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Access to Environmental Information in Latin America and the Caribbean: A Synthesis of Decisions Adopted by Oversight Bodies and Selected Judgements

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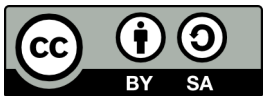

This document is based on information and data available on December 1, 2023. References to legal provisions, judgements, and decisions adopted by oversight bodies included in this publication are for information purposes only and may not coincide with current official versions. In case of discrepancy, the wording of the official publication shall prevail.

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Access to Environmental Information in Latin America and the Caribbean:

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An Invitation to Debate

More than three centuries ago, British thinker, poet and politician John Milton published one of the most important and well-known texts against censorship: *Areopagitica*. It was one of the catalysts for an important debate on the protection of freedom of expression and freedom of the press.

Many centuries before him, the Greeks had strong arguments about the importance of the *doxa* (opinion) for democracy.

The debates on the vital importance of freedom of expression and access to information and knowledge for democracies and for the development, protection and promotion of other human rights are by no means new.

However, there is no doubt that the advent of new information and communication technologies (ICTs), particularly the expansion of the Internet, offers a unique and unprecedented dimension to these discussions.

The impact on the system for the protection and promotion of human rights, on the consolidation of democracies, on development, decision-making, public policies, and, at the end of the day, on the daily life of every citizen, is unprecedented.

The progress of knowledge societies is intimately related to the deepening of the discussions on the right to freedom of expression and universal access to information in an increasingly connected world. Press freedom, media development, privacy, the role of ICTs in public policy, open governments, documents' protection, and media and information literacy, are some of the many issues on the agenda.

In an attempt to intensify the role of the Organization as a laboratory of ideas, UNESCO Office in Montevideo offers these Communication and Information Discussion Papers. In this Paper No. 27, the organizations involved in its publication reflect on the access to environmental public information.

Produced by key experts on each subject, their main objective is to provide inputs so that decision-makers and public policymakers can take into account different angles regarding the issues on the international agenda, always with the existing international standards as a driving axis.

This publication does not intend to have the last word. On the contrary, the purpose is to contribute to an increasingly informed and pluralistic debate on the core issues of yesterday, today and tomorrow.

Enjoy your reading!

Acknowledgments

We would like to thank the people and institutions that have helped us select the judgements and decisions upon which this document is based. We especially thank the Secretariat of the Escazú Agreement and the Observatory on Principle 10 in Latin America and the Caribbean of the Economic Commission for Latin America and the Caribbean (ECLAC), Marcos Mendiburu, Ana María Muñoz (Council for Transparency of Chile); Marjorie Chorro de Trigueros (Foundation for Economic and Social Development of El Salvador); Daniel Barragán (University of the Hemispheres); Clara Inés Lucarella (Civil Association for Equality and Justice); Joara Marchezini (elected representative of the public for the Escazú Agreement); Paula Saravia Di Lucca (Agency for e-Government and the Information and Knowledge Society (AGESIC) of Uruguay); Cristian Fernández and Lisandro Vázquez Giménez (Environment and Natural Resources Foundation); and Tomás Severino (Ecologic Culture).

Executive Summary

In order to promote environmental democracy, it is necessary to strengthen access to environmental information. This right is interrelated to the other procedural rights of access to environmental participation and to environmental justice.

Access to environmental information allows people to learn about the current and projected state of the environment (including damages and impacts, both potential and real); to effectively participate in decision-making processes; and to have better tools to protect their natural environment. Additionally, access to environmental information is an enabling condition to enjoy the right to a healthy environment and other related rights, such as the right to health, food, or water.

Courts and access to information (ATI) oversight bodies in Latin America and the Caribbean have implemented, through their judgements and decisions, respectively, the standards applicable to access to environmental information. The most important recent developments are based on or complement the domestic legislation in force and the Regional Agreement on Access to Information, Public Participation and Justice in Environmental Matters in Latin America and the Caribbean (Escazú Agreement). This document takes the year in which the Escazú Agreement was adopted (2018) as the base to analyse how judgements made by judicial bodies and decisions adopted by ATI oversight bodies in the region have promoted access to environmental information.

The analysis of the selected cases shows people's growing interest in the environment and the consequent need to guarantee their right to access environmental information. The cases examined here reaffirm standards previously established at the international level, such as the principle of maximum disclosure and the obligations regarding active and passive transparency. Sometimes, they even broaden the scope and content of the right, for example, by interpreting in a more favourably way the definition of environmental information; expanding the consideration of mandated entities; delimiting the application of grounds for refusal; or promoting the generation and dissemination of more environmental information.

In a context of climate crisis, biodiversity loss, and pollution that significantly impacts the region, the cases analysed in this document can serve as a guide to strengthen access to environmental information in Latin America and the Caribbean.

Introduction

Access to public information on environmental matters is necessary for the construction of a socially and environmentally sustainable future. It is a "prerequisite to achieving sustainable development as a whole"[1] and one of the foundations of environmental democracy, along with participation in decision-making processes and access to justice.

The intrinsic relationship between access to information and sustainable development has been recognized by the United Nations. For example, the 2030 Agenda for Sustainable Development includes specific targets associated with access to information that are especially important for the construction of a sustainable society. Target 16.6 seeks to "develop effective, accountable and transparent institutions at all levels." Target 16.10 seeks to "ensure public access to information and protect fundamental freedoms, in accordance with national legislation and international agreements."

In her 2023 report to the Human Rights Council, Irene Khan, the United Nations Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, extensively elaborates on the relationship between access to information (and, more broadly, freedom of expression) and sustainable development. In her opinion, access to information is an essential tool to combat illegal deforestation, illicit mining and other activities that degrade natural resources and are an obstacle to sustainable development.[2]

At a regional level, the recent entry into force of the Regional Agreement on Access to Information, Public Participation and Justice in Environmental Matters in Latin America and the Caribbean (Escazú Agreement)[3] offers an unprecedented opportunity to reflect on the right of access to public information on environmental matters.

This document summarizes the legal standards in force in the region, analysing their implementation through a selection of judgements delivered by judicial bodies and decisions adopted by bodies overseeing access to information.[4]

1 UNESCO. *Access to Information: A New Promise for Sustainable Development*. 2020. Available at: https://unesdoc.unesco.org/ark:/48223/pf0000374541.

2 Human Rights Council, Fifty-third session. *Sustainable development and freedom of expression: why voice matters,* report of the Special rapporteur on the promotion and protection of the right to freedom of opinion and expression, Irene Khan. A/HRC/53/25, 19 April 2023.

3 Official text of the Escazú Agreement and more information about the regional process available at: https://www.cepal.org/acuerdodeescazu.

4 The legal texts and judgements included in this publication can be accessed at ECLAC Observatory on Principle 10 in Latin America and the Caribbean, available at: https://observatoriop10.cepal.org.

1. Overview of the Legal Framework on Access to Environmental Information in Latin America and the Caribbean

1.1 International and Regional Standards

1.1.1 International Standards on Human Rights and the Environment

Numerous international human rights instruments recognize and develop the right of access to information. Both the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights enshrine in article 19 the right of everyone to seek, receive and impart information.

Article 19 of the International Covenant on Civil and Political Rights

1. Everyone shall have the right to hold opinions without interference.
2. Everyone shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice.
3. The exercise of the right provided for in paragraph 2 of this article carries with it special duties and responsibilities. It may therefore be subject to certain restrictions, but these shall only be such as are provided by law and are necessary:
   a) For respect of the rights or reputations of others;
   b) For the protection of national security or of public order (ordre public), or of public health or morals.

The United Nations Human Rights Committee has interpreted article 19 of the International Covenant on Civil and Political Rights by distinguishing between obligations of active transparency and passive transparency. In its General Comment No. 34, the Committee noted that "Article 19, paragraph 2 embraces a right of access to information held by public bodies. Such information includes records held by a public body, regardless of the form in which the information is stored, its source and the date of production."[5]

Regarding passive transparency, the Committee suggested that States should create the necessary procedures for accessing information. "The procedures should provide for the timely processing of requests for information according to clear rules that are compatible with the Covenant. Fees

5 Human Rights Committee, General Comment No. 34 on article 19 (freedom of opinion and freedom of expression), 2011, CCPR/C/GC/34, para. 18.

for requests for information should not be such as to constitute an unreasonable impediment to access to information. Authorities should provide reasons for any refusal to provide access to information. Arrangements should be put in place for appeals from refusals to provide access to information as well as in cases of failure to respond to requests."[6]

Other international human rights treaties have developed rules on access to information in relation to the specific individuals or groups they deal with (see Table 1). Examples include the Convention on the Rights of the Child (article 13), the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (article 13), and the Convention on the Rights of Persons with Disabilities (article 21).

Table 1: Access to Information in Selected International Human Rights Treaties

Treaty	Provisions on Access to Information	Number of Member States of Latin America and the Caribbean
International Covenant on Civil and Political Rights	Article 19	30
International Convention on the Elimination of All Forms of Racial Discrimination	Article 5	33
Convention on the Rights of the Child	Article 13	33
Convention on the Rights of Persons with Disabilities	Article 21	33
International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families	Article 13	18

Source: Prepared by the authors, based on Office of the United Nations High Commissioner for Human Rights (OHCHR).

Standards of access to information which are specific to certain groups have, in turn, been further developed by the bodies that monitor the implementation of each treaty. The last body to do so was the Committee on the Rights of the Child by adopting its General Comment No. 26 on children's rights and the environment with a special focus on climate change, in August 2023. In this General Comment, the Committee devotes special attention to access to environmental information and notes that said access is essential for boys and girls and their parents or caregivers to understand the potential impacts of environmental harm on their rights.

6 Ibid. para. 19.

The Committee has also determined that children have the right to access accurate and reliable environmental information, including on the actual and potential causes, impacts and sources of climate and environmental harm, adaptive responses, relevant climate and environmental laws and regulations, findings from climate and environmental impact assessments, policies and plans and sustainable lifestyle choices. At the same time, according to the Committee, States are obliged to make environmental information available in an appropriate manner.

Access to environmental information is also widely regulated in international instruments on the environment. One of the pillars on which the right of access to environmental information has been built has been Principle 10 of the 1992 Rio Declaration on Environment and Development, an instrument that, despite being non-binding, has served as an inspiration and foundation for binding obligations in environmental treaties.

Principle 10 of the Rio Declaration on Environment and Development

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.

The main multilateral environmental agreements also include provisions on access to information (see Table 2). Three examples are worth highlighting. First, the United Nations Framework Convention on Climate Change states in article 6 that Parties shall promote and facilitate public access to information on climate change and its effects. Second, the Paris Agreement establishes an enhanced transparency framework and promotes that nationally determined contributions should be recorded in a public registry, with Parties providing information necessary for clarity, transparency and understanding. Article 12 of the Paris Agreement also calls for measures, as appropriate, to enhance public access to information on climate change.

Third, the Minamata Convention on Mercury provides that "for the purposes of this Convention, information on the health and safety of humans and the environment shall not be regarded as confidential" (article 17). It further directs each Party to promote and facilitate public access to available information on the health and environmental effects of mercury and mercury compounds. It also promotes the collection and dissemination of information on estimates of its annual quantities of mercury and mercury compounds that are emitted, released or disposed of through human activities (article 18).

It should be noted that the overall monitoring of obligations related to access to information included in environmental treaties corresponds to the highest deliberative body established by such treaties, generally called "Conference of the Parties" or "Meetings of the Parties". Occasionally, subsidiary bodies for implementation and compliance have also been established, as in the case of the Paris Agreement and the Minamata Convention.

Table 2: Access to Information in Selected Multilateral Environmental Agreements

Treaty	Provisions on Access to Information	Number of Member States of Latin America and the Caribbean
Paris Agreement	Articles 4, 7 and 12	33
Minamata Convention on Mercury	Articles 3, 4, 5, 6, 17 and 18	26
Stockholm Convention on Persistent Organic Pollutants	Articles 9 and 10	32
Rotterdam Convention on the Prior Informed Consent Procedure for Certain Hazardous Chemicals and Pesticides in International Trade	Articles 13 and 15	30
United Nations Convention to Combat Desertification	Articles 9, 10 and 16	33
Convention on Biological Diversity	Articles 14 and 17	33
United Nations Framework Convention on Climate Change	Articles 4, 6 and 12	33
Kyoto Protocol to the United Nations Framework Convention on Climate Change	Articles 10.b and 10.e	33
Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and Their Disposal	Articles 3, 4.2.f and 16.1	32
Vienna Convention for the Protection of the Ozone Layer	Articles 3.3 and 4.1	33
Montreal Protocol on Substances that Deplete the Ozone Layer	Articles 7, 9 and 12	33

Source: ECLAC, Observatory on Principle 10 in Latin America and the Caribbean.

1.1.2. Regional Agreement on Access to Information, Public Participation and Justice in Environmental Matters in Latin America and the Caribbean (Escazú Agreement)

The Escazú Agreement, adopted by 24 countries on 4 March 2018, and in force since 22 April 2021, is the first regional environmental treaty in Latin America and the Caribbean, the only one derived from the Rio+20 United Nations Conference on Sustainable Development,[7] and the world's first to include specific provisions for the protection of human rights defenders in environmental matters. Having as its objective the full and effective implementation of the rights of access to information, public participation, and access to justice in environmental matters, and the strengthening of capacities and cooperation, it aims at realizing the right of present and future generations to a healthy environment and to a sustainable development.

Access to environmental information is one of its pillars, regulated in articles 5 and 6. While article 5 deals with passive transparency and establishes an obligation for competent authorities to provide access to information requested to them, article 6 refers to active transparency and promotes the dissemination of certain types of environmental information. The terms "environmental information" and "competent authority" are defined in article 2.

The Agreement provides that the public shall have the right to access environmental information in the possession, control or custody of a State Party, in accordance with the principle of maximum disclosure. Environmental information means information relating to the environment and its elements and natural resources, including information related to environmental risks, and any possible associated adverse impacts affecting or likely to affect the environment and the health, as well as to environmental protection and management.

The right to access information includes requesting and receiving information from competent authorities without a need to mention any special interest or explain the reasons for the request, ensuring equality and non-discrimination. Competent authorities shall respond to requests 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. To facilitate access, information shall be disclosed at no cost, insofar as its reproduction or delivery is not required. These costs shall be reasonable and can be waived in the event that the requester is deemed to be in a vulnerable situation or to have special circumstances warranting such a waiver.

Main Obligations Included in Article 5 of the Escazú Agreement and Implementation Guidance

Provision	Obligation	Implementation Guidance
Paragraph 1	Ensure the public's right of access environmental information.	• Applies to environmental information in the possession, control, or custody of a Party. • Must comply with the principle of maximum disclosure.

7 The United Nations Conference on Sustainable Development was held on June 20-22, 2012, in Rio de Janeiro, Brazil, twenty years after the Earth Summit. The outcome document was "The future we want". The Conference was attended by representatives of 193 United Nations Member States, civil society, the private sector, and other groups and organizations.

Provision	Obligation	Implementation Guidance
Paragraph 2	Uphold content of the right of access to environmental information.	• Right to request and receive information from the competent authorities. • No interest or reason for the request need to be stated. • Inform promptly whether the information is in possession of the competent authority. • Inform of the right to appeal and the requirements for appeal if the information is not delivered.
Paragraph 3	Facilitate access to environmental information for persons or groups in vulnerable situations.	• States are required to establish procedures for assistance to persons and groups in vulnerable situations. • Assistance must be based on the conditions and specificities of the vulnerable persons or groups. • Assistance should range from the formulation of requests to the delivery of information.
Paragraph 4	Guarantee that persons or groups in vulnerable situations receive assistance.	• Assistance in preparing requests and obtaining a response.
Paragraph 5	Communicate refusal in cases of non-delivery under the domestic legal regime of exceptions.	• Written refusal to be given with reasons and the legal provisions on which the decision is based. • Applicant to be informed of the right to appeal.
Paragraph 6	May establish exceptions where information may be refused.	• Exceptions may be set out in national legislation. • Where there is no national law, four specific exceptions may be applied at the discretion of the authority.
Paragraph 7	Take into account human rights obligations and encourage exception regimes that favour disclosure.	• Limited exceptions. • Exceptions limited by law. • Exceptions must conform to tests of necessity and proportionality. • Exceptions must apply for a reasonable period. New exceptions or amendments to exception regimes should conform to the principle of maximum disclosure.
Paragraph 8	Legally establish in advance reasons for refusal and take into account the public interest.	• Reasons for refusal should be included in the legal framework. • The public interest in disclosure versus non-disclosure should be taken into account, and reasons for refusal should be interpreted restrictively. • The obligation to justify the refusal lies with the competent authority.

Provision	Obligation	Implementation Guidance
Paragraph 9	Apply the public interest test.	• Weigh the interest of withholding the information against the public benefit of disclosing it, based on suitability, need and proportionality.
Paragraph 10	Disclose non-exempt material that is part of the requested information.	• Disclosure of requested information must not include exempt material (severability).
Paragraph 11	Provide information in requested format.	• El solicitante es quien decide en qué formato prefiere recibir la información. • El formato depende de la disponibilidad.
Paragraph 12	Respond to requests in a limited period.	• The response to the request must be provided as quickly as possible. • The maximum period for response is 30 business days or less if stipulated by national law.
Paragraph 13	May extend period for responding to requests in exceptional circumstances.	• Reasons for extension must be "exceptional" and set out in national law. • Extension of period for response must be no longer than 10 business days. • Applicant must be given written notice of extension.
Paragraph 14	Safeguard the applicant's right to challenge the failure of authority to respond.	• The applicant may challenge and appeal the failure of the competent authority to respond to the request within the time frames specified in Articles 5.12 and 5.13.
Paragraph 15	Notify if the requested information is not in possession of the authority and transfer the request to the relevant authority.	• Notification must occur as quickly as possible. • Duty to identify the relevant authority in possession of the information and to transfer the request.
Paragraph 16	Inform and explain why the information does not exist or has not been generated.	• The notification and explanation must be provided within 30 business days or less if so stipulated by national law. • If the period for response has been extended, the period for notification and explanation must be within 10 business days.
Paragraph 17	Ensure that the applicant is not required to pay for the cost of access, with the exception of reproduction and delivery costs.	• Reproduction and delivery costs, if charged, must be reasonable and the applicant should be aware of said costs in advance. • Payment of the costs may be waived for persons and groups in vulnerable situations or in special circumstances.

Provision	Obligation	Implementation Guidance
Paragraph 18	Establish or designate one or more independent oversight mechanisms.	• Mechanisms must be impartial, with autonomy and independence. • Roles include promoting transparency, overseeing compliance with rules, monitoring, evaluating, and guaranteeing the right of access to information. • Sanctioning powers may be included or strengthened.

Source: ECLAC. Regional Agreement on Access to Information, Public Participation and Justice in Environmental Matters in Latin America and the Caribbean, Implementation Guide (2023).

Additionally, the Escazú Agreement encourages the proactive generation and disclosure of environmental information. In this regard, each Party shall guarantee, to the extent possible within available resources, the generation, collection, publication, and disclosure of relevant environmental information in a systematic, proactive, timely, regular, accessible, and comprehensible manner. Certain mechanisms are also envisaged to promote the disclosure of environmental information, such as updated environmental information systems or pollutant release and transfer registers covering air, water, soil and subsoil, and materials and waste under the jurisdiction of each State, among others.

Main Obligations Included in Article 6 of the Escazú Agreement and Implementation Guidance

Provision	Obligation	Implementation Guidance
Paragraph 1	Guarantee that the competent authorities generate, collect, publicize and disseminate environmental information.	• To the extent possible within available resources. • Should be systematic, proactive, timely, regular, accessible and comprehensible. • Information should be periodically updated. • Information should be disaggregated and decentralized. • Obligation to strengthen coordination between the different authorities of the State.
Paragraph 2	Endeavour to ensure that environmental information is reusable, processable and available in accessible formats.	• To the extent possible. • No restrictions should be placed on reproduction or use, in accordance with domestic legislation.
Paragraph 3	Have in place one or more environmental information systems.	• Duty to establish at least one environmental information system. • Systems shall be duly organized and publicly accessible. • Systems shall be made progressively available through information technology and georeferenced media.

Provision	Obligation	Implementation Guidance
Paragraph 4	Take steps to establish a pollutant release and transfer register.	• Shall cover pollutants, materials and waste in each party's jurisdiction. • Established progressively and updated periodically.
Paragraph 5	Guarantee the immediate disclosure and dissemination of all pertinent information in case of imminent threat.	• Disclosure and dissemination to be immediate. • Required when there is an "imminent" threat to public health or the environment and before harm occurs. • Use of the most effective means. • Duty to develop and implement an early warning system.
Paragraph 6	Endeavour to disseminate environmental information to persons or groups in vulnerable situations in their languages and comprehensible formats.	• Dissemination in different languages used in the country. • Use of alternative formats for information. • Use of suitable channels of communication.
Paragraph 7	Use best endeavours to publish and disseminate a national report on the state of the environment.	• Must be published at least every five years. • Must be easily comprehensible. • Must be publicly accessible in different formats. • Disseminated through culturally appropriate means. • Discretion to invite the public to contribute to the report.
Paragraph 8	Encourage independent environmental performance reviews of national environmental policies in fulfilment of national and international commitments.	• Efficacy and effectiveness of national policies are to be assessed. • Nationally and internationally agreed criteria, guides and common indicators to be used. • Stakeholders must have the opportunity to participate in reviews.
Paragraph 9	Promote access to environmental information in arrangements for use of public goods, services or resources.	• Environmental information in concessions, contracts, agreements or authorizations for the use of public goods, services or resources. • In accordance with domestic legislation.
Paragraph 10	Ensure consumers and users have information on environmental qualities of goods and services.	• Information should be official, relevant and clear. • The objective is to favour sustainable production and consumption patterns.

Provision	Obligation	Implementation Guidance
Paragraph 11	Create and update archiving and document management systems.	• In accordance with applicable rules. • The aim is to facilitate access to information at all times.
Paragraph 12	Take the necessary measures to promote access to information on the operations of the private sector in the possession of these private entities.	• Must take necessary measures to promote access. • Use of legal and administrative frameworks, among others.
Paragraph 13	Encourage corporate sustainability reports.	• Implementation shall be based on the party's capacity. • Should include private and public sector company information on social and environmental performance.

Source: ECLAC. Regional Agreement on Access to Information, Public Participation and Justice in Environmental Matters in Latin America and the Caribbean, Implementation Guide (2023).

As in other environmental treaties, in the Escazú Agreement it is the responsibility of the Conference of the Parties to examine and promote the implementation and effectiveness of its provisions. In addition, the Agreement establishes a Committee to Support Implementation and Compliance, as a subsidiary body of the Conference of the Parties, to promote the implementation of the Agreement and to support the Parties in that regard. The Committee shall be of a consultative and transparent nature, non-adversarial, non-judicial and non-punitive.

1.1.3 Standards of the Inter-American System of Human Rights

Article 13 of the American Convention on Human Rights refers to the right of access to information, and, regarding environmental matters, it should be read together with the right to a healthy environment set forth in article 11 of the Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social and Cultural Rights (Protocol of San Salvador). As established by the Inter-American Court of Human Rights, this article "by expressly stipulating the rights to "seek" and "receive" "information," protects the right of every person to request access to information held by the State."[8]

In the case of *Claude Reyes v. Chile* of 2006, the Inter-American Court of Human Rights recognized that the Chilean State had violated the petitioners' right of access to information by failing to disclose information about a project for the exploitation of forest resources. Although the Court has referred to access to information in other cases, the standards set out in *Claude Reyes* are especially important for this publication as the case relates to environmental information. This was also the first case in which access to information was internationally recognized and developed as an autonomous right, which shows its importance for the satisfaction of other rights.

8 Inter-American Court of Human Rights. Case of Claude Reyes et al. v. Chile. Judgement of 19 September 2006. Series C No. 151, para. 77.

Article 13 of the American Convention on Human Rights

1. Everyone has the right to freedom of thought and expression. This right includes freedom to seek, receive, and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing, in print, in the form of art, or through any other medium of one's choice.
2. The exercise of the right provided for in the foregoing paragraph shall not be subject to prior censorship but shall be to subsequent imposition of liability, which shall be expressly established by law to the extent necessary to ensure: a) respect for the rights or reputations of others; or b) the protection of national security, public order, or public health or morals.
3. The right of expression may not be restricted by indirect methods or means, such as the abuse of government or private controls over newsprint, radio broadcasting frequencies, or equipment used in the dissemination of information, or by any other means tending to impede the communication and circulation of ideas and opinions.
4. Notwithstanding the provisions of paragraph 2 above, public entertainments may be subject by law to prior censorship for the sole purpose of regulating access to them for the moral protection of childhood and adolescence.
5. Any propaganda for war and any advocacy of national, racial, or religious hatred that constitute incitements to lawless violence or to any other similar action against any person or group of persons on any grounds including those of race, color, religion, language or national origin.

The right of access to information has also been developed in other instruments at the inter-American level. Article 4 of the Inter-American Democratic Charter states that transparency in government activities is an essential component of democracy. In addition, the Department of International Law of the Organization of American States, on instructions provided by the States through the General Assembly, has developed two proposals for an Inter-American Model Law on Access to Public Information. Both model laws set the highest standards to guarantee access to information, were developed by committees of experts, and involved the civil society. The first one was approved in 2010[9] and the second in 2020.[10]

Access to environmental information was further developed by the Court in Advisory Opinion 23 of 2017.[11] In the opinion of the Court, information related to environmental matters is information of public interest. Additionally, it was considered that "States have the obligation to respect and ensure access to information concerning possible environmental impacts. This obligation must be ensured to every person subject to their jurisdiction, in an accessible, effective and timely manner, without the person requesting the information having to prove a specific interest."[12]

9 Inter-American Model Law on Access to Public Information. Available at: http://www.oas.org/dil/esp/ag-res_2607-2010.pdf.

10 Inter-American Model Law 2.0 on Access to Public Information. Available at: http://www.oas.org/es/sla/ddi/docs/publicacion_Ley_Modelo_Interamericana_2_0_sobre_Acceso_Informacion_Publica.pdf.

11 Inter-American Court of Human Rights. Advisory Opinion OC-02/17, The Environment and Human Rights. 15 November 2017.

12 Ibid. para. 225.

Inter-American standards are broadly reflected in the domestic legislation of the countries in the region and in the judgements delivered by superior courts of multiple jurisdictions. High Courts, above all, cite both the Inter-American Model Law on Access to Public Information and the judgements of the Inter-American Court of Human Rights on the matter, especially the *Claude Reyes* case.[13]

1.2. National Standards

The right of access to environmental information has also been recognized at the national level in the countries of Latin America and the Caribbean, where it has been enshrined at the constitutional and legal levels.

1.2.1. Constitutional Framework

The Constitutions of 20 countries in the region expressly recognize the right to a healthy environment.[14] Also, the Constitutions of 30 countries in Latin America and the Caribbean enshrine the right of access to public information, either autonomously or through the right to freedom of expression.

While the right to a healthy environment and the right of access to information have historically been considered as autonomous, some Constitutions in the region have been at the forefront in reflecting their interrelationships. Such is the case of the National Constitution of Argentina, which in article 41 on the right to a healthy environment establishes a direct relationship between both rights by stating that "the authorities shall provide for the protection of this right, for the rational use of natural resources, and for the preservation of natural and cultural heritage and biological diversity, as well as for environmental information and education."[15]

1.2.2. Legal Framework

Legal access to public information on environmental matters is regulated both by general regulations on access to information applicable to any type of public information and by specific or sectoral regulations on environmental matters. Both legal regimes complement each other and should be read together. Although developing explaining these regimes in detail exceeds the scope of this document, it is useful to present an overview there of in the region, which is summarized below.

13 Daniel Ospina Celis and Catalina Botero Marino. (2022). "Synthesis of decisions on access to public information in Latin America", *Cuadernos de Discusión de Comunicación e Información*, No. 22, UNESCO. Available at: https://unesdoc.unesco.org/ark:/48223/pf0000383319.locale=en.

14 Constitutional treatment of the right to a healthy environment. Observatory on Principle 10 in Latin America and the Caribbean. ECLAC.

15 National Constitution of Argentina, article 41.

Map 1: Latin American Countries Having a Law on Access to Public Information

Source: ECLAC, Observatory on Principle 10 in Latin America and the Caribbean.

As shown in Map 1, of the 33 countries in Latin America and the Caribbean, 24 have passed laws on access to public information.[16] Two of them —Argentina and Brazil— also have specific laws on access to environmental information. In Bolivia[17] and Costa Rica[18], although no laws on access to public information have been passed, this matter is regulated by decrees issued by the Executive Power.

16 Antigua and Barbuda, Argentina, Bahamas, Belize, Brazil, Chile, Colombia, Dominican Republic, Ecuador, El Salvador, Guatemala, Guyana, Honduras, Jamaica, Mexico, Nicaragua, Panama, Paraguay, Peru, Saint Kitts and Nevis, Saint Vincent and the Grenadines, Trinidad and Tobago, Uruguay and Venezuela.

17 Decree on Access to Information (Supreme Decree No. 28168).

18 Decree on Transparency and Access to Public Information (No. 40200-MP) and Decree on Opening Public Data (No. 40199-MP).

Table 3: Laws on Access to Information in Latin America and the Caribbean

Country	Name of the Law	Year
Antigua and Barbuda	Freedom of Information Act (No. 19 of 2004)	2004
Argentina	Law on the Right of Access to Public Information (Law No. 27.275)	2016
	Regime of free access to public environmental information (Law No. 25.831)	2004
Bahamas	Freedom of Information Act (No. 1 of 2017)	2017
Belize	Freedom of Information Act (No. 9 of 1994)	1994
Brazil	*Lei de acesso a Informação Publica* (Law No. 12.527)	2011
	Dispõe sobre o acesso Publico aos Dados e Informações Existentes nos Órgãos e Entidades miembros do Sisnama (Law No. 10.650)	2003
Chile	Law on the Right of Access to Public Information (Law No. 20.285)	2008
Colombia	Law on Transparency and the Right of Access to Public Information (Law No. 1712 of 2014)	2014
Ecuador	Organic Law on Transparency and Access to Public Information	2004
El Salvador	Law on Access to Public Information (Decree No. 534)	2011
Guatemala	Law on Access to Public Information (Decree No. 57- 2008)	2008
Guyana	Access to Information Act (No. 21 of 2011)	2011
Honduras	Law on Transparency and Access to Public Information (Decree 170-2006)	2006
Jamaica	Access to Information Act (No. 21 of 2002)	2002
Mexico	General Law on Transparency and Access to Public Information	2015
Nicaragua	Law on Access to Public Information (Law No. 621)	2007
Panama	Law on Access to Public Information (Law No. 6)	2002
Paraguay	Law on Free Citizen Access to Public Information and Government Transparency (Law No. 5.282)	2014
Peru	Law on Transparency and Access to Public Information (Law No. 27.806)	2003
Dominican Republic	General Law on Free Access to Public Information (Law No. 200)	2004
Saint Kitts and Nevis	Freedom of Information Act (No. 6 of 2018)	2018
Saint Vincent and the Grenadines	Freedom of Information Act (No. 27 of 2003)	2003
Trinidad and Tobago	Freedom of Information Act (No. 26 of 1999)	1999
Uruguay	Law on the Right of Access to Public Information (Law No. 18.381)	2008
Venezuela	Law on Transparency and Access to Information of Public Interest (211-162/2022)	2022

Source: ECLAC, Observatory on Principle 10 in Latin America and the Caribbean.

Additionally, the general environmental laws of 28 countries in the region include provisions on access to information. Most of these provisions deal with active transparency, i.e., the obligation to make certain information on environmental matters available to the public, as well as provisions referring to the creation of environmental information systems and environmental registries. Generally, there is also the obligation for an authority to submit reports on the state of the environment at specified intervals.

In some cases, these laws also include provisions on passive transparency, strengthening the obligation of the environmental authorities to provide access to the environmental information requested to them. For example, the General Environmental Law of Argentina establishes that "every individual may obtain from the authorities the environmental information they administer and which is not considered reserved by law" (article 16), and the General Law on Ecological Balance and Environmental Protection of Mexico states that "every person shall have the right to have the Secretariat, the States, the Federal District and the Municipalities make available to them the environmental information they request, under the terms established by this law" (article 159 bis 3). In addition, five general laws on the environment (Argentina, Brazil, Chile, Mexico, and Peru) include definitions of "environmental information."

Table 4: General Laws on the Environment with Provisions on Access to Information in Latin America and the Caribbean

Country	Name of the Law	Provisions on Access to Information
Antigua and Barbuda	Environmental Protection and Management Act (No. 10 of 2019)	Articles 3, 4, 26, 84, 86, 87 and 89
Argentina	General Environmental Law (No. 25.675)	Articles 2, 16, 17, 18
Bahamas	Environmental Planning and Protection Act (No. 40 of 2019)	Articles 4, 6, 27, 34, 38 and 39
Belize	Environmental Protection Act (No. 22 of 1992)	Articles 4 and 43
Bolivia	Environmental Act (Law 1.333)	Chapter IV and article 93
Brazil	National Environmental Policy Act (Law No. 6.938)	Articles 4 and 9
Chile	Law on General Bases of the Environment (Law No. 19.300)	Articles 31 bis, ter and 70
Colombia	Act establishing the Ministry of the Environment, and making other provisions (Law No. 99)	Articles 1.13, 4, 17, 31 and 74
Costa Rica	Organic Environmental Law (Law No. 7554)	Articles 2 and 78
Cuba	Law on the System of Natural Resources and the Environment (Law No. 150)	Articles 4, 11, Chapters II and VII
Dominica	Environmental Health Services Act (No. 8 of 1997)	Article 8
Ecuador	Organic Code of the Environment	Articles 3, 9, 19 and 218
El Salvador	Environment Act (Decree No. 233)	Articles 9, 30 and 31

Country	Name of the Law	Provisions on Access to Information
Guatemala	Environmental Protection and Improvement Act (Decree 68-1986)	Article 25
Guyana	Environmental Protection Act (No. 11 of 1996)	Articles 4 and 36
Honduras	General Environmental Law (Decree No. 104-1993)	Articles 11, 39 and 103
Jamaica	Natural Resources Conservation Authority Act (No. 9 of 1991)	Articles 4, 5, 9, 32 and 33
Mexico	General Law on Ecological Balance and Environmental Protection	Articles 109 bis, 159 bis, bis 1, bis 3 and bis 5
Nicaragua	General Law on the Environment and Natural Resources (Law No. 217)	Articles 11.5, 34 and 35
Panama	General Environmental Law (Law No. 41)	Articles 2.23, 4.5, 8, 30 and 31
Paraguay	Law establishing the National Environment System, the National Environment Council and the Environment Secretariat (Law No. 1561/00)	Article 12
Peru	General Environmental Law (Law No. 28.611)	Articles II, 35.2, 39, 41, 42 and 44
Dominican Republic	General Law on the Environment and Natural Resources (Law No. 64)	Articles 6, 18.17, 48, 50 and 52
Saint Vincent and the Grenadines	Environmental Health Services Act (No. 14 of 1991)	Article 7
Suriname	Environmental Framework Act (No. 97 of 2020)	Articles 1, 3, 11, 16, 17, 28, 29 and 35
Trinidad and Tobago	Environmental Management Act (No. 3 of 2000)	Article 17
Uruguay	Environmental Protection Act (Law No. 17.283)	Articles 6, 7 and 12
Venezuela	Organic Environmental Law (Law No. 5.833)	Articles 64, 66, 68 and 71

Source: ECLAC, Observatory on Principle 10 in Latin America and the Caribbean.

Also, 9 countries in the region have passed climate change laws that include provisions on access to information. For example, in Chile, Law No. 21.455 has been recently enacted, establishing the principle of transparency, under which it is the duty of the State to facilitate timely and adequate access to information on climate change, promoting disclosure and awareness in this matter, and reducing information asymmetries. This law also provides for the creation of a National System of Access to Information and Citizen Participation on Climate Change and the disclosure of the sessions and minutes of the meetings of the Council of Ministers for Sustainability and Climate Change, among other provisions related to transparency.

The fact that physical planning acts in 14 English-speaking Caribbean countries include important obligations regarding access to environmental information, related to authorizations to carry out different activities and projects and environmental impact assessments, should be emphasized. These acts are especially important in those countries that do not have laws on access to information or general laws on the environment, since they allow access to environmental information related to plans, programmes, activities, and projects.

Additionally, some State Parties to the Escazú Agreement[19] are developing national implementation plans that include the adoption or amendment of legislative, administrative, or other types of actions regarding access to environmental information. These plans allow to analyse gaps, capacities, and opportunities, generate a mapping of stakeholders, establish a governance system, harmonize the national and regional frameworks, and prioritize actions at the country level.

19 National implementation plans for the Escazú Agreement are currently being developed in Argentina, Belize, Chile, Ecuador, Mexico, Saint Lucia, and Uruguay.

2. Analysis of Decisions Adopted by ATI Oversight Bodies and Selected Judgements on Access to Environmental Information in Latin America and the Caribbean

2.1. General Considerations

The right of access to public information requires state authorities and other duty bearers to make the information they produce, posses, or custody, available to the public, under the principles of transparency and maximum disclosure. According to the applicable law, mandated entities must proactively publish certain information (active transparency) and provide information that is directly requested to them (passive transparency).

Although domestic regulatory frameworks develop this right with its distinctive features, in general terms, any person can submit a request to any public entity or other mandated entity, requiring access to public environmental information. Authorities must respond to requests as quickly as possible, within a certain period of time, and must provide the information, unless it falls under a limited regime of exceptions. If access to information is refused or no response is received, the petitioner may appeal to an ATI oversight body or the Judiciary.

This document analyses court judgements and decisions adopted by bodies that guarantee access to information, resulting from appeals filed by applicants in the region, who requested environmental information to a duty bearers and could not have access to it in a first instance. It is a selection of judgements and decisions issued between 2018 (the year in which the Escazú Agreement was adopted and opened for signature) and 2023, related to access to environmental information, which shows how the right of access to environmental information is being guaranteed in Latin America and the Caribbean. Some of these rulings correspond to cases heard by courts of appeal or last resort, while others are cases decided by lower courts or by administrative authorities, which could eventually be appealed before higher courts.

To select the cases analysed below, the ATI oversight bodies that make up the Transparency and Access to Information Network (RTA), national experts, and organizations from Argentina, Brazil, Chile, Colombia, El Salvador, Mexico, and Panama were consulted. In addition, the ECLAC Observatory on Principle 10 in Latin America and the Caribbean was used, along with other databases of judgements and decisions adopted by oversight bodies.

2.2. Content of the Right and Principle of Maximum Disclosure

As noted above, the right of access to information has two dimensions: passive and active. On the one hand, it entails the power for any individual to request and access public information. On the other hand, it implies the obligation of the mandated entities to proactively disclose certain

information without the need of receiving any request. Furthermore, while States are generally required to only provide the information available to them at the time of the request, they should progressively take steps towards the generation, collection, and availability of as much public information as possible.

Regarding environmental matters, the Escazú Agreement defines the content of this right in articles 5 and 6. Under the Agreement, each Party shall ensure the public's right of access to that environmental information which is in its possession or under its control or custody, in accordance with the principle of maximum disclosure. It also establishes that 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 that right. These articles must be interpreted considering the principles of the Agreement, such as the principle of equality and the principle of non-discrimination (article 3), and general obligations, such as the most favourable interpretation for the full enjoyment of and respect for the right (article 4.8).

ATI oversight bodies and courts in the region have followed this trend in recent environmental cases. As it was recalled by the National Institute of Transparency, Access to Information and Protection of Personal Data of Mexico (INAI) in its Resolution RRA 9010/23, the action of the duty bearers must be governed by the principle of maximum disclosure "which provides that all the information held by the mandated entities shall be public, complete, timely and accessible, prohibiting any discrimination that undermines or prevents transparency or access to information held by such entities, always offering people the widest protection."[20] This resolution was issued in relation to the request of information submitted by an individual to the Office of the Federal Attorney for Environmental Protection about rescued and seized jaguars and related reports. The person requesting the information was not satisfied with the information provided and considered it incomplete. Based on the principle of maximum disclosure, the INAI instructed the mandated entity to carry out a new comprehensive search with a broad criterion through those administrative units that are considered competent, according to their functions and powers, and, if the information requested does not exist, to so inform the applicant in a well-founded and documented way.

In Peru, the Transparency and Access to Public Information Tribunal stated in two cases related to environmental matters that "based on the principle of disclosure, all information held by the State is presumed to be public, except for exceptions of law, having the entities the obligation to provide the information requested by individuals in application of said principle." At the same time, the Court emphasized the judgements of the country´s Constitutional Court, which has indicated that "this responsibility of the officials is then coupled with the principle of disclosure, under which all the information produced by the State is, *prima facie*, public. This principle also implies or necessarily requires the possibility of effective access to State documentation." Additionally, the Court reiterated that the entities within the Public Administration are obliged to provide the requested information if said information has been created or obtained by them or that it is in their possession or under their control:

> "The protection of the fundamental right of access to public information is not only in the interest of the holder of the right, but also of the State itself and the community in general. Therefore, requests for public information should not be understood to be linked

20 Mexico. National Institute of Transparency, Access to Information and Protection of Personal Data of Mexico (INAI). Resolution RRA 9010/23. 3 October 2023.

> solely to the interest of each requestor, but they should also be valued as an expression of the principle of transparency in public activity. This principle of transparency is, in an expository manner, a guarantee of non-arbitrariness and of lawful and efficient action by the State, serving as an ideal mechanism of control by the citizens." [21]

On the other hand, the Seventh Court of Civil Appeals of Uruguay, in case No. 20/2023, has framed the principle of maximum disclosure in a broader context considering its role in democratic and republican life when reviewing a complaint on access to information on the amount of water required for a water project:

> "Judges and courts, considering the proper checks and balances of the legal goods in question, and with the responsibility that it entails, with a democratic republican spirit, must somehow act based on these criteria (articles 23, 72 and 332 of the Magna Carta), considering that, above all, transparency and making information available are at the core of the Republic. And, of course, courts must consider that, in a democratic society, it is essential that state authorities abide by the principle of maximum disclosure, which establishes the presumption that all information is accessible, subject to a very limited and rigid system of exceptions (Inter-American Court of Human Rights, case "Claude Reyes y Otros vs. Chile"; Judgement No. 405/2022 of the Supreme Court of Justice) that in the case being heard have not been justified. The principle must be to guarantee freedom of information by making it available, and not restriction, which should be exceptionally interpreted and applied (article 8 of Law No. 18.381; article 5.8 of the Escazú Agreement, plus related and applicable rules), starting with "the presumption that all information is accessible, with the object of Law 18.381 being precisely to promote the transparency of the administrative function ..." (Judgement No. 24/2022 of the Sixth Court of Civil Appeals)."[22]

2.3. Concept of "Environmental Information"

The definition of what is considered "environmental information" has been instrumental in determining the scope of the right of access to information in this matter. In general, environmental information refers to information related to a wide range of topics and aspects, such as the state of the environment and its elements; the potential adverse effects of a certain project, work, or activity; the impacts associated with factors that affect —or may affect— the environment and human health; and other issues related to environmental management.

International law and some domestic legislations have defined what is meant by environmental information. Judges and ATI oversight bodies have also referred to this concept to determine whether certain information falls within its scope and, as a result, should be disclosed to the public. At the regional level, article 2 of the Escazú Agreement defines environmental information as follows: "'Environmental information' means any information that is written, visual, audio, and

21 Three cases should be mentioned of the Transparency and Access to Public Information Tribunal of Peru, in which the following environmental information was requested: 1) copy of the files, reports or records within the framework of the environmental monitoring, auditing and assessment functions derived from environmental claims in Arequipa (Resolution No. 002201-2023-JUS/TTAIP-PRIMERA SALA. 8 August 2023); 2) update of an environmental assessment impact file related to an electric energy project in Lambayeque (Resolution No. 001512-2023-JUS/TTAIP-SEGUNDA SALA. 8 May 2023); and 3) environmental damage civil action presented by the Peruvian State against an oil company (Resolution No. 000266-2023-JUS/TTAIP-SEGUNDA SALA. 26 January 2023).

22 Uruguay. Seventh Court of Civil Appeals of Uruguay. Case 20/2023. 3 February 2023.

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."

At the national level, some countries in the region have included in their legislation a definition of environmental information. In Argentina, for example, Law 25.831 establishes that environmental information is "any information, in any form of expression or support, related to the environment, natural or cultural resources, and sustainable development."

The concept of environmental information has recently been analysed by the Constitutional Court and the Supreme Court of Chile. The Constitutional Court had to rule on an action brought by two salmon-producing companies against a resolution of the Council for Transparency that obliged them to disclose information. In deciding on the case, the Court examined whether the Chilean legal system defines what environmental information is and what it includes. In this regard, it determined the following:

> "Law No. 19.300, as amended by Law No. 20.417 of 2010, establishes a 'special disclosure regime' and a 'specific right of access to environmental information'. Environmental information is understood to be 'any information in a written, visual, sound or electronic format, or registered in any other way, that is held by the Administration' (article 31 bis of Law No. 19.300), and that deals with a variety of matters expressly detailed in the law, including, among others, the state of the elements of the environment (air, soil, atmosphere), substances and waste that are released into the environment and may affect it, administrative acts, and reports of compliance with environmental legislation (article 31 bis of Law No. 19.300)."[23]

The Supreme Court of Chile, for its part, has applied the concept of information and the standards it implies to other rights, such as the right to water. In a case in which a group of people appealed to the court so that the supply of sufficient and adequate drinking water would be guaranteed during the COVID-19 pandemic, the Supreme Court ruled that access to information is a core element of the right to water. Citing guidelines from the World Health Organization[24], the Court held that in order to guarantee the right to water, "individuals shall have the right to full and complete information on all issues relating to the use of water in their community."[25]

In Ecuador, the right of access to environmental information obliges the State to provide objective, understandable, complete, comprehensive, and timely information. The Supreme Court of Ecuador has established what should be understood by each of these terms in judicial disputes arising from environmental decision-making processes. The information is timely "when it is delivered in the initial stages of the decision-making process." To explain the comprehensive nature of environmental information, the Court cites the Escazú Agreement, and considers that it entails providing "the information necessary to be able to make informed decisions about the environmental impact."[26]

23 Chile. Constitutional Court. Judgement No. 12.612-21 INA. 04 August 2022.

24 https://www.ohchr.org/sites/default/files/Documents/Publications/FactSheet35en.pdf.

25 Chile. Constitutional Court. Judgement No. 131.140-2020. 23 March 2021.

26 Ecuador. Constitutional Court of Ecuador. Judgement No. 22-18-IN/21. 8 September 2021.

In a very similar case seeking to uphold participation in environmental decision-making processes, the Court developed the concept of "environmental information". The Court understood that, because of its importance for participation, said information should be clear, objective, and complete. For the Court, clarity implies that information must be understandable and written in plain language. If Spanish is not widely spoken in the communities, the information must be translated into the corresponding language. Additionally, the Court established that "information is objective when its content is formulated in a value-neutral language and without any emotional load. That is, when it is not suggestive, and it is not sought to manipulate or vitiate the consent those being consulted."[27]

In the opinion of the Ecuadorian Court, complete environmental information refers to the provisions of article 7 of the Escazú Agreement. In this regard, it was established that in decision-making processes:

> "The State, through its competent authorities, must ensure that the consulted community is informed, at least of the following aspects: The nature, size, pace, reversibility and scope of any State decision or authorization; the reason and object of the decision or authorization; the duration of the authorized activity or project; the location of the areas to be affected; a preliminary assessment of the potential environmental impacts, including potential risks; the personnel likely to be involved in the implementation of the decision or authorization; and the technical and legal procedures that the decision or authorization may entail."[28]

2.4. Duty bearers

The regulations on the right of access to information and the principle of maximum disclosure apply to the "mandated entities" regarding transparency obligations. In general, both the standards of international law and domestic legislation recognize that all public entities and the bodies of all branches of government are mandated entities. Entities financed by public resources or controlled by the government are also mandated entities. Additionally, private companies performing public functions or providing public services are mandated entities in most countries. On certain occasions, transparency legislation has also been applied to other types of mandated entities, such as universities and development cooperation agencies.[29]

Article 2 of the Escazú Agreement establishes who are the mandated entities for the right of access to environmental information using the term "competent authority". According to said article, "competent authority" means, for the purposes of articles 5 and 6 of the 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."

27 Ecuador. Constitutional Court of Ecuador. Judgement No. 1149-19-JP/21. 10 November 2021.

28 Ecuador. Constitutional Court of Ecuador. Judgement No. 1149-19-JP/21. 10 November 2021.

29 Daniel Ospina Celis, *Transparency in the Spotlight: Global Case-Law on Access to Public Information*, Global Freedom of Expression, Columbia University, 2023. Available at: https://globalfreedomofexpression.columbia.edu/wp-content/uploads/2023/04/Transparency-in-the-Spotlight-3.pdf.

Two cases settled in Argentina show in an exemplary way that, while domestic legislation and international standards clearly set the scope of application of the obligations of transparency, the work of the judges is essential to guarantee the right of access. The first of these cases arose from a petition made by a civil society organization to the company Yacimientos Petrolíferos Fiscales S.A. requesting all the environmental information related to the company's activities in a specific field. The company refused to deliver the information on the grounds that public limited companies are exempt from information disclosure.

In deciding on the case, the Federal Contentious-Administrative Court determined that Yacimientos Petrolíferos Fiscales S.A. "is a private company —organized as a public limited company— that carries out a commercial activity that has been declared of public interest, and whose equity stock —under an expropriation process in which public funds were used— is 51% owned by the National State (...), it undoubtedly being a mandated entity for the purposes of environmental information."[30] Thus, the Court ordered the disclosure of the requested information.

In another case, the same civil society organization repeatedly requested environmental information from the Undersecretary of Energy, Mines and Hydrocarbons of the Province of Neuquén. Specifically, it requested information on the generation and treatment of hazardous waste derived from hydrocarbon extraction. The authority to which the information was requested did not provide it on the grounds that it had not created said information and the matter was the responsibility of a different authority: the environmental authority. For judges of first and second instance, this response violated the right of access to public environmental information, that required mandated entities to provide access to said information, regardless of which body received the request and who had or should produce the information. The Neuquén Court of Appeal in second instance considered that, "beyond the existence of different divisions in the provincial Executive Power —each one having a specific scope of competence—, when dealing with citizens (individuals and intermediate groups), the provincial state is one and must respond to the request for public information." Thus, it ordered the Province of Neuquén (in general terms) to provide the requested information.[31]

2.5. Periods and Conditions for Delivery

Another relevant aspect to ensure the right of access to environmental information is compliance with the frames, both regarding the disclosure of the information by the mandated entities and the exercise of certain actions in case of alleged breaches of this right. Effective access to information requires not only clear, complete, and understandable information, but also a timely delivery of the information within reasonable time frames. Additionally, judicial and administrative instances must be available to challenge and appeal any decision, action or omission related to access to environmental information through effective and timely procedures.

Article 5.12 of the Escazú Agreement establishes that 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

30 Argentina. Federal Contentious-Administrative Court No. 8. Judgement No. 64727/2018, Fundación Ambiente y Recursos Naturales c/ YPF SA s/ Varios. 3 July 2019.

31 Argentina. Neuquén Court of Appeal. Resolution No. 100571/2021. 24 August 2021.

legislation. The latter occurs in most legislations within the region.[32] According to the Agreement, said period may be extended in exceptional circumstances by an additional 10 business days, and the requestor must be notified in writing of this extension.

In its Resolution RRA 6676/22, the National Institute of Transparency, Access to Information and Protection of Personal Data of Mexico (INAI) referred precisely to the lack of response to a request for access to the environmental impact assessment of the Mayan Train project in its section 5 within the deadlines established by law.[33] In this regard, the INAI recalled that the response to the request for access to information must be notified through the Transparency Unit of the mandated entity to the requester as soon as possible, not exceeding 20 business days from the day following the submission of the request, a period which may be extended by 10 business days as an exception and provided that there are well-founded reasons, which will be approved by a decision of the Transparency Committee. In addition, the deadlines for the above-mentioned notifications will begin to run on the day after the first notifications are carried out.

Similarly, the Contentious-Administrative Chamber No. 1 of Paraná ruled in an environmental protection action for access to public environmental information against the provincial government of Entre Ríos in Argentina.[34] A foundation had asked the province for information on the presence of plastics and microplastics in the Paraná River, in its tributaries, and in the air and fauna. Said foundation had also asked about the measures taken by the provincial government in this regard. The authority answered after two months, far exceeding the legal deadline, and only partially delivered what was requested, arguing that the information requested was "vast, complex and possibly not structured or systematized", which made it difficult to answer the request. The Court found that the failure to release within the deadline and the subsequent delivery of incomplete information were unjustified. Therefore, it ordered the province to provide the remaining available information within 20 business days.

In the same vein, the Constitutional Chamber of the Supreme Court of Justice of Costa Rica, in its Resolution No. 20267-2021, determined that the delay in the release of a report requested to the Advisory Commission for the Control and Regulation of Agricultural Aviation Activities, without any justification or explanation from the authority, violated the right of access to environmental information, protected by Principle 10 of the Rio Declaration and other regional and international commitments.[35] In its statement, the Constitutional Chamber resorted to the principle of maximum disclosure, the definition of environmental information and the obligation of active transparency by State authorities, recalling that activities that could affect the environment are matters of obvious public interest.

Deadlines have also been key to file actions for the guarantee of the right in cases of denial of environmental information, with the ATI oversight bodies playing an equally decisive role. A recent case of interest is that of the Council for Transparency of Chile and its protection decision No. C3143-21 against the National Fisheries Service of the Los Lagos Region, concerning the provision of information on the harvests or productions obtained and declared by certain salmonid fattening

32 Observatory on Principle 10 in Latin America and the Caribbean. "América Latina y el Caribe (24 países): Plazos para la entrega de información definidos en las leyes de acceso a la información pública)". Available at: https://observatoriop10.cepal.org/es/grafico/america-latina-caribe-24-paises-plazos-la-entrega-informacion-definidos-leyes-acceso-la.

33 Mexico. National Institute of Transparency, Access to Information and Protection of Personal Data of Mexico. Resolution RRA 6676/22. 1 June 2022.

34 Argentina. Contentious-Administrative Chamber No. 1 of Paraná. "Fundación Cause: Cultura Ambiental – Causa Ecologista c/ Estado Provincial S/ Acción de Amparo Ambiental". 17 May 2023.

35 Costa Rica. Constitutional Chamber of the Supreme Court of Justice of Costa Rica. Resolution No. 20267- 2021.

centres.[36] In response to the argument that protection had been extemporaneously filed because it was a period of 15 calendar days —not business days—, since notification of the refusal, the Council noted that due to the fact that paragraph 3 of article 24 of the Transparency Law does not specify whether it is business days or calendar days, the general rule of the Framework Administrative Procedures Law should be applied, i.e., business days deadlines. To reach at this interpretation, which is more favourable for the requestor, the Council held that if a period of calendar days was to be considered, as it would be an exceptional situation, it should be expressly stated, as is the case in paragraph 3 of article 28 of the Transparency Law that regulates illegality claims.

In addition to releasing the information within the established timeframe, it is important that the response is consistent with the request. This is what some ATI oversight bodies have called the "principle of consistency." An example of its recent application is found in the Transparency and Access to Public Information Tribunal of Peru, which, in relation to a request for an environmental impact assessment related to an electric energy project in Lambayeque, ruled that "when dealing with a request for access to public information, the entity has the obligation to provide a complete, accurate response, which is consistent with the request, and should refer to the requested information in detail."[37] In the case in question, the request had been answered, but the reply neither included some of the requested documents nor specified the reason for their absence.

Regarding the format, according to article 5.11 of the Escazú Agreement, the competent authorities shall guarantee that the environmental information is provided in the format requested by the petitioner, if available. If such a format is not available, the environmental information shall be provided in the available format. Therefore, the mandated entity will not be obliged to deliver information in an unavailable format but, if there is a variety of available formats, it must use the requested format.

Notwithstanding the above, three recent cases in the region have addressed the format of delivery of environmental information available in a format which is different from the one requested, considering that information should have been delivered in the requested format. The Federal Supreme Court of Justice of Mexico, on the one hand, ruled that the Administrative Units of the Federal Judiciary Council should digitize at no cost and make available to the public those judgements dealing with any relevant aspect of the environment. On the other hand, the High Court of Justice of Trinidad and Tobago and the State Institute for Transparency, Access to Public Information and Protection of Personal Data of the State of Yucatán have considered the provision of environmental information only in paper format to be insufficient.

The first case, protection under review 492/2022, of 8 June 2023, of the Federal Court of Justice of Mexico, dealt with the response given by the Transparency Unit of the Federal Judiciary Council of Mexico to a request for access to information included in an environmental judgement (protection under review 249/2008), which required the petitioner to pay the cost of reproduction. Based on the Escazú Agreement, the national transparency framework and the duties established for that Unit of the Federal Judiciary Council, the Supreme Court considered that those executory judgements or public decisions produced by jurisdictional bodies which are of special interest or significance for society in general, should be published on the Internet in an accessible and free format, even if they predate the applicable regulatory framework in force, as was the case with the 2009 judgement. In this regard, the Supreme Court determined that:

36 Chile. Council for Transparency of Chile. Protection Decision No. C3143-21. 17 August 2021.

37 Peru. Transparency and Access to Public Information Tribunal. Resolution No. 003127-2022/JUS-TTAIP-SEGUNDA SALA. 28 November 2022.

> "Therefore, this collegiate body advises that free public versions must be developed of judgements dealing with any problem relevant to the right to the environment (as it happens in this case, where the matter reached the High Court), even those that, due to their date of issuance, are not available in electronic format, so that the administrative units of the Federal Judiciary Council take the necessary steps to digitize them and they constitute a public document for free consultation (with deletion of confidential or reserved information), in order to respect the right of access to public information, the protection of the environment and environmental democracy."[38]

A second case was heard by the High Court of Justice of Trinidad and Tobago in claim CV 2020-01251, where, among the aspects analysed, the Court assessed the way in which access to an environmental impact assessment file was being provided and its legality.[39] Access to said file was exclusively in person and at certain times, at the environmental registry offices, and only 10% of the content could be reproduced for each application, under copyright claims. The Court questioned whether the information was actually "available" to "the general public" in the sense mandated by environmental legislation, concluding that restricting access to physical copies in an office implied an undue denial of the right of access to environmental information. This was especially true when access depended on physical presence and the country was facing the COVID-19 pandemic with movement restrictions in force. Moreover, in the Court's view, in the current context of environmental crisis and in the digital age, it was not sustainable nor justified to offer a file of more than 2,000 pages only in paper format. Even if part of the information or copyrights had to be protected, the authority could resort to technological solutions that would safeguard the rights of third parties or limit access to that part of the file that might contain confidential information.

In turn, the State Institute of Transparency, Access to Public Information and Protection of Personal Data of the State of Yucatán, Mexico, had to deal in 2022 with a case which was very similar to the one settled in Trinidad and Tobago.[40] The petitioner had requested information in digital format related to the environmental impact assessments of several pig farms. In responding to the request, the Secretariat of Sustainable Development of Yucatán indicated that the information was available for consultation in the entity's office and that it was not possible to send it in digital format. The entity claimed that it did not have enough staff to perform the digitization and anonymization necessary to comply with the request for information. The ATI oversight body, on the other hand, established that information should be delivered in the requested format and that this was possible as environmental impact studies are submitted in a digitized format and those produced by the environmental entity are first carried out in electronic media, before being printed. Since there existed digital copies of the information, the Institute for Access to Public Information of the State of Yucatán determined that the Secretariat for Sustainable Development should respect the format preferred by the petitioner.

38 Mexico. Supreme Court of Justice of the Nation. Protection under review 492/2022. 8 June 2023.

39 Trinidad and Tobago. High Court of Justice. Claim No. CV 2020-01251. 21 January 2021.

40 Mexico. State Institute of Transparency, Access to Information and Protection of Personal Data of the State of Yucatán. Protection under review 80/2022. 16 June 2022.

2.6. Refusal of Access to Environmental Information

Access to environmental information is not an absolute right and may therefore be refused in whole or in part in certain circumstances. However, under the principle of maximum disclosure, there is a presumption of disclosure of the information held by the mandated entity and limitations on access should be exceptional, legitimate, of a restricted interpretation and not arbitrary.

Articles 5.5 to 5.10 of the Escazú Agreement govern the refusal of access to environmental information. First, there is a reference to the regime of exceptions established in domestic legislation, which will be applied in its entirety regardless of the nomenclature or categories used internally to refuse access. The grounds for refusal must be legally established in advance and clearly defined, being narrowly interpreted. The burden of proof will lie with the competent authority. Refusal must be communicated in writing and should be grounded on specific reasons. Additionally, the requestor should be informed of the right to appeal. Regimes of exceptions shall also consider the human rights obligations of each Party and encourage the adoption of regimes of exceptions that promote access to information.

Most of the decisions and judgements delivered in recent years regarding access to environmental information have as one of their central elements the refusal of information, either because the mandated entity does not have the information, or the information does not exist, or because they seek to apply any of the grounds for refusal established in domestic law.

When confronted with a potential collision of rights or interests, the ATI oversight bodies and courts of the region have been emphatic in underlining the supremacy of the best interest of access to environmental information. As it was pointed out by the State Institute for Access to Public Information (INAIP) of Yucatán in its appeal for judicial review 253/2022, information about authorizations regarding environmental impact is in the public interest, given the circumstances of fact that "put a general interest of society first, as the main beneficiary of knowing about the activities carried out by the state government."[41] Similarly, the High Court of the Supreme Court of Guyana, in the case Collins v. Environmental Protection Agency, 2022-HC-DEM-CIV-FDA-1314, found that the public had a right to access information on the enforcement of permits by an oil company.

The supremacy of access to environmental information has also been raised from a human rights approach. In this vein, the 7th Court of Appeals of Uruguay, in judgement 20/2023, held that any withholding of information on water was not legitimate as it collided with a human right:

> "Thus, every citizen has a right of access to information on how water is used —or how it is planned to be used— and said right must take precedence even over the financial interests of any class or person. It is important to note that water is a good of the public domain and interest. Water does not belong to the State, nor to a government or a company, not even to individuals. It belongs to each and every one of the inhabitants of the Republic (articles 1 and 47 subparagraph 3 of the National Constitution; article 477 of the Civil Code; articles 15 to 38 of the Water Code). As a result, having all information concerning water and its use, knowing how it is used, or what amount is used for different purposes, is also a human right. Therefore, all the inhabitants of the Republic are entitled to know how it is used, as well as the volumes that private parties intend to take."[42]

41 Mexico. State Institute of Transparency, Access to Information and Protection of Personal Data of the State of Yucatán. Protection under review 253/ 2022. 11 August 2022.

42 Uruguay. Seventh Court of Civil Appeals of Uruguay. Case 20/2023. 3 February 2023.

In this context, it is interesting to analyse how certain decisions and judgements have dealt with some of the main causes for refusals:

2.6.1. Non-Existent Information

A request for access to information may be refused because the requested information does not exist and the mandated entity is not required to have it. As it was recalled by the Transparency and Access to Public Information Tribunal of Peru in its Resolution No. 001512-2023-JUS/TTAIP, related to a refusal of access to environmental impact assessments of an electric energy project, "The request for information does not imply the obligation of the entities of the Public Administration to create or produce information that they do not have or are not obliged to have at the time of the request." However, it follows that the public administration has the duty to provide the information it has or is obliged to have.[43]

The non-existence of the information should also be formally confirmed once a thorough search has been carried out and the request has been sent to all competent authorities that could or should have such information. This was what the INAI of Mexico in Resolution 6676/22 determined in the request for access to the environmental impact assessment of the Mayan Train.[44] In that case, although the Directorate-General for Environmental Impact and Risk had reported that there was no record of any resolution of the environmental impact assessment on that project, it was considered that the procedure had not been complied with because the request was not circulated to all the competent units that have or should have the information as a result of their powers and duties. In addition, a thorough search of the files of the units to which the request was made was not carried out.

2.6.2. Business or Trade Secret

Multiple decisions adopted by judges and ATI oversight bodies concern the business or trade secret of private entities. Three recent cases from Chile and one from Costa Rica are worthy of mention.

The Constitutional Court of Chile, in its decision No. 12.612-21 INA, ruled on an inapplicability request on grounds of unconstitutionality with respect to article 5, second paragraph, and article 10, second paragraph, of Law No. 20.285 on Access to Public Information, and article 31 bis of Law No. 19.300 on General Bases of the Environment, in Case No. 64-2020 (Contentious-Administrative), on claim of illegality, heard by the Court of Appeals of Puerto Montt.[45] The controversy arose from a request of access to information on the volume and products of anti-parasitic treatments in salmon farming centres, made to the National Fisheries and Aquaculture Service (SERNAPESCA). In response, the companies argued that this information is part of their business strategies, and its disclosure would put them at risk from a competitive and commercial point of view. The Court set jurisprudence in several ways. In addition to determining that the principle of disclosure had an essentially expansive regulatory force, it recognized that there existed a special regime of disclosure and access to environmental information, its guarantee being a duty of the State. Additionally, it pointed out that in case disclosure affects the rights of third parties, a public interest

43 Peru. Transparency and Access to Public Information Tribunal of Peru. Resolution No. 001512-2023-JUS/TTAIP. 8 May 2023.

44 Mexico. State Institute of Transparency, Access to Information and Protection of Personal Data of Mexico. Resolution RRA 6676/22. 1 June 2022.

45 Chile. Constitutional Court. Judgement No. 12.612-21 INA. 4 August 2022.

test should be undertaken. Upon finding there had not existed any violation of the Constitution, the Court rejected the inapplicability request, ordering the release of the requested information.

Also regarding access to environmental information related to salmon farming, in its Protection Decision C8692-22, the Council for Transparency of Chile summarized important parameters when determining the potential hindering of economic and commercial rights of third parties. In this regard, the Council recalled the criteria established to determine a potential affection, namely: "(a) be secret, i.e., not generally known or easily accessible by individuals who are part of the circles where such information is normally used; (b) be subject to reasonable efforts to maintain its secrecy; and (c) have a commercial value as a result of being secret, i.e., that such characteristic provides its holder with a competitive advantage (and, on the contrary, its disclosure significantly affects its holder's competitive performance)." In addition to not considering such criteria to be proven in the case in question, the Council highlighted the special disclosure of the information requested:

> "[...] In the opinion of this Council, there is an obvious public interest in the access to the information requested, insofar as being aware of the operations or harvests reported to the requested public body by a particular undertaking, allows to evaluate whether such activity is being carried out in accordance with the specific authorizations and limitations granted for said purpose by the competent environmental authority."[46]

Along this same line, the Supreme Court of Chile, in case No. 131.990-2020, rejected a complaint brought by a salmon farm against the Ministers of the Court of Appeals of Santiago who dismissed a claim of illegality brought against the Council for Transparency that ordered to provide the information about the antibiotics used in the production centres. In this regard, the Supreme Court argued that:

> "Such decisions were mainly based on the failure to prove the hindering of the interest intended to be protected, as it happens in the case in question, since the claimant has made a mere reference to certain productive factors, without proving the occurrence of a real, concrete and quantifiable decline in the assets of the eventually affected subject, whether this decline is potential or real, a reality that does not change on the instruction given by the Council for Transparency to disaggregate the information by culture centre, a characteristic shared with most of the precedents previously singled out."[47]

For its part, the Constitutional Chamber of the Supreme Court of Justice of Costa Rica had to consider the refusal of a request for access to the topographic profiles of a watercourse which is in the public domain, on the grounds that they were subject to a trade secret regime. In this regard, the Court established that, based on Advisory Opinion No. OC-23 of 15 November 2017 of the IACHR, the principle of maximum disclosure of information in this matter and the corresponding obligation of transparency of the State:

> "The information of the comparative topographic profiles of the mining activity is not confidential, but public, and as such, access must be guaranteed and ensured in full, without imposing any formalities regarding access to data related to natural resources exploration and exploitation activities."[48]

46 Chile. Council for Transparency. Protection Decision C8692-22. 27 April 2023.

47 Chile. Supreme Court of Chile. Judgement No. 131.990-2020. 23 March 2021.

48 Costa Rica. Constitutional Chamber of the Supreme Court of Justice of Costa Rica. Resolution No. 20355 of 2018. 7 December 2018.

2.6.3. Copyright Laws

A decision adopted by an ATI oversight body and a judgement delivered by a court have referred to the application of copyright laws by subject entities to justify the non-delivery of public information.

The Institute for Access to Public Information of Honduras, in its Resolution IAIP SE-004-2019 of 25 October 2019, has precisely reviewed a previous resolution that partially accepted the request for the classification of public information as reserved made by the Secretariat of Natural Resources and Environment, encompassing "the technical studies, included in the environmental licenses' applications," based on the argument that they were protected by the Copyright and Related Rights Law. The new plenary session of commissioners reviewed this legal analysis, concluding that this information was not subject to copyright. Additionally, the law did not consider the construction of architectural works as a publication and the Secretariat of Natural Resources and Environment was not the appropriate institution to protect copyright and related rights. For this reason, the commissioners determined that "any project involving the exploitation of natural resources is closely linked to the general interest of knowing the information related to the process of exploitation or use of natural resources, along with the original right of indigenous peoples to be provided with accessible, sufficient and timely information."[49]

In Trinidad and Tobago, the High Court of Justice,[50] in case CV 2020-01251, has also examined the legitimacy of copyright in the reproduction of environmental impact assessment studies. Since access to such information was provided only in printed form, only 10 per cent of the study could be reproduced, on the basis that environmental impact assessments were subject to third-party copyrights. The Court held that the requestor, a non-profit environmental organization, sought the public good and that alone should be enough to remove any copyright restrictions. The obligation of the environmental authority was to provide the general public with a broad access to the environmental information held by said authority. Since the environmental impact assessment was available in the environmental registry, there was no reason not to allow copies of the entire texts to be made, since the registry and its documents were public in nature.

2.6.4. Ongoing Judicial or Administrative Proceedings

The denial of access to information due to the existence of ongoing judicial or administrative proceedings was questioned before ATI oversight bodies and courts in El Salvador, Mexico, Peru, and the Dominican Republic.

In El Salvador, the Institute for Access to Public Information had to decide whether the non-release of the contract in force between the Municipal Town Hall of Santa Tecla and the companies that provide collection, management, and disposal of solid waste services was justified due to the existence of active judicial proceedings. The Institute recalled that there were three requirements for a reserved classification to be valid: (a) legality, (b) reasonableness, and (c) temporality, and that information should be declassified in the absence of any of them. In this case, it was confirmed that the established three-year reservation period had expired. In addition, the Institute was of the opinion that the documents related to the public cleaning service contract are and should be known to the general public in accordance with the Law on Access to Public Information. In turn, the existence of confidential information "does not inhibit the entity from guaranteeing the right of access to public information so that, in compliance with the principle of maximum disclosure,

49 Honduras. Institute for Access to Public Information of Honduras. Resolution IAIP SE-004-2019. 25 October 2019.

50 Trinidad and Tobago. High Court of Justice. Claim No. CV 2020-01251. 21 January 2021.

it develops a public version of the information requested, only suppressing the content and/or provisions of a confidential nature and of personal data protection, as deleting data which is not subject to confidentiality equals a denial of access to information."[51]

The INAIP of Yucatán, in Mexico, similarly resolved in its appeal for judicial review 271/2022. In response to a request for access to an environmental impact assessment file, the authority considered that, since there was an ongoing administrative process, the provision of information could obstruct verification, inspection and audit activities related to compliance with the law or affect the collection of contributions. However, the INAIP did not consider the withholding of information to be legal.

> "In this sense, it follows that the information that the citizen wants to obtain [...] is in the public interest, for, on the one hand, it does not result in principle from something abstract but from the circumstances of fact that put a general interest of the society first as the main beneficiary of knowing about the activities carried out by the state Government, [...] since through the environmental impact study document, individuals can have access to the technical information and a general description of the environmental and social components of the project to ensure the well-being of the population and respect for the environment."[52]

The Constitutional Court of the Dominican Republic ruled in a similar way in its judgement 0511/18. In response to a request for access to an environmental report prepared due to a fuel spill, the Ministry of Environment and Natural Resources argued that the information could not be provided because the deadlines for the filing administrative appeals had not elapsed. In this regard, the High Court found that the Ministry had not explained the harm that could be caused if the information were to be released. In addition, it considered that information should be provided since the refusal did not fall within the scope of the exceptions provided by law[53].

In turn, the Constitutional Court of Peru analysed a *habeas data* lawsuit against the Environmental Assessment and Control Agency (OEFA) so that copies of the reports issued by the OEFA supporting ecological or environmental crimes, during the 2008-2013 period, be released. In this case, the OEFA argued that the requested reports had been developed in the context of a criminal investigation, being of a reserved nature and only accessible to the parties to the proceedings. In addition, it stated that the request for information should be submitted to the prosecutor in charge of the investigation or the judge in charge of the proceedings. The court noted that confidentiality referred to ongoing investigations, but this restriction on access was temporary and should be interpreted in accordance with the general constitutional rule that established that legal proceedings were public. Therefore, once the reserved stage had been completed, the information had to be provided and the OEFA could not generally deny access to all reports, but only to those that were part of a reserved investigation. If the information is not available, the office to which the request is submitted should forward said request to the competent body that might have it, i.e. the Office of the Public Prosecutor Specializing in Environmental Crimes of the Ministry of Environment.[54]

51 El Salvador. Institute for Access to Public Information. Decision NUE 51-A-2021 (AG). 10 December 2021.

52 Mexico. State Institute for Access to Public Information of Yucatán. Appeal for judicial review 271/ 2022. 11 August 2022.

53 Dominican Republic. Constitutional Court. Judgement 0511/18. 3 December 2018.

54 Peru. Constitutional Court. Judgement 224/2021. 17 September 2021.

Also in Peru, the Transparency and Access to Public Information Tribunal found the refusal to release a civil lawsuit for environmental damage filed against an oil company unjustified because the State authority considered it to be part of its procedural strategy. The Court recalled the requirements necessary for the application of that exception, namely: 1) The existence of certain information that has been created or is held by the entity, which could include reports, analyses, and recommendations, among others; 2) That the information has been prepared or obtained by the legal advisers or lawyers of the Public Administration; 3) That the information corresponds to a defence strategy of the entity; and 4) The existence of an ongoing administrative or judicial proceeding in which the aforementioned strategy will be deployed. Notwithstanding the foregoing, the Court concluded that confidentiality is temporary and such quality is lost once the complaint is filed in a public proceeding:

> "Such confidentiality, however, does not include, in an illustrative way, the document based on which the state entity submits its claim and its grounds before an administrative or jurisdictional body, that is, the claims, pleadings, appeals, among others, to the extent that in such a case the defence strategy has already been revealed in the framework of a proceeding that is essentially public, such as the administrative or judicial proceeding. Once a complaint, plea, appeal or other document is served by the entity into the judicial proceeding, such documents are no longer part of the process of developing a strategy and become part of an administrative or judicial file, based on which the administrative authority or the judge, where appropriate, will finally adopt a decision (administrative decision, judgement or order) that is also considered information of a public nature." [55]

2.6.5. National Security

National security has been another ground for refusal used by the competent authorities to not provide environmental information. Constitutional dispute 217/2021 of the Federal Supreme Court of Justice of Mexico, brought by the INAI[56], is particularly important because it invalidated a government decision that established the public interest and national security reserved classification of the projects and works of the Government of Mexico considered to be a priority and strategic for national development. The Supreme Court determined that such agreement, due to its ambiguity and scope, allowed the reservation of all information related to the development of priority works and projects of the Government of Mexico, considering them of public interest and national security, which directly affected article 6 of the Constitution and restricted the right of access to information. In particular, a generalized, anticipated, absolute and excluding classification of information was made without considering the provisions of the transparency legislation, thus violating the principle of maximum disclosure under which confidentiality is an

55 Peru. Transparency and Access to Public Information Tribunal. Resolution No. 000266-2023-JUS/TTAIP-SEGUNDA SALA. 26 January 2023.

56 It should be recalled that the INAI, in its resolution of 22 November 2021, had stated that said agreement violated the right of access to information for the following reasons: "(a) It makes an anticipated classification of the information and thereby violates the competence of the National Institute of Transparency, Access to Information and Protection of Personal Data, by declaring of public interest and national security all the infrastructure projects referred to in the decree, as well as all those project that are considered strategic and priority; (b) The anticipated categorization of national security that the Agreement attributes to the infrastructure works or projects in the referred branches and industries, as well as those that are considered strategic or priority, transgresses article 134 of the Constitution, by establishing a regulated exception to the public bidding regime, thus violating the right of access to information; (c) The President of the Republic does not have the power to provide content to the concepts of national security, public interest and strategic and priority areas, since these are legal concepts defined by the Constitution itself and by the laws issued by the Congress of the Union."

exception and not the general rule. In addition, limitation of the right was not justified and "the right is violated in its collective aspect, because it inhibits social or public criticism by preventing access to information on works and projects." At the same time, the concept of national security established in law was expanded, without having the power to do so.[57]

This ground for refusal was again considered by the INAI in case RRA 9389/23 of 18 October 2023.[58] On this occasion, an individual requested the Office of the Federal Attorney for Environmental Protection to provide the official documents it held that were either directly or indirectly related to the Mayan Train project, and that were also related to the allocation of communal lands belonging to the Communal Land Nucleus called Tebec, in the municipality of Umán, in the state of Yucatán. Although the Office of the Federal Attorney for Environmental Protection provided a list of documents, the original documents were not included, and their non-release was not justified. However, in the subsequent appeal process, the mandated entity argued that the information was reserved as it affected national security, public security, or national defence.

In view of this situation, the INAI determined that it was not appropriate to reserve the requested documents based on the Federal Decree that declared the carrying out of projects and infrastructure works of the Mayan Train to be of public interest and national security "since, in order to guarantee the human right of access to information, there is a prohibition to issue agreements that classify reserved information or documents, in advance and in general, but each case should be analysed through the application of a harm test."[59] In addition, the mandated entity did not express in its initial response how such information could violate national security, procedures to consider the information as classified were not followed, and a public version was not prepared eliminating the classified parts, generically referring to their content and justifying said classification. Part of the requested information related to the notices and minutes of meetings held with the shareholders of common land and staff of the mandated entity was, otherwise, in public records or sources of public access.

2.7. Generation and Disclosure of Environmental Information

The generation of information and its proactive disclosure is a central aspect of the environmental transparency regime. Although mandated entities have been traditionally obliged to provide access to the information requested that has been generated and is held by them, regulatory frameworks regarding access to environmental information have lately been referring to a related obligation of generation of information and active transparency, making information available to the public without the need for any request.

In the Escazú Agreement, this obligation is progressive and subject to available resources. Article 6.1 states that:

> "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

57 Mexico. Supreme Court of Justice of the Nation. Constitutional dispute 217/2021. 22 May 2023.

58 Mexico. National Institute of Transparency, Access to Information and Protection of Personal Data of Mexico. Resolution RRA 9389/23. 18 October 2023.

59 *Ibid.*

> local levels. Each Party shall strengthen coordination between the different authorities of the State."

Chapter II of the Inter-American Model Law 2.0 on Access to Public Information establishes measures to promote openness, including active transparency measures. Article 5.1 says that "All subject entities shall proactively disseminate the key Information established by this Law, without the need for any request for such Information". Article 6 details what is considered to be key information subject to proactive disclosure, including: (i) general information on the mandated entity, such as its structure and the services it provides; (ii) information on public officials; (iii) financial information; (iv) citizen participation mechanisms; and (v) needs of specific groups.

2.7.1. Generation of Environmental Information

Different judgements as well as decisions adopted by ATI oversight bodies in the region have ordered mandated entities to generate environmental information. When this has occurred, it has been considered that it responded to an obligation within the applicable regulatory framework or was part of the essential duties of the mandated entities, without which they could not adequately fulfil their mission. As it was recalled in another study, this is so because it is considered that "when a mandated entity must capture or systematize certain information for the adequate fulfilment of its duties, the non-existence of such information cannot be accepted as a response to requests for access."[60]

In 2022, the Supreme Court of Chile considered that the Ministry of Environment had failed to comply with its duty to properly manage a Pollutant Release and Transfer Register and to generate and compile the technical and scientific information necessary for the prevention of pollution and the improvement of environmental quality, particularly regarding atmospheric pollution and environmental impact. The case referred to the pollution situation faced by the inhabitants of the Quintero and Puchuncaví communes, in the V Region of Valparaíso (called "sacrifice zones"). In August 2019, people living in these communes suffered different health problems due to their exposure to pollutants from industries established in the area. The Chilean Supreme Court determined, on the one hand, that the State had not incorporated the systematization and estimation of emissions of several compounds in the Pollutant Release and Transfer Register to which it was obliged, including copper, arsenic, selenium, cadmium, mercury, and lead compounds. On the other hand, the State violated the obligation stated in the General Environmental Law to generate and compile information to prevent pollution and improve environmental quality. Additionally, the Supreme Court ordered the development of a website with the following characteristics:

> "In order to facilitate access to information for interested persons and, in particular, for the residents of the communes of Quintero and Puchuncaví, the defendants shall create and maintain a website which shall include all data, background information, inquiries, results, reports, etc., accounting for the various actions carried out to comply with the measures ordered in this judgement. Said website shall be of public access and shall orderly and clearly include the information referred to in the preceding paragraph and any other information deemed appropriate and pertinent to duly inform the citizens on the situation resolved in this case."[61]

60 Daniel Ospina Celis y Catalina Botero Marino. (2022). "Synthesis of decisions on access to public information in Latin America", *Cuadernos de Discusión de Comunicación e Información*, No. 22, UNESCO. Available at: https://unesdoc.unesco.org/ark:/48223/pf0000383319.locale=en.

61 Chile. Supreme Court of Chile. Judgement No. 5888-2019. 28 May 2019.

Other decisions taken in recent years by judges in Latin America and the Caribbean have reinforced the obligation of the mandated entities to generate environmental information necessary to fulfil their duties. In Brazil, in a process in which a class action was being initiated in defence of the environment alleging the illegality of a state support program for the automotive sector (IncentivAuto) for violating environmental commitments, the Court of Justice of the State of São Paulo ruled in favour of the anticipated production of evidence to assist the plaintiffs' right against the State of São Paulo. In this case, the plaintiffs considered the IncentivAuto Programme to be harmful to the environment but requested information held by the State to which they had not had access to prove their point. The Court reminded that the disclosure of documents and acts of the administration was the rule, and the secret was the exception. Besides, access to information included the right to obtain relevant information on public assets' management, the use of public resources, tenders, and administrative contracts, as well as on the implementation and monitoring of programmes, projects, and actions of public entities, including goals and indicators.[62]

The Judicial Unit on Violence against Women or Members of the Family based in the Santa Cruz canton in Ecuador decided in the first instance on another case on the generation of environmental information. The Association of Naturalist Guides of the Galapagos National Park asked the Directorate of the Galapagos National Park for a technical report on which a project carried out in the Park on fishing for the sustainable capture of large fish was based. The entity argued that it did not have the report on which the investigation was based, neither was it obliged to produce it. The judge found that the Galapagos National Park had violated the right of access to information and ordered it to produce the report, whereas:

> "Considering the sensitivity that a research project may have, and the importance of the collection of data and results of the research carried out in the Galapagos protected area, the entity in charge of controlling and monitoring the Galapagos National Park and the Galapagos Marine Reserve should be responsible for monitoring, collecting, and registering that public information. That is why the allegation of not having said information cannot be accepted [...]"[63]

In Jamaica, a group of citizens brought an action in defence of their rights to information, health, life and to enjoy a healthy environment. For the plaintiffs, bauxite mining activities on the island affect or could affect their rights as the places where they lived have become uninhabitable. Although the case is related to several environmental issues, and especially to whether mining activities have an adverse impact on health, the Supreme Court of Judicature of Jamaica, in its judgement on the admissibility of the action, has also referred to the production of environmental information.[64] A fundamental issue in the case is whether the right of access to information imposes the obligation of state entities to produce information related to the environment and if, in the absence of information on the impacts of bauxite mining activities on health, this right is being violated.

62 Brazil. Tribunal de Justiça do Estado de São Paulo. Proceeding No. 1047315-47.2020.8.26.0053. Produção Antecipada da Prova. 12 January 2021.

63 Ecuador. Judicial Unit on Violence against Women or Members of the Family, based in the Santa Cruz canton. Proceeding No. 20571202000034. 23 December 2020.

64 Jamaica. Supreme Court of Judicature of Jamaica, Civil Division. [2023] JMSC Civ 6. Claim No. SU 2022 CV 02353. 20 January 2023.

2.7.2. Active Transparency

The Superior Court of Justice of Brazil consolidated the importance of active transparency in environmental matters in a case in which it was discussed whether a municipality should and could periodically publish on its website information related to the management of an environmental protection area. The courts of first and second instance considered that there was no legal provision that required the municipality to publish on the Internet the information related to the Management Plan of the Lajeado Environmental Protection Area. In reviewing both judgements, the Superior Court of Justice in an extraordinary appeal determined totally the opposite: That information on matters of public interest, such as the management of environmental protection areas, should indeed be made available to the public periodically.[65] The Court considered that in Brazil there is an incipient "Environmental Rule of Law" or "Ecological Rule of Law", which includes within its characteristics the State's duty to publish environmental information, such as management plans, on the Internet.

The Council of State of Colombia ruled on another case on active transparency, this time on one of the tools available in the country to disclose climate information: the National Information System on Climate Change. In this country, Law No. 393 of 1997 recognizes enforcement action as a judicial mechanism through which anyone can sue the State and request it to comply with a specific law that it has not complied with so far. Using this procedural mechanism, the Attorney General's Office of the Nation sued the Ministry of Environment and Sustainable Development on the grounds that the latter had not regulated a law on climate change (Law No. 1931 of 2018). Specifically, the Colombian Ministry of Environment had not regulated article 26 of that law, which creates the National Information System on Climate Change, thus affecting the effectiveness of this active transparency tool the purpose of which is to systematise and publish information on climate change. The Council of State, after showing that indeed there was no regulation that developed the functioning of the National Information System on Climate Change, ordered the Ministry of Environment and Sustainable Development to regulate the matter within a maximum of six months.[66]

2.8. Information to Participate in Environmental Decision-Making Processes

Access to information enables public participation in decision-making processes related to the environment. To participate properly, people need truthful, timely, proper, and understandable information. By recognizing the connection between the three access rights, the Escazú Agreement promotes a comprehensive understanding of environmental participation based on the availability of quality public information on activities, projects and other decisions that have —or may have— a significant impact on the environment.

Two aspects should be highlighted regarding access to information to participate: First, the fact that access to information is governed by the general standards of this right, i.e., both active and passive transparency, regardless of whether its use is to inform the public's participation in decision-making processes or to access environmental information for other purposes; second, it is important to highlight that in addition to the general public, there is possibly a public directly impacted by the decision, which should be identified by public authorities and to which said authorities should provide certain specific information in a proactive manner.

65 Brazil. Superior Court of Justice. Special Resource No. 1857098-MS (2020/0006402-8). 11 May 2022.

66 Colombia. Council of State, Contentious-Administrative Division, Fifth Section. Proceeding No. 25000-23-41-000-2022-01551-01. 20 April 2023.

The Federal Court of Justice of Mexico very clearly linked the rights of access to information and participation in environmental matters in its protection under review 578/2019 of 6 February 2020. A group of people questioned the legality of the authorizations granted to a company to operate a mining complex in the state of Sonora, alleging that their right to an informed participation in environmental matters had been violated, as they had not had real, timely, accessible, and sufficient knowledge of the information necessary for an effective participation. Although the Court considered that in the case in question the participation procedure had complied with the law, it noted that "access to environmental information enhances environmental governance transparency and is a prerequisite for the effective participation of the public in environmental decision-making."[67]

The Ecuadorian legal framework and the decisions of the Constitutional Court of Ecuador provide a clear example of the close relationship between access to information and environmental participation. Article 398 of the Constitution of the Republic of Ecuador expressly recognizes the existence of a constitutional right to environmental consultation. Specifically, this article provides the following:

> Article 398. Any State decision or authorization that may affect the environment should be consulted with the community, who shall be informed in a timely and comprehensive manner. The consulting entity shall be the State. The law shall regulate prior consultation, citizens' participation, deadlines, the consulted entity, and the assessment and objection criteria on the activity which is the object of consultation.
>
> The State shall assess the opinion of the community according to the criteria established by law and international human rights instruments.
>
> If the consultation process results in a majority opposition by the corresponding community, the decision to implement —or not to implement— the project shall be taken through a duly motivated decision of the corresponding higher administrative body in accordance with the law.

In interpreting this article, the Constitutional Court of Ecuador has understood that "the right to environmental consultation is made up of access to environmental information and the environmental consultation itself."[68] The highest court considers that the State is obliged to provide information to individuals or communities that could be affected by the project and to disclose said information to as many people as possible. In this case, the Court found that the State had violated the right to environmental participation and the right of access to information by failing to adequately disclose to all potentially affected communities the information they required in relation to an irrigation project in Aquepi and San Vicente.

In another case, the Constitutional Court of Ecuador more accurately established the standards that should be followed to adequately guarantee access to information for environmental participation. In Judgement No. 1149-19-JP/21, it established that people interested —or potentially interested— in a specific project had not received complete or understandable information. Specifically, it stated that "accessible, clear, complete and objective information on the nature, size, pace, reversibility and scope of the authorization issued" was not disclosed.[69] Based on this logic, to guarantee

67 Mexico. Supreme Court of Justice of the Nation. Protection under review 578/2019. 6 February 2020.

68 Ecuador. Constitutional Court of Ecuador. Judgement No. 1185-20-JP/21. 15 December 2021.

69 Ecuador. Constitutional Court of Ecuador. Judgement No. 1149-19-JP/21. 10 November 2021.

environmental participation and the right of access, it is not enough to disclose any information; information should be clear, complete, reliable, timely and accessible. According to the Court:

> "The State, through its competent authorities, must guarantee that the consulted community is informed, at least, of the following aspects: The nature, size, pace, reversibility and scope of any State decision or authorization; the reason and object of the decision or authorization; the duration of the authorized activity or project; the location of the areas that will be affected; a preliminary assessment of the potential environmental impacts, including potential risks; the personnel likely to be involved in the implementation of the decision or authorization; and the technical and legal procedures that the decision or authorization may entail."

A third judgement delivered by the Constitutional Court of Ecuador analysed the relationship between access to information and participation in environmental decision-making matters. In the framework of a class action of unconstitutionality against some articles of the Organic Code of the Environment and its regulatory decree, the Ecuadorian high court expressly referred to what is meant by comprehensive and timely information in the framework of the environmental consultation.[70] In its view, timeliness refers to the information being delivered at the initial stages of the process, and to it being actually delivered in understandable formats and languages. To define the scope, the Court resorted to the Escazú Agreement, stating that the information should be accessible and follow the principle of maximum disclosure, in such a way that all the necessary information that citizens may require to make informed decisions in environmental matters is generated and disclosed.

In another recent ruling, the Supreme Court of Justice of Panama delved into the essential nature of access to information to participate in environmental decision-making processes. In determining the unconstitutionality of Law No. 406 of 20 October 2023, which approved a concession agreement for a copper mine, the Supreme Court argued that the Panamanian State had acquired international social and environmental obligations in order to guarantee the citizens the effectiveness of the right of access to information on those matters that may affect the free enjoyment of their right to a healthy environment. Additionally, the applicable regulations guaranteed the principle of disclosure within the environmental assessment process, which required that the public consultation processes include the dissemination of information related to the project, the ways in which it affects the environment, and how, once the work is completed, actions will be taken to repair the damage caused. In view of this, the high court argued that, due to the fact that a 2011 environmental assessment report was used, the concession granted in 2023 did not contain updated information on the ecological situation at the time of its execution and did not comply with the applicable regulations to provide effectiveness to the right of access to information on environmental matters, including the Escazú Agreement. Thus:

> "The date of the Environmental Impact Study is highlighted because, at the time of authentication of the Contract Law, citizens did not have any updated information on the impact that the mine had at that time on its concession area and surrounding areas, which made it impossible to access relevant information that would have enriched the discussion, generating a Contract Law appropriate to the current circumstances of the concession area, which would have definitely impacted the mitigation measures that should have been included in the Duties and Obligations of the Concessionaire."[71]

70 Ecuador. Constitutional Court of Ecuador. Judgement No. 22-18-IN/21. 08 September 2021.

71 Panama. Supreme Court of Justice. Judgement declaring the unconstitutionality of Law 406 of 20 October 2023. 27 November 2023.

Consequently, the Supreme Court concluded that by not complying with the timely provision of relevant information and effective participation, the collective right of public participation of the population, which was a condition for the legislature to approve the mining concession agreement in question, had been violated.

2.9. Environmental Information and Vulnerable Groups

As it was mentioned in another document published by UNESCO entitled *Síntesis de decisiones sobre acceso a la información pública y grupos en situación de vulnerabilidad en América Latina*,[72] access to public information is a valuable tool for people in vulnerable situations. Taking this reality into consideration, the Escazú Agreement refers in different articles to the specific obligations that States have to materialize their access to information. Articles 5.3., 5.4., and 6.6. state the following:

> 5.3. 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.
>
> 5.4. 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.
>
> 6.6. 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.

A court in Argentina has recently applied the differential standards proposed by the Escazú Agreement to guarantee access to information by vulnerable groups. The case originated from an indigenous community's request to access information on lithium and borate mining projects near a lagoon. Since the mandated entity responded in an untimely manner and did not provide all the information requested, a judicial proceeding was brought against it. In evaluating the case, the Environmental Court established that the State had violated the petitioners' right to access environmental information, especially considering that the Escazú Agreement "raises the obligation of the State when it comes to requests for access to public environmental information made by indigenous peoples, intensifying its obligation to ensure an effective access."[73]

In Bolivia, when analysing a case of pollution of Lake Uru Uru (Oruro) with industrial waste, sewage, and mining waste, which was affecting the health, livelihoods and environment of the surrounding population, the Plurinational Constitutional Court reinforced the right of the country's Indigenous Native Peasant Communities to environmental information. Referring to applicable standards, such as the Escazú Agreement, the court recalled that the population has the right to information on environmental management and citizen control over public management related

72 The link to this publication and other UNESCO resources on access to public information is available at: https://unesdoc.unesco.org/ark:/48223/pf0000384761.locale=en.

73 Argentina. Environmental Court, Province of Jujuy, File No. C-197695/2022. 15 November 2022.

to the environment, and the State has the obligation to inform about it. In particular, it ordered the authorities of the central, departmental and municipal levels of the State to constantly inform the population in general, and in particular the native indigenous peasant peoples, as well as people living on the shores of Lake Uru Uru, about the fulfilment of the obligations, activities, programmes, projects, control and monitoring established in the judgement. In addition, the court established that:

> "The referred entities, Ministries of Environment and Water, Mining and Metallurgy, Defence and Health, the Autonomous Departmental Government of Oruro, and the Autonomous Municipal Governments of Oruro and El Choro, in compliance with the State's obligation to provide the population with access to environmental information as set forth in Legal Basis III.10 of this Plurinational Constitutional Judgement, in the first quarter of each year, to carry out a rendering of public accounts to the indigenous native peasant authorities of the sector, to the communities that live and are affected by the pollution, and to the people that exercise social monitoring, to report in a timely manner on the strategic plans, their progress, implementation, monitoring, the strategic conservation plans and all actions taken to comply with the provisions of Supreme Decree 335, and the actions taken for the conservation of Lake Uru Uru as a wetland declared as a "Ramsar" site".[74]

The Constitutional Court of Colombia[75] protected the rights of the Raizal people in the islands of Providencia and Santa Catalina, who alleged a violation of their fundamental rights, including the right to a healthy environment, to access to public information, to prior consultation and cultural identity, during the planning and execution of the comprehensive reconstruction plan following Hurricane Iota, which affected the area in 2020. The plaintiff —in representation of the Raizal people— claimed that the State had violated the fundamental right of access to public information of the affected communities by not sharing with the citizens a document with a detailed, clear, and chronological description of the reconstruction activities. Furthermore, this had prevented the Raizal community from participating and taking part in monitoring the activities carried out by public entities in their territory. To guarantee this right, the Court asked the Directorate of Populations of the Ministry of Culture to translate into the language of the Raizal people of the archipelago of San Andrés, Providencia and Santa Catalina its order of provisional measures issued in 2022 "on the one hand, to guarantee the Raizal people access to judicial information that affects them, and, on the other hand, to recognize and make visible the right to cultural identity of the Raizal people and their linguistic tradition."[76] Additionally, the Court ordered the authorities to grant the Raizal people access to all administrative and financial information on the reconstruction process on the islands of Providencia and Santa Catalina according to Law No. 1712 of 2014.

74 Bolivia. Plurinational Constitutional Judgement 1582/2022-S2. 14 December 2022.

75 Colombia. Constitutional Court of Colombia. Judgement T-333/22. 26 September 2022.

76 Through order 691 of 23 May 2022, the Seventh Review Chamber of the Constitutional Court decreed provisional protection measures to mitigate the public health problem caused by the generalized sewage leak into the environment in the islands of Providencia and Santa Catalina. The Court ordered the National Unit for Disaster Risk Management and the Ministry of Housing to identify those new homes with leaking septic tanks and to carry out, with the prior agreement of the owners, the necessary adjustments to solve this problem. Additionally, the Chamber requested to verify that the discharge of sewage had been repaired and that neither the ecosystems, nor public health and the healthy environment of the inhabitants of Providencia and Santa Catalina were impacted by this.

In Costa Rica, the Constitutional Chamber of the Supreme Court of Justice clarified, in a case brought by two members of indigenous communities, that the information related to environmental impact assessments is public information that is available for consultation by anyone.[77] The plaintiffs had asked the Court to declare unconstitutional a law which, in their opinion, authorized the use of water for human consumption and the construction of related works in the natural heritage of the State, which is mainly located in indigenous territory. The Court pointed out that the law in question did not allow the use of water resources in all the natural heritage of the State, but enabled specific projects to be launched, which should be consulted in each case and in which access to information and participation of the communities involved should be guaranteed, considering their particularities.

77 Costa Rica. Constitutional Chamber of the Supreme Court of Justice. Resolution No. 17397-2019. 11 September 2019.

3. Conclusions

As it has been stated in this publication, Latin America and the Caribbean has seen remarkable progress in guaranteeing the right of access to environmental information. Developments have taken place both at the regulatory level, where the right to a healthy environment and access to information have been constitutional and legally recognized, and in practice, through its application through court judgements and decisions adopted by ATI oversight bodies. This shows the strong commitment of the countries of the region and their institutions —at all levels— to environmental democracy.

Additionally, although this study only considers the last five years, the analysis of selected cases shows the growing interest of citizens in the environment and a solid jurisprudential and decisional line of the courts and ATI oversight bodies in Latin America and the Caribbean when it comes to guaranteeing their right of access to environmental information. On the one hand, established standards, such as the principle of maximum disclosure and the obligations of active and passive transparency, are reaffirmed. On the other hand, the scope and content of the right are expanded, addressing regulatory gaps or interpreting applicable legislation in light of current developments, realities and needs. Such is the case of the definition of environmental information, the consideration of mandated entities or the implementation of deadlines and conditions for the release of environmental information.

However, the fact that most of the cases analysed deal with denials of environmental information by the competent authorities and that the courts or oversight bodies have protected the rights of the requestors should call for reflection. Certainly, the right of access to environmental information is not absolute, but it implies having regimes of exceptions that comply with the legality, suitability, necessity, and proportionality criteria, favouring access to information and being restrictively interpreted.

Another aspect which should be further explored is the generation of environmental information and its proactive public disclosure. This is especially relevant in a context of climate, biodiversity and pollution crises that have a significant impact on the region and require adequate, timely, updated, and reliable information to make better decisions.

In addition, there are other important challenges to guarantee full access to environmental information. In particular, in those countries where they do not yet exist, progress should be made towards the implementation of legislative frameworks that strengthen the right of access to information, including environmental information, both in its active and passive dimensions. In those countries where a robust regulatory framework already exists, it needs to be fully and effectively implemented, particularly guaranteeing its exercise by vulnerable individuals and groups. Additionally, the use of new technologies —including open data— should be encouraged on an equal and non-discriminatory basis so that this right can be extended. At the same time, it is imperative to continue generating, collecting, making available to the public and disclosing as much environmental information as possible. Information is the basis of participation and, as such, has a leading role in the development of a healthy and inclusive environment. Finally, oversight bodies and independent review mechanisms for access to information should be strengthened with the aim of improving their monitoring and follow-up of national transparency policies.

The Regional Agreement on Access to Information, Public Participation and Justice in Environmental Matters in Latin America and the Caribbean (Escazú Agreement) is a key tool to overcome these shared challenges. Achieving its ratification and accession by all countries in the region, along

with its full implementation, will help to better guarantee access to environmental information, as well as the related rights of public participation and access to justice. Its rights-based approach, its prioritization of vulnerable individuals and groups, and its focus on capacity-building and cooperation will be essential to achieving this goal.

Annex 1: List of Decisions and Judgements Mentioned

Country	Judgement	Date
Argentina	Contentious-Administrative Chamber No. 1 of Paraná. "Fundación Cauce: Cultura Ambiental – Causa Ecologista c/ Estado Provincial S/ Acción de Amparo Ambiental"	17 May 2023
	Environmental Court of Jujuy, File No. C-197695/2022	15 November 2022
	Chamber of Appeals of Neuquén. Proceeding No. 100571/2021	24 August 2021
	Federal Contentious-Administrative Court No. 8. Proceeding No. 64727/2018, Fundación Ambiente y Recursos Naturales c/ YPF SA s/ Varios	3 July 2019
Bolivia	Plurinational Constitutional Judgement 1582/2022-S2	14 December 2022
Brazil	Judgement of the Superior Court of Justice. Special Resource No. 1857098-MS (2020/0006402-8)	11 May 2022
	Tribunal de Justiça do Estado de São Paulo. Proceeding No. 1047315-47.2020.8.26.0053. Produção Antecipada da Prova	12 January 2021
Chile	Constitutional Court of Chile. Judgement No. 12.612-21 INA	4 August 2022
	Supreme Court of Chile. Judgement No. 10.961-2022	8 November 2022
	Supreme Court of Chile. Judgement No. 131.990-2020	23 March 2021
	Supreme Court of Chile. Judgement No. 5888-2019	28 May 2019
	Council for Transparency. Protection decision No. C8692-22	27 April 2023
	Council for Transparency of Chile. Protection decision No. C3143-21	17 August 2021
Colombia	Council of State, Contentious-Administrative Division, Fifth Section. Proceeding No. 25000-23-41-000-2022-01551-01	20 April 2023
	Constitutional Court of Colombia. Judgement T-333/22	26 September 2022
Costa Rica	Constitutional Chamber of the Supreme Court of Justice of Costa Rica (Resolution No. 20267-2021)	10 September 2021
	Constitutional Chamber of the Supreme Court of Justice of Costa Rica (Resolution No. 17397-2019)	11 September 2019
	Constitutional Chamber of the Supreme Court of Justice of Costa Rica (Resolution No. 20355 of 2018)	7 December 2018

Country	Judgement	Date
Ecuador	Constitutional Court of Ecuador. Judgement No. 1185-20-JP/21	15 December 2021
	Constitutional Court of Ecuador. Judgement No. 1149-19-JP/21	10 November 2021
	Constitutional Court of Ecuador. Judgement No. 22-18-IN	8 September 2021
	Judicial Unit on Violence against Women or Members of the Family, based in the Santa Cruz canton. Proceeding No. 20571202000034	23 December 2020
El Salvador	Institute for Access to Public Information. Decision NUE 51-A-2021 (AG)	10 December 2021
Guyana	High Court of the Supreme Court. Collins v. Environmental Protection Agency, 2022-HC-DEM-CIV-FDA-1314	3 May 2023
Honduras	Institute for Access to Public Information of Honduras. Resolution IAIP SE-004-2019	25 October 2019
Jamaica	Supreme Court of Judicature of Jamaica, Civil Division. [2023] JMSC Civ 6. Claim No. SU 2022 CV 02353	20 January 2023
Mexico	Federal Supreme Court. Protection under review 492/2022	8 June 2023
	Federal Supreme Court. Constitutional dispute 217/2021	22 May 2023
	Federal Supreme Court. Protection under review 578/2019	6 February 2020
	National Institute of Transparency, Access to Information and Protection of Personal Data of Mexico (INAI). Resolution RRA 9389/23	18 October 2023
	National Institute of Transparency, Access to Information and Protection of Personal Data of Mexico (INAI). Resolution RRA 9010/23	3 October 2023
	National Institute of Transparency, Access to Information and Protection of Personal Data of Mexico. Resolution RRA 6676/22	1 June 2022
	State Institute for Access to Public Information of Yucatán. RR 253/2022	11 August 2022
	State Institute for Access to Public Information of Yucatán. RR 80/2022	16 June 2022
	State Institute for Access to Public Information of Yucatán. RR 271/2022	11 August 2022
Dominican Republic	Constitutional Court. Judgement 0511/18	3 December 2018
Panama	Supreme Court of Justice. Judgement declaring the unconstitutionality of Law 406 of 20 October 2023	27 November 2023

Country	Judgement	Date
Peru	Constitutional Court of Peru. Judgement 224/2021	17 September 2021
	Transparency and Access to Public Information Tribunal. Resolution No. 002201-2023-JUS/TTAIP- PRIMERA SALA	8 August 2023
	Transparency and Access to Public Information Tribunal. Resolution No. 001512-2023-JUS/TTAIP-SEGUNDA SALA	8 May 2023
	Transparency and Access to Public Information Tribunal. Resolution No. 000266-2023-JUS/TTAIP-SEGUNDA SALA	26 January 2023
	Transparency and Access to Public Information Tribunal. Resolution N° 003127-2022/JUS-TTAIP-SEGUNDA SALA	28 November 2022
Trinidad and Tobago	High Court of Justice. Claim No. CV 2020-01251	21 January 2021
Uruguay	Court of Appeal. Judgement No. 7, 20/2023	3 February 2023

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