for Sustainable Development is a space for the interaction of different representatives of society concerned to analyse how the federal government carries out different activities to steward and protect the environment. The Climate Change Council is the permanent advisory body of the Intersecretarial Climate Change Commission (CICC), with at least 15 members from the social, private and academic sectors (balance between sectors and interests must be ensured).

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

One factor that enables participation, and is particularly important when it comes to the governance of natural resources, is legal recognition, at the highest level, of the rights of peaceful assembly and association. The former United Nations Special Rapporteur on the rights to freedom of peaceful assembly and of association, Maina Kiai, argued in his 2015 report that these rights play an essential role in the creation of spaces and opportunities for real and effective participation in decision-making by civil society across the whole spectrum of natural resource-exploiting activities. He also argued that these rights can facilitate constructive dialogue, which is particularly important in this sector, given the common interests and the sometimes contradictory priorities involved in the exploitation of natural resources (ECLAC/OHCHR, 2016, pp. 201-202). It should be noted that the constitutions of most Latin American and Caribbean countries explicitly recognize the rights of peaceful assembly and association.[1]

B. Participation in decision-making about projects and activities that have or may have an impact on the environment

Alongside Principle 10 of the 1992 Rio Declaration on Environment and Development, the countries approved Principle 17, which states that "environmental impact assessment, as a national instrument, shall be undertaken for proposed activities that are likely to have a significant adverse impact on the environment and are subject to a decision of a competent national authority", and Principle 15, which states that "in order to protect the environment, the precautionary approach shall be widely applied by States according to their capabilities. Where there are threats of serious or irreversible damage, lack of full scientific certainty shall not be used as a reason for postponing cost-effective measures to prevent environmental degradation".

The Rio Declaration on Environment and Development thus gave a significant boost to an environmental management tool that, while not flawless, has proven useful for preventing the harm caused by human activities to the environment. Consistently with Principle 10 of the Declaration and with the democratic processes under way in a number of the region's countries, the development of these instruments included arrangements for public participation at various stages. Thus, in most countries of Latin America and the Caribbean there is now an obligation to assess the environmental effects of particular projects, including formal arrangements for public information or participation. Table IV.3 lists the projects must commonly required to undergo compulsory environmental impact assessment in the region's countries.

Table IV.4 shows the arrangements for publicization and participation provided for in laws dealing with project environmental impact assessments in the 33 countries of the region. As can be seen, environmental impact assessments have been widely adopted in Latin America and the Caribbean as a preventive environmental management instrument. Most of the laws regulating environmental impact assessments in the region incorporate provisions relating to information access and participation, even

[1] See, for example, the constitutions of Antigua and Barbuda (1981, art. 13), Belize (1981, arts. 3 and 13), Brazil (1988, art. 5), Jamaica (1962, art. 13), Mexico (1917, art. 9), the Plurinational State of Bolivia (2008, art. 21), Saint Vincent and the Grenadines (1979, arts. 1 and 11) and Trinidad and Tobago (1976, art. 4).

though application of these sometimes depends on project size or the potential impact on the environment. On occasion, this has led to actions before national courts with a view to achieving a broader understanding of the right to participate in environmental affairs, and important jurisprudence on the subject has been generated in the region as a result.[2] Particularly noteworthy in this context is the doctrine of legitimate expectation in the Caribbean subregion, something that applies even in cases where there is no explicit legal obligation (see box IV.2).

Table IV.3
Latin America and the Caribbean (22 countries): main activities required by national laws to undergo environmental impact assessment

Types of projects
Mining
Electrical power stations and transmission infrastructure, nuclear plants
Agroindustry, slaughterhouses, breeding facilities
Air, land and sea terminals
Environmental sanitation projects and landfills
Projects that affect ecosystems or have considerable effects on the environment or human health
Projects involving the production, storage, transport or disposal of hazardous toxic substances or the like
Tourism and urban development projects
Forestry projects
Projects involving construction of chemical facilities or the application of chemicals
Railway, motorway and highway projects
Oil and gas pipelines
Construction of dams, reservoirs and dykes
Hydrocarbon exploration or drilling projects
Industrial iron and steel production
Biotechnology projects or industries or those involving genetic manipulation or the production of genetically modified organisms
Projects that affect national parks or protected areas
Fisheries and aquaculture projects

Source: Economic Commission for Latin America and the Caribbean, on the basis of the legislation of Argentina, Belize, the Bolivarian Republic of Venezuela, Brazil, Chile, Colombia, Costa Rica, Cuba, Dominica, the Dominican Republic, Ecuador, El Salvador, Guatemala, Guyana, Honduras, Mexico, Nicaragua, Panama, Paraguay, Peru, the Plurinational State of Bolivia and Uruguay.

[2] See, for example, Economic Commission for Latin America and the Caribbean (ECLAC), "Sentencia de la Corte Suprema de Chile (EXP. No. 55.203-2016)" [online] https://observatoriop10.cepal.org/es/jurisprudencia/sentencia-la-corte-suprema-chile-exp-no-55203-2016.

Table IV.4
Latin America and the Caribbean: participation and publicization arrangements for project environmental impact assessments

	Legal instruments (environmental impact study, environmental impact assessment, environmental impact declaration, environmental impact statement, etc.)	Public participation arrangements	Publicization of information on the assessment process and opportunities to participate	Obligations of the authority in respect of observations by the public
Antigua and Barbuda Environmental Protection and Management Act, No. 11 (2015) Physical Planning Act (2003)	The Physical Planning Act provides that the Minister may adopt regulations to determine the procedures for environmental impact assessment and the form of environmental impact statements (art. 81.2.g). It also provides that an environmental impact assessment shall be carried out for the projects and activities listed in the Act. Furthermore, after consultation with the Chief Environment Officer, the Development Control Authority may require an environmental impact assessment if the project or activity is likely to have significant effects on the environment (art. 23.1-2). If the Minister declares that an area is to be an environmental protection area, he or she may also order an environmental impact assessment to be carried out with respect to any proposal for an activity, enterprise or development (art. 54.3.f). The Director of the Department of Environment may require a government agency to carry out an environmental impact assessment if it appears that a policy, plan or programme or alteration thereto by a ministry, department of government or statutory body may have a significant negative impact on the environment (Environmental Protection and Management Act, art. 38). The Minister may also require an environmental impact assessment for particular activities such as the import or sale of foreign organisms (art. 60.8).	The Environmental Protection and Management Act stipulates that environmental protection shall be based on public participation and transparent decision-making regarding environmental protection (art. 4) and provides that the Ministry and Department of Environment are to encourage and facilitate the participation of all persons, non-governmental organizations (NGOs) and local communities in matters pertaining to environmental management (arts. 5.f and 7.r). The Development Control Authority may consult with or obtain advice from other authorities, persons or bodies of persons as it thinks fit, in order to attain its objectives (Physical Planning Act, art. 5.4). The Town and Country Planner may invite comments and statements from the public if an application is for a project or activity of the type mentioned in art. 22.2.	Physical Planning Act (art. 22.1): in the case of an application for a project or activity that is of the type mentioned in art. 22.2 or designated by the Minister as likely to derogate from the amenities of the public, or of adjacent or nearby properties, the Town and Country Planner shall require the applicant to publish details of the application. If the application is for a project or activity of a type mentioned in the Physical Planning Act (art. 22.2), the Town and Country Planner may publish an advertisement and place a copy of this at the site the application relates to, and invite observations and oral or written comments. If the Tribunal decides that a public inquiry is to be carried out, a notice thereto shall be published in the Gazette (art. 69).	The Development Control Authority must take into account any representations made by a person with regard to the application or the probable effect of the proposed development, if they appear relevant (Physical Planning Act, art. 25.2.a).
Argentina Environment Act, No. 25675 (2002)	Art. 11: any work or activity on Argentine territory that is likely to significantly harm the environment or any of its components or affect the quality of life of the population shall be subject to an environmental impact assessment procedure prior to implementation.	Federal law provides for public participation in environmental impact assessment procedures. The specific regulations are found in state-level legislation.	Regulated at the provincial level.	Federal law provides that observations shall not be binding, but if they run counter to the decision of the authority, the latter must make public the grounds for this decision.

Table IV.4 (continued)

	Legal instruments (environmental impact study, environmental impact assessment, environmental impact declaration, environmental impact statement, etc.)	Public participation arrangements	Publicization of information on the assessment process and opportunities to participate	Obligations of the authority in respect of observations by the public
Bahamas Conservation and Protection of the Physical Landscape Act, No. 12 (1997, last amended in 2000) Planning and Subdivision Act, No. 4 of 2010	Conservation and Protection of the Physical Landscape of the Bahamas Act, art. 7.2-3: the Act provides that the authority may require a report setting out possible effects for certain projects. Planning and Subdivision Act (art. 14.1): this states that an environmental impact statement needs to be prepared when a project or activity is likely to give rise to significant effects for the environment; if the proposed project is of national importance, is proposed for sensitive lands or for lands with natural importance; or if the project is significant in terms of size or complexity or may significantly affect the environment, among other things.	The Act provides that the authority may receive objections to the granting of a permit. The Minister may also establish procedures for public participation in the environmental impact statement process (Planning and Subdivision Act, art. 14.3.d). Any project requiring an environmental impact assessment under the Planning and Subdivision Act will also require the approval of the Town Planning Committee. The Committee shall hold public hearings to hear and decide on applications for development (art. 37.1).	The authority, if it deems necessary, may order the awarding of the permit to be advertised in at least two editions of a newspaper at intervals of no more than three days.	All objections made to the authority regarding a permit must be considered before the permit is granted.
Barbados Town and Country Planning Act (No. 14 of 1968) Coastal Zone Management Act (No. 39 of 1998)	The Chief Town Planner may request an environmental impact assessment when an application is presented. The Planner must request an environmental impact assessment where part or all of the development or use of land is proposed to occur in the coastal zone management area (Town and Country Planning Act, art. 17.1.1A). The coastal management plan may include standards for environmental impact assessment in the case of developments that might affect the conservation and management of coastal resources (Coastal Zone Management Act, art. 4.1.b).	Not specified.	Not specified.	Not specified.

Table IV.4 (continued)

	Legal instruments (environmental impact study, environmental impact assessment, environmental impact declaration, environmental impact statement, etc.)	Public participation arrangements	Publicization of information on the assessment process and opportunities to participate	Obligations of the authority in respect of observations by the public
Belize Environmental Protection Act, No. 22 (1992, last amended in 2009) Environmental Impact Assessment Regulations, No. 107 (1995, last amended in 2007) National Lands Act, No. 6 (1992, last amended in 2017)	The Environmental Protection Act provides that environmental impact assessments are to be carried out for projects, activities and programmes that may significantly affect the environment. The Environmental Impact Assessment Regulations describe instruments similar to environmental impact studies, called by different names and with different requirements depending on the scale of the project subject to evaluation. The Regulations also briefly describe projects or activities that always require an environmental impact assessment. Another annex lists the enterprises, activities and projects for which environmental impact assessment is left to the discretion of the authorities. Lastly, the Regulations list projects and activities for which an environmental impact assessment will never be necessary. A list of minimum requirements for inclusion in any environmental impact assessment is also provided. Other laws, such as the National Lands Act, oblige or allow the Minister to require an environmental impact assessment for certain activities (such as the leasing of national lands or the granting of mining licences).	Those project developers applying for an environmental impact assessment must consult the public and other interested agencies or organizations. The Regulations provide for public meetings or hearings to ascertain the concerns of the local community regarding the environmental effects of any proposed enterprise. The authority may also open a window for the reception of written comments at any time in the process. The Regulations lay down the factors that must be taken into account in deciding whether to require a public hearing (one is the degree of public interest in the proposal). Although this is not established in either the Act or the Regulations, the Manual on preparing an Environmental Impact Assessment requires a public participation plan to be included in the terms of reference.	The Regulations require the project developer to publish a notice about the project in the press, specifying where and when the process documents can be reviewed and what participation arrangements there are. The Regulations stipulate that the required public meetings held during the course of an environmental impact assessment must "provide information concerning the proposed undertaking to the people whose environment may be affected by the undertaking". The Regulations also require an applicant who has submitted an environmental impact assessment to publish in one or more newspapers circulating in Belize, as soon as may be, a notice giving information about the project and the environmental impact assessment.	The Regulations establish that the developer is to answer any questions and points raised. Comments have no binding force and there is no obligation to justify their rejection. According to the Regulations (art. 26.1.c), the Committee examining the environmental impact assessment must consider comments concerning those effects received from the public.
Bolivia (Plurinational State of) Environment Act, No. 1333 (1992) General Environmental Management Regulations (1995) Environmental Prevention and Control Regulations (1995, amended in 2013)	The Act provides that environmental impact assessment studies shall be carried out for projects, works and activities. Several categories of environmental impact studies appear in the Regulations as part of the process.	The Act establishes the right for people to participate in environmental management. According to the Regulations, citizen participation in particular decision-making processes relating to projects, works or activities is to take place through grass-roots territorial organizations and to be governed by the procedure laid down in the Environmental Prevention and Control Regulations.	The Regulations provide that a summary of the environmental impact assessment should be prepared in accessible language and made available to the public. The process documents must also be made available for consultation.	Observations made during public hearings are advisory and the authority is empowered to incorporate or reject them.
Brazil Act No. 6938 (1981, amended by Act No. 140/2011) Resolution No. 001 (1986) Resolution No. 237 (1997)	Federal law establishes environmental impact assessments as a national policy instrument, with regulations incorporating them as a federal instrument. These regulations are supplemented by state legislation.	Federal regulations provide for a period in which interested parties can formulate comments on the environmental impact assessment. There is also provision for a public hearing to be held if deemed necessary.	Regulated at the state level.	Regulated at the state level.

Table IV.4 (continued)

	Legal instruments (environmental impact study, environmental impact assessment, environmental impact declaration, environmental impact statement, etc.)	Public participation arrangements	Publicization of information on the assessment process and opportunities to participate	Obligations of the authority in respect of observations by the public
Chile Environmental Framework Law, No. 19300 (1994) Act No. 20417 (2010) Supreme Decree No. 40 (2013, last amended in 2014)	In the case of projects or activities likely to have an environmental impact, an environmental impact declaration (for lower-impact projects) or an environmental impact study must be submitted.	It is up to the authority to establish mechanisms for informed participation by the community in the evaluation of environmental impact studies and environmental impact statements, where appropriate. Any natural or legal person may formulate observations on an environmental impact study, provided they do so within a period of 60 days. In the case of environmental impact statements, the competent authority may decree that a citizen participation process lasting 20 days be conducted when environmental costs arise for local communities, provided this is requested by at least two citizen organizations with legal personalities or 10 natural persons who are directly affected. When a project directly affects indigenous peoples, the authority must design and implement a consultation process in good faith, with appropriate mechanisms.	Any natural or legal person may acquaint themselves with the content of a project and the documents accompanying it. The authority will order the interested party to publish at their own expense, in the official gazette and in a newspaper or periodical of the capital of the region concerned or one of national circulation, as the case may be, an extract (endorsed by the authority) of the environmental impact study presented. In the case of environmental impact statements, the competent authority will publish in the official gazette and in a periodical of regional or national circulation, as the case may be, on the first working day of each month, a list of projects or activities subject to environmental impact statements that have been submitted for processing in the month immediately preceding.	The competent agency will consider the observations as part of the evaluation process and must take them into account, giving reasoned responses to all of them in its ruling. These responses must be made available on the agency's website at least five days in advance of the project evaluation.
Colombia Act No. 99 (1993) Decree No. 1076 (2015)	The environmental impact study is the basic instrument for decision-making on projects, works or activities requiring an environmental licence.	The Act establishes the right of any person to participate in the process of issuing, altering or cancelling permits and licences. The regulations stipulate that community participation includes a duty to inform communities of the scope of the project, with emphasis on its effects and the management measures proposed. Prior consultation is compulsory for projects on the territories of indigenous and Afrodescendent communities. In addition, certain authorities, three non-profit organizations or 100 natural persons may request a public hearing. There are special regulations for public hearings (Decree No. 330 of 2007).	The competent authority will provide notification in the official gazette when the process begins and a ruling is made. In addition, anyone applying in writing for information on the decisions taken will be duly informed. There is also a right to apply for environmental information. When a public hearing is requested, the licence applicant will make the environmental impact study available to interested parties for perusal at least 20 days before it is held.	The regulations stipulate that contributions received during the environmental impact assessment process must be evaluated and incorporated into the environmental impact study, if this is deemed appropriate. Regarding any opinions, information and documents received during the public hearing, the stipulation is that an assessment must be made as to whether they are deemed relevant when decisions come to be taken by the competent authority.
Costa Rica Organic Law on the Environment, No. 7554 (1995) Executive Decree No. 31849 (2004) Executive Decree No. 37803 (2013)	The Law establishes an environmental impact assessment process for works, activities and projects. The regulations describe different categories of environmental impact studies as instruments in this process.	The Law requires the authorities to encourage active participation in decision-making. In addition, anyone is entitled to present observations to the authority at any point in the environmental impact assessment process. There is likewise provision for public hearings when called for by the authority.	The details of activities subjected to environmental impact assessment will be actively publicized. In addition, the dossiers of environmental impact studies and weighting criteria and percentages will be available for consultation.	Observations are to be included and evaluated in the final report.
Cuba Act No. 81 (1997) Resolution No. 77 (1999)	The Act provides for an environmental impact assessment process that includes environmental impact studies as an instrument for works and projects.	The Act establishes the principle of participation in environmental management. The regulations stipulate that citizens' interests must be taken into account, but do not provide for participation mechanisms.	The regulations provide for the creation of a record of the environmental impact assessment process.	Not specified.

Table IV.4 (continued)

	Legal instruments (environmental impact study, environmental impact assessment, environmental impact declaration, environmental impact statement, etc.)	Public participation arrangements	Publicization of information on the assessment process and opportunities to participate	Obligations of the authority in respect of observations by the public
Dominica Physical Planning Act, No. 5 (2002) Environmental impact assessment guidelines (2009)	Unless the authority determines otherwise, the applicant must submit an environmental impact assessment in respect of any application for development permission to which the Second Schedule of the Physical Planning Act applies (Physical Planning Act, art. 23.1). The authority or Chief Physical Planner also has discretionary powers to require the developer to submit an environmental impact assessment. The authority may require an environmental impact assessment of any development where it is of the opinion that significant environmental harm could result (arts. 20.1.b and 23.2) and will exercise discretionary powers on the basis of other characteristics of the proposal (art. 23).	If an environmental impact assessment is required, or the developer is required to publish or give notice of the development, the authority will invite comments and representations either in writing or orally (Physical Planning Act, art. 22.3.b). Following receipt of the application (and environmental impact assessment), the Chief Physical Planner may consult any public officer or other person (including members of the public and civil society) who appears able to provide information relevant to the application (art. 24.1). If the authority wishes to approve an application that runs counter to an established development plan, it must inform the public that a public inquiry will be held to review the application within 28 days of the date of notification.	If the application belongs to certain classes of development which the Minister may designate as likely to derogate from the amenities of the public or of adjacent or nearby properties, the Chief Physical Planner may require the applicant to publish details of the application at such times, in such places and in such manner as may be specified in the notice, or to give details of the application to such persons or authorities as may be specified in the notice (Physical Planning Act, art. 22). Notices shall be served in respect of any application: (i) for permission to alter a listed building or a building which is subject to a building preservation order; (ii) for permission to develop land in an environmental protection area; (iii) for which environmental impact assessment is required, among others (art. 22.2). For any application regarding which publication and notification are required of the applicant, the authority may publish a notice in a newspaper and affix a notice on the land to which the application relates (art. 22.3). The authority shall also publish a notice of the application (which may or may not require an environmental impact assessment) in the Gazette and another newspaper if the application is inconsistent in some material respect with an approved development plan but the authority nevertheless considers that permission should be granted. The notice should make it clear that the application departs from the plan (art. 27).	The authority also has the obligation to take into account any report, representation or comment made in relation to an activity or project requiring an environmental impact assessment (Physical Planning Act, art. 22.4). When a proposal runs counter to a development plan but the authority nevertheless considers that it should be approved, the authority must "take into account any report, representation or comment submitted to it . . ., including the findings of the public inquiry" (Physical Planning Act, art. 27, para. 1).
Dominican Republic Act No. 64 (2000) Resolution No. 02-2011 (updated in 2014)	The Act and its regulations establish the environmental impact assessment process and classify activities, works and projects into four categories (A, B, C and D) by their potential to impact the environment and natural resources. Those in category A require an environmental impact study, while those in category B require an environmental impact declaration.	The regulations provide for five public consultation instruments: project information or disclosure; analysis of interested parties; public meetings; observations on environmental studies; and public hearings. For category A and B projects, the developer must hold at least one public meeting in the area of influence of the project. The Ministry of the Environment and Natural Resources reserves the right to apply any of these instruments in the case of category C and D projects. The Ministry will also convene public hearings where it deems appropriate.	The Ministry will make the environmental study document available to interested parties and the general public at the Social Participation Department for a period of 15 working days so that the public can make its views known. Information on the public meetings must also be provided through publication in a local newspaper or in whatever media are appropriate for the study zone.	The comments and observations received in the public consultation process will form part of the information to be considered when the environmental authorization requested is decided upon and will be annexed to the technical review report.
Ecuador Environmental Management Act, No. 37 (1999) Unified Text of Secondary Environment Legislation, Executive Decree No. 3516 (2003, amended in 2015) Executive Decree No. 1040 (2008)	The Act establishes the environmental impact assessment process for works, projects or activities where there is provision for an environmental impact study.	Social participation is a compulsory part of the process for obtaining an environmental licence (required for projects, works or activities in categories II, III and IV). Participation mechanisms will be determined in the light of the project impact.	The competent authority must inform the population of activities or projects and of their possible socioenvironmental effects. Invitations to participate in social participation arrangements will be issued through one or more mass media outlets. These arrangements cannot be set in motion until the information relevant to each case has been made available to the public.	The results of the participation mechanisms are to be systematized and presented along with the environmental impact study for the authority to review.

Table IV.4 (continued)

	Legal instruments (environmental impact study, environmental impact assessment, environmental impact declaration, environmental impact statement, etc.)	Public participation arrangements	Publicization of information on the assessment process and opportunities to participate	Obligations of the authority in respect of observations by the public
El Salvador Environment Act, Decree No. 233 (1998) General Regulations of the Environment Act, Decree No. 17 (2000, amended in 2009)	The Act identifies particular activities, works and projects requiring an environmental impact study.	If the results of an environmental impact study reveal that the population's quality of life might be affected or that risks might arise for human and environmental health and well-being, the Ministry of the Environment and Natural Resources shall hold a public inquiry into the study in the municipality or municipalities where it is intended to carry out the activity, work or project.	Prior to approval, studies will be made available to the public at the principal's cost within 10 working days so that anyone believing they may be affected can express their views or make their observations known in writing. This will be announced in advance in national and other media.	The Act provides that the Ministry must take account of the opinions received in public consultations.
Grenada Physical Planning and Development Control Act, No. 25 (2002, amended in 2008) Waste Management Act, No. 16 (2001)	Applicants must complete an environmental impact assessment for any development listed in annex 2, unless the authority waives this requirement (Physical Planning and Development Control Act, art. 25.2). Otherwise, the authority may require an environmental impact assessment at its own discretion if the proposed development might have a significant impact on the environment (art. 25.1). The law also explicitly requires an environmental impact assessment before any waste management facility is set up (Waste Management Act, art. 11).	Public participation is not a requirement, but the Act states that the planning ministry must pass regulations favouring public participation in the environmental impact assessment process.	Not mentioned in the legislation.	Not mentioned in the legislation.
Guatemala Environmental Protection and Improvement Act, No. 68 (1986, amended in 1993) Regulations on Environmental Assessment, Oversight and Follow-up, Governmental Agreement No. 137 (2016)	The Act and Regulations stipulate different categories of environmental impact study for projects, works, industries and activities.	The proposer must develop mechanisms for public participation before, during and after the environmental evaluation, monitoring and follow-up process, as appropriate. The competent authority will draw up and issue the terms of reference and specific content for the implementation of the mechanisms referred to. Natural or legal persons with an interest may present their observations, or make known their objections, within 20 days running from the third day after publication of the edict (article 45 of the Regulations). Edicts (national or regional) relating to a single environmental instrument must be published on the same day. Objections presented before the deadline stipulated in the article will be notified to the proposer so that the proposer can improve the instrument and take the necessary technical or documentary steps to resolve any shortcomings.	The proposer must publish an edict in a national newspaper and in the largest-circulation regional newspaper in the area of direct influence where the project, work, industry or activity is located, with a view to providing notification that an environmental instrument will be presented to the Ministry of Environment and Natural Resources. The edict is to be published in Spanish and in the language predominating in the area where the project, work, industry or activity is located. When a project covers a number of municipalities, publication must be in Spanish and in the language predominating in each of them. The format for the edict will be established by the competent authority. All publications of the edict by the proposer will contain the same information. The competent authority must post on its website digital copies of the edicts presented. Public information must also be provided by radio.	In the final resolution of the environmental instrument, the competent authority shall rule on any observations, opinions and objections presented within 20 days of the public consultations by interested natural or legal persons, always provided they have a technical, scientific or legal rationale to support their opinion or judgement, taking notice of the results to determine the solution or procedures to be followed.

Table IV.4 (continued)

	Legal instruments (environmental impact study, environmental impact assessment, environmental impact declaration, environmental impact statement, etc.)	Public participation arrangements	Publicization of information on the assessment process and opportunities to participate	Obligations of the authority in respect of observations by the public
Guyana Environmental Protection Act, No. 11 (1996) Environmental Protection Regulations (2000)	The Act establishes an environmental impact assessment process with instruments similar to the environmental impact study for projects and activities listed in the fourth annex of the Act or those that may significantly affect the environment (Environmental Protection Act, art. 11.1). The Environmental Protection Agency may also require a public or governmental authority to present an environmental impact assessment if the adoption or alteration of a policy, programme or plan significantly affects the environment (art. 17.2).	Key functions of the Agency are to encourage public involvement in environmentally sustainable decision-making (Environmental Protection Act, art. 4.1.b) and facilitate the participation of communities that may be adversely affected by development activity, particularly indigenous communities (art. 68.1.z). The environmental impact assessment process allows the public to present for consideration its opinions on the implementation of a project. The Act also allows the public to present observations in writing to the Agency (for a period of 28 days after the project is notified) and air the questions and issues that need to be answered or considered in the environmental impact assessment (art. 11.7). When considering environmental impact assessments or environmental impact studies, the Environmental Assessment Board may hold public hearings to determine whether the environmental impact assessment should be accepted, amended or rejected (art. 18.2).	During the course of the environmental impact assessment, the developer shall provide members of the public, on request, with copies of the information obtained from it (Environmental Protection Act, art. 11.9.b). The full environmental impact assessment and environmental impact study are public documents that shall be made available to the public, upon request, for five years after the final decisions have been taken (art. 11.11). In addition, if there is doubt as to whether the proposed project will significantly affect the environment, the Agency shall publish, in at least one daily newspaper, its decision regarding the requirement for an environmental impact assessment, with reasons as to whether the project may or may not have significant effects (art. 11.2).	The comments and observations must be considered and answered in the documents of the environmental impact assessment process and in the establishment of the terms and scope of the environmental impact assessment and the environmental impact study itself.
Haiti Environment Decree (2006)	The law provides for the preparation of environmental impact studies as part of the environmental assessment of projects.	The law provides for public consultation as part of the environmental assessment.	Not specified.	Not specified.
Honduras Environment Act, No. 104 (1993) Regulations of the National Environmental Impact Assessment System, Executive Order No. 008 (2015)	The Act introduces environmental impact assessments, with the Regulations providing for a number of categories of environmental impact studies.	The authority will encourage public participation by civil society during the environmental assessment process, at all stages, for projects with a significant impact on the environment. The developer, in conformity with the terms of reference laid down by the authority, should involve the population living near the project area at the earliest possible stage in the environmental impact study preparation process. The authority may order a public hearing or forum to be held.	Information on the environmental impact assessment process for any project is public. Any natural or legal person may request information under current legislation. The developer must publish an environmental licensing application notice in a national newspaper. For Category 4 projects, notification in a local newspaper (if there is one) is also required, as are radio messages, publication of the completed results of the environmental impact study and the lodging of a printed copy with the municipality where the project is to be carried out. A sign must also be erected in the area where the project is to take place showing the name of the project, work or activity, its location and the telephone number and address of the developer so that the public can obtain further information. Projects, works or activities situated on land whose title is held by indigenous peoples or local communities must be properly socialized in these communities.	The authority will make available an environmental assessment information system that enables interested parties to obtain data on the cases dealt with, including everything relating to public participation.

Table IV.4 (continued)

	Legal instruments (environmental impact study, environmental impact assessment, environmental impact declaration, environmental impact statement, etc.)	Public participation arrangements	Publicization of information on the assessment process and opportunities to participate	Obligations of the authority in respect of observations by the public
Jamaica Natural Resources Conservation Authority Act, No. 9 (1991) Natural Resources Conservation (Permits and Licences) Regulations (2015) Guidelines for Conducting Environmental Impact Assessments (1997, revised in 2007) Guidelines for Public Presentations (2007)	By virtue of the provisions of the Act, the Natural Resources Conservation Authority may, subject to written notification, require the applicant for a permit to submit an environmental impact assessment when the Authority deems that the activities of the firm, construction or development are having or likely to have an adverse effect on the environment. The Act also empowers the Minister to describe or classify any enterprise, construction or development for which an environmental impact assessment is required (Natural Resources Conservation Authority Act, art. 38.1.b).	The Guidelines for Conducting Environmental Impact Assessments stipulate occasions for participation during the study scoping stage, allowing the public to obtain access to the draft terms of reference of the environmental impact study and make comments, and during the environmental impact study review stage. Depending on the nature of the project, the environmental impact assessment may be the subject of a public presentation or be published on the Authority website. Once the document is public, 30 days are usually allowed for the public to submit its comments in writing to the Authority. Interested parties, such as specific NGOs, are sometimes asked to form part of the Internal Review Committee to review an environmental impact assessment that has been submitted (Guidelines for Conducting Environmental Impact Assessments, p. 35).	Applicants must post two notices to the public: the first to inform the public that the National Environment and Planning Agency (NEPA) has requested an environmental impact assessment and how and where the public can access the terms of reference, and the second to inform the public that the environmental impact assessment has been submitted to NEPA, and where the public can access it. This second public notice may include information about when and where the public presentation of the environmental impact study will be convened. The public presentation should be conducted no less than 3 weeks after the environmental impact assessment has been made available to the public and no less than 3 weeks after the first notice announcing public presentation has been published (Guidelines for Conducting Environmental Impact Assessments, p. 15). The applicant must also make the environmental impact study available in public places such as libraries.	Not specified.
Mexico General Act on Ecological Balance and on Protection of the Environment (1988, last amended in 2017) Regulations of the General Act on Ecological Balance and on Protection of the Environment in relation to Environmental Impact Assessment (2000, updated in 2014)	The Act provides for an environmental impact assessment for particular works or activities likely to cause environmental imbalances, in which case an environmental impact statement, a preventive report or both must be submitted. In the case of high-risk activities, the environmental impact statement should include the relevant risk study.	The Secretariat of the Environment and Natural Resources may carry out a public inquiry at the request of anyone in the affected community. In the case of works or activities that may cause serious ecological imbalances or harm to public health or ecosystems, under the Regulations of the Act the Secretariat may hold a public briefing in coordination with local authorities. In addition, any interested party, within 20 days from the time the Secretariat makes the environmental impact statement available to the public, may propose the establishment of additional prevention and mitigation measures, in addition to any observations they consider relevant.	Environmental impact statements and preventive reports alike must be published in the authority's gazette and be made available for public consultation. In addition, the applicant must publish at their own cost an extract of the project of the work or activity in a large-circulation periodical in the federal state concerned within five days from the date the environmental impact statement is submitted to the Secretariat.	The Secretariat must include representations contributed by interested parties to the project dossier and detail the consultation process carried out and the results of any written representations in the ruling it issues.
Nicaragua Environment and Natural Resources Act, No. 217 (1996, reformed in 2008) Decree No. 76 (2006)	The Act and its regulations introduce environmental impact assessments for works, projects and activities likely to harm the environment or natural resources and provide for several categories of environmental impact study.	Participation is one of the guiding principles of the environmental assessment system, which makes provision for informed citizen involvement at all levels. The regulations state that the Ministry of Environment and Natural Resources (MARENA) is to draw up the special rules governing public inquiries in environmental assessment processes.	Not specified.	Not specified.

Table IV.4 (continued)

	Legal instruments (environmental impact study, environmental impact assessment, environmental impact declaration, environmental impact statement, etc.)	Public participation arrangements	Publicization of information on the assessment process and opportunities to participate	Obligations of the authority in respect of observations by the public
Panama Environment Act, No. 41 (1998, reformed in 2015) Executive Decree No.123 (2009) Executive Decree No. 155 (2011)	The Act introduces the environmental impact assessment process for activities, works and projects likely to give rise to environmental risk. The regulations provide for three categories of environmental impact study (I, II and III).	The developer of an activity, work or project is obliged to involve citizens at the earliest stages in the assessment process of the relevant environmental impact study. Depending on the category of environmental impact study, developers must implement and include one or more of the following mechanisms: briefings, surveys, interviews, formal consultations, citizen participation plans or a public forum. Recognition is also given to the right to formulate observations on environmental impact studies, for which there is a deadline of 8 or 10 working days, depending on the project category. Developers will be obliged to hold a public forum, at their own cost, during the assessment stage of Category III environmental impact studies, on a date to be coordinated with the Ministry of the Environment. The Ministry may order the holding of a public forum on Category II studies when the project, work or activity merits this, or when this is requested by the community or communities living within the area of influence of the project or by organized civil society.	The regulations recognize the right to information about the content of environmental impact studies and the documents submitted for the environmental assessment of projects. The developer must also publish an extract of the environmental impact study on two occasions in at least two of the communications media described in the regulations.	The ruling approving or rejecting the environmental impact study should include, among other things, considerations relating to the results of the citizen participation process undertaken during the course of the administrative procedure, taking account of the observations formulated by citizens and the community affected during the formal consultation process.
Paraguay Environmental Impact Assessment Act, No. 294 (1993, amended in 1994) Decree No. 13418 (2001) Decree No. 453 (2013)	The Environmental Impact Assessment Act describes the projects, works and activities that must be subjected to an environmental impact assessment, whether via an environmental impact study or a study on the disposal of liquid effluents, solid wastes, gaseous emissions and/or noise.	The regulations provide that the authority, following presentation of the environmental impact assessment or study on the disposal of liquid effluents, solid wastes, gaseous emissions and/or noise, may carry out consultations with the people, institutions and administrations that can be supposed to be affected by the implementation of the project. They also provide that for a period of 10 working days, or any extension thereof, anyone can individually or collectively submit written comments, representations or objections, with the reasons for these. The authority may call a public hearing if it deems this appropriate. This step will be compulsory if the projected work or activity might directly affect indigenous communities or if it is requested by local people or those likely to be directly affected.	The regulations provide that the authority will make a summary of the environmental impact study available to the public on its website, at its offices and anywhere else it deems appropriate for a period of 10 working days (20 days in the case of large projects), and will notify this through the press. When negative impacts are liable to produce cross-border effects, the administrative authority must notify the Ministry of Foreign Affairs.	Not specified.

Table IV.4 (continued)

	Legal instruments (environmental impact study, environmental impact assessment, environmental impact declaration, environmental impact statement, etc.)	Public participation arrangements	Publicization of information on the assessment process and opportunities to participate	Obligations of the authority in respect of observations by the public
Peru Environment Act, No. 28611 (2005) Act No. 27446 (2001, last amended in 2008) Supreme Decree No. 019-2009 Supreme Decree No. 002-2009 Ministerial Resolution No. 157-2011 Act No. 29968 (2012) Supreme Resolution No. 016-2015	The environmental impact assessment process is described in the Environment Act and governed by a special law and its regulations. Different categories of environmental impact study are provided for: environmental impact declarations, semi-detailed environmental impact studies and detailed environmental impact studies.	The Act specifies environmental impact assessment as a participatory process and guarantees formal and informal spaces of citizen participation. Developers must consult with the public while studies are in preparation. The responsible authority must conduct a formal inquiry for detailed and semi-detailed environmental impact studies. Public hearings are compulsory for detailed environmental impact studies and optional for semi-detailed ones. The State safeguards the rights of campesino and native communities recognized in the constitution and encourages them to participate.	Once a project classification application has begun to be processed, the competent authority must publicize it and seek to establish appropriate spaces and time limits for interested parties to apprise themselves of its content and make representations. Environmental impact studies must be publicly available and include an easily understandable executive summary. If the authority so requires, the executive summary may also be drafted in the language that predominates in the locality where the project is to be implemented.	Once the review of the environmental impact assessment has been completed, the competent authority must issue its ruling together with a report justifying it (this forms an integral part of the ruling and is of a public character). The report must include a summary of the technical opinions of other competent authorities and of the citizen participation process, among other things.
Saint Kitts and Nevis National Conservation and Environment Protection Act, No. 5 (1987) Development Control and Planning Act, No. 14 (2000) Nevis Development Control and Planning Ordinance (2005) Solid Waste Management Act, No. 11 (2009)	The National Conservation and Environment Protection Act stipulates environmental impact assessments for development activities in coastal areas, without providing further information. The Development Control and Planning Act details the activities requiring environmental impact assessments and their characteristics. The Solid Waste Management Act establishes that the Solid Waste Management Corporation is to draw up a list of activities for which an environmental impact assessment is required (art. 21). The Minister will work with the Conservation Commission to prepare the environmental impact assessment of any development activity on beaches that are Crown lands (National Conservation and Environment Protection Act, art. 25.c).	The Development Control and Planning Act is meant to facilitate processes whereby people participate in the development and planning of their communities. The authority may invite written comments to be sent to it for a period of 28 days from publication of the notice of the proposed work or activity. The Chief Physical Planner may also opt to consult anyone able to provide information relevant to consideration of the application by the authority (Development Control and Planning Act, art. 27.1).	The authority may ask the applicant to publish a prominent notice in the area where the work or activity is to be carried out in order to notify the community of the proposal and provide information about it. This type of notification is also necessary if the proposed project appears in art. 25.2 of the Development Control and Planning Act. The authority will also publish a notice of the application (which may or may not require an environmental impact assessment) in the *Gazette* and at least one large-circulation newspaper if the application is inconsistent in some material respect with an approved development plan, but nevertheless the authority considers that permission should be granted. The notice must inform the public that the application departs from the plan (Development Control and Planning Act, art. 30).	The authority must not take a decision on an application until all the comments received during the consultation phase have been considered.
Saint Lucia Physical Planning and Development Act, No. 29 (2001, revised in 2005) Waste Management Act, No. 8 (2004)	The Act states that the authority may require an environmental impact assessment for any application for development permission if the proposed activity may significantly affect the environment. In addition, and unless the Head of the Physical Planning and Development Division decides otherwise, an environmental impact assessment will be required for the activities listed in annex 4. The Act also establishes that the authority may require an environmental impact assessment for a waste management facility (Waste Management Act, art. 11.1). Some classes of development do not require permission, and thus do not require environmental impact evaluations either; these are listed in annex 3 of the Physical Planning and Development Act (art. 18).	The Act establishes that the Ministry, in consultation with the Head of the Physical Planning and Development Division, may adopt regulations providing for public participation and public scrutiny procedures in the environmental impact assessment process.	The Head of the Division will maintain a register containing information on any application for permission to carry out activities or works. The register will be kept in the office of the Ministry and anyone will be entitled to access and make copies of the information recorded in it upon payment of the prescribed fee.	Not specified.

Table IV.4 (continued)

	Legal instruments (environmental impact study, environmental impact assessment, environmental impact declaration, environmental impact statement, etc.)	Public participation arrangements	Publicization of information on the assessment process and opportunities to participate	Obligations of the authority in respect of observations by the public
Saint Vincent and the Grenadines Town and Country Planning Act, No. 45 (1992)	The Act provides that environmental impact assessments should be carried out for environmentally sensitive projects or activities. It also establishes that permission for development (and thence an environmental impact assessment) will not be required for certain specified projects and activities (art. 16.4).	As part of the environmental impact assessment for the granting of planning permission, the Council must take account of any observation made by any member of the public.	The Act stipulates that notice of application for planning permission shall be published in the Gazette giving the particulars of the application. The Physical Planning and Development Board must be given copies of this publication (art. 16.3).	The Act requires the Board to consider the environmental impact assessment and to take into account any observation made on the application by a member of the public before reaching a decision (art.17.2).
Suriname Environmental Assessment Guidelines (National Institute for Environment and Development in Suriname (NIMOS)) Manual on the environmental impact assessment process in Suriname (2009)	Although there is no legal framework for environmental impact assessments, the National Institute for Environment and Development in Suriname (NIMOS), which comes under the National Council for the Environment, has published environmental impact assessment guidelines. These guidelines establish that NIMOS must require an environmental impact assessment for certain categories of activities and projects and may require more information on developments of questionable impact before reaching a decision as to whether an environmental impact assessment is required. Projects for which an environmental impact assessment is usually required may be exempt if they contain certain characteristics.	The guidelines establish that, in general, public participation in environmental impact assessments is very important. If NIMOS decides after considering further information that no environmental impact assessment is needed, the public has 30 days from publication of this in the communications media to give its opinion (p. 7). The guidelines also establish that public inquiries may take place before a required environmental impact assessment is completed, so that members of the public can comment on matters they want addressed. Once the environmental impact assessment has been completed, the public may comment for between 30 and 90 days (depending on the complexity of the project) from when the invitation to submit written comments is issued. In addition, if there is sufficient public interest in the application and in the environmental impact assessment, NIMOS may ask the applicant to hold a public meeting. The applicant is responsible for holding these public meetings for interest groups. Meetings must be held at least 20 days before the comment period expires.	If NIMOS decides after considering further information that no environmental impact assessment is required, it will publish this decision in the media (Manual, p. 7). If NIMOS decides that an environmental impact assessment is required, the proposer will have 60 days to publish a notice of intent to undertake the project. This notice may be accompanied by an invitation to public consultation. Once the environmental impact assessment has been completed, the developer must send an executive summary of this to the persons potentially affected and publish a notice indicating that there is an environmental impact assessment declaration available for the general public. This declaration shall be published in the communications media at least 15 days before the meeting begins (p. 13).	The Manual has no legal force but establishes that the applicant must include results relevant to and valid for the public consultation exercise in the draft terms of reference (p. 9).
Trinidad and Tobago Environmental Management Act, No. 3 (2000) Certificate of Environmental Clearance Rules	The Act describes the activities requiring a Certificate of Environmental Clearance, which may necessitate an environmental impact assessment. Some types of development also require permission to be explicitly given under the Town and Country Planning Act. For these, the applicant must deal directly with the planning authority, which may or may not require an environmental impact assessment (Environmental Management Act, art. 38.1).	Any application requiring the preparation of an environmental impact assessment shall be subjected to public scrutiny. The authority shall receive comments in writing over no less than 30 days from the date of notification in the Gazette and may hold a public hearing to discuss the action proposed and receive verbal comments if it determines there to be enough public interest. It is also specified that the developer must carry out public consultations on the draft terms of reference of the environmental impact study and may, within a period of 28 calendar days, submit written notifications to the authority requesting changes in the terms of reference.	The authority shall publish a notice on the proposed activity in the Gazette and at least one general-circulation newspaper that shall include the length of the period for public comments and where these are to be sent. It must also establish and maintain an administrative dossier on the proposed action and make this dossier available to the public in one or more places.	The authority shall keep the administrative dossier available in public places for no less than 45 days following publication of the notice of the final decision in the Gazette, together with copies of the documents constituting the final action, a response to the comments of the public and identification of the basis for the final action. The authority must also consider the comments and representations of the public before granting environmental authorization (Environmental Management Act, art. 36.1). The Act likewise establishes that, if the authority fails to carry out the public scrutiny procedure, its decision may be appealed to a Commission on the grounds of lack of public participation (art. 30.1).

Table IV.4 (concluded)

	Legal instruments (environmental impact study, environmental impact assessment, environmental impact declaration, environmental impact statement, etc.)	Public participation arrangements	Publicization of information on the assessment process and opportunities to participate	Obligations of the authority in respect of observations by the public
Uruguay Environmental Protection Act, No. 17283 (2000) Environment Act, No. 16466 (1994) which protects the environment against any type of depredation, destruction or contamination Decree No. 349/2005	The Act and its regulations establish a prior environmental clearance procedure and detail those activities, constructions or works, public or private, that must be subjected to a sectoral or full environmental impact study, depending on the environmental impact expected.	The public hearing is one of the stages in the prior environmental clearance procedure under the Act. The regulations state that the authority will arrange to hold a public hearing for all projects classified as Category C and that it may do so in consideration of a project's cultural, social or environmental repercussions. In addition, the authority will open a period in which any interested party may formulate written appraisals of the project.	The authority shall make the summary environmental report publicly available in its offices so that any interested party can access it and formulate in writing such observations as they consider appropriate. To this end, it will issue the text of the notice that the interested party must publish in the Official Journal, in a national newspaper and in a newspaper of the locality closest to the site of the venture. The declaration period shall be 20 working days from the day immediately following the last publication.	Not specified.
Venezuela (Bolivarian Republic of) Organic Law on the Environment (2006) Decree No. 1257 (1996)	The law establishes an environmental impact assessment process that includes an environmental and sociocultural impact study for programmes and projects. The regulations detail the programmes and projects to be subjected to environmental impact evaluations.	The authority may order a public review and inquiry into environmental impact studies. If such processes are opened, the representations or comments shall be submitted in writing.	Developers shall notify the initiation of the environmental impact study in a local newspaper. In addition, environmental impact studies that have been approved shall remain available to the public at the authority's documentation centre.	Observations may be included in the study in full or in part. Requirements for justifying their rejection are not specified.

Source: Economic Commission for Latin America and the Caribbean (ECLAC), on the basis of R. Tiffer-Sotomayor and others, "Legal framework of environmental impact assessment in Latin America, 2015", World Bank, 2015 [online] http://conferences.iaia.org/2015/Final-Papers/Tiffer,%20R%20et%20al.%202015-Poster-%20LAC-%20EIA%20Legal%20Framework-final-I.pdf; Observatory on Principle 10 in Latin America and the Caribbean [online] https://observatoriop10.cepal.org/en.

Box IV.2
The concept of legitimate expectation in the jurisprudence of the Anglophone Caribbean

The common law that operates in most countries in the Anglo-Saxon tradition, based mainly on the development of case law, has seen the emergence of important concepts that have helped to clarify the scope and implications of access rights in environmental matters. One of the concepts of most importance in the countries of the Caribbean subregion is that of "legitimate expectation". Framed by the principles of natural justice and equity, the term has been defined as any expectation that, while not constituting a legally enforceable right, is based on a reasonable assumption that has standing in public law. This allows anyone to appeal a decision that deprives them of a well-founded and reasonable expectation of being treated in a particular way. The expectation rests on one of the following assumptions: (i) that the person will be consulted or that other appropriate procedures will be followed before a decision is taken, or (ii) that a substantive benefit will be granted or, if the person already enjoys this benefit, that it will be maintained or not substantively altered (Claim No. CV2013-04146, High Court of Justice of Trinidad and Tobago).

The doctrine of legitimate expectation has been upheld in numerous environmental cases in the Caribbean subregion. Thus, for example, in Claim No. HCV 5674/2010 (Jamaica Environment Trust versus the Natural Resources Conservation Authority and the National Environmental and Planning Agency), the Supreme Court of Judicature of Jamaica established that the environmental authority had infringed the legitimate expectation of an environmental non-governmental authority (NGO) and the general public of having access to all relevant information before certain construction and dredging projects were undertaken on the Palisadoes coast. An environmental impact assessment had originally been required, but after some alterations a new plan was presented that did not have to be subjected to such an assessment. The Court ruled that the new terms and conditions of the project also had to be made public.

Similarly, the High Court of Trinidad and Tobago ruled that while there was no legal obligation to carry out a process of public participation before authorizing the construction of a sports complex in the Orange Grove Savannah park, users and people directly affected by the project were entitled to be consulted, especially considering that the Ministry of Planning and Development had not fulfilled its obligation to update the development plan for the area, which provided for a compulsory public participation procedure. The Minister, in the Court's view, had an obligation to act fairly and equitably, meaning that the appellants should be consulted in an appropriate and significant way. The ruling included a reminder that the individuals and groups directly affected by a decision had a right to be informed of that decision and should have the opportunity to make comments and representations before it was adopted. See Claim No. CV2013-05227 (Ulric 'Buggy' Haynes Coaching School and 18 Ors. versus the Minister of Planning and Sustainable Development).

Source: Economic Commission for Latin America and the Caribbean (ECLAC), on the basis of W. Anderson, *Principles of Caribbean Environmental Law*, Washington, D.C., Environmental Law Institute (ELI), 2012.

As can be seen from table IV.4, participation in most countries involves the ability to access study dossiers (sometimes including a summary in plain language) and make representations, either orally or in writing. The holding of public hearings as part of environmental impact assessments is usually a prerogative of the authority and is decided on case by case.

Because of the technical character of the information in environmental impact studies, the time available for accessing a study and making representations is crucial for ensuring effective public participation. In only a few countries, such as Chile, Guatemala, Mexico, Panama, Paraguay, Saint Kitts and Nevis and Trinidad and Tobago, are the time limits for studying an environmental impact study dossier and making representations explicitly laid down by law. In these cases, time limits range from 8 to 60 days, depending on the project category.

It can also be seen that representations made during the environmental impact assessment process are not binding and that the authority is empowered to either incorporate or reject them. Some legal frameworks stipulate that representations received during the citizen participation process will form part of the information to be considered by the authority when it comes to approve or reject the environmental impact study, but how these representations are to be taken account of is not specified.

A crucial element highlighted by environmental impact assessment experts is the need for participation to be context-appropriate.[3] In order to reflect on this need, and in view of ongoing implementation of the provisions of the International Labour Organization (ILO) Indigenous and Tribal Peoples Convention, 1989 (No. 169), some countries have incorporated specific provisions into the legislation regulating environmental impact assessments so that when a project or activity directly affects indigenous peoples, the authority must design and implement a consultation process that includes appropriate mechanisms (see, for example, the cases of Chile,[4] Colombia[5] and Peru[6]). In Chile, the reform of the Environmental Impact Assessment System Regulations of 2012 also included an obligation to adapt citizen participation strategies to the social, economic, cultural and geographical characteristics of the population in the area of influence of the project being assessed.[7]

C. Participation in the development of environmental standards, plans, programmes and policies

As can be seen in table IV.5, some countries have created arrangements for public participation in the development of environmental quality and emissions standards. Nonetheless, and given the technical character of regulations, participation is generally confined to specific interest groups, notwithstanding recommendations to actively involve all relevant actors during the drafting of regulations and to design consultation processes to maximize the quality and effectiveness of the information obtained.[8]

3 See P. André and others, "Public participation: international best practice principles", *Special Publication series*, No. 4, International Association for Impact Assessment (IAIA) [online] https://www.iaia.org/uploads/pdf/SP4.pdf.

4 Chile: Act No. 19300, art. 4, "State agencies, in the exercise of their environmental competences and in the application of environmental management instruments, must seek to properly safeguard, develop and strengthen the identity, languages, institutions and social and cultural traditions of indigenous peoples, communities and individuals in accordance with the provisions of the law and international agreements ratified by Chile and currently in force".

5 Colombia: Act No. 99, art. 76, "The exploitation of natural resources must take place without impairing the cultural, social and economic integrity of traditional indigenous and black communities … and decisions on the subject must be taken after consultation with representatives of these communities".

6 Peru: Act No. 28611, art. 50, "Public agencies have the following obligations where citizen participation is concerned: … to abolish formal requirements and demands that hinder, limit or impede the effective participation of natural or legal persons in environmental management; to ensure that any natural or legal person can access citizen participation mechanisms without discrimination of any kind", among other things.

7 Art. 83 of the Environmental Impact Assessment System Regulations (Decree No. 40) enacted in October 2012.

8 See Organization for Economic Cooperation and Development (OECD), "Recommendation of the Council on Regulatory Policy and Governance", Paris, 2012 [online] https://www.oecd.org/governance/regulatory-policy/49990817.pdf.

Table IV.5
Latin America and the Caribbean (9 countries): public participation in the development of environmental standards

Country	Law	Article
Antigua and Barbuda	Environmental Protection and Management Act (No. 11 of 2015)	Art. 7. The Environment Department shall: (i) encourage and facilitate public participation in the development, implementation and oversight of environmental laws and policies and (ii) develop and implement mechanisms for public comment on draft laws and regulations, consistent with the provisions of the Act.
Chile	Environmental Framework Law (Act No. 19300 of 1994)	Art. 32. Regulations shall establish the procedure to be followed in issuing environmental quality standards, which shall include at least the following stages: technical and economic analysis, scientific studies, consultations with competent public and private sector agencies, analysis of representations made, and appropriate publicity. Any environmental quality standard will be reviewed by the Ministry of the Environment at least every five years, applying the procedure set out earlier.
Ecuador	Environmental Management Act (No. 37 of 1999)[a]	Art. 4. The rules, instructions, regulations and ordinances issued by State institutions in relation to the environment within their spheres of competence must have passed through the following stages, as appropriate: realization of technical studies on sectoral conditions, economic circumstances, community relations and institutional capacity, consultations with competent agencies and measures to inform citizens.
El Salvador	Environment Act (Legislative Decree No. 233 of 1998)	Art. 49. The Minister shall be responsible for supervising water availability and quality. Special regulations shall contain the technical standards for this, bearing in mind that one of the basic objectives is, with the participation of users, to carry out the necessary studies and issue the necessary guidelines to ensure the availability, quantity and quality of water for human consumption and other uses.
Jamaica	Town and Country Planning Act (No. 42 of 1957)	Art. 6. Orders for preservation of trees and woodlands: before regulations are prepared, notice shall be given to the owners and occupiers of the land affected by them and objections and representations with respect to the proposed regulation duly made in accordance with the regulations.
Mexico	General Act on Ecological Balance and on Protection of the Environment (1988)	Art. 20 bis. In formulating, issuing, implementing and evaluating general ecological land use plans, the Secretariat must encourage the participation of social and business groups and organizations, academic and research institutions and other interested persons.
Panama	Environment Act of the Republic of Panama (No. 41 of 1998)	Art. 17. The Ministry of the Environment shall direct the development of environmental quality standard-setting proposals, with the participation of the competent authorities and the organized community.
Saint Kitts and Nevis	National Conservation and Environment Protection Act (No. 5 of 1987)	Arts. 13.1, 25 and 35. Coastal management: The Minister, in consultation with the Conservation Commission (made up of representatives of civil society), shall be responsible for adopting the regulations necessary for coast conservation within the coastal zone. Forest management: The Minister, in consultation with the Conservation Commission (made up of representatives of civil society), shall draw up forest land use regulations. Conservation of river basins: The Minister, in consultation with the Conservation Commission (made up of representatives of civil society) and the Water Board, shall create the regulations to conserve and develop the nation's water resources.
Trinidad and Tobago	Environmental Management Act (No. 3 of 2000)	Art. 27. In drawing up regulations, the Minister is to: (i) present a draft set of regulations for public comment; (ii) take account of the public comments received and review the regulations as he or she deems fit; (iii) have the regulations published in the Gazette and subsequently presented before Parliament.

Source: Economic Commission for Latin America and the Caribbean (ECLAC), on the basis of Observatory on Principle 10 in Latin America and the Caribbean [online] https://observatoriop10.cepal.org/en.

[a] Ecuador's Organic Code on the Environment, which will come into force in 2018, also provides for public participation in the development of standards (see art. 8.4).

Public participation is less well developed in the sphere of policies, plans and strategies, being usually discretionary. Nonetheless, some countries such as Chile[9], Mexico[10] and Brazil[11] have introduced arrangements for public participation in the development of decontamination plans. Chile has also proactively begun a process of public participation and consultation on strategic environmental instruments for which there is no legal obligation to carry out such a process. This is the case with the National Action Plan on Climate Change 2017-2022, currently under development.[12] In Antigua and Barbuda, the 2015 Environmental Protection and Management Act created a Department of Environment whose responsibilities include developing a National Environmental Policy Framework which is to be presented to the public so that it can participate and make representations (article 19). Another provision is for the public to be consulted on any proposed amendments (article 21). The Act likewise provides for public participation in the declaration of critical river basins, important wetlands and protected areas, and establishes a procedure for public participation in policies and actions carried out by virtue of the Act. This procedure includes the publication of public notices in the Official Gazette and in a newspaper, the creation of a record with information on the proposed action and a minimum comment period of 30 days (article 108).

In Costa Rica, the Organic Law on the Environment (Act No. 7554) states that, where land use planning for sustainable development is concerned, consideration should be given to encouraging the active involvement of residents and organized society in the development and application of land use plans and regulatory plans in cities to achieve sustainable natural resource use. In Uruguay, the Land Use and Sustainable Development Act (No. 18308 of 2008) recognizes a universal right for people to participate in the development of land use instruments and identifies the instruments to be used to give effect to this.

Strategic environmental assessment is a tool that has opened up avenues for public participation in the development of policies, plans and programmes. This is a support instrument for incorporating the environmental dimension into the formulation of strategic decisions, which are usually identified with policies, plans or programmes (Jiliberto and Bonilla, 2009). Public participation is in fact a key aspect of strategic environmental assessment. Although it is still of recent application in the region, the countries have begun to introduce it as an environmental management tool at the national or subnational level (see table IV.6).

9 See Ministry of the Environment, "Planes de descontaminación atmosférica, estrategia 2014-2018", Santiago [online] http://portal.mma.gob.cl/planes-de-descontaminacion-atmosferica-estrategia-2014-2018/.

10 See Government of the state of Mexico, *Programa para mejorar la calidad del aire de la Zona Metropolitana del Valle de México 2011-2020*, Mexico City [online] http://respiramexico.org.mx/wp-content/uploads/2015/07/proaire2011-2020.pdf.

11 See Brazilian Institute of Environment and Renewable Natural Resources (IBAMA), *Programa de Controle da Poluição do Ar por Veículos Automotores*, Brasilia, 2011 [online] http://www.ibama.gov.br/phocadownload/veiculosautomotores/manual%20proconve%20promot_portugues.pdf.

12 See Ministry of the Environment, "Plan de Acción Nacional de Cambio Climático 2017-2022 (PANCC-II)", Santiago, 2017 [online] http://portal.mma.gob.cl/plan-de-accion-nacional-de-cambio-climatico-2017-2022-pancc-ii/.

Table IV.6
Latin America and the Caribbean (18 countries): examples of the use of strategic environmental assessment as an environmental management tool

Country	Legal instrument	Article
Antigua and Barbuda	Environmental Protection and Management Act No. 11 of 2015)	Art. 38. Strategic environmental assessment: when the Director considers that a policy, plan or programme or an amendment proposed by a ministry, a government department or a statutory agency might have a significant negative impact on the environment, he or she may require that agency to carry out a strategic environmental assessment.
Argentina	Minimum Budget Regime for the Preservation of Glaciers and the Periglacial Environment (No. 26639 of 2010)	Art. 7. Environmental impact assessment. All activities planned on glaciers and in the periglacial environment that are not prohibited shall be subject to environmental impact assessment and strategic environmental assessment appropriate to the scale of the intervention, in which arrangements for citizen participation must be put in place in accordance with articles 19, 20 and 21 of the Environment Act, No. 25675, prior to their authorization and implementation, in conformity with current laws.
Bolivia (Plurinational State of)	Regulations of the Environment Act (No. 1333 of 1992): General Regulations for Environmental Management	Art. 4. Strategic environmental impact assessment study: this is a study of the possible impact of plans and programmes. The very nature of plans and programmes means that a strategic environmental impact assessment study is less in-depth and technically detailed than an environmental impact assessment study for projects, works or activities; formally, though, their content is the same. A strategic environmental impact assessment study has the character of a sworn statement and may be approved or rejected by the competent environmental authority in accordance with the provisions of these regulations.
Chile	Environmental Framework Law (Act No. 19300 of 1994)	Art. 2. For all legal purposes, strategic environmental assessment shall mean the procedure carried out by the relevant sectoral ministry to incorporate environmental considerations of sustainable development into the formulation of policies and plans of a general regulatory character that have an impact on the environment or sustainability so that these considerations are integrated into the policy and plan concerned and any substantial amendments to it. Art. 7 bis. Policies and plans of a general regulatory character shall be subjected to strategic environmental assessment, as shall any substantial amendments to them, when the country's President, acting at the instigation of the Council of Ministers as indicated in article 71, considers that they will affect the environment or sustainability. In any event, regional land use plans, intercommunal regulatory plans, communal regulatory plans and sectional plans, regional urban development plans, zoning of the seaboard or maritime territory and integrated river basin management or any land use instruments that may replace or systematize these must in all cases be subjected to strategic environmental assessment. In this situation, the Ministry of Housing and Urban Affairs, the regional government or municipality or any other agency of the State administration, respectively, shall be responsible for the procedure and for approving the instrument. The development of policies and plans must include a design stage and an approval stage. At the design stage, the agency that formulates the policy or plan must consider the environmental goals and effects of the instruments, together with their sustainable development criteria. During this stage, other agencies of the State administration concerned with the matters covered by the policy or plan must be included, as must other instruments relating to these agencies, to ensure coordinated action by the public bodies involved in the projects affected by the policy or plan. In the case indicated in the following subsection, instruments relating to road capacity developed by the competent authority must in all cases be considered. At the approval stage, a draft policy or plan containing an environmental report must be prepared and submitted to the Ministry of the Environment for its observations before being sent out for public consultation by the responsible agency. Art. 7. A set of regulations will establish the procedure and time limits for carrying out this type of assessment.
Colombia	Law approving the National Development Plan 2003-2006: towards a community State (Act No. 812 of 2003)	Strategic environmental assessments will be carried out for critical production sectors, and efforts will be made to improve the efficiency of environmental licensing. Measures will be taken to prevent and control air and water pollution and dangerous wastes. Improvements will be made to cleaner production instruments and to the follow-up and assessment of sectoral environmental management, and emissions reduction projects will be prepared.[a]
Costa Rica	Executive Decree No. 31849 (2004), amended by Executive Decree No. 37803 (2013)	Art. 66. Strategic environmental assessment procedures and instruments. The National Environmental Technical Secretariat (SETENA) will use its manual of technical instruments for the environmental impact assessment process to lay down guidelines and basic procedures for the development and gradual deployment of a strategic environmental assessment system in the country as part of its responsibility as the authority for environmental impact assessment as conferred by the Organic Law on the Environment.
Dominican Republic	Environment and Natural Resources Act (No. 64)	Art. 16.27. Strategic environmental assessment. This is an instrument for the environmental assessment of public policies, activities and sectoral projects to ensure that the environmental variable is incorporated into the different areas of public administration. Art. 27. The instruments for managing the environment and natural resources are as follows: (vi) the strategic environmental impact assessment. Art. 38. With a view to preventing, controlling and mitigating possible impacts on the environment and natural resources from works, projects and activities, the environmental assessment process is established with the following instruments: (ii) the strategic environmental assessment.
El Salvador	Environment Act (Legislative Decree No. 233 of 1998)	Art. 5. For the purposes of the Act and its regulations, strategic environmental assessment means the environmental assessment of policies, plans, programmes, laws and legal standards. Art. 16. The environmental assessment process has the following instruments: (i) strategic environmental assessment. Art. 17. The policies, plans and programmes of the public administration are to be assessed for their environmental effects and the option with the smallest negative impact is to be chosen. They must also be analysed for consistency with the National Environment Policy. Each agency or institution shall carry out its own strategic environmental assessments. The Ministry shall issue guidelines for assessments, approve their recommendations and oversee implementation of these.

Table IV.6 (concluded)

Country	Legal instrument	Article
Guatemala	Environmental Protection and Improvement Act (Decree No. 68 of 1996) Regulations on Environmental Assessment, Oversight and Follow-up (Government Order 137 of 2016)	Art. 29. Strategic environmental assessment: an environmental impact assessment process whose characteristics and nature make it applicable to plans and programmes of national, binational or Central American scope and those conducted under multilateral agreements, as established in the regulations. Plans and programmes developed by both the public and private sectors, whether national or regional in scope, may be subject to strategic environmental assessment. Strategic environmental assessments of policies, plans and programmes must be prepared by the institutions promoting these, with advice from technical environmental service providers included in the register of environmental service providers of the Ministry of Environment and Natural Resources (MARN) and duly equipped for this work. In the case of government programmes and plans, whether they are sectoral or suprasectoral, strategic environmental assessments may be prepared by professionals from the environmental units of the different institutions meeting the technical requirements that MARN will establish.
Guyana	Environmental Protection Act (No. 11 of 1996)	Art. 17.2. Where any public authority adopts or alters any policy, programme or plan and such policy, programme, plan or alteration may significantly affect the environment, the agency shall require the public authority to carry out an environmental impact assessment of such policy, programme, plan or alteration.
Haiti	Decree on Environmental Management	Art. 2. In the Decree, strategic environmental assessment means consideration of the environmental consequences of policies, plans and programmes to ensure that the goals of the environmental programme are included in sectoral interventions. Art. 30. It is compulsory to carry out a strategic environmental assessment for the policy documents or sectoral programmes of an agency of the central public administration or local authorities in accordance with the guidelines proposed by the Ministry of the Environment and approved by the Council of Ministers. Art. 62. Environmental stewardship is, first and foremost, the responsibility of anyone using environmental resources. Strategic environmental assessment and environmental management plans are tools contributing to better environmental management.
Honduras	Regulations of the National Environmental Impact Assessment System (Executive Order No. 008-2015)	Chapter VIII. Other environmental assessment instruments. First section: strategic environmental assessment. Article 63: strategic environmental assessment is an environmental assessment process applied to strategic decisions, policies, plans and programmes relating to sectoral and suprasectoral development and land use, and to megaprojects classified as strategic for the country by the Secretariat of Energy, Natural Resources, Environment and Mines (MiAmbiente).
Jamaica	Guidelines for Conducting Environmental Impact Assessments (original 1997, revised in 2007), National Environment and Planning Agency (NEPA)	Recognizing the growing importance and use of strategic environmental assessments, the Executive Office (supported by the ENACT Programme and NEPA) has prepared a draft manual on the implementation of strategic environmental assessments. A strategic environmental assessment policy was also accepted by the Executive in 2005.
Mexico (Mexico City)	Environmental Law on Protection of the Earth in the Federal District (2000, reformed in 2015)	Art. 5. Strategic environmental assessment: procedure that includes all the technical reports and studies used to estimate the effects of a sectoral and institutional development plan or programme of wide scope on the environment, with a view to preventing, offsetting and mitigating these.
Nicaragua	Environment and Natural Resources Act, No. 217, incorporating reforms (2008)	Art. 5. Strategic environmental assessment. Environmental management instrument incorporating procedures for considering the environmental impacts of plans and programmes at the highest levels of the decision-making process, with a view to attaining sustainable development. Art. 26. Municipal and sectoral investment and development plans and programmes shall be required to conduct a strategic environmental assessment, for which the Ministry of the Environment and Natural Resources (MARENA) shall lay down the criteria, methodologies, requirements and administrative procedure to be followed. Art. 27. For land use and construction permits to be obtained for any type of horizontal and/or vertical works and infrastructure, it is compulsory to first obtain the relevant environmental permit, issued by MARENA in accordance with the provisions of the Strategic Assessment System.
Panama	Environment Act (No. 14 of 1998), reformed by Act No. 8 of 2015	Art. 5. The Ministry of Environment shall carry out strategic environmental assessments for policies, plans and programmes entailing potential strategic opportunities and risks for environmental conservation and sustainable use of natural resources.
	Executive Decree (No. 123 of 2009)	Art. 75. Public and private development plans, programmes and policies of national or regional scope shall be subjected to a strategic environmental assessment, following the procedure laid down in these regulations. The following actions form part of this: (a) Sectoral development plans, programmes and policies of a governmental nature and with social effects, included in the State national development plan. (b) Sectoral development plans, programmes and policies of national or regional scope, State-led and with private sector participation, planned over the medium and long term, and including areas such as energy, urban development, industry, mining, tourism, agroindustry, infrastructure and the like. (c) Land use plans, programmes and policies on a local, regional or national scale.
Peru	Legislative Decree No. 1078, amending the National Environmental Impact Assessment System Act (2008)	Art. 4. It is up to the applicant to apply a strategic environmental assessment in the case of proposals for sectoral, regional and local development policies, plans or programmes likely to have significant environmental implications. The strategic environmental assessment will lead to the issuing of an environmental report by the Ministry of the Environment (MINAM) that will guide decision-making as appropriate to prevent harm to the environment.
Uruguay	Land Use and Sustainable Development Act (No. 18308 of 2008)	Art. 47. Land use instruments must include a strategic environmental assessment approved by the National Department of the Environment of the Ministry of Housing, Land Use and Environment (MVOTMA) in the manner established by the regulations.

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

[a] Introduced in the Act approving the National Development Plan 2003-2006: towards a community State, but not yet regulated.

In Jamaica, strategic environmental assessments have been applied in a number of cases: (i) the Port Royal Heritage Tourism Project (the proposed development of a town in a renowned heritage area, with themed sections, and associated development for the cruise ship and tourism market); (ii) Highway 2000 (the proposed development of a cross-nation toll road covering over 240 km and traversing different types of terrain); (iii) Rose Hall Developments Ltd. (the proposed development of real estate for the tourism market, to include hotels, golf courses, condominiums and a conference centre).[13] In Chile, the Energy 2050 energy policy launched in 2015 provided for a strategic environmental assessment, this being an unprecedented exercise in the country's policymaking, and included a wide-ranging participation process.[14]

D. Direct and semi-direct democracy mechanisms used in environmental matters

There are a number of direct and semi-direct democracy mechanisms that can be used, and have been on occasion, as participation tools in environmental matters. One example are popular legislative initiatives, a feature of several countries in the region, with citizens having the right to present legislative proposals when supported by a given number of fellow citizens.[15]

Public consultations are a semi-direct democracy mechanism that exists in most of the region's countries and can be used in environmental matters. Public consultations, which may be binding or not, are a way for a national, regional or local authority, as the case may be, to seek to learn the views of the population on a matter of major importance. Although this participation mechanism is usually designed for political scenarios, a number of public consultations on the exploitation of natural resources have been proposed in Colombia in recent years, opening up a discussion on whether the outcome of consultations is binding or not (Muñoz, 2016).

Other forms of direct or semi-direct democracy are town hall meetings, assemblies and recalls. In Ecuador, the Organic Law on Citizen Participation of 2010 operationalizes the mechanisms that enable the right of participation to be exercised and provides, among other things, for local citizen participation assemblies, the Plurinational and Intercultural Citizen Assembly for Good Living, town hall meetings, recalls of elected officials and participatory budgeting (Barragán, 2017).

The countries are also innovating in these matters. In Ecuador, for example, the 2008 constitution introduces the concept of the empty chair in decentralized autonomous governments. This concept is regulated by article 77 of the Organic Law on Citizen Participation, which establishes that "the sessions of decentralized autonomous governments are public, and at them there will be an empty chair that will be occupied by a representative or a number of representatives of the citizenry, depending on the subjects to be dealt with, with a view to their participating in the debate and in decision-making … Any accredited person participating in debates and in decision-making shall have a right to speak and vote."

[13] See National and Environmental Planning Agency, *Guidelines for Conducting Environmental Impact Assessments*, 2007 [online] http://nepa.gov.jm/new/services_products/guidelines/docs/EIA-Guidelines-and-Public-presentation-2007.pdf.

[14] See Economic Commission for Latin America and the Caribbean (ECLAC), "Política energética de Chile Energía 2050" [online] http://observatoriop10.cepal.org/es/instrumentos/politica-energetica-chile-energia-2050.

[15] Countries with provision for popular legislative initiatives and the percentage or number of signatures stipulated by the constitution: Argentina (3%), Bolivarian Republic of Venezuela (0.1%), Brazil (1%), Colombia (5%), Costa Rica (5%), Cuba (10,000 signatures), Dominican Republic (2%), Ecuador (0.25%), Guatemala (5,000 signatures), Honduras (3,000 signatures), Mexico (0.13%), Nicaragua (50,000 signatures), Paraguay (2%), Peru (0.3%), Plurinational State of Bolivia (20%) and Uruguay (10%).

Building upon article 79 of the 1991 constitution, which establishes that everyone is entitled to a healthy environment and that communities have a legal right to participate in decisions that may affect this, Colombia's General Environmental Act of 1993 incorporates a novel citizen participation procedure: the mechanism of third party intervention in environmental administrative processes. Thus, article 69 of the Act establishes that any natural or legal person, public or private, can intervene, without having to demonstrate any legal interest, in administrative proceedings initiated to issue, alter or cancel permits or licences for activities that affect or may affect the environment, or to impose or revoke penalties for non-compliance with environmental standards and regulations (Muñoz, 2016, p. 12).

E. Participation by indigenous peoples and Afrodescendants

The region has also made progress with the integration and participation in political life of indigenous peoples and their communities, amounting in 2010 to 45 million people (ECLAC, 2014a). A number of countries have given recognition to indigenous peoples, in some cases at the constitutional level, and 15 countries of the region have ratified the International Labour Organization (ILO) Convention concerning Indigenous and Tribal Peoples in Independent Countries (No. 169), the first comprehensive international treaty to specify the rights of these peoples.[16]

Both the Convention and the United Nations Declaration on the Rights of Indigenous Peoples, adopted by the General Assembly in 2007, recognize the importance of striving to ensure that indigenous peoples participate more in the political life of States and that importance is given to their decisions in the management of their historical territories.

Convention 169 recognizes the collective rights of indigenous peoples for the first time, while the United Nations Declaration on the Rights of Indigenous Peoples recognizes their right to self-determination. Thus, the minimum standard of indigenous people's rights that States are required to uphold has five dimensions: the right to non-discrimination; the right to development and social well-being; the right to cultural integrity; the right to ownership, access, use and control of lands, territories and natural resources; and the right to political participation and free, prior and informed consent (ECLAC, 2014a).

With regard to free, prior and informed consent, the United Nations Declaration on the Rights of Indigenous Peoples affirms: "States consult and cooperate in good faith with the indigenous peoples concerned through their own representative institutions in order to obtain their free, prior and informed consent before adopting and implementing legislative or administrative measures that may affect them" (United Nations, 2007). It is through consultation, then, that States must reach agreements and decisions that guarantee the rights of indigenous peoples, seeking mutual understanding and consensus in decision-making (ECLAC, 2014a). Table IV.7 presents the legal frameworks developing Convention 169 and regulating prior consultation with indigenous peoples and their communities in certain countries of Latin America and the Caribbean. This is supplemented by the jurisprudence of national courts.[17]

[16] The 15 countries are: Argentina, the Bolivarian Republic of Venezuela, Brazil, Chile, Colombia, Costa Rica, Dominica, Ecuador, Guatemala, Honduras, Mexico, Nicaragua, Paraguay, Peru and the Plurinational State of Bolivia. See International Labour Organization (ILO), "Ratifications of C169 - Indigenous and Tribal Peoples Convention, 1989 (No. 169)" [online] http://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:11300:0::NO::P11300_INSTRUMENT_ID:312314.

[17] See, for example, the jurisprudence of the Constitutional Court of Colombia in its judgements C-169 of 2001, C-418 of 2002, C-891 of 2002, C-620 of 2003, T-382 of 2006, C-208 of 2007, C-030 of 2008, C-461 of 2008, C-750 of 2008, C-175 of 2009, C-615 of 2009, C-063 of 2010, C-608 of 2010 and C-702 of 2010, among others.

Table IV.7
Latin America and the Caribbean (15 countries): regulatory frameworks developing the Convention on Indigenous and Tribal Peoples, 1989 (No. 169) and governing prior consultation with indigenous communities

Country	Year Convention 169 ratified	National legal framework governing prior consultation
Argentina	2000	Act No. 24071 adopting International Labour Organization Convention 169 concerning Indigenous and Tribal Peoples in Independent Countries (1992) Decree No. 672/2016 of 11 May creating the Consultative and Participatory Council of Indigenous Peoples of the Argentine Republic
Bolivia (Plurinational State of)	1991	Act No. 1257 of 1991 adopting and ratifying International Labour Organization Convention 169 concerning Indigenous and Tribal Peoples in Independent Countries Act No. 3760 of 2007 enshrining the 46 articles of the United Nations Declaration on the Human Rights of Indigenous Peoples in national law Supreme Decree No. 29033 of 2007, Consultation and Participation Regulations for Hydrocarbon Activities Consultation of Indigenous Peoples in the Isiboro Sécure Indigenous Territory and National Park (TIPNIS) Act, No. 222 of 10 February 2012
Brazil	2002	Decree No. 5051 of 2004 enacting International Labour Organization Convention 169 concerning Indigenous and Tribal Peoples in Independent Countries
Chile	2008	Decree No. 236 of 2008 enacting International Labour Organization Convention 169 concerning Indigenous and Tribal Peoples in Independent Countries Decree No. 66 of 2014 adopting regulations governing the indigenous consultation procedure by virtue of articles 6.1.a and 6.2 of International Labour Organization Convention 169 and repealing the legal provisions indicated therein
Colombia	1991	Act No. 21 of 1991 adopting International Labour Organization Convention 169 concerning Indigenous and Tribal Peoples in Independent Countries Decree No. 1320 of 1998 regulating prior consultation with indigenous and black communities for the exploitation of natural resources within their territory Decree No. 2613 of 2013 adopting the Inter-institutional Coordination Protocol for Prior Consultation
Costa Rica	1993	Act No. 7316 of 1992 adopting International Labour Organization Convention 169 concerning Indigenous and Tribal Peoples in Independent Countries Executive Guideline No. 042 of 2016, Construction of the Indigenous Peoples Consultation Mechanism
Dominica	2002	Kalinago Territory Act (previously, Caribbean Reserve Act of 1978, amended in 2015)
Ecuador	1998	Legislative resolution adopting International Labour Organization Convention 169 concerning Indigenous and Tribal Peoples in Independent Countries Decree No. 1247 of 2012 prescribing the regulations for implementation of free, prior and informed consultation on the tendering and allocation of hydrocarbon areas and blocks Organic Law on Citizen Participation (No. 13 of 2010)
Guatemala	1996	Decree No. 9 of 1996 adopting International Labour Organization Convention 169 concerning Indigenous and Tribal Peoples in Independent Countries
Honduras	1995	Legislative Decree No. 26 of 1994 adopting International Labour Organization Convention 169 concerning Indigenous and Tribal Peoples in Independent Countries
Mexico	1990	Decree enacting International Labour Organization Convention 169 concerning Indigenous and Tribal Peoples in Independent Countries Protocol for implementation of consultations with indigenous peoples and communities in accordance with the standards of International Labour Organization Convention 169 concerning Indigenous and Tribal Peoples in Independent Countries, approved by the Consultative Council of the National Commission for the Development of Indigenous Peoples (CDI) National Electoral Institute (INE) protocol for consulting indigenous peoples and communities on electoral districting matters Protocol for carrying out free, prior and informed consultation on the implementation of a wind energy generating project in accordance with the standards of International Labour Organization Convention 169 concerning Indigenous and Tribal Peoples in Independent Countries
Nicaragua	2010	Decree No. 5934 of 2010 adopting International Labour Organization Convention 169 concerning Indigenous and Tribal Peoples in Independent Countries
Paraguay	1993	Act No. 234 of 1993 adopting International Labour Organization Convention 169 concerning Indigenous and Tribal Peoples in Independent Countries
Peru	1994	Legislative Resolution No. 26253 of 1993 adopting International Labour Organization Convention 169 concerning Indigenous and Tribal Peoples in Independent Countries Act No. 29785 of 2011 on the right to prior consultation of indigenous or native peoples as recognized in International Labour Organization Convention 169 concerning Indigenous and Tribal Peoples in Independent Countries Supreme Decree No. 001-2012-MC
Venezuela (Bolivarian Republic of)	2002	Act No. 41 of 2000 adopting International Labour Organization Convention 169 concerning Indigenous and Tribal Peoples in Independent Countries Organic Law on Indigenous Peoples and Communities of 11 August 2004

Source: Economic Commission for Latin America and the Caribbean (ECLAC), on the basis of national legislation.

Although Convention169 has not been ratified by Guyana, sections 6 and 48 of the Amerindian Act of 2006 include a requirement that Amerindian communities be consulted about mining projects and any research or study on land occupied by them (such projects cannot be implemented without the permission of these communities). Mining developers must reach an agreement with the community, with implicit conditions relating to matters such as compensation and employment. The Act requires developers to supply Amerindians with any information they request about any research and study for proposed mining projects to be situated on their lands.

The right to consultation and free, prior and informed consent is one of the main demands of indigenous peoples in the region. In the absence of systematic participation mechanisms for indigenous peoples in States, conflicts have intensified in most of the countries, particularly owing to the imposition of concessions for extractive, forestry, energy and other industries on their territories without their knowledge, to infrastructure projects encroaching on their territories, and to the adoption of legislative or administrative measures without consulting them (ECLAC, 2014a, p. 57).

Where consultation prior to the adoption of legislative measures is concerned, the experience of Ecuador is worth highlighting. Thanks to implementation of the Convention concerning Indigenous and Tribal Peoples in Independent Countries, specifically articles 5 and 6, Ecuador introduced prelegislative consultation in 2012, regulating the exercise of the right of indigenous communes, peoples and nationalities, the Afro-Ecuadorian people and the Montubio people as holders of collective rights to be consulted prior to the adoption of any legislative measure that might objectively affect these rights.[18] Thus, prelegislative consultation took place in 2015 on the Organic Code on the Environment, which was published in the official registry in April 2017 and will come into force a year later.

A number of judgements by both the Inter-American Court of Human Rights and national courts have expanded what is understood by the free, prior and informed consent of indigenous peoples.[19] In the case of the Saramaka indigenous people against the State of Suriname, the Inter-American Court of Human Rights took the view that when development or large-scale investment plans could be expected to have a major impact on Saramaka territory, the State had an obligation not only to consult the Saramaka, but to obtain their free, prior and informed consent, in accordance with their customs and traditions.[20]

In the case of the Kichwa indigenous people of Sarayaku versus Ecuador, the Inter-American Court of Human Rights analysed international and comparative legal and jurisprudential developments, including cases of countries that had not ratified Convention 169, and concluded that the obligation to consult indigenous peoples, in addition to being a treaty-based provision, was a general principle of international law. Setting out from these precedents, the Inter-American Court of Human Rights proposed the following elements for free, prior and informed consent: (i) the State has the obligation to consult affected communities in an active and informed manner; (ii) the consultation must accord with these communities' customs and traditions; (iii) the consultations must be undertaken in good faith, using culturally appropriate procedures and must be aimed at reaching an agreement; (iv) consultation must take place during the early stages of the development or investment plan, and not only when

[18] See *Registro Oficial del Ecuador*, "Primer suplemento", No. 733, Quito, June 27, 2012 [online] https://www.registroficial.gob.ec/index.php/registro-oficial-web/publicaciones/suplementos/item/5569-suplemento-al-registro-oficial-no-733.html.

[19] See Constitutional Court of the Republic of Colombia, "Sentencia T-129-11", Bogotá, 2011 [online] http://www.corteconstitucional.gov.co/relatoria/2011/t-129-11.htm; Fourth Constitutional Court of Lima, "Expediente núm. 32365-2014", Lima, 2014 [online] https://ia801501.us.archive.org/33/items/343584494Lote116Sentencia1raInstancia/343584494-Lote-116-Sentencia-1ra-Instancia.pdf.

[20] See Inter-American Court of Human Rights, "Case of the Saramaka People v. Suriname", San José, 28 November 2007 [online] http://www.corteidh.or.cr/docs/casos/articulos/seriec_172_ing.pdf.

it is necessary to obtain the community's approval; and (v) the State must ensure that the members of the people or the community are aware of the potential benefits and risks (United Nations, 2009, cited in ECLAC, 2014a).[21]

In his 2013 report on extractive industries and indigenous peoples, the former Special Rapporteur on the rights of indigenous peoples, James Anaya, draws attention to the power imbalances between public or private agents and indigenous peoples in consultations over extractive projects, owing to what are usually wide gaps in technical and financial capacity, access to information and political influence. He suggests that certain deliberate steps should be taken to correct these imbalances and reach sustainable and just agreements with indigenous peoples over the taking of resources from their territories. These might include employing independent facilitators for consultations or negotiations, establishing funding mechanisms that would allow indigenous peoples to have access to independent technical assistance and advice, and developing standardized procedures for the flow of information to indigenous peoples regarding both the risks and potential benefits of extractive projects.[22]

In his report, the Rapporteur also argues that, in accordance with the principle of free, prior and informed consent, consultations and agreement with indigenous peoples over an extractive project should happen before the State authorizes or a company undertakes, or commits to undertake, any activity related to the project within an indigenous territory, including within areas of both exclusive and non-exclusive indigenous use. The report adds that consultation and consent may have to occur at the various stages of an extractive project, from exploration to production to project closure.

In recent years, the doctrine of free, prior and informed consent has also permeated the action of development banks and other financial institutions (see box IV.3).

Box IV.3
Free, prior and informed consent at development banks and other financial institutions

Since the implementation of the International Labour Organization (ILO) Convention on Indigenous and Tribal Peoples, 1989 (No. 169) and the adoption of the United Nations Declaration on the Rights of Indigenous Peoples, a different view of the relationships between firms and indigenous peoples and local communities has taken hold. Both instruments have fostered greater openness to participation in decisions affecting these peoples and communities. Development banks, including the Inter-American Development Bank (IDB), have also incorporated the principles of free, prior and informed consent into their actions, making project financing conditional on a successful process of consent with these characteristics. The World Bank's safeguard policy also makes financing conditional on a process of free, prior and informed consultation for projects likely to affect the lives and surroundings of local communities, particularly in the case of extractive industry and infrastructure projects (Doyle, 2008).

Financial institutions' commitment to free, prior and informed consent was spelt out in the Equator Principles, the fifth of which deals with stakeholder engagement, requiring effective engagement as an ongoing process in a structured and culturally appropriate manner for a particular category of projects. The principle also requires an informed consultation and participation process for projects affecting indigenous peoples, while projects with adverse impacts on indigenous people will require their free, prior and informed consent where appropriate. Already, 91 financial institutions in 37 countries have adopted these principles, including 12 in Latin America and the Caribbean.

Source: Economic Commission for Latin America and the Caribbean (ECLAC), on the basis of C. Doyle, "Free Prior Informed Consent (FPIC) —a universal norm and framework for consultation and benefit sharing in relation to indigenous peoples and the extractive sector", document prepared for the Office of the United Nations High Commissioner for Human Rights (OHCHR) workshop on extractive industries, indigenous peoples and human rights, Moscow, 3-4 December 2008; Equator Principles [online] http://www.equator-principles.com/.

[21] See Inter-American Commission on Human Rights (IACHR), "Application to the Inter-American Court of Human Rights in the case of Kichwa People of Sarayaku and its members (Case 12465) against Ecuador", Washington, D.C., 26 April 2010 [online] https://www.cidh.oas.org/demandas/12.465%20Sarayaku%20Ecuador%2026abr2010%20ENG.pdf.

[22] See United Nations, "Report of the Special Rapporteur on the rights of indigenous peoples, James Anaya: extractive industries and indigenous peoples", New York, 2013 [online] http://undocs.org/en/A/HRC/24/41.

Special efforts should be made to give effect to the right of access to public participation for Afrodescendent persons, who are recognized as a people in some countries.[23] Although some 130 million Afrodescendent persons are currently estimated to live in the region, representing about a quarter of the total population, they have traditionally been excluded from decision-making affecting their environment and quality of life. Several countries in the region have adopted policies to combat racism and promote racial equality over the past few years, in response to the Afrodescendent movement and in follow-up to the commitments they have taken on at the international level (ECLAC, 2017).[24] Considering this situation, in 2015 Peru enacted Supreme Decree No. 004, which declares that full enjoyment of fundamental rights by Afro-Peruvians is a matter of priority and is in the national interest (Rangel, 2016). The decree urges all sectors and levels of government to formulate and implement programmes, projects and actions to strengthen the fundamental rights of the Afro-Peruvian population with a view to social inclusion and full participation of this population in all aspects of Peruvian society.

In Colombia, Decree No. 1320 of 1998 regulates prior consultation with indigenous and black communities over the exploitation of natural resources on their lands.

F. Challenges

While progress is visible in national legislation as regards recognition of the right to participation and the creation of arrangements for this purpose, the challenges generally concern the proper implementation of these mechanisms, particularly in plans, programmes, strategies and policies. On occasion, there is no more participation than required to comply with formal requirements, it takes place when most decisions have already been taken, it is not suited to the social, economic, geographical or gender characteristics of communities, and there is no proper response to the contributions of individuals and organizations.

Where participation in the environmental impact assessment or environmental licensing process is concerned, progress in the region has not been linear. The time periods laid down for public participation have sometimes been curtailed, or measures have been adopted to speed up processes in order to stimulate economic activity, creating tensions with the effective exercise of the right to participation. The region needs to move forwards with the establishment of standards that can guarantee full and effective public participation in environmental impact assessments, in order to avoid the judicialization of activities subject to assessment. As jurisprudence in Latin America and the Caribbean has developed, it has expanded and reinforced the scope and implications of public participation in project assessments, thereby ensuring that the right to participate is fully exercised.

The region also needs to move ahead in opening up channels for public participation in policies, plans and programmes, and for this it can benefit from a tool like strategic environmental assessment, which is already used in some countries.

To ensure the effective exercise of the right to participation in environmental matters, whether involving works and activities or standards, policies, plans and programmes, particular attention needs to be paid to the following aspects:

[23] See, for example, article 58 of the Ecuadorian constitution: "to strengthen its identity, culture, traditions and rights, the Afro-Ecuadorian population is acknowledged to possess the collective rights established in the constitution, the law and international human rights covenants, agreements, declarations and other instruments".

[24] See Economic Commission for Latin America and the Caribbean (ECLAC), *Montevideo Consensus on Population and Development* (LC/L.3697), Santiago, 2013; United Nations, "Proclamation of the International Decade for People of African Descent" (A/RES/68/237), New York, 2014 [online] http://undocs.org/en/A/RES/68/237.

- The establishment of precise legal obligations for public participation. In cases where participation is discretionary and subject to the scale of the project or activity, the effects on the environment or the amount of interest displayed by the community, there is a risk that the right to participation can only be exercised by empowered communities that have enough tools to be aware of their rights. Since the right to participation entails a correlative obligation for the State to guarantee it, it is the State which has to ensure that everyone can exercise it. This may require affirmative measures for groups traditionally excluded from decision-making and populations directly affected by decisions.
- Clear delimitation of the scope of participation. This helps give processes greater credibility and prevent possible conflicts. The difference between the community's perception and what is established by laws and regulatory frameworks regarding the purpose of participation is something that can at times create frustration and mistrust in the population about the actual scope for influencing environmental decision-making (United Nations, 2012a).
- Measures to ensure that public participation begins at early stages of the decision-making process. This means that the public can participate when all options and solutions are still possible and it can actually exercise a real influence.
- Information availability. This means both making relevant, timely, comprehensible and objective information available to the public in a clear and simple form via appropriate media and providing information on the right to participate and its scope.
- Reasonable deadlines that allow enough time for the public to be informed and to effectively prepare and participate. A good practice in this regard is for participation time limits to be clearly prescribed by law.
- Technical and financial assistance for directly affected populations. In countries such as Chile and Peru, discussion has begun about the possibility of setting up a fund to finance technical assistance for directly affected populations during environmental impact assessment processes, in order to guarantee the effective exercise of their right to participation and remove asymmetries. In Peru, article 9 of the Regulations on Citizen Participation in the Mining Subsector, adopted by Supreme Decree No. 028-2008-EM, provides that holders of mining rights may propose the constitution of a voluntary private fund so that the population living in the area of direct influence of the project can finance the activities involved in reviewing and formulating observations on environmental studies during the assessment procedures.[25] In the case of Chile, this proposal has been developed in the final report of the Presidential Advisory Committee for Evaluation of the Environmental Impact Assessment System (SEIA), which suggests allocating financial resources to enhance the management of the public participation process.[26] In particular, it suggests implementing extra funding to increase the number of professionals at the Environmental Assessment Service (SEA) responsible for implementing public participation processes (an estimated 60 new professionals nationwide). The idea is to create teams whose members specialize variously in the planning and implementation of public participation, indigenous consultation and assessment of the human environment. This would mean regional offices having at least one professional dealing with each of these functions, making a minimum of three professionals working on evaluation of the

[25] Although the provision has not so far been regulated and has not been implemented in any case, the Peruvian Environmental Law Society (SPDA) has prepared a draft design and implementation proposal for such a fund. See M. Aldana, I. Calle and C. Mora, "Propuesta de diseño e implementación de un fondo para financiar la asistencia técnica a poblaciones durante el proceso de evaluación de impacto ambiental de actividades mineras", Lima, 2016 [online] http://www.spda.org.pe/?wpfb_dl=3612.

[26] See Ministry of the Environment, *Informe Final. Comisión Asesora Presidencial para la Evaluación del SEIA*, Santiago, 2016 [online] http://portal.mma.gob.cl/wp-content/doc/35877_Informe-MMAF_FINAL.pdf.

human environment, public participation and indigenous consultation. It would also mean allocating resources to operationalize all the functions and activities deriving from implementation of the additional tasks this proposal entails.

- Broad interpretation of who is qualified to participate. The idea is to include not only those directly affected but anyone with an interest, including non-governmental organizations (NGOs) upholding collective and diffuse interests.

Challenges also still persist as regards the need to strengthen the capacities of groups of persons traditionally underrepresented in participatory processes, such as women, indigenous peoples and Afrodescendants, and to recognize the diversity of languages and cultures in the region. Public participation cannot be confined to just a few vehicles, such as a single language in intercultural countries or a medium such as the Internet when there are serious coverage shortfalls. The State needs to guarantee public participation in decision-making, paying special attention to groups that are underrepresented or excluded from this (United Nations, 2012a). This means there is a need to establish mechanisms for inviting and hosting participation that follow a criterion of differentiation, being context-appropriate and giving special consideration to specific or vulnerable groups, and including initiatives to identify vulnerable communities and consider which media and formats can best be used to keep them informed in a way that ensures respect for their cultural characteristics.

As this chapter has shown, despite recent progress and the adoption of international standards, there are still barriers in the region to the full exercise of the right to participation in environmental matters and of free, prior and informed consent on the part of indigenous peoples and Afrodescendants, sometimes because legal frameworks are lacking and sometimes because they are ill applied in practice. This has led Álvaro Pop, the Chair of the Permanent Forum on Indigenous Issues of the United Nations, to argue that the major advances recognized in intergovernmental instruments and declarations will only become a reality once States incorporate them into their legal and administrative policies, reinforcing their State institutions and practices to ensure the effective participation of indigenous peoples. In this context, he has urged member States in Latin America and the Caribbean to guarantee that the agreement negotiated in the region on access to information, public participation and justice in environmental matters is such that they can redouble their efforts to secure the right of indigenous peoples (including indigenous women and girls) to full and effective participation, among other things.[27]

As the previous Special Rapporteur on the rights of indigenous peoples argued, indigenous peoples' right to self-determination, applied in the context of democratic decision-making, creates a need to establish special consultation procedures appropriate to these peoples for all State decisions affecting their particular interests. The justification for special mechanisms is based on the observation that "the normal democratic and representative processes usually do not work adequately to address the concerns that are particular to indigenous peoples, who are typically marginalized in the political sphere" (ECLAC, 2014a).

In addition, as argued by John Knox, the then Independent Expert on the issue of human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment (now the Special Rapporteur on the subject), an aspect of the obligation to facilitate public participation that is often neglected is the value of assessing the effectiveness of different approaches to such participation. In Mexico, the environmental agency has created the Index of Citizen Participation in the Environmental Sector (IPC) to evaluate citizen participation in various institutions in respect of environmental

[27] See Economic Commission for Latin America and the Caribbean (ECLAC), "Declaración del Sr. Alvaro Pop, Presidente del Foro Permanente para las Cuestiones Indígenas sobre la negociación de CEPAL de un instrumento regional sobre el acceso a la información, la participación pública y el acceso a la justicia en asuntos ambientales en América Latina", 9 August 2016 [online] http://negociacionp10.cepal.org/4/sites/negociacionp104/files/pages/files/pfii_-_declaracion_del_presidente_del_fpci_sobreprincipio10_agosto2016.pdf.

decision-making, relying on indicators in four main categories: public participation, transparency, inclusion and equality, and citizen complaints. The agency published the first environmental IPC in 2010, with subsequent ones using the 2010 report as a baseline to gauge whether public participation is improving.[28]

The legislation of Ecuador reflects an effort to enhance people's ability to participate in decision-making. Article 43 of the Organic Law on Citizen Participation of 2010 indicates that "the State shall encourage citizen participation through its institutions, at every level of government, by allocating grant funds, education bursaries, credits, etc., so that social organizations can implement projects and processes to educate citizens in subjects related to rights and duties, in accordance with the constitution and the law". The Law explicitly recognizes that its purpose is to encourage, foment and guarantee the exercise of the right of citizens, groups, communes, communities, indigenous peoples and nationalities and the Afro-Ecuadorian and Montubio peoples to take part in decision-making.

Antigua and Barbuda's Environmental Protection and Management Act, enacted in 2015, created a Department of Environment whose responsibilities include a range of actions to promote public participation in environmental decision-making, including: holding training courses for people involved in environmental management, carrying out public education campaigns and publicization activities to achieve a better understanding of the need for public cooperation to maintain adequate environmental quality and encourage and facilitate public participation in development, and implementing and supervising environmental laws and policies.

A further challenge is the need to establish and render transparent the method used to evaluate representations from citizens and publish the final decision. This is one of the subjects addressed in the United Nations Environment Programme (UNEP) Guidelines for the Development of National Legislation on Access to Information, Public Participation and Access to Justice in Environmental Matters (Bali Guidelines).[29] In this regard, the Maastricht Recommendations on Promoting Effective Public Participation in Decision-making in Environmental Matters, prepared by a working group set up within the framework of the United Nations Economic Commission for Europe (UNECE) Aarhus Convention and adopted in 2014, affirm that there must be a clear legally mandated obligation for the competent authority (rather than the developer or the agency responsible for preparing the environmental impact study) to take the results of the public's participation into account. They add that the process must be fair and non-discriminatory, and that it must have the potential to lead to changes, additional measures, the selection of alternative options or rejection of the proposed activity. The Recommendations also deal with the need to make the text of the decision public, together with the reasoning and considerations it is based on. In the case of decisions with particularly significant effects on the environment, the Recommendations consider it good practice for the public authorities to meet those who have submitted comments in order to discuss these and explain how and why they were or were not considered.[30]

The establishment of environmental advisory councils participated in by different actors has made it possible to create spaces for dialogue on the environmental sustainability of development that deserve to supported, as they provide a way of incorporating the environmental dimension at the earliest stages of public policy design.

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28 See United Nations, "Report of the Independent Expert on the issue of human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment, John H. Knox. Preliminary report" (A/HRC/22/43), New York, 24 December 2012 [online] http://undocs.org/en/A/HRC/22/43.

29 Guideline 11: "States should ensure that due account is taken of the comments of the public in the decision-making process and that the decisions are made public."

30 See Economic Commission for Europe (ECE), *Maastricht Recommendations on Promoting Effective Public Participation in Decision-making in Environmental Matters, prepared under the Aarhus Convention*, Geneva, 2015 [online] https://www.unece.org/fileadmin/DAM/env/pp/Publications/2015/1514364_E_web.pdf.

CHAPTER

V

Access to justice in environmental matters in Latin America and the Caribbean

A. Progress in recent years

Access to environmental justice means having the opportunity to obtain a full and prompt solution from the authorities, whether through the courts or through administrative or other procedures, to any legal conflict of an environmental character, implying that everyone must have access on an equal footing to justice and a fair outcome, both individually and collectively (Brañes, 2000). Such access is not limited to the protection of rights pertaining to the environment and nature, but extends to the protection of the rights of access to information, participation and prior consultation (Barragán, 2017).

The right of access to justice thus plays an essential role in enforcing the right to live in a healthy environment and in fully exercising the rights of access to information and participation in environmental matters. It has been argued that the rights and opportunities provided for in national legislation become meaningless in the absence of proper legal protection (UNEP, 2015).

Because they are so important, most countries in Latin America and the Caribbean have given constitutional status to measures for exercising the right to justice in environmental matters. Mechanisms have also been established in the region to ensure that people can have recourse to the courts or some other independent body if they feel that their right to a clean environment under general environmental laws has been contravened. The legislation of at least a third of the region's countries now includes a legal formula allowing anyone to initiate legal proceedings in defence of diffuse interests or the environment. In Argentina, for example, article 30 of Act No. 25675 provides that once some environmental damage has occurred, anyone may apply for a cessation of the activities causing it. These constitutional and legal interests guarantee the right of access to justice in environmental matters, without prejudice to legal and administrative measures to guarantee access to both environmental information and participation, the result being enhanced access to environmental justice.

In 2011, Mexico passed a package of reforms to different bodies of legislation, such as the Federal Code of Civil Procedure and the General Act on Ecological Balance and Environmental Protection, with the aim of creating a space for citizen participation and access to environmental justice by way of the collective actions introduced into article 17 of the constitution in 2010. With collective actions, the Mexican State recognizes and legitimizes the right of particular social groups that consider themselves to have been affected by environmental operators' decisions to apply to the jurisdictional authorities for a resolution of disputes affecting their rights with a view to obtaining a financial indemnity for the environmental damage or to having the sites affected by a particular targeted anthropocentric activity cleaned up. It is also important to highlight another legislative reform with a direct bearing on the rights of information, participation and access to justice in Mexico, namely the reform of the *Amparo* Act, which is important, among other reasons, because it means that any person or group can take legal action if the Mexican State contravenes any fundamental right recognized in an international treaty or is remiss in failing to secure it by concrete measures, not least in matters of participation, access to information or access to justice in the environmental sphere.

Over the last few years, legislation enacted in several of the region's countries has offered a broader range of procedural remedies, and burgeoning jurisprudence is paving the way towards a more functional form of environmental law (United Nations, 2012a). The Observatory on Principle 10 in Latin America and the Caribbean of the Economic

Commission for Latin America and the Caribbean (ECLAC) includes jurisprudence relevant to access rights in the region's countries.[1]

Since environmental issues tend to be complex and may require specialized knowledge, many countries have seen the advisability of having a court specializing in them (UNEP, 2015) (see table V.1). Trinidad and Tobago, for example, has set up a court specializing in environmental matters: the Environment Commission of Trinidad and Tobago, which is empowered to try alleged contraventions of the Environmental Management Act. The specialized tribunal comprises at least three technically trained judges with experience in environmental matters, engineering, the natural sciences or the social sciences.[2] This Commission has some limitations on its jurisdiction, however, such as being unable to hear complaints relating to appeals from applicants for a Certificate of Environmental Clearance, matters relating to the application of the environmental standards in the Environmental Management Act and appeals over the designation of environmentally sensitive areas.

Table V.1
Latin America and the Caribbean (13 countries): judicial or administrative courts specializing in environmental matters

Country	Specialized body with environmental jurisdiction
Antigua and Barbuda	One administrative environmental court
Bolivia (Plurinational State of)	Agroenvironmental courts in nine cities
Brazil	Federal courts in Porto Alegre (state of Rio Grande do Sul), Florianópolis (state of Santa Catarina) and Curitiba (state of Paraná) with competence in environmental and agricultural matters; specialized courts with competence in environmental and agricultural matters in the states of Pará, Amazonas and Maranhão; state courts in Manaus (Court of Environment and Agrarian Issues (VEMAQA)), Mato Grosso (Environmental Circuit Court (JUVAM) and a court in Cuiabá) and São Paulo (a specialized environmental court); specialized courts in Porto Alegre; the Third Special Criminal Court (JECRIM); and the Tenth Court of Finances
Chile	Three environmental courts in Antofagasta, Santiago and Valdivia
Costa Rica	One administrative environmental court, 16 agricultural courts (15 of first instance and one appeals court)
El Salvador	One environmental court (four environmental courts were authorized in 2014, of which three were courts of first instance and one an appeals court, but so far only one is up and running)
Guatemala	Criminal courts of first instance for drug and environmental offences in different municipalities and districts
Guyana	One administrative environmental court; one administrative appeals court authorized but not operational
Jamaica	One administrative environmental court
Nicaragua	One environmental court
Paraguay	Two environmental courts (Curuguaty in Canindeyú and Alto Paraná)
Peru	Four environmental courts: the Environmental Audit Court (administrative), with three specialized divisions (mining, energy and fisheries and manufacturing), and the Forestry and Wildlife Court of the Forestry and Wildlife Resources Oversight Agency (OSINFOR)
Trinidad and Tobago	Environmental Commission of Trinidad and Tobago

Source: Economic Commission for Latin America and the Caribbean (ECLAC), on the basis of G. Pring and C. Pring, *Environmental Courts and Tribunals: A Guide for Policy Makers*, Nairobi, United Nations Environment Programme (UNEP), 2016.

In 2014, the Supreme Court of Justice of Argentina created an Environmental Trial Secretariat and an Environmental Justice Office. The functions of the Secretariat include: promoting projects and practices conducive to environmental protection, coordinating training programmes with other State authorities, giving greater exposure in Argentina and internationally to decisions and initiatives connected with environmental justice, compiling information and gathering data. The Office deals mainly with the following areas: training, data gathering and research.[3]

1 See Economic Commission for Latin America and the Caribbean (ECLAC), Observatory on Principle 10 in Latin America and the Caribbean [online] http://observatoriop10.cepal.org.
2 Section 82 of the Environmental Management Act.
3 See Supreme Court of Justice, "Expediente núm. 8099/11", Buenos Aires, 11 February 2014 [online] https://www.csjn.gov.ar/files/sustentabilidad/acordada-1-14.pdf.

In addition, most countries of Latin America and the Caribbean have environmental prosecutors attached to the public prosecution service.[4] In Brazil, the Federal Prosecution Service has environmental prosecutors who investigate criminal and civil complaints and bring charges on behalf of persons and the environment (Pring and Pring, 2016). When the Federal Prosecution Service is notified of any actual or potential harm to a public interest, it has a legal obligation to act by investigating the public complaint. When a grievance is presented or possible environmental damage independently discovered, the environmental prosecutors have a duty to investigate, negotiate with the parties, reach a deferred prosecution agreement (*termo de ajuste de conduta*) or take the case to court.

Paraguay's Public Prosecution Service has a department specializing in environmental crimes that is responsible for bringing together initiatives relating to the investigation and elucidation of possible environmental crimes reported by society.[5]

In Argentina, the Environmental Crimes Investigation Unit (UFIMA), which is part of the system of the national Public Prosecution Service, has the task of conducting preliminary investigations and supporting ongoing investigations into possible breaches of the Dangerous Waste Act, public health offences associated with environmental protection as determined by the penal categories given in articles 200 to 207 of the Penal Code, and contraventions of the Conservation of Fauna and Related Offences Act (No. 22241). The remit of UFIMA is nationwide.[6]

Mention should also be made of the human rights watchdogs and ombudsman's services in countries such as Argentina, Colombia, Ecuador, Peru and Uruguay.[7] Ombudsman's offices are public institutions, usually of constitutional rank, whose main purpose is to protect the fundamental rights of a country's inhabitants. They are independent of the executive, legislature and judiciary, provide a link between individuals and government, and can play a useful role in access to environmental justice (see table V.2).

In some of the region's countries, particularly those where the right to a healthy environment is enshrined in the constitution, human rights institutes or commissions have also incorporated matters relating to the guarantee of a healthy environment into their functions. In Mexico, the National Commission for Human Rights (CNDH) has the power to receive and investigate complaints of human rights violations and report its findings and recommendations to the government. Constitutional recognition of the right to a healthy environment empowers the CNDH to accept and act on environmental complaints, thus providing a non-judicial mechanism of access to justice (Pring and Pring, 2016).

In Chile, the functions of the National Human Rights Institute (INDH), created in 2009, include initiating court action. Thus, in 2012 it filed an appeal for protection with the Court of Appeals against the Municipality of Puente Alto on the grounds that the latter had breached the constitutionally guaranteed right to live in a pollution-free environment by dumping refuse and rubble on land adjoining a residential area.[8] In 2014, in litigation known as the "El Morro" case between indigenous Diaguita communities and a mining firm exploiting gold and copper deposits in their area, the INDH acted as *amicus curiae* to support the former's arguments. The *amicus curiae* role is described in box V.1.[9]

4 Members of the Latin American Environmental Prosecutors Network collaborate on training and share experiences. See [online] http://www.mpambiental.org/site/page/1.

5 See Public Prosecution Service, "Delitos ambientales" [online] http://www.ministeriopublico.gov.py/delitos-ambientales-i240.

6 See Environmental Crimes Investigation Unit (UFIMA) [online] https://www.mpf.gob.ar/ufima/.

7 See, for example, the Office of the Counsel for Citizen Rights (PFDC) in Brazil, the Counsel for Human Rights (PDH) in Guatemala and the Office of the Counsel for the Defence of Human Rights (PDDH) in both El Salvador and Nicaragua.

8 See Supreme Court, "Fallo núm. 3598-2012", Santiago, 21 June 2012 [online] http://basejurisprudencial.poderjudicial.cl/.

9 See Supreme Court, "Fallo núm. 11.299-2014", Santiago, 7 October 2014 [online] http://basejurisprudencial.poderjudicial.cl/.

Table V.2
Latin America and the Caribbean (10 countries): characteristics of ombudsmen and their treatment of environmental matters

Country and name of body	Legal framework	Nature of body	Method of appointing head	Prerogatives	Main powers	Treatment of environmental matters
Argentina: Defensor del Pueblo de la Nación	Arts. 86 and 43 of the constitution. Act No. 24284 creating the Ombudsman's Office, amended by Act No. 24379.	Independent and operationally autonomous body instituted within Congress. Its mission is to defend and protect the rights, guarantees and interests enshrined in the country's constitution and laws against acts and omissions by the administration, and to oversee the exercise of public administrative functions.	The head of the service is elected by a bicameral committee of Congress. The committee submits from one to three candidates for the position of Ombudsman to the two chambers, and these elect one of them by a vote of two thirds of the members present. The Ombudsman will hold office for five years and may be re-elected once by the same procedure.	The Ombudsman will enjoy the immunities established by the Argentine constitution for members of Congress. If duly arraigned for criminal prosecution, the Ombudsman may be suspended by the two chambers until such time as a stay of proceedings is ordered.	· To initiate, ex officio or at the request of a party, investigations into cases originating from government departments and firms providing public services (the Ombudsman may order dossiers or any evidence relevant to the investigation to be produced). · To propose to the legislature and public administration that laws be amended when rigorous enforcement may cause injustices. · To provide legal and technical advice, prepare case documents and respond to lawsuits. · To initiate *amparo* proceedings for the enforcement of constitutional rights, where appropriate. · To prepare annual reports on its work and investigations.	The environment and sustainable development division analyses and proposes courses of action in the light of constitutional provisions and elucidates actions or omissions involving the arbitrary or inappropriate exercise of public powers in environmental matters. It has brought some of the highest-profile cases in Argentina.
Bolivia (Plurinational State of): Defensoría del Pueblo	Arts. 218, 219, 220, 221, 222, 223 and 224 of the constitution. Ombudsman Act (No. 1818).	The Ombudsman's Office is an operationally and administratively autonomous organ of the State. Its objective is to promote, publicize and enforce the human rights provided for in the constitution, laws and international instruments. Its functions encompass the administrative activity of the whole public sector and that of private institutions providing public services.	The Ombudsman is elected by the Constitution, Justice and Judicial Police Committee of the Plurinational Legislative Assembly, which receives nominations. Civil society organizations may put forward names or challenge those put forward by others to the Committee, which shall assess the proposals and decide by simple majority on a list to be presented to the Assembly for election. Election must be by at least two thirds of those present in the Assembly. The Ombudsman shall hold office for six years.	The Ombudsman may not be pursued, detained, arraigned or tried for acts carried out in an official capacity.	· To bring actions for unconstitutionality, direct actions for annulment, *amparo* and habeas corpus, without needing a brief. · To propose legislation and amendments to laws, decrees and resolutions. · To investigate, ex officio or at the request of a party, acts or omissions involving a contravention of rights. · To request information relating to investigations by the Ombudsman's Office. · To present State bodies with recommendations, reminders and suggestions and reprimand them when they act against these. · To prepare the annual management report.	The Ombudsman's Office does not have a department or organizational unit dealing exclusively with the environment. However, the Peaceful Management of Conflict Unit can deal with conflicts over environmental matters by mediating between those involved and encouraging responsible dialogue.
Colombia: Defensoría del Pueblo	Arts. 281, 282, 283 and 284 of the constitution. Act No. 24 of 1992 establishing the organization and functioning of the Ombudsman's Office and other provisions.	The Ombudsman's Office is an autonomous body of constitutional scope, incorporated into the constitution. Its purpose is to promote, enforce and publicize human rights. It is attached to the Attorney General's Office, so that the Ombudsman's functions are carried out under the direction of the Attorney General.	The Ombudsman is elected by the House of Representatives from a shortlist of three candidates submitted by the President of Colombia. He or she has been elected for a period of four years since 1 September 1992.	The Act makes no mention of immunity. It is up to the Supreme Court of Justice to try the Ombudsman for any offences with which he or she may be charged in the event of an ordinary accusation.	· To make recommendations and observations to authorities and individuals if human rights are jeopardized or infringed, with the option of informing Congress of the response received. · To publish guidelines for different human rights-related situations. · To bring public actions in defence of the constitution, the law and the general interest. · To act as mediator for collective petitions submitted by civic or grass-roots organizations vis-à-vis the government. · To act as a mediator between users and public or private enterprises providing public services.	The Ombudsman's Office has a Delegate for Collective and Environmental Rights. Her work is to promote and publicize these rights, ensuring that they are complied with and guaranteed insofar as they involve subjects as a community and their exercise is necessary to improve people's quality of life.

Table V.1 (continued)

Country and name of body	Legal framework	Nature of body	Method of appointing head	Prerogatives	Main powers	Treatment of environmental matters
Costa Rica: Defensoría de los Habitantes de la República	Act No. 7319 establishing the Ombudsman's Service.	The purpose of the Ombudsman's Office is to ensure that the activity of the public sector accords with law and morality so that the rights and interests of the country's inhabitants are always protected. It is operationally and administratively independent, which means that it is not subject to the dictates of other agencies in the exercise of its functions.	The Ombudsman and Deputy Ombudsman are elected by the Legislative Assembly for four years, requiring an absolute majority of the deputies present. The Assembly shall appoint a special committee to analyse the statements submitted by those applying for the post, in accordance with the internal regulations of the Legislative Assembly.	The Ombudsman enjoys immunity on the same terms as the legislators of the Legislative Assembly.	· To initiate, ex officio or at the request of a party, any investigation that may serve to elucidate material measures, acts or omissions in the administrative activity of the public sector. The Ombudsman many inspect public offices without prior notice and require all necessary information from these. · When the Ombudsman's Office is apprised of an administrative irregularity alleged to have been committed by an organ of the judiciary, it will notify this to the Supreme Court of Justice. · The Ombudsman's Office, whether on its own initiative or at the request of the interested party, may undertake any type of jurisdictional or administrative action prescribed by law.	Environmental matters come under the Quality of Life Department, whose work is to deal with and investigate cases where rights and interests are contravened by acts or omissions of the public sector relating to environmental protection, access to health, social housing and adverse effects on people's surroundings.
Ecuador: Defensoría del Pueblo	Arts. 214, 215, 215 and 216 of the constitution. Organic Law of the Ombudsman's Service, No. 1.	The Ombudsman's Office is a public law body with national jurisdiction, a legal personality and administrative and financial autonomy. Its mission is to be a national human rights institution that promotes, publicizes and protects the rights of persons, communities, peoples, nationalities and groups.	The Ombudsman is elected by the plenary of Congress on a vote of two thirds of its members for a period of five years, and may be re-elected once.	The Ombudsman benefits from immunity on the same terms as the legislators of Congress and may not hold any other position in the exercise of his or her functions.	· To protect and defend people, ex officio o r at the request of a party, from contraventions of their human rights. · To bring or support actions for habeas corpus, habeas data and *amparo*. · To file suits of unconstitutionality before the Constitutional Court of Ecuador in accordance with the constitution. · To put forward bills in support of popular initiatives. · To become a party to matters relating to protection of the environment and the cultural heritage, upholding the interests of the community. · To act as a mediator in conflicts.	The Ombudsman's Office has a Human Rights and Nature Section responsible for bringing constitutional actions and carrying out advocacy to uphold the human rights of individuals and communities, nationalities and groupings within the country and abroad.
Panama: Defensoría del Pueblo	Arts. 129 and 130 of the constitution. Act No. 7 establishing the Ombudsman's Service in the Republic of Panama.	The Ombudsman's Office is an independent institution that acts with full operational, administrative and financial autonomy and is not beholden to any authority, State body or person. Its function is to protect the rights enshrined in the constitution and those provided for in international human rights conventions and the law.	The Ombudsman is proposed by the Legislative Assembly and appointed by the President of Panama in accordance with certain procedures.	The exercise of the powers of the Ombudsman's Office and the immunity of the Ombudsman and his or her deputies shall be uninterrupted. They shall not be restricted to working days or suspended while the National Assembly is in recess or if a state of emergency is declared.	· To investigate and inquire into acts or omissions by public servants that entail violations of the rights laid down in the constitution and the law. · To inquire into acts or omissions by the public administration that might involve irregularities. · To investigate and report wrongful acts or omissions by public or private enterprises or joint ventures providing a public service. · To recommend draft bills for legislation in its areas of competence. · To deal with complaints and situations affecting human rights and to urge the relevant authority to remedy these situations. · To design and adopt human rights policies. · To mediate in conflicts that arise in the public administration and between individuals. · The Ombudsman is also procedurally empowered to initiate actions for collective redress and for *amparo* to enforce constitutional guarantees, as well as administrative dispute proceedings with plenary jurisdiction and actions to protect human rights.	The Ombudsman's Office has a Department of Ecological Affairs whose mission is to ensure that the organization's environmental functions are fulfilled. In addition, there are special sections on ecological matters in the annual report.

Table V.1 (concluded)

Country and name of body	Legal framework	Nature of body	Method of appointing head	Prerogatives	Main powers	Treatment of environmental matters
Paraguay: Defensoría del Pueblo	Arts. 276, 277, 278, 279 and 280 of the constitution. Organic Act of the Ombudsman's Service, No. 631/95.	The mission of the Ombudsman's Office is to play the primary role in upholding the rights of the country's citizens and consumers by taking political action and recommending and representing collective interests to enforce constitutional and legal rights.	The Ombudsman is appointed for a five-year term by a two thirds majority of the Chamber of Deputies from a shortlist of three put forward by the Senate. He or she may be re-elected and also removed for failing to properly perform the functions of the office, using the impeachment procedure laid down in the constitution.	The Ombudsman is independent and can only be removed through impeachment.	· To receive and investigate accusations, claims and complaints of violations of human rights and other rights established by the constitution and the law. · To require the public authorities (which may on no grounds refuse) to provide the information it needs to better discharge the functions of the office. · To publicly censure acts or behaviour that contravene human rights. · To report annually to Congress on the work done. · To prepare and release reports on the human rights situation.	The Ombudsman's Office has an Environment Department specifically charged with carrying out its environmental functions. It produces observations and recommendations which it submits to public and private bodies.
Peru: Defensoría del Pueblo	Organic Act of the Ombudsman's Service, No. 26520. Arts. 161 and 162 of the constitution.	The purpose of the Ombudsman's Office is to uphold fundamental rights and oversee the public administration's fulfilment of its duties and the efficient provision of public services throughout the country.	The Ombudsman is elected and removed by Congress on a vote of two thirds of its quorum. The position is held for five years and is not subject to a binding mandate. The Ombudsman is subject to the same limitations on holding multiple posts as senior judges.	The Ombudsman enjoys the same immunity and prerogatives as members of Congress, and bears no civil or criminal liability for recommendations, criticisms and opinions issued ex officio. He or she may not be detained or tried without authorization from Congress unless apprehended in flagrante delicto.	· To initiate and pursue, ex officio or at the request of a party, any investigation to elucidate acts and rulings by the public administration entailing the arbitrary or negligent exercise of its functions. · To bring before the constitutional court actions for unconstitutionality and initiate proceedings of habeas corpus, *amparo*, habeas data, actions for collective redress and actions to safeguard fundamental constitutional rights. · To initiate or participate in, ex officio or at the request of a party, any administrative proceeding as representative of a person or group to uphold constitutional rights.	The Division for the Environment, Public Services and Indigenous Peoples is in charge of environmental matters, with responsibility for protecting citizens' rights of access to high-quality public water and drainage, electricity and telephony services and their enjoyment of a balanced environment.
Uruguay: Institución Nacional de Derechos Humanos y Defensoría del Pueblo (INDDHH)	National Human Rights Institution Act, No. 18446.	The National Human Rights Institution and Ombudsman's Office (INDDHH) has the task of defending, promoting and protecting to the fullest extent human rights recognized by the constitution and international law. The powers of the INDDHH extend to all State authorities and public bodies.	The INDDHH is presided over by a five-member Governing Council proposed by civil society organizations and elected by the General Assembly. The Council directs and represent the institution for a term of five years and is chaired in turn by each of its members for a year at a time.	Council members do not have additional prerogatives such as immunity.	· To take cognizance of and investigate alleged violations of human rights either ex officio or at the request of a party. · To prepare reports on the human rights situation. · To issue opinions on legislative bills. · To propose the adoption of provisional measures to put an end to alleged human rights violations. · To inform, publicize and educate, giving the widest exposure to human rights. · To request reports and review files, archives and documents of all kinds. · To present criminal complaints and bring actions for habeas corpus or *amparo*.	The INDDHH helps to promote spaces for participation and dialogue between the different sections of society on environmental matters and assists State institutions with efforts to incorporate the human rights perspective into environmental and development policies.
Venezuela (Bolivarian Republic of): Defensoría del Pueblo	Arts. 280, 281, 282 and 283 of the onstitution. Organic Act of the Ombudsman's Service.	The purpose of the Ombudsman's Office is to promote, defend and monitor the situation of the rights and guarantees established in the constitution and international human rights instruments. It is also responsible for promoting and monitoring people's rights, guarantees and interests in relation to the administrative services provided by the public sector.	The Ombudsman is appointed for a single seven-year term by a vote of two thirds of the members of the National Assembly. The Ombudsman is independent and expected to act as his or her conscience dictates in accordance with the constitution and laws, without being subject to a binding mandate from any authority.	The Ombudsman enjoys immunity in exercising the functions of the office and may not be pursued, detained or tried for opinions issued or actions taken in the exercise of these powers. If apprehended in flagrante delicto, the Ombudsman shall be placed under house arrest by the authority, which shall notify the Supreme Court.	· To initiate and pursue, ex officio or on request, any investigation likely to elucidate matters within its purview. · To bring or take part in actions for unconstitutionality, interpretation, *amparo*, habeas corpus, habeas data, injunctive relief and other legal actions or appeals. · To act as a facilitator in conflict resolution. · To inspect State or commercial premises whose work falls within its purview. · To supervise the proper functioning of public services, protecting the rights concerned. · To promote and implement human rights programmes, work for the conservation and protection of the environment and encourage citizen participation.	Operationally, environmental issues are dealt with by the Special Deputy Ombudsman's Service with National Competence in Environmental Matters.

Source:Economic Commission for Latin America and the Caribbean (ECLAC), on the basis of national constitutions and laws; Ibero-American Federation of Ombudsmen (FIO), *XI Informe sobre Derechos Humanos: Medio Ambiente*, G. Escobar (coord.), Madrid, 2014.

Box V.1
Amicus curiae (friend of the court) in environmental legal proceedings

Amicus curiae is a procedural mechanism that allows anyone access to a court to supply legal or interdisciplinary arguments in the interests of providing effective legal protection for public interests, such as the environmental interest. Thus, *amicus curiae*, or friend of the court, is a useful tool for channelling the right to participation, as established in Principle 10 of the Rio Declaration on Environment and Development and enshrined in the constitutions of the region's countries.

Anyone acting as an *amicus curiae* is a third party, whether a natural or legal person, and does not claim or qualify to be a party to the case. Nor do they qualify as an expert witness, since their intervention is voluntary and not requested by the judge or one of the parties. Given that an *amicus curiae* becomes involved after proceedings have begun and is a third party participating voluntarily rather than a party to the case, their arguments do not bind the judge or affect judicial independence. This is a valuable and useful tool despite its non-binding character, since the contribution of the *amicus curiae*, if legally relevant, can serve to ensure that court rulings are based on publicly considered arguments and give due consideration to the public interest.

As a legal institution, *amicus curiae* provides an appropriate mechanism for fostering citizen participation in environmental matters, specifically providing court access with a view to effectively safeguarding environmental interests. Thus, the contribution of the *amicus curiae* tends to open up and democratize the legal debate over safeguarding the public environmental interest.

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

In Honduras, the Office of the National Commissioner for Human Rights (CONADEH), created in 1995 to guarantee the rights and freedoms recognized by the constitution, has an environmental ombudsman's service. In 2016 it dealt with a total of 41 complaints over contraventions of the right to a healthy environment (including the right to water and sanitation).[10]

The Ibero-American Federation of Ombudsmen (FIO), created 20 years ago, brings together more than 75 national and subnational organizations, including ombudsmen, attorney general's offices and human rights commissions from 20 Ibero-American countries, to create a forum in which these cooperate, share experiences and work to promote, publicize and improve the institution of the ombudsman.[11] The objectives of the Caribbean Ombudsman Association, created in 1998, also include cooperation and the sharing of experience to improve the work of ombudsmen and other human rights agencies in the Caribbean.[12]

Environmental law clinics associated with academic centres and universities have also helped to facilitate access to specialized legal advice for individuals and groups who struggle to gain recourse to justice in the region (see box V.2).

[10] See Office of the National Commissioner for Human Rights (CONADEH), *Informe Anual 2016 al Honorable Congreso Nacional de la República*, Tegucigalpa, 2017 [online] http://conadeh.hn/wp-content/uploads/2017/04/Informe-Anual-2016.pdf

[11] See Ibero-American Federation of Ombudsmen (FIO) [online] http://www.portalfio.org/.

[12] See Caribbean Ombudsman Association [online] http://caribbeanombudsman.org/.

Box V.2
Latin America and the Caribbean: law clinics' contribution to access to justice in environmental matters and the training of environmental law specialists

While the State is obviously responsible for guaranteeing access to justice in environmental matters by adopting such affirmative measures as are needed to ensure that everyone can fully realize this right without discrimination of any kind, law clinics associated with universities in the region are helping to facilitate access to justice by providing legal advice on environmental matters for free or at low cost.

Law clinics operate with two general objectives: to train law students through supervised practice of their profession, and to provide free legal assistance to vulnerable people, generating a large social impact.

With regard to the aim of training law students, the idea is not just for them to put into practice what they have learned in their traditional education, but also to innovate educationally. Law clinics concentrate on helping students develop the capabilities acquired or learned when activities relating to these capabilities are performed. Thus, the aim of clinics' legal education is learning by doing, and they aim to impart professional and social skills and ethical values alike to their students with a view to forming well-rounded lawyers. The unpaid work they do and the type of people they assist bring students into contact with social reality so that they will be capable as lawyers of responding to its challenges and resolving ethical conflicts as they arise with a sense for the public interest (Bloch, 2011; Londoño, 2015).

As for the objective of providing free legal assistance, the central idea is to serve the poor population in matters connected with human rights and the public and collective interest, including environmental matters.

Law clinics specializing in environmental matters concentrate on providing support to communities that require technical and legal knowledge to claim their rights but lack easy access to this, as they specialize in legal environmental protection mechanisms and concentrate on a particular body of environment-related technical knowledge. They can also represent citizens when these need lawyers to initiate actions, and they bring to the fore the interdisciplinary factors that need to be considered in addressing environmental problems and that communities would not otherwise be aware of, or at least not with the depth and degree of specialization of clinics.

The Environmental Law Clinic of the University of Chile, the Public Actions Group of the University of Rosario (Colombia) and the Environmental Law Clinic of the Environment and Natural Resources Foundation (FARN) and the University of Buenos Aires are some examples of clinics dealing with environmental matters in the region.

Source: Economic Commission for Latin America and the Caribbean (ECLAC), on the basis of F. Blotch, "A global perspective on clinical legal education", *Education and Law Review*, No. 4, Barcelona, University of Barcelona, 2011 [online] http://revistes.ub.edu/index.php/RED/article/view/2206/2334; B. Londoño, *Educación legal clínica y litigio estratégico en Iberoamérica*, Bogotá, Editorial Universidad del Rosario, 2015 [online] http://repository.urosario.edu.co/bitstream/handle/10336/12042/Educaci%C3%B3n%20legal%20cl%C3%ADnica.pdf?sequence=1.

The countries have also made progress in establishing bodies that can be appealed to when access to information is refused, such as the Transparency Council in Chile and the National Institute for Transparency, Access to Information and Protection of Personal Data (INAI) in Mexico, of which mention has already been made (see chapter III).

An effective guarantee of access to justice in environmental matters requires a framework of appropriate, swift and effective redress as well as remedial measures such as restoration and compensation. In several countries of the region, the obligation to restore environmental damage is enshrined in the constitution. In Argentina, the constitution provides that "the prime obligation in the event of environmental damage will be to remedy it as provided by law" (art. 41). In Brazil, the constitution provides that "those engaging in conduct and activities deemed harmful to the environment, be the perpetrators physical or legal persons, shall be liable to criminal and administrative penalties, independently of the obligation to restore the damage caused" (art. 225.3). The constitution of Paraguay states that "any harm to the environment entails an obligation to remedy or indemnify this" (art. 8).

Table V.3 details obligations of remedy and redress for environmental damage in the environmental framework laws of the region's countries and summarizes provisions relating to civil liability for acts or omissions that harm the environment. In a number of the region's countries, it can be seen that the obligation to restore the environment exists independently of any other type of penalty.

Table V.3
Latin America and the Caribbean (18 countries): obligations of remedy and redress for environmental damage in framework environmental laws

Argentina	Act No. 25675 of 2002	Art. 31: "If two or more persons have collectively caused environmental damage, or it is not possible to determine precisely the extent of the damage done by each, all concerned shall be jointly liable to make redress to society."
Bolivia (Plurinational State of)	Regulations of the Environment Act, No. 1333 of 1992	Art. 108: "Those carrying out economic activities that cause environmental damage shall be liable to provide redress and compensation for this, with the liability subsisting even after the activity giving rise to the damage has ended."
Brazil	Act No. 6938 of 1981	Art. 14: "Without prejudice to the penalties set by federal, state and municipal legislation, failure to take the measures necessary for the preservation or correction of damage and prejudice caused by degradation of the quality of the environment will mean that the perpetrators [...]"
Chile	Act No. 19300 of 1994 (2010)	Art. 3: "Without prejudice to the penalties prescribed by law, any person culpably or wilfully causing damage to the environment shall be obliged to remedy this materially if possible, at their own expense, and to indemnify it as prescribed by law."
Colombia	Act No. 1333 (2009)	Art. 4: "Administrative sanctions relating to the environment have a preventive, corrective and compensatory function, the aim being to ensure the effectiveness of the principles and goals laid down in the constitution, international treaties, the law and regulations. The function of preventive measures, for their part, is to prevent, impede or forestall the continuing occurrence of an event, performance of an activity or existence of a situation that adversely affects the environment, natural resources, the landscape or human health."
Costa Rica	Act No. 7554 of 1995	Art. 99: "When environmental protection standards are contravened or conduct harmful to the environment as clearly established in this Act occurs, the public administration shall apply the following protective measures and penalties: (g) The imposition of obligations to compensate the harm caused or stabilize the environment or biological diversity."
Cuba	Act No. 81 of 1997	Art. 70: "Any natural or legal person whose actions or omissions harm the environment shall be obliged to desist from this conduct and remedy the damage and prejudices caused."
Dominican Republic	Act No. 64 of 2000	Art. 169: "Without prejudice to the penalties prescribed by law, any person harming the environment or natural resources shall be objectively liable for any damage caused, in accordance with the Act and supplementary legal provisions. They shall also be required to remedy it physically if possible, at their expense, and indemnify it in accordance with the law … Remedying the damage means restoring the situation to what it was prior to its occurrence, where possible, and paying financial compensation for the damage and prejudice caused to the environment or natural resources, to communities or to individuals."
Ecuador	Act No. 37 of 1999	Art. 43: "Without prejudice to any other legal actions that may apply, the judge shall sentence the perpetrator of the damage to pay indemnities to the community directly affected and to remedy the damage and prejudice caused. The judge shall also sentence the perpetrator to pay the petitioner ten per cent (10%) of the value of the indemnity."
El Salvador	Act No. 233 of 1998	Art. 96: "Whenever an administrative penalty is imposed, the perpetrator shall be ordered to remedy, make good or redress the damage to the environment, being granted a reasonable time to do so. In the event of non-compliance, Ministry-appointed experts shall determine the value of the investment required to meet these objectives. Certification of the appraisal and of the ruling ordering the damage to be remedied, made good or redressed shall be enforceable against the perpetrator."
Guatemala	Decree No. 68 of 1986 (Environmental Protection and Improvement Act)	Art. 31: "The penalties ordered by the National Environment Committee for contraventions of the provisions of the Act are as follows: (g) Any other measures to correct and remedy the damage done and prevent the continuation of acts harmful to the environment and natural resources."
Honduras	Decree No. 104 of 1993 (General Environment Act)	Art. 87: "Any action or omission constituting an offence or administrative violation of environmental standards shall give rise to the application of the following penalties: (g) Reinstatement or restoration of the items and objects affected to their natural state, if possible."

Table V.3 (concluded)

Jamaica	Act No. 9 of 1991	Art. 18 "Subject to the provisions of this section, where it appears to the Authority that the activities of an undertaking in any area are such as to pose a serious threat to the natural resources or to public health, the Authority may serve on the person who appears to have carried out or to be carrying out the activity, a notice … specifying the offending activity and requiring such steps as may be specified … to restore the natural resources to their condition before the activity took place."
Mexico	General Act on Ecological Balance and Environmental Protection (1988)	Art. 203: "Without prejudice to the relevant criminal or administrative sanctions, any person polluting or harming the environment or adversely affecting natural resources or biodiversity shall be liable and shall be required to make good the damage caused in accordance with the applicable civil legislation."
Nicaragua	Act No. 217 of 1996	Art. 152: "Any person damaging the environment by an action or omission shall be obliged to make good the damage and prejudice caused to environmental resources, the balance of the ecosystem and people's health and quality of life."
Panama	Act No. 41 of 1998	Art. 108 "Any person using or exploiting a resource or conducting an activity in such a way as to cause harm to the environment or human health shall be obliged to make good the damage caused, apply prevention and mitigation measures and defray the associated costs."
Peru	Act No. 28611 of 2005	Art. 142: "Any person using or exploiting a resource or carrying out an activity in such a way as to cause harm to the environment, people's quality of life, human health or property shall be obliged to defray the costs of damage prevention and mitigation measures and those incurred in overseeing and monitoring the activity and any prevention and mitigation measures adopted."
Uruguay	Act No. 16466 of 1994, Act No. 17283 of 2000	Art. 4 of the Environment Act, No. 16466: "Without prejudice to any administrative and criminal penalties prescribed by the Act, any person responsible for despoiling, destroying or polluting the environment in contravention of the provisions of the articles of this Act shall have civil liability for all prejudices caused and shall be responsible for actions to restore the environment, if this is physically possible. When the harm caused by the contravention is irreversible, the perpetrator shall be responsible for measures to reduce it to a minimum or mitigate it to the greatest possible extent, without prejudice to any administrative, civil or criminal liability arising therefrom." Art. 16 of the Environmental Protection Act, No. 17283: "When the perpetrator delays or resists complying with the requirement of restoration, reduction or mitigation prescribed in art. 4 of Act No. 16466 … compliance may be enforced by applying for a court order or ex officio, with the resulting costs to be met by the perpetrator."

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

The effective exercise of the right of access to justice in environmental matters requires States to guarantee that proceedings will be fair, open, transparent and equitable. This implies, among other things, equal, i.e. non-discriminatory treatment before the law (UNEP, 2015). States have sometimes responded by adopting measures to ensure "equal footing" for specific individuals and groups. In Peru, for example, the Unified Form for Judicial Administrative Procedures has been available since 2016 in Kichwa, Aymara and Asháninka to improve user accessibility in these indigenous languages.[13] Some practices designed to reflect the specific characteristics of environmental cases in the region will now be analysed.

1. Legal standing for access to justice in environmental matters

Legal standing is a person's ability to access justice, whether in the judicial or administrative system, in order to seek protection or recognition of a right. In traditional liability proceedings, those who are directly affected by a damage or prejudice and have

[13] See *El Peruano*, "Resolución administrativa núm. 307-2016-CE-PJ", Lima, 30 November 2016 [online] http://busquedas.elperuano.com.pe/normaslegales/aprueban-uso-del-formulario-unico-de-tramites-administrativ-resolucion-administrativa-no-307-2016-ce-pj-1462311-2/.

a legitimate interest, or their heirs and legal representatives, have legal standing. In environmental matters, however, it is sometimes difficult to determine who is directly affected, and this creates what have been called supraindividual interests, including diffuse, collective and homogeneous individual interests.[14]

Diffuse interests pertain to a group of undetermined individuals linked by a de facto situation (normally connected with the defence of a legal good, in this case an environmental one). From the procedural point of view, the interest is supraindividual, i.e. it belongs to any member of this indeterminate group, but must be exercised by one of them. Collective interests, meanwhile, are the likewise transindividual interests that belong to a group of persons linked by a legal relationship.[15]

Accordingly, and given the peculiarities of environmental law, the countries have begun to establish broad or general standing to sue over environmental damage. The idea is for anyone to be able to object to illegal acts in environmental matters without having to prove they are directly affected.[16] This direct interest exception rests on the fact that what are being asserted are collective or diffuse rights that belong not only to the victim but to a whole social grouping linked by either a de facto or a legal relationship.

The countries have responded to this challenge by introducing, for example, actio popularis, which entitles any physical or legal person to bring an action for the purpose of safeguarding and protecting a legal good. This type of action has been included in regulatory frameworks, whether in the constitution (Brazil: art. 5; Colombia: art. 88; Peru: art. 200; Plurinational State of Bolivia: art. 135), environmental laws (Ecuador: art. 28 of the Environmental Management Act and art. 16 of the Environmental Pollution Prevention and Control Act; Honduras: art. 90 of the General Environment Act; Mexico: art. 190 of the General Act on Ecological Balance and Environmental Protection) or specific laws (Brazil: Act No. 7347 of 1985; Colombia: Act No. 472 of 1998; Peru: Act No. 28237 of 2004).

As table V.4 shows, the countries have established different types of constitutional actions (action for protection, remedy of protection, injunctive relief, access to public information, and others) with a view to guaranteeing diffuse and collective rights. General environment laws and other related ones have also included guarantee mechanisms that create broad standing for action when environmental rights are infringed. Box V.3 presents developments in jurisprudence regarding broad standing in the English-speaking Caribbean.

[14] Diffuse interests: transindividual interests, indivisible in nature, pertaining to undetermined persons linked by the same de facto circumstances; collective interests: transindividual interests, indivisible in nature, pertaining to a group, category or class of determined or easily determinable persons, linked to one another or to the opposing party by an underlying legal relationship; homogeneous individual interests: interests arising from a common origin (González and Peña, 2015, p. 125).

[15] See González and Peña (2015).

[16] This is one of the UNEP Bali Guidelines. Guideline 18: States should provide broad interpretation of standing in proceedings concerned with environmental matters with a view to achieving effective access to justice.

Table V.4
Latin America and the Caribbean: legal standing in constitutions, general environment laws and other statutes

Country	Constitutional treatment	Treatment in general environmental laws and other regulations
Antigua and Barbuda	Art. 18: "If any person alleges that any of the provisions of sections 3 to 17 (inclusive) of this Constitution has been, is being or is likely to be contravened in relation to him …, then, without prejudice to any other action with respect to the same matter that is lawfully available, that person (or that other person) may apply to the High Court for redress."	Environmental Protection and Management Act (No. 11 of 2015), art. 97
Argentina	Art. 43: "Any person may bring a rapid and expeditious action of *amparo*, provided no more suitable legal recourse exists, against any act or omission by the government or private individuals that may presently or imminently impair, restrict, alter or jeopardize, in a manifestly arbitrary or illegal manner, rights and guarantees recognized by this Constitution, a treaty or a law. In the proceedings, the judge may rule that the law used to justify the harmful act or omission is unconstitutional. Such action against any form of discrimination and in relation to rights protecting the environment, competition, users and consumers, and to rights of collective application in general, may be brought by the affected party, the ombudsman and legally registered associations pursuing these ends, with the requirements and forms of organization of the action to be as determined by law."	General Environment Act (No. 25675), art. 30
Bahamas	Art. 28: "If any person alleges that any of the provisions of Articles 16 to 27 (inclusive) of this Constitution has been, is being or is likely to be contravened in relation to him then, without prejudice to any other action with respect to the same matter which is lawfully available, that person may apply to the Supreme Court for redress."	Environmental Health Services Act (1987), art. 17.2.g
Barbados	Art. 24: "If any person alleges that any of the provisions of sections 12 to 23 has been, is being or is likely to be contravened in relation to him … then, without prejudice to any other action with respect to the same matter which is lawfully available, that person … may apply to the High Court for redress."	Emergency Management Act (No. 20 of 2006), art. 27
Belize	Art. 20: "If any person alleges that any of the provisions of sections 3 to 19 inclusive of this Constitution has been, is being or is likely to be contravened in relation to him …, then, without prejudice to any other action with respect to the same matter which is lawfully available, that person (or that other person) may apply to the Supreme Court for redress … Any person aggrieved by any determination of the Supreme Court under this section may appeal therefrom to the Court of Appeal."	Environmental Protection Act (No. 22 of 1992), art. 40
Bolivia (Plurinational State of)	Art. 34: "Any person, acting individually or as the representative of a community, is entitled to take legal action in defence of the right to the environment, without prejudice to the obligation of public institutions to act ex officio when harm is done to the environment." Art. 135: "Collective redress may be sought against any act or omission by the authorities or by individual or collective persons who contravene or threaten to contravene collective rights and interests relating to public property, spaces, safety and health, the environment and the like recognized by this Constitution."	Environment Act (No. 1333), art. 102
Brazil	Art. 5: "Everyone is equal before the law, without distinction of any kind, and Brazilians and foreigners resident in the country are guaranteed the inviolability of the right to life, liberty, equality, security and property, as follows: any citizen may legitimately bring an action for collective redress with a view to reversing an act harmful to public property or the property of any body owned wholly or in part by the State, to administrative ethics, to the environment or to the historical and cultural heritage, and the plaintiff will be exempt from legal costs and other costs usually awarded against the unsuccessful party, except where there is demonstrated bad faith." Art. 225: "Everyone is entitled to an ecologically balanced environment, this being a good for the common use of the people that is essential for a healthy quality of life, and it is the responsibility of the public authorities and the community to protect and preserve it for present and future generations."	National Environmental Policy Act (No. 6938), art. 14.1 Collective Redress Act (No. 4717 of 1965) Public Civil Action for Environmental Damage Act (No. 7347 of 1985), art. 5
Chile	Art. 20: "Any person deprived of or disturbed or threatened in the legitimate exercise of established rights and guarantees because of arbitrary or illegal acts or omissions … may apply for redress personally, or anyone else may apply on their behalf, to the appropriate appeals court, which shall immediately adopt such measures as it deems necessary to re-establish the rule of law and ensure due protection for the affected party, without prejudice to any other rights the latter may assert before the authority or the appropriate courts. A remedy of protection may also be sought in the case provided for in art. 19.8, when the right to live in an unpolluted environment is affected by an illegal act or omission attributable to a determined authority or person."	Environmental Framework Act (No. 19300), arts. 53 and 54 Act creating Environmental Courts (Act No. 20600 of 2012), art. 18
Colombia	Art. 40.6: "Any citizen is entitled to participate in the make-up, exercise and oversight of the public authorities. To assert this right they may: bring public actions in defence of the Constitution and the law." Art. 88: "The law shall regulate actions for collective redress to protect collective rights and interests relating to public property, spaces, security and health, administrative ethics, the environment, free economic competition and the like as defined therein. It shall also regulate actions arising from damages caused to more than one person, without prejudice to the relevant individual actions. In addition, it shall define cases of objective civil liability for harm to collective rights and interests."	Law creating the Ministry of the Environment, reorganizing public sector responsibilities for managing and conserving the environment and renewable natural resources, organizing the National Environmental System (SINA) and establishing other provisions (Act No. 99), arts. 69 and 75 Act No. 472 of 1998 developing art. 88 of the Constitution in relation to the exercise of actions for collective and group redress and establishing other provisions, arts. 12, 13 and 14
Costa Rica	Art. 41: "Anyone must be able to obtain legal redress for any abuse or damage to their person, property or moral interests. Justice must be done swiftly, fully, unstintingly and in strict accordance with the laws." Art. 50: "The State shall seek the greatest welfare of all the country's inhabitants, organizing and encouraging production and the most suitable distribution of wealth. Everyone is entitled to a healthy and ecologically balanced environment. Accordingly, everyone is entitled to take legal action over acts that infringe this right and to seek redress for the harm caused. The State shall guarantee, uphold and preserve this right. Liabilities and penalties shall be as prescribed by law."	Biodiversity Act (No. 7788 of 1998), art. 105 Organic Law of the Attorney General's Service (Act No. 6815 of 1982), art. 3.h

Table V.4 (continued)

Country	Constitutional treatment	Treatment in general environmental laws and other regulations
Cuba	Art. 26: "Any person suffering harm or prejudice wrongfully caused by officials or agents of the State in the exercise of the functions belonging to their positions is entitled to bring a complaint and obtain the appropriate redress or indemnity in the manner prescribed by law." Art. 63: "Any citizen is entitled to address complaints and petitions to the authorities and to receive the appropriate attention or responses within a reasonable time, as prescribed by law."	Environment Act (No. 81 of 1997), art. 71
Dominica	Art. 16: "If any person alleges that any of the provisions of sections 2 to 15 (inclusive) of this Constitution has been, is being or is likely to be contravened in relation to him … then, without prejudice to any other action with respect to the same matter which is lawfully available, that person … may apply to the High Court for redress."	Environmental Health Services Act (No. 8 of 1997), art. 17
Dominican Republic	Art. 69: "Any person is entitled in the exercise of their legitimate rights and interests to secure effective judicial protection, respecting due process as constituted by the minimum guarantees established below ..." Art. 72: "Action of *amparo*. Any person is entitled to apply to the courts by an action of *amparo*, in their own right or through someone acting on their behalf, for the immediate protection of such of their fundamental rights as are not protected by habeas corpus when these are infringed or threated by the action or omission of any public authority or by private individuals, in order to enforce a law or administrative act and thereby guarantee collective and diffuse rights and interests. By law, this shall be a priority oral, summary, public procedure that is free of charge and not subject to formalities."	General Act on the Environment and Natural Resources (Act No. 64), arts. 178 and 179
Ecuador	Art. 71: "Any person, community, people or nationality may require the public authorities to enforce the rights of nature. To apply and interpret these rights, the relevant principles of the Constitution shall be observed." Art. 397: "To guarantee the individual and collective right to live in a healthy and ecologically balanced environment, the State undertakes to: allow any natural or legal person, community or human group to take legal action and apply to legal and administrative bodies, without prejudice to their direct interest, in order to secure from them effective protection for the environment, including the possibility of applying for injunctions to put an end to the threat or harm to the environment that the litigation concerns. The burden of proving that no potential or actual damage exists shall fall upon the party conducting the activity or the defendant."	Environmental Management Act (No. 37), arts. 28, 42 and 43 Environmental Pollution Prevention and Control Act, art. 16
El Salvador	Art. 247: "Any person may bring a suit for *amparo* before the Constitutional Chamber of the Supreme Court of Justice for violation of the rights granted by this Constitution."	Environment Act (Decree No. 233), art. 101
Grenada	Art. 16: "If any person alleges that any of the provisions of sections 2 to 15 (inclusive) of this Constitution has been, is being or is likely to be contravened in relation to him … then, without prejudice to any other action with respect to the same matter which is lawfully available, that person… may apply to the High Court for redress."	Physical Planning and Development Control Act (No. 25 of 2002), art. 35
Guatemala	Art. 29: "Every person has free access to the courts, services and offices of the State to bring actions and assert their rights in accordance with the law." Art. 265: "The remedy of *amparo* is instituted to protect persons against threats of infringements on their rights or to restore the exercise of these once the infringement has occurred. There is no sphere in which *amparo* cannot operate, and it shall be applicable whenever the acts, rulings, dispositions or laws of the authorities imply a threat to or a restriction or infringement of the rights guaranteed by the Constitution and the laws."	Environmental Protection and Improvement Act (Decree No. 68-86), art. 37
Guyana	Art. 133: "(1) An appeal to the Court of Appeal shall lie as of right from decisions of the High Court in the following cases, that is to say, (a) final decisions in any civil or criminal proceedings on questions as to the interpretation of this Constitution; and (b) final decisions given in exercise of the jurisdiction conferred on the High Court by article 153 (which related to the enforcement of fundamental rights and freedoms). Art. 153: (1) … if any person alleges that any of the provisions of articles 138 to 151 (inclusive) has been, is being or is likely to be contravened in relation to him …, then, without prejudice to any other action with respect to the same matter which is lawfully available, that person (or that other person) may apply to the High Court for redress."	Environmental Protection Act (No. 11 of 1996), arts. 11.3 and 48
Haiti	Art. 207: "The purpose of the Office of Citizen Protection is to protect all individuals against any form of abuse by the government. Its intervention on behalf of any complainant is without charge, whichever court may have jurisdiction."	--
Honduras	Art. 183: "The State recognizes the guarantee of *amparo*. Consequently, any aggrieved person or anyone acting on their behalf is entitled to bring a suit for *amparo*: (1) to be maintained or restored in the enjoyment of the rights or guarantees prescribed in the Constitution; and (2) to obtain a ruling in specific cases that a regulation, deed, act or resolution of an authority does not bind the appellant and is inapplicable because it infringes, diminishes or distorts any of the rights recognized by the Constitution."	General Environment Act (Decree No. 104/93), arts. 80 and 90
Jamaica	Art. 19: "(1) If any person ,alleges that any of the provisions of this Chapter has been, is being or is likely to be contravened in relation to him, then, without prejudice to any other action with respect to the same matter which is lawfully available, that person may apply to the Supreme Court for redress. (2) Any person authorized by law, or, with the leave of the Court, a public or civic organization, may initiate an application to the Supreme Court on behalf of persons who are entitled to apply under subsection (1) for a declaration that any legislative or executive act contravenes the provisions of this Chapter. (5) Any person aggrieved by any determination of the Supreme Court under this section may appeal therefrom to the Court of Appeal."	Natural Resources Conservation Authority Act (No. 9 of 1991), art. 36

Table V.4 (concluded)

Country	Constitutional treatment	Treatment in general environmental laws and other regulations
Mexico	Art. 107.I: "*Amparo* proceedings shall always proceed at the request of an aggrieved party, by which is meant someone claiming to possess a right or a legitimate individual or collective interest, provided they assert that the act complained of contravenes rights recognized by this Constitution and thereby affects their legal sphere, either directly or by virtue of their special situation vis-à-vis the legal order."	General Act on Ecological Balance and Environmental Protection, arts. 180 and 190 Federal Environmental Liability Act, arts. 28 and 54
Nicaragua	Art. 45: "Persons whose constitutional rights have been or risk being violated may lodge an appeal of habeas corpus or *amparo* where appropriate, in accordance with the *Amparo* Act."	General Act on the Environment and Natural Resources (Act No. 217), arts. 2 and 147
Panama	Art. 41: "Everyone is entitled to present public servants with respectful petitions and complaints for reasons of social or private interest, and to have these speedily resolved." Art. 54: "Any person against whom any public servant issues or executes an administrative injunction that breaches the rights and guarantees enshrined in the Constitution shall be entitled to have the injunction revoked at their own or anyone else's request. The action of *amparo* to uphold the constitutional guarantees to which this article refers shall be heard by the courts in a summary procedure."	General Environment Act, arts. 110 and 106
Paraguay	Art. 38: "Every person is entitled, individually or collectively, to demand measures from the public authorities to defend the environment, the integrity of natural habitats, public health, the nation's cultural heritage, consumer interests and such other interests as, by their legal nature, belong to the community and affect people's quality of life and the collective patrimony." Art. 134: "Any person who holds that they have been or are in imminent danger of being seriously affected in their rights or guarantees as enshrined in the Constitution or the law by a manifestly unlawful act or omission of an authority or a private individual, and who cannot seek redress through the ordinary channels because of the urgent nature of the case, may apply for an *amparo* ruling from the competent magistrate. The procedure will be short, summary, free of charge and collectively applicable in the cases provided for by law."	--
Peru	Arts. 200.2 and 200.5: "The action of *amparo*, whose purpose is to remedy an act or omission by any authority, official or person that infringes or jeopardizes the other rights recognized by the Constitution, with the exception of those indicated in the following subsection. It cannot be brought against statutory provisions or judicial rulings issuing from regular proceedings … Action for collective redress, which may be taken against regulations, administrative rules and resolutions and decrees of a general character on the grounds that they contravene the constitution and the law, whichever authority issues them."	General Environment Act (No. 28611), art. 143
Saint Kitts and Nevis	Art. 96: "Any person who alleges that any provision of this Constitution … has been or is being contravened may, if he or she has a relevant interest, apply to the High Court for a declaration and for relief."	National Disaster Management Act (No. 5 of 1998), art. 30 Development Control and Planning Act (No. 14 of 2000), art. 75
Saint Vincent and the Grenadines	Art. 16: "If any person alleges that any of the provisions of sections 2 to 15 inclusive of this Constitution has been, is being or is likely to be contravened in relation to him …, then, without prejudice to any other action with respect to the same matter that is lawfully available, that person (or that other person) may apply to the High Court for redress."	Environmental Health Services Act (No. 14 of 1991), arts. 10.7 and 17.1 Town and Country Planning Act (No. 45 of 1992), arts. 18 and 27
Saint Lucia	Art. 16: "If any person alleges that any of the provisions of sections 2 to 15 inclusive has been, is being or is likely to be contravened in relation to him or her …, then, without prejudice to any other action with respect to the same matter which is lawfully available, that person (or that other person) may apply to the High Court for redress."	Land Conservation and Improvement Act (No. 10 of 1992), art. 16
Suriname	--	--
Trinidad and Tobago	"Art. 14: For the removal of doubts it is hereby declared that if any person alleges that any of the provisions of this Chapter has been, is being, or is likely to be contravened in relation to him, then without prejudice to any other action with respect to the same matter which is lawfully available, that person may apply to the High Court for redress by way of originating motion."	Environmental Management Act (No. 3 of 2000), art. 69 Judicial Review Act (No. 60 of 2000), art. 5.2.b
Uruguay	Art. 258: "A declaration that a law is unconstitutional and the provisions affected by it are inapplicable may be sought by anyone considering themselves to be affected in their direct, personal and legitimate interest: (1) by way of an action, which must be brought before the Supreme Court of Justice; (2) by way of an objection, which may be filed in any judicial proceedings."	--
Venezuela (Bolivarian Republic of)	Art. 27: "Any person is entitled to protection from the courts in the enjoyment and exercise of their constitutional rights and guarantees, even those of a personal nature that are not expressly included in this Constitution or in international human rights instruments. The proceedings of an action for constitutional *amparo* shall be oral, public, brief, free of payment and not subject to formalities, and the competent judicial authority shall be empowered to immediately restore the legal situation infringed upon or the closest possible situation to it. The action may be heard at any time and the court shall give it preference over any other business. An action of *amparo* to protect liberty or safety may be brought by any person, and the arrested person shall be placed in the custody of the court immediately, without delay of any kind."	Organic Environmental Act (Act No. 5833), art. 43 Penal Environmental Act (2012), art. 21

Source: Economic Commission for Latin America and the Caribbean (ECLAC), on the basis of the constitutions and laws of the respective countries.

Box V.3
Developments in jurisprudence concerning broad standing in the English-speaking Caribbean

Jurisprudence in the English-speaking Caribbean has traditionally adopted a restrictive interpretation of the private or personal interest rule for access to justice, construing it as the sufficient or relevant interest required for an action to be brought. However, there has been a recent tendency in the subregion to ease this rule in cases of an environmental nature, thereby obviating one of the greatest barriers to access to environmental justice. Thus, not only affected communities but also associations and non-governmental organizations (NGOs) acting in defence of the environment have been recognized as having broad standing, with their interest deemed relevant and sufficient in environmental cases.

Perhaps the most paradigmatic case in this respect is No. BZ 2002 SC 14, in which a partnership of nine environmental organizations brought an action against the building of a dam on the Macal river in Belize on the grounds that several provisions of the environmental impact assessment law had been breached, including public participation and information rules. The Supreme Court of Belize was categorical in recognizing that these organizations had standing because they had a sufficient and relevant public interest, transcending the issue of whether they were strictly affected. The Court concluded that the partnership was particularly well qualified and positioned to bring the case because it represented affected communities and had interests that went beyond private concerns in defence of the environment.

There have been similar cases in Jamaica and Trinidad and Tobago, where a broadening of legal standing has enabled environmental groups and organizations to access justice to safeguard their legitimate rights. Thus, the non-profit NGO Jamaica Environment Trust was recognized as having standing to lodge an objection to the development of a hotel complex at Pear Tree Bottom. Similarly, People United Respecting the Environment (PURE), a public interest grouping, was able to apply for a judicial review of the authorization for an aluminium smelter in La Brea (Trinidad and Tobago).

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

2. Reversal of the burden of proof

The general rule for tort liability is that it is up to the injured party to prove the damage and demonstrate its extent and magnitude. A difficulty that arises specifically in the environmental sphere, however, lies in the complexity of proving environmental damage and the causal connection. It can sometimes be difficult to isolate the damage when there are a number of causes and the effects are cumulative or occur at some distance in space and time. Furthermore, the perpetrator of the damage usually has more technical and scientific information about the activities causing it.[17] This is compounded by the expense to the victim of gathering evidence. All this may constitute a de facto barrier to accessing justice.

For this reason, some countries have made provision to reverse the burden of proof so that the party allegedly responsible for the damage must prove that there was no such damage, or to establish a presumption of guilt for the perpetrator, who must rebut it with legally admissible evidence. This ensures that a lack of resources and information is not an obstacle to halting the damage or allotting liability.

Provision has been made for reversal of the burden of proof in countries such as Argentina, Ecuador and El Salvador. In Argentina, this has been done by a combination of articles 28 (objective liability for environmental damage) and 29 (which provides that exoneration from liability for damage occurs only when a third party proves to have been responsible for it) of the General Environment Act. In Ecuador, article 397.1 of

[17] See Environment and Natural Resources Commission, "Temas selectos de medio ambiente", Mexico City, November 2010 [online] http://www.diputados.gob.mx/documentos/temas.pdf.

the constitution states that the burden of proving the absence of potential or actual damage shall fall upon the party conducting the activity or the defendant.[18] In El Salvador, article 102.b of the 1998 Environment Act states that the burden of proof in environmental proceedings is to fall upon the defendant, with the judge ordering the relevant technical studies on which to base his or her ruling.

Another burden of proof doctrine that has been making headway in countries such as Argentina and Brazil is that of the dynamic burden of proof (also known as the duty or principle of solidarity), whereby the burden of proof falls upon the party best placed to provide it.[19]

3. Removal or reduction of financial and other barriers

To ensure that access to justice in environmental matters is not prohibitively expensive, countries have begun to establish assistance mechanisms to remove or reduce financial and other barriers. The legal rule that "costs follow the event" has been balanced by other rules limiting costs and ensuring these are reasonable and not prohibitive, such as cost caps, legal presumptions against cost awards, protective cost orders, legal aid (particularly for poor or vulnerable litigants), financial assistance for scientific and technical expertise through court-appointed experts or State laboratories, waivers and cost recovery mechanisms, and removal of bonding requirements for security in the case of injunctions, among others (UNEP, 2015, p. 117).

In Mexico, article 29 of the Federal Environmental Liability Act stipulates that "except in the cases provided for by articles 23 and 28 of the present Act, no party shall have legal costs and expenses awarded against them".

In Colombia, article 19 of Act No. 472 of 1998 developing article 88 of the Constitution in relation to the exercise of actions for collective and group redress and establishing other provisions provides for a poverty *amparo*, stating that the judge may apply this where appropriate in accordance with the Code of Civil Procedure, or when the Ombudsman or his or her deputies explicitly so request. It adds that where a poverty *amparo* is applied, the cost of commissioning expert reports is to be met by the Collective Rights and Interests Defence Fund once created. The defendant shall reimburse these costs to the Fund at the same time as settling other legal costs, if found against.

In Brazil, article 18 of Act No. 7347 on Public Civil Action (1985) states that, in the actions covered by the Act, no advances are to be paid on costs, emoluments, expert fees or any other expense, nor are lawyers' fees or legal costs and expenses to be awarded against the association bringing the claim unless bad faith is demonstrated.

In Argentina, article 32 of Act No. 25675 provides that there will be no restrictions of any kind on access to jurisdiction over environmental matters. This formula is accepted in court proceedings to obviate payment of access fees or costs for litigants in cases of this kind. Similarly, article 14 of the constitution of the City of Buenos Aires provides that actions for *amparo* are to be free of charge for plaintiffs, unless the action can be shown to have been brought frivolously and maliciously.

Article 42 of Act No. 20600 creating Environmental Courts in Chile establishes that, exceptionally, the court may wholly or partially exempt a party from payment of the expert's fee when it considers that party to be unable to afford it.

[18] Constitution of Ecuador, art. 397: "the State undertakes to: allow any natural or legal person, community or human group to take legal action and apply to legal and administrative bodies, without prejudice to their direct interest, in order to secure from them effective protection for the environment, including the possibility of applying for injunctions to put an end to the threat or harm to the environment that the litigation concerns. The burden of proving the absence of potential or actual damage shall fall upon the party conducting the activity or the defendant."

[19] See, for example, Cafferatta (2004), Cappelli (2017) and Peyrano (2008).

In Panama, article 117 in chapter III (Civil Action) of the General Environment Act (No. 41 of 1998) establishes that legal actions undertaken by the State, municipalities, NGOs and private individuals for the purpose of upholding the right to a healthy environment shall be conducted following the summary procedure and shall not give rise to legal costs, except in the case of frivolous claims.

In Trinidad and Tobago, the Judicial Review Act leaves it up to the judge to determine costs and allows these to be waived unless the application is frivolous or vexatious (art. 7.8).

4. Alternative conflict resolution methods

Another positive development in the direction of guaranteeing access to environmental justice has been the gradual inclusion of prior steps or alternatives to judicial or administrative proceedings to resolve disputes. Examples include negotiation, mediation, reconciliation and arbitration.[20] The main benefits include the possibility of arriving at broadly accepted and thereby potentially long-lasting solutions (UNEP, 2015, p. 131).

In Argentina, Act No. 26589 on mediation and binding arbitration has the aim of establishing and regulating dialogue between the parties prior to court action. While the Act is of a general character, it applies to environmental proceedings.

In Mexico, the Federal Environmental Liability Act permits such alternative dispute resolution mechanisms. Article 47 states that any person is entitled to resolve legal and social disputes arising out of damage to the environment through collaborative channels that give priority to dialogue and facilitate resolution options that are more environmentally and socially positive. Nonetheless, article 48 of the Act limits this by establishing that "all or some of the differences arising between the persons and institutions referred to in the previous article over circumstances surrounding damage to the environment, protection of the right to an environment suitable for people's development and well-being, environmental redress and compensation obligations, and actions, applications and the withdrawal of charges to which court proceedings for environmental liability relate may be dealt with by alternative dispute resolution mechanisms provided that ethical standards and the rights of third parties are unaffected and that environmental laws, public order arrangements and the international treaties to which Mexico is a party are not contravened". This makes it explicit that agreements cannot breach environmental laws. The Act also refers to the possibility of using alternative conflict resolution mechanisms in criminal matters, and article 51 indicates that alternative mechanisms used in cases of behaviour constituting a criminal offence shall have the purpose of securing redress through the involvement of the victim or injured party and the alleged perpetrator to seek a solution for disputes arising from the event characterized as a crime.

Article 152 of Peru's General Environment Act states that "determined or determinable environmental disputes or claims turning on economic or other rights at the free disposal of the parties may be submitted to arbitration and reconciliation". As can be seen, the same limitation is established as in the case of Mexico, since these agreements can only be arrived at in relation to economic rights or other rights at the free disposal of the parties, meaning that agreements that contravene environmental laws cannot be adopted. This same article 152 lists particular cases that can be submitted to arbitration:

- Determination of the amounts of indemnification for environmental damage or crimes against the environment and natural resources.

[20] See UNEP (2015) for a detailed description of these alternative methods.

- Determination of obligations of redress that may arise from an administrative proceeding, whether monetary or otherwise.
- Disputes arising in the execution and implementation of natural resource access and exploitation contracts.
- Clarification of limitations on ownership rights existing prior to the creation and implementation of a protected area of a national character.
- Conflicts between users with overlapping and incompatible rights over areas or resources subject to environmental land use or zoning provisions.

In Brazil, Act No. 7347 on Public Civil Action of 1985 (article 6.5) establishes that public bodies with the necessary powers (such as the Federal Prosecution Service) may accept a commitment by the interested parties to adapt their behaviour to what the law requires via judgements that will have extrajudicial executive effect. A deferred prosecution or behaviour adjustment agreement (*termo de ajuste de conduta*) is an instrument whose purpose is to prevent the continuance of an illegal situation, provide redress for damage to a collective right and avoid legal action.

In Trinidad and Tobago, the Environmental Management Act (No. 3 of 2000) establishes that, in performing its functions, the environmental authority shall facilitate cooperation among persons and manage the environment in a manner which fosters participation and promotes consensus, not least by encouraging and itself employing appropriate methods to avoid or expeditiously resolve disputes using alternative dispute resolution mechanisms (articles 16.2 and 84.3).

There are also instances of negotiation and agreement over the penalties imposed, the idea being to favour a system of reconciliation in which incentives and constructive proposals for solutions are the prevailing compliance mechanisms. This is expressed in article 38 of Mexico's Federal Environmental Liability Act, which states that "once the guilty verdict becomes final and enforceable, the judge shall notify the parties that within a period of thirty days they are to state their positions on:

- The form, terms and amounts of material environmental redress for the damage caused to the environment by which they mean to meet these obligations;
- The total or partial impossibility of providing material environmental redress for the damage, and consequently the form, place and scope of full or partial environmental compensation; and
- The proposed time periods for the party responsible to meet its obligations.

If the parties reach an agreement on the points set out in this article, they may formulate a joint proposal."

The ombudsman's services and national human rights institutions analysed earlier may also deal with dispute resolution through non-judicial and non-administrative channels.

5. Geographical coverage

Geographical coverage is an important consideration in large countries or those with areas that are hard to reach. Long distances can mean that access to justice is prohibitively expensive and time-consuming. Brazil's response to this challenge has been itinerant justice. A number of state-level courts have put together itinerant justice teams who travel by bus or boat to remote or hard-to-reach areas. These teams are made up of judges, prosecutors, defence attorneys, conciliators and other professionals. In 2004, itinerant justice became obligatory. A constitutional amendment established that all the courts in the country had to draw up itinerant justice projects (IPEA, 2015).

B. Challenges

The main challenges for access to environmental justice in the region include limitations on the ability to initiate legal or administrative proceedings. The limitation of standing to persons directly affected or having a relevant interest, together with other requirements, such as being registered or having a particular type of legal personality, can place major barriers in the way of environmental justice. Consequently, it is vital to ensure wide and effective access to legal, administrative or other mechanisms.

There is an open debate in the region about who should advocate for the rights of nature. In Ecuador, the constitution endows nature with rights and article 71 states that any person, community, people or nationality can demand that the public authority enforce the rights of nature. In Colombia, a recent judgement by the Constitutional Court recognizes the river Atrato and its basin and tributaries as an entity with a right to protection, conservation, maintenance and restoration, for which the State and ethnic communities are responsible.[21]

The cost of environmental litigation, whether the proceedings are administrative, judicial or of some other kind, remains a constraint when it comes to ensuring the broadest possible right to access to justice. Costs that are unreasonable and prohibitive need to be avoided, both in access to the justice system and in the proceedings themselves, which can entail copious expenditure on expert reports, evidence or bonds. An example of this are the Caribbean countries operating within the English tradition, whose system routinely requires large bonds from those applying for preventive measures or injunctions.

As with other issues of public interest, access to justice in environmental matters depends in large measure on the existence of support platforms for environmental litigation in the public interest. Different studies in the literature on legal activism, access to justice and social change have brought to light the relationship between citizens' access to the courts for issues of public interest and the development of support platforms for litigation of this kind. Having lawyers willing to take on public interest cases and the financing needed to cover minimum litigation costs are two of the components of these support platforms identified in the specialist literature.[22]

The active environmental role played by the Federal Prosecution Service in Brazil and the Ombudsman's Office in Argentina is a good example of the way the existence of organizations (in the public sector in this case) has opened up access to justice for social groups that would otherwise have struggled to bring their environmental demands before the courts.

Countries need to move forward with the establishment of measures to help the low-income population obtain access to justice without being constrained by cost. A salient development was the creation of the Collective Rights and Interests Defence Fund set up under Act No. 472 in Colombia. Another unmet challenge is to fully integrate indigenous communities into the social model so that membership of one of these communities is not a limiting factor in access to justice. The publication of Peru's Unified Form for Judicial Administrative Procedures in indigenous languages is a step in this direction.

To guarantee the right of access to justice in environmental matters, the countries have set up a number of judicial and non-judicial bodies with specialist knowledge in environmental matters over recent decades. In this context, it has been argued that

[21] See Constitutional Court of Colombia, "Sentencia T-622/16", Bogotá, 2016 [online] http://www.corteconstitucional.gov.co/relatoria/2016/t-622-16.htm.

[22] See, for example, C. Epp, *The Rights Revolution. Lawyers, Activists and Supreme Courts in Comparative Perspective*, Chicago, University of Chicago Press, 1998.

environmental courts can become a more efficient and expeditious alternative to traditional courts for dispute resolution. Offering specialized attention, being thoroughly acquainted with environmental laws and having greater scientific knowledge, they can provide faster and less costly solutions to people's environmental claims (Pring and Pring, 2016). Good geographical distribution is also necessary to ensure access for people living in more isolated conditions.

The countries need to continue to move forward with the establishment of alternative environmental conflict resolution mechanisms. The lack of these has created a tendency towards the judicialization of environmental conflicts, which adds large costs and delays and does not always lead to acceptable or sustainable solutions for the different interest groups. This subject is dealt with in chapter VI. A further challenge is the need to improve the mechanisms used to publicize information on access to and the content of environmental justice in the countries, e.g. by setting up information systems for legal and administrative procedures and rulings in environmental matters.

Suggested reforms to improve access to environmental justice in the region have included removing obstacles to the prosecution of environmental crimes; recognizing diffuse and collective environmental interests in court and administrative procedures; making the requirements of citizen participation and the use of consultation mechanisms enforceable in the courts; having courts, public prosecution services and ombudsman's services that specialize in environmental matters and ensuring these are well distributed geographically; ensuring that activities harmful to the environment or health can be halted; giving consideration to providing indigenous peoples with the extra guarantees they require; and recognizing the diversity of languages and cultures.[23]

It has also been argued that remedies in environmental cases, such as compensation, are often insufficient for full restoration of ecological services given the irreversible impacts of many environmentally hazardous acts and activities. Accordingly, attention has been drawn to the need to set priorities or establish a hierarchy in indemnification methods and mechanisms with a focus on restitution, if it is not possible to achieve redress and finally compensation or indemnification, together with the need for injunctions, such as precautionary measures, to prevent irreversible damage (UNEP, 2015; Cappelli, 2017).

It has been argued, again, that to facilitate access to a competent legal advisor, consideration needs to be giving to setting up legal aid offices that can provide free or low-cost legal advice on matters relating to the environment (UNEP, 2015).

Lastly, there is a need to train both judicial officers and other legal professionals in environmental law, introducing new concepts such as economic appraisal, diffuse interests, indemnification mechanisms, ecosystem services and intangible or existence values. This is one of the topics included in the Declaration on Justice, Governance and Law for Environmental Sustainability presented at the United Nations Conference on Sustainable Development (Rio+20), where the Chief Justices, Heads of Jurisdiction, Attorneys General, Auditors General, Chief Prosecutors, and other high-ranking representatives of the judicial, legal and auditing professions declared that States should cooperate to build and support the capacity of courts and tribunals as well as prosecutors, auditors and other related stakeholders at national, subregional and regional levels to implement environmental law, and to facilitate exchanges of best practices in order to achieve environmental sustainability by encouraging relevant institutions, such as judicial institutes, to provide continued education.[24]

[23] For information on access to justice and reforms in geonational reports, see United Nations Environment Programme (UNEP), "EAI nacionales" [online] http://www.pnuma.org/deat1/nacionales.html.

[24] See United Nations Environment Programme (UNEP), "Rio+20 declaration on justice, governance and law for environmental sustainability" [online] http://www.pnuma.org/gobernanza/documentos/congreso%20mundial%20justicia/Rio+20%20Declaration%20on%20Justice%20Governance%20and%20Law%20for%20Environmental%20Sustainability.pdf.

CHAPTER

VI

Rights of access and the prevention of socioenvironmental conflicts in Latin America and the Caribbean

A. Background

The growing number of socioenvironmental conflicts relating to the management and exploitation of natural resources is a cause for concern in Latin America and the Caribbean. According to a June 2017 report by the Office of the Ombudsman of Peru, 72.9% of the 177 social conflicts observed in the country were socioenvironmental in nature (Office of the Ombudsman of Peru, 2017). Most of these conflicts (64.3%) related to mining, followed by hydrocarbon activities (13.2%). In 2012, Chile's National Human Rights Institute (INDH) prepared a map of socioenvironmental conflicts in the country. In 2016, when an update on cases recorded up to July 2015 was released, 102 socioenvironmental conflicts were recorded.[1] The parties involved in most of these conflicts (76%) were energy and mining firms and local communities within their areas of influence. The Environmental Justice Atlas, a joint global initiative led by the Autonomous University of Barcelona, documents and catalogues socioenvironmental conflicts worldwide and includes important information on the situation in Latin America and the Caribbean.[2]

Socioenvironmental conflict is a type of social conflict whose dynamics turn on the control and use of natural resources and access to these, and on the environmental effects of economic activities.[3] The socioenvironmental conflicts observed in the region usually arise in a context of growing economies with persistent poverty and extreme poverty, especially in rural areas, and a marked expansion in extractive activities such as mining, oil and gas, fisheries, forestry and hydropower.[4] In some countries, a dearth of land use planning policies has also strained relationships between the State, firms and local communities and constitutes a potential source of socioenvironmental conflicts.

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

An analysis of seven socioenvironmental conflicts in the region identified the following causes:[5]

(i) Overlapping rights

These are cases where rights that are legally enshrined in national or international laws or both overlap and there is no clear hierarchy between them. They may arise, for example, when mining exploration permits are issued for a State-protected forest area or a project is authorized in an environmental conservation area where numerous habitats requiring conservation are threatened.

1 See National Human Rights Institute (INDH) [online] https://www.indh.cl.

2 See Environmental Justice Atlas [online] https://ejatlas.org/.

3 See Office of the Ombudsman of Peru, "Glosario", Lima, 2008 [online] http://www.defensoria.gob.pe/conflictos-sociales/glosario.php?pag=2.

4 See ECLAC (2014b, chaps. V and VI).

5 The cases analysed were: the La Colosa mining project in Colombia (conflict began in 2007); the Mirador project operated by Corriente Resources in Ecuador (conflict began in 2006); the Antamina mining project in Peru (conflict began in 2001); the El Dorado mining project in El Salvador (conflict began in 2004); the Tranque El Mauro project operated by Minera Los Pelambres in Chile (conflict began in 2006); the Rio de Janeiro Petrochemical Complex (COMPERJ) (Guanabara Bay) in Brazil (conflict began in 2008); and the La Trinidad mining project in San José del Progreso, Mexico (conflict began in 2005).

(ii) Absence of land use planning

These are situations where different uses of a given territory are incompatible, either because of the type of economic activities involved (agriculture and mining, for example) or because of cultural and social factors. This incompatibility of usage does not necessarily entail the existence of overlapping rights enshrined in specific laws, but may be due to a lack of community discussion and decision-making about the use of land and resources in the territory. One example may be a proposed mining project in a farming and cattle region that creates concern because of water availability issues, water being a vital resource for both activities. In conflicts of this type, legitimate economic considerations are usually intertwined with others relating to ways of life perceived as under threat from these projects.

(iii) Procedural problems with the environmental impact assessment or environmental licensing system

These problems have to do with a lack of relevant information, inadequate citizen involvement (limited participation arrangements and official unresponsiveness) and poor performance by the environmental authority of its coordinating role when it lacks the capacity to draw together observations by public agencies on the projects evaluated.

(iv) The "not in my back yard" (NIMBY) effect

This refers to conflicts that arise when the people affected do not oppose the development of a particular type of project as such but object for various reasons to its location. Such opposition is usually motivated by concerns about health, changes in lifestyles or even declining property values.

(v) Power asymmetries

This is one of the main characteristics of socioenvironmental conflicts and stems from inequality in financial resources, knowledge, influence and access to goods and services. Also among such causes of conflict are the strategies adopted by project developers in their relationship with communities. The granting of individual benefits such as cash payments or a commitment to employ specific members of the community or part of it contributes to fragmentation of the social fabric that makes it harder to deliberate freely, reduces opportunities for participation and erodes the trust needed to engage in these processes.[6]

(vi) Regulatory non-compliance

This is seen in conflicts where the project developer fails to comply with agreed commitments, current legislation or both, or where some branch of the State flouts regulations in order to provide the requisite permits.

(vii) Lack of transparency or legitimacy

Conflicts present this characteristic when there is a lack of trust between the parties and of timely and reliable information on the impact of the proposed activities. One of the main grievances of people living in territories where natural resource extraction is planned is lack of access to full, relevant and high-quality information. The State sometimes leaves it up to firms to inform the population of projects and their possible impact, something that causes mistrust in communities (Aranibar, Chaparro and Salgado, 2011).

As can be appreciated, socioenvironmental conflicts around investment projects related to the exploitation of natural resources are complex and multidimensional and reflect the difficulties faced by the region's countries in their efforts to move towards a new style of development favourable to sustainable growth and the equitable distribution of economic benefits and environmental effects (De Miguel and Torres, 2015).

[6] See Hernando and Razmilic (2015) for a review of the literature on local opposition to projects.

In this context, the effective exercise of the rights of access to information, public participation and justice in environmental matters is an essential element in the good governance of natural resources in the region and can help to forestall and prevent conflicts. For example, access to information and citizen participation at early stages of decision-making about natural resources ensure transparency in the distribution of the costs and benefits of decisions between investors, the government and local communities, something that in turn helps to build trust and forestalls conflict (see box VI.1).

Box VI.1
The costs and benefits of citizen participation at early stages of environmental decision-making

Citizen participation in decision-making in general and on environmental issues in particular is too recent for an exact calculation of the ratio between costs and benefits (Involve, 2005a). However, a number of factors have now combined to create a virtually unanimous movement among States towards strengthening these procedures, a movement conducive to good environmental governance. Some factors, such as a growing demand from citizens for participation in decisions affecting their environment and quality of life and the international agreements that underpin this, have spurred progress in the legislation of most of the region's countries towards increased recognition of people's right to take part in environmental decision-making.

Despite the consensus on the need for more public participation in decision-making in the interests of greater democracy, it is difficult to answer the question of whether exclusion from participatory processes has an opportunity cost. Neoclassical economic theory suggests it does, since failing to include public participation processes in rational decision-making that is meant to produce the best possible outcome leads to market failures associated with imperfect information (information asymmetry), faulty assessment of externalities and mismanagement of public goods (Involve, 2005b).

At the same time, environmental economic theory recognizes the difficulty of arriving at standardized values for environmental effects, since not all factors can be converted into a monetary unit. Public participation is thus a source of plural values that are not amenable to standardization. For this reason, decisions about the needful scale and scope of public participation need to be based on qualitative reasoning.

In this context, the following benefits have been posited for public participation in decision-making:

- Avoiding conflict and judicialization: citizen participation in the early stages forestalls the social conflict triggered by perceptions of injustice, which can drive up costs as permits are cancelled, studies are duplicated and the implementation of projects, plans, programmes and policies is blocked or delayed (CONAMA, 1999). It also obviates the cost of initiating court proceedings and reduces the backlog in legal practices.
- Improving the flow of information: participatory processes ensure that the flow of information about the decision taken and the contributions made by civil society are official and clear. This reduces failures associated with imperfect information and information asymmetries in decision-making.
- Sharing responsibilities: the best use of public goods is always a fraught matter, and citizen participation spreads responsibility and develops a fairer model for this. Thus, horizontal governance helps to increase benefits overall.
- Promoting stability: decisions taken in participatory settings and with a strong flow of information help to ensure that State policies are more stable, transcending the political cycle.

All of these improve the quality of decision-making and the service to which it relates.

These factors suggest that the cost of not incorporating citizen participation into decision-making is greater than the transaction costs it entails. Consequently, the benefits of doing so would seem to extend beyond the moral rationale of enhanced democracy and social cohesion and justice.

Source: Economic Commission for Latin America and the Caribbean (ECLAC), on the basis of Involve, *People and participation: how to put citizens at the heart of decision-making*, London, 2005a; *The true costs of public participation. Full report*, London, 2005b; National Environmental Commission (CONAMA), *Participación ciudadana temprana en el marco del sistema de evaluación de impacto ambiental: guía para titulares de proyectos de inversión*, Santiago, 1999.

B. Challenges

To prevent and mitigate socioenvironmental conflicts, there is a need for greater efforts to generate and disseminate information and create arrangements for investment project developers and the communities directly or indirectly affected to come together at an early stage. Conflicts sometimes break out in the initial phases of projects, even before environmental impact assessments take place or formal arrangements for public participation are established. Having local people actively contributing ideas, information and possible solutions usually generates opportunities for positive change as previously disregarded subjects and options are aired.

The creation of institutions responsible for promoting and overseeing dialogue between developers, communities and the authorities is conducive to the collaborative resolution of socioenvironmental conflicts and means that agreements satisfactory to all parties can be arrived at.

A further concern in Latin America and the Caribbean is the use of violence in socioenvironmental conflicts. Although the intensity of this varies, a number of abuses against communities have been documented, including intimidation and criminalization of people leading opposition to projects and the use of armed personnel. A number of reports identify Latin America as the riskiest region in the world for those upholding rights relating to territory, the environment and access to land.[7]

Michel Forst, the Special Rapporteur on the situation of human rights defenders, John Knox, the Special Rapporteur on the issue of human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment, and the Inter-American Commission on Human Rights (IACHR) have called upon States to adopt measures to protect those who defend human rights relating to the environment, land and territory, emphasizing prevention, guarantees of their safety and the investigation of attacks against them, so that they can carry on their work without fear of retaliation.

[7] See, for example, Article 19 (2016), Amnesty International (2016), IACHR (2015), United Nations (2016) and Global Witness, "Environmental activists", London [online] https://www.globalwitness.org/en/campaigns/environmental-activists/.

CHAPTER

VII

Final reflections

As the present document has shown, there has been significant progress in the last few decades with legal recognition of the rights of access to information, participation and justice in environmental matters in Latin America and the Caribbean. The path towards guaranteeing these rights has often been opened up by court rulings that have expanded and strengthened the interpretation of the laws underpinning them.

The right of access to public information now has constitutional status in most of the region's countries, while 22 of them have specific freedom of information laws, and most general laws relating to the environment contain active transparency provisions that have translated in practice into the creation of environmental information systems publicly available on the Internet.

Where public participation in environmental matters is concerned, provisions relating to citizen participation have been included in environmental legislation or in thematic or sectoral laws in most of the region's countries, and different types of citizen participation councils have been set up. Likewise, most laws regulating environmental impact assessment in the region have included provisions relating to information access and participation, while strategic environmental assessment has begun to open the way to public participation in the environmental assessment of policies, plans and strategies.

With regard to environmental justice, there has been progress in the design and implementation of specialized bodies with environmental jurisdiction, both in justice systems and in bodies attached to ministerial or autonomous agencies. The specific characteristics of environmental cases have begun to be reflected in the establishment of practices such as broad active legal standing to bring court actions in cases of environmental damage, reversal of the burden of proof that places it on the alleged perpetrator, or a dynamic burden of proof, so that this falls upon whoever is best placed to provide evidence and does not constitute a barrier to justice. Aid mechanisms have also been established to remove or reduce financial or other obstacles to justice and alternative conflict resolution mechanisms, among other things.

Nonetheless, and despite substantial improvements in many national legal frameworks, Principle 10 of the Rio Declaration on Environment and Development has yet to be fully applied in many countries of the region, and there are still challenges when it comes to guaranteeing the full exercise of access rights as an effective instrument for empowering the whole of society, and particularly those sections of it that have traditionally been left out of environmental decision-making.

For all these reasons, the Economic Commission for Latin America and the Caribbean (ECLAC) considers the full and effective application of Principle 10 in Latin America and the Caribbean to be more necessary than ever. According to the clear, pioneering vision of that principle, achieving sustainable development and eradicating poverty requires good governance and active participation by all. The region's inhabitants are increasingly demanding a say in decision-making that affects their environment, their quality of life and the governance of natural resources and calling for the traditional power relationships between the State, the private sector and civil society to be recast. In this context, Principle 10 aims at information access and transparency, public participation in environmental decision-making and access to justice (including remedy for damages) in order to enhance democracy and social cohesion, create trust in decision-making and do away with asymmetries of information and power, thereby helping to protect the environment and place economies at the service of people. The nexus of rights of access, human rights and people-centred environmental sustainability that integrates human beings into their surroundings is the cornerstone upon which sustainable development must be built.

Recognition of the importance of fully applying Principle 10 in the interests of the environmental sustainability of development has acquired great momentum in the region since the United Nations Conference on Sustainable Development (Rio+20), where a process aimed at the adoption of a regional agreement on access to information, public participation and access to justice in environmental matters in Latin America and the Caribbean was initiated. The very process of negotiating the agreement has fostered dialogue at the national and regional levels, together with the adoption of various measures to strengthen the capacities of the public authorities and the public in these areas. Furthermore, setting out from a cooperation and capacity-building approach, the future agreement will make it possible to establish regional standards for the full exercise of rights of access in environmental matters.

There could not be a better time to move forward with the application of Principle 10. One of the aspects highlighted by the adoption of the United Nations 2030 Agenda for Sustainable Development in September 2015 is that human well-being is inseparably bound up with environmental quality and peace. By making it an explicit objective that no-one should be left behind, the 2030 Agenda clearly establishes a rights perspective entailing a commitment to active public policies to reduce inequality in all its manifestations. This means that full application of Principle 10 is central to the 2030 Agenda, as it guarantees that the needs of vulnerable individuals and groups will be taken into account in addressing environmental problems so that they can exercise their rights on a basis of equality and non-discrimination. To ensure that no-one is left behind and that everyone's voice is heard, it is necessary to consider the rights of future generations and nature when development policies are decided.

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This document, of which an earlier version was published in 2013, reviews the laws and institutional frameworks that safeguard access to information, participation in decision-making and access to justice in environmental matters, as enshrined in Principle 10 of the Rio Declaration on Environment and Development, in the 33 countries of the region, on the basis of the material collected in the Observatory on Principle 10 in Latin America and the Caribbean. This updated version reflects recent developments in these matters and the traction they have gained in the region and includes new examples of good practices and emerging issues.

The Economic Commission for Latin America and the Caribbean (ECLAC) has prepared this publication as part of its commitment to the follow-up of the agreements adopted by the international community in Rio de Janeiro, Brazil, in 1992 and to the implementation and monitoring of the 2030 Agenda for Sustainable Development.

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