



Regional Agreement on Access to Information, Public Participation and Justice in Environmental Matters in Latin America and the Caribbean



UNITED NATIONS





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ECLAC



Alicia Bárcena

Executive Secretary

This publication contains the full text of Regional Agreement on Access to Information, Public Participation and Justice in Environmental Matters in Latin America and the Caribbean, adopted in Escazú, Costa Rica, on 4 March 2018. This document is published for information purposes only and does not replace the original authentic texts of the Regional Agreement that are held by the Secretary-General of the United Nations in his capacity as depositary.

Updated information on the Regional Agreement and related activities can be found on the website <https://www.cepal.org/en/principle10>.

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Foreword

In adopting the 2030 Agenda for Sustainable Development, the Member States of the United Nations charted a path towards greater dignity, prosperity and sustainability for people and planet, and pledged to leave no one behind.

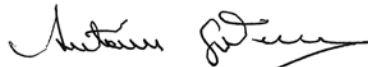
Latin American and Caribbean countries have played an important role in advancing this vision through multilateral efforts that have resulted in the only legally binding agreement stemming from the United Nations Conference on Sustainable Development (Rio+20), the region's first treaty on environmental matters and the world's first to include provisions on human rights defenders in environmental matters. Adopted at Escazú, Costa Rica, on 4 March 2018, and negotiated by States with the significant participation of civil society and the wider public, the Regional Agreement on Access to Information, Public Participation and Justice in Environmental Matters affirms the value of the regional dimension of multilateralism for sustainable development. By linking global and national frameworks, the agreement sets regional standards, fosters capacity building—particularly through South-South cooperation—lays the foundations of a supporting institutional architecture and offers tools for improved policy- and decision-making.

Above all, this treaty aims to combat inequality and discrimination and to guarantee the rights of every person to a healthy environment and to sustainable development. In so doing, it devotes particular attention to persons and groups in vulnerable situations, and places equality at the core of sustainable development.

In this year in which we commemorate the seventieth anniversary of the Economic Commission for Latin America and the Caribbean and the Universal Declaration of Human Rights,

as well as the twentieth anniversary of the Declaration on Human Rights Defenders, this landmark agreement has the potential to unlock structural change and address key challenges of our times. It is a powerful instrument to prevent conflict, achieve informed, participatory and inclusive decision-making and deepen accountability, transparency and good governance.

I commend the adoption of the first agreement ever concluded under the auspices of the regional commission, and congratulate all who made it possible. It is now up to the countries of Latin America and the Caribbean to bring this agreement into effect, for the benefit of present generations and those to come.



António Guterres

Secretary-General of the United Nations

Preface

On 4 March 2018, the Latin American and Caribbean region made history when it adopted the Regional Agreement on Access to Information, Public Participation and Justice in Environmental Matters in Latin America and the Caribbean, at Escazú, Costa Rica.

Initiated at the United Nations Conference on Sustainable Development (Rio+20) and rooted in the tenets of Principle 10 of the 1992 Rio Declaration on Environment and Development, the Regional Agreement is the fruit of a two-year preparatory phase and nine intense meetings of its negotiating committee. Led by Chile and Costa Rica, as co-chairs, and five other Presiding Officers (Argentina, Mexico, Peru, Saint Vincent and the Grenadines, and Trinidad and Tobago), the negotiations brought together government delegates, representatives of the public, experts, academics and other interested stakeholders who participated actively on a collaborative basis and an equal footing.

The result of such an innovative process could not be more inspiring. At a time of increasing uncertainty and profound economic, social and environmental imbalances, and when multilateralism is under intense scrutiny, Latin American and Caribbean countries demonstrated the value of regional action. To advance towards greater environmental rights and protection at the local level, our countries decided to act in a regionally coordinated manner, putting capacity-building and cooperation at the service of greater collective goods and interests.

The Regional Agreement is a ground-breaking legal instrument for environmental protection, but it is also a human rights treaty. Its main beneficiaries are the people of our region, particularly the most vulnerable groups and communities. It aims to ensure

the right of all persons to have access to information in a timely and appropriate manner, to participate significantly in making the decisions that affect their lives and their environment, and to access justice when those rights have been infringed. The treaty recognizes the rights of all individuals, provides measures to facilitate their exercise and, most importantly, establishes mechanisms to render them effective.

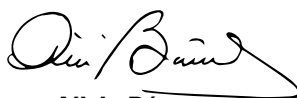
Visionary and unprecedented, it is an agreement reached by and for Latin America and the Caribbean, reflecting the ambition, priorities and particularities of our region. It addresses key aspects of environmental management and protection from a regional perspective, regulating access rights to information, public participation and justice in matters as important as the sustainable use of natural resources, biodiversity conservation, the fight against land degradation and climate change, and building resilience to disasters. It also includes the world's first binding provision on human rights defenders in environmental matters in a region where sadly they are all too often subject to attacks and intimidation.

From a rights-based approach, the Agreement recognizes core democratic principles and seeks to address the region's most important challenges, namely the scourge of inequality and a deep-rooted culture of privilege. Through transparency, openness and participation, the Regional Agreement contributes to the shift towards a new development model and tackles the region's inefficient and unsustainable culture of narrow, fragmented interests. In that vein, the Agreement vows to include those that have traditionally been underrepresented, excluded or marginalized and give a voice to the voiceless, leaving no one behind.

With this Agreement, our region is also setting a shining example of how to balance the three dimensions of sustainable development. By engaging the public in all decisions that affect them and establishing a new relationship between the State, the market and society, our countries are refuting the false dichotomy between environmental protection and economic development. Growth cannot take place at the expense of the environment and

the environment cannot be managed if our economies and peoples are ignored. Legal certainty and trust in public institutions are also crucial to sustainable development. Such interlinkage and interdependence, recognized in the Regional Agreement, makes the first regional treaty of ECLAC an invaluable tool for achieving the 2030 Agenda for Sustainable Development.

The strong regional commitment to environmental protection and human rights is expected to lead to the Regional Agreement's prompt entry into force. By joining this landmark treaty, the 33 countries of Latin America and the Caribbean will not only continue to strengthen environmental democracy, but will also move a step closer towards making equality, sound economic growth and sustainable development for all a reality.



Alicia Bárcena

Executive Secretary
Economic Commission for Latin America
and the Caribbean (ECLAC)

Regional Agreement on Access to Information, Public Participation and Justice in Environmental Matters in Latin America and the Caribbean

Adopted at Escazú, Costa Rica, on 4 March 2018
Opening for signature at United Nations Headquarters
in New York on 27 September 2018

The Parties to the present Agreement,

Recalling the adoption, at the United Nations Conference on Sustainable Development, held in Rio de Janeiro, Brazil, in 2012, of the Declaration on the application of Principle 10 of the Rio Declaration, reaffirming the commitment to the rights of access to information, participation and justice regarding environmental issues, recognizing the need to make commitments to ensure proper fulfilment of those rights and declaring a willingness to launch a process for exploring the feasibility of adopting a regional instrument,

Reaffirming Principle 10 of the 1992 Rio Declaration on Environment and Development, which establishes the following: “Environmental issues are best handled with 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”,

Emphasizing that access rights are interrelated and interdependent, and so each and every one of them should be promoted and implemented in an integrated and balanced manner,

Convinced that access rights contribute to the strengthening of, inter alia, democracy, sustainable development and human rights,

Reaffirming the importance of the Universal Declaration of Human Rights and recalling other international human rights instruments that underscore that all States have the responsibility to respect, protect and promote human rights and fundamental freedoms for all, without distinction of any kind, including those related to race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status,

Reaffirming also all the principles of the 1972 Declaration of the United Nations Conference on the Human Environment and of the 1992 Rio Declaration on Environment and Development,

Recalling the Declaration of the United Nations Conference on the Human Environment, Agenda 21, the Programme for the Further Implementation of Agenda 21, the Declaration of Barbados and the Programme of Action for the Sustainable Development of Small Island Developing States, 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, the Johannesburg Declaration on Sustainable Development, the Plan of Implementation of the World Summit on Sustainable Development and the SIDS Accelerated Modalities of Action (SAMOA) Pathway,

Recalling also that, in the outcome document of the United Nations Conference on Sustainable Development, held in Rio de Janeiro, Brazil, in 2012, entitled “The future we want”, among the many provisions referring to Principle 10 of the Rio Declaration, the Heads of State and Government and high-level representatives acknowledged that democracy, good governance and the rule of law, at the national and international levels, as well as an enabling environment, were essential for sustainable development, including sustained and inclusive economic growth, social development,

environmental protection and eradication of poverty and hunger; underscored that broad public participation and access to information and judicial and administrative proceedings were essential to the promotion of sustainable development; and encouraged action at the regional, national, subnational and local levels to promote access to environmental information, public participation in the environmental decision-making process and access to justice in environmental matters, as appropriate,

Considering United Nations General Assembly resolution 70/1 of 25 September 2015, entitled “Transforming our world: the 2030 Agenda for Sustainable Development”, by which it adopted a comprehensive, far-reaching and people-centred set of universal and transformative Sustainable Development Goals and targets, and reaffirmed its commitment to achieving sustainable development in its three dimensions —economic, social and environmental— in a balanced and integrated manner,

Recognizing the multiculturalism of Latin America and the Caribbean and of their peoples,

Recognizing also the important work of the public and of human rights defenders in environmental matters for strengthening democracy, access rights and sustainable development and their fundamental contributions in this regard,

Aware of the progress made in international and regional agreements, in domestic legislation and practice on rights of access to environmental information, public participation in the environmental decision-making process and access to justice in environmental matters,

Convinced of the need to promote and strengthen dialogue, cooperation, technical assistance, education and awareness-raising as well as capacity-building for the full exercise of access rights at the international, regional, national, subnational and local levels,

Resolved to achieve the full implementation of the access rights provided for under the present Agreement, as well as the creation and strengthening of capacities and cooperation,

Have agreed as follows:

Article 1 **Objective**

The objective of the present Agreement is to guarantee the full and effective implementation in Latin America and the Caribbean of the rights of access to environmental information, public participation in the environmental decision-making process and access to justice in environmental matters, and the creation and strengthening of capacities and cooperation, contributing to the protection of the right of every person of present and future generations to live in a healthy environment and to sustainable development.

Article 2 **Definitions**

For the purposes of the present Agreement:

- (a) “Access rights” means the right of access to environmental information, the right of public participation in the environmental decision-making process and the right of access to justice in environmental matters;
- (b) “Competent authority” means, for the purposes of articles 5 and 6 of the present Agreement, any public body that exercises the powers, authority and functions for access to information, including independent and autonomous bodies, organizations or entities owned or controlled by the government, whether by virtue of powers granted by the constitution or other laws, and, when appropriate, private organizations that receive public funds or benefits (directly or indirectly) or that perform public functions and services, but only with respect to the public funds or benefits received or to the public functions and services performed;
- (c) “Environmental information” means any information that is written, visual, audio, and electronic, or recorded in any other format, regarding the environment and its elements

and natural resources, including information related to environmental risks, and any possible adverse impacts affecting or likely to affect the environment and health, as well as to environmental protection and management;

- (d) “Public” means one or more natural or legal persons and the associations, organizations or groups established by those persons, that are nationals or that are subject to the national jurisdiction of the State Party;
- (e) “Persons or groups in vulnerable situations” means those persons or groups that face particular difficulties in fully exercising the access rights recognized in the present Agreement, because of circumstances or conditions identified within each Party’s national context and in accordance with its international obligations.

Article 3 **Principles**

Each Party shall be guided by the following principles in implementing the present Agreement:

- (a) Principle of equality and principle of non-discrimination;
- (b) Principle of transparency and principle of accountability;
- (c) Principle of non-regression and principle of progressive realization;
- (d) Principle of good faith;
- (e) Preventive principle;
- (f) Precautionary principle;
- (g) Principle of intergenerational equity;
- (h) Principle of maximum disclosure;
- (i) Principle of permanent sovereignty of States over their natural resources;
- (j) Principle of sovereign equality of States; and
- (k) Principle of *pro persona*.

Article 4

General provisions

1. Each Party shall guarantee the right of every person to live in a healthy environment and any other universally-recognized human right related to the present Agreement.
2. Each Party shall ensure that the rights recognized in the present Agreement are freely exercised.
3. Each Party shall adopt the necessary measures, of a legislative, regulatory, administrative or any other nature, in the framework of its domestic provisions, to guarantee the implementation of the provisions of the present Agreement.
4. With the aim of contributing to the effective application of the present Agreement, each Party shall provide the public with information to facilitate the acquisition of knowledge on access rights.
5. Each Party shall ensure that guidance and assistance is provided to the public —particularly those persons or groups in vulnerable situations— in order to facilitate the exercise of their access rights.
6. Each Party shall guarantee an enabling environment for the work of persons, associations, organizations or groups that promote environmental protection, by recognizing and protecting them.
7. No provision in the present Agreement shall limit or repeal other more favourable rights and guarantees set forth, at present or in the future, in the legislation of a State Party or in any other international agreement to which a State is party, or prevent a State Party from granting broader access to environmental information, public participation in the environmental decision-making process and justice in environmental matters.
8. Each Party shall seek to adopt the most favourable interpretation for the full enjoyment of and respect for the access rights when implementing the present Agreement.
9. For the implementation of the present Agreement, each Party shall encourage the use of new information and communications

technologies, such as open data, in the different languages used in the country, as appropriate. In no circumstances shall the use of electronic media constrain or result in discrimination against the public.

10. The Parties may promote knowledge of the provisions of the present Agreement in other international forums related to environmental matters, in accordance with the rules of each forum.

Article 5

Access to environmental information

Accessibility of environmental information

1. Each Party shall ensure the public's right of access to environmental information in its possession, control or custody, in accordance with the principle of maximum disclosure.
2. The exercise of the right of access to environmental information includes:
 - (a) requesting and receiving information from competent authorities without mentioning any special interest or explaining the reasons for the request;
 - (b) being informed promptly whether the requested information is in possession or not of the competent authority receiving the request; and
 - (c) being informed of the right to challenge and appeal when information is not delivered, and of the requirements for exercising this right.
3. Each Party shall facilitate access to environmental information for persons or groups in vulnerable situations, establishing procedures for the provision of assistance, from the formulation of requests through to the delivery of the information, taking into account their conditions and specificities, for the purpose of promoting access and participation under equal conditions.
4. Each Party shall guarantee that the above-mentioned persons or groups in vulnerable situations, including indigenous peoples and ethnic groups, receive assistance in preparing their requests and obtain a response.

Refusal of access to environmental information

5. If the requested information or part thereof is not delivered to the applicant because it falls under the domestic legal regime of exceptions, the competent authority shall communicate its refusal in writing, including the legal provisions and the reasons justifying the decision in each case, and inform the applicant of the right to challenge and appeal.
6. Access to information may be refused in accordance with domestic legislation. In cases where a Party does not have a domestic legal regime of exceptions, that Party may apply the following exceptions:
 - (a) when disclosure would put at risk the life, safety or health of individuals;
 - (b) when disclosure would adversely affect national security, public safety or national defence;
 - (c) when disclosure would adversely affect the protection of the environment, including any endangered or threatened species; or
 - (d) when disclosure would create a clear, probable and specific risk of substantial harm to law enforcement, prevention, investigation and prosecution of crime.
7. The exception regimes shall take into account each Party's human rights obligations. Each Party shall encourage the adoption of exception regimes that favour the disclosure of information.
8. The reasons for refusal shall be legally established in advance and be clearly defined and regulated, taking into account the public interest, and shall thus be interpreted restrictively. The burden of proof will lie with the competent authority.
9. When applying the public interest test, the competent authorities shall weigh the interest of withholding the information against the public benefit of disclosing it, based on suitability, need and proportionality.

10. Where not all the information contained in a document is exempt under paragraph 6 of the present article, the non-exempt information shall be provided to the applicant.

Conditions applicable to the delivery of environmental information

11. The competent authorities shall guarantee that the environmental information is provided in the format requested by the applicant, if available. If such a format is not available, the environmental information shall be provided in the available format.
12. The competent authorities shall respond to requests for environmental information as quickly as possible and within a period not longer than 30 business days from the date of receipt of the request, or less if so stipulated in domestic legislation.
13. Where, in exceptional circumstances and in accordance with domestic legislation, the competent authority requires more time to respond to the request, it shall notify the applicant in writing of the justification for the extension prior to the expiration of the period established in paragraph 12 of the present article. Such an extension will not exceed 10 business days.
14. In the event that the competent authority does not respond within the periods established in paragraphs 12 and 13 of the present article, paragraph 2 of article 8 shall apply.
15. When the competent authority receiving the request does not have the requested information, it shall notify the applicant as quickly as possible, indicating, if it can determine it, which authority may be in possession of the information. The request shall be forwarded to the relevant authority, and the applicant so informed.
16. When the requested information does not exist or has not yet been generated, the applicant shall be so informed, with explanation, within the periods established in paragraphs 12 and 13 of the present article.
17. Environmental information shall be disclosed at no cost, insofar as its reproduction or delivery is not required. Reproduction and delivery costs shall be applied in accordance with the

procedures established by the competent authority. Such costs shall be reasonable and made known in advance, and payment can be waived in the event that the applicant is deemed to be in a vulnerable situation or to have special circumstances warranting such a waiver.

Independent oversight mechanisms

18. Each Party shall establish or designate one or more impartial entities or institutions with autonomy and independence to promote transparency in access to environmental information, to oversee compliance with rules, and monitor, report on and guarantee the right of access to information. Each Party may consider including or strengthening, as appropriate, sanctioning powers within the scope of the responsibilities of the aforementioned entities or institutions.

Article 6

Generation and dissemination of environmental information

1. Each Party shall guarantee, to the extent possible within available resources, that the competent authorities generate, collect, publicize and disseminate environmental information relevant to their functions in a systematic, proactive, timely, regular, accessible and comprehensible manner, and periodically update this information and encourage the disaggregation and decentralization of environmental information at the subnational and local levels. Each Party shall strengthen coordination between the different authorities of the State.
2. The competent authorities shall endeavour to ensure, to the extent possible, that environmental information is reusable, processable and available in formats that are accessible, and that no restrictions are placed on its reproduction or use, in accordance with domestic legislation.
3. Each Party shall have in place one or more up-to-date environmental information systems, which may include, inter alia:
 - (a) the texts of treaties and international agreements, as well as environmental laws, regulations and administrative acts;

- (b) reports on the state of the environment;
- (c) a list of public entities competent in environmental matters and, where possible, their respective areas of operation;
- (d) a list of polluted areas, by type of pollutant and location;
- (e) information on the use and conservation of natural resources and ecosystem services;
- (f) scientific, technical or technological reports, studies and information on environmental matters produced by academic and research institutions, whether public or private, national or foreign;
- (g) climate change sources aimed at building national capacities;
- (h) information on environmental impact assessment processes and on other environmental management instruments, where applicable, and environmental licences or permits granted by the public authorities;
- (i) an estimated list of waste by type and, when possible, by volume, location and year; and
- (j) information on the imposition of administrative sanctions in environmental matters.

Each Party shall guarantee that environmental information systems are duly organized, accessible to all persons and made progressively available through information technology and georeferenced media, where appropriate.

4. Each Party shall take steps to establish a pollutant release and transfer register covering air, water, soil and subsoil pollutants, as well as materials and waste in its jurisdiction. This register will be established progressively and updated periodically.
5. Each Party shall guarantee that in the case of an imminent threat to public health or the environment, the relevant competent authority shall immediately disclose and disseminate through the most effective means all pertinent information in its possession that could help the public take measures to prevent or limit

potential damage. Each Party shall develop and implement an early warning system using available mechanisms.

6. In order to facilitate access by persons or groups in vulnerable situations to information that particularly affects them, each Party shall endeavour, where applicable, to ensure that the competent authorities disseminate environmental information in the various languages used in the country, and prepare alternative formats that are comprehensible to those groups, using suitable channels of communication.
7. Each Party shall use its best endeavours to publish and disseminate at regular intervals, not exceeding five years, a national report on the state of the environment, which may contain:
 - (a) information on the state of the environment and natural resources, including quantitative data, where possible;
 - (b) national actions to fulfil environmental legal obligations;
 - (c) advances in the implementation of the access rights; and
 - (d) collaboration agreements among public, social and private sectors.

Such reports shall be drafted in an easily comprehensible manner and accessible to the public in different formats and disseminated through appropriate means, taking into account cultural realities. Each Party may invite the public to make contributions to these reports.

8. Each Party shall encourage independent environmental performance reviews that take into account nationally or internationally agreed criteria and guides and common indicators, with a view to evaluating the efficacy, effectiveness and progress of its national environmental policies in fulfilment of their national and international commitments. The reviews shall include participation by the various stakeholders.
9. Each Party shall promote access to environmental information contained in concessions, contracts, agreements or authorizations granted, which involve the use of public goods, services or resources, in accordance with domestic legislation.

10. Each Party shall ensure that consumers and users have official, relevant and clear information on the environmental qualities of goods and services and their effects on health, favouring sustainable production and consumption patterns.
11. Each Party shall create and keep regularly updated its archiving and document management systems in environmental matters in accordance with its applicable rules with the aim of facilitating access to information at all times.
12. Each Party shall take the necessary measures, through legal or administrative frameworks, among others, to promote access to environmental information in the possession of private entities, in particular information on their operations and the possible risks and effects on human health and the environment.
13. In accordance with its capacities, each Party shall encourage public and private companies, particularly large companies, to prepare sustainability reports that reflect their social and environmental performance.

Article 7

Public participation in the environmental decision-making process

1. Each Party shall ensure the public's right to participation and, for that purpose, commits to implement open and inclusive participation in environmental decision-making processes based on domestic and international normative frameworks.
2. Each Party shall guarantee mechanisms for the participation of the public in decision-making processes, revisions, re-examinations or updates with respect to projects and activities, and in other processes for granting environmental permits that have or may have a significant impact on the environment, including when they may affect health.
3. Each Party shall promote the participation of the public in decision-making processes, revisions, re-examinations or updates other than those referred to in paragraph 2 of the present article with respect to environmental matters of public

interest, such as land-use planning, policies, strategies, plans, programmes, rules and regulations, which have or may have a significant impact on the environment.

4. Each Party shall adopt measures to ensure that the public can participate in the decision-making process from the early stages, so that due consideration can be given to the observations of the public, thus contributing to the process. To that effect, each Party shall provide the public with the necessary information in a clear, timely and comprehensive manner, to give effect to its right to participate in the decision-making process.
5. The public participation procedure will provide for reasonable timeframes that allow sufficient time to inform the public and for its effective participation.
6. The public shall be informed, through appropriate means, such as in writing, electronically, orally and by customary methods, and in an effective, comprehensible and timely manner, as a minimum, of the following:
 - (a) the type or nature of the environmental decision under consideration and, where appropriate, in non-technical language;
 - (b) the authority responsible for making the decision and other authorities and bodies involved;
 - (c) the procedure foreseen for the participation of the public, including the date on which the procedure will begin and end, mechanisms for participation and, where applicable, the date and place of any public consultation or hearing; and
 - (d) the public authorities involved from which additional information on the environmental decision under consideration can be requested and the procedure for requesting information.
7. The public's right to participate in environmental decision-making processes shall include the opportunity to present observations through appropriate means available, according to

the circumstances of the process. Before adopting the decision, the relevant public authority shall give due consideration to the outcome of the participation process.

8. Each Party shall ensure that, once a decision has been made, the public is informed in a timely manner thereof and of the grounds and reasons underlying the decision, including how the observations of the public have been taken into consideration. The decision and its basis shall be made public and be accessible.
9. The dissemination of the decisions resulting from environmental impact assessments and other environmental decision-making processes in which the public has participated shall be carried out through appropriate means, which may include written, electronic or oral means and customary methods, in an effective and prompt manner. The information disseminated shall include the established procedure to allow the public to take the relevant administrative and judicial actions.
10. Each Party shall establish conditions that are favourable to public participation in environmental decision-making processes and that are adapted to the social, economic, cultural, geographical and gender characteristics of the public.
11. When the primary language of the directly affected public is different to the official languages, the public authority shall ensure that means are provided to facilitate their understanding and participation.
12. Each Party shall promote, where appropriate and in accordance with domestic legislation, public participation in international forums and negotiations on environmental matters or with an environmental impact, in accordance with the procedural rules on participation of each forum. The participation of the public at the national level on matters of international environmental forums shall also be promoted, where appropriate.
13. Each Party shall encourage the establishment of appropriate spaces for consultation on environmental matters or the use of those that are already in existence in which various groups and sectors are able to participate. Each Party shall promote

regard for local knowledge, dialogue and interaction of different views and knowledge, where appropriate.

14. The public authorities shall make efforts to identify and support persons or groups in vulnerable situations in order to engage them in an active, timely and effective manner in participation mechanisms. For these purposes, appropriate means and formats will be considered, in order to eliminate barriers to participation.
15. In the implementation of the present Agreement, each Party shall guarantee that its domestic legislation and international obligations in relation to the rights of indigenous peoples and local communities are observed.
16. The public authority shall make efforts to identify the public directly affected by the projects or activities that have or may have a significant impact on the environment and shall promote specific actions to facilitate their participation.
17. With respect to the environmental decision-making processes referred to in paragraph 2 of the present article, as a minimum, the following information shall be made public:
 - (a) a description of the area of influence and physical and technical characteristics of the proposed project or activity;
 - (b) a description of the main environmental impacts of the project or activity and, as appropriate, the cumulative environmental impact;
 - (c) a description of the measures foreseen with respect to those impacts;
 - (d) a summary of (a), (b) and (c) of the present paragraph in comprehensible, non-technical language;
 - (e) the public reports and opinions of the involved entities addressed to the public authority related to the project or activity under consideration;
 - (f) a description of the available technologies to be used and alternative locations for executing the project or activity subject to assessment, when the information is available; and

- (g) actions taken to monitor the implementation and results of environmental impact assessment measures.

The aforementioned information shall be made available free of charge to the public in accordance with paragraph 17 of article 5 of the present Agreement.

Article 8

Access to justice in environmental matters

1. Each Party shall guarantee the right of access to justice in environmental matters in accordance with the guarantees of due process.
2. Each Party shall ensure, in the framework of its domestic legislation, access to judicial and administrative mechanisms to challenge and appeal, with respect to substance and procedure:
 - (a) any decision, action or omission related to the access to environmental information;
 - (b) any decision, action or omission related to public participation in the decision-making process regarding environmental matters; and
 - (c) any other decision, action or omission that affects or could affect the environment adversely or violate laws and regulations related to the environment.
3. To guarantee the right of access to justice in environmental matters, each Party shall have, considering its circumstances:
 - (a) competent State entities with access to expertise in environmental matters;
 - (b) effective, timely, public, transparent and impartial procedures that are not prohibitively expensive;
 - (c) broad active legal standing in defence of the environment, in accordance with domestic legislation;
 - (d) the possibility of ordering precautionary and interim measures, inter alia, to prevent, halt, mitigate or rehabilitate damage to the environment;

- (e) measures to facilitate the production of evidence of environmental damage, when appropriate and as applicable, such as the reversal of the burden of proof and the dynamic burden of proof;
 - (f) mechanisms to execute and enforce judicial and administrative decisions in a timely manner; and
 - (g) mechanisms for redress, where applicable, such as restitution to the condition prior to the damage, restoration, compensation or payment of a financial penalty, satisfaction, guarantees of non-repetition, assistance for affected persons and financial instruments to support redress.
4. To facilitate access to justice in environmental matters for the public, each Party shall establish:
- (a) measures to minimize or eliminate barriers to the exercise of the right of access to justice;
 - (b) means to publicize the right of access to justice and the procedures to ensure its effectiveness;
 - (c) mechanisms to systematize and disseminate judicial and administrative decisions, as appropriate; and
 - (d) the use of interpretation or translation of languages other than the official languages when necessary for the exercise of that right.
5. In order to give effect to the right of access to justice, each Party shall meet the needs of persons or groups in vulnerable situations by establishing support mechanisms, including, as appropriate, free technical and legal assistance.
6. Each Party shall ensure that the judicial and administrative decisions adopted in environmental matters and their legal grounds are set out in writing.
7. Each Party shall promote, where appropriate, alternative dispute resolution mechanisms in environmental matters, such as mediation, conciliation or other means that allow such disputes to be prevented or resolved.

Article 9

Human rights defenders in environmental matters

1. Each Party shall guarantee a safe and enabling environment for persons, groups and organizations that promote and defend human rights in environmental matters, so that they are able to act free from threat, restriction and insecurity.
2. Each Party shall take adequate and effective measures to recognize, protect and promote all the rights of human rights defenders in environmental matters, including their right to life, personal integrity, freedom of opinion and expression, peaceful assembly and association, and free movement, as well as their ability to exercise their access rights, taking into account its international obligations in the field of human rights, its constitutional principles and the basic concepts of its legal system.
3. Each Party shall also take appropriate, effective and timely measures to prevent, investigate and punish attacks, threats or intimidations that human rights defenders in environmental matters may suffer while exercising the rights set out in the present Agreement.

Article 10

Capacity-building

1. In order to contribute to the implementation of the provisions of the present Agreement, each Party undertakes to create and strengthen national capacities, based on its priorities and needs.
2. Each Party, in line with its capacities, may take, inter alia, the following measures:
 - (a) train authorities and civil servants on environmental access rights;
 - (b) develop and strengthen environmental law and access rights awareness-raising and capacity-building programmes for, inter alia, the public, judicial and administrative officials, national human rights institutions and jurists;

- (c) provide the competent institutions and entities with adequate equipment and resources;
- (d) promote education and training on, and raise public awareness of, environmental matters, through, inter alia, basic educational modules on access rights for students at all levels of education;
- (e) develop specific measures for persons or groups in vulnerable situations, such as providing interpreters or translators in languages other than official languages when necessary;
- (f) acknowledge the importance of associations, organizations or groups that train the public on or raise public awareness of access rights; and
- (g) strengthen capabilities to collect, retain and evaluate environmental information.

Article 11 **Cooperation**

1. The Parties shall cooperate to strengthen their national capacities with the aim of implementing the present Agreement in an effective manner.
2. The Parties shall give particular consideration to least developed countries, landlocked developing countries and small island developing States from Latin America and the Caribbean.
3. For the purposes of implementing paragraph 2 of the present article, the Parties shall promote activities and mechanisms, such as:
 - (a) discussions, workshops, expert exchanges, technical assistance, education and observatories;
 - (b) developing, sharing and implementing educational, training and awareness-raising materials and programmes;
 - (c) sharing experiences of voluntary codes of conduct, guidelines, good practices and standards; and

- (d) committees, councils and forums of multisectoral development stakeholders to address cooperation priorities and activities.
4. The Parties shall encourage partnerships with States from other regions, intergovernmental, non-governmental, academic and private organizations, as well as civil society organizations and other relevant stakeholders to implement the present Agreement.
5. The Parties recognize that regional cooperation and information-sharing shall be promoted in relation to all aspects of illicit activities against the environment.

Article 12

Clearing house

The Parties shall have a virtual and universally accessible clearing house on access rights. The clearing house will be operated by the Economic Commission for Latin America and the Caribbean, in its capacity as Secretariat, and may include, inter alia, legislative, administrative and policy measures, codes of conduct and good practices.

Article 13

National implementation

Each Party, to the extent of its ability and in accordance with its national priorities, commits to provide the resources for national activities that are needed to fulfil the obligations derived from the present Agreement.

Article 14

Voluntary Fund

1. A Voluntary Fund is hereby established to support the financing of the implementation of the present Agreement, the functioning of which shall be defined by the Conference of the Parties.
2. Parties may make voluntary contributions to support the implementation of the present Agreement.

3. The Conference of the Parties may seek, in accordance with paragraph 5(g) of article 15 of the present Agreement, to obtain funds from other sources to support the implementation of the present Agreement.

Article 15

Conference of the Parties

1. A Conference of the Parties is hereby established.
2. The Executive Secretary of the Economic Commission for Latin America and the Caribbean shall convene the first meeting of the Conference of the Parties no later than one year after the entry into force of the present Agreement. Subsequently, ordinary meetings of the Conference of the Parties shall be held at regular intervals to be decided by the Conference.
3. Extraordinary meetings of the Conference of the Parties shall be held when the Conference deems necessary.
4. At its first meeting, the Conference of the Parties shall:
 - (a) discuss and adopt by consensus its rules of procedure, including the modalities for significant participation by the public; and
 - (b) discuss and adopt by consensus the financial provisions that are necessary for the functioning and implementation of the present Agreement.
5. The Conference of the Parties shall examine and promote the implementation and effectiveness of the present Agreement. To that end:
 - (a) it shall establish by consensus such subsidiary bodies as it deems necessary for the implementation of the present Agreement;
 - (b) it shall receive and consider reports and recommendations from subsidiary bodies;
 - (c) it shall be informed by the Parties of the measures adopted to implement the present Agreement;
 - (d) it may formulate recommendations to the Parties on the implementation of the present Agreement;

- (e) it shall prepare and adopt, as applicable, protocols to the present Agreement for its subsequent signature, ratification, acceptance, approval and accession;
- (f) it shall examine and adopt proposals to amend the present Agreement in accordance with the provisions of article 20 of the present Agreement;
- (g) it shall establish guidelines and modalities for mobilizing financial and non-financial resources from various sources to facilitate the implementation of the present Agreement;
- (h) it shall examine and adopt any additional measures needed to achieve the objective of the present Agreement; and
- (i) it shall perform any other function assigned to it by the present Agreement.

Article 16

Right to vote

Each Party to the present Agreement shall have one vote.

Article 17

Secretariat

1. The Executive Secretary of the Economic Commission for Latin America and the Caribbean shall carry out the secretariat functions of the present Agreement.
2. The functions of the Secretariat shall be as follows:
 - (a) to convene and organize the meetings of the Conference of the Parties and its subsidiary bodies and provide the necessary services;
 - (b) to provide assistance to the Parties upon their request for capacity-building, including the sharing of experiences and information and the organization of activities in accordance with articles 10, 11 and 12 of the present Agreement;
 - (c) to determine, under the general guidance of the Conference of the Parties, the administrative and contractual arrangements needed to carry out its functions effectively; and

- (d) to perform any other secretariat functions specified in the present Agreement and any other functions as determined by the Conference of the Parties.

Article 18

Committee to Support Implementation and Compliance

1. A Committee to Support Implementation and Compliance is hereby established as a subsidiary body of the Conference of the Parties to promote the implementation of the present Agreement and to support the Parties in that regard. The rules relating to its structure and functions shall be determined by the Conference of the Parties at its first meeting.
2. The Committee shall be of a consultative and transparent nature, non-adversarial, non-judicial and non-punitive and shall review compliance of the provisions of the present Agreement and formulate recommendations, in accordance with the rules of procedure established by the Conference of the Parties, ensuring the significant participation of the public and paying particular attention to the national capacities and circumstances of the Parties.

Article 19

Settlement of disputes

1. If a dispute arises between two or more Parties about the interpretation or application of the present Agreement, they shall seek a solution by negotiation or by any other means of dispute settlement acceptable to the parties to the dispute.
2. When signing, ratifying, accepting, approving or acceding to the present Agreement, or at any time thereafter, a Party may declare in writing to the Depositary that, for a dispute not resolved in accordance with paragraph 1 of the present article, it accepts one or both of the following means of dispute settlement as compulsory in relation to any Party accepting the same obligation:
 - (a) submission of the dispute to the International Court of Justice;
 - (b) arbitration in accordance with the procedures that the Conference of the Parties will establish.

3. If the parties to the dispute have accepted both means of dispute settlement referred to in paragraph 2 of the present article, the dispute may be submitted only to the International Court of Justice, unless the parties agree otherwise.

Article 20 **Amendments**

1. Amendments to the present Agreement may be proposed by any Party.
2. Amendments to the present Agreement shall be adopted at a meeting of the Conference of the Parties. The text of any proposed amendment shall be communicated to the Parties by the Secretariat at least six months before the meeting at which it is proposed for adoption. The Secretariat shall also communicate the proposed amendment to the signatories to the present Agreement and, for information, to the Depositary.
3. The Parties shall make every effort to reach a consensus on any proposed amendment to the present Agreement. In the event that the efforts to reach a consensus fail, as a last resort, the amendment shall be adopted by a three-fourths majority vote of the Parties present and voting at the meeting.
4. An adopted amendment shall be communicated by the Depositary to all Parties for ratification, acceptance or approval.
5. Ratification, acceptance or approval of an amendment shall be notified to the Depositary in writing. An amendment adopted in accordance with paragraph 3 of the present article shall enter into force for the Parties having consented to be bound by it on the ninetieth day after the date of deposit of the instruments of ratification, acceptance or approval by at least half of the number of Parties to the present Agreement at the time the amendment was adopted. Thereafter, the amendment shall enter into force for any other Party that consents to be bound by it on the ninetieth day after the date of deposit of its instrument of ratification, acceptance or approval of the amendment.

Article 21

Signature, ratification, acceptance, approval and accession

1. The present Agreement shall be open for signature by any of the countries of Latin America and the Caribbean included in annex 1 at United Nations Headquarters in New York from 27 September 2018 to 26 September 2020.
2. The present Agreement shall be subject to the ratification, acceptance or approval of the States that have signed it. It shall be open to accession by any country in Latin America and the Caribbean included in annex 1 that has not signed it from the day after the date on which it is closed for signature. Instruments of ratification, acceptance, approval or accession shall be deposited with the Depository.

Article 22

Entry into force

1. The present Agreement shall enter into force on the ninetieth day after the date of deposit of the eleventh instrument of ratification, acceptance, approval or accession.
2. For each State that ratifies, accepts or approves the present Agreement or accedes thereto after the deposit of the eleventh instrument of ratification, acceptance, approval or accession, the present Agreement shall enter into effect on the ninetieth day after the date of deposit by such State of its instrument of ratification, acceptance, approval or accession.

Article 23

Reservations

No reservations may be made to the present Agreement.

Article 24

Withdrawal

1. At any time after three years from the date on which the present Agreement has entered into force for a Party, that Party may withdraw from the present Agreement by giving written notification to the Depository.

2. Any such withdrawal shall take effect upon expiry of one year from the date of receipt by the Depositary of the notification of withdrawal, or on such later date as may be specified in the notification of withdrawal.

Article 25
Depositary

The Secretary-General of the United Nations shall be the Depositary for the present Agreement.

Article 26
Authentic texts

The original of the present Agreement, the Spanish and English texts of which are equally authentic, shall be deposited with the Secretary-General of the United Nations.

IN WITNESS WHEREOF, the undersigned, duly authorized, have signed the present Agreement.

DONE at Escazú, Costa Rica, on this fourth day of March, two thousand and eighteen.

Annex 1

- Antigua and Barbuda
- Argentina
- Bahamas
- Barbados
- Belize
- Bolivia (Plurinational State of)
- Brazil
- Chile
- Colombia
- Costa Rica
- Cuba
- Dominica
- Dominican Republic
- Ecuador
- El Salvador
- Grenada
- Guatemala
- Guyana
- Haiti
- Honduras
- Jamaica
- Mexico
- Nicaragua
- Panama
- Paraguay
- Peru
- Saint Kitts and Nevis
- Saint Lucia
- Saint Vincent and the Grenadines
- Suriname
- Trinidad and Tobago
- Uruguay
- Venezuela (Bolivarian Republic of)

Technical Secretariat

Regional Agreement on Access to Information, Public Participation and Justice in Environmental Matters in Latin America and the Caribbean

Sustainable Development and Human Settlements Division
United Nations, Economic Commission for Latin America
and the Caribbean (ECLAC)

E-mail: principio10.lac@cepal.org

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