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**REPORT OF THE SIXTH MEETING OF THE NEGOTIATING COMMITTEE
OF THE REGIONAL AGREEMENT ON ACCESS TO INFORMATION,
PARTICIPATION AND JUSTICE IN ENVIRONMENTAL MATTERS
IN LATIN AMERICA AND THE CARIBBEAN**

Brasilia, 20-24 March 2017

CONTENTS

	<i>Paragraph</i>	<i>Page</i>
A. ATTENDANCE AND ORGANIZATION OF WORK	1-8	3
Place and date of the meeting	1-2	3
Attendance.....	3-7	3
Chair	8	4
B. ADOPTION OF THE AGENDA	9	4
C. SUMMARY OF PROCEEDINGS.....	10-78	4
Annex A Agreements	-	19
Annex B List of participants	-	21

A. ATTENDANCE AND ORGANIZATION OF WORK

Place and date of the meeting

1. The sixth meeting of the negotiating committee of the regional agreement on access to information, participation and justice in environmental matters in Latin America and the Caribbean was held in Brasilia, from 20 to 24 March 2017.
2. The meeting was organized jointly by the Government of Brazil and the Economic Commission for Latin America and the Caribbean (ECLAC), in its capacity as technical secretariat of the regional process relating to the Declaration on the application of Principle 10 of the Rio Declaration on Environment and Development.¹

Attendance²

3. Representatives of 21 of the 23 signatory countries of the Declaration participated in the meeting: Antigua and Barbuda, Argentina, Brazil, Chile, Colombia, Costa Rica, Dominica, Dominican Republic, Ecuador, Grenada, Guatemala, Honduras, Jamaica, Mexico, Panama, Paraguay, Peru, Saint Kitts and Nevis, Saint Vincent and the Grenadines, Trinidad and Tobago and Uruguay.
4. Nicaragua attended as an observer.
5. Representatives of the United Nations Environment Programme (UNEP), the Compliance Committee of the Aarhus Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters of the Economic Commission for Europe (ECE), the United Nations Educational, Scientific and Cultural Organization (UNESCO), the United Nations Development Programme (UNDP) and the Amazon Cooperation Treaty Organization (ACTO) were also in attendance.
6. Also attending were international experts in access to information, participation and justice in environmental matters, elected representatives of the public and members of the public, in accordance with the Santiago Decision, the *Organization and work plan for the negotiating committee of the regional agreement on access to information, participation and justice in environmental matters in Latin America and the Caribbean*³ and the *Modalities for participation of the public in the negotiating committee of the regional agreement on access to information, participation and justice in environmental matters in Latin America and the Caribbean*.⁴
7. The meeting was open-ended and webcast live.

¹ See A/CONF.216.13.

² See the list of participants in annex B.

³ See LC/L.4011/Rev.1.

⁴ See LC/L.4163.

Chair

8. Brazil chaired the meeting in its capacity as host country.

B. ADOPTION OF THE AGENDA

9. The following agenda was adopted:
 1. Adoption of the agenda.
 2. Special session on rights of access to environmental justice.
 3. Actions taken at the national level by the signatory countries of the Declaration on the application of Principle 10 of the Rio Declaration on Environment and Development and activities carried out by the secretariat.
 4. Negotiation of the regional agreement on access to information, public participation and justice in environmental matters in Latin America and the Caribbean.
 5. Presentation of the preliminary report by the secretariat assessing the possible administrative, financial and budgetary implications of the regional agreement.
 6. Consideration and adoption of agreements.

C. SUMMARY OF PROCEEDINGS

Opening session

10. At the opening session statements were made by Marcos Galvão, Secretary General of the Ministry of Foreign Affairs of Brazil; José Sarney Filho, Minister of the Environment of Brazil; Wagner Rosário, Executive Secretary of the Ministry of Transparency, Oversight and Comptroller General of Brazil; Antonio Herman Benjamin, Judge of the Higher Court of Justice of Brazil; Alicia Bárcena, Executive Secretary of the Economic Commission for Latin America and the Caribbean (ECLAC) (video message); Joseluis Samaniego, Chief of the Sustainable Development and Human Settlements Division of ECLAC; Rômulo Paes de Sousa, Director of the RIO+ Centre; and Karetta Crooks and Joara Marchezini, representatives of the public.

11. After welcoming the participants, the Secretary General of the Ministry of Foreign Affairs of Brazil said that the rights of access to information, participation and justice were crucial to attaining sustainable development. Negotiations on a regional instrument on the application of Principle 10 dated back to the United Nations Conference on Sustainable Development (Rio+20), which had recognized the need to balance the economic, social and environmental dimensions of sustainable development. The fact that 23 countries were participating in the process reflected the region's interest in further strengthening inclusive and transparent institutions. The sixth meeting of the negotiating committee had the ambitious task of negotiating access to justice in environmental matters, which would be essential to deciding the

level of ambition of the instrument. Lastly, he reaffirmed his country's commitment to multilateralism and sustainable growth, as well as to public information and transparent government actions.

12. The Minister of the Environment of Brazil said that the issues under discussion were central to the Ministry's work, whereby the formulation and implementation of public policies on the environment and public access to information was guided by the participation of civil society. Participation and transparency were fundamental in any area of public administration, but they were of strategic importance in environmental matters. Principle 10 of the Rio Declaration stated that environmental issues were best handled with the participation of all concerned stakeholders who should have access to information held by public authorities. The creation of the negotiating committee had been a significant step forward in that direction. The regional agreement on Principle 10 should occupy a prominent place in the environmental agenda and contribute to improving mechanisms for participation and access to information and justice. He said that his country stood ready to share its substantial experience with the countries of the region, to help to increase cooperation with neighbouring countries.

13. The Executive Secretary of the Ministry of Transparency, Oversight and Comptroller General of Brazil reaffirmed the importance of access rights in achieving a sustainable environment. He commended the substantial progress that had been made at the previous five meetings of the negotiating committee and the creation of the Observatory on Principle 10 in Latin America and the Caribbean, which he considered a useful tool for the process. He said that he trusted that interesting discussions would take place at the sixth meeting, including on the possible administrative, financial and budgetary implications of the agreement, which would provide clarity on its future implementation.

14. The Judge of the Higher Court of Justice of Brazil said that it was a very special time for his country, as 30 years ago it was unthinkable that there would have been any discussion of transparency and rights of access to information on environmental matters. The negotiations were therefore a source of pride for Brazil and its people. He highlighted the activities carried out by the Ministries of the Environment and of Foreign Affairs of his country on environmental matters, which transcended national borders. He said that environmental value was intangible and could not be measured in monetary terms, but it was fundamental to ensuring the quality of life of present and future generations.

15. A recorded message from the Executive Secretary of ECLAC was then shown. She said that the negotiating process that was underway was highly symbolic, as it could produce the only convention to arise from Rio+20. She underscored the link between Principle 10 and democracy and participation, especially in decisions concerning the use of natural resources and the environment. She said that she was of the opinion that a second generation agreement was being constructed and that the sixth meeting of the negotiating committee was very important because the report on the possible administrative and financial implications of the agreement would be presented at the meeting. Referring to the first meeting of the Forum of the Countries of Latin America and the Caribbean on Sustainable Development, to be held in April 2017, at which the countries would report on the progress and challenges in the implementation of the 2030 Agenda for Sustainable Development, she noted its relationship with the negotiating process. She also said that an effort must be made to achieve greater equality and environmental sustainability across the continent, which would result in greater well-being, and that the region had decided to be the protagonist in its own history.

16. The Chief of the Sustainable Development and Human Settlements Division of ECLAC spoke of the long-term implications of implementing the regional instrument and said that the agreement could improve decision-making, with a view to realigning the development path with the consensus opinion of society. Information on some regional issues was already available (rising sea levels, land use, migration

and others), but other national concerns must be taken into consideration, such as prioritizing climate change adaptation measures. The implementation of the agreement under negotiation would pave the way for more transparent, informed and fair policies that would prevent conflicts, transcend political cycles and lead to more sustainable paths.

17. The Director of the RIO+ Centre said that, like the Declaration on the application of Principle 10 of the Rio Declaration on Environment and Development in Latin America and the Caribbean, the RIO+ Centre had been a product of Rio+20, so they shared common origins and had the same approach: transparent information on issues related to the environment. The Centre's aim was to keep the commitments made at Rio+20 alive, that is, to balance the social, environmental and economic dimensions. More equitable development models and new agreements on sustainability were therefore needed. Noting the relationship between Principle 10 and the 2030 Agenda for Sustainable Development, he said that access to information, participation and justice was not restricted to Sustainable Development Goal 16, but rather was crucial to achieving all the Goals. Thus, having a regional agreement would be useful for citizens, as it would promote the implementation of the 2030 Agenda, strengthen democracy and deepen South-South cooperation.

18. Lastly, the representatives of the public expressed their appreciation for the opportunity to participate actively in the negotiations and reaffirmed their commitment to and support for countries to reach a robust agreement. They said that, in preparation for the sixth meeting, the public had submitted draft texts for articles 6 to 10 and asked the delegations to take them into account. They reiterated that the right to environmental information was essential for the protection of the environment and that the full implementation of Principle 10 would reduce conflict between governments and civil society. They said that Principle 10, which had led to the negotiation of the regional agreement, sought to uphold rights, reduce conflicts and support sustainable development through the participatory and democratic management of the environment. It must therefore be disseminated throughout the community. They welcomed the return of the process to Brazil, where they hoped it would be strengthened to ensure the rights of all people in the region. Lastly, they urged the countries to listen to their societies, to show solidarity and to defend people's interests.

Special session on rights of access to environmental justice (agenda item 2)

19. The session was moderated by Antonio Herman Benjamin, Judge of the Higher Court of Justice of Brazil. Winston Anderson, Judge of the Caribbean Court of Justice; Patricia Madrigal, Vice-Minister of the Environment of the Ministry of the Environment and Energy of Costa Rica; Félix Wing, Secretary General of the Ministry of the Environment of Panama; Silvia Cappelli, State Prosecutor of Rio Grande do Sul and Director of the Right to a Green Planet Institute of Brazil; Andrés Nápoli, Executive Director of the Environment and Natural Resources Foundation (FARN) of Argentina; and Carole Excell, Director of The Access Initiative, participated in the session.

20. The Judge of the Higher Court of Justice of Brazil said that Latin America and the Caribbean should lose its fear of innovation, believe in its potential and establish its own environmental institutions. The region had a duty to consider the experience of other countries, but also the right not to limit itself to it. It would require innovation with a Latin American and Caribbean perspective, an understanding of the fact that those who would have recourse to justice on behalf of the whole community would have to be treated differently, and that it was not a privilege, but a recognition of the collective interests of wider society and future generations. It must be understood that environmental law could not be brought into line with an international trade dispute settlement mechanism, since it had its own characteristics. In addition to ensuring access to environmental justice, judges must have the necessary tools to dispense

justice, for example by establishing new legal concepts, figures and techniques, such as the *in dubio pro natura* principle, applicable to environmental obligations.

21. The Judge of the Caribbean Court of Justice said that the negotiation process had brought together people from different countries, with different languages and cultures, but with the same objective, namely to promote environmental justice. There were two critical components of access to justice: access itself and environmental justice. In the last 45 years, great strides had been made in overcoming some procedural barriers that hindered access, but countries' progress had been uneven. He also referred to different concepts, such as strict liability, absolute liability and reversal of the burden of proof, and stressed that it was very important to define the justice to which people would have access.

22. The Vice-Minister of the Environment of the Ministry of the Environment and Energy of Costa Rica said that access to justice had lagged behind other access rights. The issue under discussion went beyond the administration of justice, including administrative instances and conflict resolution. In order to guarantee environmental justice, a balance should be struck between ecological integrity, social equity and economic efficiency, an issue that had already been examined in international forums, such as in the Buenos Aires Declaration of the sixteenth Ibero-American Judicial Summit, which raised the issues addressed in article 9 of the compiled text. He called for consideration to be given to human rights and the specificities of the environmental process, such as the need for broad active standing, strict liability, timely and effective precautionary measures, and precautionary and non-regressive principles. He said that effectively ensuring access to justice would be a major success for Latin America and the Caribbean, especially for future generations.

23. The Secretary General of the Ministry of the Environment of Panama said that the right to effective judicial protection, developed in different countries' jurisprudence, was established under article 8.1 of the American Convention on Human Rights, and that the provisions of that article were not limited to the issues listed. There were precedents for recognizing the active standing of any person in defence of diffuse rights, including the right to a healthy environment. In matters of environmental justice, results must be guaranteed within a reasonable time, as specified in the American Convention. Attempts should be made to enumerate the specificities of access rights, as it was not easy to put them into practice. In the light of the many concerns expressed, standards must be established that gave States the flexibility to adapt access rights to their specific situations. States had a historic responsibility to ensure that the outcome of the process was ambitious and equitable for all, so that everyone had the same rights throughout the region.

24. The State Prosecutor and Director of the Right to a Green Planet Institute said that while the right to a healthy environment was established in most of the constitutions of Latin America and the Caribbean, there were no rights without effectiveness. A procedural law should therefore be established. Access to justice should be comprehensive and include all judicial bodies, not only the judiciary, and should be implemented through adequate, sufficient, free and effective means. She called for the individualist approach of pursuing monetary compensation to be abandoned and replaced with one that sought to ensure that judicial or administrative decisions restored the damaged environment to its previous state. She also said that the effectiveness of the right to justice was related to the timeliness of the decisions. Difficulties in determining evidence must be overcome and hermeneutic principles, such as *in dubio pro natura*, must be established. Lastly, she called for preventative measures to be implemented and the specialization of judicial officials to be encouraged as a matter of priority.

25. The Executive Director of the Environment and Natural Resources Foundation (FARN) of Argentina said that, from the perspective of civil society, legal figures such as amparo had provided

effective solutions to the public's demands in Latin America, but there was still a long way to go in that regard. The institutions' responses must be improved, as taking matters to court was the last resort. The cost of access to justice must be reduced in order to remove barriers, and precautionary measures must be introduced to speed up responses. That was why article 9 of the negotiating text posed such a challenge, because it would begin to shape the principles of environmental law in the region. He also stressed that power must be balanced out in the face of the inequities inherent in the environmental process.

26. The Director of the Access Initiative gave some examples of her experience in cases of access to environmental justice that highlighted the difficulties in accessing information and justice and the concern over how best to participate. As a result, she said that, in her opinion, the access rights that the agreement sought to address were real-life issues, and that barriers actually existed and were common to many countries. Factors such as cost, inequity between the parties, the lack of specialized judges and the effectiveness of decisions were critical. The negotiation process therefore offered a great opportunity to establish innovative measures in Latin America and the Caribbean and to translate them into a regional instrument.

27. During the discussion, participants said that some criteria should be developed to interpret environmental damage, such as resilience, restoring the balance and cumulative effects. Among the conditions needed to facilitate access to justice were strong institutions, protections for petitioners to the courts, investigations into accusations of intimidation, the prioritization of collective actions and the creation of specialized courts, which would help to speed up the decision-making process. Lastly, it was not enough to assess the damage, it must be halted and the environment restored to its previous state. To that end, efficient and balanced mechanisms must be put in place. The challenge was to establish a basis for the procedural principles to guarantee the rights.

Actions taken at the national level by the signatory countries of the Declaration on the application of Principle 10 of the Rio Declaration on Environment and Development and activities carried out by the secretariat (agenda item 3)

28. The signatory countries of the Declaration on the application of Principle 10 of the Rio Declaration spoke on the actions taken at the national level in the framework of the regional process, consisting of consultations, meetings and workshops with various governmental and non-governmental stakeholders, as well as dissemination and awareness-raising activities. Statements were made by the following delegations:⁵ Costa Rica, Honduras, Paraguay, Argentina, Brazil, Chile, Colombia, Peru, Guatemala, Panama and Antigua and Barbuda.

29. The representative of Costa Rica said that his government had held a first consultation with citizens on decrees concerning rights of access to information and open data, which stated that public institutions must provide information. Round table discussions were being encouraged with different sectors in the framework of the National Commission for Open Government. Under the new regulations, all government bodies had to guarantee access to information following particular data storage processes. He also mentioned the national environmental information system, which included a platform for information networking, and the development of environmental indicators in conjunction with UNDP, the University of Costa Rica and other stakeholders. Lastly, he said that a meeting of officials and environmental justice experts, held at the Ministry of Foreign Affairs, had contributed to the analysis of the national situation in that area.

⁵ Listed in speaking order.

30. The representative of Honduras referred to open government, climate change and resilience policies, and their connection with the right to environmental information. He said that the first national report of the Extractive Industries Transparency Initiative (EITI) had been presented and the final outcome was pending. With regard to transparency and access to information, the government had pursued the Construction Sector Transparency Initiative (CoST), which demonstrated the political will to ensure transparency when carrying out infrastructure works. A bill on free and informed prior consultation was being drafted, in conjunction with indigenous peoples, which included many of the concepts that had emerged during the negotiations of the regional agreement. He reiterated his country's desire to have a binding regional agreement.

31. The representative of Paraguay said that his country, as a member of the Open Government Partnership, had submitted different action plans and made commitments on transparency, public participation and accountability. One of the most important initiatives in that regard had been the Open Access to Public Information and Government Transparency Act, adopted in 2014, which guaranteed free access to public sources of information and required, among other measures, the publication of public officials' salaries and allowances. A government portal for open economics, labour and education data and a legislative open data portal had been set up. The Secretariat of the Environment had announced that work had begun to strengthen access to information in order to improve institutional capacity.

32. Citing activities undertaken since the fifth meeting, the representative of Argentina said that annual environmental reports would be presented to inform citizens about the state of natural resources, in accordance with the General Environmental Act. Land-use planning had been included as one of the national government's initiatives and a legislative process for a future law on the subject had begun. With regard to citizen participation, the Ministry of Foreign Affairs had held a meeting with civil society to report on the progress made in the negotiations of the regional agreement. Training workshops on access to justice were being planned and training courses on the illegal trafficking of species had been given in border areas. Interministerial consultations on the future regional agreement had also begun.

33. In addition, she said that her country stood ready to host the seventh meeting of the negotiating committee in Buenos Aires from 31 July to 4 August 2017, which was welcomed by the participating countries.

34. The representative of Brazil said that a number of national coordination meetings had been held between civil society and various government institutions. At the last meeting, articles 6 to 10 had been discussed to address the concerns of both parties. The Office of the Comptroller-General of Brazil, as the guarantor of rights of access to information, had used Principle 10 to define environmental cases, and, five years after the Access to Information Act had been enacted, a large number of applications and appeals had been processed. He also spoke of training activities on access rights and of the launch of the Brazil Transparent programme, in which the country's states and municipalities were participating.

35. The representative of Chile said that her country had continued to hold meetings prior to and following each round of negotiations, at which all the national ministries and the public were represented. The government had also supported initiatives by other stakeholders, such as the meeting organized by the Environmental Law Centre of the University of Chile and the workshop on the participation of indigenous peoples in environmental decision-making, which had been held in the framework of the free trade agreement between Chile and Canada. Early participation in environmental and social regeneration programmes was being promoted and consultations had been held on the development of plans to combat air pollution, on the national policy for sustainable mountain management and on the three regulations of the law to promote recycling and extended producer responsibility. Commissions had been established to

implement the 2030 Agenda for Sustainable Development and her country was participating in the Open Climate Working Group of the Open Government Partnership.

36. The representative of Colombia said that significant progress had been made in his country with regard to the tenets of Principle 10. In the area of access to information, it had been decided that regulatory decrees should be published on the website of the ministry or department concerned before being issued. In order to ensure citizens' participation in the development of draft regulations, the body responsible should inform proactively on the drafts and promote public participation. Progress had also been made in consolidating the environmental information system—a pilot exercise was being carried out on the cross-cutting nature of information on marine, water and forest issues—in the Unified System on Environmental Health Information (SUISA) and in the comprehensive environmental health policy guidelines. Workshops on environmental democracy and a consultation campaign to develop a climate change policy had taken place. Lastly, progress had been made in efforts to mainstream access to justice into the 2017-2027 justice plan.

37. The representative of Peru said that the Ministry of the Environment, together with the Ministry of Foreign Affairs and the judiciary, had held a seminar-workshop at which a conceptual framework on access rights had been set out and the experiences of other countries shared. On that occasion, it had been announced that an international congress on environmental justice would be held in 2017, organized by the Peruvian judiciary, which would seek to make judges aware of the scope of environmental regulations. In that connection, the judiciary had signed agreements with the Ministry of the Environment and other institutions. In the context of access to information, the Office of the President and the Ministry of the Environment had announced the launch of the multisectoral working group for the implementation of national contributions to address climate change, thereby indicating that the country's work was aligned with the Sustainable Development Goals.

38. The representative of Guatemala said that, in January 2017, the Ministry of Foreign Affairs and the Ministry of the Environment and Natural Resources had held a forum with the National Network of Environmental Training and Research, aimed at university students and lecturers, in order to guide the process of establishing socialization mechanisms for the preliminary document of the regional agreement. The document had also been disseminated among various government entities. She reiterated that her country considered it crucial to have a regional instrument that would provide space for capacity-building and affirm access rights at a national level, taking into account the realities of the region.

39. Among the actions undertaken since the fifth meeting of the negotiating committee, the representative of Panama mentioned the creation of a wildlife refuge in the Matusagaratí wetlands, for which a consultation process with local communities and scientists had taken place; a bill on financing forestry and silvopastoral projects that met the goals of the Alliance for one million reforested hectares—the result of 11 consultation workshops with forestry sector stakeholders, livestock farmers and non-governmental organizations, among others—; and the signing of a decree that regulated recognition of the legal status of community-based organizations.

40. The representative of Antigua and Barbuda mentioned activities to protect mangroves and the coral reef system. She also reported that data and statistics had been collected on ocean conditions and workshops on green energy and sustainable cities had been held to encourage the use of environmentally-friendly housing materials and the creation of green spaces within communities. Meanwhile, work had been undertaken to reduce polluting emissions and electronic waste treatment methods were being assessed, for which the country had requested technical assistance.

41. The representative of the public outlined the activities carried out in Argentina, Peru, Chile, Colombia, Ecuador, Saint Lucia, Trinidad and Tobago and Brazil, which had included, among other things, promoting Principle 10 in secondary schools, producing videos and newsletters, writing opinion pieces, and organizing campaigns, round tables and seminars.

42. Among the activities undertaken by the secretariat, the representative of ECLAC noted the support provided to the four contact groups and the organization of virtual, inter-sessional meetings and meetings of the Presiding Officers, as well as capacity-building activities and the preparation of news bulletins on the negotiation process. He noted the growth of the regional public mechanism, which now had more than 3,000 people. The process had also continued to be disseminated through the website and a web page had been developed dedicated to the sixth meeting of the negotiating committee. Lastly, the Observatory on Principle 10 in Latin America and the Caribbean had been launched, which included treaties, laws, policies and jurisprudence relevant to the region in the area of access rights. The Observatory could be accessed through the website <http://observatoriop10.cepal.org/en>.

43. The representative of the public then presented the winning videos of a contest on access rights in environmental matters in Latin America and the Caribbean, organized by representatives of the public in conjunction with the Regional Environmental Centre for Central and Eastern Europe.

Negotiation of the regional agreement on access to information, public participation and justice in environmental matters in Latin America and the Caribbean (agenda item 4)

44. Under this agenda item, the delegations considered the document *Text compiled by the Presiding Officers incorporating the language proposals received from the countries on the preamble and articles 1 to 10 of the preliminary document on the regional agreement on access to information, participation and justice in environmental matters in Latin America and the Caribbean. Fifth version.*⁶ The negotiations centred on articles 9 to 25 and on the outstanding issues of the fifth version of the text compiled by the Presiding Officers.

45. The delegations began the discussion with article 9 and negotiated up to article 11. To facilitate the discussions on articles 9 and 10, a general overview of the contents of those articles was presented by the coordinators of the respective contact group: Brazil and Chile for article 9 and Costa Rica and Saint Vincent and the Grenadines for article 10.

46. As agreed at previous meetings, the authorship of each country in each new or alternative proposal and, where applicable, the support of other delegations, was reflected in the numerals not agreed upon, on the understanding that those countries not mentioned were in agreement with the text that served as the basis for negotiations. Proposals made by the public taken up by one or more delegations were incorporated into the text indicating the country or countries that had made them their own.

47. In an effort to make progress on the review of outstanding issues, the contact groups on articles 6 and 7 (access to information) and 8 (participation), led by Mexico and Trinidad and Tobago, and by Argentina and Peru, respectively, held breakout sessions.

48. After hearing the positions of the various delegations, the Chair drafted a proposal for article 9 (access to justice), which he submitted to the negotiating committee for consideration. The proposal was accepted by the plenary and included in the compiled text.

⁶ LC/L.4059/Rev.4.

49. During the discussions, delegations agreed that the word “public” had a broader meaning than “persons”, since the former included both natural and legal persons, as well as collective entities without legal personality, such as associations and communities. Similarly, they said that it would be preferable to use the term “persons or groups in situations of vulnerability” throughout the text rather than other formulations. It was agreed that those terms and others, such as “Party” and “competent authority”, should be reviewed once the article on definitions had been agreed.

50. The representative of Chile, in her capacity as Co-Chair, presented a general overview of the contents of articles 11 to 25, with comments by Concepción Escobar Hernández, Chair of Public International Law at the National Distance Education University (UNED), Spain, and member of the International Law Commission.⁷

51. The Chair of Public International Law said that articles 11 to 25 contained all the elements necessary for an effective, legally binding instrument and that they were consistent with the logic and substance of the rights and obligations set out in previous articles. The compiled text already had a considerable degree of flexibility, providing a comprehensive and robust model for both institutions and the final provisions. The prohibition of reservations was in line with international trends and practice in environmental legal treaties and should be understood in the framework of the flexible provisions already foreseen. She was therefore of the opinion that reservations were not necessary and could lead to problems of interpretation and implementation, as well as creating legal uncertainty. However, she believed that there was room for additional instruments that could offer greater flexibility, such as allowing States to make a statement when giving consent, indicating that they would need a fixed period to implement certain specific obligations (compliance with which would always be subject to evaluation and follow up), or introducing “without prejudice to” clauses that would allow States that were more advanced in that area to move towards a fuller implementation of the rights. While the institutional framework envisaged was broad and flexible, she suggested that the text should include elements, such as the frequency of meetings of the Conference of the Parties, should establish interim bodies and procedural rules for the period between the agreement’s adoption and entry into force, contemplate simplified amendments for procedural elements (such as increasing the number of members of a committee); and explicitly define certain operational aspects of the facilitation and follow-up committee, such as its composition, as that would expedite its entry into force.

52. In the subsequent exchange of views, participants asked how a balance could be struck between legal rigidity and greater flexibility in the instrument; what factors should be taken into consideration when selecting the secretariat of the future agreement; how the public could participate in its implementation; and whether institutional arrangements and the means of implementation could be made more flexible, for example, through amendments or protocols. The Chair of Public International Law said that flexibility was important but it had its limits and that, far from being rigid, the current wording of the text was flexible enough to accommodate States’ different realities. It was customary in international practice for the secretariat of the negotiations to be the secretariat of the agreement, owing to its greater knowledge of the process. Meanwhile, the form public participation in the implementation of the agreement would take and whether to adopt amendments and protocols were political decisions, but those decisions must be in line with the technical aspects and with the object and purpose of the agreement. They should not, in that sense, hinder the recognition and effectiveness of recognized rights.

⁷ See [online] <http://negociacionp10.cepal.org/6/en/programme/general-overview-articles-11-25-compiled-text>.

Presentation of the preliminary report by the secretariat assessing the possible administrative, financial and budgetary implications of the regional agreement (agenda item 5)

53. Under this agenda item, and as was agreed at the fifth meeting of the negotiating committee, the representative of the secretariat presented a preliminary report assessing the possible administrative, financial and budgetary implications of the regional agreement and the establishment of its secretariat.⁸ He said that the report had been prepared in the light of the institutional structure set out in the compiled text, building on the experience gained in the preparatory and negotiating phases of the regional agreement and other similar agreements. He presented the background, the functions of the current and future technical secretariat and the institutional structure foreseen, which also included the Conference of the Parties, the Presiding Officers, consultative groups, a facilitation and follow-up committee, an implementation fund and a clearing house. He said that the estimates had been calculated on the basis of the funds needed to provide support to the Conference of the Parties and for the workings of the technical secretariat, capacity-building activities and the implementation fund. There were two possible options for financing the agreement, depending on whether partial financial support was provided to some delegations to allow them to attend the Conference of the Parties or not. Both options included the funds needed to cover the functioning of the secretariat and the cost of an annual regional workshop. Both options proposed to allocate resources from the regular budget of ECLAC, to obtain additional regular funds and to use the implementation fund, albeit to different percentages depending on the option. In addition to those amounts, two additional posts would be needed to support the secretariat (one professional and one administrative). The estimates were for a two-year period, owing to the biennial nature of ECLAC budgets.

54. The representative of Mexico welcomed the report and the opportunity to discuss those issues, which he considered to be highly relevant. He asked how the bodies created by the agreement would fit within the institutional framework of ECLAC and what would be the path within the Commission and the United Nations that would allow it to be awarded the mandate of secretariat and the corresponding budget. He also asked how the future agreement would work with those member States of ECLAC that were outside the region and whether it would be appropriate to involve them, given the existence of borders with some countries of the region and cross-border environmental exchanges.

55. The representative of Colombia said that he was unsure about the procedures to be followed for the adoption of the agreement and the establishment of its secretariat. He asked for further clarification on what percentage of the current budget would be reallocated and how the cost of support for the subsidiary bodies, such as the facilitation and follow-up committee, had been calculated. He also requested further information on the administration of the implementation fund and the experience of ECLAC in that regard, and asked whether the secretariat would be able to mobilize resources beyond the regular budget. Lastly, he suggested that discussion of those elements should be continued at the committee's next meeting.

56. The representative of Jamaica said that the nature of the instrument must be defined, as the institutional and financial arrangements would depend to a large extent on that definition. She called for financial rules to be established and the nature of the implementation fund to be clarified, specifically whether it would be voluntary or not and how contributions would be calculated. She said that countries should figure out what would be required of them financially in order to give effect to the future agreement.

⁸ See [online] <http://negociacionp10.cepal.org/6/en/programme/presentation-preliminary-report-assessing-possible-administrative-financial-and-budgetary>.

57. The representative of Costa Rica said that the countries had already started to allocate institutional and financial resources for the process, since participating in the negotiations carried significant financial implications. She also noted that the Observatory on Principle 10 in Latin America and the Caribbean and the documents prepared by ECLAC helped generate greater understanding in the negotiations. She said that the process was at a turning point, since for the first time the contours of the agreement had been outlined and delegates had a comprehensive view of it. Now the necessary means for its effective implementation must be provided. It was therefore crucial that budgetary discussions should be linked to the review of articles 11 to 25.

58. The Officer-in-Charge of the Office of the Secretary of the Commission thanked the delegates for their questions and said that the process before the governing bodies of ECLAC had already started and was taking place as the negotiations were progressing. In that connection, the Co-Chairs of the Presiding Officers had reported on the progress made in the negotiations at the sessions of ECLAC and of the Committee of the Whole of ECLAC, and those bodies had adopted a number of specific resolutions in that regard. The member States of ECLAC were therefore fully aware of the scale, objectives, scope and membership of the regional process. The Forum of the Countries of Latin America and the Caribbean on Sustainable Development served as a good recent precedent of a body that was limited to the countries of the region but had been instituted by all the ECLAC member States. In the light of the provisions of the agreement, the Commission's programme of work would have to be modified to reflect the new role and the corresponding budget. Considering the overall budget of ECLAC, he said that the future agreement's budgetary implications would be negligible and that the preliminary budget presented by the technical secretariat was realistic and feasible. Moreover, the other ECLAC outputs would not be affected and undertaking more activities within the existing budget was generally welcomed by member States.

59. The delegations considered the report presented very useful and decided to analyse it further in discussions at future meetings.

Other matters

60. The delegations devoted part of the meeting to discussing the organization of work for the seventh meeting of the negotiating committee.

61. The representative of Argentina, the host country of the next meeting, said that the agenda would be ambitious, in view of the current stage in the negotiations and the established time frames. She proposed moving forward with the review of the outstanding issues from articles 6 to 10 by continuing to use the flexible working modalities, both at virtual and face-to-face meetings, and to allow some time at the plenary meeting for the contact groups to present any text proposals that might have been agreed upon by the group. She added that work must continue on the review of articles 11 to 25 and on the financial and budgetary aspects of the agreement.

62. The representative of Colombia reiterated the importance of continuing the discussions on the financial implications at the seventh meeting of the committee and called for a review of outstanding issues from the preamble and articles 1 to 5. He said that he would prefer not to have parallel contact group meetings to avoid repeating discussions in the plenary and that he thought it would be beneficial to be able to have flexible approach to the exchange of views.

63. In view of the successful outcome of the current meeting, the representative of Chile called for the role of the coordinators of the contact groups to be expanded so that they could submit to the plenary clean texts of the different articles reviewed that reflected the discussions among the countries.

64. Several delegations welcomed the flexible approach to analysing outstanding issues and said that they supported the working modalities for the contact groups and the bilateral contacts between the coordinators of the different groups. The representatives agreed that, while the only formal negotiating text was the text compiled by the Presiding Officers, the clean text proposals made by the coordinators of the contact groups would be additional texts that could help to advance the negotiations. If they were supported by at least one country in the plenary, those texts would be included in the compiled text as a proposal of that country and, in the event that there was consensus, they could replace the wording in the compiled text. The secretariat said that the documents produced by the contact groups would be considered reference documents.

65. The representative of Jamaica said that the virtual meetings were useful for exchanging views and clarifying some issues, but recalled that decisions could not be taken in them. She called for more in-depth analysis of articles 10 and 11, as they were central to the implementation of articles 6 to 9 and for the committee to take a decision on the nature of the instrument promptly, as the lack of clarity was creating too many uncertainties in the negotiations. She also said that some of the definitions must be addressed, particularly of those terms that appeared more frequently in the text.

66. The representative of Honduras expressed her support for the approach adopted to move the process forward and called for clarity on its final outcome. She said that any doubts about budgetary issues must be resolved, to ensure that they did not impede the negotiations of the operative articles.

67. The representative of Chile welcomed the progress made at the sixth meeting and at the inter-sessional meetings and urged delegations to redouble their efforts in preparation for the seventh meeting. In order to finalize the negotiations in December 2017 as expected, the nature of the future agreement had to be defined. In that connection, she said that her country and most of the members of the committee had stated that they were seeking to produce a legally binding instrument.

68. The Chair of Public International Law said that it was standard practice in international negotiations and in the International Law Commission to finalize the definitions once the rest of the text had been agreed, since they would depend on how the terms were used in the document and it could then be decided whether to include or delete definitions. She also urged the delegations to consider undertaking a technical and legal review of the text before formally adopting it, to ensure the correct and consistent use of terms. Such a review would also facilitate the final approval of the text and its effective implementation.

69. Several delegates congratulated ECLAC on the launch of the Observatory on Principle 10 in Latin America and the Caribbean and agreed that it was a very useful tool that would provide greater access to information.

70. The secretariat reported that the sixth version of the compiled text resulting from the sixth meeting would be available on the website of the seventh meeting of the negotiating committee.⁹

⁹ See [online] <http://negociacionp10.cepal.org/6/en>.

Consideration and adoption of agreements (agenda item 6)

71. The delegations then considered the agreements of the sixth meeting of the negotiating committee.
72. The delegations adopted the agreements set out in annex A by consensus.

Closing session

73. During the closing session, statements were made by the Chief of the Sustainable Development and Human Settlements Division of ECLAC, the representatives of Chile and Costa Rica, in their capacity as Co-Chairs of the Presiding Officers, Rubens Harry Born, representative of the public, and José Antonio Marcondes de Carvalho, Assistant Secretary-General for the Environment, Energy, Science and Technology of the Ministry of Foreign Affairs of Brazil.

74. The Chief of the Sustainable Development and Human Settlements Division of ECLAC said that the progress made by the contact groups would ensure that the session in Buenos Aires was very productive. Progress had been made on several articles and the budgetary assessment, a matter of the utmost importance at that stage of the process. A very positive agenda was being negotiated, an innovative instrument, aimed at guaranteeing rights and protecting the environment. While the process focused on environmental issues, it would have far-reaching implications for sustainable development, as it was linked to policymaking, conflict prevention and the harmonization of national policies. He thanked the Government of Brazil for hosting the meeting and the members of the public for their active participation. He concluded by reiterating the ongoing commitment of ECLAC to supporting the process.

75. The representative of Chile thanked the Chair of the meeting for the excellent work accomplished and welcomed the remarkable progress achieved in that round of negotiations. He said that the delegations would continue to move steadily forward at the seventh meeting and predicted that by the end of the year there would be a useful instrument for the entire region. The initiative, which had been launched in Brazil, had started with a declaration signed by just 10 countries and that number had already risen to 23, which suggested that the effort made in the intervening years had not been in vain. He said that he hoped to end the year with an agreed text, which would be a great achievement for Latin America and the Caribbean.

76. The representative of Costa Rica said that it had been a week of hard work and commitment and that the discussions had been very enriching. She thanked the members of the public and the experts for their valuable contributions, which had been critical to the analysis of the text. She said that access rights were at the heart of environmental democracy and were covered by the Sustainable Development Goals, and she was confident that a consensus text would be reached at the seventh meeting.

77. The representative of the public said that significant progress had been made in the region since the 1992 Rio Declaration on Environment and Development and the Rio+20 Conference of 2012. However, the complexity of the environmental challenges required additional commitments and measures that were capable of meeting those challenges. It was therefore essential to reach a regional agreement on Principle 10 with high standards that would give people and governments the necessary tools to tackle those challenges. He highlighted positive aspects of the sixth meeting, such as the progress made by the contact groups and during the inter-sessional virtual meetings; the countries' acceptance of several suggestions put forward by the public; the recognition of the importance of preventing and punishing attacks on environmental defenders; and the inclusion of key elements for access to justice, such as broad active legal standing. He

also called for regional frameworks to be established that were not limited to national progress; for the San José Content to be respected; and for article 10 on capacity-building and cooperation to be strengthened. He said that it was vital that the public should play a significant role in the governance, implementation and follow-up mechanisms, working in conjunction with governments on the effective application of the future agreement. Lastly, he said that there was a collective moral and political responsibility to use the momentum and produce a binding, timely and meaningful agreement for the region.

78. The Assistant Secretary-General for the Environment, Energy, Science and Technology of the Ministry of Foreign Affairs of Brazil said that the delegations were very close to concluding a process in which they had worked unrelentingly. Hosting the sixth meeting of the negotiating committee had been very significant moment for Brazil, as it had always been a proponent of the ideas contained in Principle 10, evidenced by its commitment to and observance of access rights. After thanking the delegations and the secretariat for the work accomplished, he welcomed the progress made and acknowledged in particular the participation of the general public, who had followed the process both in person and online.

Annex A

AGREEMENTS

The representatives of the countries participating in the sixth meeting of the negotiating committee of the regional agreement on access to information, participation and justice in environmental matters in Latin America and the Caribbean, held in Brasilia from 20 to 24 March 2017,

1. *Acknowledge* the significant progress made in the negotiations on the basis of the text compiled by the Presiding Officers, which will be presented in a sixth version of that document;
2. *Agree* to resume the negotiations on the text compiled by the Presiding Officers at the seventh meeting of the negotiating committee, using the sixth version of that text;
3. *Recall* that, with a view to completing the process by December 2017, the committee will meet regularly, both in person and virtually, on the basis of the updated calendar of meetings attached as an annex hereto, and request the Presiding Officers to steer the negotiation process, with the support of the Economic Commission for Latin America and the Caribbean as technical secretariat, by making good use of the flexible working modalities for the review of outstanding issues already considered by the plenary, such as the contact groups, and with the meaningful participation of the public;
4. *Thank* the Government of Argentina for the invitation to hold the seventh meeting of the negotiating committee of the regional agreement on access to information, participation and justice in environmental matters in Latin America and the Caribbean in Buenos Aires from 31 July to 4 August 2017;
5. *Agree* to convene the eighth meeting of the negotiating committee of the regional agreement on access to information, participation and justice in environmental matters in Latin America and the Caribbean tentatively from 27 November to 1 December 2017, at a place yet to be decided;
6. *Thank* the Economic Commission for Latin America and the Caribbean for its support as technical secretariat and, in particular, for the presentation of the preliminary report assessing the possible administrative, financial and budgetary implications of the agreement and the progress made in the development of the Observatory on Principle 10 in Latin America and the Caribbean;
7. *Agree* to discuss the possible administrative, financial and budgetary implications of the regional agreement, including the preliminary report presented by the secretariat at the sixth meeting of the negotiating committee.
8. *Thank* the people and the Government of Brazil for their hospitality and the effort devoted to the organization of the sixth meeting of the negotiating committee of the regional agreement on access to information, participation and justice in environmental matters in Latin America and the Caribbean.

Annex 1

**CALENDAR OF MEETINGS OF THE NEGOTIATING COMMITTEE
OF THE REGIONAL AGREEMENT ON ACCESS TO INFORMATION,
PARTICIPATION AND JUSTICE IN ENVIRONMENTAL MATTERS
IN LATIN AMERICA AND THE CARIBBEAN**

With a view to concluding negotiations on the agreement by December 2017, the Committee will meet periodically, both in person and virtually, on the following dates:

- 23 May 2017: intersessional meeting of the negotiating committee (virtual)
- 11 July 2017: intersessional meeting of the negotiating committee (virtual)
- 31 July - 4 August 2017: seventh meeting of the negotiating committee (Buenos Aires)
- 27 November - 1 December 2017: eighth meeting of the negotiating committee.

Annex B

LIST OF PARTICIPANTS**A. Países signatarios de la Declaración
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